Monday,
7th January, 1884

# ABSTRACT OF THE PROCEEDINGS

OF THE

# Council of the Governor General of India,

# LAWS AND REGULATIONS

**Vol. XXIII**

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# ABSTRACT OF THE PROCEEDINGS

# Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

# LAWS AND REGULATIONS

1884

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

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The Council met at Government House on Monday, the 7th January, 1884.

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.
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 Sir A. Colvin, K.C.M.G.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Darbhangá.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.I.E.

## CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble MR. EVANS said:—"My Lord, I have great pleasure in stating that the point upon which I found some misapprehension had arisen, and which, as I said, was not one of primary importance, has been cleared up, and no misapprehension exists at present; and I am very happy to say, as I understand the matter, there is no doubt that a settlement has been arrived at in this matter which will, I sincerely trust, be satisfactory, and which ought to have the effect of putting an end to the

bitterness of this controversy. Had it been proposed to proceed with the Bill as it stands, as apart from the settlement to which I shall presently refer, I should have felt bound to oppose to the utmost of my power the proposal to refer it to a Select Committee. Many reasons for this position have been given by me in Council in March, and fuller and more detailed reasons are to be found in the local opinions, the minutes of the High Court in Calcutta, Sir Fitzjames Stephen's letters, and a recent most able and exhaustive minute by Mr. Justice Field. It is unnecessary for me to recapitulate them, though later on I shall also have some remarks to make on the speeches made in this debate. I need only say that they are weighty, and touch matters which the European community regard as of vital importance to themselves. The opposition aroused by what European British subjects considered an unnecessary attack on their rights—their most valuable and necessary rights—was of a most strong and serious character. I, in common with many, had hoped that, on receipt of the local opinions of the most experienced officers in India adverse to proceeding with the Bill, the Government would have withdrawn it, and I still think that that would have been the wisest course. But the Government of India resolved to cut down the Bill so as to give jurisdiction over European British subjects to such Natives only as should attain the position of Sessions Judge or District Magistrate. Of this the public was first informed by Lord Northbrook's speech in November, and it was formally announced by His Excellency in the first meeting of the Legislative Council after the return of the Government to Calcutta. By this resolution the practical evils of the Bill were much lessened. The proposal, to quote the hon'ble mover's speech in introducing the Bill, to 'completely remove from the law all distinctions based on the race of the Judge,' was abandoned. That scheme was based on the "disqualification," to use my hon'ble friend's word, in the future of the bulk of the European uncovenanted servants of the Crown from exercising powers which they had long been exercising to the benefit and satisfaction of the State, in order to do away with an invidious distinction between them and the bulk of the Native uncovenanted servants who had never exercised these powers, and as to whom it was almost universally recognised that it would not be to the interest of the State that they should be empowered to exercise these powers; and also by disqualifying the whole European non-official community from exercising powers which they similarly had long exercised to the admitted benefit and satisfaction of the State, in order to do away with the invidious distinction between them and the non-official Native community, as to whom it had never even been suggested that it was desirable they should exercise these powers. This scheme has received the assent of no single responsible person, so far

as I can recollect, whose opinion was taken, and the hon'ble and learned mover has himself in this debate admitted it to be 'defective.' I can only marvel how such a scheme originated, or how it passed the Indian Council, and how it came to be laid before this assembly. Not only was this wild scheme abandoned, but also all attempts to empower any other Native officers, except District Magistrates and Sessions Judges, was also abandoned. The Government should, it would seem, then have abandoned the Bill, for the hon'ble learned mover said, in introducing it, that 'no change in the law could be satisfactory or stable which did not remove at once and completely from the Code every judicial disqualification based merely on race-distinctions,' and said Government would not be justified in re-opening this difficult question and the settlement of 1872, unless it saw a way to a solution which contained within itself the elements of stability and durability. And he deprecated constant tinkering of the law on such a subject. But this limited Bill was still open to the grand objection—that the class affected had an intense repugnance to having their guilt or innocence decided by a Native Sessions Judge or District Magistrate, and had good and weighty grounds for the objection. The Government of Bombay had come to the conclusion that it was necessary on this account to give the European British subject a right to a jury before a Native Sessions Judge, and had said that Government must recognise the fact of the unwillingness of Europeans to be tried by Native Magistrates, and the evils that would arise from trying to force them to be so tried, and that the Europeans honestly believed in the reasonableness of the objection. It was obvious from the first that this curtailed Bill could never be accepted by the European community. The Government insisted on proceeding with it, and the class to be affected by it doggedly resisted. They were animated by the same spirit which has always caused the English race to resist to the utmost all attempts by the Government of the day to encroach on what they believed to be their right and liberties. Things came to a deadlock, and the tension became extreme and threatened grave consequences to the country. It became apparent to me, and I think to every one who had adequate means of information, that the situation had become extremely dangerous, and was becoming more perilous every day. Under this crisis I thought it to be my duty to endeavour to bring about some solution of the question. Therefore, I took it upon myself, after making such enquiries as I could, to make certain proposals to the Government—proposals which were not accepted. But though they were rejected, counter-suggestions emanated from Government, which resulted in the present arrangement. I distinctly wish to state that no proposal or suggestion of any kind emanated in any way from the Defence Association, of which I am not

a member. But, when these proposals were laid before the Defence Association, it appeared that the bulk of the European community which they represented were, notwithstanding the irritation created by this measure, the same sensible, moderate, loyal Englishmen as they had been in 1872. In 1872, the European British subjects, in view of the grave administrative inconvenience then existing, agreed for the public good to give up to a certain extent their right to trial by jury, provided that the persons to try them without jury were European British subjects like themselves. When the Government now determined to re-open that settlement and to give jurisdiction to certain Natives in the two classes of District Magistrate and Sessions Judge over European British subjects, the natural result was that they were entitled to fall back on their valued privilege of trial by jury. It was felt that the proposed arrangement in effect gave them back this privilege. The main point that they had fought and struggled for was the right to be tried by their own fellow-countrymen, that is, that their own fellow-countrymen should decide whether they were guilty or not guilty. This right or privilege was secured to them by this arrangement, for they became entitled to trial by jury when claimed before the District Magistrate as well as before the Sessions Judge, and they rightly felt that they had substantially gained what they were fighting for; that it would not be right to incur the grave evil to the country which might result from the prolongation of the contest for any object that was not of paramount importance to them. The Government went further and gave them what they had not struggled for. They gave them back the privilege of trial by jury, not only in case of their being tried by the Natives, introduced into these two classes, Sessions Judges and District Magistrates, but in case of their being tried by any member of these two classes, whether Native or European. The jurisdiction of the District Magistrate was enlarged from three to six months' imprisonment, apparently to avoid any anomaly, but this did not hurt the European British subject, as he could now claim a jury before the District Magistrate.

"No one can rejoice more sincerely than I do that a settlement has been come to, and no one can wish more heartily that it should be speedily carried through, and that the present lamentable tension should at once cease. The settlement has cost me much time and labour, besides the anxiety and harassment which awaits any one who interferes as a volunteer to compose so bitter a dispute. All that remains to be done is for the Select Committee to see to the framing of the necessary sections to carry out the arrangement, and to see to the subordinate amendments and alterations which may be necessary to harmonize the new clauses with the Code; and I do not think that any difficulty ought to arise in carrying out the work, and see no difficulty in

reporting on Friday week. No one can deplore more than myself the bitterness of the controversy, but I hope and trust it will cease from this day. I have all along felt assured that the object which His Excellency had in view was the good of the country. I have never doubted this, though I have thought he was grievously mistaken. I have always thought that, if His Excellency had known how real and sincere and important a fact the repugnance of the European community was, he would not have introduced this Bill. I am confirmed in this view by the manner in which he has dealt with the matter since this fact has become manifest to all. I am satisfied by inference from facts which have come under my observation that, by some misfortune which I am not able to explain, the warning which ought to have been transmitted to this country from the Indian Council or from the Secretary of State for India did not arrive before the introduction of the Bill. If so, this was a grave misfortune, but it is one which no one in this country is responsible for. Here I wish I could stop, but I cannot pass without a word about the previous speeches in the debate, lest my silence be misconstrued. The hon'ble mover in his speech stated that the principle of the Bill could not be better described than in saying it aimed at the '*removal of all disqualifications based on race, and the substitution of a qualification based on personal fitness.*' He also said that 'it was never described by any Member of Government as the abolition of race-distinctions for judicial purposes.' But turning to his own speech in introducing the Bill, I find the words—'These proposals will completely remove from the law all distinction based on the race of the Judge.' Now, as to the matter of disqualification. The Natives are not disqualified from any office which we are now concerned with. They can be made District Magistrates and Sessions Judges. The so-called office of Justice of the Peace has long ceased to be an independent office. It has become in the Mufassal a mere formula for conferring magisterial jurisdiction over British subjects. That this is so is clear from the fact that the term could be cut out of the Code and the jurisdiction given to the Magistrates by other words without any mention of the office, without any one being, as my hon'ble and learned friend put it, a penny the worse. The hon'ble and learned mover is, I think, aware of this, because he expressly says later on in his speech that Native Magistrates are not disqualified by the Act of 1872 from holding an office. It is not any such disqualification, that is, a disqualification for an office, which he seeks to remove, but a 'disqualification to perform a part of the duties ordinarily attached to the office.' How do the facts stand? The Magistrates in the Mufassal are of three grades. The general limitations on the powers of the different grades are in respect of the class of offence or the amount of punishment. Certain Magistrates

of the 1st class are called District Magistrates. Now, European British subjects are entirely exempt from the jurisdiction of the Magistrates of the 2nd and 3rd classes, and, besides this, when brought before a Magistrate of the 1st class, they are entitled, as the privilege of the accused, to claim that the 1st class Magistrate who is to try them should be not only a Magistrate of the 1st class but also a Justice of the Peace and an European British subject. This right is guaranteed to them by legislative enactment. This is the special privilege of the accused which he is entitled to in a Magistrate's Court. In the Sessions Court he has the privilege of claiming that he should be tried by a European British subject, and in the Assistant Sessions Judge's Court by an Assistant Judge who is an European British subject and is of three years' standing. Now, is it not surely playing with words when my learned friend describes a Bill for taking away this special privilege of the accused to claim that the Native Magistrate shall be an European British subject, when he describes such a Bill as 'merely declaring that the simple fact of belonging to an artificially defined circumscribed category of human beings—that this fact, standing alone, apart from other considerations, shall not constitute an absolute disqualification for the performance of certain important magisterial functions? The Magistrate, whether Native or European, is a Magistrate with the full powers of his grade and the full pay, but there is a special class who can claim the privilege of appearing before a certain class of Magistrates. The expression 'artificially defined circumscribed category of human beings' is a roundabout expression which would fit most legally defined classes whose members have, as members of such class, a right to any privileges, because legal definitions have generally to be more or less artificial, and a defined category of human beings is, I take it, in plain English, a special class. I fear it will turn out that even His Excellency belongs to an artificially defined circumscribed category of human beings, not only as British subject, but as a peer of the realm. In this latter capacity he has also a right to a special tribunal of his own peers in certain cases. The analogy would be more complete if some portion of the Judges in England were ordinarily peers, and if an Act had been passed altering the present law and enacting that no English Judge who was not a peer could try a peer without his consent. Would it be fair to describe such a law as imposing on the other English Judges a disqualification for the performance of certain judicial functions—to ignore the privilege of the peer and treat it as a matter of 'removing a disqualification' from the other Judges arising solely from their not belonging to an artificially defined circumscribed class of human beings, that is, of peers? The burden of proof, I take it, is on him who wishes to take away from any class a legal right they possess, and it cannot be got rid of by involving

the matter in a cloud of words. The so-called principle of the Bill seems founded on a misconception. But the matter does not stand there. The hon'ble mover says his object is to declare that this fact alone, apart from other considerations, should not disqualify from exercising certain powers. There are other considerations of the utmost weight and gravity to be found in the local opinions, which the hon'ble mover does not seem affected by. I will only mention one, the opinion of Mr. Badshah, a Native Covenanted Civilian and Assistant Magistrate of Goalundo, who wrote—

'To equalize rights, to remove the irritation and friction which attend their inequality is certainly high and noble policy. But if the privileges of a class are infinitesimal, if they injure no person and irritate a very small body of men, if their removal is associated with the degradation of justice and tends to bring judges into contempt, it is still higher policy to let alone the privileges, so that the sacred name of justice may not be sullied nor Judges become the targets for universal ridicule and abuse. It has been the aim and object of every civilised nation to secure their judges from attacks on their impartiality. I cannot suppose that the present Government of India, if they were informed of all the facts, would depart from the declared policy of the civilised world.'

"Now, as to the Charter Act and the Queen's Proclamation. I desire to treat both of them with all respect, and I have always regarded the Queen's Proclamation as a solemn declaration of policy. The Charter Act removed any disability that there might be on Natives from holding any place, office or employment, and the Proclamation announces it to be the will of Her Majesty that 'so far as may be' all her subjects may be freely and impartially admitted to all offices in her service. As I have pointed out, the so-called office of Justice of the Peace is not now really a substantive office. The substantive office is that of Magistrate. Then, there is no contravention either of the Act or Proclamation in the special privilege claimed. If the Justiceship of the Peace were really an office, it has never been open to Natives in the Mufassal; and, if this were a violation of the Act and Proclamation, it would be strange to find that the Government of India had been during all these years violating the Act and Proclamation, and that this fact had now been discovered by my hon'ble and learned friend for the first time since the introduction of the Bill. The hon'ble and learned mover expressly admitted this, and could say nothing more than that the Act of 1872 went perilously near to an infringement of the rule.

"How, then, about the fallacy which, he says, underlies the reasonings of the Lieutenant-Governor and the High Court? He says that the general rule is that the Native is not to be disqualified for the office, and is to be freely and

impartially admitted. If he is not disqualified, and is admitted to the office, as it seems conceded, the rule is not infringed, and we are not called to justify an infringement by proof of an exception; and the fallacy is imaginary. With regard to a large portion of the hon'ble mover's speech which dealt with the old struggle as to subjecting the British subject to the country or local Courts, he has answered it himself by showing that struggle then was not whether, if the European was subjected to the local Courts, he should be tried by a Native or European, but whether he should be at all subjected in any shape to the local Courts. This was never accomplished till 1872, and the European British subjects then stipulated that, as they consented not only to be subject to local Courts, but to give up their rights to a jury in Magistrates' cases, they should be allowed a special privilege as to the constitution of the tribunal. Most of the old discussions have, therefore, no bearing, as they were addressed to a totally different point. Throughout his speech I find no indication of his recognition that the European British subject had any right to object to privileges being taken away, or had any voice in the matter. He treats his legislation as necessitated by the Charter Act and the Proclamation, and he seems to treat the concessions of right of trial by jury as a safety-valve attached to the Act in cases of accidents, which he will remove as an exception if it does not work satisfactorily, and meanwhile will sit upon to show how necessary it is. This is not my view. I hope it will work satisfactorily so far as it is required to work, but I regard it as an integral part of the settlement, and consider that, if it was objected to, the whole Bill would have to go, and the European British subjects would be entitled to revert to the *status quo ante* and to resist as vigorously as ever any invasion of their rights. They will not, I am certain, surrender the right to a jury, except on the same terms as in 1872, or on terms which would equally secure their just liberties.

"There is one observation of the Hon'ble Dr. Hunter which I must allude to. He says he understands that hon'ble members who approve of this Bill going into Select Committee approve of the principle of it. This may ordinarily be the case, but not in the present instance. A settlement of this sort is the resultant of opposing forces. I no more affirm my learned friend's principle than I expect him to affirm mine. I only assent to this Bill going into Select Committee to procure a settlement of a question which it is plain to see will produce most serious results if the controversy is continued.

"My learned friend Amír Alí states the object of the Bill very differently from the hon'ble mover. He says the object of the Government was to 'raise the

status of a few specially qualified officers; in fact, to assimilate them for certain purposes under the Criminal Procedure Code to European British subjects.'

"Another statement of the hon'ble mover I must mention. He has said that 'he need hardly say that the maintenance of trial by jury either in its existing form or with the proposed extension is dependent on an assumption as to its working.' This language has given rise to great mistrust and alarm. It has been taken to point to a decision on the part of the hon'ble mover not only to ignore the settlement now arrived at, but also to deprive European British subjects and also Natives of the existing right to trial by jury. This mistrust and alarm he has aggravated by another statement that Magna Charta might be said to have as much to do with the Bill as Domesday Book with the Permanent Settlement.

"It has been laid down by high authority that the right to trial by jury was part of the unwritten law of the realm confirmed to the subject by Magna Charta under the description of 'legem terræ,' and it was described by Sir William Jones in his celebrated charge in 1792 as one of the three anchors which preserve the Constitution from shipwreck.

"I do not wish to discuss the question, but only to say that I both trust and believe that the Government has no intention of interfering with a right which is specially valuable to Englishmen living under a despotic form of Government.

"I understand that now the hon'ble and learned mover did not very clearly recognize the settlement, because at the time he made his speech it was difficult to do so. My hon'ble friend Kristodás Pál has paid the European community a compliment by recognising them as important factors in the advancement of the country. I have always been on friendly terms with the Native community, and have always sought to do individuals of that community a good turn when I could. I don't think I have done them a bad turn, unless they consider my opposition in this case one. But my hon'ble friend is hard to please. He is not content that Native and European District Magistrates are placed on the same platform, and that a Native District Magistrate should enjoy all possible dignities of the office, and be entitled to preside as judge at the trial of a European. He wishes that he should act as jury too. My hon'ble friend forgets that the ancient common law form of trial, the 'legem terræ' of Magna Charta, was a trial by a judge holding office from the Crown and a jury not nominated by the Crown, and that the jury, who were always

the judges of fact, were liable to challenge by the accused, to a certain number of challenges without cause shown, besides challenges with cause. Now, a summary trial is a case in which the Magistrate is judge and jury: As a judge he is a nominee of the executive, and it is difficult for the accused to object to the judge, except on very special cause. But if the Magistrate wants to act as juryman too, I may fairly challenge him, and I never yet heard of a man insisting on his right to try the accused as a juryman in spite of the accused's reluctance. As to the latter part of his speech, I read it as meaning that he fears that this Bill as modified will be less satisfactory to the Native community than the present state of affairs, that is, than the compromise of 1872. If he is serious in this, and can persuade His Excellency on the final debate to withdraw the Bill in toto, I shall certainly not object, for it is not as an improvement on the present state of things but as a settlement of strife that I support the modified Bill; and if he can get the strife ended by an amicable withdrawal of the Bill, no European will object. But I doubt if he is serious in this idea, and I think, when it is known that the proportion of Magistrates' cases tried by District Magistrates in Bengal is ·7 as against 93·3 tried by his subordinates, his fears of inconvenience will abate. I should be very glad if the District Magistrate tried none at all. As the head of the executive—the superintendent of the police—receiver of private reports, &c., he is a very undesirable person to exercise judicial functions, and his executive duties are always heavy. I reiterate my sense of relief at the settlement of the question, though it is clear to my mind that it was a grievous mistake to raise the question by introducing this Bill."

The Hon'ble MR. THOMAS said:—"My Lord, I came into this Council Chamber on Friday last prepared to vote for the Bill going to Committee, because I thought there had been a Concordat, under the shadow of which we might still hope for peace for this troubled land, and I thought we had only to agree together to leave it to the Committee to work out an amicable *modus vivendi*. I thought, too, in doing so, to abstain from any discussion that might tend to prolong the lamentable controversy that has so angrily agitated the country to a state critically bordering on convulsion. But I am distressed to hear how the speech of the hon'ble and learned mover re-opens old sores, re-asserts things that have been answered *ad nauseam*, insists on prominence for the principles that have caused all this grievous agitation, and makes light of those which have instantly brought back peace. There is also a ring of uncertainty and unfinality about the future which fills me with grave misgivings, and about which I would fain be reassured by your Lordship.

The speech of the hon'ble and learned mover is, then, my apology for any discussion at all on an occasion on which I had fondly hoped that we had at last met together to close deep sores, and not *infandum renovare dolorem.*

"We all know, my Lord, that one has only to confidently assert a matter often enough to get the great majority of the world to unconsciously accept it as true, and, the assumption once accepted, then it is easy to build up a splendid edifice upon it, and the majority gaze only at the splendid edifice that catches the eye, and forget the buried false foundation. Thus the hon'ble and learned mover has asserted over and over again, and has built up his present speech on it, as he has built up the whole measure, and has harped and re-harped on it in varied strains till all the Native Press have chimed in, and he and they doubtless believe it to be a great uncontrovertible truth, that the Criminal Procedure Code imposed on the Natives of India restrictions and disqualification based on race-distinctions; and yet, to my simple thinking, it is not the true state of the case for all that; and I find that the Hon'ble Justice Field, in a minute which was in the hon'ble mover's hands before this his last re-assertion of the old error disposes of the matter in words which, with your Lordship's permission, I will read:—

'Now, I venture to take exception to the form of expression here used, as involving a serious fallacy which has since permeated and coloured, not only the utterances of public officers, but also the arguments advanced by the Press and the public. In the first place, the new Code of Criminal Procedure did not *impose* any restrictions. It left the law in this respect in precisely the same condition in which it had been since Englishmen first came to India. Then, when we speak of '*restrictions*' on the power of judicial officers and '*judicial disqualifications based on race-distinctions*,' we use an erroneous form of expression, which has the effect of putting the burden of proof upon the wrong side. It lies upon those who seek to impose *restrictions* or *disqualifications* upon any race or class to prove by the most cogent arguments the necessity for their imposition. Even when the question is whether *restrictions* or *disqualifications* shall be maintained, a very slight *primâ facie* case for their removal may fairly cast on those who advocate their maintenance the burden of showing that the ends of justice or public policy require that they should be maintained. But in the present case the question is one not of *disqualification* but of *qualification*: it is not whether *restrictions* or *disqualifications* shall be removed but whether the personal law of a particular race shall be abrogated—whether a right which has always been enjoyed by a particular class shall be taken away. And it lies upon those who assert the affirmative of this proposition to prove it. It appears to me so necessary that the absolute accuracy of this view should be understood by all parties to the controversy, that, at the risk of being tedious, I shall submit at some length the grounds and authorities upon which it is based.'

"And after referring to those authorities the Hon'ble Mr. Justice Field says again:—

'That Englishmen should be tried by their own countrymen was at the same time part of this personal law and a natural incident of their settlement in, and occupation of, the country. It is not, therefore, an accurate use of language to speak of this right, which is a portion of their personal law, and the natural outcome of the circumstances under which they acquired the country, as a *restriction* or *disqualification* upon members of the other races, whom they have permitted equally with themselves to enjoy their own personal law in all matters in which they valued it, and in which its enjoyment was not opposed to natural justice, or was not inconsistent with the position which the British had necessarily to take up in the country. * * * * * There can be no doubt that, by stating the question for discussion in what I think I have shown to be an erroneous form, and thereby casting the burden of proof upon the wrong side in the controversy, not only have feelings been unnecessarily embittered at the outset, but the right determination of the true question at issue has been rendered more difficult.'

"Again, the hon'ble and learned mover makes a very sweeping and telling proposition which I wish to take the liberty to quote, and make bold to confront with an ugly fact—

'And this test of fitness which it would impose is a test to which no reasonable person could object on the ground of insufficiency. For to say that a Native of India who has been entrusted with the powers exercisable by a District Magistrate or Sessions Judge, who has risen to the position of being the chief executive officer or the chief judicial officer in an area the average population of which in Bengal is about a million and a half,—to say that such a person cannot be trusted to exercise with justice and discretion the very limited jurisdiction which is exercisable over European British subjects outside the Presidency-towns, is to say that no Native of India, however long and complete may have been his training and experience, however high and responsible may be his position in the public service, is fit to exercise that jurisdiction.'

"And now for my fact: one is enough. I do not say *ab uno disce omnes*—far from it. But I do say that one fact is quite enough to show that such very sweeping assertions had better have been left unsaid, and that there is much—very much—to be said on the other side, which for my part I came here on Friday prepared to leave unsaid, in order that we might all unite to endeavour to bring back peace to this land. I could name date and place and individual, but they must be too well known to need that, and it is enough for my purpose that the bare fact should be given. A certain Native who fully answers the test to which we are told 'no reasonable person could object on the ground of insufficiency' had brought before him the case of a man who, wholly unprovoked, ripped open a child, tore out its entrails, devoured them before the

eyes of his still living victim, was apprehended actually red-handed, attempted no denial, and pleaded only the deliberate fulfilment of a vow to a goddess. For this wilful murder this gentleman who satisfies every reasonable test passed a sentence of three months' imprisonment, and the High Court had to annul the sentence and to send an English Judge to try the case *de novo*, and he, of course, condemned the murderer to the extreme penalty of the law. And yet we are told 'no reasonable person' could object to this gentleman's fitness to try him. My Lord, I repeat that I came here on Friday fully resolved to recur to none of these things; but the sweeping assertions of the hon'ble mover have compelled me to do so in defence of the position that the Englishman is not unreasonable in wishing to retain in this foreign land his personal right to be tried by his peers.

"The hon'ble and learned mover will pardon me if I refer once again to his speech, and he will believe me that, in a matter that concerns crucially the well-being of the Empire, I am too deeply moved to think of anything but the Empire. He will pardon me that it chances to be his individual words that in all personal good feeling I still cannot help endeavouring to confute as dangerous. He says our Empire is an Empire of law. He makes light of prestige, and his policy is to level it. What does history, the logic of facts, say to this? Was there ever a nation that maintained its supremacy by the righteousness of its laws? When the Gaul was at her gates, did it avail the Mistress of the World to plead the goodness of her laws before her late subject-races? Her code of jurisprudence was much more in advance of the world and her times than ours is of India, and yet Brennus took no note of it. I will admit that England is the nation in all the world that proudly and justly claims to have most largely supplemented the paucity of her legions by the righteousness of her rule; but I hold that this theory is in great peril of being very much overstrained—that it is dangerous to make light of prestige. Prestige is to power as a reflector is to a light. It economises its force; and, if prestige be thrown away by levelling down, the battalions will have to be doubled to make up for it; for after all they are 'the last logic of nations,' and it is on them only that the law takes its stand. Sir Fitzjames Stephen has some incisive words on this point, and the explanation of the intense feeling that has been exhibited by Europeans lies, I think, not a little in the recognition of the danger of such levelling down policy. It were better, far better, never to have stirred these embers at all, and to have let European and Asiatic walk peacefully side by side in the places they had grown quietly to recognise.

"I cannot but think, too, that a very serious mistake underlies the words in which the hon'ble mover introduces the proposal for trial by jury; and if I am wrong, I should like to be corrected. He says—'It has been strongly pressed upon us' and 'we have agreed to accept the suggestion which has been made to us;' whereas the newspapers stated confidently that the suggestion came from Government and had been accepted by the representatives of the people: and they gave the text of the Concordat, and the Hon'ble Mr. Evans now confirms this impression; and it was because I thought it came from Government that I came here last Friday prepared to support it, as a possible opening for a peaceful solution of the present position. If it comes not from Government, and the Government is not prepared to let the Bill stand or fall on this issue, then it alters the whole aspect of affairs. If the Government will put this principle forward as its own,—this principle of the Englishman retaining his personal right to trial by his peers, whether by jury or as now,—the principle with which I am mainly concerned,—the principle to which the Englishman tenaciously clings and will never yield if he can possibly help it; if the Government will distinctly pledge itself to pass the Bill with this principle maintained or to abandon the Bill, then I for one will give my vote for the Bill going to Committee. But if it will not do so, if I am to understand, as I do from the hon'ble mover's words, that the principle is one outside the Government proposal and accepted only at the suggestion of others, and that, too, on the condition of its being found practically workable; and that, in the event, either in Committee now or in the working experience of after years, of its being found to be accompanied by administrative difficulties, then it will be dropped out and the rest of the Bill passed without it; then, my Lord, the position would be a very different one, and I could not but oppose the Bill.

"There are other things, too, in the hon'ble mover's speech that fill me with grave misgivings. The same mouth that originally introduced this Bill with such a promise of permanency speaks now only of 'meeting the immediate necessities of the case,' and says we are not bound by the pledges given in 1872—the pledges of the principle of trial by his peers on which the Englishman withdrew his objections. Am I to understand that, if, on the Government pledge of reverting to trial by jury, the Englishman withdraws his objections now, and as a compromise accepts all the other parts of the Bill, that pledge is not to be permanent? I hope your Lordship will be able to assure us to the contrary. I hope your Lordship will be able to assure us both that the principle of the Englishman retaining his personal

right to trial by his peers will be an integral part of the Bill, without which it shall not become law, and that it shall be so passed only with the view of its being a permanent settlement. If the Government can give no such assurances, then I submit that it would be well to abandon the Bill, and let us revert to the position in which we all got along very happily until disturbed by these proposals to legislate for a mere theory unaccompanied by any practical want. If the Government can give no such assurances, it will certainly leave the European community in at least a permanent state of feverish unrest, if not in active agitation; for I ought not to conceal from your Lordship that outside these walls there is, as far as can be ascertained in the limited time allowed, much deep-felt anxiety on these points. And as to the Natives, it is already apparent that they do not view the Bill with satisfaction. It has only served to whet their appetites for fresh demands; this much is evident from the speeches of the two hon'ble Native members of this Council who have already spoken, and from the Native Press. If, then, neither Europeans nor Natives are satisfied with the Bill, and it is not only not wanted administratively, but may even create administrative difficulty, what is it that we are to gain by the passing of it? Is it the credit of the Government that is to be saved by persistence in the creation of a political sore that will go on festering in the hearts of both sides to break out at intervals as cases occur? Surely, the credit of the Government will stand a great deal higher if it has the manliness to abandon the Bill. Seeing also the administrative uncertainties which surround the working of the jury-system, in the difficulty of foreseeing through the next few decades the lines of the spread of the European community in India, it would surely be safer and more statesmanlike to abide by the present system, which works well, and has satisfied every one, at least till such time as a change is positively required not by theory, but by the practical pressure of actual circumstances; and such is certainly not the case now. In brief, my Lord, my individual opinion is that I have seen no reason in all the months that have passed to change the views which I submitted to your Lordship's judgment in March last; and everything that has happened from that day to this has, to my thinking, only testified to the correctness of those views; for the deep abiding anxiety of the European and the portentous spread of race-antagonism has fully justified my warning; and I am still unhesitatingly of opinion that the best course for the country would be, as I then said, to withdraw the Bill, or, failing that, to adopt the compromise which I then proposed. Still, looking to the agitated state of the country, I am prepared, if the Government still wishes to persevere with their measure, and can give us the assurances which I ask, to abstain from opposing the action of

Government, in the hope that a *modus vivendi* may yet be worked out by that means. But if the Government can give no such assurances, then I think it wiser to walk in the tried paths to which no practical objection has yet been made than to take all uncalled-for a dangerous plunge into what bids fair to be a sea of troubles in search of what, to my humble thinking, is a mere Utopia. And, even if the Government can give the assurances of principle and permanancy which I ask, still my abstention from opposing the measure will not be because my own judgment approves it, but in deference, for peace sake, to the proposal of the Government accepted by the European portion of the community. I need hardly add, my Lord, that, even so consenting, I must demur to the Committee being directed to report in a week. I see that supporters of the Bill, as well as opponents, deprecate the pressure of such haste, and I see the Hon'ble Mr. Evans asks for the postponement of a report till Friday week."

The Hon'ble SIR A. COLVIN said:—"I do not propose to detain the Council long, or to examine very closely the merits of a controversy which I am glad to think is now drawing to a close. But, before proceeding with what I have to say, I would pause to remark that I entirely disagree with the Hon'ble Mr. Thomas when he says that the speech made by the Hon'ble Mr. Ilbert on Friday last was in any way calculated to re-open that controversy. As I understood the remarks made by Mr. Ilbert and by Mr. Evans, they were both careful, while professing their willingness to meet on common ground on which they agreed to maintain what they considered to be the fundamental principles of public policy which they respectively affirmed. In plainly stating that policy, as they understood it, while they wished to abstain from further controversy, they equally refrained from saying anything which might prejudice their case should unhappily the time arise at which it might become necessary to re-state it. They were careful, in other words, to maintain intact communication with their several bases. The Hon'ble Mr. Thomas has further asked several questions and pressed for a variety of assurances to which I consider it is not my business to reply. Had similar observations fallen from the Hon'ble Mr. Evans I might have had something to say; but the Hon'ble Mr. Evans has maintained a guarded and discreet silence, and I shall follow his example.

"The constitutional and legal aspects of the question before us I leave to others more competent to discuss them, and the whole matter indeed has been so thoroughly thrashed out that I am perfectly aware that I can throw no new light upon it. But what I propose is to explain the reasons why the settlement

which has been come to commends itself to me, and why I accept it as a settlement which I consider should bring about a satisfactory conclusion of the issue which has been raised. The cardinal point to which the Government has throughout these discussions attached importance is the necessity for removing from the Statute-book the absolute disability under which the Natives of India rest, of exercising in any circumstances whatever jurisdiction over European British subjects in criminal cases in the Mufassal. As that point has been practically conceded, I will only say that I entirely agree with those who through good report and evil report have steadfastly adhered to it. The extent to which that disability is to be removed is to me matter of secondary importance. What, in my opinion, is of vital importance is that Natives of India should not, merely because they *are* Natives of India, be absolutely and under every circumstance disabled from exercising that jurisdiction. That a man who has been a Sessions Judge, or who has for years been in administrative charge of a district, and has given ample proof of his integrity, his independence and his ability, be he European or be he Native, is equally qualified to exercise that jurisdiction, and especially in view of the safeguards with which it is by the law even as it stands surrounded, is amongst my most absolute convictions. On this point, as on many others connected with this matter, there have been great misapprehensions. It has been represented, for example, that this jurisdiction was to be conferred on all Native Magistrates; and then it was argued that because all Native Magistrates were unfit to exercise this jurisdiction, therefore every Native Magistrate must be unfit; and that is a fallacy which has attracted much approval. The truth seems to be that the time has gone past when the Government can profitably discuss the question. It was open to the Government of India in times past to say to the Natives, 'We will not admit you to the higher offices; we will accentuate race-distinctions; we will keep you wholly in a subordinate position.' But, happily, the Government of India did not say that. On the contrary, its policy has ever been to give to the Natives of India every encouragement in their efforts to improve themselves, and to assist them in their onward progress. The Government has always given them its warmest support and sympathy, and in the most solemn way has pledged its word, and at its word they have taken it; taken it at its word in a manner which had taken some of us by surprise. So that I look, my Lord, upon this measure as on a bill which has fallen due, and which the Government is bound immediately to honour. Now, I believe, that the main secret of our security in India lies in the conviction among its people that we shall, in all circumstances, and at all costs, maintain inviolable the pledges which we have given them, and that not only in the letter

but in the fullest sense of the spirit of those pledges. Hence, much as I regard and value the desires and wishes of my countrymen, I value more their national honour. I think that there are moments when, misled by prejudice or carried away by passion, they lose sight in public affairs for a moment of those principles which in their private life and in their ordinary transactions form their habitual rule of conduct, and I believe that at such times it is the special duty of the Government, at whatever temporary risk of reproach or unpopularity, to stand between them and the consequences of their misapprehensions, and to hold high the inviolability of its pledges—the ark of its covenant with the people of India. The best answer which could be given to the attacks which assaulted the Government in former days, when civil jurisdiction was given to Natives in India, was the honourable and patient answer which they gave by living down the attacks which were made upon them: and I look to them now again similarly to justify the confidence which the Government for a second time proposes, in pursuit of its engagements, to place in them, and to furnish a similar answer to the charge that the jurisdiction now to be conferred upon them is one which they are incapable of exercising. I myself know a score of men, neither Sessions Judges nor District Magistrates, but men of intelligence, independence, and integrity, plain country gentlemen, who are as competent to exercise this jurisdiction as the hon'ble member in charge of the Bill himself.

"This point settled, then, this cardinal point secured, it is the desire of the Government that material safeguards should be given to European British subjects; and I may say at once on this point that it seems to me very natural and reasonable that, in face of the new departure, European British subjects should wish to assure themselves of these safeguards; that they should come to the Council and say—'We understand that you wish to adopt a policy with which we do not sympathise; we are prepared to admit that you consider it necessary, and we for our part do not propose longer to obstruct it; but from our point of view we ask that you should secure to us our personal safety.' I think that, under the circumstances, that was an argument which might be fairly expected from the lips of our fellow-countrymen in India; and I am of opinion that, so far as safeguards can be given without insuperable administrative inconvenience or prejudice to the ends of justice, it is the duty of the Government to give them. In serious cases I think it natural that European British subjects should wish to safeguard themselves when they rightly or wrongly consider that their personal safety is in question. My hon'ble friend (Mr. Kristodás Pál) cursorily remarked the other day on what he considered might be some of the inconveniences attaching to the Bill. As I assent to the

measure in its proposed form, I am bound to show that justice in my opinion will not be prejudiced if it becomes law. My remarks, like those of my hon'ble colleague, will be summary, but I am unwilling to leave his comments wholly unanswered. The first point raised by Mr. Kristodás Pál was with regard to distance. He argued that because a man formerly had to go possibly 1,000 miles to the High Court, he would be similarly inconvenienced now by having perhaps to go 50 or 60 miles. Well, there is a river in Monmouth and a river in Macedon; and that is about the measure of the similarity. In former days a man had to go far away to the High Court; now he would have to go at furthest to the Sessions Judge's Court, and would suffer no great inconvenience from the distance. That argument I believe was a mere flower of rhetoric, one of those flowers which overlaid the whole of my hon'ble colleague's argument, rather than a serious objection, seriously urged; and I do not think that he would be inclined to press it. Next, he spoke of the consequences which might arise in times of great excitement. But contingencies of that sort were provided for by the provisions of the existing law, which in certain cases such as these give to the High Court power to transfer cases from one to another Court. Then my hon'ble colleague said that to give the Judge the power to sentence, and to a jury the power to convict, was to give to the one the shadow and to the other the substance. But the power of sentencing seems to me a very substantial shadow, a shadow so substantial that it may hang over a man for the term of his natural life, a shadow the substance of which I, for one, am not in the least inclined to test. The hon'ble member then spoke of anomalies. I consider this very dangerous ground to tread, and I decline to follow him on it further than to say that in the honourable path of progress and of endeavour on which the Natives of India have embarked, they will, in my opinion, find more assistance in divesting themselves gradually of anomalies peculiar to themselves than in pausing to contemplate those which are incidental to their relations with their fellow-subjects. Then my hon'ble friend alluded to the miscarriage of justice through the partiality of jurors. Well, that, of all points, seems to me to be one which those who ask for this safeguard must see to. If the juries abuse their powers, so much the worse for the juries; but I understand that there is a body of gentlemen here in Calcutta whose business it will be in future to look uncommonly sharp after us all, and especially after the working of this Bill, and, if I might give them a friendly word of advice, it would be to look especially sharp after the juries.

"My Lord, I need not detain the Council longer; I think I have now said what I had to say; and I will only add, in conclusion, that the Government, in my opinion, have maintained, and have been most careful most effectually

to maintain, the cardinal position which from the first they announced their intention to maintain, and that the safeguards which have been agreed to are quite compatible with that resolution. And, finally, I would express my belief that, if the reasonable remonstrances which your Lordship spoke of on the 9th March last, and which have been now addressed to us by the Hon'ble Mr. Evans, had been addressed to the Government at an earlier stage with the moderation, prudence and sagacity which our hon'ble colleague has evinced, much of the controversy might have been avoided, and the untenable position which the opponents of the Bill had taken up might, at a far earlier moment, have been abandoned."

His Excellency THE COMMANDER-IN-CHIEF said he wished to re-affirm what he had stated in the first instance, namely, that he entirely agreed in the principle of the Bill, and he was glad to find it was to be proceeded with. HIS EXCELLENCY thought from the first, like his hon'ble friend Sir Auckland Colvin, that every safeguard which the Legislature could give ought to be given; and His Excellency the Viceroy was aware that from last August he (THE COMMANDER-IN-CHIEF) was willing and ready to extend the jury-system. In the course of his speech his hon'ble friend Mr. Evans alluded to two points on which HIS EXCELLENCY would like to say a few words. He had expressed his surprise that a dangerous measure like this should pass at all through the Councils of India and the Secretary of State. As regarded the Council of the Government of India, every member of it was present, and could answer for himself; but with regard to the Council of the Secretary of State for India, HIS, EXCELLENCY had something to say. It had been frequently asserted that the members of that Council had disapproved of the measure and had warned the Secretary of State of its dangers, and it had been further asserted that these warnings had been communicated to the Government of India.

The speeches of the late Secretary of State on this question had, no doubt, been widely read. In these speeches Lord Hartington had publicly declared that the members of his Council unanimously approved of the principle of the Bill, and also that they unanimously approved of the despatches which authorized the Government of India to proceed with it, both in its original and its amended form.

It was true that his Lordship in his latest speech on this subject had to some extent qualified his original statement. He had admitted that some of the members of his Council warned him that the question raised in the draft Bill was one which had created much political excitement in former times, and it

was suggested to him that this warning should be unofficially communicated to the Government of India.

This statement explained perhaps the rumours that had reached us regarding the opinions and warnings of the Secretary of State's Council, but they did not justify the assertion that the Council opposed legislation and warned the Secretary of State of its dangers.

However this might be, HIS EXCELLENCY could positively affirm that no caution or warning of any kind, public or private, official or unofficial, ever reached the Government of India from the Secretary of State. That was all he wished to say on the subject.

His Honour THE LIEUTENANT-GOVERNOR said that on the present occasion the remarks which he had to make must necessarily be very few. He wished particularly to express his congratulations to the Government and the gratification which he himself felt at the settlement which had been effected in regard to this Bill, and which was likely to bring to an end a controversy which had disturbed and distracted the province of Bengal to a degree which he had never before experienced in this country. He did not pretend to say that if this Bill stood on its original basis, or if it went forth now to the Select Committee without the proviso and safeguards which the negotiations of these few days had brought about, he should be prepared for a reference of the Bill to a Select Committee. But, when the Government had come forward with a proposal which had very much modified the form in which the Bill was originally framed, and when they had, in addition to that, agreed to the insertion of a proviso which gave satisfaction to the non-official Europeans in the country generally, he did not think any one would be justified—and certainly he should not in his position be justified—in withholding his support to the vote that the Bill should be referred to a Select Committee. Now, there was little doubt in His HONOUR'S mind that, if the Council was discussing for the first time a Bill of these proportions in this novel shape,—and practically they were considering it for the first time,—he had very little doubt that they would not have proceeded with it further without referring it for the opinion of the higher judicial officers of the country and also of the local district officers. But it came before them now under extraordinary circumstances, and therefore had to be dealt with in an extraordinary way. It was a positive novelty in that it introduced for the first time into this country the system of jury-trials in the magisterial Courts—a novelty, he supposed, in any country, and which certainly was more than unusual in India, where the provision of a jury was always a difficult matter, and in many instances almost an impossibility. It revolutionized completely our criminal procedure, by making it the law

that the Magistrate and the Collector of the district, if a European accused was brought before him, should have recourse to a jury to try him. Now, the Bill in its new shape was not before the Council, and they could only judge of it by the general statements which had been made in this Council and out of doors. But he thought they might say this—that, so far as he knew, it would make very little difference in the administration of justice in this province, and from the day of its publication would practically be a dead-letter in Bengal. It was a great thing to his mind that the present law was not changed, and that the Joint Magistrate of the district and other European officers who had criminal jurisdiction over European British subjects could take up cases against Europeans. Now, HIS HONOUR had stated elsewhere—and all experience proved the correctness of that opinion—that the Magistrate and Collector of the district, the gentleman on whom they were now conferring these powers, hardly ever took up cases connected with criminal trials against any one. As the hon'ble member, Mr. Quinton, had said on a previous occasion, the Magistrate and Collector of the district was a kind of superior person; he was the eyes and ears and hands of the Government, and was responsible to the Government for everything which went on in his district; he had to submit reports on railway-accidents, the state of the crops, the condition of education, the management of dispensaries, and, in fact, everything connected with the executive management of the district. The Government looked to him to give any information which was required. He was the officer entrusted with the important charge of the revenue-administration of the district. And with all this the practice had grown up—a practice which had removed the Magistrate and Collector very much from the administration of judicial work—that the whole of the criminal administration of the district fell to the hands of the Joint Magistrate, and the figures which represented this state of things HIS HONOUR was in a position to quote, because they were brought to notice in a paper which had recently been published. It was there seen that, in 1882, of the whole of the criminal cases in Bengal which came under trial, 99·3 per cent. were tried by Joint Magistrates and their subordinate officers, and ·7 per cent. represented the proportion in Bengal, with a population of 69 millions, of cases of a criminal character which came before the Magistrate and Collector of the district. It would be difficult indeed to say what decimal would represent the proportion of criminal cases against European British subjects which would come before Native Magistrates under this Bill. There were 45 or 46 districts in Bengal, and the Government had at the present time possibly to provide districts for two Native gentlemen; and HIS HONOUR could say that it would be almost impossible to realize the chance of any case of a criminal nature in which a European British subject was

concerned coming before one or either of those gentlemen. In the first place, the Government would take care that no Native would be appointed Magistrate and Collector of a district in which there was not a European Joint Magistrate capable of taking up such cases, and in such districts the Magistrate and Collector would never think of calling up such cases for trial before himself. If, through absence, sickness, departure on leave, or other circumstances of that kind, of the Joint Magistrate, it fell frequently to the Magistrate and Collector to take up criminal cases, and it became the fashion to have recourse to juries, there would be serious risk of the whole thing breaking down. But his belief was that the Magistrate and Collector of the district would never have to deal with the cases for which the Bill was intended to provide, and consequently the proposed settlement would under existing arrangements leave things very much as they were at present. The fact was that, in conferring this power on the Magistrate and Collector, the Government was conferring it on the wrong person. It was the man who was coming up in the lower classes of the service, the Joint Magistrate, in regard to whom the difficulty would arise from his position of possibly having to deal with European cases, and they would not, under the Bill as it stood, be able to take judicial cognizance of such cases. It was there where the shoe would pinch; it was not with regard to the Magistrate and Collector that, in his belief, any difficulty would arise.

Another observation which HIS HONOUR wished to make was with reference to a remark which fell from the hon'ble member in charge of the Bill, who said that, in giving these powers to the Magistrates and Collectors of districts, they were giving them to specially selected officers; and if it was conceded that the District Magistrate and Collector was one who had shown, by long administrative ability and capacity, his fitness to take charge of a district with its large responsible functions, then on what ground was it just or reasonable to withhold from him those powers, those smaller powers, which they were now asked to give him? But the fact was that, in Bengal at least, the Government had no manner of power of selection in the appointment of Magistrates and Collectors of districts. A man rose to that appointment, not by ability, but, as soon as a vacancy arose, by seniority. The fact was that a civilian rose to that position after many years of labour and exertion, and he looked to, and felt himself entitled to, and claimed, promotion as of right. HIS HONOUR did not allude to the cases of men who were utterly bad, or utterly incompetent, and who would have no such chance; but, taking the general run of men, it was totally out of the power of the

Lieutenant-Governor of Bengal to refuse to a civilian, when his turn of promotion came, promotion to a district magistracy. He had been thirty years in Bengal, and he knew only of one case in Bengal where such a procedure was ever adopted of refusing a civilian such promotion, and that case was one of an unfortunate officer who himself readily acceded to the justice of the refusal. He was intelligent and active, but came to trouble from a stroke of the sun, and, though he diligently performed his duties to the end of his service,—the sedentary duties which were required of a Joint Magistrate in the trial of cases,—he accepted the position that he was not fit to succeed to the charge of a district. Of course, there were Magistrates *and* Magistrates. There were three grades of Magistrates in Bengal, and the Lieutenant-Governor had the power, which HIS HONOUR had himself exercised, of refusing to allow promotions from one grade to another to an inefficient officer. But, if he held back promotion to an officer when it came to his turn to succeed to a magistracy, not only the officer himself, but the whole service, would resent the act as an unjustifiable exercise of power.

HIS HONOUR had always regretted that the rejection or the adoption of this Bill had been regarded as a political test of a standing or a falling India. He had seen it stated in Native newspapers that the rejection of the Bill implied that the government of 250 millions of people could not be carried on except at the point of the bayonet. As regarded the 250 millions, he would observe that, if we were to substract two hundred and forty-nine millions from the two hundred and fifty, it would leave a large margin to represent those who had ever heard of this Bill, or who ever cared for it, or who, if they did, would not much rather that it should be withdrawn. As regarded the bayonet theory, he did not believe that a shot in anger had ever been fired in Bengal, except perhaps in some local disturbances, since the days of Clive; and the military force that was now maintained in this province for the subjugation of 69 millions constituted in numbers what would make up the population of a fifth rate town or of a large village. Taking the argument in its figurative sense, HIS HONOUR would ask his hon'ble friend Raí Kristodás Pál whether Bengal did not enjoy a greater freedom of action and more liberty of speech and of writing (which, he was afraid, often degenerated into license) than the Natives of Bengal had ever before enjoyed, or could possibly hope to enjoy under any other rulers. Then, with reference to Her Majesty's Gracious Proclamation of 1858, HIS HONOUR would be the last person in the world to depreciate it or ignore it. He agreed with his friend Mr. Ilbert that the ostentatious use of the word *prestige* was

unnecessary and obnoxious. Still the fact of our domination could not be ignored, and, when our rule was loyally acknowledged, it could best be established by the indifferent and impartial administration of justice to all sorts and conditions of men. He was not aware that any one would deny this; and, as regarded the plea now prominently put forward in respect to the Proclamation,—an argument which, if he remembered rightly, was brought forward at the eleventh hour,—he would again appeal to his friend Raí Kristodás Pál, with whom he had been associated more or less for the last thirty years in public business, whether since 1858 the policy of that declaration had not been honestly and honourably carried out in the liberal advancement of the Natives of the country. Their position in every High Court in India, their position as Judges in the Mufassal, their wider employment in every post and department of the public service, proved this; but, where the Proclamation was pleaded as justifying the right of giving to Natives the powers of Justices of the Peace for the sake of trying Europeans, it seemed to HIS HONOUR that this was just one of those cases which the conditional clause of the Proclamation itself excluded as dealing with a question of great delicacy and demanding the most cautious and statesmanlike discretion. For his own part, he did not hesitate to say that, in the condition and circumstances in which Europeans were placed in this country, they had a right to claim the maintenance of a privilege, which they had enjoyed since 1773, either in the form of a trial by jury or, by what was substituted for it in 1872, by a trial before their own countrymen. It was because, without any reference to, or consultation with, them, that this privilege was ordered to be suddenly surrendered, that all the acrimony and animosity of the last six months was due. If the European community had been asked and consulted as regarded this measure even in its original form, or if the Bill in the modified character which the Council had now to consider with the additional safeguards now accepted, had ever been suggested to them, he did not believe that any reasonable European would have hesitated to agree to it.

His Excellency THE PRESIDENT said:—"I am glad that the time has at length arrived when it will be possible for me to express more fully than I have hitherto done the views which I entertain in respect to the measure which we are now considering. I may, I fear, have to make a somewhat large demand upon your patience, but I trust that you will accord to me the indulgence which the importance of the subject demands. On the 7th of December last, at the first meeting of the Council after the Government returned to Calcutta, I explained the modifications which we had submitted to the Secretary of State and which had been approved by him. Upon that occasion I purposely

abstained from anything in the nature of argument, and gave to the Council a bare statement of facts. I must now enlarge and supplement that statement, and explain what course the Government has taken, and the grounds on which they have taken it. In doing so, however, I do not propose to go over again the ground which I traversed in my speech on the 9th of March last year. I then explained how the question, with which we are now dealing, was raised in 1882, and I need not touch again upon that point. We were bound, as we considered, to answer the questions put to us at that time, and we could only do so in accordance with the established policy of the Crown and Parliament, upon which I shall have something to say before I conclude. We might, perhaps while admitting the claim put forward at that time, have tried to postpone the period for its practical acknowledgment; but I explained, in March last, my reasons for thinking that it was wiser to deal with the subject at once, and I have nothing now to add on that point to what I then said. The Bill was therefore introduced, and the first question to which I desire to address myself is the consideration of what was the principle of the measure. That principle is stated in the Statement of Objects and Reasons which was published at the same time as the Bill, and in that statement I find the principle of the Bill declared to be 'to remove from the Code at once and completely every judicial disqualification which is based merely on race-distinctions.' My hon'ble and learned friend, Mr. Evans, has contended, I know, that the fact that under the Act of 1872 a Native Magistrate is precluded from exercising jurisdiction over a European British subject does not constitute a disqualification to hold the office, but it does constitute a disqualification to discharge some of the duties of the office, and to remove that disqualification was the object of the Bill introduced last February. I quite admit that we have not been able, for reasons which I shall give before long, to apply this principle to the full extent which we first intended, and which was covered by the words 'at once and completely.' But to the principle of removing these disqualifications, as far as present circumstances would admit, we have always steadily adhered. Such, then, being the declared principle of the Bill,—to remove judicial disqualifications based merely on race-distinctions,—I now come to review as briefly as I may the circumstances which have taken place since last March. It will be in everybody's recollection that, from the commencement of the controversy which was created by the introduction of this Bill, the opposition has been to the principle of the Bill and the policy upon which it is founded. In many writings, and in not a few speeches, I have observed that some of the most fundamental principles of just and righteous government have been ridiculed and denounced; it would be unjust to hold the opponents of this Bill respon-

sible for the language of some of their number, but, at the same time, the existence of such sentiments and their public avowal is a circumstance which the Government, in considering how to deal with this question, could not overlook. The one demand made upon the Government from February to December was that the Bill should be withdrawn, and the theory put forward was that an Englishman had an inalienable right to be tried on criminal charges by European British Magistrates and Judges. It is now said that that claim meant that he should be tried by a mixed jury, but that view of this matter never was put forward until now, and the claim made was distinctly made in the form and words which I have just read. No doubt, it was sometimes said that the claim to be tried only by a European was a claim to be tried by a man's peers, and anybody who has any acquaintance with the meaning of that expression is, of course, aware that it does not relate in the smallest degree to the race of the Judge before whom the person charged with an offence may be brought. Trial by peers refers to jury-trials, and not to the race of the Judge presiding over the Court before which the accused person is brought up for trial. My hon'ble and learned friend, hoping doubtless to get a rise out of me, alluded jocosely to the fact that I was a peer, and could only be tried, if I chose to claim the right, by the House of Lords. Well, I can only say that, if I were to commit a felony,—and I can assure my hon'ble and learned friend that I have no present intention of doing so,—I should certainly not claim to be tried by that illustrious body. And then my hon'ble and learned friend says, supposing that by the law in England only Judges who were peers could try peers, would such a law be considered to imply any disrespect to other Judges or to cast a slur upon them? I venture to think that it is highly probable that, if Lord Coleridge was the only Judge that could try a peer, his colleagues on the Bench would be likely to think that an invidious distinction; but I will tell my hon'ble friend one thing of which I am perfectly sure, and that is that, if such a system were to be by some extraordinary process set up in England, the people of England would not endure it for a single week.

"That, therefore, was the fundamental principle of the Bill and the policy on which it was founded, and consequently, when the Government came to consider last August, after the various reports of the Local Governments had come in, the course which they should take with regard to the Bill, they held that they were bound to uphold the policy and to maintain the principle thus distinctly impugned. I said, in March last, that to arguments which were inconsistent with the declared policy of the Crown and of Parliament, it would be contrary to my duty to listen. To this declaration the Government, last

August, determined to adhere. We decided, therefore, not to withdraw the Bill, and, having come to this decision, we had then to consider two questions: to what extent the principle of the Bill should be applied, and whether we could offer any additional securities to Europeans against any possible miscarriage of justice. In considering the extent to which the Bill was to be applied, we took note that a considerable misapprehension appeared to exist as to what was the real scope of the original Bill—a misapprehension which seemed to me not to be altogether absent from the mind of my hon'ble and learned friend Mr. Evans to-day. But, in order to show what the scope of the Bill was, I cannot do better than refer to the language which was used in the debate of the 9th March last by my hon'ble friend Sir Steuart Bayley. On that occasion Sir Steuart Bayley used the following words:—

'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 Sessions Judges and District Magistrates as such, and that they should not be disqualified from exercising those powers on the score of birthplace or nationality. The other or permissive provisions, in regard to Assistant Commissioners and Magistrates of the 1st 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.'

"That is not a description of the Bill in its present condition, and after it has been amended and its scope reduced, but it is a description of the Bill given last March when it was before the Council in its original shape. When we came, therefore, to consider the question, we felt that what Sir Steuart Bayley called 'the main and important object and substantive principle of the Bill' stood upon a different footing from that which he described as a 'fringe,' and it certainly seemed to me and others in the light of the controversy which had sprung up, and of the great dislike and fear of the extent of this Bill which were widely entertained, that those who were opposed to it might fairly ask that anything in the nature of a discretionary power vested in the Executive Government should be removed by the Bill. When we became aware of the strength of the feeling this question had originated, it seemed but a reasonable concession to make to those who entertained that feeling that there should be nothing in the measure of a discretionary nature, but that the Act to be passed should distinctly and clearly lay down what was the extent of the jurisdiction to be given. Besides that, as my hon'ble and learned friend Mr. Ilbert said, none of the Local Governments who were opposed to the withdrawal of the Bill, with the exception of the Government of the Panjáb, appeared to desire

to have this discretionary power conferred upon them. Under these circumstances, we determined to withdraw this discretionary power, to give up what Sir Steuart Bayley called the 'fringe.' It is quite true, as I have already intimated, that in so doing we became unable to apply the principle of the Bill to the full extent which we originally contemplated, but we upheld that principle in itself and gave almost as much practical effect to it as would have been given to it in the Bill as originally introduced. We therefore did not hesitate to remove from the measure everything in the nature of an executive discretion. We then came to consider a very important point, and one which we have had always in view, and which has guided us very much in our recent action, namely, whether there were any additional securities beyond those which the present law afforded which could be given to European British subjects against those miscarriages of justice which they appeared to fear; and we were of opinion that there was a suggestion made by that distinguished person, Sir Charles Turner, the Chief Justice of Madras, which would go a very considerable way in that direction, while at the same time it would effect a positive amendment of the law as it stands. In order to make perfectly clear the nature of Sir Charles Turner's proposal, I would ask you—though the extract is a little long—to allow me to read to you what he said in the memorandum which he wrote in reference to the Bill. In the seventeenth paragraph of that memorandum he said:—

'In order to allay whatever apprehension is seriously entertained to the fitness of the officers on whom jurisdiction would be conferred, I have considered whether it might not be desirable to give to every European British subject the same option in respect of the presiding Judge or Magistrate as he at present enjoys to a qualified extent in respect of jurors and assessors. I have come to the conclusion that it would be unbecoming to the dignity of the judicial office that this option should rest with those who are subject to the jurisdiction, and that a safeguard reasonably sufficient might be provided by rendering more effectual a provision of the existing Code. The 526th section, Code of Criminal Procedure, enacts that, whenever it is made to appear that a fair and impartial inquiry cannot be had in any Criminal Court, or that some question of law of unusual difficulty is likely to arise, the High Court may transfer a case to another Court or to itself. I would authorize the High Court to make the transfer if it is made to appear 'that it is expedient for the ends of justice.' And I would supply a defect in the Code by directing that in any case in which prior to the commencement of the hearing the Government, the complainant, or the accused shall notify to the Court its or his intention to make an application under section 526, the Court shall adjourn the hearing for such reasonable time as may be required to enable an application to be made and an order obtained thereon.'

"That was, in Sir Charles Turner's own words, the nature of his proposal, and those were the reasons which he gave in its favour. They appeared

to us to be very good reasons, and the proposal commended itself to our judgment in a high degree, because it would enable a transfer to be made without casting upon the Magistrate, from whom the case was to be transferred, any such reflection as might seem to be involved in the statement necessary under one of the sub-sections of the present Code, that 'a fair and impartial inquiry cannot be had,' when a Court has to say that it might be thought to imply some distrust of the Magistrate trying the case; and, therefore, we considered that upon that ground, among others, it was desirable that the discretion of the High Court in this matter should be increased, that some such words as those suggested by Sir Charles Turner, namely, 'that it is expedient for the ends of justice' should be introduced. Then, it seemed only proper that, when an application of this kind was made, the case before the Court below should be suspended for a reasonable time. Not to do that appeared to make the application almost a farce, and we very readily adopted this amendment as in itself desirable quite apart from anything relating to this particular Bill. The amendment would also be equally applicable to everyone, and not confined to any particular class of Her Majesty's subjects. These were the modifications which recommended themselves to the Council last August, and with these modifications the Bill was, as hon'ble members are already aware, sent home to the Secretary of State and was approved by him. This was the state of things when the Government re-assembled in Calcutta on the 1st of December. Up to that time none of the opponents of the Bill had approached the Government with any proposal whatever for its further modification or for the granting of any additional securities to those who would be affected by it. As I have said, the one simple and unvaried demand had been that the Bill should be withdrawn. But, when we arrived here in Calcutta, my hon'ble and learned friend Mr. Evans, with that public spirit for which he is distinguished, intimated to the Government that he thought that he saw a further alteration of the measure which might be possible, and which might put an end to the controversy which had raged so long. My hon'ble and learned friend no doubt still maintained that the Bill had better be withdrawn, but he made a suggestion which I do not think he will object to my stating to this Council. That proposal was that the sections of the Code which create the legal disqualification of Native Magistrates to try European British subjects should be removed, but that every European British subject brought before a Native Magistrate should be given the right to claim a transfer to a European Magistrate. I think that is a correct statement of the proposal of my hon'ble and learned friend Any proposal coming from Mr. Evans naturally demanded the utmost consideration from Government. It was the first proposal of the kind which had

reached our ears, and we consequently gave to it a most full and careful deliberation. It seemed, however, to us that it was a proposal which we could not accept, because it appeared to take away with one hand what it gave with the other. It gave the appearance of removing the legal disqualification, but it accompanied it with a right on the part of the accused person to set up that disqualification again by claiming to be tried by a Judge of his own race, and it also seemed to us to be objectionable because it admitted distinctly the principle that a European British subject had a right to refuse to be tried by a Native Magistrate or Judge; and, lastly, we thought with Sir Charles Turner, as stated by him in the passage which I have read, that such an option on the part of the accused would be unbecoming to the dignity of the judicial office; and under these circumstances we felt ourselves obliged—I can truly say with great regret—to refuse to accept the proposal which my hon'ble and learned friend Mr. Evans with the most friendly intention to both sides had offered to our consideration.

"But the fact that an important Member of this Council and a decided and undoubted opponent of this Bill had proposed an arrangement to the Government which he thought might lead to a settlement of the difficulties which had arisen, raised at once for our consideration the question whether there was anything in the way of additional security which we could give to those who would be affected by this Bill without any sacrifice of principle, with a view to allay the fears which we knew to be largely entertained, and thus to enable the Bill to be passed with such a degree of general acquiescence as would prevent its being made even after it became law the battle-field of contending parties. It was our duty to take into serious consideration the chances of such a settlement which the opening made by Mr. Evans' proposal gave us, and we entered upon the examination of that subject with a very earnest desire to satisfy all that was just and reasonable in the wishes of those who objected to the measure, and to find, if possible, a mode by which we might, consistently with the principles we determined to uphold, arrive at a pacific solution of the question. The only proposal which seemed in any way to fulfil the conditions which I have described of being not contrary to the principle of the Bill, and yet one which might be accepted by those who were opposed to us, as giving them legitimate security, was one which had been made in the month of May by the Government of Bombay, and under which a right to claim a jury would be given to Europeans in serious cases, summary jurisdiction over Europeans being left as it is at present. The proposal was made by the Government of Bombay in their

report upon the present Bill, and had been considered by the Government of India in August last, and I do not wish to deny that it had for me at that time an undoubted attraction, perhaps natural enough, because, having lived all my life in England, I have an Englishman's feeling on the subject of a jury. It did not, however, at that time commend itself to the approval of the majority of my colleagues, and we had nothing before us whatever to lead us to suppose that if such a proposal had then been made by us it would have been accepted as a satisfactory settlement of the question by the opponents of the Bill, they having up to that time declined to accept any arrangement, except a complete withdrawal of the measure, and never having in any form or through any person approached us with anything in the nature of a proposal for a compromise or for a modification of the Bill. Under these circumstances, a suggestion of this kind was made by my hon'ble colleague Sir Auckland Colvin to my hon'ble and learned friend Mr. Evans, and the upshot of what passed between them is stated in the words which I shall here read to the Council. The Government undertook—

'to agree in Select Committee on the basis of the modifications approved in the Secretary of State's despatch to the right being given to European British subjects, when brought for trial before a District Magistrate or Sessions Judge, to claim trial by jury such as is provided for by section 451 of the Criminal Procedure Code, subject to the following conditions:—'

'(1) No distinction to be made between European and Native District Magistrates and Sessions Judges.

'(2) Powers of District Magistrates under section 446 of the Code to be extended to imprisonment for six months or fine of two thousand rupees.'

"There was in this undertaking no sacrifice whatever of the principle of the Bill. It distinctly lays down as a condition of the acceptance by the Government of such a proposal in Select Committee, and the extended right to a jury-trial that no distinction should be made between European and Native District Magistrates and Sessions Judges. Both under the arrangement will be placed in all respects on the same footing. All judicial disqualifications of Native Magistrates and Judges of those grades will be removed. Europeans will be liable to appear equally in their Courts, and will be dealt with by them precisely in the same manner. The principle of the Bill will thus be entirely maintained. This arrangement also gives no sanction to the theory to which I have already referred, that an Englishman possesses everywhere an inalienable right to be tried only before a Magistrate of his own race, a right which, as my hon'ble friend Mr. Ilbert explained in his speech, is not recognised in other domi-

nions of the British Crown,—in Ceylon or in China for instance,—and which no Government since the passing of the Act of 1833, which distinctly contravenes any such claim, has ever been known to admit. But it was an arrangement which, as it seems to me, ought to be satisfactory to Englishmen in India, for it gives them in all serious cases a judicial security to which they are accustomed at home, which is peculiarly English in its character, and upon which they have been brought up to set a very high value. Mr. Kristodás Pál, however, urged on Friday last certain objections against this arrangement. He spoke of it, in the first place, as involving a reduction of the power of Magistrates, and seemed to think that some slur was cast upon a Magistrate if he was required to try a case with the assistance of a jury. I cannot with my English experience for a moment admit that such is the case. It is notorious that, both in England and in India, it is the higher Magistrates who try cases with a jury. Criminal trials before the High Courts of India are by jury. The higher Magistrates in England try by jury, and in the case of Justices of the Peace at home, when they sit in the higher capacity of Justices in Quarter Sessions, they try by juries, it being in their lower capacity in Petty Sessions that they try cases without them. To be required to try with a jury does not imply any diminution of the status of the Judge or Magistrate; indeed, it rather implies the contrary; and, as a matter of fact, Mr. Kristodás Pál should remember that, under the arrangement proposed in this agreement, the powers of District Magistrates over European British subjects will be materially increased and not diminished. Again, Mr. Kristodás Pál spoke of the possibility of a failure of justice resulting from this system. Such a failure of justice would, undoubtedly, be an intolerable evil; but I need scarcely say that, if I anticipated that this arrangement would result in any such failure of justice, I should never have been a party to it. I do not think that such fears are well-founded. Of course, if hereafter it should turn out that serious failures of justice or other grave evils arise out of the system about to be established, it will be the duty of the Government of the day to apply adequate remedies to those evils when they appear; but, as I have said, I do not anticipate that those evils will be created, and I have the utmost confidence that Local Governments and their officers will do all in their power when this Bill becomes law to secure the honest and effectual working of this extension of jury-trials. This is the desire which I and my colleagues entertain, and I am sure that this course will be taken by all Local Governments throughout the country.

"Then Mr. Kristodás Pál said that numerous transfers to distant places will be necessary under this arrangement. My hon'ble and learned friend Mr. Evans, I think, made some remarks upon that point to-day. It does not seem

to me probable that that will be the case. There is no intention of altering the present arrangement for the trial of petty cases by Magistrates below the rank of District Magistrates, or of adopting the suggestion of Mr. Gibbon, the other day, that a general right should be given to Europeans of trial by jury in all cases. Summary jurisdiction will remain as it is at present, and care will be taken not to render the jury-system ridiculous by applying it to every petty case. In all cases tried before a District Magistrate the right to claim a jury will be given, but it must be borne in mind, in reference to this question of frequent transfer, that those will almost invariably hereafter be cases for which the proper punishment is from 3 to 6 months, and which under the present law would have to be sent to the Sessions Judge, and, therefore, though it should be found occasionally necessary to transfer those cases to some more distant officer, nothing more will occur than would occur now, when District Magistrates are debarred from dealing with such cases at all, and are obliged under any circumstances to transfer them to the Sessions Court. These are subjects, however, which I have no doubt will engage the attention of Local Governments, and it will be their duty to do everything in their power to prevent anything in the nature of inconvenience to suitors.

"But there are aspects of this case looked at from the point of view of the Native community upon which Mr. Kristodás Pál scarcely touched, and on which I desire to make a few observations; and at the outset I must say that, if the proposed amendment had given to one class of Her Majesty's subjects a privilege from which the rest of those subjects were wholly debarred, and to which the law afforded them no means of ever attaining, the objections to it would have been very serious, but, as hon'ble members are aware, that is not the case. It must be remembered, in the first place, that the amendment, while it takes nothing away from the Natives, gives to the Europeans in jury-districts little or nothing which they do not now possess. As summary cases will in practice be disposed of by Justices of the Peace below the rank of District Magistrates, and as the cases which will be dealt with by District Magistrates will generally be those which will fall within the category of the more extended powers with which they are to be invested,—cases which at the present time go to the Sessions Judge,—the Europeans will in the great majority of cases in jury-districts obtain no novel right to a jury-trial at all. Practically, therefore, in these districts this arrangement will leave things very much as they are so far as regards the question of right to trial by jury; though the arrangements under which that trial will be conducted may be of a somewhat different character from the present arrangements. In non-jury districts, the amendment will no doubt at present introduce a distinction, but the distinction is one which,

as we all know, can be removed without fresh legislation in any district and at any time if the Local Government should think it fit to do so by extending the general jury-system. My hon'ble friend Mr. Amír Alí touched upon this subject, but I did not understand him to say that he proposed to move any amendment regarding it in the Select Committee on the Bill, and I should deprecate his doing so. As I have alluded to remarks which fell from Mr. Amír Alí, I may say, with respect to certain amendments which he announced his intention of submitting to the Select Committee, that I am sure the Select Committee will receive with careful attention anything which he may bring under their notice, but I cannot, of course, express any opinion on the part of Government in regard to proposals which are not at present before us. I was glad, however, to observe that he said that what he had to propose would not affect the European British subject, because of course it must be clearly understood, with respect to that branch of the question, that the Government are altogether bound by the agreement which has been made through the instrumentality of Mr Evans, and by that agreement they intend to abide. But Mr. Amír Alí alluded specially to certain amendments which he intended to suggest in section 526 of the present Code. That is the section affected by Sir Charles Turner's proposals, and I am quite sure that the Select Committee will be very glad indeed to have the assistance of my hon'ble and learned friend in amending that section with the object of extending the powers of the High Court in regard to transfer. I am afraid that, in touching upon the points specially alluded to by Mr. Amír Alí, I have somewhat wandered from the question with which I was dealing when I first referred to this matter, and I will now go back to it.

"Native opinion is, I know, averse to such distinctions as those which will be made in non-jury districts. The feeling is very natural, but I would ask those who entertain it to remember that the measure which we are now, I trust, about to pass will vindicate a principle of the greatest value to Her Majesty's Native subjects, will remove a disqualification very distasteful to some of the highest Native Magistrates and Judges of the land, and will constitute a substantial, if but a limited, advance in the application of the just and wise policy inaugurated in 1833 and confirmed in 1858. If, to obtain these results in a manner calculated to give them the solid security afforded by the acceptance of the general body of the European community, the Government has consented to grant to those who are directly affected by the change of the law now about to be made a safeguard specially suited to their feelings and consonant with their traditions, it has surely acted wisely in the interests of all parties concerned. One side has gained a reaffirmation and extension of a great principle, which has been violently assailed and bitterly opposed, and the other has received a concession calculated to allay

all that is reasonable in fears which have no doubt been widely felt. It seems to me that we may find in these considerations the true justification of the course which the Government has taken.

"Before I pass to another topic of great importance, I would just say one word in respect to some observations which fell from my hon'ble friend the Lieutenant-Governor. He spoke of the principles on which men were promoted to the highest posts in the Civil Service; and he said that those promotions were practically made by seniority. Well, I should be the last man to deny the claims of seniority; they are great, and constitute a very important element in the consideration of questions of promotion, but at the same time they ought not to constitute the sole, or even the ruling, principle in respect to such promotions. In the despatch from the Court of Directors, to which reference was made on Friday by my hon'ble friend Mr. Ilbert, it is laid down distinctly that fitness is henceforth to be the criterion of eligibility. I think that that is a sound principle, though I admit that great weight ought to be given to the claims of seniority, and I can assure my hon'ble friend the Lieutenant-Governor and others that, so long as I hold office, they will always have my warm support in any case in which they think it necessary to disregard the claims of seniority in favour of considerations of fitness.

"And now, before I conclude the observations I have to make upon this occasion, I wish to explain to this Council the view which I entertain of the policy by which the Government has been guided in the introduction and conduct of this measure; and, in the first place, I desire to point out to hon'ble members that this policy is not, as it is often represented to be, something entirely novel, which has been invented by myself or sent out brand new from England. It is, on the contrary, a policy which was introduced half a century ago, when Europeans were first admitted without restriction to this country. It was a great conception of a great Government, of which, be it remembered, men such as Lord Grey, Lord Palmerston, Lord Russell, Lord Lansdowne, and the late Lord Derby were members. It was clearly enunciated in Parliament and confirmed by both Houses; it was explained and commented on in the despatch from the Court of Directors to which my hon'ble friend Mr. Ilbert alluded on Friday; and, finally, it received a solemn confirmation in the Queen's Proclamation of 1858. In the Act of 1833 and in that Proclamation we have then, as it seems to me, two great instruments embodying a clear and definite policy, from which, as I hold, it is not open to any Government of India

to depart. The Charter Act of 1833 was so called, because it prolonged for a limited period the charter of the East India Company, but it seems to me that it deserved the name much more because it conferred a Great Charter upon the people of India. The Proclamation of the Queen, issued at a moment so important and so critical as the assumption by the Crown of England of the direct government of the British dominions in India, explained the principles upon which that government was to be conducted, and gave pledges to Her Majesty's Indian subjects which it has ever since been the duty of Her Majesty's representatives to redeem. Those who know anything of the intention with which that Proclamation was prepared know very well that its authors regarded it as having in view the objects which I have described, and to look at it in any other light would be altogether inconsistent with the great and noble purposes with which it was issued. I know that the view which I hold upon the subject of the character of this document has recently been repudiated by a learned Judge in England, Sir Fitzjames Stephen, who has spoken of it in these words:—

'The Proclamation has no legal force whatever. The Act of Parliament has no force beyond the legal effect of its words. Neither can bind the Indian Legislative Council, which ought to be guided in the exercise of its discretion solely by its own opinion of the merits of the measure submitted to it, and the extent of its legal authority.'

"And then mark this language—

'As a ceremonial, the Proclamation may have been proper, but in any other point of view it is a mere expression of sentiment and opinion, worth as much as the sentiments and opinions expressed would have been without it, and no more.'

"We did not require one of Her Majesty's Judges to tell us in these days that a Royal Proclamation has not the force of law; but when Sir Fitzjames Stephen goes on to maintain that a Proclamation issued by the Sovereign of England and of India is only a ceremonial, and is worth no more than the sentiments which it expresses are worth by themselves,—that is, that it was a mere formal utterance of sentimental phrases of no binding force or practical effect whatever,—I cannot too emphatically express my dissent.

"To me it seems a very serious thing to put forth to the people of India a doctrine which renders worthless the solemn words of their Sovereign, and which converts her gracious promises, which her Indian subjects have cherished for a quarter of a century, into a hollow mockery, as meaningless as the compliments which form the invariable opening of an Oriental letter. Sir Fitzjames Stephen, it seems to me, is not consistent, for he admits, in the course of the

document from which I have quoted, that the Proclamation binds the Government of India in regard to the Native Princes and States, but, in regard to Her Majesty's own immediate subjects, it is, according to his view, of no force whatever. It gives no pledge, and it lays down no principle. But, if it binds the Government towards the Princes of India, it binds it to the people of India as well. The document is not a treaty—it is not a diplomatic instrument; it is a declaration of principles of Government which, if it is obligatory at all is obligatory in respect to all to whom it is addressed. The doctrine, therefore, to which Sir Fitzjames Stephen has given the sanction of his authority I feel bound to repudiate to the utmost of my power. It seems to me to be inconsistent with the character of my Sovereign and with the honour of my country, and, if it were once to be received and acted upon by the Government of England, it would do more than any thing else could possibly do to strike at the root of our power and to destroy our just influence, because that power and that influence rest upon the conviction of our good faith more than upon any other foundation, aye, more than upon the valour of our soldiers and the reputation of our arms. I have heard to-day with no little surprise a very different argument. The Hon'ble Mr. Thomas, in a speech in which he did his utmost to stir up the bitterness of a controversy which was approaching a settlement and to fan again the dying embers of race-animosity, has asked—Was there ever a nation which retained her supremacy by the righteousness of her laws? I have read in a book, the authority of which the Hon'ble Mr. Thomas will admit, that 'righteousness exalteth a nation,' and my study of history has led me to the conclusion that it is not by the force of her armies or by the might of her soldiery that a great empire is permanently maintained, but that it is by the righteousness of her laws, and by her respect for the principles of justice. To believe otherwise appears to me to assume that there is not a God in Heaven who rules over the affairs of men, and who can punish injustice and iniquity in nations as surely as in the individuals of whom they are composed. It is against doctrines like this that I desire to protest, and it is against principles of this description that the gracious Proclamation of the Queen was directed. So long, then, as I hold the office which I now fill, I shall conduct the administration of this country in strict accordance with the policy which has been enjoined upon me by my Queen and by Parliament. Guided by this policy, it has been the duty of the Government to refuse with firmness what could not be given without an abandonment of principle. But we have not allowed anything which has passed in the heat of this prolonged controversy to deter us from seeking up to the last moment for a solution of the question at issue which could be honourably accepted by ourselves and by

our opponents alike. In doing so, we have, I believe, better consulted for the real advantage of all races and classes in the country than if we had rested the reform we are now about to make upon the insecure foundation of a mere exercise of power. And it is in this belief that I now ask you to remit this Bill to a Select Committee, who will consider the amendments which may be proposed, and mould them into the shape best suited to carry out the objects which it is desired to attain. I have one word more to say. I quite accept the proposal of my hon'ble friend Mr. Evans that the Select Committee should report on Friday, the 18th of this month."

The Motion referring the Bill to a Select Committee was then put and agreed to.

The Council adjourned to Friday, the 11th January, 1884.

D. FITZPATRICK,
*Secretary to the Government of India,*
*Legislative Department.*

FORT WILLIAM;
*The 18th January, 1884.*

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