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ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 11

1872

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 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 16th April, 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.T., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble J. Fitzjames Stephen, Q.C.
The Hon'ble B. H. Ellis.
Major General the Hon'ble H. W. Norman, C.B.
The Hon'ble J. F. D. Inglis.
The Hon'ble W. Robinson, C.S.I.
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.

NATIVE PASSENGER SHIPS ACT AMENDMENT BILL.

The Hon'ble MR. CHAPMAN moved that the report of the Select Committee on the Bill to amend Act XII of 1870 (the Native Passenger Ships Act) be taken into consideration. He said :—MY LORD, Act XII of 1870 was passed with a view of affording pilgrims proceeding to Jeddah, still further protection from the cruel hardships to which they were subjected from overcrowding.

"Owing, however, to no specific mention of steamers having been made, the Law Officers entertained doubts as to the applicability of the Act to that class of vessels. Hence, the necessity for this Bill.

"Opportunity has been taken to introduce certain alterations. It is proposed to make the Act applicable to Native Passenger Ships proceeding to every part of the world. Provision has been made to meet the case of foreign vessels leaving Turkish Ports with Native passengers bound to India. It is proposed that, whenever a Convention has been entered into between Her Majesty's Government and that of the Porte, the Commander of any vessel that arrives in a British Port without a clean bill of health obtained in the

manner provided for in the Bill, that is to say, with more than the authorized number of passengers, shall be liable to a summary fine of one thousand rupees. This will be the most effectual and practical way of dealing with what is likely to be an increasing evil.

"It was originally proposed to alter the number of persons requisite to constitute a Passenger Ship from thirty to sixty. The object of this alteration was to except vessels belonging to the Peninsular and Oriental, the British India, and other well regulated Companies from what might be fairly considered vexatious and unnecessary provisions. But it has since been pointed out by the Department of the Government immediately interested in this matter, that there are a large class of small vessels carrying less than sixty passengers to the Persian Gulf; and that it would be inexpedient to exempt them from control and supervision. The old provisions have therefore been adhered to; but it is proposed to give the Local Governments discretion to exempt any vessel or class of vessels carrying not more than sixty passengers. This exemption will not of course be allowed in the case of steamers engaged in the Pilgrims-carrying trade; it is proposed, however, to give discretionary power, in the case of those vessels, not to insist on the full amount of space requisite in the case of sailing vessels. This concession has been made in consideration of the comparatively short time likely to be occupied in the voyage.

"An amendment has been introduced with a view to saving the provisions of the Local Act XXV of 1859. It is hoped that the law, as now proposed to be amended, will prove effectual for the suppression of what are believed to be great abuses and cruelties."

The Hon'ble MR. STRACHEY said that this Bill having been originally introduced at the request of the Executive Government in the Department of which he had charge, he thought it right to say that he believed that the Bill, with the amendments that would be proposed by his hon'ble friend, Mr. Chapman, would carry out all that was necessary on the subject. There was one other change in the law contained in section 3 to which he did not desire to offer opposition but which it was right to notice, to the effect that, in the case of a steam vessel, the space to be appropriated for passengers might, under certain circumstances, be reduced. He was of opinion that that section would require to be very carefully worked, and that it would be necessary for the Local Governments to take very great care before they allowed the space to be reduced.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN then moved the following amendments :—

That after, and as part of, the section substituted by the Bill for section two of the Act No. XII of 1870, the following be read :—

"The Local Government may, if it thinks fit, exempt any steamer or class of steamers, carrying not more than sixty passengers, being Natives of Asia or Africa, from the operation of this Act, for any period not exceeding one year.

"Such exemption may be from time to time renewed for any period not exceeding one year."

That, in the definition of 'Native Passenger Ship' in section two of the amended Bill, instead of the words "sixty passengers" there be read the words "thirty passengers."

That the following section be added to the Bill as section six :—

"6. After section 38 of the said Act, the following section shall be added as section 39 :—

"39. Nothing in this Act shall affect the provisions of Act XXV of 1859 *(to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal)*"

Saving of Act XXV of 1859.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN then moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

PATTERNS AND DESIGNS BILL.

The Hon'ble MR. STEWART moved that the report of the Select Committee on the Bill for the protection of Patterns and Designs be taken into consideration. He said that respecting the principle of the Bill he did not think he could add anything to what he had already said. It provided that, in the case of local inventors of patterns and designs, they should, on compliance with the provisions of the Act, enjoy protection for their inventions for the space of three years: the English Acts provided for such protection for various periods ranging up to three years; but it was deemed to be more suitable that the period here should be the uniform one of three years. The inventors of patterns and designs who had registered their designs in England would enjoy in India the same rights and privileges as in England, and their

enjoyment would be enforced in the same way, with this difference that, in England, certain remedies by way of fines were provided, while here the remedy would be of a purely civil nature.

The Bill had the approval of his hon'ble friend, Mr. Stephen, and it might be satisfactory to the Council to know that Mr. Bullen Smith also entirely agreed in the propriety of the Bill. He (Mr. Bullen Smith) had brought the subject to the notice of the Committee of the Chamber of Commerce, and the Bill had met with general approval there. MR. STEWART regarded the Bill as suitable to the necessities of the times and of commerce, and hoped the Council would regard it favourably.

His Honour THE LIEUTENANT-GOVERNOR thought the Council were well aware that, as regards the whole subject of Patents for inventions, there was a great difference of opinion and if he were willing to allow this Bill to pass, he by no means committed himself to an opinion in favour of any Patent law. Still, if Patents and Copy-rights were to be protected by law, there seemed to him to be no reason why patterns and designs should not have the same privilege accorded to them. No objection appeared to have been taken to the Bill; and HIS HONOUR attributed great weight to the opinions of the mercantile members of the Council, Mr. Bullen Smith and Mr. Stewart. The only point upon which he wished to have an opinion was as regards the words in section 4: "the same civil remedies in respect of any infringement thereof in British India, as those to which he would be entitled in the United Kingdom." He wished to know whether there was any danger of a cumbrous chancery procedure being introduced into this country in these matters.

The Hon'ble MR. STEPHEN did not think that the words to which His Honour the Lieutenant-Governor referred would alter the form of procedure prevailing here in the least degree: by "civil remedy" was simply meant that fines which were leviable in England should be precluded. The words would have the effect of enabling a man to obtain a decree to restrain a person from wrongfully using a pattern or design of which he was the owner. He thought that no doubt could be entertained as to the meaning of the provision. The Bill was likely to be put in force only in rare instances, and in the large commercial towns in which English law was well understood.

As regards the Bill itself, he accepted what had been stated by His Honour that it did not pledge any one upon the difficult subject of Patents: the whole object of the Bill was simply to make actionable in India what was

actionable in England. At present, if a person sustained wrong in the matter of a pattern or design, say in Rangoon, he had to go for his remedy to Westminster Hall, and the whole effect of the Bill would be to give a remedy on the spot.

The Motion was put and agreed to.

The Hon'ble MR. STEWART then moved that the Bill be passed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN presented a supplementary report of the Select Committee on the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter.

The Hon'ble MR. STEPHEN also moved that the reports of the Select Committee on the Bill be taken into consideration. He said:—"My Lord, it is now about eighteen months since I had the honour of introducing this Bill, and I need not repeat what I then stated as to the reasons which rendered its introduction desirable. There is, however, a great deal to be said upon the provisions of the Bill itself.

"I need hardly remark that it is one of the most important enactments which can be brought before this Council. I am not sure that it may not be regarded as the most important, perhaps, with the exception of the Penal Code, as it is in reality little less than the body of law by which the practical every-day business of governing this vast empire is carried on by a body of men—I mean the district officers—of whom it is difficult to say whether the smallness of their number in comparison to the incredible magnitude of their duties, or their success in performing the immense task entrusted to them, is most remarkable. The Civil Service, or at all events its most distinguished members, do not appear to bear any particular love to lawyers. I hope they will not be affronted if a lawyer takes the opportunity of his last public appearance in this country to express the profound respect with which they have impressed him. I have seen much of the most energetic sections of what is commonly regarded as the most energetic nation in the world; but I never saw anything to equal the general level of zeal, intelligence, public spirit and vigour maintained by the public service of this country, and nothing could give me greater satisfaction than to be able to believe that I had in some decree lightened their labours and strengthened their hands by

increasing the clearness, simplicity and precision of the system of rules by which they are guided in the discharge of their duties.

"To return to the subject of Criminal Procedure. I think that the present Bill is not adequately described by the name which it is bears, though I am not prepared to suggest a better; but its nature may be easily described. Of the benefits which England has conferred upon India, the first, and the most important is the general maintenance of peace and order, and the suppression of crime. Peace and order are ideas so familiar to the inhabitants of Western Europe, that we are, I think, a little apt to forget that they do not come by nature, like the sun, the wind and the rain. That, till they have given birth to the sentiments and institutions which protect them, they are an artificial state of things which can be maintained in a country like this only by elaborate arrangements made beforehand, and by great personal exertion and resource. This Code contains those arrangements. It is the instruments by which the peace and order of the country are secured in detail, as the Army is the instrument by which the same object is obtained in gross, and it is obvious that no decree of care which may be required to keep such an instrument in thorough working order can be regarded as excessive.

"I may perhaps be allowed to give, in a very few words, the history of the Code. It has been built up by slow degrees by the labours of successive generations of legislators ever since legislation first began in this country. The very earliest Regulations of 1793 provide for the establishment of a system for the administration of criminal justice. This system was repeatedly altered, varied and re-adjusted, so as to meet the varying wants of the country and to supply the requirements which were shown by experience to exist. The mass of legislation which thus accumulated was very large, and when the Penal Code was passed in 1860, it was considered a matter of pressing importance to prepare a Code of Criminal Procedure as quickly as possible, in order to act as a companion to it. Act XXV of 1861 was the result. It threw together all the existing law on the subject to which it related, and so consolidated an immense mass of Regulations and Acts. I will not say how many, but I think they were counted by the hundred. Act XXV of 1861 was drawn by men thoroughly well acquainted with the system with which they were concerned; but I am inclined to doubt whether they did not know it rather too well, for they certainly threw the various provisions together with very little regard to arrangement, and without any general plan. Various Acts for the amendment of the Code became necessary after it had been passed. These were consolidated by Act VIII of 1869. The result was rather to increase than to diminish the

confusion which had previously existed. Act VIII of 1869 was not regarded as a final measure, and a correspondence on several points connected with it, and with the further reform of the system of criminal procedure, took place between the Government of India and the Indian Law Commissioners, who gave their opinion on various matters submitted to them in one of their very latest reports. This report was the cause of the present Bill. I must now say what appears to be necessary upon its provisions.

"I wish, in the first place, to state distinctly my own position with regard to the Bill. Of course, I am fully responsible for it; but at the same time I must observe that I have not been so presumptuous or foolish as to attempt to introduce modifications of my own devising into the working of a system gradually constructed by the minute care and vast practical experience of many successive generations of Indian administrators and statesmen. I have carefully avoided that fault. I have regarded myself, rather as the draftsman and secretary of the Committee, by whom all the important working details of the Bill have been settled, than as its author; and to them, rather than to me, is due any merit which may attach to the practical improvements which I hope this Bill will be found to have introduced in the administration of criminal justice, and in the general maintenance of the public security. I am the more anxious to say this, because, when I last addressed the Council on this subject, I made various criticisms from the point of view of an English lawyer on the administration of justice in this country. I do not wish to retract or to modify what I then said. I still feel that the system of criminal justice in this country is open to serious objection, and would admit, in course of time, of considerable improvement. I think I could suggest means by which those improvements might be brought about quickly and gradually; but the task of the critic differs essentially in my opinion from that of the legislator. The task of the critic is to form and express his opinions as pointedly as possible, in order that they may form the subject of public discussion and gradually produce whatever effect may properly belong to them. The task of the legislator, in reference to an existing system like that of Indian Criminal Procedure is much more like that of the editor of a law-book. It is his duty to rearrange, to explain what experience has proved to be obscure, to supply defects, and to make such alterations as harmonize with, and carry out, the leading idea of the system with which he is concerned. The notion that any one could, if he would, or that he ought to wish, if by any accident he had the power, to make a new set of laws for his fellow-creatures out of his own head, and without reference to existing materials, is, to my mind, altogether wild and absurd. This I believe to be true everywhere, but it is emphatically and peculiarly

true of India. It is simply impossible to make extensive changes in the administration of this country suddenly. The reason is obvious, though I think people in England are apt not unnaturally to overlook it. It is, that the number of officers is so small, their duties so unremitting, and the nature of the engagements between them and the Government which employs them so stringent, that the whole administration would be thrown into confusion by any change which greatly altered the duties, or involved any serious modification in the position, of the officers concerned.

"Being strongly impressed with these views, the Committee on this Bill unanimously resolved not to interfere materially with the general outline of the existing system; but as criticism of a general kind has its place and its importance, as well as legislation, I have recorded my impressions as to the administration of justice in India in a Minute, which will be published as a Selection from the Records of Government. I hope it may be of some use in future legislation, both as a record of the manner in which an English lawyer was impressed by what he saw in this country, and as an account of a system of a very remarkable character, of which, so far as I am aware, no complete account exists of modern date and in a popular and easily accessible form.

"I will now proceed to go through the Bill submitted to the Council, making such general remarks upon its contents as I feel qualified to make. Numerous important modifications in the detail of the present system have been made by the Committee. I am not specially responsible for them. Their effect, and the reasons for making them, will be stated by my hon'ble friends and colleagues, and especially by His Honour the Lieutenant-Governor, whose attendance at the meetings of the Committee has been most assiduous, and to whose wide and long experience a very large, perhaps the largest and most important, part of the alterations made in the existing system is due.

"First, with regard to the arrangement of the Bill I may observe that, though the title of 'Code of Criminal Procedure' has been retained, it does not adequately describe the scope of the measure. It is a complete body of law on three distinct, but closely related, subjects—the constitution of the Criminal Courts, the conduct of criminal proceedings, and the prevention of crimes by interference beforehand.

"The first of these subjects is the constitution of the Criminal Courts. This is distinctly and systematically laid down for the first time in chapters II, III and IV, which enable us to repeal a large number of Acts and Regulations through which the subject-matter of the chapters in question is at present

scattered in the most obscure and fragmentary manner. I need only remind the Council of the Bengal Sessions Judges Act which was passed last summer, in order to show the importance of doing this. Till that Act was passed, the law upon the subject was scattered through, and had to be inferred from several Acts and Regulations so clumsily drawn, that it appeared probable, when the matter came to be carefully examined, that most of the sentences passed by the Bengal Sessions Judges for a whole generation had been illegal. This and similar scandals will, I hope, be effectually prevented by the present Bill, which puts the whole matter in a perfectly distinct shape. This, however, is comparatively speaking a small matter. A far more important one is this. The Bill defines at once, comprehensively, and I hope quite plainly, two matters of importance about Magistrates, which are at present in a state of extreme obscurity and confusion. These are, the powers of Magistrates, and their relation to each other. No branch of the law is either more important, or, as matters stand, more confused. The District Magistrates are, in fact—though their title would hardly convey the notion to a person unacquainted with the subject—the actual Governors of the country, and there is no matter on which, according to my observation, the most experienced Indian Administrators have expended so much care and thought, or to which they attach so much importance, as the definition of their position. It had come, in the course of time and under the teaching of experience, to be defined, though in a clumsy and intricate manner; and the Courts of justice have been greatly perplexed by the difficulty of deciding what might be done by Magistrates of the District; what by full-power Magistrates; and what by Subordinate Magistrates of the first or second class. The obscurity appeared to me to arise, as most of the obscurity of law does arise, from the unfounded, but not by any means unnatural, error, into which nearly every one falls, that it is needless to express things which are generally known, and that they may therefore be taken for granted. The result is that such expressions as 'the Magistrate,' 'the Magistrate of the District,' 'full-power Magistrate, and so forth, are continually used in the existing Acts without any definition of their powers or of their relations to each other.

"This, I hope, we have now made as clear as it can be made, though a certain degree of intricacy is inseparable from the subject-matter, and could not be removed unless the whole of the executive arrangements by which the government of the country is carried on were very deeply modified. The intricacy arises from the following circumstances:—There are three separate points of view in which Magistrates must be regarded. *First*, they have different judicial powers; *secondly*, they have different powers in a multitude

of miscellaneous matters connected with procedure, and these miscellaneous powers are liable to variation in particular cases; and, *thirdly*, they stand in various relations to each other. This, no doubt, is intricate; but the intricacy could not be substantially lessened unless Government were prepared to alter the whole organization of the districts, which, of course, is out of the question. All, therefore, that can be done, is to describe the matter as clearly and shortly as possible. This task we have attempted in the fourth chapter of the Bill. Its leading features are these.

"As regards their judicial powers, Magistrates are divided into three classes according to the maximum sentences which they can pass:—First Class Magistrates can sentence up to two years' imprisonment, and 1,000 rupees fine; Second Class Magistrates up to six months, and 200 rupees fine; Third Class Magistrates up to one month, and 50 rupees fine.

"Their miscellaneous powers are thirty-seven in number, and these are specified in section 21. In sections 20 to 30, both inclusive, we specify the powers which may be exercised by all Magistrates as such; those which may be exercised by Magistrates of the second and first class, and those which may be exercised by Magistrates in charge of a Division of a District as such. We also specify the powers with which these various classes of Magistrates may be invested, either by the Magistrate of the District, or by the Local Government.

"We next proceed to consider the Magistrates in their relation to the district in which they are quartered, and here we lay down distinctly (I think for the first time) that there shall be, in every District, a Magistrate of the District, to whom all other Magistrates in the District shall be subordinate; and that the Local Government may divide Districts into Divisions, and put Subordinate Magistrates of certain grades in charge of them.

"I think it will be found that the provisions of the Bill throw these various matters into as clear and precise a shape as the nature of the case admits of.

"Having provided for the Judges and Magistrates, we pass to the subject of public prosecutors. My own personal opinion is, that it would be desirable to separate, rather more clearly than they are separated at present, the functions of Magistrates and public prosecutors, and I should have liked to see the sections so drawn as to enable the public prosecutor to command the assistance of the Police in getting up a case for trial. The Committee were, however, of a different opinion, and considered that the public prosecutor ought to be merely

an advocate for the prosecution. They are, of course, much more likely to be right than I am; but I hope that the sections as settled will at all events make it clear that a criminal trial in this country is not like a civil section; that the complainant is only a witness; and that if he does conduct the prosecution, he does so only by the permission of the Court. In passing from this subject I wish to repeat and to record my personal regret that the Bill does not provide more distinctly for it. The discussions upon it have made me aware of the fact, that a difference of opinion, which no doubt extends very deep, exists as to the position of District Magistrates. The extreme view on the one side is, that the Magistrate of District should be a sort of king, who should govern his district from bottom to top and from beginning to end, hunting up criminals, trying and punishing them in minor cases, and handing them on for punishment to the Sessions Judge in other cases. The extreme view on the other side is, that the Magistrate should sit still and hear the witnesses brought before him by others; and this difference of opinion reflects itself in a manner which is obvious enough upon the question about public prosecutors.

"We deal next with what an English lawyer would call the law of venue —the law as to the place where a trial should be held. The existing Act copies the English law on this subject, and, in particular, re-produces the bald exceptions to a vague rule which are characterististic of it. We have attempted in this chapter to state the principles on which these exceptions depend, and have turned the exceptions themselves into illustrations. We have also inserted a provision which, unless I am much mistaken, will effectually prevent the undergrowth of cases upon this matter, which has disfigured English law. We propose that, unless it appear that actual injustice resulted from holding the trial in a wrong place, no effect at all shall follow from it.

"The last of the preliminary topics with which we propose to deal is one which has caused some discussion and attention. It relates to the subject of criminal jurisdiction over European British subjects. The proposals of the Committee upon this subject have been before the public for a considerable time, and I think I am entitled to say that, on the whole, they have been very favourably received. I see, from the amendments put upon the paper, that two at least of the members of Council who were not members of the Committee, my hon'ble friend Mr. Ellis and His Excellency the Commander-in-Chief, object to what we propose. My hon'ble friend, Mr. Ellis, thinks that, in requiring the Judges and Magistrates by whom Europeans are tried to be themselves Europeans, we concede too much to the feelings of Europeans. My hon'ble friend, the Commander-in-Chief, thinks that, in empowering first

class Magistrates, being also Europeans and Justices of the Peace, to inflict upon them three months' imprisonment, we make too great a concession to the opposite view of the subject.

"My Lord, I cannot undertake to justify upon prineiple the terms of a compromise. A compromise must be, essentially, a matter of more or less give-and-take, and this measure is not the less a compromise, because we have been obliged to suggest its terms without actually consulting the parties or their representatives. I need not remind your Lordship and the Council of the extreme warmth of feeling which discussions upon a measure of this nature excited at no very distant date; nor need I insist on the great importance to the Government of this country of the existence of harmony between the Government and the general European population. I think I am entitled to say that the manner in which our proposals, made six weeks ago or more, have been received by the public in general, proves that they were not made injudiciously, and I should be sorry, after putting forward these proposals for the express purpose of obtaining an expression of public opinion upon them, and after obtaining what I am entitled to describe as a favourable expression of opinion, to make any material alterations in them at a time when the public views on the subject can hardly be collected. As to the particular proposals made, I shall reserve what I have to say about them till my hon'ble friends bring forward their amendments. Thus much I think I may say in general, and particularly by way of answer to a petition which has been received from certain persons at Bombay, declaring that the maintenance of any distinction at all between Europeans and Natives in this matter is a great injustice, and contrary to the principles on which the British Government ought to rule. I cannot think so: I do not wish to say anything offensive to any one; but I must speak plainly on this matter. In countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal, as proposed to territorial, laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost pertinacity by those who are subject to them. The Muhammadan has his personal law. The Hindu has his personal law. Women who, according to the custom of the country, ought not to appear in Court, are excused from appearing in Court. Natives of rank and influence enjoy, in many cases, privileges which stand on precisely the same principle; and are English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? that whilst English Courts are to respect, and even to enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privi-

ledges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim for absolute identity of law for persons of all races and all habits comes with so bad a grace as from the natives of this country, filled as it is with every distinction with race, caste and religion can create, and passionately tenacious as are its inhabitants of such distinctions.

"It may be replied that to use this argument is to desert the characteristic principles of English government, and to make a point against an antagonist by surrendering what we ourselves believe. My answer is that the general principle that all persons should be subject to the same laws is subject to wide exceptions, one of which covers this case. It is obvious enough; but possibly the best way of stating it will be to show how it applies to the particular matter before us. The English people established by military force a regular system of government, and, in particular, a regular system for the administration of justice, in this country, in the place of downright anarchy. The system for administering justice was, and is beyond all question, infinitely better than any system which the English people found here; but it neither is nor can be, the English system. It must of necessity differ from it in its characteristic features; and although I am not one of those who blindly admire the English system of criminal justice, I say that, if English people in India like it, which they notoriously do, they have a perfect right to have it. I cannot see how the mere fact that a man has, at great expense and trouble, provided the people who live on his estate with drinking water, of which under previous landlords, they never had enough, is to prevent him from keeping a cellar of wine for his own drinking; and even if I thought water better for his health than wine, it would be for him to judge.

"There is, no doubt, one way in which the present system is a great and real grievance to the Natives. It extends practical impunity to English wrongdoers, I think, however, that the provisions of the Bill effectually dispose of this, for they will subject every European in the country to an effective criminal jurisdiction, able to inflict prompt and severe punishment upon him for any offence which he may have committed.

"I may just notice the provisions of sections 81 and 82 of the subject of the writ of *habeas corpus*. The matter is at present in the greatest confusion, as any one may see for himself by reading the arguments on the subject which took place in the case of the Wahábí convict Amír Khán. I will not detain the Council with a legal argument; but I think it is exceedingly doubtful whether

the writ of *habeas corpus* would issue, as matters now stand, to bring up a European unlawfully detained in custody in the Mofussil, and I think it pretty clear that it would not lie to bring up a Native unlawfully detained by a Native in the Mofussil. Into the minor ramification of the subject I need not enter. The sections in the Bill make the matter clear. An order equivalent to a writ of *habeas corpus ad subjiciendum* may be issued in respect of European British subjects throughout the whole of India. The writ of *habeas corpus* itself will continue to be issued, as at present, in the Presidency towns, but nowhere else.

"It must not be supposed that personal liberty is at all unprotected in the Mofussil. Wrongful restraint (which is very widely defined) is an offence against the Penal Code. And a person subjected to wrongful restraint can always procure his release by presenting a petition to any Magistrate for a summons or warrant against the person who wrongfully restrains him and by procuring himself to be summoned as a witness. These remarks exhaust all that I have to say on the general part of the Bill.

"I shall pass more rapidly over its detailed provisions, leaving it to my hon'ble friends and colleagues to state to the Council the grounds of such of the amendments as may appear to deserve special notice.

"Upon the question of arrangement I may observe, that Part III, which immediately follows the general provisions already described, deals with the very earliest stage of criminal proceedings—that which is left in the hands of the Police. This is stated in the existing Code in a confused manner, and it is by no means easy for the reader of it to draw the line between the functions of the Police and those of the Magistrate. The present arrangement, I hope will make this quite clear. In certain cases, the Police may arrest without warrant. In those, and in certain other specified cases, they may collect evidence, and, in order to enable them to do so, it is necessary to arm them with the power of asking questions and requiring answers. No very material alteration in the present system is suggested. I would remark that there may be some degree of awkwardness in leaving the organization of the Police to be provided for by Act V of 1861 and other corresponding Acts which apply to different provinces, and in prescribing the most important of their powers and duties in this Act. No doubt the Code would be more complete if it contained the Police Acts; but there are two difficulties in the way which have prevented this arrangement. The first is, that the subject of Police organization is just one of those with which the local legislatures ought to deal. The second is, that very great differences of opinion exist on the

subject, with which we are not in a position to deal in reference to the present Bill.

"On the fourth part of the Bill I need make no remark, nor have I much to say on the provisions of the fifth part, which relates to enquiries and trials, I have however one or two remarks to make upon it. Chapter XVIII contains a most important innovation upon the existing practice, and one which I hope will prove very valuable. It enables the Magistrate of the District and other first class Magistrates, if authorized by the Local Government, to try certain common and simple offences in a summary way, without the elaborate record of evidence which is required under the present law. This is substantially the procedure now followed by English Courts of Petty Session, and by the Police Magistrates in the presidency towns. As far as my opinion goes, I look upon this chapter with great satisfaction, but I am not entitled to any credit which may attach to its introduction into this Bill. It was suggested by others, who will, I have no doubt, explain its provisions more fully.

"On the chapter (XIX) which relates to trials, I may make a few observations. It embodies the law upon the subject of juries, in which we have made several important alterations. We propose that, if the Judge differs from the jury, he may refer the case for the opinion of the High Court. We also proposed that the High Court in the exercise of its powers of revision may, if it thinks fit, set aside the verdict of a jury if the Judge has misdirected them. In other respects we have not altered the existing law.

"I am aware that some of my hon'ble colleagues think that we have changed the spirit of the whole system so much by these alterations, that it would have been better to sweep it away altogether. I cannot myself think so. I certainly should not have suggested the introduction of the jury system into India, if I had not found it here, and I cannot say that the opinions given of it by those who have had experience of its working are at all favourable. They were not, however, so altogether unfavourable as to induce us to take the step of recommending its total abolition. In giving the Judge power to refer to the High Court cases in which he differs from the jury, we have no doubt made a considerable alteration upon English precedents. But the alteration if adopted will be entirely in harmony with the whole spirit of Indian criminal procedure, the very essence of which is control and supervision by one set of Courts over another. We do not, of course, mean that the Judge should act in this manner in every case in which he has doubts as to the propriety of a verdict or even in those cases in which he feels that, if he

had been a juror, he would not have returned the same verdict. Our intention is, that he should exercise the power in question in those cases only in which it is necessary to do so in order to prevent a manifest failure of justice; and having regard to the strong motive which the Judge always has for avoiding all future trouble by accepting the view taken by a jury, I think there is little reason to fear that the power will be abused.

"As to the power of the High Court to revise the verdict of a jury which has been misdirected, it is nothing more than what the Court for Crown Cases Reserved does in England, in case of a misdirection which leads to a conviction. Why the same course should not be taken in case of a misdirection which leads to an acquittal, I cannot conceive.

"As to the chapter on Appeals, the only alterations which we have made are that, in certain carefully selected cases, we permit an appeal against an acquittal, and that we allow the Appellate Court to enhance sentences passed if it considers them insufficient. This alteration is one of those which I will leave it to my hon'ble friends to explain and justify.

"I need notice nothing more in the Bill till I come to Part X, which treats of the charge, judgment and sentence, or what an English lawyer would call the system of criminal pleading. For chapter XXXIII, which relates to the subject of charges, I am peculiarly responsible. The chapter was drawn by me with the view of making as clear and plain as I could a matter which, in England, has given rise to an inordinate amount of quibbling and chicanery. I hope that the sections drawn by me and accepted by the Committee will make it almost, if not quite, impossible that any failure of justice should ever take place in this country by reason of any defect in a charge; for, under these sections, the worst that can happen is, that the Court may think that the prisoner has been misled, and that he ought to have a new trial.

"The only remaining matter contained in the Bill which I need mention specially is chapter XXXVI, the first chapter of Part XI, which relates to the preventive jurisdiction of Magistrates. This chapter sets out in plain terms what is now the law (as I believe, though it is nowhere written down) as to the dispersion of unlawful assemblies by military force. It has often appeared to me to be a great hardship on military men that there should be no express written law laying down in precise terms their duty in relation to the dispersion of unlawful assemblies. The Queen's Regulations contain provisions on the subject; but they are not law; at least they have not, as regards Civil Courts in England, the force of law. Various celebrated judgments have laid down the prin-

cipies of the matter very clearly, but military officers can hardly be expected to be acquainted with the Law Reports. The results of the want of clear precise knowledge on this subject have often been deplorable. Thus, for instance, in the Gordon riots in 1780, London was at the mercy of a mob for two days, because no one chose to give orders or take responsibility as to the employment of the military. As the Bristol riots, fifty years later, a great part of the town was burnt to the ground, because an officer in command of a dragoon regiment did not know that it was his duty to order his men to charge when the town was burning, and there was no Magistrate to give him orders, and I have been told of several instances in which similar evils have occurred in India. In order to show that what is enacted in this Bill is no invention of mine, but merely a statement, with but very slight additions, of the law on this important subject which has long existed in England, I will, with your Lordship's permission, read the statement of the law made by Lord Chief Justice Tindal in his charge to the Grand Juri of Bristol at a Special Commission held in 1832 after the riots:—

'By the common law, every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the Magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled; he may stay those who are engaged in it from executing their purpose; he may stop and prevent others whom he shall see coming up from joining the rest; and not only has he the authority, but it is *his bounden duty* as a good subject of the King, to perform this *the utmost of his ability*. If the riot be general and dangerous, he may arm himself against the evil-doers to keep the peace.

'It would undoubtedly be more prudent to attend and be assistant to the justices, sheriffs, or other ministers of the King in doing this, for the presence and authority of the Magistrate would restrain the proceeding to such extremities until the danger were sufficiently immediate, or until some felony was either committed, or could not be prevented without recourse to arms; and, at all events, the assistance given by men who act in subordination and concert with the civil Magistrate, will be more effectual to attain the object proposed, than any efforts, however well intended, of separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procurring the advice or sanction of the Magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly; and he may be assured that, whatever is honestly done by him in the execution of that object, will be supported and justified by the common law. The law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation, and invested with the same authority to preserve the peace of the King, as any other subject. If the one is bound to attend the call of the civil Magistrate, so is the other; if the one may interfere for that purpose when the occasion demands it, without the requisition of the Magistrate, so may the other too; if the one may employ arms for that

purpose, when arms are necessary, the soldier may do the same. Undoubtedly, the same exercise of discretion which requires the private subject to act in subordination to and in aid of the Magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authority, the military subjects of the King not only may, but are bound to do their utmost, of their own authorities, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people. Still further, by the common law, not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer is called upon to do all that in them lies for the supression of the riot, and each has authority to command all other subjects of the King to assist them in that undertaking. By an early Statute (13 H. IV, cap. 7), any two justices, with the sheriff or under-sheriff of the country, may come with the power of the country, if need be, to arrest any rioters, and shall arrest them; and they have power to record that which they see done in their presence against the law; by which record the offenders shall be convicted, and may afterwards be brought to punishment. And here I must distinctly observe, that *it is not left to the choice or will of the subject*, as some have erroneously supposed, *to attend or not to the call of the Magistrate, as they think proper*, but *every man is bound, when called upon*, under pain of fine and imprisonment, *to yeild a ready and implicit obedience to the call of the Magistrate, and to do his utmost in assisting him to suppress any tumultuous assembly.*'

"The only point on which we have—I will not say altered, but somewhat amplified—the law of England, is in reference to the responsibility of soldiers for acts done in dispersing unlawful assemblies. The English law upon this point is somewhat indefinite, and it is by no means clear that, if a Magistrate calls upon an officer to disperse an assembly, and if the officer orders his troops to fire, and if the troops do fire, and if the Magistrate is mistaken in the view which he takes of the requirements of his case, that his orders protect the officer, or that the officer's orders protect the soldier. Military men may thus be placed between two conflicting authorities. The soldier may be liable to be tried by Court Martial for disobeying orders if he does not fire, and to be tried at the Assizes for murder if he does. I will not now go into the legal aspects of the matter; but it is by no means clear that, according to the law of England, the actual necessity for the order, as distinguished from the order itself, is not the condition of the legality of an order to attack a mob by military force. This, no doubt, arose from the extreme jealousy with which English lawyers have always regarded the interference of soldiers in civil matters, and this jealousy is to be explained by historical causes which happily do not exist in this country. I think I need hardly insist upon the monstrous injustice of the rule itself, if such it is. What possible means have subordinate officers or private soldiers

of knowing whether it is or is not necessary to disperse a particular assembly, or to use more or less force for that purpose? To make a common soldier a murderer for shooting people whom he is ordered to shoot, because a jury afterwards thinks that it was not necessary that they should be shot, seems to me as absurd as to say that every one who deals in any way with stolen goods is to be treated as a receiver whether he knew they were stolen or not. It will, I trust, be made perfectly clear by the provisions of this Bill that no one commits a crime by any act done by him in good faith for keeping the peace. Section 483 protects the Magistrate who orders an assembly to be dispersed by military force, if he regards the measure as necessary to the public security on reasonable grounds and in good faith. Sections 484 and 485 make it the duty of the officer in command to obey the Magistrate's requisition, and whilst they put upon him the responsibility, which he clearly ought to bear, of deciding on the manner in which the requisition is to be carried out, and of doing as little injury to person and property as is consistent with carrying it out effectually, they protect him from all responsibility for the order itself. In the same spirit, section 486 protects every inferior officer and soldier for every act done in obedience to any order which he was bound to obey by the Mutiny Act or the Indian Articles of War.

"We also propose that prosecutions for excess in acts done under these sections should not be permitted without sanction from the Local Government. My own personal experience has led me to feel, perhaps more deeply than most other persons the necessity for such a provision as this, and has impressed me with the evils which may arise from the defective state of the law, which leaves it in the option of private persons to carry on a series of proceedings, under no public check whatever, which might break a man's heart when he is perfectly innocent. I can imagine cases in which a man who had only done his duty might be baited to death by one prosecution after another, for murder, hurt, mischief and the like, nor do I see how the Government could protect him in the absence of this provision. I do not know that such cases have as yet occurred, but nothing is more likely than their occurrence, as Native lawyers become familiarised with English Law, unless we provide for the matter beforehand.

"The principle of sanction is well established in Indian Law and is of great value, and this appears to me to be just the sort of case to which it ought to be applied.

"These my Lord, are the remarks I have to make on the Bill as published in the Gazette. I now turn to the supplementary report, which suggests a

very large number of minor amendments. Our object in publishing the Bill in the Gazette for nearly a month before we laid it before the Council, was to obtain as much detailed criticism on it as we possibly could. This supplementary report is the result. It consists principally, indeed almost entirely, of slight additions made to particular sections, for the purpose of clearing up points on which the High Courts had found it necessary to pass decisions. It would be idle to ask the Council to discuss them in detail. A few days ago, the Committee on the Bill held a final meeting, in which every one of them (except a few which were suggested and assented to afterwards) was discussed with minute care. We agreed upon the report which I now submit to the Council, and I ask your Lordship and the Council to accept it. It involves few, if any, alterations of principle, though, I believe, it will add immensely to the value of the Bill, by settling nearly every question which has been shown by experience to be capable of being raised upon it. Though I do not propose to discuss the subject in detail, I should like to make a few observations upon it. I think that it represents very fairly the amount of needless intricacy in which the law of this country is involved by the system of law-reporting which unhappily prevails here. And I would most earnestly direct the attention, both of the Government and of the public, to the evils which arise from it. I have tried to devise means for its mitigation, and I have made some remarks upon the subject in the Minute recorded by me, to which I have already alluded, and which will be published in a few days. On the present occasion, I will simply specify the evil of which I complain. All the High Courts and the Chief Court of the Panjáb have their decisions reported, and the expense of reporting them is borne, to a very great extent, by Government, which pays the reporters' salaries and subscribes very largely towards the reports. I will give a few illustrations of their character. The Bengal Law Reports for 1868, 1869, 1870 and 1871 fill six enormous volumes, and will, I suppose, fill seven, when the reports for 1871 are completed. The first instalment of the reports for 1871 is a volume of 1,000 pages. As if this was not enough, a little book, called *Sutherland's Weekly Reporter*, is published, which consists principally of prints of all the judgments delivered by all the Benches into which the High Court is divided, as well as those which are delivered in its original jurisdiction. It appears to me that if it were the intention of Government to enervate the administration of justice, to make the appreciation of legal principles impossible, and to foster all the weaknesses which are usually said to be characteristic of the Native intellect, they could not spend their money better than by encouraging a system like this. I do not believe that one case in twenty of those which are reported is at all worth reporting; and when we

think what the High Courts are, it seems to me little less than monstrous to make every division bench into a little legislature, which is to be continually occupied in making binding precedents, with all of which every Court and Magistrate in the country is bound to be acquainted. Careful reports of great cases are perhaps the most instructive kind of legal literature; but I know nothing which so completely enervates the mind, and prevents it from regarding law as a whole, or as depending upon any principles at all, as the habit of continually dwelling upon and referring to minute decisions upon every petty question which occurs. It is this enormous growth of case-law which justifies so far as they can be justified, the attacks so often made upon lawyers, and it does appear to me that no legal reform could possibly be so important as its reduction to reasonable dimensions. I have made definite and specific proposals on the subject in the Minute to which I refer. I confine myself at present to the remark, that I believe that the Government of India is at present spending considerable sums of money every year in impairing the efficiency and wasting the time of every judicial officer in the country. I hope that this Bill will be found to have stopped a good many of the holes which have been detected in this Code, and to have superseded an immense number of the cases which have been decided on. However, the impression made upon my mind by going through large numbers of them was not, I must confess, by any means favourable. The great mass of them ought never to have been reported at all.

"This concludes what I have to say on the Bill which I now ask the Council to take into consideration; but there is one other subject to which I must refer before I end my speech. I obtained leave some time ago to introduce a Bill for assimilating the Criminal Procedure of the High Court on the original side to that of the other Courts. A Bill had been prepared with that object in the Legislative Department; but I think its form might be considerably improved; and as I do not wish to introduce an imperfect measure, I will content myself with saying how, in my opinion, such a measure ought to be drawn.

"It might begin by providing that, in the presidency towns, there should be two grades of Criminal Courts, the Courts of the Police Magistrates, and the High Court acting as a Court of Session. The Police Magistrates might be expressly empowered to hear the cases which they now hear, according to the procedure laid down in chapter XVIII on summary trials. In appealable cases, the limit of appeal being fixed somewhat higher than in the Mofussil, they might take a note of the substance of the evidence in English, and the

appeals might lie, if an additional Police Magistrate were appointed, to a full bench of Magistrates, with power to refer questions to the High Court. If no addition is made to the number of Police Magistrates the appeals might go direct to the High Court, which again would find its sessions business diminished if the Magistrates had the same powers as in the Mofussil. Committals to the High Court might be made as at present. The High Court should be declared to be a Court of Session for the trial of such cases; but it should be provided that the chapter of the Code relating to recording evidence should not apply to the Judges of the High Court. They should try with a jury of twelve, who should be constituted as at present, and should give a unanimous verdict. The power to reserve cases for the full Court should be maintained as at prsent. In other respects, the Code of Criminal Procedure might apply. The difference between the Code and the present practice is small. The power of questioning the accused is the principle point of difference, so far as I know, and that is, I think, an undeniable improvement. Several experimental provisions, which in practice have been dead-letters, might, I think, be repealed. They will be found in Act XXIV of 1866, which was intended to set on foot a system of circuits. No High Court Judge ever has gone in circuit in the Mofussil, at least in Bengal, and I do not myself see what good he would do if he did. There are some provisions relating to the Chief Court of the Panjáb to which similar observations apply.

"These are the remarks which occur to me upon this measure, but I cannot conclude without publicly expressing my thanks and the thanks of the Committee to my friends, Mr. Cunningham, the Secretary, and Captain Newbery, who was put upon special duty to assist us in the preparation of the Bill. It is difficult to exaggerate the minute and anxious labour which they have bestowed upon the Bill, and I wish to add that Captain Newbery put at the disposal of the Committee a complete collection of rulings which he had complied with a view to a new edition of the present Code. I hope that he has been, to a considerable degree, successful in destroying the value of his own work, or rather, in putting it into a shape in which its value will be permanent and general."

His Honour THE LIEUTENANT-GOVERNOR said that the subject of this Bill had been treated so fully, and the principles upon which the Committee had deliberated and discussed the measure had been so clearly explained by the Hon'ble Member in charge of the Bill, that it would not be unnecessary for him to say much upon the subject. But inasmuch as he had taken a part in the deliberations of the Committee, he should not allow this important mea-

sure to pass wholly in silence. The criminal law was, as the Hon'ble Member had said, a law of overwhelming importance in this country; he meant not only the law for the administration of criminal justice, but the executive administration as carried on through the Magistrates. The prevailing ideas on the subject of criminal law had been somewhat affected by the English law; and the departures from the rules of the English law which the Committee recommended were founded on this ground, that many of the prominent parts of the English law were based on political considerations, the object of those familiar rules of criminal law being not to bring the criminal to justice, but to protect the people from a tyrannical Government, and the functions of juries of the people having been for many centuries principally directed to the protection of the interests of the people. Not only were those provisions now unnecessary in England, but they were especially out of place in a country where it was not pretended that the subject enjoyed that liberty which was the birth-right of an Englishman; and it was not intended to introduce rules into the criminal law which were designed with the object of securing the liberties of the people. That being so, HIS HONOUR thought they might fairly get rid of some of the rules the object of which was to secure for the people that jealous protection which the English law gave to the accused. It seemed to him that they were not bound to protect the criminal according to any code of fair play, but that their object should be to get at the truth, and anything which would tend to elicit the truth was regarded by the Committee to be desirable for the interests of the accused if he was innocent, for those of the public if he was guilty. That being so, he would say that he had no sympathy whatever of some of those things which his hon'ble friend Mr. Stephen had called superstitions. For instance, HIS HONOUR did not see why they should not get a man to criminate himself if they could; why they should not do all which they could to get the truth from him; why they should not cross-question him, and adopt every other means, short of absolute torture, to get at the truth. They had already done a good deal in the direction of clearing away English prejudices, and the Committee proposed to make further concessions to common sense in the present Bill. HIS HONOUR thought it right to say that, in his opinion, the Code of Criminal Procedure as now existing was an admirable Code; he thought that the country was under great obligations to the framers of that Code; he had long administered that Code, and thought that it was one of the best Codes of Criminal Procedure that had ever been enacted. On the other hand, he had no doubt that the framers of that Code would be the first to admit that, after ten or twelve years, the time had arrived when the Council might fairly reconsider its provisions; and the action of the Committee upon the Bill had amounted to this, that they had

re-arranged and reconsidered and amended its provisions; but no more: the Bill was simply an amendation of the existing Code, which they acknowledged to be a very valuable peace of legislation.

Then, as to the details of the Bill, some people might think that some of the amendments adopted by the Committee were not of such a nature as to be interesting to the general public; but they were of very great importance nevertheless. Some of the amendments were in the direction of securing the efficiency of the executive. The administration of the criminal law was entrusted to the executive officers of the Government, and if they were overburthened by a cumbrous procedure, they would have no time to attend to their multifarious duties. The tendency hitherto had been to overburthen these executive officers with too heavy a record of judicial work. The result had been, to some extent, to tie our officers to their desks, so that they had not been able to perform their executive duties as efficiently as they should. A great deal, then, that had been done by the Committee, had been done to lighten the labour of the Magistrates. He thought that the course of justice usually was this, that first, in early times, there was very little law; that, in the next stage, there was an excess of law and of writing; that it had been so in India there was no doubt. Then, as our Magistrates and Judges became more efficient, we could, to some extent, relax the rules of written procedure and record, and lighten the labours of the Magistrate. That appeared to be the course which the Committee took in the revision of the Code. You must, to a certain extent, place confidence in your officers. His Honour's wish had been, to some extent, to go further; but the Committee had proposed to go a long way in that direction. They proposed that a very large class of petty cases should be recorded in a more summary manner than the way in which they were now recorded, and they hoped that in this way they might hit that happy medium in which there should be a record sufficient for the purposes of justice, but not so long as to overburthen our officers in keeping it. He hoped that, when the next revision of the Code might take place, the labours of the Magistrates might be still further lightened.

His Honour would only make one or two further observations with regard to certain points noticed by the Hon'ble Member in charge of the Bill. The first of those subjects was the subject of the appointment of public prosecutors. His Honour would express his entire and absolute concurrence with his hon'ble friend in the opinion that the prosecution of a criminal in any serious case should not be looked upon in any degree as a suit between man and man

but should be treated as a public matter, and that whether there should be a prosecution or no prosecution, should be a subject for the consideration of a public servant appointed for the purpose. HIS HONOUR'S opinion was, that the provisions on this subject which were introduced in the Bill were very beneficial, and he hoped the Council would pass them.

Another subject to which he would draw the attention of the Council was the difficult subject of juries. It was HIS HONOUR'S opinion that, in this country, juries framed on an English model were not altogether beneficial instruments in the administration of criminal justice; at the same time he had not been willing to abandon the jury system altogether, because, although he did not think that trial by jury was an unmixed good, he believed that the system had a great effect in the political education of the people. It was a very great object to induce the Natives of the country to take a part in self-government and in the administration of justice, and it was in that respect only that he regarded the maintenance of the jury system in criminal trials to be of some value. At the same time, he felt that the jury system was less fitted for criminal trials than to some trials of a civil nature : he should be glad to dispense with the jury system in criminal trials, if there could be introduced something in the shape of trial by jury in civil cases. The Courts at present laboured under great difficulties in the determination of civil cases ; it was in many cases a most difficult matter for them to arrive at the truth. He looked upon a panchâyat somewhat in the light of a jury without the superstitious number of twelve ; and he hoped that, if they dispensed with juries in criminal trials, they should be able to introduce something like the jury system in regard to civil cases.

The Hon'ble Member in charge of the Bill had expressed a scintilla of doubt with regard to the propriety of permitting a Court of appeal to enhance the punishment awarded to a criminal. It seemed to HIS HONOUR that, after all the eminent services which his hon'ble friend had rendered in the improvement of the administration of justice in this country, the doubt to which he had given expression showed as it were the slightest possible taint of the English-lawyer prejudice still hanging about him, although he was generally so free from anything of that kind. It appeared to HIS HONOUR that, where we afforded the greatest facilities for an appeal to the superior tribunals, the superior tribunal to whom the criminal appealed should have the power to decide what was the proper punishment for the offence ; and if that tribunal considered that the punishment that had been awarded was inadequate, it should be in its power to award an enhanced punishment. More than that,

it appeared to him that there was a practical necessity for such a provision. Our law as to criminal appeals was the most liberal law in the world: there was no law that was so liberal as to allow a person to say to his jailor, "I wish to appeal," and the jailor was bound to send the appeal on to the Judge without expense or trouble to the appellant. The result of such a law was that the prisoner could lose nothing by his appeal, and might possibly gain something, and the consequence of such a state of things was that, in some districts, there was no such thing as a case that had not been appealed. HIS HONOUR said that that was carrying matters to an undesirable extreme, and he thought that it was only fair that, if a man chose to appeal, he should run the risk of his sentence being enhanced by the Appellate Court if it was inadequate.

The Hon'ble Member in charge of the Bill went at very considerable length into the subject of chapter XI of the Code, which provided for the dispersion of unlawful assemblies, and attributed to those provisions, perhaps, somewhat greater importance than HIS HONOUR would attribute to them. Happily, unlawful assemblies requiring military force for their dispersion in this country, were of extremely rare occurrence. HIS HONOUR'S experience was that organized resistance to authority was almost unknown: it had never happened to him that he had been obliged to resort to the assistance of the military to disperse an assembly, and except in the case of actual war and mutiny, he had never been personally concerned in any case in which the military had acted in suppressing any riot or disturbance whatever. At the same time, he admitted that it was not impossible that such cases might occur and it would be well to be forearmed, and he believed that the law upon the subject had been laid down as well as it was possible to lay it down.

Then, there was another subject incidental to this Code upon which the Hon'ble Member had dwelt at some length, namely, the question of law reporting. HIS HONOUR entirely agreed with Mr. Stephen as to the great evil of the present system of reporting; at the same time, he was not prepared to admit that that fact gave ground for the observations of his hon'ble friend on the subject of lawyers. The observations upon that subject, which had fallen from HIS HONOUR on previous occasions, had reference, not to the Judges, but to the greed of the law practitioners, who had made a bad use of the judgments that had been printed in the reports. Every judgment was a sort of carcase, around which the vultures gathered together to extract from it legal quibbles. He believed that very great injustice had been done to the High Courts owing to the system of misreporting to which the Hon'ble Member had alluded; people had been supplied with bad abstracts of bad reports, and the result

had been a perversion of the judgments of the High Courts, attributing to them errors and absurdities of which they had never been guilty.

Perhaps, he need not follow the Hon'ble Member in the remarks he had made in regard to the draft of a Bill, which HIS HONOUR hoped he would leave to the Council for the extension of a system of Criminal Procedure to the presidency towns. HIS HONOUR had already expressed his opinion upon that subject; and he had only to say that we should be immensely indebted to the hon'ble gentleman if he put the matter into train for legislation. He need only further say that, in respect to many Bills, India would always owe to the Hon'ble Member an enormous debt of gratitude, and that he believed that Hon'ble Members would agree with him in fully expressing that gratitude.

The Hon'ble Member's motion included the consideration of the supplementary report on the Bill. It was true that that supplementary report had been put in at a very late period, and that a very long time had not been allowed to elapse for the consideration of it. But it might be some comfort to some Hon'ble Members who had not had the full opportunity which HIS HONOUR had of considering the amendments which accompanied the supplementary report, to know that he had criticized those amendments with great care and some jealousy, and although he was not prepared to say that the whole of those amendments were absolutely necessary, he believed by far the greater number of them to be unobjectionable, and some extremely necessary. The greater part of them were of a verbal nature and not very important; and he hoped the Council would accept the report of the Committee with the addition of one or two small amendments which he proposed to submit for consideration.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN also moved that the amendments mentioned in the supplementary report be adopted.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS said that there were three amendments in his name on the notice paper. But the second of those amendments was not connected with the other two in any way: he would not therefore refer to that amendment at present. He proposed at present to ask the Council to consider the first and third amendments, which were substantially the same in purport and effect. As a preliminary, he begged leave to express his sense of the great ability with which the hon'ble member in charge of the Bill, and the Select Committee had dealt with the subject, and his appreciation of the very great

labour they had bestowed on it. He thought that the thanks of the Council were due to them in a special degree for the very provisions in respect of which he had to move these two amendments. With the hon'ble member in charge of the Bill, he was exceedingly glad to notice the excellent spirit in which these new provisions with regard to the jurisdiction over European British subjects had been received by the public generally—a spirit which was very different from that in which some similar propositions had been received a few years ago. The matter seemed to have been looked upon at the present time very properly as a simple question of administration. The difficulty attending the conviction in the Mofussil of offenders being European British subjects, was admitted to be a great evil, and the question was how to remove the evil, without risk of injustice being done to those concerned. The provisions which had been devised by the Committee for solving the problem how to deal with such cases were not in the main objected to by MR. ELLIS: on the contrary, he thought, the Committee had shown much wisdom in framing the sections in the manner in which they had been drawn. He did not hold with those who conceived that it was necessary to deal with Europeans and Natives in precisely the same manner. There were to his mind administrative reasons that would justify a difference; but he did not believe that it was necessary to deal with the question on the broad basis on which the hon'ble member in charge of the Bill had dealt with it. It appeared to him that there were abundant reasons why we should not trust Native Tahsíldárs and Deputy Collectors to deal with the class of European offenders. They were often ignorant of the language and always ignorant of the feelings and customs of the Europeans, and he thought therefore that it would be very imprudent to give them any power to deal with Europeans of the class with which they would be brought into contact. That being so he cordially endorsed the main principle of the sections drafted by the Committee; and he considered that the Committee had done rightly in limiting the cognizance of such cases to Justices of the Peace and high officers in the position of Sessions Judges. But, then, he thought that the Committee had made an invidious distinction, which was not called for and which he desired to see removed. Admitting that the officers who should take cognizance of offences by Europeans should not be of a lower standing than Justices of the Peace and Sessions Judges, he saw no reason why Natives who were qualified to be appointed Justices of the Peace should not have cognizance of these cases in common with their European compeers. The only object of making a person a Justice of the Peace was to enable him to deal with European British subjects: the appointment had no other significance whatever. And if it was admitted that a Native could, under any circumstances, be appointed

a Justice of the Peace, it must be admitted that he would then be qualified to deal with offences committed by European British subjects. The point then for the consideration of the Council was, who could be appointed a Justice of the Peace? Setting aside the case of the presidency towns, which was alien to the subject under consideration, the only persons who could be appointed Justices of the Peace were European British subjects and Covenanted Civil Servants. It was as a Covenanted Civil Servant, and in that capacity alone, that a Native could take cognizance of these cases as a Justice of the Peace. MR. ELLIS might be allowed to paraphrase the words of his hon'ble colleague, Mr. Stephen, in discussing the Brāhmo Marriage Bill, and address the Native Civil Servant in these words—"We have instituted schools and universities for your benefit; we have taught you the arts and sciences; we have thrown open the services to you by which you can obtain a high position in the land. We have not only done that, but we have urged your going to England to make yourselves acquainted with our institutions and people, and to learn their usages and manners. We have done all this, and when you return, having by your ability attained to the dignity of a member of the Covenanted Civil Service, we tell you that you are not fit to deal with a European British subject and to sentence him to one week's imprisonment." MR. ELLIS thought that all this was inconsistent and anomalous. When you admitted Natives to be Justices of the Peace, you ought not to place any bar to the powers which they might exercise in common with other Justices of the Peace. But it might be urged that, in the position of a Sessions Judge, any Native would be empowered by the proposed amendment to exercise jurisdiction over European British subjects. In answer to this, he would say that, if a Native be appointed to this office, he must be appointed exceptionally, showing that he was by his judicial knowledge and other qualifications competent to exercise jurisdiction equal to that of the Covenanted Civilians with whom he would be associated. MR. ELLIS would say therefore that, in making the invidious distinction which was now proposed, if we excluded any Justice of the Peace from the exercise of certain powers, we were really casting a stigma on the whole educated Native population of India. He might also urge that there would be considerable inconvenience in having such a distinction. But he preferred to put it on the broad ground that, if you had Native Covenanted Civil Servants, you ought not to bar them from exercising the powers of a Civil Servant, among which powers is the jurisdiction of a Justice of the Peace over European British subjects. By Act II of 1869, certain Natives might be appointed Justices of the Peace, and on what ground, he would ask, was it proposed to restrict their powers as Justices of the Peace? The only argument that he had heard adduced was that we were conferring

new powers on Justices of the Peace, and not taking away old powers, and that this being a compromise, the Committee were pledged to act as they had proposed in their preliminary report, and that we ought not to disturb that promise. In answer to that, he would assert that we were not merely conferring new privileges. By Act II of 1869, Justices of the Peace (and Natives might attain that position) had the privilege of dealing with Europeans in certain cases: for instance, they could fine to a certain amount; they could commit for trial to the High Courts, and exercise all other powers of a Justice of the Peace. These powers, though conferred so recently as 1869, would be taken away by the present Bill. But the second objection was perhaps a more important one, and in regard to that, he might say, in the first place, that he did not see that any pledge had been given, or, if given, that it was only given to an extent which was quite compatible with the amendment which he now proposed. He was not aware to whom that pledge was supposed to be given: he presumed that it was not to the Native public, though they were deeply concerned in the proper administration of justice on wrong-doers. Was it, then, the European public to whom the pledge was given? He could not consider that the European public outside these walls, consisting of Government officials, of merchants, traders, planters, and the like, were in any way more interested in the matter, than the Members of this Council themselves were. They all had the good of the country at heart and desired that some steps should be taken to remedy the present inconvenient state of things with respect to Europeans in the Mofussil, and that the remedy should be as effectual as it could be, consistently with security against injustice. The only persons, therefore, to whom any pledge could possibly be held to have been given, was the class of persons most interested—he meant the class of Europeans who by misfortune had fallen into crime; and with regard to them, he objected wholly to its being supposed that these new sections which the Committee had devised tended only to their prejudice, detriment, and hurt. In one respect, these sections might be supposed to act to their detriment; for under the present system, the criminal frequently escaped conviction; but that was nothing to the boon which was conferred upon the European criminal by these sections, by giving him the opportunity of having speedy justice administered, and the chance of a very much lighter punishment than he might otherwise have obtained. MR. ELLIS would mention one instance which had occurred in the Bombay Presidency. A European stole a common blanket worth two rupees: he was committed to the High Court for trial; but as the Sessions had only just concluded, he was kept in confinement for upwards of two months awaiting trial. When he was tried and convicted, the Judge discharged the prisoner because he had suffered more punishment than should have been awarded to him for his offence. The poor man had been in jail for

upwards of two months; but even if a Native Civil Servant were acting as a Justice of the Peace, the amount of punishment that would have been awarded under the proposed amended system, would have been one week's imprisonment at the outside. Therefore Mr. ELLIS said that the provisions which had been devised by the Committee were a boon to the criminal; for while he would have speedy justice with the chance of three months' imprisonment, he might otherwise have been sent up to the High Court and got a year's imprisonment. Thus, the provisions that had been proposed should be adopted in the interests of the European himself. But all the boons promised to the criminal by the preliminary Report had not been given by the Bill as drawn; the first recommendations of the Committee having been materially altered. The first recommendations held out a hope to the criminal that, by confessing his crime and not objecting to the jurisdiction, he would get off with a less amount of punishment. That provision had been omitted. Thus, the recommendations in the preliminary Report had not been adhered to. But, on the other hand, the formal Resolution in that Report had been adhered to; and to this Resolution his proposed amendment was in no way opposed. In fact, he fully concurred in it and wished to carry it out precisely as framed by the Committee. The Resolution was worded thus:—

"We are of opinion that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might, with advantage, beextended in the case of European British subjects."

There was not a word in this restricting the power to European Justices, and why the Committee should consider themselves pledged to subsidiary recommendations which they themselves had altered, he could not understand. Moreover, great stress had been laid upon the circumstance that the compromise had been assented to by the public, and that the provisions as sketched out in the preliminary Report had met with general approval, the evidence of this being the little opposition offered by the Press. But MR. ELLIS claimed for his amendment precisely the same admission; he would claim for it general acceptance; for in the Bill as originally drafted, there was no such limitation that a Justice of the Peace should be a European British subject. In section 44 it was provided:—

"Any Justice of the Peace may, and no other person shall, commit, or hold to bail, any European British subject to take his trial before a High Court."

Section 47 also enacted:—

"Every person exercising the full powers of a Magistrate, and being also a Justice of the Peace, shall have power to enquire into and determine in a summary way complaints of

offences committed by a European British subject outside the local limits of the ordinary original criminal jurisdiction of the High Courts, and on which a summons ordinarily issue in the first instance, and, in case of conviction, to inflict on the offender a fine not exceeding five hundred rupees, and, in default of payment, imprisonment for a term not exceeding two months, in some place of confinement within the District, which, in the opinion of the Magistrate, is fit for receiving such offender, or, if there be no such place, then in the presidency gaol."

Now, to these sections no more opposition had been offered than to the subsequent report of the Committee, and therefore he might say with safety, that if it was asserted that no objection had been taken to the Bill in the form in which it had been presented by the Committee, his proposition had also been accepted by the public and no ground of pledge or compromise could be urged against the amendment which he proposed. He would therefore move—

(1.) That the first paragraph of section 72 be omitted.

That, instead of the second paragraph of the same section, the following be substituted :—

"No Magistrate shall have jurisdiction to inquire into a complaint or try a charge against a European British subject unless he is a Magistrate of the first class and a Justice of the Peace."

(3.) That section 77 be omitted, and that the second paragraph of the present section 76 be numbered 77.

The Hon'ble MR. CHAPMAN agreed with very much that had fallen from his hon'ble friend, but he felt himself unable to support the amendment, for the very plain and conclusive reason, that he, as a member of the Select Committee, considered himself bound to adhere to the pledge he had given the European community, that under the altered law an Englishman should retain his privilege of being tried by an Englishman. It must be remembered that the Bill before the Council would deprive our countrymen of privileges which they had hitherto exclusively enjoyed, and on which they set the highest value, without in any way interfering with the rights of the Natives of this country. He (Mr. Ellis) was old enough to remember the loud outcry with which the proposal to withdraw from Englishmen their right to be tried exclusively by the Supreme Courts of the several presidency towns was received some two and twenty years ago; and MR. CHAPMAN could not help being struck with the moderation, loyalty and good sense with which the present proposed alterations had been generally accepted by the press and public. He could not consent to an amendment which might have the appearance of drawing back in the slightest degree from the pledge which he considered had been held forth. For his own part, he disclaimed any race or caste feeling in the matter.

The Hon'ble MR. ROBINSON said:—"MY LORD, I must express great regret that our hon'ble colleague has brought forward this motion and put the matter before us on what appears to me an incorrect issue.

"The facts, as it appears to me, are simply these. In the Provinces, European British subjects, ever since the commencement of our rule, have been, and still are, for all practical purposes, subject to the criminal jurisdiction of Justices of the Peace of English extraction alone.

"I am not going to discuss the theory or policy of this condition. This is a matter which is, I think, foreign to a revision of the Criminal Procedure Code. But such is the actual state of things with which the Select Committee on the Bill had to do when the subject of dealing with European British offenders came under their consideration.

"The Committee deliberately resolved not to alter the existing and practical conditions of matters, with reference to any accidental state of the *personel* of any special branch of the public services in India.

"The exigencies of the time clearly call for an extension of the jurisdiction of up-country Justices of the Peace in respect to the trial and punishment of European British offenders; and the Committee adopted this view. They therefore resolved to propose to increase the powers of that class of officers who now alone have practically any jurisdiction over European British subjects; and to make some useful adaptations of the existing Courts—when presided over by English Justices of the Peace—in respect to the disposal of cases in which European British subjects are defendants.

"The Committee proposed to give English Justices of the Peace who may be First Class Magistrates, powers to pass sentence of imprisonment up to three months; and to English Justices of the Peace who may be Sessions Judges, power to pass such sentence up to one year, as against European British offenders. Beyond this, the Committee resolved to leave the jurisdiction over European British subjects where they found it, namely, with the High Court in its original jurisdiction.

"This is all that has been done.

"These proposals were placed before the Council and before the European community in our preliminary report some time ago. And the right time for our hon'ble colleague to have taken objection to the principle so adopted, was when that report was presented.

"The proposals, went out from this Council with the Hon'ble Member's concurrence, and they have met with singularly considerate acceptance at the hands of our European British fellow-subjects, with whom alone we have to do in this matter. We cannot, I think, simply on some after-thought of our hon'ble colleague, pass into this Bill an amendment which will have the effect of transgressing the broad principle of the existing practice, and of surprising our European fellow-subjects into a condition which they were not asked to consider.

"But I will look at this matter from a practical point of view, presuming that I believe my hon'ble colleague will acquit me for any want of respect for, or confidence, in our intelligent Native public officers—least of all of the class to which he alludes.

"I have had much to do with Native Magistracy of all classes, superior Native Police officers and the like; and I can only say that I believe that these would, as a rule, far rather have nothing to do with cases in which Europeans are implicated, and their unpleasant concomitants.

"The European British wrong-doer is not always an agreeable inmate in any Court, howsoever presided over. The persons who take part in cases in which Europeans are implicated are by no means always attractive neighbours, and the kind of interest and criticism is evoked above, around, and below in any up-country station by an European case, is, as a rule, anything but pleasant. Be this as it may. The cases in which Europeans are involved are almost invariably troublesome and invidious, even when we ourselves are the Judges of our countrymen's conduct.

"Now, Native Magistrates have not, I believe, the slightest misgivings in the matter of impartial justice being done by every European Magistrate, even when a fellow-countryman is the defendant; nor do they think that Native interest do not receive quite as efficient protection at their hands, as they could at the hands of any Native Magistrate. I believe therefore that there is scarcely a Native Magistrate in the country, not even excepting those on whose behalf jurisdiction over European offenders is sought by the Hon'ble Mr. Ellis, who would not infinitely rather have nothing to do with such defendants and such cases, who would not far rather pass them on to the broader shoulders of their European equals or superiors. Practically, therefore, I think that the Hon'ble Member's motion is futile, and we ought not to postpone the passing of this Bill until this material change in the principle of what has already been

published under the authority of this Council can be promulgated for discussion. I think also that this discussion would be productive of far more harm than good."

The Hon'ble MR. INGLIS said that he regretted that the Hon'ble Mr. Ellis had thought it necessary to raise a discussion on the question to which the amendment proposed by him referred. He did not intend to go into the question on its merits, as he considered that he was bound by the terms of the recommendation he had signed with the other members of the Select Committee in January last, and which was subsequently printed in the Government Gazette for the information of the public. The Committee in this paper distinctly stated that they proposed to give power to try offences committed by the European British subject only to Judges and Magistrates who were themselves European British subject. The Hon'ble Members accepted the proposals then laid before them in a manner which reflected much credit on their liberality and good sense. The condition that a European British subject was to be tried only by his fellow-countrymen was no doubt considered by them as one of great importance, and he thought that they had no right now at this eleventh hour to go back for the term of the compromise proposed two months ago, and accepted by the public.

His Honour THE LIEUTENANT-GOVERNOR seldom had greater difficulty in making up his mind than upon the motion before the Council The fact was that this was one of those matters of sentiment with which it was very difficult to deal, although, in practice, its decision would affect only this single question, whether the Local Governments should have the power of appointing a very few Native gentlemen, who were members of the Civil Service, to be also Justices of the Peace, for the purpose of dealing with the limited number of cases of which they were likely to have cognizance under these provisions. He entirely acquiesced in the general view of the case which was put forward by the Hon'ble Member in charge of the Bill ; as he truly stated, the real and practical evil was that, at present, Europeans in the Mofussil committed petty offences with impunity. That had been found to be a practical evil, and these provisions were designed to meet that evil as far as it was possible to meet it. For the sake of vesting the powers of a Justice of the Peace in the three or four Native gentlemen who had entered the Civil Service, HIS HONOUR should not have thought it necessary to disturb the decision of the Select Committee. But he found that, owing to ignorance of the law, he had put his name to a report which he should not have signed if he had known of the existence of Act II of 1869. He found now that that Act in effect

settled this question, that was to say, that the Government should not have the power to appoint any person a Justice of the Peace who was not either a European British subject or a Covenanted Civil Servant. That being so, he should most decidedly have said that it was much better not to re-open this question, and that the Council should adhere to the decision which had been come to by the passing of Act II of 1869, namely, that a Justice of the Peace must be either a European British subject or a Covenanted Civil Servant. To re-open that question and to limit the powers that might be exercised by any Justices who were Covenanted Civil Servants, appeared to HIS HONOUR to be somewhat invidious, and would be, as it were, setting themselves against the policy hitherto pursued. Viewing the matter in that light, he should be inclined to vote for the motion before the Council.

Then came the consideration that there was said to be some sort of pledge to the European community, and the fact that they had in the most handsome manner accepted the proposals of the Committee. Here, HIS HONOUR found himself in some difficulty, because, as his hon'ble friend, Mr. Ellis, had pointed out, there was some sort of contradiction in the Resolution of the Committee. The Resolution to which his hon'ble friend had referred was as follows :—

"We are of opinion that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might, with advantage, be extended in the case of European British subjects."

There was not a word in that Resolution limiting the legal definition of a justice ; but in the subsequent paragraphs, the Committee, in their recommendation, had added the words "and a European British subject:" it so happened that neither the European nor the Native community had commented upon those words.

Under all the circumstances, he felt so much doubt that he would inform his conscience by listening to the opinions of those who were to follow him before deciding which way he should vote.

Major General the Hon'ble H. W. NORMAN regretted his inability to support the amendment of his hon'ble colleague Mr. Ellis. In proposing the amendment, he had not the slightest doubt that his hon'ble friend was actuated by a sincere desire to avoid the appearance of want of confidence in the entire impartiality of Native Magistrates or of favouritism towards Europeans. Major General H. W. NORMAN was aware that, in the Presidency towns, the trial of Europeans by Native Justices was not infrequent, and as far as he had heard, it had been attended with no bad results : but he did not think it desirable that the powers exercised by Native Justices in the Presidency towns

should be extended to the Mofussil. He had the highest regard for the Natives of the country, and, particularly, for those who had attained the very important position of a Magistrate of the first class; but looking to the peculiarities of our position here and to the great differences of character between Natives and Europeans, he thought it was undesirable to allow the trial of European British subjects by Natives in the Mofussil.

The Hon'ble MR. STEPHEN had only a very few words to say upon this subject. He would first point out that there was no kind of relation between the case of the Native who had learned to abjure the idolatry of his fathers and thus placed himself under a disability to contract a lawful marriage, and the Native who had entered the Civil Service and was unable to exercise certain jurisdiction over European British subjects. He said then, and he said now, that it was a cruel thing to make a man give up his caste and then place him under civil disabilities, by telling him that he could not contract a valid marriage. The privilege as to jurisdiction was the privilege of the prisoner, not the privilege of the Judge. The European had an objection to be tried by the Native. Considering the position in which he stood, the question was whether you would put him in a position in which he did not at present stand. You placed no slight upon the Native by saying that he could only try a man of his own race. What was there against the feelings of the Native in saying that? Why should any one feel a slight because he was told that this particular man was to be tried in a particular way? On the other hand, it was a feeling, and not an unnatural one, that a man should wish to be tried by his own countrymen.

The Hon'ble MR. STRACHEY would merely say that he was unable to support the motion of his hon'ble friend Mr. Ellis. It appeared to him that no question of principle was really involved in the amendment. Nobody pretended for one moment that the provisions of the Bill as they now stood were symmetrical: on the contrary, they represented a compromise which was open to criticism of every kind. It appeared to him that, if his hon'ble friend's amendment were accepted, it would be just as much a compromise as the provisions of the Bill now were; and he did not see that the matter of principle would be altered in one way or another. He felt himself bound to adhere to the compromise which he understood had been accepted by the public two or three months ago, and, for his own part, he never had any doubt whatever as to the meaning of the Resolution of the Select Committee of which he had been a Member. Under these circumstances, he felt himself bound to vote against the amendment.

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

HIS EXCELLENCY understood that the amendment of his hon'ble friend, Mr. Ellis, did not extend the power of Justice of the Peace to any Native Magistrates who were not Covenanted Civilians out of the Presidency Towns, and under this understanding would vote for the amendment.

His Excellency THE PRESIDENT said that his vote would be given in conformity with the opinion which had been expressed by His Excellency the Commander-in-Chief. He was not a competent Judge of the force which might attach to the engagement or compromise which it was said had been entered into with the public, because he was not here at the time when the preliminary Report of the Committee had been presented, and he had taken no share in the recommendations of the Committee. He did not know what the effect of that declaration had been on the public feeling and in the expression of public sentiment on that subject. He could not, however, agree with the hon'ble member in charge of the Bill in thinking that the educated Native community of the country would not deem themselves exposed to some degree of slight or stigma or discouragement by the restrictions which would be imposed upon them if this amendment should not be passed. HIS EXCELLENCY thought that the restriction would embody a stigma on the Native community in general. It was equivalent to stating that under no circumstances, as far as the administration of the law was concerned, could the Native attain to that degree of impartiality and courage which would justify the Government in reposing in his hands the power of trying European British subjects. HIS EXCELLENCY thought that the proposed restriction would be held to be offensive and discouraging to the educated classes of the Native community. He thought also that it would be unjust and discouraging to those enterprising members of the Native community who at great expense to themselves, and at great sacrifice, had gone to England and had devoted themselves to the attainment of those qualifications which had enabled them to pass a severe competive examination for admission to the Civil Service. He thought it would be a grievous discouragement to say to them—"You are not competent to administer justice to European British subjects." He thought that by the restriction we in effect said to the European—"You are not to be tried

in the Moffussil by the agency by which you are tried in the High Courts and in the Courts of the Magistrates in the Presidency towns, with the general approval and sanction of the European and Native communities." It was saying in the effect that the Native who had attained to the position of a Sessions Judge was not competent to try a European British subject, but that he might try him when he became a Judge of the High Court and sat beside a European Judge. His Excellency could not but help thinking that there was practically no greater disparity in permitting these Native Civil Servants to try a European British subject, than in permitting Native Justices in the Presidency towns to try him. There appeared to His Excellency to be no such broad distinction whatever between the conditions of society and of public opinion in this respect between the Presidency towns and the Mofussil. There were now a great number of public spirited men and a great deal of public spirit all over the Provinces. Communications by rail, the dissemination of newspapers both in English and the Vernacular, and a great variety of other circumstances had destroyed that distinction which formerly existed between the Presidency towns and the Mofussil. There was not that distinction of light and darkness which existed formerly ; there was now almost equal light in the Mofussil and in the Presidency towns. His Excellency did not himself consider that there was the slighest possibility that in the rare case of a Civil and Sessions Judge trying a European British subject in the Mofussil there would be an abuse of justice. It had been said that if this distinction was obliterated it would be offensive or hurtful to our European fellow subjects. He thought that there might be some dissatisfaction but he did not think that the irritation or dissatisfaction would be of a sustained character. He believed that the actual cases in which the penalty of imprisonment would be awarded would be extremely rare : there would not be a frequency of those cases which were likely to cause dissatisfaction. On the other hand His Excellency had the greatest confidence in the justice and generosity of his countrymen. He thought that the generosity which they had extended to the exercise of judicial functions by Natives in the Presidency towns, would very soon be extended to the exercise of justice by Natives in the Mofussil, and that there would be no permanent dissatisfaction or irritation or grievance caused by the obliteration of the distinction which now existed. His Excellency's very hearty concurrence would therefore be given to the hon'ble Mr. Ellis' amendment.

The Hon'ble Mr. Ellis said that after the observation which had fallen from His Excellency the President in favour of the amendment, he hardly

required to say anything further upon the subject. But he desired, with reference to what had fallen from his hon'ble friend, General Norman, to add his testimony to the efficiency with which Native Magistrates had performed their duties in the presidency towns, in the administration of justice to both Europeans and Natives; and he had no hesitation in saying that they had performed their duties with as much credit and efficiency as the European Magistrates. And if they had done that, he saw no reason why Natives in the position of Convenanted Civil Servants or Sessions Judges should not be equally competent to administer justice to the European in the Mofussil. His hon'ble friend, Mr. Stephen, had remarked that, in this matter, we were not to consult the feelings of the Judge, but of those who were to be subjected to the jurisdiction; in answer to that, MR. ELLIS would say that he saw no reason why that which did not hurt the feelings of Europeans in the presidency towns, should hurt them in the Mofussil.

His Honour THE LIEUTENANT-GOVERNOR said that, as his hon'ble friend Mr. Ellis had put it, the first Report of the Committee had placed before the public certain matter for consideration. Under all the circumstances, he should not have thought himself justified in now making any radical alteration in the propositions put forward by the Committee. But it appeared to HIS HONOUR that what was now proposed was a minimum of change. It was not proposed to impose upon the European public the general liability to be tried by Native Magistrates, but only the possibility of being placed under the jurisdiction of three or four Natives who had qualified themselves for admission into the ranks of the Covenanted Civil Service, and who, under the existing law, might be Justices of the Peace. After consideration and having listened to the arguments and given due weight to the weighty considerations which His Excellency the President had placed before the Council, His HONOUR was prepared to vote in favour of the very limited change which was proposed by the amendment.

The Hon'ble SIR RICHARD TEMPLE said that the reason why he had not expressed any opinion at an earlier stage of this debate was this, that he felt that this question did slightly involve that larger and graver question as to whether civil appointments of the higher classes should be thrown open to the Natives. But that had already been decided by the supreme authority of Parliament. That having been decided, he thought that the inference was undeniable that, if the Natives were eligible to all the great offices of the administration, it seemed improper and unreasonable to say that they should not sit as Judges over Europeans in the Mofussil for offences of the trivial nature over which it was proposed to give Justices of the Peace cognizance.

After what had fallen from hon'ble members, he felt that he ought not to give a silent vote on this subject. He would vote in favour of the amendment of his hon'ble colleague Mr. Ellis.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the president.	Hon'ble Mr. Strachey.
His Honour the Lieutenant-Governor.	Hon'ble Mr. Stephen.
His Excellency the Commander-in-Chief.	Major General the Hon'ble H. W. Norman.
Hon'ble Sir R. Temple.	Hon'ble Mr. Inglis.
Hon'ble Mr. Ellis.	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.

So the amendment was negatived.

The Hon'ble MR. ELLIS then moved—

That in section 76, instead of the words "but not Assistant Sessions Judges," the following be substituted:—

"and, when specially empowered in that behalf by Government, Assistant Sessions Judges, who have been Assistant Sessions Judges for not less than three years."

In doing so, he said that there were Sessions Judges who had been Sessions Judges for a day only, and there were Assistant Sessions Judges who had held their office for many years. These Assistant Judges exercised very many of the functions of District Judges. Moreover, in the scheme framed for the judicial administration of the Punjáb, it was proposed to place whole Districts in charge of Assistant Judges; but under the wording of this Bill, those Assistant Judges would not be able to take cognizance of cases against European British subjects; therefore in one-half of the Districts of the Punjáb there would be no judicial officer empowered to try such cases. The matter was a simple one of administration, not involving any new principle, and he would not therefore dilate on it.

The Hon'ble MR. CHAPMAN said he quite concurred in what had fallen from his hon'ble friend Mr. Ellis. He believed that the proposal now made would be a very valuable addition to the Bill.

The Motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF moved—

"That the second paragraph of section 74 be omitted.

That section 79 be omitted."

He said that he felt under a great disadvantage in moving the amendments of which he had given notice, because a large majority of the Council were Members of the Select Committee and were pledged to the Report—the whole Report, and nothing but the Report of the Committee. Therefore the amendment which he now proposed could only be regarded as his protest against an extension of the powers of Magistrates for dealing with European British subjects.

His Excellency objected to the increased powers proposed to be given by section 74 to Magistrates for the punishment of European British subjects. He considered the Magistrates had at present quite as wide powers as it was necessary to give them. He was not aware of any reason why European British subjects required more repression than heretofore.

He could not but think that the complete silence with which the public had received the intimation of the increased powers which it was proposed to give to Magistrates, was owing to the supposition that they were intended only for the suppression of the loafer, the troublesome and irrepressible European vagrant. But as his honourable friend, Mr. Chapman, had remarked, it was not only the loafer, but persons of the highest respectability who might be subject to this jurisdiction.

If it was the loafer against whom these powers were directed, he certainly would never be able to pay a large fine; his lot would invariably be imprisonment, which is not likely to render him, in person or character, better able to gain a livelihood than before.

He thought the manner of dealing with loafers should be a different one. His Excellency was of opinion that, as in the case of persons brought from Australia in charge of horses, those who brought out and let loafers loose on the country, should be bound to provide for their deportation and thus prevent their becoming a nuisance to the country.

If the person against whom the increased Magisterial powers are directed is the European settler, planter, or merchant, he would ask what have they been doing lately to require greater severity of treatment?

His hon'ble colleague, Mr. Ellis, had rather dilated on the delight which the European should feel at being promptly put into jail for three months;

but an imprisonment for three months in the hot weather was a very serious punishment.

It might be the case of a poor man unable to make a proper representation of his case, or he might be ignorant of his right of appeal.

In by far the greater number of Magistrates' jurisdictions, there are no places in which an European could be imprisoned, without injury to his health, in the hot weather in India. HIS EXCELLENCY would ask whether the Government were prepared to supply every Magistrate with a prison suitable for the confinement of European offenders during the hot weather; or whether the prisoner, when sentenced, is to be sent to the place of confinement for prisoners sentenced by the higher Courts? If so, HIS EXCELLENCY thought it would be better if the prisoner were to be sent at once to the higher Court to be tried there.

He said he was jealous of the liberty of the European British subject in India, because he laboured under great disadvantages. In places where Europeans are numerous, there is a chance that there may be European witnesses, but in remote places there is every probability that he may be at the mercy of Native witnesses.

HIS EXCELLENCY objected to trust the fate of the European offender to the single judgment of the one Magistrate. He had no objection whatever to the Sessions Judge, as he is an officer of wider experience, and he has a jury or assessors to assist his decisions; but a Magistrate who has resided for some time in remote districts, is every apt to adopt peculiar notions which might affect his decisions.

HIS EXCELLENCY could mention a case which came under his own knowledge.

A full-power Magistrate, whom he would, for the sake of convenience, call Mr. Full-power Magistrate Robinson, and who was not in any way connected with his hon'ble colleague, reviewed the case of a soldier who was pursuing some life-convicts who were effecting their escape. In the dark night he overtook them, having outstripped his comrades, and they, seeing but one man, mobbed and tried to disarm him: being obliged to use his weapons, he bayoneted his most troublesome assailant, giving him three stabs. Mr. Full-power Magistrate Robinson wrote a severe report on the soldier's proceedings, because he gave three stabs when, in the opinion of the Magistrate, one would have been sufficient. HIS EXCELLENCY was convinced from the Magistrate's report that he was a good and humane young man, but HIS EXCELLENCY

much feared that he would have punished the soldier, had he had the power very severely.

In another case, a Magistrate in a secluded district acquired a dislike, almost amounting to hatred of Europeans, and would not let one come near him or enter his presence. HIS EXCELLENCY with another officer (now living), was refused admittance to him, although they called on public business. HIS EXCELLENCY could not help fearing that, if that gentleman had had to sentence an European, the sentence would have been a hard one.

In another case, a Magistrate was personally concerned and endeavoured to bring the case on for trial in the Courts of his own station, presided over by his brother Magistrate, where local feelings were naturally in a state of irritation.

HIS EXCELLENCY had mentioned these instances to show that it was not expedient to entrust a Magistrate with these extended powers, considering the extreme severity of the punishment of imprisonment to Europeans in this country.

HIS EXCELLENCY thought it might be assumed that Military Law was severe enough. But the Commanding Officer of a Regiment, who seldom attained that position under twenty years' service, and often not until a much longer period, and is an officer of long administrative experience, could only sentence a soldier to imprisonment for twenty-eight days.

A Regimental Court Martial, consisting usually of five, and never less than three officers, could only sentence to forty-two days' imprisonment. HIS EXCELLENCY therefore did not see why a Magistrate of only a few years' service should have power to inflict a sentence of imprisonment for so long a period as three months, on his own unaided judgment.

In making these remarks, he desired to guard himself against being thought to underrate the value of the Civil Service to which the Magistrates belong.

His experience during many years' service had enabled him to verify the high opinion expressed by his hon'ble colleague, Mr. Stephen, of the Civil Service, which HIS EXCELLENCY had been associated with under circumstances that had enabled him to appreciate their high honour and rectitude, and their devotion to their duties. HIS EXCELLENCY had the highest respect and regard for the Civil Service of India, and he believed that it was unsurpassed by any similar body in the world. HIS EXCELLENCY trusted that he should not be

misunderstood, because he objected to an extension of power which might fall into the hands of young Magistrates, who were placed under circumstances not tending to develope a mature judgment.

The Hon'ble MR. STEWART said that he was one of the Committee which drafted the Resolutions upon which these provisions had been based, and he took very much the same view of the subject as the Hon'ble Member in charge of the Bill. He thought that, practically, they were bound by the recommendations of the Committee in their preliminary report.

The Hon'ble MR. CHAPMAN said that the papers before the Council were exceedingly voluminous, and His Excellency the Commander-in-Chief had not perhaps read the whole of them. The testimony which they bore upon the subject under discussion was quite concurrent from all quarters that the evil must be dealt with, and the Committee had stopped far short of the recommendation of the local authorities. He thought that if His Excellency would duly consider the inconvenience and expense of sending down a host of witnesses in every trivial case of theft, he would admit that it was a great hardship upon them.

With reference to His Excellency's remarks as to there being no suitable places for the confinement of Europeans, if he referred to the Bill he would find that it was provided that sentences of imprisonment of Europeans were only to be carried out in places which the Local Government considered fit for the purpose. A Magistrate had the power of sentencing a native to imprisonment for two years, to order him to be flogged, and to fine him. Surely, the same man was competent to deal with the case of a European British subject, and sentence him to three months' imprisonment? MR. CHAPMAN thought hat the class of men who would be entrusted with these powers were fully qualified to exercise them: he thought that they were quite as qualified to sentence a European to imprisonment for three months, as the Sessions Judge was to inflict a much severer punishment; and it very frequently happened that the Magistrate of the District was a man of quite as much experience, if not greater experience, than the Sessions Judge.

His Honour THE LIEUTENANT-GOVERNOR said that he would only notice two points in connection with the remarks of His Excellency the Commander-in-Chief. His Excellency asked whether planters and merchants in the Mofussil were a worse or better class of men now than they used to be. HIS HONOUR would answer most decidedly that he admitted that they were a a better class of men than they were formerly. It must, however, be

remembered that since the year 1853 the Government were under a Statutory obligation imposed by the British Parliament to improve the administration of justice in the country, and they were now fulfilling that obligation. And as regards planters and merchants in the country, although they were not a worse class of men, but on the contrary a more loyal and much better class of men, yet they were now a much more numerous class: the loafer also was a much more numerous class and it was necessary for the peace of the country that he should be made amenable to the law.

On the other point, as regards the provision of suitable accommodation for the confinement of Europeans, His Honour hoped and believed that there were very few places in which suitable places had not already been provided for the purpose by the erection of Central Jails all over the country. Besides, as his hon'ble friend, Mr. Chapman, had observed, under the provisions of the Bill, sentences of imprisonment imposed upon Europeans could only be carried out at the places appointed by the Government for the purpose; and the Government would be bound not to permit the imprisonment of a European in a place which was not suitable for the purpose: European prisoners would be sent to a place where there was good accommodation. It was well known that the greatest difficulty and inconvenience had been found in the prosecution of European British subjects charged with offences, in consequence of its being necessary to bring down to the High Court all the witnesses in the case. But under the provisions now under consideration, the prisoner having been sentenced to imprisonment, the grievance to him to be sent to the place of confinement would not be a very great one, and his deportation would not be attended with very great offence to the State, now that there were increased facilities for travelling by rail and steamer.

The Hon'ble Mr. Ellis said the observations which he desired to make had in a great measure been anticipated by the remarks which had fallen from His Honour the Lieutenant-Governor and his hon'ble friend, Mr. Chapman. But he did not wish to give a silent vote upon this question. He grieved to say that he was unable to concur in the arguments which had been adduced by His Excellency the Commander-in-Chief; in fact, His Excellency would perhaps already be prepared for the announcement Mr. Ellis had made. He could not look upon this chapter of the Code altogether in the light of an injury to the criminal. He thought that under these provisions the European would enjoy more liberty than he did at present, there being so many cases in which he would enjoy speedy justice and be dealt with lightly with the view of saving the witnesses from long and harassing journeys; and on the whole he thought that the criminal would not be worse off under the proposed than under

the existing system. He could not view the regulations which the Council were making at all in the light that they would affect planters and such classes of Europeans in a prominent degree, or that they were likely to be concerned in a large number of cases of the description contemplated. He considered such classes of Europeans as far above such consideration. It was with the loafer, and the unfortunate people who from want of proper means of subsistence had been driven to crime, that we had to deal. And as means of punishment were provided, by the existence of that very means of punishment we should prevent a great deal of crime being committed by that class of men. The knowledge that punishment would swiftly follow crime was the best deterrent of crime.

With reference to His Excellency the Commander-in-Chief's remark as to the amount of imprisonment that could be awarded by the Commanding Officer of a regiment, MR. ELLIS would observe, that there was this difference between the powers that might be entrusted to a Military Officer and the powers that were exercised by a Magistrate, that a Commanding Officer's business was to be martial, not judicial-minded. It was a Magistrate's business, on the other hand, to be judicial-minded; he was accustomed to administer justice, and in that particular respect he might be considered to be far better qualified that the Commanding Officer of a regiment. On those grounds MR. ELLIS regretted that he was unable to concur in the amendment of His Excellency the Commander-in-Chief.

The Hon'ble SIR RICHARD TEMPLE said that, although he was unwilling to trouble the Council with any remarks upon this subject, yet as a member of the Government he felt bound to add his testimony, and to say that from his experience of very many parts of the country, it appeared to him there was great necessity for those provisions of the Bill which empowered Magistrates to try Europeans for petty offences. He believed that those provisions arose out of the necessities of the age, and the progress which we had made in the development of the resources of the country, considering that the expansion of Railways all over the country and the immense increase of industrial enterprise had caused the influx of a large number of our countrymen: without any disparagement to them as a body, it must be admitted that some of them occasionally fell into trouble and into evil ways. That was a fact which there was no shutting their eyes to. The increase of Europeans of what might be called the working classes had been very great: it was one of the necessary circumstances concomitant with some of the greatest improvements of the age. If unhappily individuals of European classes, then, committed offences, the Council had to consider not only the offenders themselves, but also the persons with whom

they might come into contact. He did not believe that the offenders themselves would be placed in any worse position by the enactment of these provisions, than that in which they would otherwise be. He admitted that sometimes a Magistrate might be hasty in respect to affairs of this nature, but still he was confident that through the great progress of public opinion in the country, that opinion would be brought to bear upon them, and that there was little or no danger of Magistrates' abusing or misusing the powers entrusted to them. At the same time, the Council were bound to remember that under the present state of the law on the subject, a great many who committed crimes escaped punishment, and a great many innocent persons suffered in consequence. We must not only think of the criminal, but we must think of the unhappy circumstances of those who came into contact with those criminals. They were persons who had at least as much claim upon our sympathy as any other class, and they would receive considerable relief by these new provisions.

On those grounds he felt it is duty, not only to vote for the provisions contained in the Bill, but also to take the first opportunity of expressing his views upon the subject.

His Excellency THE COMMANDER-IN-CHIEF observed that his hon'ble friend, Mr. Chapman, had spoken of the experience of Magistrates; but HIS EXCELLENCY was informed that Magistrates of only two or three years might be invested with the full powers of a Magistrate and Justice of the Peace on passing the necessary examinations.

With reference to the remarks of his hon'ble friend, Mr. Ellis, that these provisions were directed against the lower orders of the European population, HIS EXCELLENCY would observe that a fine of rupees one thousand was not a punishment which might be said to be directed against a poor man, but rather against the higher classes of Europeans.

HIS EXCELLENCY THE PRESIDENT regretted that he was not able to support the amendment of His Excellency the Commander-in-Chief; his inability to do so was not from any want of sympathy or consideration for the class of persons in whose behalf the Council were desired to interfere, but from a sincere conviction of the necessity of some provisions such as those which were contained in the Bill. A great deal had been said about the loafer and a bad name had been given to a class of Europeans who did not always deserve the stigma that had been cast upon them. It was in Madras that an attempt was first made to afford some place of refuge to an injured class of our countrymen in this country, and then the discovery was made what the real condition of these unfortunate people was. When first what was called

the "Loafer's Home" was established in Madras a great deal of laborious attention was paid to it by his hon'ble friend, Mr. Robinson, and THE PRESIDENT thought Mr. Robinson would concur with him when he said that, in the great majority of cases, the members of the humbler orders of our countrymen were more unfortunate than guilty. Mr. Robinson discovered a great number of valuable elements in the character of these men, who found it impossible in this country to maintain a respectable state in society. THE PRESIDENT did not wish to apply harsh terms to the humbler orders of his countrymen, it must, however, be allowed that there was a class of Europeans now in this country in reference to whom a temperate but speedy means of justice was necessary; and he could not doubt that the class of Magistrates in whom it was proposed to vest these powers were quite competent to inflict the petty sentences which were contemplated by this Code. He agreed with His Excellency the Commander-in-Chief in thinking that there was something inconsistent in reference to the amount of fine which it was proposed by these provisions to authorize the Magistrate to inflict; and if His Excellency had confined his amendment to a reduction in the amount of fine, THE PRESIDENT would have been glad to support the proposition; but if His Excellency was determined to press the whole of his amendment, THE PRESIDENT would feel himself compelled to vote against it. THE PRESIDENT could not admit the force of the objection which His Excellency the Commander-in-Chief had raised on the ground that there were no proper places for the detention of European prisoners. THE PRESIDENT believed that the institution of Central Jails which were nearly completed over the whole of India, provided proper places for the imprisonment of European British subjects of the humbler orders, and in such places as those in which Central Jails had not yet been provided, it appeared to him that there would be no difficulty in transporting a prisoner to some adjacent prison.

The question being put,

The Council divided—

AYE.	NOES.
His Excellency the Commander-in-Chief.	His Excellency the President. His Honour the Lieutenant-Governor. Hon'ble Mr. Strachey. Hon'ble Sir R. Temple. Hon'ble Mr. Stephen. Hon'ble Mr. Ellis.

AYE.	NOES.
	Major General the Hon'ble H. W. Norman.
	Hon'ble Mr. Inglis.
	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.

So the amendment was negatived.

His Excellency THE COMMANDER-IN-CHIEF moved that, in section 488, last line, instead of the words "Local Government" the words "Government of India, or the Government of Madras or Bombay" be substituted. He said:—

MY LORD—In the case of such disturbance of the peace as is contemplated in Part XI, Chapters XXVI and XXVII, I consider that it would be a security against possible complications if the sanction of the Government of India, or the Government of Madras or Bombay, were obtained to the prosecution of a Magistrate, officer or soldier, for any act done under the provisions contained in sections four hundred and eighty-two, four hundred and eighty-four and four hundred and eighty-seven, instead of the prosecutions being instituted by the Local Governments. The term 'Local Government' includes the smaller agencies where local authorities are more liable to be influenced by local feelings than the presidential Governments.

"By adopting the amendment which I propose, such an anomaly as the payment by the State, at the same time, of the prosecution and defence of a person prosecuted, would be avoided.

"With telegraph communication everywhere, no possible evil would arise from the delay in seeking the sanction of the Governor General, or Governor in Council, before plunging the Government into a prosecution which it might consider it necessary to defend. I believe that, by adopting my amendment, you will obtain a security against inexpedient prosecutions, and will lose nothing in the efficiency of administration."

His Honour THE LIEUTENANT-GOVERNOR said that it was perhaps not unnatural or out of place that he should wish the power of directing prosecutions under this section to be left in the hands of the Local Government. He should have thought that there was a certain consistency in the amendment if His Excellency had proposed in all cases to require the sanction of the Government of India to these prosecutions. It seemed to HIS HONOUR that such

proceedings would be extremely cumbersome. He objected to the power of sanctioning prosecutions being vested in the Governments of Madras and Bombay, and not in the Government of Bengal, and the other Local Governments. His impression had been that the protection proposed to be given applied specially to soldiers. But as he now understood the provision, it related to Civil as well as Military Officers. As regards Civilians and soldiers equally, he thought the Civil Government should decide the matter; he did not think is ought to be decided by the Military authorities whether a prosecution of an officer or soldier should not be permitted. He thought it was not respectful to the other Local Governments to exclude them from the exercise of this discretionary power.

Major-General the Hon'ble H. W. NORMAN entirely supported the amendment. The control of the armies in India was vested in the Government of India and in the Governments of Madras and Bombay, and not in the other Local Governments; and it would be more satisfactory to the members of those Armies not to be sent to trial under the provisions of this Code without the sanction of the Governments under which they served. It was in the power of those Governments to consult with their respective Commanders-in-Chief, an advantage not possessed by other Governments. He would therefore support the amendment.

He desired to take this opportunity to say how much he thought the public were indebted to the Hon'ble Member, Mr. Stephen, for this comprehensive Bill which he had prepared, and for the simplification of the law on several very important subjects. The profession to which Major General H. W. NORMAN belonged were particulary indebted to Mr. Stephen for those provisions of the law which the Council were now discussing. Nothing of the kind existed in the English law, and much embarrassment and hardship had arisen in consequence. But no such embarrassment could in future take place in this country with these clear provisions of the law to guide those concerned. He thought the provisions of section 487 would be most useful, as cases may often arise in India where it is desirable for a Military Officer to act in the absence of any Magistrate: section 488 also, he thought, would be most valuable in protecting officers and troops from vindictive prosecutions.

The Hon'ble MR. ELLIS said that, if the question before the Council had been merely, whether a Magistrate who suppressed a riot with the aid of the troops should be prosecuted under the orders of the Local Government or of the Supreme Government, he should, without hesitation, have said that the matter might safely be left to the discretion of the Local Government of the Province

in which the case occurred. But as the Military also were concerned, he thought it would be wise to limit the power of ordering prosecutions to the Government of India and the Governments of Madras and Bombay. He had not the slightest wish to detract from the dignity of the office which His Honour the Lieutenant-Governor held: the difference in this respect between the position of the Governments of Madras and Bombay, and the Government of Bengal, consisted in this that, while those Governments could act with the advice of their respective Commanders-in-Chief, His Honour the Lieutenant-Governor had no Commander-in-Chief to advise him, and could not have those considerations placed before him which it was the duty of a Commander-in-Chief to put forward. He should therefore vote for the amendment of His Excellency the Commander-in-Chief.

The Hon'ble SIR RICHARD TEMPLE concurred with what had fallen from his hon'ble colleague Mr. Ellis. He desired to explain that in his estimation the position as a Civil Government occupied by the several Local Governments under the Lieutenant-Governor was in no wise inferior to that of the Governments of Madras and Bombay: indeed, some of those Local Governments were of the greatest importance. But the question before the Council was not a civil question: it was really a military question. And inasmuch as the Bengal Army was under the control of the Government of India, and not under the Government of Bengal, it appeared to him necessary that the sanction requisite for the prosecution of soldiers under this provision should be under the authority of the Government of India.

The Hon'ble MR. STEPHEN said that he must oppose the amendment. It appeared to him that the object with which this section was inserted in the Code, was to protect soliders and Magisterial officers from prosecution at the hands of private persons when charges were brought against them. He could hardly imagine that a man who was placed in the important position of a Lieutenant-Governor or a Chief Commissioner, should be considered unfit to exercise the discretion vested in the Local Governments under this section. He thought that the difficulty that would be attendant upon obtaining the sanction of the Government of India to a prosecution, would be tantamount to prohibiting prosecutions altogether. He thought, therefore, that the power to accord this sanction should be given to the Local Governments, and if it were retained in the hands of the Government of India, it would almost have the effect of placing persons engaged in putting down a riot above the law altogether.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	His Honour the Lieutenant-Governor.
His Excellency the Commander-in-Chief.	Hon'ble Mr. Strachey.
Hon'ble Sir R. Temple.	Hon'ble Mr. Stephen.
Hon'ble Mr. Ellis.	Hon'ble Mr. Inglis.
Major General the Hon'ble H. W. Norman.	
Hon'ble Mr. Robinson.	
Hon'ble Mr. Chapman.	
Hon'ble Mr. Stewart.	

So the amendment was carried.

The Hon'ble MR. CHAPMAN then moved—

"That the following words be added to section 54 :—

'Every Sessions Judge, Additional Sessions Judge, Joint Sessions Judge, Assistant Sessions Judge, and every Magistrate shall, in his executive capacity, be subordinate to the Local Government.'"

He said the object of the amendment was to make known to all officers discharging judicial functions that, in matters of an administrative or executive character, they were bound to obey the orders of the Government under which they were employed. He thought that no Sessions Judge should have it in his power to question, for example, the right of the Government to nominate him to the duty of sitting on an examination Committee. It was true that in point of practice the Government always had the power to enforce obedience to orders of this kind; but still he thought the opportunity should not be lost of explicitly declaring in this Code the subordination of officers in all matters not affecting their judicial *independence*.

He did not, on reflection, think this amendment had been happily worded, or that its proposed place in the Code had been happily selected. He would, with the permission of His Lordship and the Council, alter the amendment and insert, at the end of section V, the following words :—"These four grades of officers shall, in matters not otherwise provided for in this Code, be subject to the orders and control of the Local Government."

After some conversation the Council divided :—

Ayes.	Noes.
Hon'ble Mr. Strachey.	His Excellency the President.
Hon'ble Sir R. Temple.	His Honour the Lieutenant-Governor.
Hon'ble Mr. Ellis.	His Excellency the Commander-in-Chief.
Major General Hon'ble H. W. Norman.	Hon'ble Mr. Stephen.
Hon'ble Mr. Chapman.	Hon'ble Mr. Inglis.
	Hon'ble Mr. Robinson.
	Hon'ble Mr. Stewart.

So the amendment was negatived.

The Hon'ble MR. CHAPMAN then moved—

"That, instead of section 126, the following be substituted :—

'126. A Police officer making an investigation under this chapter shall, day by day, enter his proceedings in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances elicited by his investigation. He shall forward day by day a copy of such diary to the District Superintendent of Police, who shall without delay bring to the notice of the Magistrate of the District any part of such diary which he considers it to be important that such Magistrate shall know.

Daily record of proceedings.

"The Magistrate of the District may call for and inspect such diary.

"In cases where there is no District Superintendent of Police, the Police officer shall forward day by day a copy of the diary to the Magistrate of the District.

"Such diary shall not be evidence of the facts stated therein, except against the Police officer who made it, nor shall it form part of the record.

"Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. The prisoner and his agents shall not be entitled to call for them, nor shall he or they be entitled to see them, merely because they are referred to by the Court; but if they are used by the Police officer, who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.' "

Use of diaries by Criminal Courts.

He said, the effect of this amendment would be to retain the law as it now stood, whereas the Bill proposed to do away with all legal provision as to the particular authority to whom this diary should be sent.

He was happy to think it would not be necessary for him to enter on a long disquisition on the vexed question of Police administration, because he believed he was quite at one with His Honour the Lieutenant-Governor, and his hon'ble friends, Messrs. Strachey, Inglis and Robinson, in condemning the theory that the Magistrate should sit with solemn judicial dignity and only adjudicate on such evidence as might be brought before him. On the contrary, he (MR. CHAPMAN) was very decidedly of opinion that it was the bounden duty of the Magistracy of this country to co-operate energetically with the Police in the detection and suppression of crime,—to be in short 'a terror to evil-doers'. But while holding this view, he was not prepared to go the length of saying that there should be no separate Police organization. If District Superintendents of Police were to be maintained at all, it was essential that this diary should be forwarded to them without delay. It was particularly necessary that the history of the crime of a District should be contemporaneously recorded in one central office. Let the Council consider the great advantage of District Superintendents being able promptly to communicate with each other the intelligence of the commission of organized and systematic crime. Again, if the Superintendents were not kept immediately informed of the occurrence of every crime in their District, how were they to direct and stimulate the exertions of their men, and how were they to exercise any control over them by way of reward and punishment?

If Superintendents were not furnished with these diaries, he did not see how they could fairly and reasonably be held responsible for the peace and security of their Districts. He would have them responsible to the Magistrate of the District and to him alone.

This question had been very fully discussed in Committee. The principal arguments he (MR. CHAPMAN) had heard adduced in support of the change were, that it was advisable that the diary should be sent to the Magistrate nearest the scene of the crime, when the Superintendent might be at a distance, and that the subject was one which had much better be left to the Local Government to deal with as they might think best. His reply to the first of these arguments was, that the provisions of sections 137 and 138 of the Bill rendered it obligatory on the Police to send intimation to the nearest Magistrate having jurisdiction, and made it the duty of such Magistrate to repair to the scene of the crime, if necessary, and to assist in its investigation. The fullest means were thus provided for the Magistrate being promptly informed, and for his being left without excuse if he failed to do his duty in the way of direct and active personal exertion. Then, as to the argument about discretion being left to the Local Government. The system

of District Superintendents had now been established throughout India, and if the principle he had advocated was sound, he thought there was no question as to the advisability of its being made generally applicable. He (MR. CHAPMAN) would earnestly beg to point out to the Council that his amendment involved no change in the existing law; and that he considered the onus of showing cause for the alteration contained in the Bill rested on his hon'ble friends who differed from him. The alteration was calculated, in his opinion, to introduce a most dangerous and radical change in the Police organization of the country.

The Hon'ble MR. ROBINSON said:—"My Lord, the object of this amendment is to restore to the Bill the purely executive direction which is contained in the existing Criminal Procedure Code as to what is to be done with the diary which is directed to be kept by a Police officer who may be investigating, on behalf of the Magistrate having jurisdiction, into a cognizable case.

"The provisions of the existing law in respect to this matter import an uncertain sound into it in respect to the relation between the Police who are engaged in tracing out an offence, and the Magistrate before whom the case is eventually to be brought for trial or committal, and they may be used—and, in fact, probably have been used in some places—to justify the executive Police in refusing to the local Magistracy information as what the Police are doing in respect of a case for which the Magistrates are responsible in their executive and judicial capacity, as well as the Police.

"The law, as the Council are aware, requires that immediate intelligence of the occurrence of any grave crime be conveyed to the Magistrate having jurisdiction. He is empowered to take up the case himself and to adopt all means for detection. But, in fact, he generally leaves this, as is intended, to the Police, who are, in the words of the Police Law (Act XXIV of 1859), 'placed at his disposal for the detection of crime' within his (the Magistrate's) division.

"The executive Police are, on their part, required to keep a diary of all steps taken during this professional investigation for the information of the Magistrates and Courts, if required, and of their own superior office.

"The object of this provision is sufficiently obvious. It enables the responsible Magistrate, as well as the superior officers of Police to see what is being done from day to day in the case, and to judge whether the Police are doing their duty; it secures a valuable check against irregularity of procedure in respect to the particular case to which it relates, and if such irregularity occurs, it provides a useful auxiliary towards the detection of them.

"Now, it is clear that no one can be more directly interested—to no one is this information so indispensable—as to the responsible Magistrate within whose jurisdiction the offence occurred and who has finally to dispose of the case. This officer is generally near the spot, and if kept constantly advised of what is going on, he has peculiar advantages for aiding the Police by his influence and advice as to the detection of the offence and the hearing of any evidence which may be forthcoming. He enjoys, too, special opportunities for hearing of, and checking in the bud, any impropriety into which the executive Police may be betrayed during the investigation. It is therefore all-important that this responsible Magistrate should know what is transpiring through a daily diary.

"The diary is o quasi-judicial document. It may be called for by Courts, &c., and is therefore a record of ascertained facts and occurrences, not of Police theories and surmises in respect to the circumstances of the offence, or of unsifted suspicions and intelligence. These need not be brought on record until they have passed into the category of judicial evidence. This diary is in fact a confidential but authoritative communication between the official persons who are both responsible for the case, namely, the Magistrate having jurisdiction and his executive Police, and the former must have it. A copy of this daily diary can be sent to the District Superintendent of Police, or a mere mention of the matters noted thereon can be shown in the general diary of Police working, &c., within the station through the Superintendent, and the information it contains goes to the Magistrate of the District.

"I hope the Council will thus see that there can be no doubt that the Magistrate having jurisdiction should have this document submitted to him, and that the efficient working as well as the due support, of the Police are essentially involved in thus coupling-up these two bodies in respect to their joint responsibilities for the conduct of a case in the early stages of investigation, and thereby insisting on mutual confidence and co-operation and efficient check.

"The present law only provides that a copy of the diary is to be sent to the District Superintendent of Police, who shall bring to the knowledge of the Magistrate of the District what he sees fit, and so on; but it does not deny the same information to the Magistrate having jurisdiction.

"Now, it appears that this somewhat limited and fragmentary direction of law has been construed by Police officers in some parts as justifying them in refusing information in respect to any individual case to the really responsible official, namely, the Magistrate having jurisdiction, and as justifying them in

simply ignoring in their Police detection, every and any Magistrate, except the Magistrate of the District to who the District Superintendent of Police communicates as much or as little as he pleases about cases, subject, of course, to the chance of his requiring the actual production of the diary. Police offi cers of this school simply treat the subordinate executive Magistracy of all grades as purely judicial officers, before whom they prosecute their cases very much in the same exclusive spirit as they would before a Sessions Court, and deny them any communication with the Police in respect to cases actually pending before them.

"Where this is the position assumed by the Police throughout a district, I am sure things cannot possibly work with the harmony and mutual confidence which are indispensable. The Police place themselves in a position alike too weak as respects real efficient working and detection—for they cut themselves off from the aid and advice of the Magistracy of all ranks—and too strong as respects the relative positions of the Magistracy and the executive Police. In fact, they override the Magistracy.

"The Select Committee on the Bill perceived how the direction of the existing law, thus alluded to, is capable of misconstruction, and myself and others probably would have wished to see things put on a clearer and more distinct footing by law, and would have incorporated a direction in the Bill to the effect that the diary of each special case shall be submitted to the Magistrate having jurisdiction, a copy being sent to the District Superintendent of Police, who would bring to the notice of the Magistrate what he thought worth informing him about. But the matter is of so purely executive a character that as suggested in the early discussion on the reconstruction of the Code of Criminal Procedure, it had better be left in the hands of the Local Government. These best know the state of their Police and Magistracy, and may safely be left to give directions as to whom the diary is to be submitted to in a manner that will best suit all parties.

"I am afraid I have unduly occupied the time of the Council on this matter. I have done so because the thing has been made a great deal of—a very great deal more than is at all desirable. It has been represented as the very keystone of Police working, and of the District Superintendent's control over, and responsibility as to, the District force, and so on. Why, it has no more to do with the internal economy and efficient working of the general Police, than the proceedings of a regimental Court Martial has to do with the command or efficiency of a regiment or brigade. It is a short skeleton diary relating to an individual case

under investigation by the Police, and has nothing to do with internal economy of the district force, or even of the station within which the offence occurred. The general administration is conducted from information supplied by station-house reports, general diaries, occurrence reports and the like, which come together in the superintendent's office from all parts of the district and are there collated. From this general information, a daily report of all important occurrences in the district is prepared, and laid before the District Magistrate every twenty-four hours. Amongst other items of information thus communicated are of course notices of what has taken place in respect to each of the important cases in the hands of the Police all over the district. It is exactly of the same character as the 'case-diary' which has been described and which is kept for the use of the Magistrate having jurisdiction and of the Court.

"The matter is purely executive and of little importance as respects the administration of the general Police of a district, and the Bill, as now drawn, not only removes a source of misapprehension, but leaves Local Governments to adjust the matter in the manner that best suits the character of their Police and Subordinate Magistrates.

"I trust that the Council will reject the amendment."

The Hon'ble MR. INGLIS said:—"MY LORD,—I hope the Council will reject this amendment. I think that the use these Police diaries are to be put to is a purely executive matter, which should be left open for the orders of the Local Governments, and is altogether foreign to the Bill now before the Council. Accordingly the Select Committee, after considerable discussion, decided to omit any direction on the subject.

"Act V of 1861, the Police Act, is curiously vague in the matter of the relations between the Magistrate of the District and the District Superintendent of Police, and very widely different opinions had been held on this subject all supported by arguments based on the provisions of the Act. One party contending that the Police are a body altogether separate and independent of the Magistrate of the District; the other, that they are completely under his authority and control: both of them, however, referring to Act V in support of their opinions. Those who consider that the Police should be an independent and separate department refer to those clauses in the Procedure Code which the Committee have decided on omitting as indicating a vague way that the Police are, to a certain and undefined extent, independent of the Magistrate of the District. Indeed, the Hon'ble Mr. Chapman says that his

intention in now proposing their re-introduction is to show that it is the District Police Officer, and not the Magistrate of the District, who should be held responsible by Government for the suppression and detection of crime.

"Now, I hold a very decided opinion on this point. I consider that the Magistrate of the District should be, in all matters and in all departments, the supreme head and controlling authority, and that the proper position for the District Superintendent of Police is that of one of his Assistants in special charge of the Police; but whether this opinion is correct or not, I think that this is neither the time nor the occasion on which it should be finally decided, and that it would be a mistake to prejudge in any way the decision that may be come to hereafter by the insertion of a couple of altogether unnecessary clauses to a Bill with which they have no proper connection.

His Honour THE LIEUTENANT-GOVERNOR said that he should also vote against this amendment to which he objected, not so much for what it expressed, as for what it really meant. He believed that they were all, including the Hon'ble Mr. Chapman himself, agreed that the District Superintendent of Police should be under the orders and control of the Magistrate of the District, and yet the Hon'ble Member spoke of the independence of the Police. His Honour believed it would be admitted that no one could speak more authoritatively upon this subject than the Hon'ble Mr. Robinson, and he strongly advocated the subordination of the Police to the Magistracy. The fact appeared to be, as the Hon'ble Mr. Inglis told the Council, that these few words were sought to be inserted in order to maintain a remnant of that Police independence of which the Hon'ble Mr. Chapman had spoken. His Honour thought that the arguments which had been brought forward in support of the amendment were amply met by what the Hon'ble Member in charge of the Bill had said, that it was not desirable to introduce a Police law into this Bill: he told the Council that that was a matter which should not be imported into this Bill, and the Committee thought fit to accede to the Hon'ble Member's argument and leave the matter out of this Bill altogether. In voting now against the amendment, His Honour did so on the ground put forward by his hon'ble friend Mr. Inglis, that it was a Police matter, which each local administration could settle as they thought fit. The question was not whether the District Superintendent of Police should have certain information furnished to him, but whether this law should contain any specific provision upon that point. The fact of no provision upon the point being contained in this Code, by no means involved that the Police Superintendent should be kept in ignorance of what was going on in the District. It would always be in the power of the executive Government to direct in what form the information should be supplied to the Police

Superintendent, or for the Police law to prescribe any particular course. It appeared to HIS HONOUR that it was not necessary that, in every petty case of theft, the full proceedings should be sent to the District Superintendent for his information. The determination of such questions should, HIS HONOUR thought be left to the Police law and the executive. The Police was established upon a different basis in different parts of the country; and even from a purely Police point of view, it might not be desirable in all cases that the same rule should be followed. In Bengal, for instance, there were Police Sub-Divisional Inspectors to whom reports were submitted of the occurences within their jurisdiction. But the result of the proposed amendment would be, that those reports must be sent direct to the District Superintendent, instead of to the Inspector, who would thus be kept in complete ignorance of what was going on within his jurisdiction.

The Hon'ble MR. ELLIS said that he merely desired to express his entire concurrence with what had fallen from his hon'ble friend Mr. Chapman, with the single exception that he did not agree, as his hon'ble friend did, in all points with His Honour the Lieutenant-Governor and the Hon'ble Mr. Strachey on the general question of Police. But that was not a matter which was now under consideration. MR. ELLIS laid stress upon the amendment, not because there was any great difference between it and the section as framed in the Bill, but because he perceived that there was a desire, by a side-wind, to re-introduce the old objectionable system of combining in the same officer the exercise of Police and judicial functions.

The Hon'ble Mr. STEPHEN knew nothing by experience of the subject under discussion, but he objected to the character of this Code being depreciated by the introduction of these provisions. What his hon'ble friend, Mr. Chapman, proposed was exactly the existing law; but by striking out this section, a wide change was effected in section 7 of Act V of 1861. Take the matter in the way in which His Honour the Lieutenant-Governor put it: what he said was as much as to say that he did not like Act V of 1861; he wanted to put the administration of the Police on a different footing from that in which it stood now. MR. STEPHEN thought Mr. Chapman's exposition of the effect of the amendment was the true one, and he should therefore vote for the amendments so as to keep the law as it stood. If any of the Local Governments did not like the law, it was within their competency to alter Act V of 1861.

The Hon'ble MR. STRACHEY said that it appeared to him to be of little real importance whether the section remained as it stood, or whether his hon'ble friend Mr. Chapman's amendment were adopted. He, for his part, had only one ground for objecting to the amendment. He hardly knew why it was so, but the Council had been told that in this amendment was involved the question whether or not the Police were to have a semi-independent existence. If this were the case, the amendment acquired an importance which did not appear

on its face. If there was any question on which he had a decided opinion it was this. As to Act V of 1861, he thought it unnecessary to say anything, because, as a matter of fact, no human being could ever say what the most important section in that Act meant. It had been interpreted in a different way in almost every Province. Sometimes, the District Superintendent of Police had been almost independent, and at another time, the District Superintendent had been a mere assistant to the Magistrate of the District without any independent authority whatever. Act V of 1861 was at different times held to be consistent with both of these opposite views.

MR. STRACHEY spoke of the Bengal Presidency only, and in it he believed there was no Province in which an attempt had not been made to convert the Police into a semi-independent body separate from the Magistrate of the District, the most important officer in some respects in the whole country, the man on whom the whole executive power of the Government in the interior of the District really depended. The separation of the Police from the authority of the Magistrate had done extreme mischief, and he believed there was no part of the Upper Provinces in which the executive authority had not been more or less weakened. During the last few years, however, the tendency had been in the other direction, and the Magistrate of the District had, to a considerable extent, got back his authority. He must give his vote against the amendment.

His Excellency the COMMANDER-IN-CHIEF said that he would support the amendment, because he believed that its tendency was to maintain the separate police organization which had been introduced by Lord Canning's Government.

Formerly, the Magistrate and Collector had been everything in the district; he was the absolute king of the district; he exercised magisterial, police and revenue functions; but, as the country advanced, and a more elaborate administration was necessary, a sub-division of labour was introduced—an organized police force trained, disciplined and governed by its own officers, was established.

This was distasteful to the District Magistrate, who believed himself still equal to undertake all the duties formerly combined in one officer; and bit by bit the distinctive character of the Police had been cut away, until there appeared danger of its returning to the level of the old Police.

His Excellency would vote for the amendment, because he believed it necessary to support and maintain the position and utility of the District Inspector of Police.

The Hon'ble MR. CHAPMAN would not, at that late hour, detain the Council with many remarks. He wished distinctly and emphatically to repudiate the idea that he was in favour of making the Superintendents independent of the Magistrate. In his opinion the Police should not be independent of the Magistrate; but, at the same time, their organization should be established on a separate and distinct basis. He would place the Superintendent of Police and his

men directly and immediately under the orders of the Magistrate of the District; but this was very different from saying that he should be at the beck and call of every subordinate Magistrate. He supposed that, in an ordinary District, there were some twenty-four subordinate Magistrates of different grades. Now, let the Council consider the effect of diaries being sent indiscriminately to officers of this class without the District Superintendent being communicated with. All he could say was that, if this was to be sanctioned and adopted, then the sooner a financial saving was affected by the abolition of the office of District Superintendent the better. In the course of the consideration of this Bill, his hon'ble friend on his left had told the Committee some very startling facts connected with Police and Magisterial administration in the Madras Presidency. It seemed there were officers in charge of police-stations on rupees 14 per mensem, and Magistrates on rupees 40. Let the Council consider for a moment the effect of two corrupt officers of this class playing into each others hands?

His Honour the Lieutenant-Governor had said that he (MR. CHAPMAN) was endeavouring by a side-wind to introduce a very important change. He could not too plainly say that there was no foundation whatever for such an assertion. All he wished was to retain the law on its present footing, and it was His Honour, and Hon'ble Members who shared His Honour's views, who wanted to effect what he (MR. CHAPMAN) considered a most dangerous innovation. The matter was of the greatest importance, and he begged the Council would carefully consider the effect of their votes. He could not too strongly assure Hon'ble Members, and especially his friend Mr. Strachey, that it was not his wish or intention to place the Superintendent in a position of independence towards the Magistrate of the District. All he contended for was that the Superintendent should not be liable to be interfered with, and his authority and responsibility weakened, by every Subordinate Magistrate of the District.

The question being put,

The Council divided—

AYES.	NOES.
His Excellency the Commander-in-Chief.	His Excellency the President.
Hon'ble Sir R. Temple.	His Honour the Lieutenant-Governor.
Hon'ble Mr. Stephen.	Hon'ble Mr. Strachey.
Hon'ble Mr. Ellis.	Hon'ble Mr. Inglis.
Major General the Hon'ble H. W. Norman.	Hon'ble Mr. Robinson.
Hon'ble Mr. Chapman.	Hon'ble Mr. Stewart.

The numbers being equal, the President gave his casting vote with the Noes.

So the amendment was negatived.

The Hon'ble MR. CHAPMAN then moved—

"That the following be inserted as paragraphs one and two before the present paragraph one of section 188 :—

"'Offences under chapter XX (relating to Marriage) and Chapter XXI (of Defamation) of the Indian Penal Code, and offences of the class described in section 148 of this Code, may be compounded. No other offence may be compounded.'"

"Instead of the Exception to section 214 of the Indian Penal Code, the following shall be read :—

"'The provisions of sections 213 and 214 do not extend to any offence which may be lawfully compounded.'"

It had been pointed out to him (MR. CHAPMAN) that the Code would be defective in a very important particular if no specification were made of the offences which might be compounded. He had consulted a Judge of great experience, and the only doubt that authority had expressed was whether the amendment went far enough, and whether other offences, especially those relating to religion, might not be included. His amendment, if agreed to, would have the effect of clearing up perhaps the only really obscure and doubtful provision of the Penal Code.

His Honour THE LIEUTENANT-GOVERNOR said that he must oppose this amendment. It appeared to him that the matter required elucidation in a great degree. No one understood the present law, still it was very difficult to deal with, and could not be disposed of in this summary way. The offences included under section 148 of the Code included a great variety of cases, and HIS HONOUR did not think that the Hon'ble Member had exercised sufficient care in drawing up the amendment: there might be included in it a vast number of cases that ought not to be compounded. You might go through hundreds of cases that would fall within the provisions of section 148 and ought not to be compounded, and there might be many other cases which were not included in the amendment, but which ought to be compoundable.

The Hon'ble MR. STEPHEN expressed his general agreement with the Lieutenant-Governor and pointed out several difficulties in adopting Mr. Chapman's amendment.

The Hon'ble MR. CHAPMAN said that, after what had fallen from the Hon'ble Mr. Stephen, he would, with the permission of the President, withdraw the amendment.

The amendment was by leave withdrawn.

The Hon'ble MR. CHAPMAN then moved—

"That the following words be added to section 295 :—

"'For the purposes of this section, every Magistrate in a Sessions Division shall be deemed to be subordinate to the Sessions Judge of the Division.'"

In doing so, he said, he was no advocate for interfering with the independence and authority of the Magistrate of the District, but he considered that there should be no doubt as to the right of the Judge to call for, for purposes of revision, the proceedings of either the Magistrate of a District or of any other Magistrate subordinate to him.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN moved the following amendments :—

"That, at the end of section 186, the following be added :—

Where accused person does not understand the proceedings.

"'If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit."

"That the following clause be inserted after section 274 :—

Saving sentences on European British subjects.

"'The provisions of this and the last preceding section shall not apply to appeals from orders passed on European British subjects under section seventy-four or seventy-six.'"

That the words "and all officers and soldiers acting under his orders shall have the protection mentioned in section four hundred and eighty-six" be inserted after the word "Magistrate" in line 8 of section 487.

The Motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF moved that the words "whether European or Native" be inserted after the word "Troops" in line 5 of section 484.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 17th April, 1872.

CALCUTTA,
The 16th April 1872.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

S. G. P. I.—No. 42 L. D.—19-6-1916—50.