COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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

The Council met at Government House on Friday, the 16th December 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahàdur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Dahádur.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

CIVIL JUSTICE BILL.

The Hon'ble Mr. Maine introduced the Bill for the improvement of the administration of Civil Justice in respect of suits of small value, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said—" This Bill, on its first appearance, attracted some interest and excited much discussion. I do not think that in its present form, objection will be taken either, to its principle or to its details. The controverted parts of the Bill were the sections relating to specific performance, which I have now agreed to remove to the Code of my hon'ble friend Mr. Harington, where no doubt their proper place is. Apart from those sections, nobody will doubt that the measure will contribute to the efficiency of the Small Cause Courts, and possibly to their extension. It will effect some mechanical improvements—considerable, no doubt, but still, in their nature, chiefly mechanical—in the organization of those Courts, which I consider one of the greatest of the benefits which the country owes to my hon'ble friend Mr. Harington. In one sense, indeed, the Bill cannot fail.

For it only empowers the Local Government, with the concurrence of the Governor-General in Council, to introduce the system which it creates into particular districts; and if experience and observation show that the existing arrangements possess any superiority, it will always be possible to re-establish them.

If one watches the practical working of Small Cause Courts—and no one has observed them with greater attention or interest than I have—one cannot help being struck that the principal drawback on the efficiency of the system, in Bengal at all events, is connected with these Courts being insulated tribunals. Whether or not that was intended by Mr. Harington, I do not know. But it is the fact that Small Cause Courts in the Mofussil are mainly isolated tribunals, presided over by a single Judge. The result is that, if a neighbourhood be thickly populated, and litigation be consequently active, the Government can afford to establish a Court with a Judge of capacity, and to allot to him an adequate salary. If, however, the population be sparse, and there be, therefore, little litigation, then, as a Small Cause Court is an expensive Court to the extent to which its cost is not covered by its stamps, the Government cannot take upon itself the charge involved in the establishment of a Court of the first class. It is, therefore, driven to the alternative of either appointing an inferior Judge on a lower salary, or of joining other judicial functions to those of the Small Cause Court. Both those expedients seem to me violations of the principle on which Small Cause Courts are founded. Presently, I will say what that principle appears to be. It is enough now to state that the obvious remedy is to link Courts of the lower class together in groups, so that the suitors may have the advantage at all events of occasional and periodical visits by Judges of capacity. The Bill therefore provides for a Judge of the first class going circuit among these Courts, under rules to be laid down by the Local Government. Certainly, if we stopped there, I am not sure that the system would not break down; for, in every Court, there is a great mass of routine business to be done, and a good deal of business which I should call "semi-judicial." By this last name I should distinguish such duties as examining the plaint, or passing decrees in unopposed suits; and I should call 'routine business' that which is described in sections 32 and 34 of the Bill. Such business imposes at present a heavy burthen on Judges, and it would become more onerous if Judges only paid periodical visits and stayed but for a limited time. For remedy of this, the Bill adopts an English plan which has been very successful wherever a group of Courts subordinate to some great Court has been established—as, for example, in the case of the English Courts of Bankruptcy. A special officer is appointed to dispose of the routine and of the semi-judicial business, subject as to the latter, to the revision of the Judge. We call him by the English term Registrar. He will not be a mere clerk, but will be

strictly subordinate to the Judge. In most cases, I suppose that he will be a native gentleman of about the standing of a Munsiff. I can conceive no better school for higher judicial employment, and the Bill provides that, when his capacity is assured, he may have jurisdiction conferred upon him up to a certain amount, stated formally at fifty rupees.

I anticipate no opposition to the commitment of the Bill. But I may take this opportunity of stating my views as to the principles which govern the constitution of Small Cause Courts—principles which seem to me to be greatly misunderstood in India. It appears to be generally believed in this country, that a Small Cause Court is created by the simple expedient of cutting off an appeal. I can only explain such an impression by reference to the intolerable practical evils which, before the enactment of the Code of Civil Procedure and other recent laws, were caused by the extravagant facilities which the law furnished for appeals. I have here a well known book—the work of Mr. Gubbins on the Mutinies in Oudh. Into the latter editions, the author introduced some passages (written, I should say, before the Civil Procedure Code became law, though published afterwards), in which he describes, not the causes of the mutiny (for, like most competent observers, he thinks the ostensible cause to have been the true one) but the grievances which ought to be removed before our administration can be entitled to that character of beneficence which it claims.

"A still greater source of weakness in our Civil Executive is found in the cumbrous and unsuitable mass of law with which our Indian Officers are shackled, and the numberless appeals to which their orders are subjected. Speedy and cheap justice is what is wanted in India; but any speedy and cheap decision would be better than what we give the people, *viz.*, slow and expensive law."

What, then, Mr. Gubbins says is simply this: give us cheap and speedy justice if you can: if you can't, give us at any rate cheap and speedy decision. Now, Sir, although I have been sometimes assumed to have been unreasonably hostile to appeals, I cannot say that I can go so far as that conclusion to which Mr. Gubbins was conducted by his practical experience of India. If I supposed that an appeal furthered justice, I should no more dream of dispensing with it than I should of deciding a suit by tossing up a rupee —which is both a cheap and a speedy method of decision. I say that if you organize a Small Cause Court properly, an appeal would not further but obstruct justice. My theory of a Small Cause Court is that, from the limitation of the suits to claims of a certain nature it is almost exclusively a Court for the solution of questions of fact. Hence by considerably—not extraordinarily but considerably—elevating the capacity of the Judge you are able to utilize to the utmost those inherent and natural advantages which

every Court of first instance possesses in the decision of facts; that is, you are able to accept its decision in preference to that of any other Court which has not actually seen the witnesses and observed their demeanour. I am aware that I here approach the point upon which there is most difference of opinion between English lawyers and the gentlemen belonging to the judicial branch of the Civil Service. I should describe the Indian judicial system, apart from the original jurisdiction of the High Courts, as an exaggeration of that which is established in France. The weakest parts of the system are those at the bottom, the Courts of first instance: but their weakness is acquiesced in, because it is believed that a strong Court of appeal, sitting at a distance, and reading the evidence on paper, can successfully correct their mistakes. Now, in England, in the Courts of Common Law, which are the great Courts for the solution of questions of fact, a strong Court of first instance—probably the strongest in the world, a Judge and Jury—is at once placed in contact with the witnesses, and then its decision is accepted as conclusive by all other tribunals. Verdicts are sometimes disturbed. But the Court setting them aside does not substitute its own view of the facts: it sends the case back to be tried by another jury. Taking into account the simplicity of the questions, the same principle is applied in the County Courts also. Hence the astonishment—for I can use no other term—of an English lawyer new to India, at the system of regular appeal under which Courts of appeal freely substitute their own theory of the facts for the view of them taken by the Court below, which heard the story of the witnesses from their own lips. I admit that this surprise somewhat diminishes on further acquaintance with the country; for it is true that, owing to the uniformity of habit and inveteracy of routine among the people of India, it is possible to conjecture what took place in a certain case with a far higher degree of probability than could be attained in the active and diversified societies of Europe. I maintain, however, that the characteristic fault of the Indian judicial system is, that it greatly under-estimates the inherent advantages possessed by Courts of first instance, and greatly overrates the power of correction possessed by a Court of appeal. I will cite two cases which illustrate the difference of theory. The first is rather remarkable for this reason: it was a question of fact tried by the Court of Chancery. Until recently, Courts of Equity in England so far resembled the Indian Courts, that they relied mainly upon paper evidence, and it was only a certain class of cases which they sent to be tried in the form of an issue by the Courts of Common Law. Recently, however, the belief that no decision on facts is trustworthy which was not arrived at after actual examination of the witnesses has so gained ground that, by late Statutes, these Courts have been permitted and

directed to examine witnesses in open Court. The case I quote had, I fear, thus much of resemblance to an Indian case, that the plaintiff and her witnesses all swore to one thing, while the defendant and all his witnesses swore to the exact contrary. Here are a few words from the Judge who tried the case, one of the ablest and most patient on the bench, Vice-Chancellor Kindersley.

"In that state of things, there being oath against oath, inasmuch as the onus lay on the plaintiff, who alleged the promise, the decision must be against her, unless there were other circumstances not in dispute sufficient to lead to the conclusion that the defendant was not speaking the truth. His Honour thought there were—first, the letter, and then the interviews with Mr. Starling, and the pause and most expressive silence of the defendant."

Now, in an Indian regular appeal, I should like to know what became of that pause and expressive silence, which were obviously the most important material for conclusion in the judgment of the Vice-Chancellor. Would they be described on the record, and if so, what effect would they have on the Sudder Court? Is it not clear that an Indian Court would have followed what, no doubt, is the presumption of law until displaced by contrary evidence In other words, it would have done injustice and not justice.

My next case is one which I have to ask Your Excellency's pardon for mentioning, as your name occurs in it, but it is so instructive that I must quote it in the interest of my argument. I take it from Mr. Gubbins' account.

"I recollect, in 1842, when Magistrate of Delhi, that I obtained information of a noted "forger, a Mussulman, who resided in the city. He had carried his craft into matters which "came before me criminally; and I lost no time in attacking him.

"It was deposed before me that forgery was his business; that he kept a variety of seals "of different names, and a large apparatus of all that was necessary to carry on his iniquitous "trade within his house. His arrest and the search of his house were carefully arranged and "successfully accomplished.

"The articles seized carried convincing proof of his guilt. He was committed for trial "on a charge of fraud and forgery; and John Lawrence (now Sir John) presided as Judge. "He was convicted; and a sentence of imprisonment for five years was passed. This was "justice. But next came law! and, by the aid of the law, the forger came off victorious. He "appealed to the Sudder Court of Agra: and, ere long, a warrant, commanding the release of "the forger was received! The Court were not satisfied that the proof was legally sufficient. "And the Magistrate was cautioned to be careful how he searched the houses of respectable men."

It is difficult to conceive a more illustrative case. Everything here turned obviously on ocular inspection. It was the eye, and the eye alone, that could decide whether the sinister look of the articles proved them to be the implements

of a forger. But the Sudder Court, with the usual Indian confidence in paper descriptions, decided, and most naturally, that the proof was insufficient.

These are extreme cases: but every system must be tested by extreme cases. I do not, however, wish to make any stronger assertion than this—that here we greatly underrate the natural advantages of Courts of first instance, and set far too high a value on the corrective power of Courts of Appeal. It is no answer to me to say that our Judges of first instance are negligent and incompetent; that, even under the check of appeal, they take down the evidence imperfectly, and that it would never do to trust them to form irreversible conclusions on questions of fact. All that may, unhappily, be too true; but my doubts attach to the Court of Appeal. I doubt whether, under the existing conditions of the human mind, it is possible successfully to set right, more than to a very limited extent, the mistakes committted in a Court of first instance. In reading a great Indian case (we sometimes see them at home in the records of the Privy Council, and I admit that I speak of a time before the worst extravagencies of appeal were pruned away), it has often struck me when I have seen the Zillah Judge starting ingenious theory over the head of the Principal Sudder Ameen, and the Sudder Court showing itself still more ingenious than the Zillah Judge, and the Privy Council (though it did not often sin in that way) perhaps showing itself more ingenious than all—it has often struck me, I say, that the process might after all be like a long mathematical problem, in which, if you make a mistake in the first stage, the error only becomes worse, and vitiates the conclusion more hopelessly in proportion as the calculation mounts higher up and becomes more intricate.

But while I lay down theoretically that Courts of first instance possess advantages which no Courts of Appeal enjoy, my practical conclusion is a very simple one. It is this: improve your Courts of first instance, and, to the extent of your judicial material, establish these Courts of Small Causes. It will be seen why I object to inferior Courts of Small Causes. An inferior Court of this kind is not only a waste of public money and an injury to the litigants, but a standing sin against principle. The proper course is to improve your Judge till you can save the appeal. Very moderate improvement is, however, sufficient. So great are the natural advantages possessed by Courts of first instance, that a moderate elevation of the standard of capacity goes a long way. Fair legal knowledge, honesty, good sense, and familiarity with the language and customs of the people will suffice.

Two points remain to be noted. It may be said to me—granting all you say as to questions of fact, why not give an appeal on points of law? Now, I

have no objection on principle to the form of appeal known as special appeal. But the difficulty is, to whom shall the appeal lie? You cannot send the litigants in these small cases hundreds of miles to the Sudder Court; and if we did give such power of appeal we may be sure that it would be frightfully abused. And then as to the Zillah Judge. Without meaning the smallest disrespect to the Zillah Judges, I must say that, if the Small Cause Courts were properly organized (I admit the condition is all-important), there would be no such superiority in the Zillah Judge as would warrant an appeal of right being given to him from the Small Cause Court Judge on the simple points of law which arise, and that rarely, in the Small Cause Courts. The existing system of allowing the Judge to state a case for the Sudder Court at his own pleasure seems infinitely the best; and the more you improve the capacity of your Judges, the more freely, you may be sure, will they state cases on questions on which there may be genuine cause for doubt.

I must not conclude without making the admission that appeals have one indirect advantage, that they do serve as a mode of supervision. Whether it be true or not, that the Court of appeal can correct the mistakes of the Court below, it is an important consideration that the Judge below thinks it can; and under this impression, a negligent Judge may do his work better. I think it very desirable that Small Cause Courts should be under supervision; but for the best mode of supervision appears to me to be the bringing of a second mind to bear on the business of the Court. I therefore attach very high importance to the provisions of the Bill for the appointment of Judges extraordinary. Under these provisions, the Local Government may invest any judicial officer or person of legal learning with the power of assisting, occasionally or periodically, in the conduct of the jurisdiction of a Small Cause Court. Ordinarily, the person so empowered will doubtless be the Zillah Judge: but in the vicinity of the Presidency towns, I am not without hope that he may be a member of the Presidency Bar, if we can find one who can spare the time, and is reasonably well acquainted with the language. The report of such a Judge extraordinary, on the manner in which the business of the Court is conducted, will carry with it a supervision not less effective and more consistent with principle than any appeal whatever."

The Hon'ble Mr. Harington said that his hon'ble colleague Mr. Maine, to whose very able speech they must all have listened with much pleasure, had done him the honour of coupling his name with the institution of Courts of Small Causes in this country beyond the limits of the Presidency towns, and he begged to thank his hon'ble colleague for the flattering terms in which he had spoken of his exertions in connection with the establishment of those Courts. It would be an affectation

of modesty on his part were he to disclaim all merit in the matter, but any credit which attached to him for anything that he might have done in the way of establishing Courts of Small Causes in the interior of the country was at least equally due to the able men who had taken part with him in passing the Act under which the existing Courts were held. He need scarcely remark that there was nothing original in the measures adopted by them. Courts of Small Causes had existed for years previously at home and in the Presidency towns of India, and had been found to work most satisfactorily. The work of the Indian Legislature was confined to adapting the system of Small Cause Courts to the circumstances of this country, and to reconciling the natives of India to the procedure which gave the presiding Judges a final jurisdiction, and allowed of no appeal from their decisions. The establishment of Courts of Small Causes in the Mofussil was a great and, in some respects, no doubt a hazardous experiment. The Courts in the Mofussil being far from popular, by taking away the right of appeal to which the natives were greatly attached, they ran the risk of rendering the Courts still more unpopular. He was happy to say that wherever the experiment of Small Cause Courts had been properly and fairly tried, it had been remarkably successful. He might state, indeed, that it had succeeded to a degree far beyond what the promoters of the system could have expected. He had lately seen a communication from the Lieutenant-Governor of the North-Western Provinces, in which he said "the reports of the Judges who have presided in the Small Cause Courts in these Provinces lead to the belief that they tend to check extravagance, to induce the punctual fulfilment of pecuniary obligations"—that was, to make men more honest—"and to reduce litigation." He recollected similar remarks being made some time ago in respect to the Small Cause Court at Karachi. He thought it was scarcely possible to bestow higher praise upon any Courts. The Government of the Punjab reported that the Courts had been freely resorted to, and that the procedure was prompt and final; and from Bengal they were told that the usefulness of the Small Cause Courts had been gradually more and more apparent in proportion to the length of time over which their operations had extended. He considered this to be very satisfactory as showing that the Courts were growing in public estimation. He had remarked that the system of Small Cause Courts had succeeded wherever it had been properly and fairly tried. What he meat was that, when the Judges of the Small Cause Courts could give their whole time to the work coming before them and had no other duties to perform, the system had been properly tried; but that when the Small Cause Court Judge was also a Principal Sudder Ameen, and was invested with ordinary as well as Small Cause Court jurisdiction, the system could not be said to have had a fair trial. Mr. Maine's remarks upon this point, in which as well as in his speech generally, he (Mr. Harington) entirely

concurred, referred, as he understood them, rather to Madras than to Bengal. In Bengal no Judge exercising ordinary jurisdiction had been invested with Small Cause jurisdiction, though Small Cause Court Judges had been invested with the powers of a Principal Sudder Ameen. This he could not but regard as a mistake. He also thought that what had been lately done at Madras was open to objection. It was essential to the success of Small Cause Courts that there should be only a brief interval between the date of the institution and the date of the decision of a suit, and that on the day fixed for the attendance of the witnesses and the hearing of the suit, ordinarily, the witnesses should be examined and allowed to return to their homes, and the suit decided.

This could generally be done with proper management when the Judge of the Court was only a Small Cause Court Judge, but if the Judge of a Court of Small Causes was also a Principal Sudder Ameen or a Munsiff, or had some other work to do, he could never command his time, and either the work coming before him as a Small Cause Court Judge, or the other business to which he had to attend must suffer; both could not be properly performed. A suit had lately been decided in the High Court of Judicature at Calcutta, which occupied the Judge who presided at the hearing no less than nine days. The case was not one of any importance. If such a suit were to come before a Small Cause Court Judge in the exercise of his powers as a Principal Sudder Ameen, hon'ble Members would understand what serious interruption it would cause on the Small Cause Court side of the same Judge's Court and how great would be the inconvenience which the parties and witnesses on that side of the Court would suffer. Referring again to the report of the Lieutenant-Governor of the North-Western Provinces, he found that the average duration of suits in the Court of Small Causes at Benares was only 8 days, and in that of the Small Cause Court at Allahabad, only 5½ days. These Courts were properly constituted, that was to say, the Judges had no other duties to perform. Thus it was that they had been able to attain these short averages. Respecting the difficulty noticed by Mr. Maine of providing sufficient work for Judges of Courts of Small Causes, which was found to exist in some parts of Bengal, and which had prevented the extension of the system, he might mention that it was at first emntemplated that Courts of Small Causes should be established only in large cities and towns where there would be ample work for them. The law did not contain any limitation to that effect, and Courts had, he believed, been established in some agricultural districts where the number of suits was not sufficient to occupy the time of the Judges. Mr. Maine's Bill would prove a remedy for this state of things, and remove the difficulty to which he had referred. The Bill admitted of the enlargement of the territorial jurisdiction of the Courts con

stituted under it to any extent. Courts would be established at convenient distances from one another. To these Courts, Registrars would be appointed, who would receive and register plaints and perform other duties including the decision of cases of small amount, when the Registrar was considered qualified for this duty; and the Judge would visit each of the Courts, so established, in turn and decide the cases which he found ready for hearing. He regarded this as a great improvement, and he had no doubt it would prove a most useful provision. On his return from England a short time ago, he had the good fortune to have as a fellow passenger on board the Steamer, the Hon'ble Mr. Adams, the learned Chief Justice of the principal Court of Judicature at Hong-Kong. Mr. Adams, hearing that he (Mr. Harington) was engaged in revising the Indian Code of Civil Procedure asked to be allowed to see it. On returning the Code, Mr. Adams remarked that what had struck him most in the Code was the number of appeals which it allowed. He gave Mr. Adams the same explanation, that their hon'ble colleague had given them today. He mentioned that they could not trust the great majority of the Courts of first instance with a final jurisdiction in any cases, and that to preserve regularity and prevent injustice being done, they were compelled to allow an appeal from almost every order and decision. Mr. Adams very justly remarked that the proper remedy for this state of things was not to multiply appeals, but to improve the Courts of first instance. This was what Mr. Maine's Bill proposed to do. When fully introduced by the establishment throughout the country of Courts such as were contemplated, the Bill would affect or cover no less than about four-fifths of the entire ligitation of the country. He need say no more to show the great importance and value of the Bill. Of course the success of the Bill would depend in a very great measure upon the character of the Judges presiding in the Courts to be constituted under it. To secure competent Judges adequate or liberal salaries must be given. These he was sure would not be begrudged by the Government. He believed it would be a true economy to establish under competent and well paid Judges, Courts having a final jurisdiction, for the trial of cases of a simple character and not very large amount, as proposed in Mr. Maine's Bill, that was Courts from whose decisions there would be no appeal, and in which ordinarily a single trial would be allowed. These Courts, however liberal, within any reasonable limits, the salaries of the Judges might be, would be infinitely cheaper than classes of Courts for the decision of the same cases, the principal duty of the superior Courts being to discover whether there was not something wrong in the decision of the Courts next below them, and he thought that their decisions would give more satisfaction. He felt sure that, after a very short time, the Courts established under Mr. Maine's Bill would become amongst the most popular Courts in the Country. He quite agreed with Mr. Maine in what he had said as to the unsatisfactory

nature generally of decisions passed in appeal on questions of fact the right decision of which rested entirely upon oral testimony given in another Court.

The Motion was put and agreed to.

CIVIL COURTS (CENTRAL PROVINCES) BILL.

The Hon'ble Mr. Harington, in moving for leave to introduce a Bill to define the Jurisdiction of the Courts of Civil Judicature in the Central Provinces, said that the jurisdiction which was now exercised by the Civil Courts in the Central Provinces was derived, not from any express provision of law, but from orders passed from time to time by the Executive Government. These orders bearing a date prior to the passing of the Indian Councils' Act, 1861, their validity, and the proceedings of the Courts established by them, could not be called in question, but it was felt that the constitution of the Civil Courts in the Central Provinces was not so satisfactory as could be desired ; and the Chief Commissioner having come up with a request that the Government of India would be pleased to confer Civil jurisdiction in suits of a small amount upon a class of officers who had not hitherto exercised any of the functions of a Civil Judge, which could not be done without a law, it seemed desirable that, instead of confining the scope of any Bill introduced to this single object, the opportunity should be taken to place the Civil Courts generally of the Central Provinces on a similar legal basis to that upon which the Courts in British Burmah had been placed by Act I of 1863, and to give them a similar legal status. This was the object of the Bill which he had asked for leave to introduce. The Bill followed the form of the British Burmah Act in so far as it defined the jurisdiction of the Courts to which it referred.

The Motion was put and agreed to.

CHIEF COURT (PUNJAB) BILL.

The Hon'ble Mr. Cust introduced the Bill to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that in moving for leave to introduce the Bill, he had mentioned that the new Court would have an ordinary and extraordinary jurisdiction : the Bill had been carefully drawn with the aid of his hon'ble friend Mr. Harington so as to provide for all requirements ; and with regard to the ordinary jurisdiction, there was little to add beyond this, that the new Court would consist of two Judges, one of whom would be a Barrister, and would be the Court of final Appeal, Re-

ference and Revision in the Province. All special or second appeals, which could only be on points of law, would be heard by this Court alone, and the final appeal in all cases affecting land would be heard by this Court, except in those districts where a settlement of land revenue was actually in progress, in which case the appeal would lie to the Financial Commissioner. These were two great changes, and, in his opinion, great improvements on the present Punjab practice.

But he would call more particularly the attention of the Council to the extraordinary jurisdiction of the new Court over European British subjects in criminal trials. This was a great innovation on existing practice, but the necessity of it had been forced upon the Government by the unsatisfactory state of affairs. For many years it had been a standing reproach that there was no machinery nearer than a thousand miles, for punishing theft or any serious crime against life and property, if the offender were an European British subject. Every person acquainted with the North of India must recollect cases in which justice had been, denied, or had miscarried, or had been satisfied at such an expenditure of money. and inconvenience, and health, as to render the remedy worse than the disease. It had been asserted that there was an impunity of European crime. This was not entirely the case: the Government always prosecuted in cases of murder and offences against Commerce, such as forgery; and in the last Session of the High Court, a man who stole a bag of 300 Rupees at Lahore, was sentenced to two years' imprisonment. Five European witnesses, including the Chief Police Officer of the city of Lahore, and the Landlord of the Chief Hotel, had to accompany the thief by dawk carriage and train to Calcutta. That bag of 300 Rupees would have cost the Government many thousands. Indeed, it was expected that the saving of the expense of sending parties to Calcutta would go far to meet the increased expenditure of the new Court.

In this case a conviction was secured, and the money was well spent to get the ill-conditioned thief out of the Province. But had the witnesses been natives, had the season of the year been less favourable, it is probable that some of them would have sickened or died on the road, or sent substitutes, or their dialect would not have been understood, and a Calcutta Jury would have returned a verdict of acquittal.

And even where a conviction is secured, the moral effect is entirely lost, when the punishment is inflicted so far from the scene of the offence. A case happened two years ago, when a man named Rudd killed a native in the Hazara hills on the banks of the Indus: he was tried at Calcutta, but it was doubtful whether the news of the righteous and severe sentence of the Judge ever reached the scene of his crime. All that the villagers probably knew was, that one of their number was

killed by a Sáhib, and as punishment to them, other members of their community were carried off 1,500 miles to Calcutta under charge of the Police.

This Bill provided for trial by Jury, but not for Grand Jury. Whatever might be the merits or demerits of that venerable institution, there was no possibility of transplanting it to the Punjab. There was no material of which it could be constituted. On the other hand, the petty Jury was strengthened by the provision that no Military officer was to be exempted as such from attending upon it. Trials must always take place at Lahore, Delhi, or Umballa, or some large Station where there would always be abundance of intelligent and independent British officers, quite unconnected with the Civil Government, and familiar with Courts Martial; and if it were desired that the verdict of the Jury should be unanimous, this could be amended in Committee, and he (Mr. Cust) would have no objection to offer to such amendment. The attention of the Local Government had also been directed to the necessity of providing proper prisons for the detention of Europeans before trial, or after sentence. Under the present system of Jail management in the Punjab, there was no fear of there being any unnecessary suffering on this account: indeed, the Government was bound to prevent the possibility of anything of the kind: all Jails were daily visited by a European Medical Officer.

Such then was the nature of the Bill which he (Mr. Cust) submitted to the Council: he did not anticipate that better justice in any material point would be secured than was already supplied by the old Court; but he admitted that in the new Court there would be a greater respect to form and legal traditions which rightly or wrongly, were prized.

The Hon'ble Mr. Bullen said that he did not oppose the Bill going to a Committee. So far as regarded the trial of European British subjects charged with the Commission of Criminal offences in the Mofussil, every one would admit that some change was necessary. But if such change was made, no safeguard which the accused had previously should be withdrawn. In the opinion of a large section of the community one of those safeguards was the Grand Jury. He wished to be understood as not expressing any opinion of his own as to the practicability of extending the Grand Jury system to the Mofussil; but many persons of experience and knowledge of the country thought there would be no difficulty in so extending it. Speaking, therefore, their opinion, rather than his own, he would ask that the question of the feasibility and the expediency of extending Grand Juries to the Mofussil should be thoroughly examined in Committee.

He had intended to object to section 23 of the Bill, which dispensed with the unanimity hitherto considered essential to the validity of a verdict; but as the hon'ble mover had declared that he would have no objection to amending the Bill in that respect, he (Mr. Bullen) would make no further observations on the subject.

One other point appeared to require notice. The Bill as it stood contained no provision that a certain portion of the Jury trying a European British subject should be British-born. He (Mr. Bullen) trusted that a clause would be introduced supplying this deficiency, and would suggest that in all such cases one-half at least of the Jury should be British-born. Subject to these observations he had no objection to the Bill being referred to a Committee.

The Hon'ble Sir Charles Trevelyan expressed the great satisfaction with which he viewed the introduction of this Bill. Early in his public service in India, a case arose which impressed him with the defective condition of the law requiring Europen British subjects to be sent for trial to the Presidency town. The accused in the case referred to had to be sent with a guard of soldiers and the prosecutor and witnesses—fourteen British subjects in all, with the Brigadier at their head—from Delhi to Calcutta, involving an absence of several months. The chief burden in this case fell upon the Government. For the persons sent were all public servants, and continued to draw their pay during their absence. The public not only lost their services during the long period; but the expenses were extremely heavy, according to his recollection, about 30,000 rupees. But what would have been the case had the fourteen persons been merchants, planters, or persons connected with the important trade which has arisen out of the business of the great Military and Hill Stations and the Transit and Railway Companies? How grievous would have been the burden on persons of that class who depended for their success in life on the constant application of their time to their private affairs. Such a state of the law was entirely incompatible with that free settlement of Europeans in the interior of India which it was so desirable to encourage. It was also incompatible with the proper administration of justice. Under such a state of things, there must be impunity to the wrong-doer, and denial of justice to the wronged, except in extreme cases where, at all hazards, and at any expense, the offender must be reached and punished. Consider what is meant by impunity to the wrong-doer and denial of justice to the wronged. It means a general relaxation of moral principles in a certain class, and a general inducement to crime and disposition to lawlessness. The securities which the Bill provided for the fair trial of European British subjects were very satisfactory. Objections used to be made to Mofussil Courts and Mofussil Law—that was, to the Criminal Law founded on the Muham-

madan Law. Now, thank God, we had one of the best Criminal Codes which the world had seen, and which was equally applicable to the whole of British India, including the Presidency towns. We had also the Codes of Civil and Criminal Procedure, and we should soon have a substantive body of Civil Law. Then the Bill provided for the appointment of a Barrister Judge and the empanelling of the best Jury which the neighbourhood could afford; and, although the persons available for Juries were limited in number, yet they were excellent of their kind, and a person on trial for his life could not place greater confidence in any Jury than one composed, in any of the great Mofussil towns in India, of persons engaged in mercantile pursuits joined with the Civil and Military Officers of Her Majesty.

The Bill also provided, although not directly, yet as a necessary consequence of the other measure, for an independent Bar, deriving its tone and spirit from the Bar of England. Those who know how necessary a Bar is, not only for the elucidation of truth, but also for assisting and correcting the Judge and holding the prosecutor in check, must regard with great satisfaction the increased disposition which has been shown by our young English Barristers to resort to this country. Within the last few months many young Barristers of high character and sound legal training had arrived from England; and he, Sir Charles Trevelyan, did not doubt that, for years to come, the country would derive great benefits from their labours, and that they would, as the just reward of the exercise of their abilities and learning, attain to high distinction. Altogether he considered this Bill constituted a new era in our Indian legal system, a fresh starting-point, and the commencement of an arrangement by which new centres would be established in various parts of the interior, whence would be diffused the liberality, and the love of justice and independence which had distinguished the late Supreme, and present High Courts, and which the rulers of India for their own sake and for that of the people under their charge, would fain see more generally prevalent.

The Hon'ble Mr. Maine said.—"I think that my hon'ble friend Mr. Bullen has done well to reserve his final determination as to Grand Juries until the time when the Bill providing formally for their abolition comes again before the Council. I am well aware that when the measure was before under our consideration, he had doubts as to its expediency. But he knew that there were difficulties in extending the system of Grand Juries to the Mofussil, and with that fairness and moderation which have always characterised the non-official Members in their relations with the Council, he was willing that those difficulties should be sifted in Committee before he finally made up his mind. I am bound to make the same statement on behalf of our late colleague Mr. Claud Brown. To the regret which we must all feel for the retirement of a colleague who gave us most useful assistance in Com-

mittee and elsewhere, I am desirous of adding the expression of a regret peculiar to myself. My hon'ble friend, like half (or probably more than half) the so-called Englishmen in India, is in point of fact a Scotchman, and intends, I believe, to settle in his native country. I am sorry to say that when he gets there he will find that, except for one crime which my hon'ble friend is not likely to commit, and which was brought under English legislation shortly after the Union, there is not, and there never was, a Grand Jury in Scotland.

I am glad to see that my hon'ble friend Mr. Cust had adopted the jury-rules suggested by the Royal Commissioners, rather than those of the Code of Criminal Procedure. I have never thought that the jury Sections of the Code possessed all the value that belongs to the rest of that excellent body of law. I should say that the framers of the Code had either an exaggerated estimate of the difficulty of obtaining unanimity among jurors, or else that they undervalued the rule of unanimity itself. Now so highly do I prize that rule, and so much do I think that it has been misunderstood by those who object to it, that I can scarcely consent to even the slight modification of it proposed by my hon'ble friend. I am aware however, that we are limited by the scantiness of our material for juries. A jury which will not agree must be discharged, and the accused person retired. We cannot go on empanelling a series of juries, and in this climate we cannot keep persons charged with offences, but who may possibly be innocent of them, for a prolonged period in jail. The point, however, should be fairly considered.

With regard to the observation which fell from Mr. Bullen, that it seemed doubtful on the face of the Bill whether the majority of the petty jury were to be Europeans, I do not know what reason my hon'ble friend Mr. Cust had for drawing the Bill in this form; but, I presume, he supposed that the provision in question would follow from the Code of Criminal Procedure which would govern the trial subject to these rules. The matter should, however, be made clear. There is no doubt the law should be in conformity with Mr. Bullen's wishes.

I need not say that I fully approve of the measure, which, indeed, is a fragment of the general Government plan. It will abate the scandal of the nearly absolute immunity of certain classes from punishment, and put an end to the deportation of innocent persons to Calcutta on suspicion of having testimony to give. It will give the British-born subject a mode of trial which involves the very minimum of departure from the existing system. It gives him a unanimous or nearly unanimous jury, and a Judge professionally educated to assist the jurors in applying the rules of evidence; and by joining the new Criminal jurisdiction to the Civil

jurisdiction of a great Court of Appeal, it provides, so far as legislation can provide, the services of an efficient Bar."

The Hon'ble Mr. Harington said he believed that Sir Charles Trevelyan had not in any degree over-rated the importance of the Bill which had just been introduced, particularly of that part which proposed to relieve the High Court at Calcutta from the Criminal jurisdiction which it now exercised in respect of the trial of offences committed by European British subjects in the Punjab and its Dependencies, and to constitute a local Court, one of the Judges of which should always be a Barrister of not less than five years' standing, for the trial of such offences. It must not be supposed that this was the first time that the legislation of this Council had taken the direction of that part of the Bill to which he had particularly referred, though previous laws had not gone so far in that direction as the present Bill proposed to go. In 1862 the Council had passed an Act authorizing the Government of India to constitute a Recorder's Court in the principal towns of British Burmah, namely, Akyab, Rangoon, and Moulmein. The Act gave power to the Recorder to try European British subjects for all offences, other than capital committed in British Burmah. It made the Code of Criminal Procedure applicable to the preliminary investigation and trials held under the Act, and required that the commitment should be direct from the Magistrate to the Recorder's Court, without the intervention of any other agency. Recorder's Courts had been established at Rangoon and Moulmein, and the Court at Rangoon had been in existence for more than a year. It was to be presumed that during this period some trials of European British subjects had taken place under the Act; and they had no reason to believe that any injustice had been committed, any hardship felt, or any inconvenience experienced in consequence of the form of procedure prescribed by the Act. Last year the Council passed an Act to regulate the administration of Civil and Criminal justice at Aden. This Act also empowered the Resident to try European British subjects charged with offences other than capital committed within the limits of his jurisdiction, and required that the commitment should be made by the Magistrate direct to the Resident. There were thus already two places beyond the local limits of the High Courts of Judicature at Calcutta, Madras and Bombay, in which European British subjects could be tried by the Local Courts for offences other than capital; and, so far as they knew, the experiment (for such it might be regarded) had been successful. The present Bill, as already noticed, went beyond the British Burmah Recorder's Act and the Aden Act, in that it proposed that the Court to be constituted under its provisions should have power to try European British subjects for all offences, whether capital or otherwise; and he thought that the success which had attended the experiment at Rangoon, as well as other considerations, justified this extension of the law. An-

other point of difference between the present Bill and the Acts previously passed was as to the proceeding to be followed on the delivery of the verdict of the Jury when the Jury were not unanimous. This part of the present Bill had been referred to both by Mr Bullen and Mr. Maine. Under the Criminal Procedure Code, as applicable to the Recuorder's Courts in Burmah and to the Resident's Court at Aden, if a certain number of the jurors could not be brought to agree in a verdict of guilty, the accused person was liable to be tried over again. He thought this was a great hardship. The present Bill, as noticed by Mr. Maine, adopted the provision of the Code prepared by the Royal Commissioners, and enacted that a majority of not less than two-thirds, with the concurrence of the Judge, should be sufficient for a verdict of guilty. This seemed to him to be a very proper provision, and he did not think that any reasonable objection could be made to it. He was aware that many persons, whose opinions were entitled to much respect, thought the old rule as to unanimity should be maintained. This was a point which could be better considered in Committee than at the present stage of the Bill. He wished to say a few words on the subject of the trial of European British subjects for offences committed in the Mofussil. There seemed to be a general concurrence of opinion that the present system under which European British subjects committing offences beyond the limits of the Presidency towns must be brought for trial, accompanied by the prosecutors and witnesses, before the High Court, however remote the locality of the crime, could no longer be maintained; and that the time had arrived when the interests of justice and the safety of the public required that the law should be altered. Taking for granted, then, the necessity of a change of the law, he readily admitted that in creating new tribunals for the trial in the Mofussil of offences when committed by European British subjects, it behoved the Government to take care that the Courts were presided over by duly qualified Judges, that the procedure should be reasonable, and that under it the accused should have a fair and impartial trial, and be afforded every proper and legitimate chance of escape. He could not agree with those who thought that Courts hitherto considered good enough for the trial of natives for criminal offences must be considered good enough for the trial of European British subjects also. He believed that the existing Mofussil Courts were as good as the means at their disposal had enabled the Government to make them. But it could not be denied that they stood in need of reform, and so long as he had the honour of being a member of the Government, he should be prepared cordially to support any measure for their improvement. But whatever might be the character of the Courts in the Mofussil, there could be no doubt that European British subjects, charged with crimes, had been accustomed to be tried by very superior tribunals. At home, in the Colonies,

and in India, they had a right to be tried by Judges trained to the law. Naturally they highly prized this right, and he did not think they could be deprived of it. They might expect the European British subjects in India to make certain concessions or sacrifices, rendered necessary by the circumstances of the country, but he did not think they could be expected to give up the right of trial by Judges qualified in the manner stated. In this respect the Bill introduced by Mr. Cust furnished no ground of complaint. It provided that one, at least, of the Judges of the Court to be constituted under the Bill should always be a trained lawyer. No doubt the Bill made no provision for any investigation before a Grand Jury between commitment and trial. The reason was that in many places where trials would be held, it would be quite impossible to get an efficient Grand Jury and an efficient Petty Jury likewise, deserving of confidence; and as the Petty Jury could not be dispensed with, the only alternative was to dispense with the Grand Jury. This was what was proposed by the Royal Commissioners. In their remarks on the Section of the Code for abolishing Grand Juries they observed—

"The provisions prepared by us on the subject of juries commence with a rule to the effect that Grand Juries shall be abolished. This institution has never existed in India out of the Presidency towns, is not adapted to the country, and as coming between the Magistrate and the Session Judge, so as to control in any way the proceedings of the former, would not be understood or appreciated by the great mass of the community. The retention of the Grand Jury in Calcutta would involve a very wide and as we think an unnecessary diversity from the practice of the Mofussil in the mode of dealing with criminal charges."

On this Commission were Sir John Romilly, the Master of the Rolls, the late Sir John Jervis, Chief Justice of the Court of Common Pleas, Sir Edward Ryan, for many years the respected Chief Justice of Bengal, Mr. Cameron, a Member of the Indian Law Commission and formerly a Member of the Council of the Governor-General of India, and Mr. Lowe, whose legal and other attainments were well known. He could not believe that these eminent lawyers would have proposed the abolition of the Grand Jury if it would endanger the liberty of the subject in times of political excitement, or if the interests of justice were likely to suffer by the abolition. He supported Mr. Maine's Bill for the abolition of Grand Juries very much on the ground upon which the Royal Commissioners had proposed that measure, and not for any supposed delinquencies on the part of Grand Juries in India. That the Grand Jury had occasionally made mistakes was probable. But reviewing their conduct for a long series of years, he considered that they were entitled to the acknowledgments of the Government and the community for the time and labour which they had devoted to the performance of their duties. He

had had no practical acquaintance with the working of the Grand Jury system and any opinion therefore that he could give as to its utility or otherwise could carry with it no weight. But having very recently read the Report of the English Law Commissioners on trial by Jury generally, he was greatly struck by their remarks on Grand Juries, as showing how much might be said in opposition to the views entertained by many persons as to the necessity of maintaining the institution for the protection of innocent persons accused of offences, and to prevent their being subjected to the disgrace of a criminal trial. These views had recently been expressed with remarkable moderation and fairness, and he felt sure that the representations about to be made to the Council on the subject would be regarded as entitled to full and careful consideration. With the permission of the Council he would read the remarks to which he had just referred, first observing that the conclusions of the Commissioners had been arrived at after the examination of a large number of persons as to the utility of Grand Juries and as to the necessity of their retention. The Criminal Law Commissioners said—

"The uitlity of Grand Juries has usually been rested on the position, that it is an impediment to frivolous or malicious accusations. In ordinary practice it can seldom have this effect until the accused has undergone every hardship preliminary to taking his trial. And as the investigation is taken in his absence, and therefore the witnesses for the prosecution cannot be properly cross-examined nor exculpatory defences suggested, as the Judge is not present to superintend the legality of the evidence, and as the witnesses do not speak under the salutary impression of the presence of the public, nor, indeed, under any apprehension of the penalties of perjury, the impediment of a Grand Jury to frivolous or malicious accusations is very slender indeed. On the other hand the dismissal of an accusation by a secret and irresponsible tribunal can contribute very imperfectly to allay suspicions of guilt, or to satisfy the public mind that justice has been allowed to follow in its legtimate course. Added to which, the inconveniences and expense incurred by jurymen, prosecutors, and witnesses; the delay of judicial proceedings, and that scandal to the English law of the Criminal Procedure, the flaws detected in indictments, arising out of the defective means of judicial investigation possessed by Grand Juries, all make it obvious that any advantages derivable from the institution of Grand Juries are not without a great alloy of very serious mischiefs. If it be thought that in some cases it is important to shield an accused with the double protection of a Grand and Petty Jury, it is conceived that at all events a Grand Jury may be safely dispensed with in all cases of commitments by Stipendiary Magistrates, being Barristers-at-law, for all offences other than those contained in the Chapter of the Act of Crimes and Punishments, which relates to treason and other offences against the State."

He thought he should not be over-rating the Magistrates in the Mofussil or others empowered to commit European British subjects for trial, who performed their duties under the close supervision of the Sessions Judges and High Courts,

in placing them on the same footing as the Stipendiary Magistrates referred to in the remarks which he had just read. He would only add that accused persons might always be defended by Counsel before the committing officer, which would of course be a great protection to them.

The Hon'ble Sir Robert Napier said that opinions were unanimous as to the necessity of competent Courts in Provinces which were remote from the Presidency towns. But as there was some difference of opinion as to the mode in which such Courts should be established, he thought it right to state to the Council the reasons which induced him to support the Bill. Many imaginary cases had been put forward of probable inconvenience and hardship which might be occasioned to a European by the want of a Grand Jury, and he thought it not irrelevant to mention a real case which occurred within his own knowledge several years ago in which a failure of justice took place from the want of a proper criminal Court in the Mofussil. A European was charged with murdering his sister-in-law; and, on the evidence of his wife and bearers, was committed by a Mofussil Magistrate and sent up to Calcutta. On the way, the wife was induced to retract her testimony against her husband and the bearers absconded. The consequence was, that on his arrival at Calcutta, when he was put on his trial, there being no evidence against him, he was acquitted, and the Magistrate was severely censured by the Supreme Court. He (Sir Robert Napier) had no doubt that the man committed the murder, and yet he escaped unpunished. But whether he was guilty or innocent the evil was equal: if innocent, he was dragged twelve hundred miles for trial: if guilty, he was acquitted owing to circumstances which would probably never have occurred had the trial been held near the scene of the murder. This was only one of the many instances in which justice had been defeated by the want of a proper tribunal in the Mofussil for the trial of European criminals.

He should cordially support the Bill of his hon'ble friend provided it involved unanimous verdict of the jury. He had no doubt the Executive Government would provide proper prisons in the Punjab for the custody of European criminals; and whether the Bill which had been introduced by Mr. Maine, for the abolition of Grand Juries, became law or not, he should cordially support the Bill of his hon'ble friend (Mr. Cust,) under the condition he had mentioned.

The Hon'ble Mr. Anderson said:—"I did not intend to have addressed the Council on this occasion, but I cannot refrain from expressing my entire concurrence with what has fallen from Sir Charles Trevelyan as to the benefits which will accrue to this country from the establishment of Courts in various centres similar

to the one which is proposed in the present Bill for the Punjab. I trust that, at no distant time, I shall receive authority to introduce a Bill of the same character for the improvement of the administration of Civil and Criminal justice in the Province of Scinde, subordinate to the Government of Bombay. As the question of the abolition of Grand Juries has also been incidentally raised, I feel it my duty to state that I entirely concur in what was advanced by my hon'ble friend Mr. Maine, on the present and on a former occasion, and that I am utterly unable to see, in what has been advanced on the other side, more than one single argument. Had my obligation to Grand Juries rested on purely theoretical grounds, or even on practical grounds of no very great importance, I should, for my own part, have been willing to defer to any marked expression of public opinion, even though I thought that opinion erroneous. But I am constrained to say that the consideration which has had great weight with me, and has for many years influenced my views, for I have had frequent opportunities, as Secretary to the Government of Bombay in the Judicial Department, of watching the system, is the absolute necessity which exists for the improvement of the Petty Juries. I have no right to offer an opinion, as to the system in Calcutta, but I must plainly state that the verdicts of Petty Juries in Bombay have, in many instances for many years, been simply scandalous. I do not impute to the members of those Juries anything like vulgar corruption or crass stupidity; but I do impute to them the absence of that higher intelligence which can discriminate between facts as they really stand upon the evidence, and facts as discoloured by forensic fustian. I do impute to them an exaggerated sympathy for prisoners. I do impute to them a kind of bastard sentiment of miscalled independence, which leads them to imagine that the acquittal of a prisoner inflicts some sort of discomfiture on the Government. Holding this strong opinion, which I shall be prepared to support, if necessary, by adequate evidence, I cannot hesitate to accord my humble support to any measure which will remove the monstrous evil of the incapacity of Petty Juries, by utilizing for the ends of public justice, the admirable material which is now squandered on the effete institution of Grand Juries. In favour of the Grand Jury system, I can recognize but one argument, *viz.*, that it may sometimes prevent an innocent man from being placed on his trial. But I would remark that Grand Juries seldom in practice ignore bills in cases to which their special attention has not been directed by the presiding Judge, and that if they do ignore bills in such cases, they will generally have exceeded their just authority. All that a humane man can desire for the purpose of saving an innocent person from the disgrace of a public trial, will be better secured if the authority be vested in the Judge which is now entrusted to the Grand Jury. The institution must in all judicial reasoning be open to the objection that it places an authority of less intelligence and experience in a parti-

cular duty, in appeal over an authority of greater intelligence and experience. For to say that the Magistrate, be he a Mofussil or a Presidency Magistrate, whose daily duty it is to sift and to weigh the value of judicial evidence, is not a superior authority *quoad* that duty, to the members of a Grand Jury, is to say that he is an anomaly which has no parallel in the book of human experience. I do not wish on the present occasion to discuss the question at any length. I will therefore only briefly state that every jurist of high reputation who has discussed the subject from Jeremy Bentham to Fitzjames Stephen, has pronounced against Grand Juries. The latter gentleman, who has given us the latest expression of educated thought on the subject, states that the institution is one which no one would wish to retain were it not for certain social advantages, which are derived from the connection of the class from which Grand Juries are taken, with the administration of justice. It is because I wish in India to give the Grand Jury class a real and general connection with the administration of justice that I shall give my best support to the present Bill and to the Bill which was recently introduced by my hon'ble friend Mr. Maine.

There is one other point in connection with the present Bill to which I wish to advert. It is the one to which allusion has been made by the hon'ble Mr. Bullen and Sir Robert Napier. These gentlemen wish that the verdicts of juries constituted by this Bill should be unanimous. My hon'ble friend, the Mover has expressed his willingness to assent to this modification of the measure. I confess that I do not share in this anxiety for unanimity. I prefer the practice of the Scotch Law, which is content with the verdict of a large majority. I am much inclined to take Bentham's view, that to demand unanimity is to enforce perjury by means of torture: certainly such a demand is to induce a man by the infliction of physical inconvenience to sacrifice his mental convictions. I cannot forget that on a day, when the liberties of England were at stake, the day of the trial of the seven Bishops, the cause of all right was imperilled by the fact that Arnold, the King's brewer, was on the jury. He retarded the acquittal of the Bishops for a whole night, and might have worn out his brother Jurymen, but for the statement of one, the largest and strongest of the twelve, that he would remain there until he was as thin as a tobacco-pipe before he would consent to a verdict of guilty. It is not pleasant to think what might have been the verdict had the brewer been the largest and strongest man. A system which subordinates the intellect to mere physical endurance may fairly be placed in the same category as ordeals and wager of battle.

I have only again to express my hearty approval of the present Bill, and my hope that it may soon be followed by similar Bills for other parts of India."

The Hon'ble Mr. Cowie said that, when he had come to the Council that morning, he had not intended to say a word on the question of the abolition of Grand Juries, because it was not before the Meeting. But as other hon'ble members had spoken on the subject, he felt bound to say—although he regreted to find himself in this matter at variance with most of his mercantile brethern—that for years he had considered a Calcutta Grand Jury an unnecessary and useless institution. He had formed this opinion after many years' experience as a juror, and frequently as a foreman of the Grand Jury. He agreed with Mr. Anderson as to the corresponding inefficiency of the Petty Juries, which seemed composed of persons brought together on no principle, save that of the most ignorant man being entitled to be tried by his peers. In desiring to see the Grand Jury of Calcutta abolished, he earnestly desired the elevation and improvement of the Petty Jury. In regard to the Bill really before the Council, he had no doubt that it would, when passed, prove very useful. The case of Rudd, alluded to by the hon'ble Mover, was quite enough to justify its introduction.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill for the improvement of the administration of Civil Justice in respect of suits of small value.—The Hon'ble Messrs. Harington, Maine, Anderson, Toylor, Muir and Cust.

On the Bill to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies.—The Hon'ble Messrs. Harington, Maine, Anderson, Bullen, Muir and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 16th December 1864.

C. P. L.—77 L. D.—20-6-