Friday,
9th March, 1883

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXII

Jan.-Dec., 1883

ABSTRACT OF THE PROCEEDINGS

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1883,

VOL. XXII.

Published by the Authority of the Governor General

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1884.

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 Friday, the 9th March, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Rájá Siva Prasád, C.S.I.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble Sayyad Ahmad Khán Bahadur, C.S.I.
The Hon'ble Durgá Charan Láhá.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble R. Miller.
The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.
The Hon'ble J. W. Quinton.

INLAND STEAM-VESSELS BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the law relating to the Survey, and the Examination and Grant of Certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Steuart Bayley, the Hon'ble Messrs. Reynolds and Miller and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

STEAMSHIPS BILL.

The Hon'ble MR. ILBERT also introduced the Bill to amend the law relating to the Survey of Steamships and the Grant of Certificates to Engineers of those ships, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Steuart Bayley, the Hon'ble Messrs. Reynolds and Miller and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved that the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and Statement of Objects and Reasons, be published in the *Gazette of India*, and in the local official Gazettes in English and in such other languages as the Local Governments might think fit. He said:—

"This publication is a necessary stage—and it clearly ought to be an early stage—in the progress of a Bill; but, under the Rules of Business as they stood before the recent alteration, the Council could not have ordered the publication of a Bill until a motion that it be referred to a Select Committee or some equivalent motion had been put and carried. However, under the new rule which was passed the other day, the Council may direct the publication of a Bill at any time after leave to introduce it has been granted. The effect of passing this motion, which I now make, will be that this Bill will be published in the usual manner, and that the various Local Governments will have the same opportunity of expressing their opinions on the provisions

of this Bill as they have of expressing their opinions on the provisions of any other Bill.

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

"To substantiate this statement let me recapitulate shortly the several stages through which this measure has passed, both before and since its introduction as a Bill into the Council. It originated with a proposal for legislation which was made by the Government of Bengal to the Government of India in the month of March, 1882. That proposal was, in the month of April last, communicated in the ordinary way to other Local Governments for their opinions. On receipt of those opinions, the Government of India considered whether legislation should be undertaken, and, if so, what form it should take. Having come to a conclusion on these points, they submitted their proposals—the proposals which are embodied in the present Bill—to the Secretary of State in Council. The then Secretary of State, Lord Hartington, informed us that these proposals had been very carefully considered by him in Council, that he agreed in the conclusions at which we had arrived, and that he sanctioned the introduction of a Bill embodying the proposals which we had submitted. Accordingly, the Home Department issued instructions to the Legislative Department to frame a Bill, and the Bill, when framed, was placed in charge of the Legal Member of Council, who, I believe, always takes charge of Bills amending the Procedure Codes. I obtained leave to introduce the Bill on the 2nd of February, I introduced it in the following week, and the papers containing the opinions of Local Governments were, I believe, sent to the newspapers within three days after the introduction of the Bill. Since then the Bill has not been carried through any further stage.

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

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

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

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

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

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

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

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

"First, then, as to the jurisdiction exerciseable over European British subjects in civil cases. That jurisdiction is precisely the same as that which is exerciseable in the case of persons not being European British subjects. Section 10 of the Civil Procedure Code enacts that—

'no person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of the Courts.'

"No person is exempted from that jurisdiction by reason of his being a European British subject; no person is disqualified for exercising that jurisdiction by reason of his not being a European British subject. A Native Judge has the same civil jurisdiction over a European British subject as any other Judge, and may exercise that jurisdiction in such a way as to affect not only his property, but his reputation and his person. He can give judgment against him in a suit for fraud or libel; he can send him to prison for debt; can punish him for contempt of Court; and can issue a warrant for his arrest in case of his non-attendance as a witness.

"So much as to jurisdiction in civil cases. Next, as to jurisdiction in criminal cases. I will deal first with the jurisdiction of the High Courts, including in that expression, not only the High Courts at the Presidency-towns of Calcutta, Madras and Bombay, but the High Court at Allahabad and the Chief Court of the Punjab at Lahore. The criminal jurisdiction of these Courts is unlimited. No person is exempted from it by reason of race or place of birth. No person is disqualified for exercising it by reason of race or place of birth.

Any person may exercise the jurisdiction, whether he is a European British subject or a Native of India. And a Judge of the High Court, whether he is a European British subject or not, is by virtue of his office a Justice of the Peace within and for the whole of British India.

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

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

(2) Fine not exceeding one thousand rupees ;

(3) Whipping.

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

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

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

"He may claim to be tried by a mixed jury or a mixed set of assessors, not less than half the number of jurors or assessors being either Europeans or Americans, or both Europeans and Americans.

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

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

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

The Hon'ble MR. QUINTON said:—"It cannot be denied by the most earnest opponents of the present Bill that there is a strong array of official opinion in support of it. The measure which it embodies originated with the Government of Bengal. The Governments of Bombay, Madras, the North-Western Provinces and the Punjab, the Chief Commissioners of the Central Provinces, of British Burma and of Assam, and the Resident at Haidarábád, who is *ex officio* Chief Commissioner of the Haidarábád Assigned Districts, have all written in no qualified terms expressing their approval of it on the grounds of public policy and administrative convenience.

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

the question this Council has now to determine—a question which the heads of all the Local Governments have answered in the affirmative.

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

"It is scarcely needful for me before this Council to dwell on the importance of this charge. District-officers have been rightly called the eyes and ears of Government. They are in their districts the outward and visible representation of British authority,—often but a dim and distant shadow,—and upon their effciency, and on the respect and confidence they inspire, depend the reputation, the influence, and, perhaps in the last resort, the existence, of British rule in India. They are entrusted with weighty judicial and executive functions, and have in their hands powers which may affect the welfare and happiness of hundreds of thousands of human beings; for they, and they only, can adequately represent and secure a hearing for the wants of their people. Similarly, Sessions Judges preside over the administration of criminal justice in areas co-extensive with, or larger than, those of districts, and have powers of trying all offences, even of a capital nature, committed by persons residing within their jurisdiction.

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

"It is much to be regretted that this cannot be done without depriving Englishmen in India of a privilege, however small, which they have hitherto

possessed, but that it must be done, sound policy and good administration alike seem to me to require.

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

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

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

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

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

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

"It is difficult to find any intelligible reason why an officer of sufficient judicial ability to be appointed a Presidency Magistrate should, when promoted or even transferred to a district beyond the Presidency, forfeit powers which he had been found to exercise in a satisfactory manner; or why a Native gentleman who has proved his fitness for the Bench of the Sessions Court should be declared disqualified from presiding at a trial of a European British subject, when the accused can have the advantage of a number of his countrymen on the jury or among the assessors.

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

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

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

"None, my Lord, can regret more than I do the ebullition of feeling which this Bill has caused. Considering the innocuous character of the Bill, I confess I did not expect it, nor did the Government, I believe, anticipate it. Had it not been for the great and important principle at stake, I would have been the first to counsel the withdrawal of the Bill, rather than oppose the wave of feeling which has risen against it. I have too strong a faith in the character of John Bull to believe for a moment that he will carry to the bitter end his opposition to a noble attempt to establish that equality in the eye of the law which the history of his own country, and the teachings of his own political system, so loudly proclaim. I was young when the hurricane of the Sepoy Revolt burst over the country in 1857, but I well recollect how feelings were torn asunder by the sad events of those days, how furious was the rage of denunciation, and how terrible the voice of vengeance. And yet, when the storm of the Mutiny subsided, the feeling also subsided, and not a few of those who had stood forth as uncompromising enemies of the Natives now stepped forward as zealous champions of their cause. It has been my good fortune to work with many of them, and to profit not a little by their advice, assistance, co-operation and example. Who could for a moment say that the Anglo-Indian of the Mutiny days was the Anglo-Indian of the succeeding days of peace and progress? This is my experience of the character of honest John Bull.

"Pride of race—I use the phrase in no offensive sense—is a commendable feeling. It is an honest and honourable pride. It has been the mother of good deeds, valiant acts, patriotic exertions and national glory. But there is a higher and nobler pride, that of fostering human happiness under beneficent law, raising the weak and lowly to the level of the strong and high, and making equal law and equal justice the basis of political paramountcy in the world. It is to that noble feeling I appeal. All Englishmen, whether in India or in England, I humbly think, should rejoice that, within the century and a quarter they have ruled India, they have effected such a complete revolution in the

Indian mind, both intellectual and moral, that Indian Magistrates are found fit to be trusted with the administration of the laws of the land, not only over their own countrymen, but also over the members of the ruling race. This is a work of which England may justly feel proud—this is a consummation over which all Englishmen may well rejoice."

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

"No subject for many years has evoked in India so deep or such united feeling on the part of the European community as this Bill. In the presence of a feeling so strong, and I cannot help saying also so powerful for mischief, it is an infinite pity that a measure of this nature, which deeply affects the material interests, as well as the sentiments, of Europeans, should have been introduced without any attempt made beforehand to ascertain their views.

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

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

"But, from what I and many others have seen of your Lordship and of your Lordship's Government, we are led to believe this must have arisen from some misapprehension; and that, when it is made plain that on this subject the interested class, whom alone the proposed alteration of the law would practically affect, not only have an opinion, but are practically unanimous in

it, as regards this measure,—when this, the true state of affairs, is discovered, —the Government may see their way to withdraw their calamitous proposal.

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

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

"If means were being sought to stir up and inflame those race antipathies which it is the noble ambition of your Lordship's administration to efface, a more effective one than this 'trifle' could not be found. It is not a trifle; for, if by mischance a Native Sessions Judge or a Native District Magistrate were to misjudge an European and condemn him to imprisonment on grounds which were afterwards proved to have been erroneous, it is perfectly certain that more positive, immediate, I may say instantaneous, harm would be done to this country than could be repaired in half a dozen years. It is not a trifle; for one of the most common crimes, I will not say one of the ingrained customs, of this country is the fabrication of false evidence in the Courts of law. Perhaps, the hon'ble and learned member who introduces the Bill may think I am only uttering one of the common Anglo-Indian fossilized prejudices; but I would appeal to universal Indian experience to bear me out. False evidence is cheap. One single miscarriage

of justice, through the medium of false evidence sworn before a Native Magistrate will do more infinite mischief, by driving English workmen and English capital out of the country, than the united efforts of Government and of all the guarantees they can offer can repair in a quarter of a century.

"If a trifle, then, why in the name of common sense provoke all their animosity for the sake of it? It is difficult in a matter like this to appeal to experience that is purely English. This country is full of anomalies, and it is difficult for the English mind, unaccustomed to the facts of Indian life, to discover how it is that a practice which is submitted to without demur in a Presidency-town should be so bitterly resisted in the Mufassal. The answer is simple. A public opinion, a press and legal assistance are at hand here. There, there is nothing but a Judge to condemn and a jail to confine. English enterprise—and on this side of India at least there is very litte enterprise of any kind except English—is largely concerned, and English capital largely invested in this country, especially in Bengal. The indigo factories, the tea gardens, and the consequent inducement to that migration of population which is so urgently needed in parts of India, mills and mines, are all supported by English capital, and the tendency has been to increase this. It has begun to be recognized by European capital that India most wants to buy what England most wants to sell, namely, material for increasing the trading power of the country; and a stimulus has lately, under the auspices of your Lordship's Government, been given to the inward flow of capital.

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

"Capital employed in the Province is invested on the faith of European agency, but such agency is expensive and is not employed in greater strength than the circumstances of the case render positively necessary. A practice exists in the Mufassal—I am not drawing on my imagination, I am not uttering an Anglo-Indian prejudice, I am stating a fact which is known to every zemíndár as well as to every raiyat, to every official European equally as to non-officials who ever engaged in litigation, that the practice of bringing false charges to injure rivals or to gratify a grudge is a common practice. This

is a fact of which European capital has to take account before it allows itself to be locked up in India, and capital reflects that, if an European manager is removed from the charge of the enterprise on which he is employed in the Mufassal at a critical moment and imprisoned on a false accusation, the loss and damage may be overwhelming.

"No Native criminal tribunal in the Mufassal can, under these circumstances, command the confidence of our employés. Anything that touches the personal safety of our European employés in the Mufassal reflects back again on us, and, if it threatens their safety, it deters the inflow of capital. It is said this is all prejudice. We think it to be fact. Capital is sensitive, and, when you deprive the investor of one of the safeguards on which he mainly relies, namely, the right on the part of his employés to be tried by one who, whatever may be his knowledge of the criminal law, is at least a fellow-countryman and capable of understanding, as one of ourselves, our own feelings, it is of no sort of use to assure that capitalist that what he looks upon as a safeguard is only an 'anomaly.'

"It is only eleven years ago since Sir James Stephen addressed this Council on the same subject that is now before us; and in allusion to the law which had then been decided upon, but which it is now proposed to alter, he used the following words:—

'I need not remind the Council of the extreme warmth of feeling which discussion upon a measure of the nature excited at no distant date, nor need I insist on the great importance to the Government of the country of the existence of harmony between the Government and the general European population.'

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

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

"Is this compromise,—the least objectionable, the least actively offensive, of any that are to be found within the four corners of the Statute-book—highly valued by the section to whom it applies? We have the traders' and planters' association from every part of India answering with one voice. I

think it is a most regrettable thing, the idea of being called upon to answer the question had it ever to be proposed to them; but of the fact of their reply there is no sort of doubt.

"My Lord, the exasperation of race that is now going on is terrible and deplorable. Enough harm has been done, and yet the exasperation is increasing every day. It has not done so yet, but it is leading to a sense of insecurity. If the Government depart from Calcutta to Simla, leaving the population of Bengal 'to stew in the juices of mutual animosity' engendered by this most unfortunate proposition, the mischief, which will not be prejudice, but a fact, not imaginary but tangible, may become beyond repair; and I call upon those of your Lordship's Council who have served their years in the country, and who have more than a theoretical knowledge of the people, to tell your Lordship frankly that I have not overstated the case. And of yourself, I would earnestly beg, in the interest of that concord between the races which you have so much at heart, to withdraw this Bill, which satisfies no one, and which, with the smallest amount of good, does almost the largest possible amount of harm."

[The spectators present here applauded the last speaker by loud clapping of hands.]

His Excellency THE PRESIDENT said:— "It is a rule of this Council, and of all legislative assemblies in the world, that those persons admitted as spectators should not applaud on either side any of the sentiments delivered and it is my duty to enforce that rule. I am quite sure that those gentlemen who have applauded on this occasion did so from forgetfulness, but it is a rule which must be observed; and, although sentiments are felt on one side or the other, they must not be expressed."

The Hon'ble MR. EVANS said that the motion for publication was purely formal. It was only a strong sense of public duty, and a strong conviction that the present deplorable state of things ought to be put an end to at once, that led him to speak at this stage of the Bill. The question raised by this Bill, as stated by the hon'ble mover, was whether they "could with safety, and ought in justice, to re-open the settlement or compromise of 1872." Mr. Ilbert had admitted, practically, that he was bound to show three things—

(1) necessity for disturbing the settlement of 1872;

(2) that the new settlement proposed was a durable and stable one; and

(3) that the new scheme was one conducive to the "effectual and impartial administration of justice."

He (MR. EVANS) emphatically denied that any one of these propositions was made out. There was no administrative necessity; there was no element of finality or durability in the proposal made, and he challenged any one to say that justice would be "more effectually or impartially administered" under the scheme proposed by this Bill.

In order to explain the compromise of 1872, he was obliged to take the Council back to 1857, to show how the matter really stood; and how and why the settlement of 1872 was come to.

In 1857, European British subjects in Bengal had the right to have their criminal cases (with a few small statutory exceptions) tried by the old Supreme Court. This led to grave inconvenience in bringing down prisoners and witnesses from very remote places on trifling charges.

All persons in India were now in civil cases subject to the ordinary Courts, and no person was exempt from the jurisdiction of any Civil Court, by reason of birth or descent. The Penal Code was then about to be passed, making one body of criminal law applicable to all Her Majesty's subjects in India. And it was proposed, as a complement to the Penal Code, to introduce a Criminal Procedure Code on the same broad principle, enacting that no person should, by reason of birth or descent, be exempted from the jurisdiction of any Criminal Court. This would have swept away at one stroke the right of privilege of European British subjects to have any special tribunals, or special privilege as to the constitution of the tribunals, by which their liberties and their lives could be declared forfeited. There was a great outcry against the proposal and violent public feeling. Meetings were held, and a petition, signed by 1,100 European British subjects in Bengal, was presented to the Legislative Council. They objected to all the proposed tribunals, as incompetent, and to those presided over by Natives, as utterly unsafe.

Debate of 1857.

Sir A. Buller, a Judge of the old Supreme Court, spoke in Council in March, 1857, advocating a compromise. He admitted the grave inconvenience of bringing all charges against European British subjects to be tried by the Supreme Court. But urged that this practical difficulty could be met by the practical

remedy of making them triable only by the Sessions Courts—not by the Magistrates' Courts or the Subordinate Courts presided over by Natives.

Sir A. Buller urged that they were practical men, living in a land full of anomalies, which they must deal with practically. He said the Magistrates' Courts, though they gave the Natives far better justice than they ever had before, would give the European British subjects far worse justice than they had been used to. He did not think it was right to give poorer justice to the European British subjects to avoid an anomaly, if they could give them as good justice as before, without hardship to the Natives. As to the Native tribunals, he thought the European British subjects were right in objecting to them on the additional ground of race antagonism.

The Chief Justice, Sir James Colville, supported him, and drew attention to the well-known habit prevailing among Natives in the Mufassal, of endeavouring to get rid of rivals by deliberately framed false criminal charges, supported by false evidence, and said the combination of executive and judicial functions in the person of the Magistrates prejudiced and biassed their minds, and rendered the Magistrate's Courts in India very unsatisfactory tribunals.

Sir B. Peacock, the Legal Member of Council, said that though he had introduced the Bill he would consider the arguments. No division was ever taken on this question.

The Mutiny broke out with all its horrors, and race feeling rose to a fearful pitch. The Court of Directors withdrew the question from the Council, and it was resolved to continue the former system of having European British subjects tried solely by the Supreme Court.

Debate of 1859.

In 1859, there was, however, another debate, which showed that Sir Barnes Peacock had been taught by the Mutiny the danger of carrying abstract principles to their logical conclusion in India, without regard to consequences. Sir Barnes Peacock inserted in the Code a provision disabling Natives in the Mufassal from even committing European British subjects for trial. Mr. Harington (a most able and experienced Civilian) thought this unnecessary. He said he had never advocated the *trial* of European British subjects by Natives, but he thought they might be allowed to commit; and he taunted Sir Barnes Peacock with having at first advocated the sweeping Bill of 1857, and having now gone to the

opposite extreme. Sir Barnes Peacock replied that he had never committed himself to it, and that, even if he had done so, it was unfair of Mr. Harington to remind him of it. After the Mutiny he claimed the right to change his mind, and boldly avowed he had done so. Sir Charles Jackson, a Judge of the old Supreme Court, agreed with Sir Barnes, and pointed out the practical necessity of providing special tribunals for this particular class of persons, and showed the utter fallacy of arguing that because Natives were allowed to act as Justices in Calcutta, and to commit Europeans, therefore, it was practically safe to let them do so in the Mufassal. The Criminal Procedure Code of 1861 was eventually passed, leaving criminal jurisdiction over European British subjects practically as it was before.

Code of 1861.

Years rolled on, the echoes of the Mutiny grew fainter, and, in 1871, a revised Criminal Procedure Code was being prepared by Sir J. F. Stephen.

He was in Calcutta at that time, and knew both Sir J. F. Stephen and Mr. Stewart, and, speaking from memory, without any notes of what passed, he would give the Council his impression of the state of things that led to the settlement of 1872. The influx of a poorer class of Europeans from England and Australia had rendered it an intolerable inconvenience to send them all for trial to the High Court in Calcutta for petty offences, and even gave practical immunity for petty crimes. The moderate and sensible men among the European British subjects fully recognised the necessity for giving some jurisdiction to some Mufassal Courts, and the Government pressed urgently for it.

State of things in 1871.

The amount of jurisdiction proposed to be given to the Mufassal Courts over European British subjects was three months' imprisonment to be inflicted by a Magistrate's Court, and one year to be inflicted by a Sessions Court.

The European British subjects could not successfully object to the jurisdiction of the Sessions Judge, provided he was a European, as his duties were purely judicial. But they could well object to the jurisdiction of the Magistrates' Courts, for the reason touched on by Sir James Colville in 1857, that is, the combination of executive and judicial functions in the same person. The Magistrate was head of his district, had to keep the peace, to see that crime and lawlessness was detected and put down, to hold secret inquiries, to act as practical head of the Police, to decide on ordering prosecutions to be

instituted, and then, when his mind had been thoroughly saturated and biassed by the result of secret inquiries and police reports, to try the accused.

Further, Sir J. F. Stephen was very anxious to introduce by his new Code summary trials, as in Petty Sessions in England, in which there should be no regular record of evidence, save such précis of it as the Magistrate might record in his judgment.

Sir J. F. Stephen justly feared a strong onslaught by the European British subjects on Magistrates' justice. He knew, and all knew, that the finances of India could not afford the severance of the executive and judicial functions of Magistrates, which the interests of justice loudly called for.

The European British subjects were likewise entitled to object to summary trial without a proper record of the evidence, as tending to nullify in practice the much prized right of appeal to the High Court in all cases, which they possessed and still possess.

But there was, further, the danger, nay the certainty, of a fierce agitation by the European British subjects against being subjected to the criminal jurisdiction of Natives in the Mufassal. Any proposal to do this would (it was well known) revive the fire of race hatred and the memories of the Mutiny, which had been waning and dying out slowly, and do much to interrupt cordial relations between Natives and Europeans, and between the European community and the Government of India.

Sir J. F. Stephen was quite willing to concede that European British subjects should not be tried by the ordinary Native Deputy Magistrates, and in this all responsible Government officials agreed with him, and still agree. But natives had begun to enter the Covenanted Civil Service, and the European British subjects utterly objected to entrust their personal liberty to Natives, whether covenanted or uncovenanted.

This was the problem which Sir J. F. Stephen and Sir John Strachey, and the other experienced men who made the settlement of 1872, had to decide—"Was it worth while, for the sake of asserting the principle (if principle it be) that all Covenanted Civilians should be empowered to try Europeans as soon as they became full-power Magistrates, to risk the explosion which would inevitably have ensued, and which would have done incalculable mischief. Bearing

in mind that it was admittedly impossible, and politically dangerous, to carry out in its integrity, in the Mufassal, the broad principle that no man should be exempted from the jurisdiction of any Criminal Court by reason of birth or descent; and, further, bearing in mind that every one connected with Government was agreed that is was necessary to sanction a similar anomaly in the case of Uncovenanted Magistrates, and to enact in effect that full-power Uncovenanted Magistrates, who were Europeans, might try the European British subjects, but that the Uncovenanted Magistrates, who were not Europeans, should not have that power. The strong practical intellects of Sir J. F. Stephen and Sir John Strachey perceived that, to risk such evils to avoid this petty anomaly, which caused no practical inconvenience, after sanctioning so many departures from the only broad principle which could be appealed to, would indeed be to strain at a gnat after swallowing many camels. They knew also the strong practical objections which exist to entrusting this jurisdiction to Natives.

Compromise of 1872.

Accordingly, they informally proposed to the European community, through the non-official members, that, if they would consent to submit to the jurisdiction of the Magistrates' Courts and to the summary trials without opposition, they (Sir J. F. Stephen, Sir J. Strachey and others) would agree that no Natives, not even Covenanted Civilians, should have power to try European British subjects. The European community, to whom the proposals were informally made, assented, and the arrangement was embodied in the report and resolution of the Select Committee.

This arrangement was come to, so far as he remembered, during the interregnum between the lamented death of Lord Mayo and the arrival of Lord Napier of Murchistoun, when Sir J. Strachey, as senior member of the Council, practically officiated as Viceroy, and it had Sir J. Strachey's fullest approbation, as appears by his remarks in the debate of 1872.

It was a wise, a statesmanlike compromise, and he felt well assured that the present Government of India, had they had the least idea of the lamentable results that would arise from endeavouring to upset it, would never have brought in this unfortunate Bill.

The debate of 1872 had been entirely misunderstood by Mr. Ilbert in his speech introducing the Bill, and Mr. Ilbert had unconsciously misrepresented the attitude of Sir J. F. Stephen and Sir Strachey in that debate.

All the opponents of the compromise in that debate admitted the principle, that only Natives who had become Europeanised in thought, and thoroughly acquainted with European manners and customs, could be permitted to try Europeans. So that a great portion of the proposals in the present Bill were directly opposed to the opinions of the eminent authorities who were appealed to and relied on in support of it. In particular, so much of the present measure as provided that all Sessions Judges, whether Covenanted Civilians or not, should try European British subjects, was opposed to all authority.

Subordinate Judges from the Uncovenanted Service were now being promoted for their legal ability and aptitude in trying civil cases to be Sessions Judges. Many of them were men of high caste, saturated with caste prejudice, and had never been brought into social contact with Europeans, and were totally ignorant of their manners, customs and habits of thought. This was also the case with the Natives now being admitted into the Covenanted Service under the new statutory rules, without competition and without going to England.

The Commander-in-Chief, in that debate in 1872, although he advocated the admission of Europeanised Native members of the Covenanted Service, yet was altogether opposed to the trial of Europeans by the Magistrates' Courts in the Mufassal, and had moved an amendment to confine the jurisdiction over European British subjects to the Sessions Courts, as suggested in 1857 by Sir A. Buller. The silence of Mr. Stewart, the non-official member, during the debate on the compromise, was due to a desire not to say things which are best left unsaid unless there is necessity, and to the assurance of Sir J. F. Stephen that a majority of the Council would stand by the compromise, and it was, he believed, the effect of the compromise, which led Mr. Stewart to go against the Commander-in-Chief in the division on the subsequent amendment.

He made these observations as they were necessary to a correct understanding of the nature of the settlement of 1872 now sought to be re-opened. He did not put forward that compromise as anything legally or morally binding on the present Government; but he thought it was hard on the European British subjects to take away by a separate Act that concession by which their acquiescence in many of the provisions of the Code had been obtained, leaving in the Code provisions and powers which they were not prepared to entrust to any Native Magistrate in the Mufassal. He thought in fairness such a proposal should only be brought on when there was a general revision of the Code.

The power to direct prosecutions on suspicion and then try the case summarily, without record of evidence and without (in a large class of cases) any right in the accused to cross-examine after charge framed unless the witnesses happened to be present in Court, were instances of powers which European British subjects were not prepared to entrust into the hands of Natives.

He hoped it was not likely that any Local Government would be so indiscreet as to appoint a Native Magistrate to any district where Europeans were strong and numerous (a fact, if he was right, which went to show how useless the Bill was); but these powers in the hands of Natives would render the position of the lonely pioneers of European enterprise in remote places untenable and unsafe.

The next question was—

What was the necessity for reopening this burning question? None of the Local Governments consulted had complained of any administrative inconvenience. The reason there was no complaint was not far to seek. Only 11 natives had entered the Covenanted Civil Service, by competition in England, from 1864, when the first of them arrived in India, to the present day, and he had the authority of the *Statesman* for saying that the import had now ceased owing to a change in the rules at home. Of these eleven one had left the service under circumstances which he need not advert to; one had gone to Madras and was dead. The remaining nine were thus distributed:—two were in Bombay; one, a young Parsee, a very junior officer, was in the North-Western Provinces; and the remaining six were in Bengal. There were none in the rest of India.

Necessity.

The Circular inviting confidential opinions from the Local Governments was sent out on the 28th April, 1882, when Mr. Rivers Thompson was Lieutenant-Governor of Bengal, and it was singular that that circular was not sent to Bengal, and that no opportunities had been given to the Government of Bengal to consult its officers and the High Court on the subject.

He spoke subject to correction by His Honour the Lieutenant-Governor, who was present, but so far as he (as an outsider) had been able to gather, the opinion of the bulk of the Bengal officers and of the High Court was against the measure, and, so far as he could learn, no administrative necessity had arisen

in Bengal, or was likely to arise. It was impossible to allege the existence of administrative necessity in the rest of India arising from the presence of three men only, one of whom only would, so far as he could learn, be immediately affected by it and have the power conferred on him of trying European British subjects. The statutory Native Civil Service had very recently been created, and it would be years before the question of investing them with the power became a practical one.

As to stability and durability—

Stability and Durability.

The settlement proposed had no single element of stability or durability. It proceeded on the principle (if it could be said to have any real principle in it) of allowing the Local Governments to determine the fitness of individuals to be Justices of the Peace (Justices of the Peace alone being empowered to try European British subjects) while the area of selection was to be restricted and not left open as in the Presidency-towns, where any fit person might be selected.

Having enunciated this principle of personal fitness (to be judged by the Local Government,) the hon'ble and learned mover found himself face to face with this difficulty. Everyone was agreed that it was not desirable to vest Uncovenanted Native officers with this power. They, therefore, must remain disqualified.

But, as the law now stood, Government was empowered to invest any Uncovenanted Europeans with the power, and had largely done so. There were now from 20 to 30 Uncovenanted European Deputy Magistrates, with first class powers in Bengal, who were Justices of the Peace, and had power to try European British subjects. The Uncovenanted Europeans were fit, and, so far as could be learnt, had exercised their powers impartially and efficiently, but it was an anomaly.

This difficulty was solved by disqualifying all Europeans who were not Covenanted Civilians from being Justices of the Peace in the Mafassal and practically confining, with a few exceptions, the office of Justice of the Peace to ordinary Covenanted Civilians, whether Native or European, and to the Native Civilians admitted under the new statutory rules.

What principle was there in this? certainly not the principle of *fitness*, for no allegation was made against the fitness of the class it was proposed to exclude, that is, Uncovenanted Europeans. There was a difference of race and moral standard. The effect of it was to disqualify the Uncovenanted Natives. This was a fact. It could not be got rid of. This Bill attempted to hide or disguise the unpleasant fact by disqualifying the Uncovenanted Europeans against whose fitness there was no complaint. Thus, an apparent symmetry was produced at the expenses of depriving Government of the services of a class of men who have been admitted as Justices of the Peace since the thirty-third year of His late Majesty, King George the Third, to the acknowledged advantage and convenience of the public service.

But his hon'ble and learned friend said there was a principle in this. His hon'ble and learned friend had apparently discovered that there was no privilege of European British subjects as to tribunals to be considered, but a "class of offences" which, from "the circumstances in which they were usually committed" by European British subjects, required to be dealt with by the higher class of Magistrates only. And it was to be presumed that it was this discovery which he considered justified him in disqualifying all Uncovenanted European British subjects from trying so "troublesome and difficult" a class of cases.

The only answer to be made to this was, that it had no basis of fact. There was no "class of offences," but there was a class of persons always liable to be accused of crimes, and who sometimes, but rarely, committed crimes.

Individuals of this class were, owing to the circumstances of the country, often "difficult and troublesome" to try. From the nature of things they must be far more "troublesome and difficult" for a Native to try than for an European to try. This class of persons was at present entitled to special tribunals, or to a special constitution of the tribunals by which they are to be tried.

This Bill attempted to disguise the fact—to allow this class to retain all its anomalous privileges as to tribunals (except the one now in question), and to justify such retention, not on the real ground, but on an imaginary ground, that is, that the offences this class commit are of such a character that Government is justified in enacting for the more "effectual and impartial administration of justice" that none but Covenanted Civilians shall try them, with a few exceptions based on no principle.

The Native Press utterly declines to accept this as final, and many of the Native papers, as the *Amrita Bazar Patrika* of March 1st, give it but very faint support, on the ground that the other anomalies are much more objectionable and inconvenient.

There can be no element of stability or durability in such an illusory settlement as this.

Effectual and impartial administration of justice.

The object of these proposals was said by his hon'ble and learned friend to be the effectual and impartial administration of justice. On this point it was enough to say that the proposal was to disqualify a class of men against whose effectual and impartial administration of justice no complaint had been made, and to substitute a class (the Native Statutory Civil Service) whom Mr. Duthoit, Judicial Commissioner of Oudh, declared, in his confidential communication, to be utterly unfit to hold the scales of justice impartially in cases where Europeans are concerned, and to be often saturated with caste and class prejudices, and who were not necessarily at all Europeanised. Even the *Statesman* (15th February) condemned this class as inferior to many of the Native Deputy Magistrates. Tried by this test, this measure fails on the face of it.

Many of the supporters of this measure were not prepared to go further than Sir Barrow Ellis' amendment in 1872, that is, in effect, to invest with these powers only the nine Covenanted Civilians elected by competition in England ; but his hon'ble and learned friend had confessed, as he (MR. EVANS) understood him, that it would be mere tinkering to stop there, and that the Government would not be justified in re-opening the settlement of 1872, unless they could go further and propose a permanent and durable settlement of the broad question.

Satisfactory tribunal.

There was another test which he would suggest when any change in a tribunal was proposed, that is, that the tribunal, as reconstituted, should, if possible, have the respect and reverence of the class from which the accused are drawn, and should (if possible) be regarded by the accused and his class as a satisfactory tribunal. This is a cardinal point in the administration of criminal justice. It would be waste of words to demonstrate that the proposed measure utterly fails to stand this test.

He failed to see any sufficient reason for proceeding with so unnecessary and useless a Bill on the face of so strong and intense a feeling as existed, a feeling in which the whole European community in India were practically unanimous.

He was not oppressed by the wonderful "unanimity" of the confidential answers of the Local Governments consulted. Bombay stood in a very peculiar position, with comparatively a small Mufassal, and a small European population in it. The voice of experience in Madras was against it. Even the Governor thought it was a pity to introduce it now. Sir A. Lyall said it would not for many years become a practical question in the North-Western Provinces. The others had nothing to do with it as a practical question, as a measure which would come into immediate operation.

A number of one-sided extracts from the debate of 1872 were sent with the letter of Sir A. Eden and Mr. Gupta's note, and these gentlemen had, he ventured to think, given opinions without sufficient consideration on points which to them must have seemed more abstract than practical. He excepted Mr. Elliot in Assam, who pointed out the need of caution, and Mr. Howell in the Birars, who showed the grave nature of the issue raised. But it was sufficient to say that all who had given opinions in favour of the change were mistaken as to the feelings it would arouse, and had apparently made no enquiries among the class to be affected.

The voice of Bengal was absent. He could not accept Sir A. Eden's letter as a demand by the Government of Bengal for legislation. Considering the circumstances under which it was written—on the eve of departure, and without any consultation of officers or of the High Court—he looked on it as the individual opinion of Sir A. Eden, suggesting a consideration of the subject at a fitting time, and recording his own opinion. He knew there were in it the words "the time has come." But on the whole he thought it was more a record of individual opinion than a demand for immediate legislation.

Sir A. Eden's views on the subjection of Europeans to Mufassal Courts had never been in harmony with that of the bulk of Europeans in Bengal, official and non-official, as appears by what took place in 1857, when he came into collision with the Judges of the Supreme Court. But he had too great a respect for Sir A. Eden's tact and administrative ability to think that he would

have initiated legislation on this subject without trying to ascertain the views of his officers and the High Court and the European community. So much for the "consensus" of opinion.

Then it was said, how can Europeans object to Native Magistrates in the Mufassal and yet suffer them in the Presidency-towns? The power and influence of the European community—the blaze of publicity—the Press—the Bar—the presence and powers of the High Court—are sufficient answers. Besides, the Presidency Magistrate's functions are strictly judicial, and the practice of deliberately attempting to ruin rivals or enemies by cunningly concocted false charges, which is still as common as ever in the Mufassal, is practically unknown in Calcutta.

Argument to show the difference between the Presidency-towns and the Mufassal was unnecssary. His hon'ble and learned friend had just explained to them that in the Presidency-towns no person was, by reason of birth or descent, exempted from the jurisdiction of any criminal tribunal, and he had just read a long list of the anomalous exemptions accorded to Europeans in the Mufassal. It was not proposed to abolish any of these exemptions, except the one dealt with by this Bill. No responsible adviser of His Excellency, who had any knowledge of the country, could be found, who would propose the abolition of these exemptions or the extension to the Mufassal of the broad principle that Europeans should be subject to all the Criminal Courts in the Mufassal exactly the same as Natives are. So long as this was so, it was waste of time to combat any argument drawn from a fancied similarity between the Presidency-towns and the Mufassal.

Then there was the alleged slur on Natives; but he denied that any set of judges, any more than assessors or jurymen, were entitled to complain of the privilege of the accused as to his tribunal as a slur on them. If there was to be any question of slur, the large class of Uncovenanted Europeans who were disqualified by this Bill might well complain. He himself, though a Justice of the Peace in England, and now qualified to be a Justice of the Peace in Bengal, Bihar and Orissa, would be disqualified by this Bill.

But the question before them that day was not a pure matter of argument. The reality and intensity of the feeling against the Bill was patent, and was one of the main points they had to consider as practical legislators.

He felt it his duty to offer some remarks on the reasons for this at the risk of giving pain.

First.—There was a reason, of which all would admit the weight. It was most desirable that a Criminal Judge should be able to put himself in the place of the accused, so as to judge of the probability or improbability of his having committed the alleged offence. This was desirable everywhere, but especially in India. Criminal trials here generally proceeded entirely on oral evidence. The lamentable untruthfulness and untrustworthiness of the bulk of Native oral evidence had been repeatedly commented on by the Privy Council, and was well known to all. It was, therefore, particularly necessary that the Judge should be in a position to try such evidence by the test of its probability or improbability. But, if he was alien in thought and moral standard, and ignorant of the manners, customs and habits of the accused, how could he put himself in his place.

It was to this power in the Judge, of putting himself in the place of the accused, that the lonely planter in the Mufassal, confronted with a false charge and false witnesses, and far away from help, mainly trusted for protection.

He might be told that defect was exhibited by Europeans in trying Natives. It was so, but that was no reason for introducing the same defect into the trial of Europeans. We had given the Natives an administration of justice immeasurably superior to anything they ever had before. The unswerving uprightness, probity and intense desire to do impartial justice shown by European Judges had been an education to the people of the country, and they constantly showed their appreciation of it by asking to have their cases transferred from Natives to Europeans.

The second factor was race antagonism. This feeling, which had been fanned into a fierce flame by the horrors of the Mutiny, was slowly dying out, but it was most unwise to stir the embers while so many of the generation who went through the Mutiny were still alive. The vitality of that feeling had been lamentably illustrated by the outbreak with which this Bill had been greeted.

The third and most serious consideration was that dwelt on by his hon'ble friend Mr. Miller. The Europeans did not trust the Natives as they trusted fellow Europeans. He knew many upright and honourable Natives. But the broad fact remained that the bulk of the Anglo-Saxon race in India looked upon the Natives as men bred in a degrading idolatry, and surrounded from their infancy by influences most adverse to truth, uprightness, honour and

every quality which Englishmen most revere, and which they demand especially in a Criminal Judge. They think that many centuries of Christianity, and of free political life, have given them a moral fibre not to be found among Natives, especially Natives of Bengal.

Can it be wondered at (unless Christianity is a sham, and the belief in national character a delusion) that they refuse to recognise as an Englishman a Native who has spent two or three years in England.

When passed, the effect of this Bill would be to establish tribunals for Europeans which they objected to and refused to respect. There was a vast difference between civil and criminal law. Broadly speaking, the one affects the purse, the other the person. We might be willing to have Natives educated at the expense of our purses; we were not willing to have them educated at the expense of our persons. Every conviction of a European in the Mufassal under these circumstances would be looked on as unjust, and would revive the bitter and violent animosities which they all knew were raging around them that day.

Some said the agitation was a mere flash, and referred to the Black Act of 1836 in Macaulay's time; but a reference to Trevelyan's life of Macaulay would satisfy anyone that the circumstances were widely different, and that no inference could be drawn from the one to the other. That was a Calcutta agitation; this was universal over India. That was about appeals being transferred from the Supreme Court to the Sadr; this was a far graver matter. Besides he thought any Government which proposed to deal with the present European community as "a mere handful of settlers," whose protests might be treated with contempt, would be forgetting the difference between 1836 and 1883.

Was this Bill likely, in any view of it, to remove any evils comparable in magnitude to those it was creating and would create?

This measure would have the effect of giving the power to Uncovenanted Subordinate Judges, when promoted to be District Judges, to try Europeans, though they might be utterly ignorant of their thoughts, ways and customs.

It would give this power to nine Covenanted Civilians who had been to England, but whom the Europeans in India declined to accept as Englishmen.

It would give this power to the new Native Statutory Civil Service who are declared by Mr. Duthoit to be utterly unfit, and who also are, or may be, un-Europeanised and ignorant of Europeans. These persons may or may

not form a useful machinery for governing Natives, selected as they often are, on account of the influence and social position of their families. But they are quite unfit to be Criminal Judges over Europeans.

It was a measure which had exasperated Europeans to the highest degree, and had interfered with their growing cordial relations with the Natives and destroyed the harmony between the European British subjects in India and the Government, and would do so to a much greater extent before it was passed. It was a measure which provided a machinery for producing periodical outbursts of race feeling whenever a European was convicted by a Native in the Mufassal—outbursts which would do immense harm and might lead to disastrous results.

It was a measure for which there was no necessity and one which touched almost the only point which was capable of uniting the whole of the Europeans in India as one man against the Government.

It was a measure which could, in any view of it, do little or no practical good, while it had already done and would do incalculable harm.

It was a measure which Government would never have introduced had they known the strength of the feeling against it.

He, therefore, implored the Government to show the truest form of courage by confessing an error of judgment and withdrawing the Bill at once.

The Hon'ble MR. THOMAS said:—"My Lord, the hon'ble and learned member on whom, by force of his position, has devolved the duty of being the mover of this Bill, has stated emphatically, and re-asserted it on behalf of the Government, that the only object of its introduction is "to provide for the impartial and effectual administration of justice." It is a high claim,—a claim so high that every Briton is predisposed, without a thought, to bow to it instinctively, for a love of impartial and effectual justice is ingrained in him. Impartial and effectual justice is just what is in the very nature of every Briton to give to everyone within his power the wide world over. There is a danger, therefore,—a serious danger,—that, heralded with so high a claim, this Bill may be accepted without sufficient examination; and for that very reason it is the more desirable and necessary that it should be stripped of any adventitious advantage it may derive from such heraldry. For we all love justice, and an equal love of justice will surely be conceded to those who, like myself, may venture to traverse this Bill. Presuming that so much will be conceded we shall commence our examination of the Bill on more even terms, and, bearing in mind that the test by which we are invited to try this Bill is, that its object is "to provide for the impartial and effectual administration of justice," I will ask, first, what, in prosaic business

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

"All this, I may be told, applies equally to the trial of Natives of this country by Europeans, as it does to the trial of Europeans by Natives. But, I venture to say, it does not. Europeans in India are compelled to learn the

languages of the country; they have to learn them before they are even appointed in England; they have to still further qualify in them in this country before they can be promoted: the Natives, who are to try Europeans, are not so compelled. It is specially provided by Statute that the great and increasing majority of them are to be appointed without such examination. Again, Europeans in this country pass their lives among the classes they have to try, the criminal classes of all shades, the labouring classes, the agricultural classes, as well as the better classes; learning their patois, their habits of thought, and their religion or their superstition; learning everything that underlies their springs of action; walking his fields with the farmer, the jungles with the junglemen; listening to their tales of joy and grief; sympathising with and labouring for them; present at their festivities; leading their combined action for any good; hunting, shooting, fishing with them; carried by them by day and night in travel; ever accessible to them in camp or Court; speaking direct as man to man with them; caring, aye, and exerting themselves to the sacrifice of health and even life, for them in famine; and walking daily amongst them, seeing to their village sanitation and the provision of medical treatment when they are dying around them of cholera; making it the one object of their lives to sympathise with and work for them. Such, my Lord, is the life of a district officer. By such means does he qualify himself to enter into the case of the Natives committed to his care. It is no fancy sketch. I have been through it myself, and it is being gone through every day in India by hundreds. Such are the means by which Englishmen have qualified, and continue to qualify, themselves to do justice to the people among whom they live. Will anyone assert the same, or anything approaching the same, of the Natives of this country that are to be entrusted with jurisdiction over British subjects? Have they lived among captains and seamen, soldiers and engine-drivers, mechanical engineers and surveyors, planters and merchants? What have they in common? They are absolutely a sealed book to them, and will be, for they shun them. Only the better class of Englishmen do they know anything about—only the educated official whom they have to meet in business. Of that class only, from whom will never come the subjects of trial, have they any knowledge at all; and even that knowledge is very superficial, and is only what the European chooses to give them, not what they search for for themselves, as we do among them. They do not court knowledge as a duty with a view to be in a position to do justice as the European does; they do not throw open their houses to us as we do to them. Their very religion forbids it; their very religion disqualifies them for ever having an intimate knowledge of the inner life of the European; and, if the fact is so even with the better classes of Europeans in all but the Presidency-towns, and to a large extent even there, it is still more

so in connexion with the classes of Europeans from whom criminal cases are likely to come. For that class of Europeans they studiously avoid, not only on religious grounds, but also because they are afraid of them. The courteous Asiatic does not understand their rough ways; and there is no reason why they should ever understand them, for there is nothing to bring them into every-day contact with such men. They do not seek to know anything about them, and yet they wish to try them. It is surely irrational! And apart from not seeking, as a duty, to comprehend the habits of thought of the classes they may have to try, there is nothing accidental even to throw them together. They have no subjects of common interest.

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

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

she has to order on her husband's behalf,—a false complaint by any irrepressibly obtrusive hawker, who comes unbidden into the very verandah in which she is sitting and will not leave it,—a false complaint by any outside petty cobbler who has been paid his due, but thinks to get twice his due by means of vociferating clamour amounting even to menace, in a manner quite inconceivable to, and incredible by, those who do not know this country,—a false complaint by any of these may any day subject English ladies and English women to be tried by Foreigners. These are no ideal pictures. They are every-day circumstances of middle class Mufassal life, unexperienced, perhaps, by the well-to-do, but well known to their poorer unofficial brethren. Patience outlives the provocations, and nothing comes of them, because there is the certainty of a fair trial in the background, and the Court is the Court of a countryman. But when it comes to be known, as it will be known if this Bill passes, that anyone can summon an English lady before a Native, and that, right or wrong, she will, in 99 cases out of 100, pay any fine rather than appear, and it is borne in mind that, even if she does appear and answer to the charge, the complainant has more than satisfied himself with the sweets of the annoyance he has caused,—when this comes to be known, there is hardly room to doubt that complaints of this sort will become distressingly numerous. The position of English ladies and English women, left alone in their houses while their husbands are in Court, or camp, or office, or workshop, will be very distressing even in the bare contemplation. The security, and the feeling of assurance of security, which they now have, in trial by a British Magistrate, will be gone from them, and they will be subjected to the jurisdiction of Asiatics.

"I have cursorily alluded to the falsity of the complaints; but only most cursorily, both because I took it for granted that the proneness to false complaints in the Mufassal was well known, and also because I shrunk from dwelling on that side of the question—I shrunk from it, because unwilling to make unkindly imputations. But now that it has been stated by one Hon'ble Member that such is not his experience in the Mufassal, and the hon'ble and learned member to my right (Mr. Evans) has advanced opposite experience, I feel bound to say that my experience of the Mufassal, extending as it does over nearly a quarter of a century, is entirely in accord with that of Mr. Evans, that false complaints and false evidence are common in the Mufassal. I speak not of what may be called exaggerations and hard swearing; I speak of deliberate machinations, that are perfectly staggering and appalling to the European; of rehearsals held in the presence of all the witnesses, that they may be thoroughly tutored in all details; of dress rehearsals, so to speak, held just before the trial, and in the very precincts of the Court

to refresh memory I could instance a case in which a poor man was hired to take a blow from a billhook, and all the witnesses were present to see and testify to the blow in all detail, only instructed to substitute an European for the Native striker of the blow. I could produce volumes of such evidence, but time will not allow. And I have no desire to do more than is absolutely necessary to bring that side of the question forward, and have only been constrained, as I have said, by the conflict of opinion.

"And why, let me ask for Britons, as they will ask,—why are they to be thus subjected to the jurisdiction of Asiatics? Not on account of any necessity of the case; not because it cannot be helped; not because the Natives wish it, but because—yes, that is what we are asked to expect—because the justice thus provided through the medium of the Asiatic will be more impartial, more effectual, than that dispensed by the Englishman himself; that is what the proposal comes to; that is what the Bill says in effect; and my business is with the Bill, the people to be tried by it, the people to be empowered by it. The only object of the Bill is 'to provide for the impartial and effectual administration of justice,' and that is the test by which I am invited to try it. If it be said that I rather overstrain the argument by applying the claim of impartial and effectual justice to the people to be tried by the Bill, and not, as was meant, to the Magistrates and Judges who are to administer it, then I plead in answer that such words should never surely be said with reference to any but the persons who are to experience in their proper persons whether the justice meted out is or is not impartial and effectual; that they have no applicability to anyone else, least of all to the mere machinery, the Judges and Magistrates, who only give life and existence to the Bill, and are merely the means by which the more impartial and effectual administration of justice is to be provided.

"Whatever may have been said elsewhere on the other phases of the Bill as it affects Natives, by removing an anomaly and a stigma, it cannot be that the claim by which we are invited to try the Bill, that of providing impartial and effectual justice, can have been put forward with reference to anything but the quality of the justice administered to the people who sought it, that is, to the complainant and accused. The question of anomaly and personal stigma is perfectly distinct. We shall come to that separately hereafter, but at present we have only to do with the claim that the Bill 'provides for the impartial and effectual administration of justice.'

"To the Englishman at home, who knows not this country, it may even seem that it does so provide; but when the Bill is examined in the light of the experience of those who have spent their lives in the study and the service of

this country and its people, who can throw upon the Bill the light of actuals rather than of theories, it is then that it becomes apparent that the circumstances of the position afford no real foundation for the expectation that the administration of justice to British subjects will be either more effectual or more impartial for being entrusted to Foreigners and strangers rather than to fellow-country-men—to Natives rather than to British subjects.

"But this, I may be told, is my idea—only my idea. Let the Native speak for himself. I shall quote, my Lord, from the *Madras Native Opinion*, a newspaper edited by a Brahman of considerable culture, a Native who has the interests of Natives, the interests of his country, very much at heart. He writes in a leading article of that paper, dated 14th February, 1883:—

'Let us take, for instance, the case of a Deputy Magistrate of the first class who is called upon to try a case between two Europeans, one, say, a Covenanted Civil Servant, and the other a merchant or a planter. The case may be one of assault or defamation, and have arisen out of some episode at a ball, a club-room, or a dinner party. Now, if the Deputy Magistrate happens to be a Brahman (as almost all of those on the Madras establishment are) who has not been in Madras, and whose knowledge of English is but limited, what a predicament the poor man is sure to be in? He cannot possibly understand the allusions which will be made, and the conventional terms used in such a case, and he cannot very well engage an interpreter to explain what is meant! We leave our readers to imagine what the result will be, and what satisfaction the Magistrate's decision is likely to cause to the litigant parties.'

"And in a subsequent issue the same Native editor says—

'We must not lose sight of the fact that, while nothing is easier than for the European to obtain evidence or information on such matters in Native society as he might not know, the Native Magistrate is very differently placed. The *Munshi* and clerks of an Anglo-Indian Magistrate are Natives of the country, and if they are not able to supply it themselves they can easily obtain for their master any information the latter may need in connection with the disposal of cases. Now, to whom can the Native Magistrate turn when he has an Englishman brought before him?'

"And this Native editor is not alone in his opinion of the unfitness of his countrymen to try British subjects; but I must revert to the objection that, if it is right in theory for Europeans to try Natives, it is right also for Natives to try Europeans; and again I will say that, in my humble opinion, it is not so, because the case is not parallel. It is not as if Englishmen were asking to have authority to try Natives, as Natives are asking for jurisdiction over British subjects. The whole history of our Law Courts in India shows the fallacy of such an argument. Englishmen have no desire to try Natives because they are Natives. Indeed, they would never have tried them at all if they had been capable of trying themselves, and our whole aim ever since we came to this

country has been steadily in the direction of fitting them to try their own countrymen; and as we have found them more and more qualified, so we have gone on extending their jurisdiction over their countrymen, or, in other words, resigning to them more and more of the judicial work in connection with their own countrymen that we had in earlier years to do for them.

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

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

under the jurisdiction of Britons, and there was, and is still, *no necessity* for their being under any other jurisdiction.

"With the Natives, however, the necessities of the case were very different. It was impossible that the few and far between Englishmen should, in their own person, try all the teeming millions of Natives over such wide areas. The attempt would have been too extravagantly quixotic. They did the closest they practically could to it. In short, they aimed at the same thing for both; they aimed at giving the Native, as they gave their countrymen, the very best justice in their power to give; and while they gave the Briton the same as he had been accustomed to in the land of his nativity, they gave the Native of India a very great deal better than he had ever seen or heard or dreamt of before. And this they did by keeping the graver cases in their own hands, by deciding the intermediate cases on reports accompanied by the record, and leaving only minor cases to the decision of Natives. Then they fostered education, and they imposed examinations on candidates for public service, and subsequently they enhanced the scope of those examinations; and as they gradually qualified the Native for the right exercise of power, they entrusted him with more and more of it, till now we have Natives on the High Court Benches. I confess it puzzles me, my Lord, to see how anyone can say that the tendency of legal administration in India has not been uniformly and without anomaly in the simple and single direction of giving the best form of justice possible in the circumstances to all classes, Briton and Native alike. With Britons we started at the top, because, from the paucity of their numbers, it was possible to do so. With the Natives this was impossible, because of their countless numbers, and their unmanageable areas, compared with the mere handful of Englishmen that have governed this vast Empire. So we started as near as we could to the same point, and, keeping it ever in view, progressed steadily as circumstances allowed, always towards the same end. The progress has ever been upwards and the principle uniform. There has been no anomaly whatever, and there is no anomaly now in the sense urged in favour of this Bill. But to turn round now and progress downwards, by placing the British subject under a tribunal of less competency to do him justice than he already enjoys, and we have readily at command, and to do that for no better reason than to remove a fancied anomaly, that would be an anomaly indeed.

"'The anomalous nature of present arrangements' is one of the reasons put forward for the introduction of this Bill. Rightly examined, the anomaly lies, not in Natives having less jurisdiction out of Presidency-towns than they have in them, but in their having jurisdiction over British subjects anywhere. The anomaly lies in having made an exception of Presidency-towns. The anomaly lies in having, in Presidency-towns, departed from the simple prin-

ciple on which we had uniformly proceeded, of ever giving to both races the best justice practicable in the circumstances, in proceeding downwards instead of upwards. Remove that anomaly, and the position is logical and clear. But to set up that anomaly, and to base on it the claim to surround it with so many more anomalies that it shall cease to stand out singly as a marked anomaly, is to lead us blindly into a maze of anomalies in which we can never see our place to stop.

" If we must needs turn aside to such trifles as anomalies, and legislate on what I will take leave to call such very secondary grounds, then, to be consistent, we ought rather to wipe out this first great anomaly, and have done with the whole side issue, and revert to first principles—logical principles. But there is no need for this, and all I wish to say on this point is, do not let us bring the existence of one anomaly forward as a reason for justifying the creation of more.

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

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

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

"Once more, the same hand that sweeps away anomalies and partialities so as to lead us to a settlement that shall be final, introduces, by the same stroke of the pen, an incongruity and a piece of race partiality that, to my thinking, is more glaring than any which it removes. The effect of the amendment of section 443, by the elision of the words 'and an European British subject,' is not only to admit the Native to jurisdiction over British subjects, but by race distinction to bar the Briton, so that, if, for instance, the learned

and hon'ble member to my right (Mr. Evans),—distinguished member though he is of the Calcutta Bar; if the Lord Chief Justice himself—were to elect to offer their services gratuitously for the trial of their countrymen in Calcutta or elsewhere in India, as they might do, and as so many do in England, they would find that, by the Bill we are asked to pass, they would be legally disqualified by reason of their race. In spite of their having the highest possible qualifications, in legal knowledge, in knowledge of the classes to be tried, to wit, their fellow countrymen, they would be legally barred by race distinction—barred solely because they are Britons, barred in the interests of the more effectual and impartial justice to be administered by Natives, stigmatised—if we are to use such a poor argument at all—stigmatised, in order that no stigma may be cast on Natives; and this, we are told, is an element of finality. The barring of the Briton is to be final.

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

"As the word 'stigma' has been forced upon us, and we are called on to consider it in the course of this discussion, let me take the opportunity, before parting with the word, to say that, in considering their *circumstantial* disqualifications for trying Britons, I cast no manner of stigma on Natives—no more, in fact, than if the Commander-in-Chief, there, were to stigmatise me as unfit to command a brigade, or even a company. And even if it were a sort of fancied stigma not to be allowed to try a class of cases you were not calculated to be exactly the best man to understand; even if it were a hardship equal to being tried by a man who was not calculated to understand your case, and the hardships on both sides being equal—which, of course, they are not and never can be,—we were cast on the horns of a dilemma and had to choose between them, there still need not be a moment's hesitation about the choice, for the persons affected by the one hardship are in thousands, if not tens of thousands; whereas those affected by the other fancied hardship may be numbered on the fingers. On the principle, therefore, of the greatest good of the greatest number, there should not be a moment's hesitation about abandoning a Bill that legislates for the few against the many.

"To sum up the above objections and apply them to the Bill. Not only does this Bill not 'contain in itself', as is claimed for it by the hon'ble and learned mover, 'the elements of stability and durability,' but it is pregnant with exactly the opposite elements, and, therefore, by the corollary of that very proposition, this question ought not to be re-opened.

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

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

that the planters of Assam, of the Nilgiris, of the Wynaad and other places, with lakhs of rupees that they bring into this country, should not be discouraged, which, I am convinced, they will be if this Bill passes. I specially allude to planters, because, settling, as they do, in isolated positions, each a lone man among a hundred, they are specially trusting in, and specially entitled to, the best justice we can given them, a style of justice that shall give them a feeling of security.

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

"When this matter was discussed in 1872, there were no Native gentlemen in this Council. Now there are four hon'ble members, and they are called upon to decide with us on the liberties of the British subject. The appeal to try this question by 'impartial justice' is addressed to them as well as to us; and there is a side of the case which specially addresses itself to them. They are better able, perhaps, than we are to appreciate the value to them of the special concessions made to them,—concessions made, some of them, in the very face of Western notions of justice,—concessions simultaneouly denied to our own countrymen. I will touch with a word only, lest I should offend, such things as dancing girls, child marriage, child widowhood for life, plurality of wives, exemption on account of rank from appearance in Court, exemption on account of sex from appearance in Court—exemption that we do not accord to our own Princes and our own ladies. Natives are the best judges of the value to them of these and like privileges, and, accordingly, they have been allowed, and rightly allowed, to be the judges: their voices had ever prevailed; their wishes have ever been scrupulously regarded, the only test applied being, will it do any positive injury to anyone else to concede these privileges? If it will not, then, by all means, let us liberally concede them. This has been the principle that has guided the concessions to Natives. Is it not fair to let the same equitable principle govern the grant of concessions to Europeans? Britons are the best judges of the value to them of the privilege of being tried by Britons, a privilege of which they seem to think so much; and if it will not do any positive injury to anyone else to let them have the privilege, then, by parity of treatment, by all means let them have the privilege. This view of the case will, probably, commend itself to the minds of Natives as an impartial one. Again, what would Natives think if, with

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

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

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

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

"On the other hand, there are very large numbers who, whether rightly or wrongly is a secondary matter here, are, nevertheless, as a matter of fact, vehemently, aye vehemently, opposed to the Bill, and they come of a class, too, on whom all the best interests of India are immeasurably more dependent than they are on any other class. It is an obvious fact of which we cannot but take count, and their vehement feeling in the matter has led to the rousing and bringing prominently forward of the very feeling which the Bill was meant to allay—race antagonism—feeling given expression to in the Native Press, and thus disseminated, in much more violent and provocative language than Britons have indulged in. Now that it has been unmistakeably seen that the Bill has roused and keeps on intensifying the very feelings it was meant to allay, the Bill, if it is to be consistent with its aim, ought, I submit, to be withdrawn.

"That it is wanted for administrative convenience, as has been alleged, is a mere loose statement, which five minutes reference to the criminal statistics of the country would conclusively falsify. Theoretical positions may be set up, but so absolutely is fact against theory in this matter that I will not waste time on it.

"Though I have urged above that, in effect, the Bill does not give what it professes to give, I never meant to imply that, in theory and in the minds of the framers, it was not honestly, generously intended and expected that it should and would give it. Who would doubt it? Not doubting it, I venture to urge that the same soul of honourable, generous impartiality which lay behind the idea that prompted the Bill, should equally impel the advocates of this Bill to abandon it, now that it is unmistakeably clear that the Bill will not forward, but will positively thwart, their liberal intentions. I am not one of those who cannot admit honourable, high-minded intentions in those who think differently; nay, rather, I venture to make an appeal to those very intentions to which I pay all honour. If it is manly in an individual to admit a well-intentioned error, and he only rises in our estimation for the generosity of the admission—and none but the mean spirited will impute it to weakness—may not a Government also, conscious of its strength, do the same with advantage, advantage both to its own credit and, what is of much more importance, to the interests of the great country committed to its charge? By the introduction of this Bill, the Government has made it abundantly plain that it entertains the most liberal intentions towards the Natives of India; that it has placed beyond a doubt; that surely will henceforth be accepted on all hands without a question; and that having been demonstrated, surely the Government is in the best possible position for saying in effect if not in word, to the peoples of India—'Though we entertain these unquestionable sympathies, yet, in the course of the ventilation which this Bill has undergone, we have come to know that the passing of the Bill will not compass for you the advantages we had aimed at, but will, on the contrary, injure you seriously, by rousing a deep feeling of race antagonism in a class on which all your best interests are immeasurably dependent for justice, intelligence, capital, energy, progress in civilization, commerce, agriculture and all the material elements, of peace, plenty and health. Though in an infinitesimally minor degree, the Government itself also is not without indebtedness to the martial loyalty of the class that strengthens Her Majesty's forces in India by the supply of some ten thousand volunteers of all arms. We have accordingly resolved, in the best interests of the very people for whom this Bill was introduced, to abandon it.' If the Government can do this of its own motion, it will, I submit, take

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

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

"The Government has only very recently taken additional steps for the better ventilation of Bills, with the avowed intention of availing themselves, in the interests of the country, of the better light shed by such increased ventilation. Here, then, in the deep and widespread agitation and vehement expression of strong feelings, is the very light they have courted. Will they cast aside the very light they have courted on the very first exhibition of it ? Will they not rather recognise that it is the very light they courted, and, in consonance with their own previously expressed policy, rather use it in the best interests of the country ? Surely they are in an advantageous position for doing so without risk of being misunderstood.

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

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

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

The Hon'ble Mr. REYNOLDS said:—"My Lord, I shall not detain the Council with more than a very few remarks, but I wish to take this opportunity of expressing my cordial approval of the principle of this Bill. That principle is clearly explained in the Statement of Objects and Reasons, and

has been further explained to-day by the hon'ble member in charge of the Bill. It is simply this, to do away with all judicial disqualifications which are based upon mere distinctions of race. What we have to look at in a Judge or a Magistrate is, not his colour, but his character; not his pedigree, but his ability and his integrity. I was a member of the Select Committee last year on the Bill to amend the Code of Criminal Procedure. The question of the exceptional position of European British subjects under the criminal law was raised in the course of the discussion upon that Bill; but it was brought before the Council in a form, and at a stage of the proceedings, which precluded us from taking it into consideration, except at the risk of deferring the passing of the Bill to another session, and thus delaying the introduction of those useful reforms which have now become law in the amended Code of Criminal Procedure. But a promise was then given by the Government that the matter should not be lost sight of; and I presume that the Government had this promise in mind when it was determined to introduce the present Bill.

"I not only accept the principle of the Bill, but I entirely approve of the system on which it is proposed to carry that principle into effect. This is a Bill for levelling up, not for levelling down. It does not take away from Englishmen the cherished right of being tried by their peers, but it declares that a Magistrate shall not be precluded from being deemed the peer of an Englishman merely because he happens to be a Native. In the criticisms which have lately been poured out upon the Bill, it has been confidently asserted that this is a measure for removing a mere sentimental grievance; for dealing with a difficulty which may arise at some future time, but which has not yet assumed a practical shape. The authoes of those criticisms must have been imperfectly acquainted with the facts of the case. In August last, Mr. Romesh Chunder Dutt, a Covenanted Civil Servant, was appointed to officiate as Magistrate and Collector of Balasore, and he has now been again appointed to officiate as Magistrate and Collector of Bakirganj. Mr. Dutt is an officer of some distinction in the service to which I have the honour to belong. He stood second in his year at the final examination in England; he is a barrister-at-law; he has filled subordinate appointemnts with credit; and he has written ably and successfully on economic questions in Bengal. It is something more than a sentimental grievance that such a man, who is thought competent to hold the chief executive charge of a district, should remain under a legal disqualification for exercising the powers of a Justice of the Peace. Such a disqualification hampers the Government in the selection of its officers, and weakens the hands of justice, and I should rejoice to see it removed from the Statute-book.

" If, therefore, the motion before us to-day, instead of being merely a motion for the publication of papers, had been a motion to refer the Bill to a Select Committee, I should have had no hesitation in voting in favour of it. I do not say that I am entirely satisfied with the provisions of the Bill. I feel considerable doubt whether the first section has not been too widely drawn, and whether it would not have been better to restrict the operation of the measure to officers, whether Covenanted Civilians or not, who might be actually appointed to be Sessions Judges or District Magistrates. But points of this kind do not touch the principle of the Bill, and the Select Committee would be the proper place for their consideration.

" It is, of course, a further question whether, in view of the determined opposition which this measure has encountered, it would be prudent in the Government to make any further attempt to pass it into law. It appears to me that this is primarily a question for the Executive, but I imagine it is quite within the competence of this Coucil, as a legislative body, to say that, though the abstract principles of a measure may be equitable and right, it would be impolitic and inopportune to make them part of the law of the land That, however, is not a question which we are called upon to consider to-day. If the present ferment should subside; if the passions which have been aroused and the misrepresentations which have been made, should disappear before a calm consideration of what the Government really proposes to do, and what the effects of its legislation are likely to be, I should gladly give my vote, when the time comes, for passing into law a measure based upon the principle of this Bill. But if, on the other hand, postponement and reflection should intensify the feeling which undoubtedly exists to-day; if it should be made clear that the deliberate verdict of the European community in India is opposed to any such legislation as this; if the appeal to Philip sober, which is now to be made, should be dismissed on the merits of the case,—the Government would undoubtedly incur a serious responsibility by asking this Council to pass the Bill. "

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

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

" As to race prejudice, which has been already referred to, I for one think that it has little or no existence in fact. With the progress of English educa-

tion and increased intercourse with Europeans, I am glad to say this feeling has no place in the minds of educated Natives, and that any apprehension as to failure of justice in their hands appears to me wholly groundless.

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

"It has been said that the passing of the amendment will prevent the introduction of British capital and enterprise into this country. I cannot bring myself to believe that anything of the kind will ever happen. The same argument was employed when Act XI of 1836, bringing our European fellow-subjects within the jurisdiction of the Mufassal Civil Courts of the East India Company, was passed, and we now see how the predictions then made have been wholly falsified.

"The Government of this country has, I am aware, my Lord, been of a most liberal and lenient description for many years past; and all educated Natives are, I am sure, deeply sensible of the great debt of gratitude they owe to the English nation for the conciliatory spirit which has been shown by the rulers of this country, when they might, with impunity, have acted in so very different a manner. The aim and object of the English Government has, I believe, been to make the people of this great Empire loyal and contented

subjects of our Most Gracious Queen ; and this object has hitherto been gained by the wise policy pursued by your Lordship and your predecessors, of treating all Her Majesty's subjects, whether Natives of this country or Europeans, as far as has been possible, with equality."

The Hon'ble SAYYAD AHMAD KHAN said :—" My Lord, as this is probably the only opportunity which I shall have of expressing my views on this important measure, I am anxious to offer a few observations. I am aware, my Lord, that this Bill has been the subject of much discussion by the public Press, and has given rise to excited agitation among the non-official section of the European and Eurasian community, who feel that their liberties are imperilled by the proposed law. I have not the smallest wish to assign unworthy motives to the agitation ; and far be it from me to say that the views which that agitation represents should not be duly considered by the Legislature. Never has the Indian Legislature been more anxious to consult the views and feelings of the public regarding legislative measures than the present Government of India. With every wish that the views put forward by the European and Eurasian community should be duly considered, I confess, my Lord, I cannot help feeling deep and sincere regret at the attitude which the agitation against this Bill has adopted. Vehement and somewhat unmeasured language has been used by the agitators against my countrymen. I sincerely deplore this circumstance as much for the sake of the leaders of the agitation themselves as for the sake of the feelings of my own countrymen. And here, my Lord, permit me to express a sincere hope that my countrymen will in no part of India follow the example of those who think that the vehemence of public demonstrations is the best way of submitting arguments and claims for the consideration of the Legislature. The people of India, strongly as they feel in favour of the justice, the wisdom and the expediency of this Bill, need no demonstration in favour of the measure ; and if I know the views of the leaders of Native society, I cannot be far wrong in prophesying that the people of India will not resort to any public demonstrations in support of this Bill. They are content to leave the measure to be decided upon its own merits. As a Native of India myself, with every wish for the success of this Bill, I hope my countrymen will adhereto their present determination to watch the progress of this Bill with calm and respectful silence.

" My Lord, it is not unintelligible to me that the non-official European and Eurasian community, separated as they are by the distance of time and space from those influences which secure the progress of political thought in England, should in the circumstances of India attach exaggerated importance to distinctions of race and creed, that they should upon such occasions emphasise the fact

of their belonging to the ruling race; that they should claim for themselves especial provisions in the general law of the land. My Lord, all this is intelligible to me; but, at the same time, I cannot help feeling that a good deal of the opposition offered to the Bill arises from inadequate information in regard to the history of Indian legislation in matters of a similar nature, and from a misapprehension of the small change which this Bill proposes to make in the existing law. My Lord, I do not claim to be an authority on questions of constitutional law; but I may safely doubt the legal accuracy of the contention, which has been put forward elsewhere against this Bill, that the European and Eurasian subjects of the Queen Empress in India have any such constitutional rights as would place them above the jurisdiction of the Indian Legislature. As an humble member of the Indian Legislature myself, I would repudiate any such limitation. We derive our powers from the great Parliament of England; and, so long as we do not exceed those powers, it seems to me erroneous to doubt the legislative authority of this Council in all matters connected with India. History repeats itself, and we have in the present agitation against this Bill a repetition of the arguments and sentiments employed by the alarmists of many years ago, when Native Judges presiding in the Courts of the East India Company were empowered to try civil suits to which Europeans and Eurasians were parties. My Lord, I hope I may, without fear of contradiction, say that the exercise of civil jurisdiction by Native Judges in cases to which Europeans are parties has not given rise to any injustice, not even to complaint on the score of national differences. The truth is, that the fears of the alarmists of those days were unfounded, and their prophecies were bound to prove false. At this moment throughout British India, Native Judges exercise civil jurisdiction over Europeans in a manner which certainly is not open to the charge of being influenced by race distinctions. But then, my Lord, it is sometimes urged that civil jurisdiction is vastly different to criminal jurisdiction; that the former affects property only, but the latter affects personal character and liberty; and that, whilst the European and Eurasian community may be willing to subject themselves to the civil jurisdiction of Native Judges, it does not follow that they should do the same in criminal matters. My Lord, I confess I am unable to see the reason upon which such distinction is based. The decrees of Civil Courts can reduce a man from opulence to poverty, and there are some branches of civil jurisdiction which not only relate to personal relations, but include the power of personal arrest, and, in the interests of justice, authorize a procedure similar to that provided for Criminal Courts. The process of arriving at conclusions as to the facts of civil cases is much the same as in criminal cases. The same law of evidence in India regulates the investigation of truth in Civil and Criminal Courts. The judgments

of Civil Courts may stain the reputation and ruin the character of parties nearly as much as sentences passed by Criminal Courts; and it seems to me that there is no substantial foundation for drawing a distinction in principle between judicial powers of the two classes of Courts, or for attaching greater importance to one class of jurisdiction than to the other. If probity, justice and absence of race bias are found among Native Judges in civil matters, it is difficult to perceive why the same qualities should not mark their administration of criminal justice in cases in which Europeans and Eurasians are concerned. As I understand the existing law, all Native Magistrates already exercise jurisdiction in criminal matters, in cases in which Europeans are complainants and seek redress from the Courts as injured parties. I have never yet heard that European British subjects have any objection to resort to Native Magistrates for redress; indeed, they do so without any hesitation. If this is so, there seems no reason why the same confidence should not be shown to those tribunals in cases in which complaints are brought against European British subjects. Counter-charges are not uncommon in criminal cases. Magistrates competent to give redress ought to be competent also to award punishment; and it seems unreasonable and unfair for any section of the community to say 'We will go to Native Magistrates for redress, but we will not submit to be tried by them.' Indeed, my Lord, it is hardly necessary to say that, even under the existing law, Natives of India exercise a good deal of criminal jurisdiction over European British subjects. Even outside the Presidency-towns' I believe it is not a rare occurrence that European British subjects, appearing as defendants before Native Magistrates, waive the exceptional privilege accorded by the existing law. There is no judicial disqualification based on race distinction in the powers of the Native Judges of the High Courts and Magistrates in Presidency-towns; and I need have no fear of contradiction in saying that Native officers, when entrusted with criminal jurisdiction over European British subjects, have performed their duty with honesty and efficiency, and without any bias arising from distinctions of race or creed. Indeed, my Lord, in educated minds, employed in the solemn and sacred duty of administering justice, the claims of humanity at large to the protection of law, and the dictates of conscience, leave no room for any other considerations. In the neighbouring island of Ceylon, which forms a part of the vast Empire of Britain, I believe I am rightly informed, Native Magistrates and Judges exercise criminal jurisdiction over European British subjects. Judicial disqualifications based on race distinctions are unknown in that country. Yet British capital and British commercial enterprise, far from being driven from that island, have had considerable scope in that colony. The interest of coffee-planters in Ceylon is, so far as I know, in no sense inferior to the interest of indigo-planters in Bengal;

and the people of Ceylon are in no sense less Asiatic than the people of India. Nor would their staunchest patriot in Ceylon claim for his countrymen a higher position in the scale of civilisation than he would concede to the people of India. Yet the existing law of British India in regard to criminal jurisdiction over European British subjects is behind the law of Ceylon, and, my Lord, I do not think it unreasonable for the people of India to feel that the time has arrived when the necessity of improving the law has become urgent.

"So far, my Lord, I have endeavoured to show that the proposed law is no innovation in principle, that the fears of the opponents of this measure are exaggerated and ill-founded, and that the example of Ceylon furnishes a practical illustration of the argument that the removal of judicial disqualifications, based entirely on race distinctions, will not be attended by any injury to the sacred cause of justice. And, my Lord, I may here repeat that the scope of the Bill seems to have been greatly misunderstood by the promoters of the agitation against it. As I understand the Bill, it does not propose to invest every Native Magistrate with power to try European British subjects. It is only in the case of those Natives of India whose recognised probity and ability have enabled them to achieve positions in the Judicial Service equal in rank to English officers of the higher order that the Bill proposes to remove judicial disqualifications based on race distinctions. The number of such Native officers is very limited ; and the Bill cannot, therefore, in any reasonable sense, be regarded as precipitate or calculated to cause any serious practical change in the present machinery of the administration of justice.

"But, my Lord, putting aside these considerations, it seems to me that there is much fallacy in the argument which attaches so much significance to race distinctions. What the people obey in countries blessed with a civilised Government is, not the authority of individuals, but the mandates of the law. So long as the law is just, impartial and humane ; so long as the proper administration of that law can be secured, the nationality of those who carry out the law should be of no consequence even to sentimentalists. What requires respect, submission and obedience is the authority of the law, and not that of individuals, and even those who regard the people of India as not entitled to equality with themselves might, if they only consider the question calmly, feel that Native Magistrates are only the servants of the State, charged with the duty of carrying out the behests of the law. It is the duty of the State to provide for the proper administration of the law. To secure this object, the State has to choose the best available agency, and it seems a somewhat untenable and unjust proposition for any subjects of the State to

insist that, in the choice of officers, Government shall confine itself to any particular race or section of the community. The whole question raised by the Bill, in my humble opinion, practically amounts to what I have just said. It is a matter the principle of which requires no new decision. The question was discussed and it was decided, and decided nobly, when the magnanimity and justice of England accorded to the people of India rights of employment in the service of the State on the same footing as Englishmen themselves. That noble decision has, in recent years, received practical effect, and administrative expediency requires the moderate change which this Bill proposes.

"But, my Lord, this Bill has in its favour considerations of a higher order than even administrative expediency. I allude to those noble principles of freedom, justice and humanity which have their home nowhere as much as in the bosoms of the nation which first came forward to release the slave from his thraldom; which first announced to the people of India that, in matters of constitutional rights, distinctions of race and creed should have no place in the eye of the law. Never in the history of the world has a nation been called upon to act up to its principles more than the British in India. The removal of disabilities under which certain sections of the community laboured in England in regard to constitutional rights sinks almost into insignificance in comparison to what England has already done in India. The history of Indian legislation is the history of steady progress, of well-considered reforms, of a gradual and cautious development of the noble principle that between British subjects the distinctions of race, colour, or creed shall make no difference in legal rights; that whilst, on the one hand, British rule enforces submission, and expects loyalty and devotion from the people of India, on the other hand, it accords to them rights and privileges of equality with the dominant race. My Lord, I am convinced that it is on account of these noble principles, remarkable alike for their justice and for their wisdom, that the British rule has founded itself upon the hearts and affections of the people —a foundation far more firm than any which the military achievements of ancient conquerors could furnish for the domination of one race over another. History teaches the lesson that nothing is more destructive to the prosperity of a country than that race distinctions should be maintained between the rulers and the ruled. No one can be more anxious than myself that friendly feelings should grow even more than they have already done between the English nation and the Natives of India. Providence has thrown the two races together in a political and, I hope I may also say, social union, which will grow firmer and closer as time goes on. My Lord, if I believed that the legislative measure incorporated in the Bill will prove destructive to the growth of friendly feel-

ings between the two races, I should have deprecated the introduction of the measure. But I can take no such view. I am strongly convinced that, so long as race distinctions find a place in the general law of the land, so long will there exist obstacles to the growth of true friendly feelings between two races. The social amenities of life arise from political equality, from living under the same laws, from being subject to the same tribunals. The caste system in India would, perhaps, never have held its ground so long, if the legislators of old had not framed one law for the Bráhman and another for the Súdra. Whatever the exigencies of former times may have been, I hope, my Lord, that a century and a half of British rule has brought us to that stage of civilisation when there is every reason for minimising race distinctions, at least in the general law of the land. My lord, I, for one, am firmly convinced that the time has come when the entire population of India, be they Hindú or Muhammadan, European or Eurasian, must begin to feel that they are fellow-subjects; that between their political rights or constitutional status no difference exists in the eye of the law; that their claims to protection under the British rule in India lie, not in their nationalities or their creeds, but in the great privilege, common to all—the privilege of being loyal subjects of the august Sovereign whose reign has brought peace and prosperity to India, and made it a place suitable for commercial enterprise, and for the pursuit of the arts and sciences of civilisation. My Lord, as this is probably the last occasion on which I shall ever address the Legislative Council of India, I cannot conclude my observations without saying that your Lordship's administration is to be heartily congratulated upon having brought forward a measure which, I am convinced, will go a great way to remove invidious race distinctions, and ultimately promote good feeling, mutual respect and sympathy between the rulers and the ruled in this land of many races and many creeds."

The Hon'ble MR. HUNTER said:—My Lord, after very careful consideration, I feel constrained to support this measure. In doing so, however, I hope that I shall not disregard either the expressions of disapproval which have reached us from without, or the arguments which have been so skilfully arrayed against the Bill in Council to-day. I agree with the opponents of the measure, that there is a body of personal law peculiar to European British subjects in this country—a law which accords to them highly-prized exemptions and privileges. I agree that there is likewise a personal law peculiar to certain classes of our Native subjects—a law which is equally valued by them. I agree that, as we have respected the exemptions and privileges secured to our Native subjects by their personal law, so we are bound to respect the exemptions and privileges enjoyed by European British

subjects under their personal law. I am prepared to go further, and to maintain that, in the early days of English rule in India, the personal laws of the various classes formed the main body of law administered in our Courts. The history of Anglo-Indian legislation is the history of the absorption of these personal laws peculiar to classes into a commen system of law applicable to all. By this process of absorption, the personal law of each class has been gradually but steadily curtailed. It is this process of absorption which supplied what the Marquis of Wellesley termed the "active principle of continual revision" that struck him as the salient feature of the Bengal Regulations in 1805. During the last 80 years the process has gone on at an accelerated pace, until the special privileges now left to the Natives of this country, the peculiar exemptions still claimed by European British subjects residing within it, are a mere fragment of the privileges and exemptions which those classes severally enjoyed when Lord Wellesley delivered his Discourse. At each important stage in the process, there has been an outcry from the class whose personal law it has curtailed. Indeed, no class of men can be expected to part with their special privileges without opposition. It seems to me that a Government is bound to listen with great respect and sympathy to such an opposition, and that it ought to refrain from such changes, except when they are clearly demanded by the common weal. But when such a change becomes really necessary for the better administration of the country, then I hold that Government is bound to make it; however much it may regret that it has to purchase a benefit for the whole body of its subjects, at the cost of the natural resentment of a section of them.

The curtailment of class distinctions which this Bill will effect is no isolated act. It forms one of a long series of measures absolutely inevitable in moulding the laws of the various races, from which our administration of justice in India started, into a common body of law applicable to them all. Permit me for a moment to remind the Council how this process has affected our Hindu and Muhammadan subjects. The Charter of 1753 expressly exempted suits between Natives from the jurisdiction of the English tribunals, then styled the Mayor's Court.* The Governor General guaranteed in 1772 their own laws to the natives, and provided that Maulvís and Bráhmans should attend the Courts to expound those laws.† By the Statute‡ of 1781, the British Parliament secured the Hindus and Muhammadans, not only in their law of inheri-

* Charter of George II granted in 1753.

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

‡ 21 Geo. III, c. 70.

tance, succession, etc., but also in "all matters of contract and dealing between party and party." The same Statute guaranteed to them their domestic law of the *patria potestas*, and the punitive sanctions of caste. It provided that no act done, and therefore no penalty inflicted, in consequence of caste rules should "be held and adjudged a crime, although the same may not be justifiable by the laws of England."

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

In all this the Government has done wisely and well. In doing so, however, it has had again and again to encounter a clamorous but quite natural opposition from those whose ancient privileges or personal law it curtailed. I shall not cite instances where the gain to the community at large was beyond question, but one in which the necessity for a change seemed doubtful to many. There are no branches of the Native law more solemnly guaranteed to the Hindús than those which deal with marriage and inheritance; and there is no principle more clearly established than the deprivation of rights to family property in the case of a Hindú becoming a convert to another

religion. Yet a series of *Lex Loci* Acts, initiated in 1832, and ending within our own experience, have repeatedly interfered with the most cherished feelings of the Natives in these matters. In each case since 1842, the Natives have struggled against the change. With them, inheritance is not a mere question of gain or loss in this world, but involves the safety of the souls of their ancestors, and their own happiness or misery in the future life. They have pleaded Parliamentary guarantees, the solemn declarations of the Indian Legislature, the established usage of a century of British rule. With one temporary exception, they have pleaded in vain.

The personal law and exemptions peculiar to European British subjects in India have undergone scarcely less important curtailments. The legal status of the non-official Englishman in India commences, for practical purposes, with the Charter of 1813.* During the preceding half century, the English non-official in rural Bengal had passed through various stages, as an interloper, a licensed adventurer, a subordinate agent of the East India Company, and a partner, recognised or unrecognised, of its servants in their private trade. He might execute a bond making himself amenable to the Company's Civil Courts, and after 1787 he had to do so before he was permitted to reside in the interior. In criminal matters he was subject only to the Supreme Court and Her Majesty's Justices of the Peace in Calcutta. He practically, therefore, remained outside the Company's system of administration as an unmalleable unit of sturdy independence and growing importance in whatever district he settled, disliked and often unfairly treated, but very difficult to reckon with. In matters of criminal jurisdiction he was under the surveillance of the rural police instead of being amenable to the rural Courts. As late as 1817 a Regulation was passed requiring the police to submit yearly to the Magistrate of the district a list of all Europeans residing within it. Indeed, until the Government passed to the Crown, each police-inspector had to report the arrival of every non-official European who came within his circle.

The charter of 1813 threw open the Indian trade to private enterprise, and at the same time created a jurisdiction over the Europeans who might embark in the business. It provided that every British subject living at a distance of more than ten miles from the Presidencies should be amenable to the Civil Courts of the East India Company in like manner as Natives of India. It also empowered the Governor-General to appoint Justices of the Peace from among its Covenanted Ser-

* 53 Geo. III, c. 155.

vants, or other British residents, with petty criminal jurisdiction over British subjects, not exceeding a fine of Rs. 500, or in default two months' imprisonment. As the number of Europeans increased in India, the powers of the Justices of the Peace were extended by a Statute of George IV.* All powers, whether civil or criminal, were exercised only by Europeans, because at that time the Natives of India had been excluded from the higher judicial offices which they held in the early days of the Company, and had not yet been incorporated as a branch of its Uncovenanted Civil Service. But when the Company withdrew from its trade after 1813, it set itself to the task of improving its rural government. By a series of measures between 1821 and 1836, it increased the powers of its Native Judges, and admitted the Natives of India to a large share of the civil judicial administration. It followed that, if Natives were to do the staple work of civil justice, they must exercise jurisdiction over the whole body of inhabitants within their district. By a series of laws in 1836, 1839 and 1843, their jurisdiction was therefore extended over European British subjects. It was enacted in comprehensive terms that, thenceforth, no person should by reason of place of birth, or by reason of descent, be in any civil proceeding exempted from the jurisdiction of any of the Company's Civil Courts.

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

* 9 Geo. IV, c. 74, sections 92, 97, 113, 121, 124.

series of administrative measures to protect British capital, and to render British enterprise possible in rural India.

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

---

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

† *Idem*, section 6.

My Lord, I think that the Legislature decided wisely in 1872; but that we should decide wrongly if, in 1882, we supported its decision. The circumstances of the country at large, and of the special class of public servants to whom jurisdiction will be given, have altered during the ten years. The administrative necessity for the change, which was then remote, has now arrived, and will soon become urgent. Even before 1872, criminal jurisdiction over British subjects had been given to Native Magistrates in Calcutta, and both Hindú and Muhammadan gentlemen have exercised these powers in the Calcutta Courts. But it was not considered safe to entrust the same powers to Native Magistrates in the districts, because it was feared that public opinion, which would check any miscarriage of justice in Calcutta, might not act with equal force upon District Magistrates. I think that this was a good argument in 1872. But new enterprises have since then brought an influx of Englishmen into the interior, and created an amount of independent English opinion in the districts which could not have been anticipated in 1872. I, for one, read with pleasure the telegrams which have poured into *The Englishman* during the past month, from every part of Bengal where Englishmen reside. Those telegrams show that our non-official countrymen are strongly opposed to the measure which I advocate. But they also show that Englishmen in the interior have now the means of expressing the public opinion of their class with such promptitude and with such force as to constitute the strongest possible guarantee against the abuse of magisterial powers, whether vested in European or in Native hands. Not only is English public opinion in the districts stronger, but English public opinion in Calcutta acts much more directly upon the District Magistrates. Since 1872, the length of railways open in India has increased from a little over 5,000 to close on 10,000 miles. The number of private telegrams sent has increased from 600,000 to 1,337,526. The number of post offices and letter-boxes has, during the same period, multiplied from under 5,000 to more than 11,000; and the number of letters, newspapers, etc., from 89 millions to 158 millions. Districts formerly isolated have now speedy and constant communication with the capital. Nor is it too much to say that English public opinion in the remote province of Assam can now be brought to bear as powerfully and as immediately upon the central Government, as the English public opinion of Calcutta could twenty years ago.

The circumstances of the special class of public servants, to whom it is proposed to give jurisdiction, have also changed. In 1872, the Native Covenanted Civilians appointed by open competition in England were untried men, who had yet to prove their fitness for the offices entrusted to them. They have, during the past ten years, abundantly proved it. They have established

their reputation as painstaking, impartial officers, and in a special manner they have shown their capacity for sound judicial work. Nevertheless, if a distinct administrative necessity had not arisen, I should decline to support a change which must be painful to an important section of the community. But such a necessity has now arisen. The Council has before it the reports from the various Local Governments in favour of this measure. I shall not, therefore, say more with regard to them, than that they present to my mind an overwhelming preponderance of opinion which it is difficult for the central Government to disregard. But I shall show, by one or two individual instances, the way in which the present anomalous state of things works in the rural districts. The Native Civilians have now reached a stage in their service when they must become, in the natural course, District Magistrates and Sessions Judges. We have guaranteed to them equal rights with their English brethren, yet they must be excluded from those offices in the more eligible districts where English private enterprise exists, and they must be turned out of those offices in any district into which English private enterprise comes. Let me illustrate this by two examples; one taken from Bengal, the other from Bombay. On the 17th January last, a Native Civilian was, in the ordinary course, appointed Joint Magistrate, with powers of a Magistrate of the first class, at the important station of Dháká. On the 23rd January, he received a letter from the Secretary to the Bengal Government, cancelling the appointment and transferring him to a less eligible district, on the ground that the opening out of the Dháká and Maimansingh railway was bringing a number of Europeans into the Dháká district. The gentleman thus disqualified had won the second place in this year, by open competition in England, from among several hundred candidates; he is an English barrister, and he had proved his fitness for the post from which he was turned out by twelve years of service. In the Bombay Presidency, a Native Civilian holds the important office of District and Sessions Judge of Kanára. His head-quarters are at Kárwár, the coast terminus of the railway which, some time ago, was proposed to be constructed from the Dhárwár cotton country. If this scheme should be revived and the railway sanctioned, the Sessions Judge of Kanára would, under the exigencies of the existing law, have to be turned out of his district. Let us see what this practically means. The gentleman in question is Mr. Tagore. After a distinguished education, both here and in England, he has given about twenty years of unblemished service to the Government, and has established a high reputation as a Judge. He is a near relative of our late colleague, the Maharaja Sir Jotíndra Mohan Tagore, who, during an unusually prolonged period, assisted this Council in making the laws of India. The well-earned encomiums in which Your Excellency expressed your sense of the services thus rendered

are still fresh in our memories. Yet we are told that we must not entrust to a member of the same noble house, notwithstanding his training in England and his twenty years of proved integrity as a Judge, the power of sentencing a European British subject to a short term of imprisonment. This, too, although the European British criminal has the right of immediate appeal from any sentence of imprisonment, however brief, and from any fine, however small. If it were necessary I could multiply examples. Unfortunately, the time has come when such examples will year by year multiply themselves, unless the existing law is changed.

Since this Bill was introduced, I have taken occasion to consult several of the leading Native Civilians who were appointed by competition in England. They complain that under the present law they will be excluded, as Magistrates and Sessions Judges, from the advancing districts into which British enterprise comes; and that they will be condemned to backward or remote districts where they will have less opportunity of distinguishing themselves, or of proving their fitness for higher offices. They urge that in Bengal, for example, this means that they will be shut out, as Magistrates and Judges, from the healthy Province of Bihár, and condemned for the most part of their career to the miasmatic Delta. The pleasant regions of Tirhut and Patna will be denied to them: the swamps of Bákirganj and Noakháli will be permanently at their disposal. They contrast this state of things with the long series of declarations by Her Majesty's Government presented to Parliament, beginning with the Queen's Proclamation to the Chiefs and people of India in 1858, and ending with the Despatch of the Secretary of State, dated the 10th July, 1879. They rebut the plea that it is not essential that the Magistrate of the district should have power over Europeans if his Joint-Magistrate has these powers, by bringing forward a long list of districts in which there is no Joint-Magistrate. They expose the fallacy of the argument that in cases where a Sessions Judge has not these powers a European criminal can easily be transferred to another district. In the Bombay case which I have cited, a European criminal, together with the prosecutor and witnesses, would either have to be sent several hundred miles by sea to the Presidency-town, or the whole party would have to be marched inland, under guard, nearly 100 miles, in part across a tract malarious during the rains, to the head-quarters of one of the adjoining districts. The present law not only acts as a disqualification to the Native Judge, but it operates as a hardship to English criminals, prosecutors and their witnesses. The fact is, as shown by the Dháká case, that the Native Magistrate and Judge must either have jurisdiction over Europeans, or they must go elsewhere. They urge that Government will have to regulate its

appointments, not by the merits of an officer, nor by his general fitness for a district, but by his power to deal with a small exceptional class of cases occurring within it. Yet by the orders of repeated Secretaries of State, orders formally placed before Parliament, the Native officers thus disqualified will in time form a substantial proportion of the whole Covenanted Civil Service. They point out that this is not only an injustice to themselves, but also a source of weakness to the Administration.

The admission of the Natives to the Covenanted Civil Service was one of the results of the Queen's Proclamation when Her Majesty assumed the Government of India. In that Proclamation she commanded that her subjects, "of whatever race or creed, be freely and impartially admitted to offices in [her] service, the duties of which they may be qualified, by their education, ability and integrity, duly to discharge." The Covenanted Native Civilians have now reached a point in Her Majesty's service when the Government must decide whether it will or will not grant them criminal jurisdiction over European British residents, as the Company had in 1836 to decide whether it would grant civil jurisdiction over such residents to the Uncovenanted Native Servants. The Government has in 1882 simply reached the same conclusion as that at which the Company arrived in 1836. But the present, Bill provides the most ample safeguards against the abuse of the powers which it confers—safeguards so ample, stringent and complete as to destroy any further analogy between the action of the Legislature in 1836 and in 1882. For the present, I shall only deal with the case of Covenanted Civilians who have entered the service by competition in England. They are the class to whom the Bill is chiefly directed; they are the only class in regard to whom the Local Governments appear to have yet been consulted. So far as a scrutiny of the Civil List enables me to form an opinion, there are not above two or three Native officers, with the exception of those in the regular Covenanted Service, on whom any Local Government would confer the powers granted by this Bill for many years to come. At any rate, the Council has no evidence before it with respect to the other classes mentioned in the Bill. And I, for one, am not prepared to support, by speech or vote, the curtailment of privileges on which my countrymen set a high value, without clear evidence that the sacrifice is demanded on behalf of good administration and the common weal. Such evidence may be forthcoming at the proper stage, when the Bill reaches the Select Committee. But, meanwhile, I speak only of the principal class of Native public servants whom the Bill will affect, namely, those who have won their positions by open competition in England.

I beg the opponents of this measure to consider the very limited powers which the Bill conveys, and the stringent safeguards which it provides against their abuse. The native members of the competitive Covenanted Service are a select body of men, who have won their way into public employment by exceptional exertion, and by exceptional abilities. In youth they so far overcame the inertia of the climate, and the prejudices of their race, as to set forth to a country on the other side of the globe, on the chance of securing an honourable career by open competition. Most of them had already earned distinctions at Indian Colleges and universities. In England they had to partially re-educate themselves on a Foreign model. They had to compete in an examination framed to suit an educational system different from that on which they had been trained, and they won their appointments from among a crowd of competitors. Many of the Native Civilians thus selected are more English in thought and feeling than Englishmen themselves. After their arrival in India they have to pass through further tests, and to prove their fitness by years of faithful service, before they can receive the powers which the Bill confers. Even then, it is only if the Local Government is satisfied of the fitness of the individual officer that the powers are granted to him. And what, precisely, are these powers ? The highest are those granted to Magistrates of districts and Sessions Judges, officers of about 13 to 25 years' standing. A District Magistrate can sentence a Native of India to two years' imprisoment, with fine, or, in cases of cumulative sentences, and in default of payment of the fine, to four years. This Bill would only empower him to sentence a European British subject to a term not exceeding three months. A Sessions Judge may sentence a Native of India to death or transportation for life. This Bill empowers him to sentence European British criminals to only one year. A Native criminal can appeal only to certain Courts, and only against sentences of a certain degree of severity. The European criminal by this Bill is allowed the right of appeal to either the District Court or the High Court at his own option; and he may exercise that right against a sentence of a Magistrate or Sessions Judge, however small—against a fine of one rupee, or a single day's imprisonment. The European British subject is further protected by his race privilege of the writ of *habeas corpus*, and in any case important enough to come before the Sessions Judge, by trial by jury. Nothing can be further from the truth than the statement that this Bill disregards the different degrees in which the force of public opinion acts as a check upon miscarriages of justice in Calcutta and in the rural districts. A Native Magistrate sitting in Calcutta can at present sentence European British subjects to two years' imprisonment, and to a fine, with a right of appeal only from sentences of a certain gravity. This Bill confers on the same officer, if he is promoted to be Magistrate of a district, the

power of sentencing a European British subject to only three months' imprisonment, with the privilege of appeal from every sentence, however small.

I would ask the opponents of the measure whether they seriously believe that these safeguards are not ample for the purposes of justice. If they can suggest further safeguards, I feel sure that this Council will impartially listen to their proposals. I know it is hard for any class of men to part with its special privileges. The hardship is sometimes a matter of fact, and sometimes a matter of feeling. The class affected always believes that the hardship is one of fact. Whether Europeans or Natives, they plead the same argument of the thin end of the wedge, and of the total abolition of their class privileges which the change, however small, foretells. This argument was never better set forth than by the Hindus on the passing of the *Lex Loci* Act. They then expressed their belief "that the security in person, property and religion, hitherto ensured to them, thus undermined in one instance, would be eventually denied to them altogether." The forty years which have passed since these words were uttered have abundantly falsified the predictions which they conveyed. Nor have the apprehensions of the European community, on the passing of the Black Act in 1836, been more fully justified. The civil jurisdiction then granted to Native Judges seemed to our countrymen to destroy the sole securities which they possessed for their capital invested in the rural districts, and to threaten the extinction of British enterprise in Bengal. Europeans would be deterred thenceforth from settling in India, and it was vainly attempted to combat this statement by quoting Mr. Mill's evidence before the Committee of the House of Commons. The fifty years which have since passed, and the immense development of British enterprise under the protection of the rural Courts of Bengal, now supply an unanswerable refutation of such fears. Even the abolition of the Grand Jury in the Presidency-towns in 1865 sufficed to awaken serious apprehensions. "On the abolition of Grand Juries," said the circular issued by the Landholders' Association, "there would be no protection to gentlemen from being accused of crimes of which they were entirely innocent, whenever the local Magistrate was supposed to be inclined to believe in such charges, and of being put upon their trial whenever a credulous or prejudiced Magistrate would be found." A correspondent in the *Englishman* predicted that now that the Grand Jury was doomed, the right of calling a public meeting through the Sheriff "would be the next old institution voted effete." Another begged his countrymen to "beware of the doctrinaire dissectors. Cry out in time," he said, "and that lustily, or we may expect the fate of the eviscerated cat, whose personal objections to the operation are disregarded in the promotion of experimental science." The public meeting in Calcutta condemned by a formal

resolution "the proposed abolition of Grand Juries in the Presidency-towns; and on the contrary was of opinion that the institution should be extended to the Courts proposed to be established in the interior of India." One speaker regarded the abolition of the Grand Juries as "the thin end of the wedge" * * * "which threatens to bring down and destroy the whole fabric of our constitution." The *Englishman* newspaper, which has so ably brought to a focus the opposition to the Bill now before the Council, quoted with approval, in 1865, Sir Eardley Wilmot's protest against "any interference with this 'bulwark of the nation.'" My Lord, there have been individual miscarriages of justice since the abolition of the Grand Jury, as there were when it still flourished. But I feel sure that the English citizens of Calcutta, old enough to remember the state of things before 1865, will agree with me that the abolition of the Grand Jury has been a boon to the English community of the city, and a source of strength to the working of the whole jury system in the Presidency-towns.

I believe that the apprehensions now expressed with regard to the present measure will, ten years hence, be found to have been equally groundless. Meanwhile, we ought not to forget that those apprehensions spring from natural feelings of alarm in the minds of an important section of the community. If we can in any way allay those apprehensions, or conciliate those feelings, I think we are bound to do so. The honour of this Council, or the honour of the Government, is not involved in any hard-and-fast resistance on points of detail. Or, rather, the honour of the Government is involved in carrying out a measure which must necessarily be painful to an important class with the utmost consideration that it can show to their feelings. But with regard to the principle involved, I think the time has come when the Indian Legislature is bound to declare itself. At such a crisis, party spirit must run high. Several months will, however, elapse before the Bill can pass into law. During the interval the Council will have time to candidly listen to every argument, and to seriously consider every suggestion. If, in the heat of the discussion, fair arguments give place to ungenerous aspersions, our duty seems equally clear. We must meet obloquy with patience, and, assured of the justice of the measure, we must wait for time to dispel the apprehensions of our countrymen at present, as time has disproved their apprehensions in the past.

The Hon'ble RÁJÁ SIVA PRASÁD said:—"My Lord, this is the grandest concession to India. I would have called it the coping stone of the liberal policy of the Liberal Government of Her Most Gracious Majesty, whose worthy representative, the liberality incarnate, my Lord, you are; but no one can say to what a height the building is destined to reach during your Excellency's incumbency. So I content myself by simply saying that the measure will be

a magnificent addition to the list already long. The distinction of race in the Indian Criminal Procedure was one of the remaining mementos of the narrow policy of an honourable body of monopolist traders, though it might have suited or become a necessity at the time; but now it will be simply incongruous with advanced liberal ideas and the progress of the age. The concession is most unexpected and little asked for, and so the most valuable. I cannot conceal from your Excellency that the Indian branch of the Aryan race has been the most intolerant towards their conquered, and had no distinction between a conquered and a slave. Up to this time the Súdras, the remnants of the conquered aborigines, who form the mass of the population, are looked down upon by the military, and the then ruling class of Kshatryas, and the sacerdotal Bráhmans, as worse than slaves. The very name Dás, a corruption of Dasyu, means a slave or thief. Prohibition to wear the sacred thread has been for the poor Súdras a lasting mark of humility and subjection. Manu says, if any Súdra takes into his head to speak Sanskrit or to teach that language, 'scalding oil' is to be poured into his mouth; nay, 'on killing a cat, a weasel, a peacock, a frog, a dog, a lizard, and an owl or a crow, a Bráhman should expiate himself by the same penance which he has to undergo for killing a Súdra'—chapter XII, stanza 132. Further, 'having slandered a Bráhman, a Kshatriya becomes liable to a fine of 8,000 *kauries* (shells) amounting to less than rupee one and a half, but a Súdra merits death'—chapter VIII, stanza 267. Let us see how the Muhammadans treated their conquered. They did not regard the Hindús even as men; hence to massacre them, to enslave their wives and daughters, to plunder their property, to demolish their temples, to deface the images, to force beef down their throats by violence, are the subjects which fill the so-called histories of the time. Even so good-natured a writer as Amír Khusro was, alludes to the Hindús in such contemptuous terms as 'raven-faced' and 'raven-like in nature' (*Zigh-rú va Zagh Manish*). The administration of the civil and criminal justice was completely in the hands of the kázís, and no Hindú could possibly aspire to be a kází. No matter whether either or both parties were Muhammadans or Hindús, the judgment was invariably pronounced according to the Muhammadan law or Shara. The same Amír Khusro relates in his Teríkhi Alai that Alá-ud-dín Khilji once sent for a kází and asked him what was written in the Code of Muhammadan law regarding the Hindús. The kází answered that the 'Hindús were Zimmis' (condemned to pay the *Jizya* tax); if asked silver, they ought to pay gold with deep respect and humility; and if the collector of taxes were to fling dirt in their faces, they should gladly open their mouths wide. God's order is to keep them in subjection, and the Prophet enjoins on the Faithful to kill, plunder and imprison them, to make them Mussulmáns or to put them to the sword, to enslave them, and confiscate their property. Abu

Hanifa alone permits the levying of the Jizya, but the remaining successors of the Prophet have uniformly laid down that the Hindus ought to be made Mussulmans, otherwise lose their heads.' The Emperor smiled, and remarked that he did know what the Code might prescribe, but that he had issued an edict that only so much grain, milk and other articles of consumption as would suffice for a year should be left to Hindús, and that they should in no case be allowed to lay by any money. Akbar was the only Emperor who raised the Hindús and kept down the race distinction as low as he could, but that was a matter of necessity. He had seen how his father was driven out from India. He could not reckon on receiving any succour from Central Asia. His only hope for his Empire was with the Hindús, and the Hindús well supported him. Now the days have come that a Hindú is appointed by your Excellency Chief Justice, or Kází-ul-Kuzáat, of the metropolis of the Indian Empire. We Hindús do not consider the British as our conquerors. We do not only acknowledge the divine right of our Sovereigns, but find divinity in their person. I will never forget what the Pandits of Benares spoke to Sir William Macnaghten. I was then a boy reading in the Sanskrit College. Lord Auckland came with Sir William. His jemadar, being a Muhammadan, was stopped at the gate. Sir William asked the Pandits how it was that the English were allowed and the Muhammadans not. The Pandits quoted Bhagabat Gita that 'Rulers are divine.' Leaving aside the divinity for the present, is it not a fact that we sought the protection of the British? Jagat Seth Mahtábrai, one of the ancestors of the humble speaker, was one of those three who invited Clive to Murshidábád and helped him to establish the British supremacy in Bengal at the sacrifice of his own life. The idea of any restoration of a Kshatriyan Empire is as far from the bosom of a Hindú, as the idea of restoration of the Roman Empire in the family of Romulus, driving out all the 'barbarian' races across the Danube, is from the bosom of an Italian. Taimuri dynasty was gone; the choice lay between the bloody Muhammadans from the North-West, like Nádir Sháh, who massacred Delhi, or Ahmad Shah Abdali, who massacred Mathura, and the freebooter Pindari Mahrattas. India threw herself under the protection of the British like a sheep running from a tiger and a wolf to her shepherd. We look to our Sovereign Kaisar-i-Hind, not only as Divine ruler, but as our own mother. We take her as our own, and I leave it to the generous Christian feelings of the British nation whether we are still to be treated as a conquered and subjugated race. The *Indian Daily News* says very sensibly that 'we shall rise above class questions and race questions, and confess, even if it be with some natural reluctance, that the change in the law which is now proposed is practically inevitable. Besides, we have to consider whether determined and narrow adhesion to exclusive privileges is not the most dangerous policy the European commu-

nity could adopt. For the sake of England in India, and in order to further strengthen and cement the union between the two countries, is it not necessary that Englishmen should give the highest proof in their power of the thoroughness with which they adopt India, and take upon them the defence and advancement of her interests' ? The *Statesman* takes the same just and impartial view of the question. Though there is no doubt that a very strong feeling, whether right or wrong, but almost universal, exists against the Bill in the European quarters, as a gentleman was just the other day saying, wherever he went he was asked 'Have you seen that infernal Bill.' They take it as certain that all their countrymen who have to appear before a Native Magistrate will be sent to jail, and the reason they assign for it is the 'widening' as they are pleased to think, of the breach between the Natives and Europeans. Some say that there is neither newspaper nor High Court with astute barristers in the Mufassal ; but I do not know if there is any place in India now beyond the pale of the newspaper influence, or where barristers cannot go ; the wire has brought the High Court within an easy reach of everybody. As for a Native's sending a European or his wife to jail, there is no fear of that. If there is any fear, the fear is for his unjust acquittal. Mr. Duthoit, the Judicial Commissioner of Oudh, who is no mean judge of Native character, truly says : ' I do not mean that they (Natives) would be likely, as a rule, to press hardly upon Europeans ; I think, on the contrary, that they would, as a rule, unduly favour the Europeans.' Woe to the Native who has a European before him to judge ! His position will be most unenviable, and fool he must be if ever he takes into his head not to ask for transfer of the case to some other tribunal or not to acquit the culprit totally. So, whatever the Europeans may have to say against the Bill, they cannot show any good cause for its condemnation, except the domineering race pride, or, as Mr. W. B. Jones says, the 'unreasonable class prejudice,' which cannot brook any idea of equality ; but is such a pride to be encouraged ? Does it not widen the gulf which we are trying to bridge over ? Will it not keep the wound fresh which we want to heal up ? The Government is bound to exonerate the integrity of Her Imperial Majesty's Proclamation of 1858. It is true that the Natives will not gain much by this concession. At the same time, it is also true that not the least harm will be done to the Europeans. It may do, I may afraid, some harm to the Natives. This new power may stand, to a certain extent, as a bar in the way of their promotion to a District Magistracy or a Sessions Judgeship ; nay, some alarmists see a greater harm looming at a distance ; they argue in this way, that, if the Government has broken the acknowledged privilege or personal law of their own countrymen, the Britons, like a straw, how can they be expected to maintain very long our own privileges and personal laws, which, though dear

to us, but often approach absurdity in the eyes of the advanced civilisation. Simply an incongruity will be removed. Our European brethren ought to have a little faith upon their European Governors, and to be sure that these Governors will never appoint any one Justice of the Peace unless they know him to be the fittest man before whom, if occasion arises, a European can stand to be judged. Hear what Sir Alfred Lyall says:—

'No European officer is appointed to be a Justice of the Peace or Magistrate of a district or Sessions Judge, until he has been found to be, by experience and character, fitted to exercise the powers and perform the duties which are attached to these offices. During the period that ordinarily elapses before any officer can attain to the position of Magistrate of a district or Judge, or is appointed to be Justice of the Peace, ample opportunities are afforded of forming an opinion as to his qualifications for the offices in question; and he is not appointed to them if he has shown himself to be unfit to perform the duties and exercise the powers belonging to them. The interests of the European British subjects and of the administration would be sufficiently provided for, if the general restriction, under which no one who is not himself an European British subject has jurisdiction over an European British subject, being removed, power be left with the Local Government to appoint Justices of the Peace those Native members of the Covenanted Civil Service who have proved their fitness to exercise the jurisdiction. The Local Government would then apply the test of personal fitness to each particular case for Native as well as for European members of the Covenanted Civil Service.'

"The worth of the argument or analogy brought forward by my hon'ble colleague, the learned Dr. Hunter, that, if so many privileges of the Natives have been destroyed, why not this privilege of the Britons also is to follow suit, I leave to your Excellency to judge. However, I do not know if the Britons also burnt their widows like the Hindus, or killed their infant daughters like them.

"Now, so far, whatever I have said, I have said as a representative of the Native community at large, and have echoed India's voice; but, if your Excellency allow me to express my own individual opinion, may I ask whether this feeling, right or wrong, is to be totally derided and set at naught? I would rather join with the Commissioner of Coorg in saying that 'the provisions of the present law on criminal procedure, which limit jurisdiction to try, for criminal offences, European British subjects to persons who are themselves European British subjects, are wise, and should, for political reasons, be maintained.' I would rather agree with the Hon'ble D. F. Carmichael in saying that 'after all, there is such a thing as *privilege*; this one is highly valued by those who possess it, and certainly does no harm to the Native population; while its surrender would, in my opinion, cause great exasperation. I would rather coincide with the Hon'ble W. Hudleston in saying 'that the proposed extension of jurisdiction would be impolitic, and is not expedient; I am confident it would raise an outcry that would aggravate race friction far more than

the removal of the already existing disability attaching to a small number of officials would allay it.' I would rather side with the Right Hon'ble the Governor of Madras, on whom, if my memory does not fail me, almost the whole brunt of all the Parliamentary debate fell when he was Under Secretary for India under His Grace the Duke of Argyll, when he says such weighty words as 'it is perhaps a pity that a question was raised just now which affects so few people.' There is much truth in Sir James Stephen's remark that 'in countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal, as opposed to territorial, laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost 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 the English Courts are to respect, and even to enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim of absolute identity of law for persons of all races and all habits comes with so bad a grace as from the Natives of this country, filled as it is with every distinction which race, caste and religion can create, and passionately tenacious as are its inhabitants of such distinction.' I would rather allow the incongruity to remain untouched, at least for the present, as greater incongruities remain. For instance, a rich Babu's European coachman can keep as many arms as he likes unchallenged; but the Babu Sahib, or, if he is so fortunate as being dubbed with some title, his son and brother, have to go every year to the Magistrate's Court for the renewal of the license with his menial servants, and suffer all the indignities and annoyances inseparable from such a procedure. My countrymen (advanced and anglicised) will call me a traitor to my country. The Native newspapers will vilify me; but if the Hon'ble the Law Member is not afraid of the British lion, wagging his tail and roaring, why am I to care for the bellowing of a few Indian sheep? However, for the present I only desire the Select Committee, when formed, to take both sides of the question into their serious consideration. It is possible that the Select Committee may add some more sugar to the pill. The Committee may think fit to strike off

section 2 altogether, or go further, and, striking off clauses (*c*) and (*d*) in section 1, change 'invested with the powers of a Magistrate of the first class' for District Magistrates or Cantonment Magistrates or Sessions Judges or equal to them in rank as Deputy Commissioners in Non-Regulation Provinces.' I reserve my vote in favour or against the Bill till it comes to that stage. This moment my head, under the dictates of prudence, is in its favour; but my heart—a true heart of a true Native, labouring under a sense of deep obligation and sincere respect to the Britsh nation for all the good it has done to my dear country—is against it.

"Ignorant people—I mean ignorant of facts, though otherwise well educated—may charge me with flattery; but a life's experience cannot be forgotten. How much I value the goodwill of the European Britsh subjects; how much I appreciate their services to the country, and how far I look to them for the protection of our life and property and the advancement of our welfare, the mention of one single incident, I think, will amply suffice. It was, if my memory does not fail me, the evening of the 4th June, 1857, when the alarm gun had been fired, all the non-combatant Europeans with their families had assembled in the mint at Benares. A few European gunners were blowing up on the parade some Native regiments of infantry and cavalry for refusing to lay down arms and mutinying. The time was critical. I was with the Governor General's Agent, Mr. Henry Carr Tucker, at the Mint. The runaway mutineers, many wounded and many with arms, were passing by the gate of the Mint towards the Burna Bridge. Not more than a dozen or two of the European soldiers were protecting the gate, pointing their guns towards the road. The hope of all of us was centred in them. Benares has a population of some two hundred thousand souls, but they all were utterly useless at the moment. The shops and houses were all closed, and the streets deserted. We were not so much afraid of the mutineers for our lives as of the city ruffians. The European soldiers were daily passing up the country by bullock-train, in batches, to join General Havelock's army. These few soldiers were detained from the preceding day's batch. That day's batch had not arrived. With what anxiety we were expecting it I have no words to describe; every moment was precious. We would have offered each soldier's weight in silver had they been procurable. Mr. Tucker thought that they might have been waylaid by the mutineers and wished me to ride down to Rájghát to look after them. How happy I felt when I saw there the bullock-carts full of European soldiers just arriving, I have again no words to describe. This handful of Europeans saved Benares. Such incidents can be multiplied by scores and hundreds. But I do not feel myself justified in further encroaching on your Excellency's valuable time."

"The Hon'ble SIR STEUART BAYLEY said: —"The motion before the Council is not one which, under ordinary circumstances, would require any expression of opinion from me; but, owing to the course the discussion has taken, and to the direct personal appeal that has been made to me, I feel bound to express my own views on the subject. And, first, I think it is due to our colleague, Mr. Ilbert, that it should not be supposed that he is the prime mover and originator of the Bill. Those who have read the papers of the case must be aware that the Bill had its origin in a suggestion made in March last by the Government of Bengal, when Sir A. Eden was at the head of the Local Government. That suggestion was circulated in the ordinary way for the opinion of other Local Governments, and on finding that there was a general agreement among them as to the expediency of legislation, and that in this opinion the Secretary of State concurred, the duty of framing and introducing the Bill devolved, as a matter of official routine, on my hon'ble friend. I make these remarks, because much of the odium with which he has been assailed seems to be based on the supposition that the Bill is in its main principle the outcome of his own reforming zeal, whereas, whatever be the merits or demerits of that principle, the responsibility should in justice be far more widely distributed.

"After the clear statement of the legal aspects of the case which we have heard from the member in charge of the Bill, I need not go over the same ground; but I may say that the aspect in which I have all along regarded the Bill is that its main and important object, its substantive principle in fact, is to allow Native Civilians who may rise to be Sessions Judges or District Magistrates to exercise the powers which the law vests in District Judges and District Magistrates as such and that they should not be disqualified from exercising those powers on the score of birth-place or nationality. The other or permissive provisions in regard to Assistant Commissioners and Magistrates of the first class I understand to be an adjunct to the main principle of the Bill, a fringe or margin as it were, and intended only to meet special cases, which the Local Government might otherwise be at a loss to provide for without serious inconvenience; and from this point of view the measure seems to me to be just and reasonable. Given the education which has enable a Native to succeed in entering the Civil Service, is not the fact of his having served with sufficient credit to be appointed to a District Magistracy or Sessions Judgeship,—a grade, be it remembered, that he cannot even temporarily reach till after an apprenticeship of some eleven or twelve years, and permanently not in less than eighteen years,—is not this as good a guarantee as can reasonably be desired of that man's fitness, honesty and practical ability? and in that phrase I include, not merely natural ability, but the assimilation, by practice and study, of the full legal and juridical ideas

which guide our Courts. I think we have here all the guarantee that can reasonably be expected that the principles of our law will be properly applied, and this is all we have a right to demand. It seems to me that the exercise of these powers is the necessary corollary of the admission of Natives to the Civil Service. Practically, I hold that, when Government committed itself to the one step, it committed itself to the other ; the question was only one of time, and the present Bill gives expression to that principle with as little alteration of existing arrangements, and with as careful a regard to the safety of the important interests concerned, as any Bill framed with this object could have attained. Before it can pass, however, the Bill will have to be criticised in ordinary course by the Local Governments (to whom only the preliminary principle of the Bill was referred in the first instance), and its working can be carefully examined and discussed, and the opinions of the Local Governments and their officers, as well as of others, will be fully weighed and considered before any action is taken. Now, there are two aspects from which the Bill is assailed. One is that Native gentlemen, no matter what their qualification, must be taught to remember that they are of a subject race, and, as such, unfit to try any members of the dominant race. On this argement I am unwilling to dwell. It has been developed into what our American cousins call 'spread-eagleism.' I have absolutely no sympathy with it, and the frequent recourse to such an argument is not creditable to our national character. But there is another aspect to the case of the opposition which I think deserves most attentive consideration ; and this is the real danger in which the isolated European, living in the Mufassal, runs from having false cases trumped up against him. It is right that I should state publicly that this danger is a very real and very serious one ; for, probably, no member of this Council has had the same experience as I have of the lives led by planters in the Mufassal. My own experience has given me a strong feeling on this matter, and anyone who knows the extreme bitterness with which disputes about land are fought out in the Mufassal, and the unscrupulous methods to which recourse is had in conducting these disputes before the Court,—methods to which a planter cannot have recourse,—will understand how precarious his position may become, and how essential to him it is that the law should be well and wisely administered. So far, then, as the argument against the Bill is based on a fear that these dangers are perceptibly increased, and that under the new Bill the law will be less well and less wisely administered than at present, I consider the objections deserve a most careful examination. As I have already said, my own opinion is that, in respect to Native Civilians who have reached the position of District Judge or District Magistrate, we have the best possible guarantee of their qualifications, and the other provisions of the Bill do not take effect *proprio*

vigore, but merely give Local Governments the power of selection in special cases. But I imagine that what has really excited the feelings of the Europ pean population in this matter is, not so much the actual extension of power contemplated in this Bill, but the apprehenision that it is only a stepping-stone to a larger measure which would really do what many speakers and writers seem to think this Bill will do, namely, place all Europeans quoad jurisdiction exactly in the same position as Natives of the country. The actual scope of this Bill has been clearly explained by Mr. Ilbert, and, so far from its being a stepping-stone to a larger measure, I can certainly say for myself, and, I believe, for the Government of India at large, not only that there is no such intention, but that the proposal itself would be regarded as dangerous and uncalled-for. No, so far as we are concerned, what Mr. Ilbert said on the score of the finality of this Bill is, I know, strictly correct, and I hope that there may be no further misapprehension on this point.

"And now I have a few words to say in regard to the agitation which has sprung up in oppositon to this measure. I confess that I failed to foresee either the extent or the depth of feeling which the measure has aroused among the European population ; and it is only fair to add that I think the Viceroy had a clear right to expect from the Local Governments, or, in regard to Bengal, from myself, a more decided warning than he received of the spirit which the proposal would arouse. I cannot, looking at the evil effects which have ensued, and must ensue, from the agitation going on, but deeply regret that I failed to gauge accurately the feelings of the great body of my countrymen and of even my many personal friends among the planting community. I confess I had hoped that twenty-five years had really done something to obliterate the feeling of race antagonism, of bitterness and hatred, which was familiar to us a quarter of a century ago. It seems that I was in error, and I deplore, as we all must deplore, the palpable evidence that I was mistaken. Nor am I prepared to say, in response to the challenge of my hon'ble friend Mr. Evans, that he has in any way exaggerated the depth and earnestness of the feeling which this Bill has evoked, or the probability of its continued ill effects. It is one thing, however, to oppose this measure on the ground that it threatens rights dear to Europeans, and that it jeopardises the liberty and property of the European community in the Mufassal. I believe the fear to be ill-founded, but at least the objections on this score deserve to be anxiously considered and to be treated with all respect. But when the ground is changed, and rhetorical appeals are made to race hatred; when bitterness and vituperation directed against the whole body of Native officials take the place of calm reasoning, then I say that those who employ these weapons incur a very serious responsibility.

It is, by the use of these weapons that the old sore is re-opened and embittered, and that the healing influences of the past quarter of a century are nullified and destroyed in an hour. I have expressed my own regret that I did not foresee that this would take place, and I look forward with still deeper regret to the continuance of a state of things which by action and re-action must continue to keep the sore open. I wish it were in any way possible for the Government directly, and at once, to close the question one way or the other; but it is not easy to see how this can be done without incurring still more serious evils; and I can only hope that, so long as the question must remain open, it will be discussed candidly and fairly, without threats and without vituperation, with as little appeal as possible to the passions of race hatred and race contempt, and with the moderation which persons who really have reason on their side generally find to be the most successful weapon in their armoury. To such arguments the Government will give full and fair consideration."

Lieutenant-General the Hon'ble T. F. WILSON said :—" My Lord, with regard to the measure which is now before this Council, I occupy a position totally different from that of every other member of your Excellency's Government, inasmuch as I have alone, from the commencement of its consideration, been compelled by my convictions to take the very unusual course of opposing those with whom I have the honour to be associated. It will be within the recollection of your Excellency that I availed myself of the first opportunity I could of recording my dissent from the views of the other members of the Government. And on a later occasion, when the matter came under the discussion of the Government, I entered at some length into an explanation of the views which I entertained, and, with your Excellency's permission, my dissent from the recommendations made to the Secretary of State was duly recorded.

" It is not necessary for my immediate purpose that I should enter upon this occasion into any detailed explanation as to why I hold the opinion I do; it will suffice for the object I have in view, that I should honestly and frankly declare that the opinion which I held more than six months ago I maintain as strongly to-day. I am opposed to the measure that has been brought forward by the Government. But whilst sympathising with those who are anxious that this measure should not become law, and thus bring about the changes which the Bill will produce,—whilst sympathising with them, still I must, in the strongest manner I can, condemn the violent language which has been used towards the Government. I desire further to condemn, in the strongest terms I can command, the malicious and scandalous personal attacks which have been made upon my hon'ble colleagues, and more especially upon your Excellency the Viceroy, in your great and high position

as the representative of the Queen in India. Sympathising as I do with the opponents of the measure, and anxious as I am that the Bill should not become law, I must say that I hold in contempt many of the measures which have been resorted to in order to increase outside agitation. My Lord, there is no member of your Excelleney's Government, there is not a person who is sitting round this table, who is more anxious and desirous than I am to receive outside criticism, for I think that, in these days of enlightenment and with the spread of education, the more the Government court publicity with regard to their intentions to alter the laws of the country, the better for the Government, and the better for those it governs : and when that criticism comes to us from a largely increasing population of Englishmen residing in the Presidency towns, and other far away in remote districts of the country in pursuit of their several avocations, distinct, separate and independent of the Government,—I say, when such criticism and advice is presented to us through the medium of a temperate and discriminating Press,—it is indeed valuable, as making known to those who are entrusted with the government of the country, the wishes, the hopes, the fears, and all the general requirements of those who are committed to our charge ; and it does something even more than this, for it in some small degree, relieves those who are entrusted with high office of some of the heavy responsibilities which are inseparable from such position.

"The Government has been urged to-day, by several hon'ble members who have spoken, to withdraw this Bill. Now, I have considerable experience of the Government of India, for it has been my privilege to serve under eleven Viceroys and Governors General, and I have seen other cases, during that long period, when the Government have stood very much in the same position towards the British public of India as they stand to-day ; but never have I seen such violence and unnecessary agitation as has been imported into the discussions on this measure ; and I desire to say that, anxious as I am, in what I believe to be the interests of this vast country, that the proposed measure should not become law, still I am bound to add that, in my opinion, no Government ought to yield to the violence and hysterical excitement which now rages around us. In the presence of this it seems to me that there is but one course which Government can safely adopt, and that is to ascertain further the views and opinions of many more of the officials who are spread over the country. The time which this will occupy will permit of passion cooling down, and we shall then be able to ascertain to a greater extent than we have already done the opinions of the various classes on the question now under consideration. These measures will enable those who like to change their opinions to do so, if further information should tend to that end.

"My Lord, there is another feature in connection with this great controversy which has given me, individually, great pain; because, if I am anything at all, I am a soldier in every feeling and idea; and those feelings have been wounded by the miserable and pernicious advice which I have seen tendered by some irresponsible persons to the volunteers in India. It is known to your Lordship, and it is known to my hon'ble colleagues, that, as the head of the Military Department, I take a keen interest in the volunteers in India. But, apart from the official position I hold, it would be strange, indeed, if I were not a friend of the volunteers in this country. During by far the most eventful period of my life, I was closely associated with a body of volunteers, who took a prominent part in one of the most protracted and deadly struggles which has taken place during the past century, and they materially helped to write one of the most brilliant pages in our Indian military history. For these reasons I am, indeed, pained to read of the unpatriotic course which has been recommended to the volunteers. Can any volunteer in his senses suppose that his resignation, or that of any number of his comrades, will have any influence on this Council? No. This Council will do as it has ever done. It will act fearlessly; it will ascertain all the facts of the case; it will seek further information, and it will decide as it thinks best for the interests of those who are committed to its care. But it has been said that the recommendation has been made with a view, not so much to embarrass or intimidate this Government, as to show to the House of Parliament in England the necessity of reversing hereafter any decision in favour of the measure which may be arrived at by the Indian Government. Now, if there is one thing which would rivet fast the whole thing, it would be procedure such as this. I cannot conceive anything more wild. But, my Lord, I hope that time will bring reflection, and that calmer, wiser and more patriotic counsels will prevail. I hope that the volunteers of India, mindful of those responsibilities which they have voluntarily taken upon themselves, will remain, as heretofore, faithful citizen soldiers of the Queen Empress of India.

"In conclusion, I will only say that, as regards the measure which is now under consideration, I maintain, as I have always maintained, distinct opposition to it; and, believing it to be impolitic, I hope it will not become law. To this extent I sympathise—I repeat, I sympathise—with those who hold similar views. Beyond this I cannot go, for I desire to separate myself from the unnecessary violence and agitation that has taken place outside this Council chamber."

The Hon'ble MR. GIBBS said:—"My Lord, it must be remembered that we are not now discussing or defending the principle of the Bill. That will form the subject of a future debate; but as member in charge of the Home

Department, and, therefore, intimately connected with the general administration of justice in the Empire, it has been considered right for me to offer some explanation regarding the introduction of this measure, specially as it has, simple though it be, raised a perfect tempest among the European community.

"In so doing, I fear I may repeat some of the arguments used by those who have preceded me, but this I cannot help, nor do I think in such an important matter it is to be regretted.

"First, I think some explanation is required to show why the Government has remained silent up till now. The rules of this Council have been, as is well known to the members, recently amended with the object of giving greater publicity to measures. When leave for this Bill to be introduced was asked for, as the new rules were not in force, it could not be published, and, in consequence, the only way the Government could inform the public of its purport was by sending it by administrative order to the public newspapers. It has not yet been published in the *Gazette*, as my hon'ble and learned colleague's motion to-day shows; and, until this is done, no opinions of Local Governments and Administrations can be called for on it. Now, in accordence with the usual custom, such will be called for, and, when submitted, be laid before the Select Committee on the Bill. It is only, therefore, to-day that we have had the opportunity of saying anything about the matter. The opinions already published were invited, not on the Bill, but on a proposal submitted by the Government of Bengal, and which, as usual in such cases, was forwarded to the other Local Governments and Administrations for opinion, on receipt of which, as they were nearly unanimous in favour of the Bengal proposal, concurring as they did in the opinion so clearly given by Sir Ashley Eden in submitting his proposal to the Government of India (Bengal letter 1411 T. of 30th March, 1882, paragraph 4), the Bill was drafted, and leave to introduce it applied for.

"We have been accused of not consulting the present Lieutenant-Governor of Bengal. The fact is, the measure, as it came from Sir Ashley Eden, was couched in the usual terms, and was taken as the opinion of the Government of Bengal, and, as such, was, according to custom, sent to the other Local Governments and Administrations for an expression of their views.

"The measure in itself is required for the furtherance of justice and the convenience of all parties. That sooner or later such a change would have to be made has long been foreseen, and I venture to think that the time has now come when, certainly as far as Sessions Judges and Magistrates of the district are concerned, the alteration is called for to meet the actual requirements of one part of the Empire, as well as the contemplated future requirements of

other parts. I will explain how this is so. At Kárwár, in the Bombay Presidency, there is now a Sessions Judge, Mr. Tagore, who was the first successful Native candidate for the Covenanted Civil Service, of which he has now for eighteen years been a member, and for some eight or more years he has exercised, with credit to himself, the duties of District Judge and Sessions Judge.

"Then, in the Bengal Presidency, there are four gentlemen of the Covenanted Civil Service rapidly approaching their promotion to be District Magistrates or Sessions Judges, one of whom, Mr. Dutt, was gazetted in Wednesday's *Gazette* as promoted to the former grade.

"I have not obtained information as to the other divisions of the Empire, but I have, I consider, shown from the above that the time has come when a change should be made to render present and impending incumbents fitted for the full duties of their appointments; and the requirement is one of increasing importance, as year by year Native members of the Covenanted Civil Service will arrive at, or come nearer and nearer to, the appointments of Sessions Judge and District Magistrate. As regards the Natives themselves, it is a measure of simple justice, in so far that the policy which was laid down by the wisdom of Parliament a quarter of a century ago admitted Natives to the Covenanted Civil Service, and by so doing not only intended, but clearly made it manifest, that they should have therein the same powers as their European *confrères*, which they will not have unless the law is amended. Surely, then, we cannot now, in the year 1883, be said to be pushing on a new measure 'with indecent haste simply to please the Natives of the country.' The entire general question is not now before us, but it has been one of long standing, from the time of Lord Macaulay to the present. In 1872 the latest step was taken. It is called 'a compromise,' not, so far as I can learn, a compromise between Natives and Europeans, but between the members of the then Government or, perhaps, of the Select Committee on the Bill; but even this showed that some change in the present direction was then felt to be required; and I remember, with reference to this, when a Judge of Her Majesty's High Court at Bombay in 1870, I minuted in favour of such a change as is now proposed, basing my opinion mainly on the inconvenience of the law as it then stood. At that time there was no Native Civilian actually in a position to require such powers, whereas now the case is the reverse. Two officers actually require them, while others will do so very shortly; and surely any unbiassed person would admit that the time has arisen for going beyond the 'compromise' of 1872.

"Let me explain more fully what I mean by the 'inconvenience' argument. Take Kárwár for example, where Mr. Tagore is Sessions Judge, in the

neighbourhood of which large railway-works are about being commenced. If a European commits a crime which requires more punishment than the District Magistrate can award, and which is three months' imprisonment and fine of Rs. 1,000, he must be committed to the Sessions Court, whose powers extend to one year's imprisonment and fine; but the Sessions Judge there could not try him, and an application would have to be made to the High Court to order his commitment elsewhere. He could thus be sent to Belgaum or Dhárwár, for example, each about 80 to 100 miles distant; this would be a troublesome journey at any time; but, for some months of the year, one generally dangerous to the health of all parties, Europeans especially. Surely this would be a matter of great inconvenience, not to say danger, expense and delay to all concerned.

"In the case of the District Magistracy, present arrangements also must cause great inconvenience. They are to some extent subversive of discipline by putting a junior officer by reason of his birth only, for one particular purpose, over the head of his superior in all other matters. No gentleman can arrive at the high position of Magistrate of the district under 10 to 12 years' service; and, considering that he would not even then be appointed to that post unless the Government thought him fitted for it (I have known European members of the Civil Service whom Government decline to place in such a position),—surely, I say, under these circumstances, the measure we propose is so far merely the natural and logical result of the policy which has been laid down for more than 25 years since Natives of India were first admitted into the Covenanted Civil Service of the State.

"From the extraordinary excitement which has been raised, a stranger would be led to suppose that the majority of the Europeans in India were constantly before the Criminal Courts in serious and intricate cases, whereas, so far as my own experience goes, there are very few cases in which Europeans come before them, and those of a simple nature—petty thefts or assaults.

"All cases in which one year's imprisonment does not suffice must now go to the High Court of the Province, and this Bill makes no alteration in this law. I fail, therefore, to find any reason why objection should be made, or why a 'European British subject' should not be tried by an officer who can now try any other European, be he French, German, Italian or otherwise, not to mention those Englishmen who are not what is technically called 'European British subject,' or an American, who might be placed before him.

"I do not now stop to consider separately the Native members of the Civil Service appointed under 33 Victoria, for, while I have some doubts whether

they constitute a separate body, they are, when once admitted into the Service at the end of their term of probation, for all administrative purposes, members of the Covenanted Civil Service of India, equally with those who are appointed from home. I will, therefore, now proceed to consider the three classes of first class Magistrates on whom it is proposed that Government should confer the powers of a Justice of the Peace when necessary. These are—

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

"(*b*) Assistant Commissioners in Non-Regulation Provinces; or

"(*c*) Cantonment Magistrates.

"The proposed measure being intended to contain the entire law regarding the trial of Europeans in the Mufassal, as regards the powers to be given to the local officers, the Bill makes no difference between Europeans and Natives, just as it makes no distinction when it confers, by the previous section, Justice of the Peace powers '*ex officio*' on all Sessions Judges and District Magistrates. It, therefore, only differs from the present law by permitting Government to confer the powers of a Justice of the Peace on Native members of the classes I have named. As this power is only permissive, we are again thrown back on the questions of convenience and fitness to exercise the powers, and these must be left to the Local Governments to decide.

"Now, I will give an instance in point:—Take Calicut or any other large seaport on the coasts of India not being a Presidency-town. Unless Government have the power of appointing a Civilian of less standing than a Magistrate of the district to hear such cases, a captain who had a complaint to make against any of his crew might have to go some 60 miles for justice, leaving his ship lying in the roadstead in charge of a junior officer and a weakened crew, although there might be a Native Civilian on the spot as able and as capable of dealing with European crews and captains as is Mr. Dossabhoy Framjee in Bombay. Surely this is a case of inconvenience demanding a remedy.

"As regards Assistant Commissioners in Non-Regulation Provinces, the special provision is merely intended to be used to prevent inconvenience to the parties, and will probably be seldom resorted to; while, as regards Cantonment Magistrates, they are, as a rule, European military officers, and are merely included here to complete the law as to Justices of the Peace in the Mufassal.

"Having thus, I trust, shown that there are causes of an administrative character which call for the change in the law, I may, my Lord, express my inability, perhaps from being of a somewhat unsentimental disposition, and

preferring as a rule to be guided by common sense, to understand why all this commotion should have arisen about this measure—a measure which, even if the Bill became law to-morrow, and if the Local Governments were at once to confer on every Native gentleman of the classes mentioned in it the power of a Justice of the Peace—a course not at all probable,—would add but a very small number to the list of those who could try Europeans for petty offences in the Mufassal. From a return I called for, I find the entire number in the whole of India would be about twenty, while in Bengal *alone* there would be but nine, and all these members of the Civil Service.

"Much less can I understand why your Lordship should be looked upon as the leader of 'an anomalous, unconstitutional and illegal confiscation of the chartered rights and privileges of Englishmen,' or why my hon'ble and learned colleague, on whom the wrath of the European public seems to have fallen with redoubled violence, so much so that it was even suggested that he was not a worthy representative of the *alumni* of the two great English Universities, should be the victim of so much abuse, as if he alone, under your Lordship's guidance, were the sole author of the proposal, and his colleagues, including myself, were no parties to the discussion which led to it.

"Neither can I understand why the European gentry of the City of Calcutta, who have for years been subject to the Court of a Native Magistrate who can pass on them heavier sentences than, should this Bill become law, could be passed by any Sessions Judge, much less a Magistrate, in the Mufassal, should now rise to prevent their neighbours on the opposite side of the Circular Road or other parts of the Mufassal from being placed, not on a par with them, but from being saved from some of the inconveniences and trouble and expense I have above alluded to.

"I am not sure that the great bulk of the European and Eurasian population of Bengal, who are most interested in this matter, know the meaning of the term 'European British subject.' It is a mere legal creation of the Indian Criminal Procedure Code; colour has nothing to do with it; a perfectly white person may not come within its definition, while a decidedly dark one may. It simply means that the person was either himself born in England, or that his father or grandfather, from whom he may be legitimately descended, was so born; but it goes no further. If the family has been settled for four generations in India, although father, grandfather and great-grandfather may have married European ladies, the representative of the fourth generation ceases to be a 'European British subject' within the meaning of the Procedure Code, and is amenable to all Criminal Courts presided over by

Natives or Europeans, as the case may be, exactly as any one of his Native fellow-subjects, or any European of another nationality.

"And this, my Lord, brings me to the consideration of the articles in the Press, and the letters and speeches with which the daily newspapers have teemed during the last month or so. No one respects more than I do the right of any person or class of persons to bring forward their grievances and demand redress, and, therefore, I have read carefully this varied literature, to see what reasons it contained to lead me to the conclusion that the proposed measure was uncalled-for or could only be injurious; but, my Lord, though I found in those letters and speeches and articles warm eloquence, much invective, more assertions, and some insinuations, I could find no reason to show that the view I took from the first as to the advisability of this step was wrong. I venture to think that, while all must admit the meeting of the 28th to have been an extraordinary expression of strong feeling, it was, like the articles and letters in the Press, confined to feeling only; and when a cause appears supported mainly by invective instead of calm and dignified reasoning, its importance diminishes and its significance fades.

"But we are bound, my Lord, to respect the feelings of all the races under our Government, though we are equally bound to analyse those feeling and to judge calmly and dispassionately of them, and to bear in mind that the other races may also have feelings to be equally consulted and respected; and this we shall do most carefully when the reports and objections, which will doubtless be sent in during the next six months, come to be considered by the Governor General in Council.

"My learned colleague has explained the legal effects of the proposed measure, and I have endeavoured to show that, while it is the logical outcome of the policy of the last quarter of a century, there are also causes of an administrative nature requiring its introduction; and there I would leave it, merely adding that, although the Magna Charta has been freely alluded to, and the right which is supposed to belong to every British subject, of being tried by his peers, made the most of, I know not how the former can affect the matter, or where the latter right will be found granted to Europeans in India. In Calcutta it has long ceased, if it ever existed, and those very gentlemen who spoke so energetically about it have never possessed it; so that I think the issue must be, as it ought to be, confined to the simple one of whether the measure is required for the due administration of justice or not? And on this I have already shewn my reasons for holding that it is an alteration of the law which the circumstances of the time have rendered justifiable."

His Excellency THE COMMANDER-IN-CHIEF said :—"My Lord, I ask permission to say a few words on this occasion, because I have been challenged to give my free and unrestrained opinion on the policy of the Government, and because unworthy attempts have been made to intimidate me from doing my duty in regard to the matter before us.

"At the outset I beg to say that, in dealing with the question of the proposed amendment of the Criminal Procedure Code, I confined myself entirely to the practical bearings of the case. The sorrows of Native officials, the symmetry of the law and philosophic theories have no special attraction for me, for I do not believe that the world can be ruled by logic alone. What I had to consider was this. Did the Government service require any change, and, if so, to what extent was change needed?

"I will say frankly that I should have been very glad if matters could have been left as they are. I have been long enough in India to have a very vivid recollection of the storm created by the so-called Black Act, and having this before my mind, I proceeded to examine the question.

"Well, having been satisfied by the representations of the Home Department that it was necessary to remove some of the disabilities of the Native Members of the Civil Service, who must sooner or later be appointed to the charge of districts or to be Sessions Judges, I made up my mind to support the proposals of the Government so far as they were applicable to these two offices, and to these only.

"My reasons for going so far are these :—

"Though the principle involved is, no doubt, a large one and of considerable importance, yet it must be patent to anyone who cares to look into the matter that its practical application must for a considerable time be small. I looked upon the change as a very tentative measure, which in its operation could be carefully watched, and which would, in a legitimate way, give us an opportunity of testing the merits and qualifications of this class of Civil Servants.

"If, unfortunately, it should turn out that officers of this class could not be trusted with extended powers, the Government of the day would be obliged to reconsider the whole position, and perhaps retrace their steps. It is obvious that a Native Magistrate or Judge who exercised his functions in a tyrannical or unjust manner would not hold his office very long. Again, the proposed change seemed to me to be in the nature of what is called a permissive Bill.

The Supreme Government gives power to certain classes of its officers, but it cannot appoint these officers. It is only Local Governments that have the power of appointment, and we may rely on their not appointing to such offices any but men of the highest character and qualification; for the stronger sympathies of the Governors will naturalty lie on the side of their own countrymen.

"In point of fact, I looked on the amendment of the law as a very safe experiment, and an experiment that might well be tried when its provisions would only apply to one or two individuals. I knew there would be opposition to any change, but I believed that, when my countrymen understood the case in all its bearings, they would see that it was a safe way of introducing a change which the bitterest of its opponents admit to be a question of time.

"That my expectations and forecast have been utterly wrong I freely admit, but I am not prepared to admit that the objections which have been put forward by those who oppose our proceedings are founded either on reason or common sense.

"I have hitherto attempted to restrict my observation to my own personal connexion with the measure under discussion, but there is one other point on which I have something to say. Very wicked and criminal attempts have, as you know, been made in some of the newspapers to excite animosity against the Government in the army. My Lord, I cannot trust myself to speak on proceedings of this nature. I am aware that the army may, and perhaps does, take a keen interest in a question that is engrossing the thoughts of the public; but I feel confident that the army knows its duty, and that it is thoroughly loyal to its Sovereign and to its salt.

"Soldiers have their feelings like other people—feelings that we all respect; but they also know that, if they have a grievance to redress, there is a legitimate way of putting it forward through their officers and those placed in authority over them. But what are we to say of persons who make use of such tactics in support of their arguments? They must, indeed, be in a bad way when they resort to such a course.

"It is possible that the reference to Cantonment Magistrates in the Bill may have misled people into the belief that the Government proposes to appoint Native Civilians to such offices. This would be an entire misapprehension.

"The following extract from a note which I received two days ago from the Secretary in the Legislative Department explains more clearly than I can why reference has been made to this class of officials in the Bill.

'With regard to Cantonment Magistrates, they were put in because they would not ordinarily be Covenanted Civilians, Native Civilians or Assistant Commissioners, and it was

thought necessary that power should be given to appoint a Cantonment Magistrate, who would be almost certain to have to deal with European British subjects, a Justice of the Peace. Military officers who are Cantonment Magistrates can, under the present law (Act X of 1882, section 22), be appointed Justices of the Peace if they are, as I suppose they always are, European British subjects.'

"It will, then, be seen that the Government does not intend to make any real change in the system under which Cantonment Magistrates are usually military officers.

"If the reference to Cantonment Magistrates had not been made in the amendment, the effect would have been that any person, even a person who was not an European British subject, might have been made a Cantonment Magistrate, and it was to avoid this difficulty that "the point was raised in this form."

His Honour THE LIEUTENANT-GOVERNOR said :—"My Lord, I must apologise to the Council for being obliged to trouble them with a few remarks at this late hour, but the desire which I share with the other members of Council to hear the address of your Excellency compels me to be very brief. I feel, however, that I could scarcely remain silent, even if I wished to do so, after the several appeals which have been made in the course of the debate to the Government of Bengal, and after recent events which have testified in so prominent a manner the strong expression of public opinion in this City and the Province. At the same time, I confess, I feel I am in a position not altogether satisfactory regarding this proposed legislation; and if I had not received so late as yesterday evening from your Excellency an assurance that the motion now before the Council was of a purely formal character which pledged no one to the principle of the Bill, but, what is of more importance to me, that it is the intention of the Government of India to refer the Bill as drafted for the renewed consideration of Local Governments, I would not have hesitated to take this opportunity to state at length, and with such ability as I possess, the conviction which I entertain that this measure is unnecessary in the present condition and constitution of the Native Judicial Covenanted Service in Bengal, and that it is inopportune, having regard to the many claims which demand the most cordial relations between the Government and the European community in India. In saying that, I am not in an altogether satisfactory position, I allude to the fact to which reference has been made, that I have had no opportunity personally of consulting the officers of Government or recording my own views upon this change in the law; though at the same time I am aware that the Government of India had received from

Sir Ashley Eden a communication which favoured the view of withdrawing restrictions which now exist against Native Judges and Magistrates in the matter of the trial of European British subjects. Any defects or omissions in that respect will now be removed or remedied; and, as I shall have the opportunity of referring to the experienced officers of Government for their opinion I think it the wiser and more appropriate course, and a course in which I am justified by the temper and excitement around us, if I reserve my own judgment till I have received those opinions. Whatever value may attach to my own views of the question—and those views I will say have not been formed or expressed only recently—they may be modified, or they may be removed, or they may be strengthened by the result of the inquiry. But whatever the result may be, they shall be communicated to your Excellency's Government with the utmost unreserve. Ample and exhaustive as was the speech of my hon'ble and learned friend Mr. Evans, with a great deal of which I sympathise, there are a great many facts which I could bring forward to support his contention that there is no administrative difficulty in connexion with the matter, and I should have been inclined to challenge more strongly than he did the competency of the Native to try European British subjects. But this is not the occasion on which I shall press those views. It is right, however, that before I conclude my remarks, I should say a few words as regards the attitude of resentment which has characterised the public meetings and public utterances in connexion with this Bill. No man could deprecate more strongly and earnestly than myself the wild, extravagant and very dangerous sentiments to which the excitement round about us has given occasion. And I am sure no Englishman, Scotchman, or even Irishman, in his lucid moments, will think that the cause he advocates will be advanced or promoted by the threats levelled at the Government by certain writers and comments in the Press. If the Bill is not to be withdrawn—and this suggestion has come from a good many quarters—I sincerely trust the suspension of the measure for some months will induce a calmer judgment. No Government can deal with legislation, or with the withdrawal of legislation in the presence of a popular phrenzy. Still I shall be wanting in my duty if I failed to press on the Government that I hope that, in their absence from personal contact with the public feeling, they will not allow themselves to think that the calm which I hope will supervene is an indication of apathy or indifference. If it be the opinion of the Government of India that this is a case of temporary excitement, which will soon die out, I am sure they are mistaken; for I feel that, in the whole of my experience in India, this is unmistakeably the strongest and most united and unanimous expression of opinion of public discontent that I have ever known, and that the last state will be worse than the first.

I could wish for myself that the Bill could be withdrawn, and I do so, not only for myself, but as expressing the opinion of a great many who have spoken to me on the subject, even though they support the principle of the Bill. I believe that such difficulties happen to all Governments; and that the oldest and most English course is the wisest and safest. It is in the knowledge of all of us that such a course has been adopted in many cases, in our home Parliamentary experience, and it has not unseldom been the case also in India; and if I may venture to allude to the fact, I think your Lordship's reputation in this country as a Viceroy, who has endeavoured earnestly and honestly to promote the political and educational development of the people, will not be affected if you see your way to withdraw the Bill."

His Excellency THE PRESIDENT said:—"I am very sorry that I should feel it my duty to detain the members of this Council yet a while after the length ened and able discussion to which we have listened for so many hours; but I feel bound to make some statement, before this discussion closes, of the grounds upon which the Government have proceeded in introducing this Bill, and to explain the reasons which led them to think that it was a right and a reasonable measure. The observations which I wish to make now will be, as far as possible, of a strictly practical character. I do not intend or desire to enter into needless controversy, for I wish to reserve to myself the freedom carefully to weigh and consider the arguments which have been adduced in the course of this debate on both sides of the question at issue. It has been to me a source of regret that I have not had an opportunity before to-day of explaining the course which the Government has pursued; but that I have not had an earlier opportunity of doing so has not been my fault. It was the intention of the Government to have taken a discussion upon this Bill upon the 23rd of February. We never had the least intention of hurrying this measure through the Council, or of proceeding with it further than the stage which I described when it was brought in as the second reading stage during the present Calcutta season; but we did propose, and it was necessary that we should propose, as the rules stood when this Bill was brought in, that it should have been referred to a Select Committee before we left here, with a view to its being afterwards circulated and published as the rules required. But when my honourable friends Mr. Evans and Mr. Miller became acquainted with the intention of the Government to take a further stage of this Bill on the 23rd of February, they represented that they were somewhat taken by surprise by that proposal. Not that I understood them to make any complaint of want of good faith on the part of the Government; but they urged that they did not expect any such discussion to come on on that date. In consequence of those representations I had an

interview with my hon'ble and learned friend Mr. Evans, on the 19th of February, and I then said to him that I was anxious that this discussion should take place, because I felt that it was only fair to the Government that they should have an early opportunity of explaining at greater length than had been explained by my hon'ble and learned friend Mr. Ilbert, when he brought in this Bill, the objects of this measure, and the reasons which had induced them to submit it to this Council. I said to my hon'ble and learned friend, Mr. Evans 'You may perhaps object to a discussion in the nature of a second reading, but it is possible for us, under the present rules, to take a formal discussion upon a reference of this Bill to Local Governments; that would afford a sufficient opportunity for the statement that I propose to make, and would not involve a discussion upon the principle of the Bill.' My hon'ble and learned friend took time to consider whether he could agree to that proposal or whether he must adhere to the objection previously urged on his own behalf and on that of Mr. Miller to the discussion on the date proposed, and on the next day he informed me that he could not waive that objection. I then had to choose between putting my hon'ble and learned friend and Mr. Miller at some disadvantage, and putting myself and the Government at some disadvantage. I chose the latter alternative. It has been one of the many accusations made against the Government, that they delayed a farther explanation on this subject: those who have used that argument will now have an opportunity of judging of the justice of their charge. I may as well also say, as my hon'ble and learned friend is here, and will bear me out, that when I saw him on the 19th of February, I explained to him that the Government had no intention of passing the Bill during the present session; to that my hon'ble and learned friend assented. I was, therefore, somewhat surprised when I saw next day a statement in Reuter's telegram, that something had been said in the House of Commons, which appeared to imply that this measure was going to be pressed forward now; and I immediately explained to the Secretary of State that that statement was not correct. It was founded on an entire misapprehension of the intentions of the Government. It would have been totally inconsistent with the declared policy of the present Government of India, if they had thought of unduly pressing forward this measure, and of not affording the fullest opportunity tothe public and those interested in the matter to consider it. My hon'ble friend Mr. Miller touched upon that point, and he seemed, I thought, somewhat to complain that the public had not been consulted in this case in the manner in which we professed to consult them in respect to our legislative measures. Now, that charge—if it was meant as a charge—is founded on a mistake. The Government never professed that they would submit their Bills to the public before being brought in. No Government ever did or could do such a thing. All that we said was that, when our measures were brought in

and published, the public should have the fullest opportunity of considering them ; and that we ourselves desired to consider any representations which might be made to us upon any proposals for legislation which we might so submit. To that course we have strictly adhered in this case, and have acted in perfect and absolute accordance with all our professions in respect to giving the public full time to consider our legislative proposals.

"I thought it necessary to make these observations, in order to clear away some misapprehensions and misrepresentations which have surrounded this matter for some time.

"And now I will proceed to state very briefly the history of this transaction. Something was said upon the occasion of the introduction of this Bill by Sir Jotindra Mohan Tagore about an undertaking which had been given him last year to the effect that this subject would be considered by the Government of India. What took place on that occasion was this. When the Criminal Procedure Code was before the Council last year, one of my hon'ble colleagues,—I cannot exactly remember which,—who was a member of the Select Committee on that Bill, came to me and said that Maharaja Jotíndra Mohan Tagore had told the Select Committee that he intended to raise the question of the powers of Native Magistrates to exercise jurisdiction over European British subjects. That was at a time when the Bill had nearly reached its last stage, and my hon'ble colleague said, with perfect justice, that it would be entirely impossible to take up a question of such magnitude upon that stage of the Bill ; and he said to me—'I think, if you were to speak to the Maharaja and tell him that, if he did not bring this matter forward now, the question would be considered by the Government, he probably would not press his notice of amendment.' I replied 'I will consult my colleagues'; and I did consult the members of the Executive Government at that time, and it was with their full consent that I told Maharaja Jotíndra Mohan Tagore that the subject in which he was interested should receive the full consideration of the Government. Of course, by so saying, I gave no pledge whatever to the Maharaja as to what would be the decision at which the Government would ultimately arrive. All that I did say was—and that promise I and my colleagues intended to keep—that we would consider this question after the new Criminal Procedure Code had passed. But, before we had taken any steps whatever to fulfil that pledge, we received from Sir Ashley Eden a letter which is contained in these papers, and that letter winds up as the su mmary of the opinion of Sir Ashley Eden with these words :—

'For these reasons Sir Ashley Eden is of opinion that the time has now arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their

powers as are imposed on them by Chapter XXXIII of the new Code of Criminal Procedure, or when at least Native Covenanted Civilians who have attained the position of District Magistrate or Sessions Judge should have entrusted to them full powers over all classes, whether European or Native, within their jurisdictions'.

"That opinion was expressed to us by the Lieutenant-Governor of Bengal; was a clear and distinct opinion. There is not one word in Mr. Cockerell's letter from which I have quoted which indicated any probability that a proposal of that kind would be received, I will not say with resentment, but even with disapproval by any portion of the community. Now, it is not necessary that I should recall to the recollection of this Council who was the person who made that recommendation. You all know that Sir Ashley Eden had been for five years Lieutenant-Governor of Bengal; you all know that he was a man of large experience, and that he was intimately acquainted with the feelings of the European population; and certainly there was ample proof that he had their respect and confidence in the remarkable ovations which he received just before he left the country. Sir Ashley Eden did not accompany that letter by any other communications upon the subject, and therefore, I had no doubt whatever that it contained his deliberate opinion and advice to the Government of India. My hon'ble and learned friend Mr. Evans says that Sir Ashley Eden only wanted to put his opinion on record; and he did not at all mean that anything should be done about it now. He only desired to say what he should like to see done at some future opportunity. But, in the first place, he says distinctly, in the summing-up of his letter,—'the time has now arrived for the change,' and in the next place, it must be borne in mind that, if Sir Ashley Eden did not mean that the question should be taken up at an early date upon his proposal, he had a perfect opportunity of saying so; because by a singular coincidence, marking the high respect entertained for that distinguished man by Her Majesty's Government, he went straight from the Government of Bengal to the Council of the Secretary of State at home; he was a member of that Council when our proposals were submitted to and sanctioned by the Secretary of State; and, therefore, if we had misinterpreted his views as my hon'ble and learned friend appears to think, or, if we had acted hastily on his opinion, he would undoubtedly have said so; and I cannot for a moment think that my noble friend Lord Hartington would not have communicated the fact to me: he did not do so. I should like to say one other word about Sir Ashley Eden. In the earlier stages of this controversy, before a large number of persons took to using strong language, they used language of a milder kind, and they talked about this Bill as an ideal and sentimental measure. Now, I must say that, if ever I came across a man in my life who was not remarkable for the sentimental side

to his character, that man was Sir Ashley Eden. I do not think that I ever knew a man less likely to be led away by vague sentiment or mere theory than Sir Ashley Eden. Then, what did Government do? If they had been so very keen to carry out this proposal; if they had been so very ready to proceed rashly in this matter, they would have had a very fair ground for acting at once, in the mere fact that a man so experienced as Sir Ashley Eden had recommended them to take that action. But they did nothing of the kind; they consulted the Local Governments on the subject, and the opinions of those Local Governments are before this Council. I have heard it said that those Local Governments felt themselves bound to give opinions which they thought would be agreeable to the Government of India. Well, really, it is needless on behalf of the Local Governments that we consulted—of men so eminent as those who fill the office of heads of those Governments—for me to reply to a charge of that description. The question was very carefully considered by those Governments, and their opinions are, with the single exception of the Local Government of Coorg, in favour of amending the present law. It is quite true that the Government of Madras were divided among themselves, and that the opinion given in favour of the Bill was only decided by the casting vote of the Governor of that Presidency. It is also true that another gentleman, Mr. Howell, has given an opinion which, if not absolutely clear, must on the whole be regarded as unfavourable to this proposal, but he reported as Commissioner of the Birars to the Resident at Haidarabad, who advocated the principle of this Bill; and, therefore, I am strictly correct in saying that all Local Governments, with the exception of Coorg, were in favour of an alteration of the law. My hon'ble and learned friend Mr. Evans said that the only Local Government that is really concerned with this question at all is the Government of Bengal. But it was the Government of Bengal which started the question. I do not observe, however, that the European community in other parts of India appear inclined to admit that they have nothing to do with this subject; and I venture to think that all Local Governments have an interest in this matter, and are entitled to speak upon it. Can it be supposed that those distinguished men— many of them personal friends of my own—who are at the head of Local Governments; if they had anticipated—I will not say danger, but—serious inconvenience, would not have advised me privately that this was a measure that ought not to be pressed forward? There are, doubtless, in these papers differences of opinion between different Local Governments as to the extent to which this measure should go, just as there have been differences among members of the Executive Council on the same subject. My hon'ble and gallant friend the Commander-in-Chief says that, though he supports the measure, he would confine it to District Magistrates and Sessions

Judges. Sir Charles Aitchison, on the other hand, went further than any other head of a Local Government; and the measure as produced and brought forward by the Government of India is one which has struck a mean between these different proposals and which, on the one hand, does not go so far as Sir Charles Aitchison recommended, and, on the other, goes somewhat further than the recommendations of some other Local Governments. Indeed, as a matter of fact, the measure was drawn up mainly in accordance with the amendments of the Code suggested in Sir Alfred Lyall's letter. Now, what was the next step taken with regard to this question? The next step taken was that the Government of India sent a despatch to the Secretary of State, Lord Hartington, last September, containing their proposals and forwarding the papers now before the Council. Lord Hartington must have received that letter late in September. It was upon the 7th of December that, in an answer to that letter, he stated that he had very carefully considered our proposals in Council, and that he gave them his sanction. My hon'ble and learned friend Mr. Evans alluded to the fact that this circular to Local Governments was not sent to the Government of Bengal. The course taken on the occasion was in accordance with the practice generally pursued; and it is a perfectly reasonable and intelligible practice, followed by all the departments of the Government of India, that, when one Local Government originates a proposal on which the Government desires to consult other Local Governments, the original proposal is sent round to those Governments, but not sent back to the Government from which it, in the first instance, emanated. The Bill was prepared and drafted in strict accordance with the proposals sanctioned by the Secretary of State. Leave was given to introduce it on the 2nd of February. It was brought in on the 9th of February; and the papers, containing the opinions of Local Governments, were circulated to members of Council and given to the public at the earliest possible opportunity. I believe I am right in saying that they were circulated to members of Council on the 12th February.

"That is the history of this transaction up to the introduction of the Bill. And I turn now to consider what was the state of things in respect to the position of Natives of India in the Civil Service of the Crown, with which we had to deal. I am dealing now solely with the case of the Covenanted Civil Servants. I leave aside the question of the Non-Regulation Provinces, which is not material to the present argument. I say nothing of Cantonment Magistrates, because my hon'ble and gallant friend the Commander-in-Chief has explained that Cantonment Magistrates are almost invariably military officers, and that no Native gentlemen are likely to be appointed to positions of that kind. The question, therefore, we have to consider here relates to the

Native members of the Covenanted Civil Service, because it must be borne in mind that, although, in departmental pratice, it has been the custom to describe the members of the Covenanted Civil Service admitted under Lord Lytton's rules as members serving under the statutory rules, they are under those rules themselves—rules approved by the Secretary of State, Lord Cranbrook, and laid before Parliament—admitted to employment in Her Majesty's Covenanted Civil Service. These are the words of the rule as sanctioned by the Secretary of State and by Parliament; and, therefore, the persons with whom we have to deal are the members of the Covenanted Civil Service. Our proposal, I would just point out, is a very much narrower one than that which was made in the year 1857, and to which Mr. Evans alluded. In that year there were no Native members of the Covenanted Civil Service. The proposal of 1857 would have subjected European British subjects to the jurisdiction of all the Mufassal Courts of every grade. The present Bill does not go nearly so far. Well, what is the state of things with which we have to deal now? I have said that in 1857 there were no Native members of the Civil Service at all. They have come in since;—first, by competition, having gone home and competed on equal terms with Englishmen, Irishmen and Scotchmen, and won their way in that competition into the Civil Service; and recently under the new system inaugurated in the time of Lord Lytton. The time has now arrived when some of these gentlemen have risen to high judicial positions. Mr. Tagore is one, and I have been informed that Mr. Dutt has also been raised to a similar office. Therefore, they are now beginning to reach these positions, and the number of those who fill such appointments must gradually and steadily increase. Mr. Miller asks in what have the times changed since 1872? They have changed in this respect, that some of these Native gentlemen have acquired these important positions, and others will go on rising to them in increasing numbers in coming years. But the great change which has taken place in regard to this question from an administrative point of view has been that which was made by Lord Lytton's Government in 1879. That change was made by the express order of the Government at home: indeed, after the reiterated orders of successive Secretaries of State. I am not about to express any opinion as to the mode in which these gentlemen are now admitted into the Covenanted Civil Service under the rules of 1879. It may be that these rules can be improved. Nothing is more probable than that experience may show that they are capable of amendment. But what we have to consider is, what is the position in which these rules place the gentlemen admitted under them? and what will be the effect of them as time goes on? These gentlemen will rise in the Covenanted Service year by year, and they will be entitled to hold higher and higher offices as they advance, until ultimately they will attain to the highest judicial offices below the High

Court. Now, it has been contended that the Local Governments, when they spoke of Covenanted Civilians, only meant those who had got in by competition. I have no reason to suppose that that is the case with any of the opinions which have been expressed, because the words 'Covenanted Civil Service' cover all the members of that Service. The Hon'ble Mr. Evans quoted Mr. Elliott, the Chief Commissioner of Assam, and he said that Mr. Elliott only proposed that these powers should be conferred upon persons who had got into the Covenanted Service by competition. Mr. Elliott no doubt drew a distinction between the two classes; but he said that he would extend the powers to the second class when they became District Magistrates or Sessions Judges. Now, it seems clear to me that, as these gentlemen in the Civil Service rise to the higher appointments, especially to the appointments of District Magistrates and Sessions Judges, increasing administrative inconvenience must ensue unless these additional powers are conferred on them. If they are to hold these offices, it appears to me that inconvenience of a serious kind must arise as time goes on; indeed, I shall have to show that it has arisen already. The Hon'ble Mr. Evans has said that what we ought to do is to give the best justice we can to everyone in the country without giving rise to administrative inconvenience. I entirely concur in that opinion, and I say administrative inconvenience has already begun to be felt, and it will increase. That being the state of things with which we had to deal, some of these gentlemen being already in high administrative positions, and a still larger number coming on from below, we felt it our duty to see in what way we could best remove this administrative inconvenience, and, I must also say, the injustice to suitors which would be caused by dragging them long distances over the country.

"I turn to consider what is the scope of the Bill. I have shown you that the extent of our Bill is very much less than that of the Bill of 1857. It is very much less than that of the Bill brought in by Lord Dalhousie's Government in 1849. We have confined it to the strict necessities of the case, and the result of it would be that, if it were passed to-day, it would at once confer jurisdiction over European British subjects upon only two persons in India; and the number who would rise to that position during the next few years might not exceed four or five. That statement supplies, as it seems to me, the strongest argument against the proposal of the Government. It is said, why do this now when it will only affect Mr. Tagore and Mr. Dutt? Why do this now, when, if there is administrative inconvenience, it is only in one or two places? and I admit that I am bound to meet that objection, and to explain why the Government think that this is a convenient opportunity for making the change.

"But, before I do so, I must point out that, of course, that argument cuts

both ways. If the scope of the Bill is so very small, then it seems not altogether reasonable that it should have been encountered by such violent opposition. In stating the reasons why it appears to me to be desirable to make this change now, rather than to postpone it until the appointment of a much larger number of these gentlemen to high judicial positions, I desire to deal with this question strictly from a practical point of view. I am not going upon this occasion to enter into any examination whatever of any claim which these Native gentlemen may have to exercise this jurisdiction; but, at the same time, I cannot but ask members of this Council to consider whether—I do not speak now of justice or generosity—it is politic, if there be not an overwhelming necessity, for us to impose on these gentlemen restrictions which sensitive men would naturally feel? These men, it must be admitted, are the pick and cream of our Native Civil Service; those who are now in this position, or are about to enter into it, have won their way through a keen competition at home, and secured their position through their own ability. Under Lord Lytton's system, by which, for the future, at least one-sixth of the whole Covenanted Service will in course of time consist of Natives, we shall have to rely more and more, year by year, on the devotion and loyalty of these gentlemen. I think the question of policy is not undeserving of the consideration of this Council; but I pass from it to the practical question. My hon'ble friend Mr. Gibbs has shown you to night that the idea that administrative inconvenience may arise is not an imagination or a theory; he has pointed out to you what are the circumstances in regard to Mr. Tagore, the Sessions Judge of Karwar; and he has explained that, if certain railway works which, he says, are likely to commence there are opened, they will bring European British subjects in considerable numbers into that district. If these persons are not tried by the Sessions Judge, they will either have to besent by sea to Bombay, or have to march 80 or a 100 miles through a district which at many times of the year is very injurious to health. This constitutes a real administrative inconvenience, and it implies, not only an inconvenience to the administration of justice, but also a considerable hardship to the suitors and witnesses concerned. And it is surely clear that, though there is not at the present moment an irresistible necessity for introducing this measure, as Lord Lytton's system develops an irresistible necessity will arise. When you have one-sixth of the Civil Service composed of Natives, it will be impossible to maintain the present restriction. Therefore, what we had to consider was—is it better to wait until this necessity becomes overwhelming and irresistible, or is it better to introduce the system now? I confess it appears to me that it is far wiser, and far more in the true and substantial interests of those over whom this jurisdiction is exercised, that it should be introduced now, when the persons who would

obtain the powers are very limited in number; when the circumstances under which they enter the Civil Service insure their ability and character; and when all their proceedings can be carefully watched. Being few in number, it will be easier now than afterwards for the attention of the Local Governments and the public to be directed to their proceedings; and, being the men they are, it seems to me that they would be likely to set a good example and give a good tone to those who come after them. I hold it, therefore, to be wiser to introduce the measure now gradually, cautiously and tentatively, than to wait till the change is forced upon us by necessity, and the powers which are now to be given only to a few men have to be given suddenly to a very much larger number of Native Civil Servants. This is the ground upon which I thought that the time had come when this change could best be made. The truth is, that the opposition to this Bill is in reality, not so much an opposition to this particular measure, as an opposition to the declared policy of Parliament about the admission of Natives to the Covenanted CivilService. That policy has been a deliberate policy; it commenced many years ago, and has been enforced steadily from time to time. It is not a policy of my invention or of the invention of the present Government at home or here; it is the policy of Parliament. What does Lord Cranbrook say upon that subject, writing to Lord Lytton's Government on the 7th of November, 1878? He says—

'The broad policy was laid down by Parliament so long ago as 1833, that no Native shall, by reason of his religion, place of birth or colour, be disabled from holding any office; and Her Majesty's gracious Proclamation in 1858 announced her will that, as far as may be, "our subjects of whatever race or creed be impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge".'

"And he goes on to say—

'Since that period several of my predecessors in office, and especially Lord Halifax, Sir Stafford Northcote, the Duke of Argyll and Lord Salisbury, have pressed upon the attention of the Government of India that the policy of Parliament, enforced as it was by the Royal Proclamation, was not to remain a dead-letter, and two Acts of Parliament were passed to give further effect to it. But, as your Excellency justly observes, all endeavours hitherto to deal with this question on a satisfactory basis have proved unsuccessful. It is gratifying to observe that your Lordship's elaborate treatment of the subject will enable a practical course to be taken, that will prove, it may be hoped, both beneficial to the State and satisfactory to the natural aspirations of the educated Natives of India.'

"That is said, not by me, but by Lord Cranbrook; and I cannot doubt that, if that policy is now applied under the rules laid down by Lord Lytton's Government in 1879, and is carried out as he proposed, an alteration of the law in the direction in which this Bill goes is inevitable at no distant time.

The Government of India have not the power, if they had the inclination, which certainly I have not, to withdraw from that policy; and Lord Cranbrook very distinctly tells us that, in his judgment, Parliament will not withdraw from it. Lord Lytton's original proposal was that, when he established a separate Native Service, permission to Natives to compete for the Civil Service in England should be withdrawn. What Lord Cranbrook says on that subject is this—

'But your proposal of a close Native Service, with a limited class of high appointments attached to it, and your suggestions that the Covenanted Civil Service should no longer be open to Natives, involve an application to Parliament which would have no prospect of success, and which I certainly would not undertake. Your Lordship has yourself observed that no scheme could have a chance of sanction which included legislation for the purpose of repealing the clause in the Act of 1833 above quoted; and the obstacles which would be presented against any attempt to exclude Natives from public competition for the Civil Service would be little less formidable.'

"Therefore, it appears to me to be evident that the intention of Parliament has been to admit Natives more and more largely into the Covenanted Service; that steps were taken in 1879, after a considerable delay and frequent injunctions from the Secretary of State, to carry out that intention more fully; and that the result has been, as I have stated, that we have now to deal with a state of things in which, before many years have elapsed, it will be, as I have said, simply impossible, on account of administrative inconvenience, to withhold powers of this description from the higher ranks of the Covenanted Native Service. The Hon'ble Mr. Evans has said that he could not admit the force of the argument that because Presidency Magistrates had power to try Europeans, therefore, similar powers should be given to Native Magistrates in the Mufassal. I admit a considerable portion of the argument of my hon'ble friend, but he must allow me to say that the fact that Natives of India have been trying Europeans for a considerable number of years in Calcutta and Bombay is a conclusive argument against the theory that Englishmen have a constitutional right to be tried by Englishmen only. No one is more convinced than I am of the advantage of having a case argued before a Magistrate by trained lawyers; and I would not for a moment think of underrating its importance. Nevertheless, I was rather struck with what I saw in a Bombay newspaper this morning. It certainly did seem rather curious, after all that has been said on this subject, to find that certain European gentlemen, composing what is called the Salvation Army, are being tried at this moment in Bombay by Mr. Dossabhoy Framjee. Their religious feelings are very intimately involved in the case which is being tried by that Native Magistrate. I did not intend to have said anything about the past history of this question, because, as I have mentioned before, my main object

has been to explain the reasons which have induced the Government to bring in this Bill. But Mr. Evans has spoken with personal knowledge of what was called the compromise of 1872. On that point I would say this. There may have been a compromise between the members of the European community and the members of the Select Committee Of that I know nothing, although I have not the least doubt that the Hon'ble Mr. Evans has stated exactly what occurred; but it is perfectly obvious that that compromise cannot have been a compromise with the Government; because, if it had been, then Lord Napier of Merchistoun, Lord Napier of Magdala, Sir Richard Temple, Sir George Campbell and Mr. Barrow Ellis could never for a moment have given their support to an amendment inconsistent with it. My hon'ble friend Mr. Ilbert, in the speech with which he commenced this discussion, pointed out that all the safeguards now possessed by Europeans, and all the special privileges now enjoyed by them, were left standing by this Bill, except the single one of being exempted from the jurisdiction of Magistrates who are not European British subjects. This Bill does not touch the rest of these safeguards; and the Government has not the least intention of submitting any proposals now or hereafter, certainly not so long as I am here, with the view of interfering with those privileges. But there is another matter which I look upon as in some respects a more important safeguard, and that is the power of supervision exercised by the High Court over all the Courts below. What would be the result if a Native Magistrate trying an European acted towards him in an unjust manner? If the case came before the High Court, or if they even heard of it, they would be able to call for the proceedings, and the consequence would be to deprive that gentleman of the position which he might have so abused. That is the history of this measure, and of the grounds upon which it was introduced, and of the extent to which it goes. I know very well that a great deal has been said, as is always said when changes are introduced, about this being the thin end of the wedge. I can only say that, so far as this question is concerned, it is not the thin end of the wedge, and that this measure represents the final views of the present Government in respect to changes regarding this portion of the Criminal Procedure Code. Passing from the history of the course we have taken and the motives which have actuated us, I may now state that we are perfectly ready to listen to reasonable remonstrances, to statements of fact, and to legitimate arguments. But neither this nor any other Government that will ever exist in India will, I hope, listen to violence, to exaggeration, to misrepresentation and, least of all, to menace. It is perfectly natural that those whose interests are affected by this Bill, that those who would lose under it a privilege to which they evidently attach a great value, should bring their views on the subject before the Government, and should press them earnestly upon their attention. I should be the last man

to complain of that being done, and I should be the last man not to give to such representations the fullest and most careful consideration; and those who are animated by the dread, which has been expressed in many quarters, of the results of this measure, may rely upon it that a fair representation of their opinions, supported by good arguments, will enlistened to with the greatest attention. It is, of course, true that in this, as in every other, question with which the Government of India has to deal, it is obliged to take a wider view than that confined exclusively to the interest of any single class of the community; but it is also true that any special class of the community, which is specially affected by any particular measure, has a right to bring its views before the Government, and to expect that those views will be fully and carefully examined. I will not allude on this occasion to the character of a great deal of the opposition which has sprung up to this Bill, or to the means by which that opposition has been to a great extent conducted; I will say nothing of the charges which have been made against myself, or of the systematic misrepresentation of my feelings and objects in regard to this and other measures. I pass that by; but I can truly say that it is a source of deep regret to me and all my colleagues to observe the difference which has in this matter sprung up between the Government and, I admit, a very large portion of the European community, especially on this side of India. I do not know whether anything that I can say will tend to mitigate the bitterness of the controversy or to induce calmness; but if the vehemence of feeling is due in any degree to a misapprehension as to the scope of the Bill or the course which the Government intended to pursue in regard to it, or to a fear that we have ulterior designs which we never have entertained, then it is possible that this discussion may have done good. It is only right that it should be remembered that the Government never had the smallest idea of hurrying this Bill through the Council. They proposed to deal with it deliberately, and to afford the amplest opportunity for the representation of opinion in regard to it. It will be observed that it was before any such representations had reached the Government, and, therefore, before it had been in their power to consider them, that the proceedings which have been adverted to were adopted. This Bill will now, in accordance with the usual practice, be sent to the various Local Governments, and they will have an opportunity of recording their views upon it. These views will be sent up in due course, after careful examination by the Local Governments into all the circumstances of the case, for the consideration of the Government of India; and we shall then give to the observations of the Local Governments and of the public which may have reached us in the meantime, the fullest weight and the most deliberate consideration. I frankly say that with those who desire, if any such there be, to retain the distinction which this Bill proposes to remove, merely

because it is a race distinction, I have no sympathy whatever. To arguments which are inconsistent with the declared policy of the Crown and of Parliament it would be contrary to my duty to listen; but to fair reasons, urged in a manner to which the Government can give heed, the ears of myself and my colleagues will always be open on this and every other question. I observe that the opponents of this Bill speak of appealing to the House of Commons. I am the last man in the world to object to such a course being taken. To the decision of the House of Commons both parties to this controversy must bow. I did not think I have anything more to add now by way of explanation of the views of the Government. I have kept myself clear of controversy, because I wish to hold myself perfectly open to consider the arguments adduced on both sides in this debate. If I had thrown myself into this controversy, it might fairly be objected that I had not reserved to myself real freedom to consider those arguments. I have shown that this measure was recommended to the Government by Sir Ashley Eden, the Lieutenant-Governor of Bengal; that its principle has been approved by all the other Local Governments in India, with the exception of that of Coorg; and that it has been very carefully considered by the late Secretary of State for India, Lord Hartington, in Council and sanctioned by him. I have recalled to the recollection of the Council the circumstances in which we stand at this moment, and those in which we shall stand in no distant future, with respect to the position of the Native members of the Covenanted Civil Service. I have pointed out how very limited the immediate effect of the Bill will be, and have stated the reasons which induce me to think that it is wiser to make the proposed change now, when it can be brought into operation gradually and cautiously, than to wait until administrative necessities and justice to suitors compel the Government to introduce it suddenly and extensively. Lastly, I have expressed the perfect readiness of the Government to consider and to weigh any remonstrances which may be made against this Bill, provided they are supported by arguments which are consistent with the policy of Parliament. The Government do not propose to take any further steps in this matter now, and ample time will thus be afforded for the deliberate examination by Local Governments, by the Government of India, and by the Government at home of any representations which may be made to them in connection with this measure."

The Motion was put and agreed to.

SUCCESSION CERTIFICATE BILL.

Major the Hon'ble E. BARING asked for leave to postpone the motion for leave to introduce a Bill to amend the law relating to certificates granted under

Act XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons.*)

Leave was granted.

Major the Hon'ble E. BARING also asked for leave to postpone the introduction of the Bill, and the motion that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* and in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

Leave was granted.

The Council adjourned to Monday, the 12th March, 1883.

R. J. CROSTHWAITE,
Additional Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 9th March, 1883.

Government of India Central Printing Office—No. 57 L. D.—20-3-15.