COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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

The Council met at Government House on Friday, the 13th November 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble Claud H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vizíarám Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Bájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
His Highness Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.

His Highness Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan, made a solemn declaration of Allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

OATHS OF JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to substitute certain declarations for the oaths of qualification taken by Justices of the Peace.

ABKARI ACTS EXTENSION BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to provide for the extension of Act XXI of 1856 (to consolidate and amend the Law relating to the Abkárí Revenue in the Presidency of Fort William in Bengal), to the Provinces under the control of the Lieutenant-Governor of the Panjáb.

NON-REGULATION PROVINCES BILL.

The Hon'ble MR. HARINGTON, in moving for leave to introduce the Bill to authorize the Governor General of India in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India, Acts and Regulations not in force in those Provinces, said that the Bill had grown out of an application made by the Commissioner of Mysore and Coorg for the extension to those territories, by an order of the Executive Government of India, of an Act passed last year by the Government of Madras, to authorize Subordinate Magistrates of the second class to take cognizance of offences falling under Section 174 of the Indian Penal Code.

The more recent enactments of this Council, which had been passed for particular places or parts of India, but which it was considered might from their nature be extended, at some future period, with advantage to places other than those in which they were intended immediately to take effect generally, contained a provision authorizing such extension. Where this provision existed in the Act, all that was necessary for its extension was an order of the Executive or Local Government; where this provision did not exist, the Act could be extended within territories in British India only with the special sanction of the Legislature. The Act of the Madras Government, which the Government of India had been asked to extend, was within the latter category. The extension of the Madras Act to Mysore and Coorg would probably be very beneficial; but instead of confining legislation at the present time to the extension of this single Act in the manner proposed, it appeared to be a better and more convenient course that a general Bill should be introduced, authorizing the Governor General in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India, Acts and Regulations not in force in those Provinces. This was the object of the Bill which he had asked for leave to introduce. The Bill would be limited in its application to Regulations and Acts existing at the time of the passing of the Bill. He did not think that any objection could be made to the principle of the Bill.

The Motion was put and agreed to.

HIGH COURTS' CRIMINAL JURISDICTION BILL.

The Hon'ble MR. MAINE, in introducing the Bill to amend the Procedure of Her Majesty's High Courts of Judicature in the exercise of their Original Criminal Jurisdiction (relating to Grand Juries), said—"Although there are some obvious reasons for postponing this Bill, I have preferred to go on with it, because I think I can prove to the Council that in some shape or other, whether modified or not in consequence of any representations we may receive, a Bill on the subject of Grand Juries must be passed. The reason that I give is, that the question has been settled for us by the British Parliament. The Letters Patent of the High Court, issued by the Queen in Council under the authority of the High Courts Act, and therefore having the force of statute law, make provision for the deputation of a Judge into the Mofussil under commission from the Governor General in Council. The circuits of the Judges are an integral part of the machinery of the High Courts; and I apprehend that your Excellency will fail in duty to the Queen and to Parliament if you do not establish them as soon as the Court has completed its first duty to its suitors, by clearing off its arrears. What, then, is our position? If we send a Judge of the High Court to Patna or to Dacca, or any other large Mofussil city, what number of gentlemen capable of serving on a Jury shall we find there? My own information, which doubtless the Lieutenant-Governor can correct, leads me to believe that even if we reduce the Grand and Petty Juries to the lowest point, we should not find a sufficient number of competent persons to make them up, unless we carried the inherent absurdities (I shall justify that word presently) of the Grand Jury system to the furthest point by taking the Grand and Petty Jurymen from the same list, so that the same man will be first tried secretly under every conceivable disadvantage, and will then be tried publicly and with every advantage, by the same men.

But even those who maintain that it is possible to preserve the Grand Jury in the Mofussil, allow that both it and the Petty Jury must be reduced greatly in number, and that most of the exemptions must be repealed. Hence, by general concurrence, it is clear that some legislation is necessary. I therefore propose to the Council to commit the Bill, remembering that it has still to go through several stages in which it can be modified, if any alteration should be thought necessary. Meantime I shall have the opportunity of stating the real case against Grand Juries in India, which I confess I omitted to do in the Statement of Objects and Reasons appended to the Bill. The truth is, I took for granted that in comparatively small and very busy societies, a system which occupied the best heads of a community with an inquiry conducted under such disadvantages as to defeat itself, and confided the momentous business of trying men for their lives to the residue, was self-condemned. But one of the things one learns in India is to take nothing for granted; and I will now attempt to say what Grand Juries really are, both in England and in India.

In the absence of any formal expression of opinion, I have only the presentments of the Grand Juries of two of the Presidency Towns. I may say, however, that the papers which have already been sent in show that a large majority of the Barrister Judges of the High Courts are in favour of the Bill.

I have heard something of a presentment by the Grand Jury of Bombay. But, as I have not actually seen it, I will not say anything about it. I am, however, able to say, on the authority of my Hon'ble friend Mr. Anderson, that the Bill has been received with favour by all classes of the Bombay community. Here, however, is the presentment of the Grand Jury of Madras:—

"The Grand Jury, taking advantage of the opportunity afforded them by the reference made by your Lordship in your charge on the opening of the present Sessions to the Bill about to be introduced into the Legislative Council of India for the abolition of Grand Juries, are desirous, before they separate, of placing on record the opinion entertained in regard to the proposed measure by the great majority of those who have served on the present occasion.

"The Statement of Objects and Reasons by the Hon'ble Mr. Maine, accompanying the Bill, has been carefully considered by them, and, in their opinion, establishes a complete case for the abolition of Grand Juries in this country. In making this statement, however, I do not wish to be understood as expressing an opinion that the institution has not rendered good service in the administration of justice in India, for it is, on the contrary, their firm belief that with all its inherent defects it has been productive of much good.

"The Grand Jury entirely concur in the view expressed by your Lordship of the many important advantages resulting from the association of European gentlemen of education and business-experience with Natives of rank and position, and not one of the least improvements contemplated by the proposed Bill appears to them to be, that the services of the gentlemen now on the panel of the Grand Jury will, should it become law, be made available in the trial of cases in open Court.

"That the proposed change by thus increasing and strengthening the panel of the Petty Jury, will materially tend to facilitate the administration of justice, the Grand Jury entertain no doubt whatever."

And here is the presentment of the Grand Jury of Calcutta, which certainly differs considerably from that of the Grand Jury of Madras:—

"The Grand Jury beg leave to present that they have learned with extreme regret, as well from your Lordship's charge as the Public Journals, that a Bill, having for its object the abolition in India of the institution of the Grand Jury, has been introduced by Mr. Maine, and obtained the sanction of the Government, and is therefore likely to become law. The Grand Jury cannot separate without giving an emphatic expression of their unanimous opinion that such an interference with a time-honoured institution is premature and unwarranted. Whatever may be the case in England, where the institution in question is still maintained in all its integrity, the time, in the opinion of the Grand Jury, has certainly not yet come when in India the Grand Jury is no longer, to use your own words, 'a necessity for the purpose of guarding the subjects from oppression on the part of the Executive Government, to protect the individual from the aggressive conduct of men in power, whose purposes would be sufficiently met by the fact of the obnoxious person being placed on trial in open Court on a Criminal charge.' The Grand Jury think that this has been sufficiently demonstrated by actual cases of no remote occurrence; nor is there any guarantee that here in India we may not again be placed in such times (to quote once more from your Lordship's charge) 'of great public commotion and excitement, when it may be necessary for the Executive to use extraordinary and indeed despotic powers against the liberty of the subject, under circumstances which would imply that the Magistrates ought not to be trusted unchecked in the exercise of arbitrary power.' The Grand Jury are further of opinion that the object of the presentment of a former Grand Jury has been sufficiently, and to all intents and purposes, met by the extension of the summary jurisdiction of the Police Magistrates. And believing, as they do, that the measure in question, if carried into effect, would be

fraught with danger to the liberty of the subject, they beg most respectfully to present that in their judgment, the Bill ought not to be passed into law."

Now, Sir, I trust that the highly respectable gentlemen who signed this presentment will not be offended if I say that its value is rather rhetorical than logical. I do not wish to criticise what is evidently more an expression of feeling than anything else. But there are some matters which I cannot help observing in it. There are some things in it which I cannot understand. In the first place, I do not think that the Grand Jury rightly understood the learned Judge, when he told them that their functions prevented Government from putting obnoxious persons on their trial, or rather they imagined him to be giving a more minute exposition of the law than he intended. For, Sir, it does happen that the Government already possesses this terrible power of gaining its wicked ends by sending men to be tried at once by the Petty Jury. Under an English Statute, which this Council cannot repeal, the Government has the power of filing, through the Advocate General, what are called informations *ex officio*, in every case in which it may choose to consider (to use the word of a legal authority) that "an enormous misdemeanor affecting the common wealth or public peace" has been committed. Assuming, therefore, that your Excellency's Government were capable of so insane an act, there is nothing to prevent you from putting all the printers of the newspapers in Calcutta on their trial for seditious libel, even though you knew them to be innocent, and the Grand Jury could not save them. Again, I am unable to reconcile the argument of the Grand Jury that the greatest of all calamities is to be charged with an offence, without reference to ultimate acquittal, and the argument in which both this and the former Jury seemed to coincide, that a large addition should be made to the summary jurisdiction of the Magistrates. For if the disgrace consists in the mere accusation without reference to the final establishment of innocence, surely it is as easy to disgrace a man by charging him before a Magistrate with a crime which is punishable with hard labour and a flogging, as by charging him with a crime which is punishable with penal servitude or death. Of course it is a matter of taste, but if I were in the predicament of having a false charge brought against me by men in power, though I knew I should be acquitted of it, and had my choice of the accusation, I confess I should prefer treason to larceny. But the question which I should really like to ask these gentlemen who signed the presentment—some of them well-known members of the mercantile community of Calcutta—is whether they are not satisfied to dispense with the enquiry before the Grand Jury in cases in which they are greatly more interested than in criminal charges. If a merchant of Calcutta were in danger of being involved by a malignant enemy in a disagreeable trial, I venture to ask my hon'ble friends at the other end of the table whether it would be more likely to be a civil or a criminal trial? I fancy I have observed that the number of personal cases—cases in which questions of commercial honour and probity are involved—coming before the Civil Courts of Calcutta, is larger than comes before any jurisdiction of similar extent at home. It seems to me that the risk of being subjected by an unscrupulous private enemy to what I may call

a civil charge is, in Calcutta, at least appreciable. In the trial of such a charge, a man's good name and mercantile credit, his present fortune, and future prospects may be at stake—in such a case do you demand a trial by Grand Jury? No, you do not even ask for a common Jury. You are satisfied with the fiat of a single Judge, and it seems to me that the verdict of this one man is more respected here, than the award of a Jury would be at home.

But, Sir, of course the only complete answer to the presentment of the Calcutta Grand Jury will consist in showing what a Grand Jury is, not only in England, but in India. Every body, I suppose, is aware that the Grand Jury was originally a body which more nearly resembled an assembly of witnesses than what we should now call a Jury. It consisted of the principal freeholders of the county, summoned by the sheriff and empowered to declare all matters known to itself and affecting the public comfort or peace. The most characteristic relic of its ancient condition is its power to make presentments of nuisances, in order that they may be abated. Now, considering that Calcutta probably contains more choice samples of every nuisance known to the law than any city inhabited by Europeans, if I had found that the Grand Jury of Calcutta had exhibited the same activity which I am told the Grand Jury at Bombay has shown, and had been extraordinarily watchful and vigilant on the presentment of its nuisances, I should have said that, whatever were its anomalies, there was an argument for preserving it. But the Calcutta Grand Jury has this singularity, that it has grown more inactive in proportion as the city has grown worse. About 1818 it seems to have been in the habit of making presentments on those matters which have lately attracted public attention. But of late years it has made none. I have here an abstract list of presentments—there are a good many about 1857 and 1859—there are some to the effect that the "arm of justice has been paralysed"—nothing relating to the general health of the city.

I presume, therefore, I can leave out of account the services of the Grand Jury as a custodian of public health, and pass to its function as a judicial body. What, then, is a Grand Jury considered from a judicial point of view? Not, I mean, a Calcutta Grand Jury solely, but a Grand Jury in England, or in any part of the British dominions. First of all, it is a body of men so numerous, that under almost any conceivable conditions, it would be unfitted calmly to sift evidence. For it consists ordinarily of twenty-three persons; and that comes dangerously near the point at which the instincts of a crowd take the place of deliberation.

Then after having so constituted it, you proceed to deprive it of all the aids which modern jurisprudence considers essential to the discovery of truth. You deprive it of the wholesome check of publicity; for since the Star Chamber was abolished, it is the only secret tribunal known to English institutions. Next, you take away the rule of unanimity, which, though no doubt objectionable in its application to small juries, such as those of our Code of Criminal Procedure, is, in its application to large juries, a valuable curb on the tyranny of the majority. You take away that sustained guidance of the Judge without which even real trial by Jury—that is, trial by Petty Jury—would be absurd. You

take away all chance of its applying the rules of evidence by the perpetual exemption of practising lawyers; and then, as if you had not done enough for it, you remove the means of cross-examining the witnesses by comparing the statements which they have made at different times, for the Grand Jury does not see the depositions. And after all is done, you reduce its functions (and in this, perhaps, you act consistently) to a simple guess at a probability, for it only hears one side of the case. Well, Sir, since Grand Juries are so constituted, and since such are their functions, I have always thought, even in England, that though it includes all the persons in the community who are best able to form a judgment upon evidence, and though in most cases I doubt not that it uses its powers conscientiously, nevertheless, its inherent disadvantages are such, that a Grand Jury is an obstruction to justice; and therefore I entirely agree with that Metropolitan Grand Jury which has for a series of years presented itself as a nuisance. But I must admit that in England, although Criminal Juries are notoriously inferior to Civil Juries, yet the field from which the two lists of Juries are taken is so large that the system is perhaps tolerable. But how does it work in India? Well, if I never left my own house and my own room, I should be able to say how it worked; for it happens that no complaints come so frequently before Members of Government as complaints of clerks in our Public Offices of the extreme frequency with which they are called to serve on Petty Juries, and of the annoyance to themselves and hindrance to public business caused by the interruption. I mention this because it shows the unfairness with which the burden and heat of assisting in the administration of criminal justice are thrown upon one class under the present system, and also because it illustrates the value of the argument that Grand Juries should be retained as a protection against the machinations of a too powerful Government. We are told that Grand Juries must be preserved lest we should make tools of the covenanted servants on the Bench; and the effect is to send men to be tried for their lives by Juries largely composed of the uncovenanted servants in our offices. Of course I know that those gentlemen give honest, independent verdicts. But surely, if your Excellency's Government were capable of the iniquity imputed to it by the Calcutta Grand Jury, it stands to reason that it had better begin with those officers who, so to speak, are under its eye and under its hand.

My case, however, rests on those opinions of Mr. Ritchie's which have been circulated through the Council. I am, myself, open to the remark that I have not seen the practical working of the system in India. But here is Mr. Ritchie giving the result of an experience of twenty years. I never saw Mr. Ritchie. But there is such an unanimity of testimony about him, that I cannot doubt that he was a man of remarkable moderation, fairness and judgment. He was the incontestable leader of the Calcutta Bar, and he wrote these papers while still in a situation—that of Advocate General—which, while it enabled him to see those cases from the point of view of the Government, did not cut him off from sympathy with the opinions of the unofficial community. Here is the net result of his observations. After reciting a list of miscarriages of justice

lamentable to read, caused sometimes by the Petty Jury and sometimes by the Grand, but, as he admits, and I readily allow, attributable not to the persons, but to the system—in the case of the Grand Jury, to the disadvantages under which it is placed, in the case of the Petty Jury, to the withdrawal from it of those best able to assist it to a conclusion—he deduces from this the inference, which he presses repeatedly on the Government, that Grand Juries ought to be abolished, and Grand and Petty Jurors fused. I will read the passages of which the words are nearly identical with those of Sir Colley Scotland to the Grand Jury of Madras.

"The result of a pretty long observation of the practical working of the Grand Jury in this country is, that the constitution of this tribunal appears to me wholly unadapted to the wants and circumstances even of the European portion of the community; that it is unable to afford any safeguard to the innocent, while it often unconsciously serves as an obstruction to the due course of justice; and that the only purpose for which it can now be considered as of any real use—that of imposing some check upon private prosecutions—may be much better attained in a different way.

"I would therefore respectfully urge upon the Government the expediency of taking steps towards the abolition of this body, and the substitution of such proceedings as I have above pointed out. Such substitution is quite within the competency of the Legislative Council, to whose attention, I think, the subject may be submitted with advantage, without waiting to mature more extensive changes in the Criminal Law Procedure applicable to British subjects.

"I am sure that, in the strictures above made, I shall be understood to refer to the defective character of the institution, and not to the class or individuals comprising it. For that class and for many of the individual members of it I have a very high respect. And one great improvement in Jury trials in this country, which I anticipate from the change I advocate, is that those gentlemen will be thereby released from duties which are practically useless, and that their services may be employed in the far more important functions of Jurymen at the trial. From an union of the class of Grand Jurymen with those now called Petty Jurymen, whereby the high intelligence, position, and independence of the former will be brought to bear upon criminal trials in the Supreme Courts, I think very valuable results may be expected. The actual loss of time to those gentlemen need not probably be greater than it is at present, as the proportion summoned upon each Jury need not be large. And it may be reasonably hoped that the time thus taken up, even if longer than at present, will be cheerfully bestowed, as the class from whom it will be required are those most interested in preserving Jury trials in this country, and, consequently, in raising the character of Juries. If this change be effected, the service upon Juries will be looked on by the public with more respect, and the verdicts of Juries will command more general confidence than at present."

Those, then, are Mr. Ritchie's views. His opinion and his facts coincide so exactly with those which I could have predicted *à priori*, that I have not the slightest doubt of the correctness of either the one or the other.

I have now to address myself to the arguments which I have heard or read for maintaining the Grand Jury. It is said that the Grand Jury is a protection to an innocent man falsely accused, especially when he is the victim of unscrupulous enmity, whether that of a private adversary, or of men in

power, or of the Magistrate. I do not deny that the Grand Jury may sometimes release an innocent man, for if you let a man off, it is always possible that he may be innocent. But I say that the case in which it will most rarely occur will be that of an innocent man oppressed by an enemy. To assume that the Grand Jury can protect you from the false accusation of an enemy, is to assume not only that your enemy is unscrupulous, but that he is a fool; for, Sir, anybody can get up a colourable *primâ facie* case—at least I hope we may claim that credit for the Government—and before a fair-looking *primâ facie* case, if the Grand Jurors obey their oaths, the Grand Jury is helpless. Does it not strike the Council that the most dangerous charges are those which are *primâ facie* impregnable? Suppose that some unlucky combination of events, or, what I am afraid is far from impossible in this country, some artful conspiracy, involved an innocent man in a criminal accusation; surely the chances are that the case on the face of it will be perfect, the witnesses will have concocted their story, and all the documents bear the stamp of authenticity. In such an event the vindication of innocence will depend exactly on those instrumentalities which the Grand Jury never has at its command—on the cross-examination of the witnesses as to facts known only to the accused, and therefore unknown to the Grand Jury; on the strength of the case for the defence which the Grand Jury never hears, and on the balancing of fact against fact by the Judge whom the Grand Jury, though an important part of the enquiry, never see. The truth is, that innocent men unjustly accused must place reliance entirely on the Petty Jury and not on the Grand, and the direct effect of the system is to starve and weaken the Petty Jury. In truth unless it could be accounted for historically, the system would be one of the most unintelligible that ever existed. It is strong at the wrong point, and weak at the wrong point; and, if it were worth while reforming it, the only sensible way of doing so would be to turn it upside down, and give the functions of the Petty Jury to the Grand Jury and those of the Grand Jury to the Petty.

I see it further said that many of the Magistrates are incompetent and prejudiced, and make bad commitments. Now, Sir, it is one of the most characteristic results of the Grand Jury system that it exactly prevents our knowing the facts which are here alleged. Whether the commitments of the Magistrates in India are generally bad, or whether any of them are bad, are entirely matters of opinion and conjecture. The cases are disposed of in the darkness of the Grand Jury room. Of course, the Grand Jury says that it is right, and occasionally makes emphatic presentments that it is right. But that does not prevent another large class from asserting with equal positiveness that the Grand Jury was entirely wrong. The public is not let into the secret, and who is to decide? I can only say that my own enquiries have elicited nothing better than positive contradictory assertions. And there is great evil in this. It is the duty of the Local Government to watch for evidence of incompetence or prejudice among the judicial Officers, and, if necessary, to rebuke or remove them. Now a trial in the High Court throws such a flood of light on all

concerned in it that it is greatly to be regretted that this system deprives the Local Government of most valuable facilities for forming a judgment on the real standard of capacity among its judicial servants. Here, too, are some remarks of Mr. Ritchie's on another of the fruits of this secrecy:

"Not the least evil attending this state of things is the utter uncertainty as to what has taken place before the Grand Jury, and the suspicion to which both they and the witnesses are exposed. Whether the witnesses have kept back the truth; whether they have boldly sworn to the contrary of what they deposed to before the Magistrate; whether the Grand Jury have been in a hurry to get away, and have not had the patience thoroughly to investigate the case; whether they have mistaken the nature of their duties, and thought they were bound to ignore a Bill unless they were prepared conclusively to convict, or whether they were carried away by prejudice or sympathies, no human means can detect, and the law does not permit us to enquire. And yet any one of these alternatives may be the true one; and the Grand Jury and the witnesses are thus placed in the unfair position of being open to a suspicion which may be as unfounded regarding the one as regarding the other, but which is of itself disastrous to the administration of justice."

So far as I myself can form an opinion on a matter about which I confess that all is dark, I am inclined to think that the presumption is against the Grand Jury: in fact the very secrecy itself is a ground for such presumption. The commitments to the High Courts in the Presidency towns are practically made either by trained lawyers or by men whose every-day business it is to sift evidence. As regards them I should be disposed to apply the maxim *cuique in arte sud credendum;* and if the Grand Jury differs from them, to say that the chances are that the Magistrate is right and the Grand Jury wrong. As to the Mofussil Magistrates, I cannot forget [that Mr. Justice Peterson, in Spring went even out of his way to compliment the Bengal Magistrates on the way they prepared their commitments; and the Chief Justice of Madras, in his charge to the Grand Jury, declares himself satisfied with the Mofussil commitments in that Presidency.

However, Sir, to obviate the least chance of injury being done by arraigning a man against whom not even a *primâ facie* case has been established, I am willing to consider in Committee a plan which, I have reason to believe, commends itself to several of the Judges of the High Court. If the Judge, on reading the depositions, thinks that no *primâ facie* case is disclosed, I do not object to giving him power to examine the witnesses in an informal manner, and then, if upon the depositions and the evidence he thinks a conviction impossible, to prevent the accused from being arraigned, and order his discharge. That, after all, is pretty much what he does now; for, though the Grand Jurors are on oath, I suppose it is no great secret that, in ninety-nine cases out of a hundred, the bills which they ignore are those on which the Judge has thrown a doubt in his charge. I do not, however, wish this to be quite a hole and corner proceeding; and, therefore, when a Judge releases a prisoner, I would place the Judge under an obligation to report the case to Government, and state his reasons for the course he has taken.

But, Sir, unless arguments are presented to me which have not yet occurred to my mind, further than that I cannot go, speaking for myself as an individual Member of the Government. Though this is in itself a little question, a great question is plainly implicated with it. All of us occasionally see complaints from the European community that in public matters their existence and importance are not sufficiently recognized. But I think the Government may call upon that community to recognize the facts which are implied in its existence. Its existence, its importance, and its growing power are all facts: it is a fact that whole provinces, such as Assam, Cachar and Sylhet, are getting to belong to it in the same sense that Australia belongs to the Australians. But there are facts on the other side. With this great multiplication of Europeans, there has come, as unfortunately there always does come, a great increase of European crime. How is it to be dealt with, for dealt with it must be, not only in the interests of justice, not only in those of the Native population, not only in those of the European settlers themselves, who, as I said in the Statement of Objects and Reasons, suffer more severely from it than any body else, but also, I could almost say, in the interests of the criminals themselves. For we all know our countrymen well enough to be aware that, after bearing for a long time with the annoyance caused by unpunished crime, out of respect to some venerable institution, or venerable quirk, they suddenly turn round and call, almost ferociously, for punishment. How, then, is this mass of crime, relatively, if not absolutely, great, and committed over much of India with the most perfect impunity, to be disposed of? For myself, while I think that the Government of India will not have done its duty until every European criminal is brought to justice as certainly as if he were a Native, I am opposed (to use a phrase which I dislike, and which, I think, reflects no credit on those who invented it), to a Black Act. I think that, for so long a time as we can look forward to, European British subjects will have to be tried for all serious crimes by special tribunals—that is, by a Judge applying those strict criteria of truth which constitute the English law of evidence, and a Jury—a real Jury—a Petty Jury. To put that on its lowest ground, it seems to me that trial by Jury, that is trial by the Petty Jury, has affected English character more than any national institution, even more, I am inclined to say, than representative institutions. While, then, we preserve and protect so many Native customs that we cannot even justify, I regard it as only reasonable to respect the greatest and most influential of English usages. The exemption, therefore, of British subjects from the ordinary criminal tribunals seems to me to stand on precisely the same ground as the exemption of Hindus and Muhammadans from the new Civil Code which is about to be introduced. But of course I have more positive grounds for my opinion. I considered that these Special Courts, scattered or moving about the country, will be of the utmost importance as examples and patterns. They will exhibit the English law where it is strongest, and serve to correct the Mofussil Courts where they are said to be weakest, namely, in the sifting of evidence and the ascertaining of facts. But if Europeans are to enjoy this privilege (I don't use the word in an invidious sense), they must expect to enjoy it in a reasonable way: and I think that the first and best evidence of reasonableness will consist

in their consenting to give up the Grand Jury. For my own part, believing as I do, that the greatest contribution of English Lawyers to the art of practical justice—perhaps their only very great contribution—is the discovery of the process of ascertaining facts by Judge and Jury through the agency of the rules of evidence, and believing that the spectacle of the process in operation will be of the utmost value in India, it is matter of every-day regret to me that its impressiveness and authority should be spoiled by this absurd appendage of an institution which, in all but the integrity of those who take part in it, exhibits the worst characteristics of Oriental procedure—which is secret and one-sided, and unscientific and irresponsible, and which, besides, sucks all the life-blood out of the invaluable institution on which it hangs.

I have only one thing more to say. I have no right to assume that any part of the feeling against this Bill has been caused by the belief that I wished for a simple fusion of the Grand and Petty Jury lists. The formation of those lists is a matter which I thought it would be more respectful to leave to the High Courts, as they now possess it by Act of Parliament. But I wish to say that, in my opinion, there should be no such fusion; and I have no objection expressly to introduce into the Bill a power to that effect. I believe it is practically found that men deliberate better together when they belong to the same average station in life. I would therefore follow the practice adopted with respect to Civil Juries at home, and have both a special and a common Jury list for criminal cases. The special list would contain the majority of the present Grand Jurors, and Juries would be taken from it in all cases of great importance, or which the High Court should deem to be of pecular difficulty. The Grand Jurors will then do little more work than they do at present, and do it much more effectually. And if it should enter into your Excellency's head, or rather that of my hon'ble friend the Lieutenant-Governor—for I believe that it is he who here represents an aggressive despotism—to put on his trial an innocent man who is a public or private adversary, I venture to think that, if the trial is held by a Judge of the High Court and a Jury from this list, my hon'ble friend will be extremely disappointed.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to amend the Procedure of Her Majesty's High Courts of Judicature in the exercise of their Original Criminal jurisdiction (relating to Grand Juries)—His Honour the Lieutenant Governor of Bengal, and the Hon'ble Messrs. Harington, Maine, Anderson, Brown, Bullen, and Cust.

The Council then adjourned.

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

CALCUTTA,
The 18th November 1864.

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