ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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Council of the Governor General of India,

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LAWS AND REGULATIONS.

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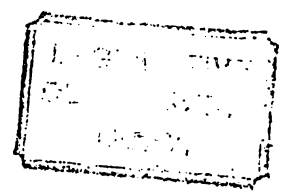

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1878.

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 Wednesday, the 28th February 1877.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir H. W. Norman, K.C.B.
The Hon'ble Sir Arthur Hobhouse, Q.C., K.C.S.I.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, K.C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble D. Cowie.
The Hon'ble Mahárájá Narendra Krishna.
The Hon'ble F. R. Cockerell.
The Hon'ble B. W. Colvin.
The Hon'ble R. A. Dalyell.
The Hon'ble R. E. Egerton, C.S.I.

SALT-TRANSPORT BY SEA BILL.

The Hon'ble MR. HOPE presented the Report of the Select Committee on the Bill to restrict the transport of salt by sea.

The Hon'ble MR. DALYELL said that, although there was no motion before the Council, he desired to ask permission to say a few words with reference to the report of the Select Committee, as he found himself constrained to dissent from its most important recommendation, and he might not have another opportunity of acquainting the Council with his reasons for doing so.

His Excellency THE PRESIDENT having given his consent,

MR. DALYELL said that it would be in the recollection of the Council that about four weeks ago his hon'ble friend Mr. Hope had introduced the Bill to restrict the transport of salt by sea, and that MR. DALYELL had then criticised it as a most arbitrary measure, and one which was likely

to press with very considerable hardship on a large class of poor sea-faring people in the Madras Presidency who were engaged in the coasting and over-sea salt-trade, and who invariably carried on their operations in vessels of a lesser burthen than three hundred tons. His hon'ble friend had, in moving for leave to introduce the Bill the previous week, merely stated that there was no law in force at present to prevent foreign salt, or salt shipped from Bombay without payment of duty, with intended destination to Madras or Calcutta, being surreptitiously landed at any port on the coast, and smuggled salt being taken in lieu of it and carried on to the port for which the vessel was originally cleared, and that that had caused a considerable amount of smuggling which it was proposed to put a stop to by the provisions of the Bill, as it would prevent salt being carried in vessels of a lesser burthen than three hundred tons except under very strict conditions, and would authorize the boarding and search of vessels suspected of carrying on an illicit traffic in salt. Now, MR. DALYELL confessed that he did think that before the Council was asked to accept and to refer to a Select Committee a measure conferring on the executive such great powers of inquisitorial and vexatious interference with a considerable portion of the coast and over-sea trade of the country, they were entitled to receive a somewhat less brief account of the circumstances which, in the opinion of his hon'ble friend, had rendered the measure necessary, than had been accorded by him. It was also clear from the remarks which had fallen from the Hon'ble Mr. Bullen Smith when the Bill was introduced that he held the same opinion, and MR. DALYELL had been a good deal surprised that neither his hon'ble friend Mr. Hope, nor the hon'ble member who was in charge of the Department from which the Bill had originally emanated, was apparently in a position to inform the Council, in reply to the remarks which were then made, on what grounds it was necessary to introduce the measure. It was true that his hon'ble friend Mr. Hope had alluded to a certain large bundle of papers, which he had not brought with him, but which was said to contain voluminous correspondence with the Local Governments on the subject of the Bill, and he had told the Council that the objections which had been raised by the Madras Government had been referred to the Madras Salt Commission, and that they had reported in favour of the measure. But he did not adduce from the large bundle any argument in favour of the Bill, nor did he inform the Council what was the nature of the objections which had been raised by the Madras Government. MR. DALYELL also thought that his hon'ble friend's allusion to the restrictions on salt carried by land over the inland-customs-line were peculiarly unfortunate, when he remembered the debate which took place two years ago on the Madras Salt Bill, in which nearly every member who spoke on the question had alluded in no measured terms to the restrictions placed on salt carried by land by that

very line, and to the hindrance caused thereby to the inland trade—a hindrance which, according to Sir Barrow Ellis, the member in charge of that Bill, amounted almost to a stoppage of interchange of commodities between the Central Provinces and Orissa. Though MR. DALYELL had been surprised that his hon'ble friend could not give any good reasons for the measure, he concluded that there *were* such reasons which his hon'ble friend could not call to mind, and that his first step would be to take an early opportunity of printing and circulating papers which would clearly show the necessity of the measure. Nothing of the sort, however, had taken place, and though MR. DALYELL had obtained from the Madras Government some of the correspondence which referred to that Presidency, it was only through the courtesy of his hon'ble friend that he had obtained a glance at the voluminous papers on the subject, and he believed that the very papers on which the Committee's report purported to be based had not yet been printed and circulated. A cursory inspection of those papers at their meeting had had the effect of inducing the Committee to make considerable modifications in the Bill, for it would now only take effect on the west coast of India, although the power of extending it to other parts of India would still rest in the executive Government. Since the meeting of the Committee, he had had a further opportunity of examining the papers more carefully, thanks again to the consideration of his hon'ble friend, and he believed that if other members had been able to do so, they would have come to the conclusion which he had arrived at, that no satisfactory case had been made out for the passing of any measure at all. When he said no case, he meant that no satisfactory evidence had been adduced that smuggling was so rife, or that danger to the revenue was so considerable, as to justify a measure which must cause serious annoyance and vexation to the whole petty coasting and over-sea trade of the empire. No doubt it was not intended to interfere with the honest trader. But if the Bill was not intended to be a dead letter altogether, it was clear that under its provisions all the small craft which swarmed upon the coast must constantly be overhauled and inspected whether they were engaged in carrying salt or any other article of merchandize, and that this inspection would probably be carried out by a poorly paid Marine Police. In fact, as far as he could judge, the result of the Bill would be to extend to all the coasts of India all the most objectionable features of the salt-customs-line, and the result might here also be the stopping of the interchange of commodities as far as small country-vessels were concerned; or in other words, the suppression of the means of obtaining their livelihood of a not insignificant proportion of the Native population.

MR. DALYELL's further perusal of the correspondence had also led him to

conclude that his hon'ble friend had not clearly appreciated the intention of the measure, and a second examination of his printed Statement of Objects and Reasons appeared to show that he was also mistaken in his estimate of the existing law. For, as MR. DALYELL understood the law, the Customs-law, which prohibited the surreptitious landing of any articles of merchandise, applied to salt as much as to any other commodity. Then he apparently supposed that the Bill would prevent salt being smuggled from Bombay on to the west coast, but it appeared from the papers that it was intended to effect this object in quite a different manner, namely, by an executive order. In future all salt shipped in Bombay would be required to pay the full duty before being removed for export. And, as the whole manufacture of salt was under strict Government supervision, that would effectually prevent any smuggling of this kind of salt. The declared object of the measure, according to the Revenue-circular of the Government of India and the Madras Salt Commission's report, was clearly the suppression of illicit traffic in *foreign* salt, that was, salt made at Goa, Muscat and other places, and there was no satisfactory proof given in the papers that the smuggling of *this* salt was at all general at present. It was true that it was stated that, as soon as this order was passed in Bombay requiring the pre-payment of full duty, the traders who now carried salt to the west coast would turn to Goa for their supply. But it would be time enough when they did so, and when a large amount of smuggling took place to call on this Council to legislate. And even then he questioned whether the Bill would have the desired effect, for it would not be possible under it to seize Goa-salt in Goa-ships unless within British India, that was to say, within three miles of the coast; so that a salt-smuggler would only have to cruise about at a distance of three miles from the coast and watch his opportunity of running a cargo, and by this means avoid the provisions of the Bill altogether. It seemed to him that the far preferable course would be, if it should occur that the salt-traders obtained their supplies from Goa and smuggling took place, to make some arrangement with the Portuguese Government that an export-duty should be charged in the same way as a duty was chargeable on salt exported from Bombay.

Another very serious objection to the Bill which had occurred to him was that it must necessarily enhance the price of salt in these two districts in an objectionable manner, although the price had been raised some fifteen per cent. only two years back, and although the compulsory pre-payment of duty at Bombay must also have an effect in the same direction. It was true, no doubt, that the financial necessities of the State might authorise the levy of a duty even on a commodity which was so essential to the very existence of

the people as salt. But he thought that the Government were bound not to pass any measure which could in any way increase the price of salt independently of the duty levied upon it, and that they should moreover endeavour to remove any cause existing which was likely to have that effect. He had always felt himself that the proper course was to view the salt-tax as merely an engine for the purpose of collecting a moderate poll-tax, and on these grounds he should be glad to see a change in the mode of levying the duty by the adoption of a plan which he did not think had ever been brought under consideration in the very numerous discussions which had taken place during a long series of years in regard to this tax. He thought that the salt-duty should be a differential duty, not as at present with reference to locality, but regulated by the saline properties—the *strength*, so to say—of the article, in the same way as the excise-duty on spirits varied according as it was above or below London proof. This change of system would be a great boon to the two Madras districts which would be chiefly affected by his hon'ble friend's measure. And he believed it would not result in any reduction of the Government revenue, although there was reason to suppose that it would have the effect of putting a stop to a great extent of the smuggling which was said to exist. He thought he was approximately correct in saying that the salt made in these districts was of inferior quality and so deficient in saline properties that one pound of Bombay or east-coast salt would go as far as two pounds of district-made salt. If this was the case, it was clear that if the population of these districts were to use district-made salt instead of foreign salt, they would be obliged to consume double the quantity which they now used; so that even if the duty on the district-salt were reduced by one-half, it would result in no reduction of the revenue; and as it was said that the cost of the manufacture and carriage of foreign salt was double or more than double the cost of production of the indigenous salt, the public would to that extent be the gainer. No doubt it would be impossible to carry out the proposed system with strict exactness, but he thought when any particular district or group of districts was found to produce salt of very inferior quality, the people of the locality should be allowed to bring it into consumption by permitting them to consume it at a lower rate of duty than that charged on a superior quality of salt. Such a scheme would no doubt open out an entirely new field of enquiry as to the consumption of salt in different parts of the empire, and it might result in clearing up anomalies as to consumption in different localities. For instance, if it was found that Cheshire salt imported for use in Lower Bengal was thirty per cent. stronger than the salt in Madras, that would account for the fact that in Madras twelve pounds per head were consumed and in Bengal only nine pounds, and would prove that the true duty

charged upon the article in the two places was not so different as it was now supposed to be.

He felt however that he was perhaps digressing from the subject of the Select Committee's report, but he might say briefly, after going carefully through the correspondence, that he found himself unable to recommend the passing of the Bill; first, because he believed that the order about to be passed in Bombay, requiring prepayment of full duty on all salt exported, would remove all existing necessity for any Bill of the sort; secondly, because, even if the necessity should arise hereafter, the Bill as it stood would not, in his opinion, effect the object in view; and, thirdly, because it would unnecessarily enhance the price of salt in the two west-coast districts of the Madras Presidency.

In conclusion he could not do better than read to the Council the final remarks of the Madras Government as to this Bill, and he ventured to submit that the opinion of that Government was entitled to the gravest consideration at the hands of the Council in regard to a Bill which so largely affected the Madras Presidency. His Grace in Council had written as follows in the last communication on the subject:—

"Without an efficient preventive force, the provisions of the Bill cannot be enforced. The provision of such a force both by land and sea to prevent smuggling on an extensive coast-line must prove exceedingly expensive, while its success will be doubtful; and the Bill will either deprive a large number of Madras vessels of an ordinary article of freight, or will introduce a harassing system of passes and exemptions, which, to the small ship-owner, means either cost in money or loss of time."

The Hon'ble SIR ALEXANDER ARBUTHNOT thought, as the information which had been circulated to the Council in reference to this Bill was considered by the hon'ble member to be defective, it was desirable that the correspondence which had taken place should be further examined and an ample selection printed and circulated for the information of members before the question of passing the Bill was taken into consideration. He hoped that, with that understanding, the hon'ble member would be satisfied.

The Hon'ble MR. HOPE said that, after listening to the remarks of his hon'ble friend Mr. Dalyell, he felt somewhat disposed to infer that his hon'ble friend's own recollection not being very complete as to what had passed when the Bill was introduced, he had attempted to refresh his memory by consulting certain incomplete and inaccurate accounts, instead of referring to the authorized records of the Council. MR. HOPE thought that when reference was made

to those records, it would be seen that, on the occasion of introducing the Bill, he had given to the Council sufficient information as to the main principle of the measure. He did not understand that it was necessary or customary, in introducing a Bill, to do more than to sketch its general principle, and to state briefly the necessity which gave rise to it. That sketch he considered that he made. He thought he had said everything that was necessary on the first occasion; especially considering the fact that his hon'ble friend Mr. Dalyell was about to be appointed a member of the Select Committee, which would afford him full opportunity for considering the Bill in any form or at any length he thought proper. As far as he was aware, it was not customary in introducing a Bill to lay before the Council a complete printed *résumé* of all the correspondence. What was done was to explain the principle of the Bill. It then issued to the Local Governments for their opinion, and all the papers received in reply were printed and circulated, and past records were consulted when necessary. Therefore, under the circumstances, and explaining as he did the reasons and necessity for the measure, he did not think that he had afforded an insufficient account of what was proposed to be done. He was glad, however, to think that his hon'ble friend himself had had full opportunity of perusing the papers, which had been sent to him as soon as they had been collected. As for the non-production of the papers at the time of the introduction of the Bill, and the amusing story of their being very voluminous, and left at home, he would remind the Council that what had really taken place was, that His Excellency the Viceroy having been absent on a tour at the time the Bill had been brought up in the Executive Council, and consequently being unaware of what had taken place, had asked him whether the Bill was the result of communication with the Local Governments, and he had replied that there had been a voluminous correspondence with them, which had lasted, as well as he remembered, for four years, but he had not got the papers with him. The same reasons, as to want of information, which were offered by his hon'ble friend for not accepting the measure would, MR. HOPE thought, justify him in not replying to his criticisms in detail until all the papers were before the Council.

The Hon'ble MR. DALYELL desired to explain that the expressions which he had ascribed to his hon'ble friend were taken entirely from the official report of the proceedings of the Council, and he believed that if anybody would take the trouble to compare the version of his hon'ble friend's remarks which he had just given, with the official report of them, he would find them almost word for word the same.

PRESIDENCY MAGISTRATES BILL.

The Hon'ble MR. HOPE also moved that the Reports of the Select Committee on the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of Police Magistrates in the Presidency Towns be taken into consideration.

The Hon'ble MR. COWIE said there was one feature in this Bill to which he desired to offer strong opposition; that portion or clause which proposed to give the Presidency Magistrates greatly extended criminal powers, namely, to sentence prisoners to two years' imprisonment. No doubt that had been introduced in order to relieve the High Courts of a great deal of petty business. But he maintained that it overshot the mark. Many years ago he was told by persons who served as grand jurors and petty jurors, of the very paltry nature of the cases which were sent up to the then Supreme Court for trial, and that was a great error. But now the proposal which had been made much overshot the mark, and he could not sit content to see Magistrates with no great experience authorized to sentence persons to the extreme punishment of two years' imprisonment. In London the Police Magistrates were always Barristers of considerable standing and great experience, sometimes of ten, twenty or thirty years, and he believed that the extent of imprisonment they could award was six months; every offence deserving higher punishment they were obliged to commit to the Court of Criminal Sessions. Why in Calcutta gentlemen of much less experience should be allowed the power of sentencing to four times the amount of imprisonment, he could not for the life of him understand. He was bound to believe that the six hon'ble members who had signed the report of the Select Committee had given great consideration to this and other points of the Bill, but there was such a thing as reconsideration, and if it was possible he would ask that the Bill be recommitted, in order that this point might be again considered. But if that could not be done, he could only record his protest against the measure, and his hope that the Presidency Magistrates would use as little as possible the new powers with which they would be invested.

The Hon'ble MR. HOPE thought it due to the Council to offer a certain amount of explanation supplementary to that which was recorded on a previous occasion. It would be remembered that the Bill laid before the Council in February 1876 was simply an application of the Code of Criminal Procedure (as it stood) in almost all cases excepting certain ones in which alteration was desirable in the Presidency-towns. And the only material difference between it and the Code of Procedure for the Mufassal was a difference in

the extent of power which it was proposed to give. It was then proposed to give the Presidency Magistrates without appeal double the power of imprisonment they previously possessed, that was, to give them the power of sentencing without appeal up to one year instead of six months, and also to raise their power of fine up to Rs. 1,000; and it was further proposed to empower them to sentence, subject to appeal, up to two years, in the same manner as the District Magistrates in the Mufassal did. The Bill was republished, and all the objections received were fully considered and a further report was presented in June of last year. The Bill as then laid before the Council contained very material alterations in wording and arrangement. Moreover, it went back so far as to reduce the proposed summary power of one year's imprisonment to the existing summary power of six months and the fine to two hundred rupees. At the same time it left the limit of sentence subject to appeal as was originally proposed. It likewise made three alterations of considerable importance in the nature of the record. It required that the Presidency Magistrate should record the evidence in all appealable cases and in all cases of fine above two hundred rupees and imprisonment exceeding a term of six months. It likewise obliged him to frame a charge in all cases punishable with imprisonment above six months, and laid on him the obligation of recording the reasons for his judgment in all cases whatever of imprisonment, even for a day, and in every case of fine exceeding fifty rupees. It also made another alteration preventing the Magistrate from issuing process upon mere suspicion.

The Bill as now for the fourth time laid before the Council contained only one alteration as to jurisdiction as revised on the last occasion, which was made on the joint recommendation of the Presidency Magistrates of Calcutta, Madras and Bombay, and was to the effect that in cases of fine only, the Magistrate need not record his reasons for conviction, except where the fine exceeded two hundred rupees, instead of fifty rupees as at first proposed. As regards the constitution of the Courts, however, the Bill made a very important enlargement, for it provided, in accordance with a recommendation made by Sir Richard Temple and repeated by the present Lieutenant Governor of Bengal, that a case might be tried by two or more Magistrates sitting as a Bench. And further, with reference to procedure it made three more amendments in the same direction as the previous one in regard to process. It precluded the Magistrate from ordering a previous enquiry by the Police to ascertain the truth of a complaint; it provided that warrants of arrest and search should always be directed to the Police instead of allowing them to be directed to private persons in emergent cases; and finally it did not contain the clause which had been inserted in the previous Bill, with the view of

placing a telegram on the same footing as a letter as regards the power of having it produced in open Court.

On the question of jurisdiction, MR. HOPE] proposed to remark at somewhat greater length. He himself was one of those who regretted the change made in June last, of reducing the summary power of the Presidency Magistrates from one year to six months, because it appeared to him that the very material restrictions imposed on the Magistrate of framing a charge and recording the evidence and the reasons for his judgment were quite sufficient. And for this he could now say that he had very high authority on his side. He knew that there were Judges of the High Court, both European and Native, who shared the opinion he held, and he might possibly quote even higher authority. He would ask why Presidency Magistrates should not be competent to exercise the power now proposed to be given to them? He was glad to think that the post of Presidency Magistrate was held in all the three Presidency-towns by Native gentlemen as well as European. In regard to these Native gentlemen, he would not be guilty of the impertinence of expressing his personal or individual opinion as to the manner in which they performed their duties. But he might say, without fear of contradiction, that they performed them to the entire satisfaction of the public at large. He need hardly do more than call to mind two cases which had occurred in Bombay during the past year, in which it had happened that European gentlemen of high position had been brought before Native Magistrates, and it was universally agreed on those occasions that even the Barrister Judges of the High Court could not have shown greater fairness, tact and judgment than had been shown by the Native Magistrates. He would further remind his Native friends who might be disposed to object to this increase of power given to Native Magistrates, that their argument might be used against themselves. If they were not prepared to allow a Native Magistrate in the Presidency-towns to exercise the power, subject to appeal to the High Court, of passing sentences of imprisonment up to two years, and of six months without appeal but subject to *certiorari*, how could they maintain that their countrymen ought to be made District Judges with powers infinitely greater, and District Collectors and Magistrates with all the great powers of an executive nature which we knew they exercised? Then again as to the objections made to such Presidency Magistrates as were Barristers. If they were unfit as a class to have the powers proposed, how could they be fit for Mufassal Judgeships and Benches, to which some people desired to appoint them?

But people might answer—"our objection was not based on the ground of unfitness of the persons appointed, but on our preference for the system of

trial by jury which we happen to enjoy in the Presidency-towns." Now this appeared to him to be an objection which was based on sentiment, and it might be said to be as useless to argue against sentiment as to argue about tastes. Trial by jury was a very old institution; it had a very long history, and a history which was studded with conspicuous failures. The fact was, that although it might be a good institution under ordinary circumstances, it failed completely where public feeling was excited. Whenever any strong sentiment possessed the public mind, it was reflected in the jury. We had only to look to Ireland to see that, in cases where religion or politics were concerned, the jury-system did not ensure justice. In England, again, we saw the same thing when national antagonism was raised by the Orsini trial. And in India we had only to look round us to be aware that it was a constant complaint that justice was not invariably done when the jury had to decide between a European and a Native. In short, one might say that it failed to give either to society or to the subject special protection just at the very time when there was the greatest need of it. One would be disposed to think that trial by a Judge who was trained to weigh evidence, and who was controlled by an intelligent Bar and also by means of a writ of *certiorari* and a provision for appeal, would be more likely in the long run to give satisfactory results than the institution to which he had referred. However, as he had said before, there was little use in arguing against sentiment. The Bill as it stood practically yielded to the force of that sentiment as regards many kinds of cases which would have gone before a Magistrate under the Bill as it was, but which would not do so under it as now amended; and it only withdrew from a jury minor cases, such as were daily tried in the Mufassal without practical harm, though under less light. For further improvement we must trust to time. Time had effected great wonders in the direction of law-reform. We had lived to see that provisions of law which less than a century ago had been considered as the perfection of human wisdom were now considered the perfection of human folly. Already, trial by jury was quietly abandoned in England, in a considerable class of cases, and he had very little doubt that eventually it would be relegated, except in rare instances, to the institutions of the past. It would come to hold, he trusted, the position which we saw occupied by some bowl of ancient and valuable China, placed on high on the mantel-piece or the pier-table for general admiration, but never used except on occasions of the greatest importance. Or again, to change the metaphor, it might come to be treated like that most venerable and venerated personage, our grandmother. We were all familiar with her aspect in old age, surrounded by a large circle of affectionate and respectful relatives, relieved one by one of the various functions, social and domestic, which her declining years rendered her unable to perform, and at

last laid gently and honourably in the grave by grandchildren and great-grandchildren, to whom the freshness of her budding youth, and the beauty of her matured womanhood were alike traditions of an earlier generation.

He now turned to a less sentimental branch of the subject, and would observe, with regard to the provision for Benches, that those who had heard the remarks he had made as to the Native Presidency Magistrates would quite understand that their admission to Benches could not otherwise than meet with his approval. He could not say that he himself looked for any great advantage from the collective action of Benches, or thought that the decisions of three Magistrates were likely to be more wise than those of one. But the establishment of Benches would have one valuable recommendation; it would induce Native gentlemen to give their attention to public business, and he hoped that from sitting jointly with stipendiary Magistrates they would be led to sitting singly. Native Honorary Magistrates had done, and were doing, much good work in the Mufassal, and he had no doubt that they might do the same in the Presidency-towns, with equal advantage to the political relations of the State and the public, and to the stipendiary Magistrates who would be relieved in their laborious duties.

With regard to the three further changes made in limitation of the Magistrates' powers, the chief objection that occurred to him was that they would render more difficult the assimilation at some future date of the Presidency procedure to that in the Mufassal.

He should perform his duty very imperfectly if he omitted to notice a memorial which had been received a week ago. It was presented by a society called the Indian League, and it purported to embody certain Resolutions adopted at a public meeting held in March last. But in March last we had not presented our second amendment of the Bill, and yet all the references in the memorial were to the Bill as last amended; so that he had some doubt how far this influential meeting could be said to sanction the present memorial, and whether, if the meeting had seen the amended Bill, they might not have deemed further agitation to be unnecessary. As regards trial by jury, to which much of the memorial was devoted, he need not say anything further. But there were some minor points which should not be overlooked. The memorialists were under a misapprehension in supposing that the Magistrate was not required to assign any reasons. Again, section 117 was simply copied from the Criminal Procedure Code. Then he found here again entertained a misapprehension which he had endeavoured on a former occasion to dispel, that an appeal by the Crown was given to the Government as the executive Government—that it was a right which was not enjoyed by a private party; whereas

in fact an appeal was given to the Crown on behalf of the whole community, and was scarcely ever exercised by the Crown in its own behalf.

There was one point in regard to which the Council was very much indebted to the Indian League. They had pointed out a blot which he proposed to remedy. Under section 174 as it at present stood, the High Court would be able to inflict a higher punishment than what the Magistrate could impose. He would move an alteration in section 174, clause (*b*), to meet that objection.

There were several minor matters in noticing which he would not take up the time of the Council. There was also an objection raised to section 17 with respect to the liberation of a female above the age of fourteen years, and it was said that the section was "fraught with the gravest mischief." But the memorialists overlooked the fact that this provision was in their own Bengal law, Act IV of 1866, section 31. He was not aware that the gravest mischief had arisen from it. It was also noticed with reference to section 87 that hardship would arise owing to the Bill making no distinction between summons-cases and warrant-cases, but the fact was that no summons-cases were tried by the High Court.

There was only one other matter, which had been brought to their notice this morning. It related to the definition of "pleader" in the Bill. The Bill as originally drafted provided that an accused person might be defended by any person with the permission of the Magistrate. This would give, it had been said, an arbitrary power to the Magistrate, who might refuse to allow a prisoner to be defended, and it was amended by giving a right to be defended by an advocate, attorney or pleader, and "pleader" was defined to mean a pleader of a High Court established by Royal Charter. It was now pointed out that the definition was not comprehensive enough, as there were persons practising in the Calcutta Police Courts who were not pleaders of the High Court. That might perhaps be met by adding that "pleader" should mean a pleader as defined under the Act XX of 1865. But it was also objected that even if those words were inserted some other difficulty might arise in Madras or Bombay. He therefore proposed to strike out the definition altogether.

MR. HOPE had to say in conclusion that not only had he taken up much of the time of the Council in making these remarks, but he must plead guilty to two previous convictions for the same offence, and he would only express the hope that the Council would render it impossible that he should offend again by passing the Bill at that sitting.

His Honour THE LIEUTENANT GOVERNOR thought the objections which had been made to the Bill by an hon'ble member were valid and were deserving of fair consideration, but he submitted that they had already received the most careful consideration. The Bill had been before the Council in one form or another nearly four years, and there was no part of it which had received so much consideration and been the subject of so much discussion as the special point which the hon'ble member had raised. The objection of the hon'ble member, as far as he understood it, was made solely to the increased powers to be conferred on Magistrates. But he forgot that precisely the same powers to which he objected were exercised throughout the length and breadth of the country by Magistrates in whose selection we had not the same choice as we had in the case of the Presidency Magistrates. We were obliged to employ a number of officers in sub-divisions and sadr stations of whom we knew very little and had not the same previous knowledge as we had in the case of Magistrates appointed in the Presidency-towns. He should have thought that if in any place it was safe to leave these large powers in the hands of Magistrates, it would be in the Presidency-towns, where every judgment and every word uttered was taken down by reporters and published in the newspapers and subjected to public criticism and opinion, and where all orders would be subject to an immediate appeal to the High Court on the spot. He thought that if such powers could be exercised at all by any one in the country, they could be more safely exercised by Police Magistrates in the Presidency-towns than anywhere else, and it was out of the question now to go back and say that these powers should not be exercised in the interior.

Then as to the removal of cases from the cognizance of juries, HIS HONOUR thought that by so doing we were more likely to get juries to devote their careful attention to the matter brought before them and arrive at good verdicts, than by over-burdening them and employing them for days and days in deciding petty cases. It must be remembered that our jurors were all busy men and had to be taken away from their work at much inconvenience to sit on juries, and he thought that, as a rule, we should get a better class of men if they found they were only called upon to attend to cases of really serious importance. Other remarks which he had intended to make had been anticipated by his hon'ble friend Mr. Hope, and he need add nothing further.

The Hon'ble MR. DALYELL said he had only one word to say by way of supplement in reference to the hon'ble Mr. Cowie's remarks as to the increased powers proposed to be given to the Presidency Magistrates, that practically the Magistrates in Madras had exercised these powers for a long series of years. The Madras Act permitted them, with the consent of the prisoner, to

exercise these extended powers. In all such cases the prisoner was asked whether he wished to be tried summarily by the Magistrate or by the High Court, and he believed that prisoners had always preferred to be tried summarily. No objection whatever had been raised to this course, and as far as he was aware no failure of justice had taken place. The High Court had also been largely relieved of business, to the extent of about three-fourths, that was to say, its present business would be just four times as much if the Presidency Magistrates did not exercise the powers which they did.

The Hon'ble MAHÁRÁJÁ NARENDRA KRISHNA said the Police Magistrates Bill was framed with a view to remove the uncertainty of the procedure for the trial of cases by the Presidency Police Magistrates. So far as it removed that uncertainty and simplified the present complicated practice obtaining in the Police Courts, the proposed measure would no doubt be hailed by the public as an improvement upon the old law. It was also satisfactory to notice that the Bill made no distinction between the powers of a European and Native Magistrate with regard to the trial of British-born subjects.

But he might be allowed to notice some other provisions of the Bill upon which some dissatisfaction might be felt by all sections of the Calcutta community. He alluded to the extension of the jurisdiction of the Police Magistrates as regards the trial of cases hitherto triable by the High Court Sessions. At present the Police Magistrate was invested with the powers of a second class Mufassal Magistrate under the Criminal Code of Procedure. To raise his powers to that of a first class Magistrate, and at the same time to allow him to try a large and serious class of offences without the aid of a jury, would create discontent and would, the Mahárájá feared, work serious evil. If it be determined however to increase his powers, he would recommend the limit to be one year's imprisonment and a fine of five hundred rupees, with an appeal to the High Court in all cases when the sentence exceeded six months' imprisonment and a fine of two hundred rupees, as very properly provided for by section 167 of chapter XII of this Bill. The Natives of this city had come to regard the jury-system as a valuable safeguard of their rights and liberties. They cherished it as one of their dearest privileges enjoyed for a long time past. It was not therefore desirable to take away this safeguard by increasing the number of cases triable by Magistrates under this Bill. As by sections 115 and 116 of the Bill they would be allowed to try cases summarily when the punishment would not exceed the period of six months or a fine of two hundred rupees without the framing of a charge against the accused and the recording of evidence of the witnesses, he would suggest that in all cases in which the Magistrate would inflict more than three months' imprison-

ment, he would be bound to record the evidence of the witnesses adduced in behalf of both the parties, and also to state in his judgment his reasons in full for conviction, so that the party who might feel himself aggrieved might have his remedy by way of motion before the High Court. The Mahárájá was certainly of opinion, and he believed the public hoped and expected, that in all cases in which the accused would be liable to more than a year's imprisonment, he should be tried by jurors at the High Court Sessions. The recording of evidence in the cases cited by him would, he apprehended, entail such an amount of work as could not be performed by the present staff of Police Magistrates; but in the interest of justice it would be necessary that the record should be full and complete, even if for the securing of that object, it be necessary to entertain an additional number of Police Magistrates.

The Hon'ble SIR ARTHUR HOBHOUSE said—"This Bill has been so long before the public, and has met with so much attention and criticism, official and other, that I shall confine the remarks I have to make to its most general and important features. I was indeed under the belief that the objections made to our original proposal to increase the jurisdiction of the Presidency Magistrates had been so carefully considered and so completely met by the modifications which were made in the Bill last June, that all unfriendly feeling to the measure had died away. Notwithstanding the lapse of many months, we heard of no objections to our Bill No. V, except that the Magistrates themselves thought that we had been too cautious in requiring them to record reasons for their judgments in certain cases. A paper however has very recently come to us from a very respectable Society, the Indian League, which shows that the respectable feeling which loves whatever exists has not been quite overcome in all quarters. And we have to-day heard from two of our honourable colleagues that they also have objections to altering that which exists.

"With reference to the memorial of the Indian League, I wish to make some remarks to the Council. They take objection to three important points of principle comprised in the Bill, and more or less discussed in the papers which reached our hands prior to last June. The first, and I think the most important, point is the right of appeal by the Crown in cases of acquittal; the next is the power of enhancing punishment on an appeal by the prisoner; and the other is the increased range of jurisdiction given to the Presidency Magistrates.

"As regards appeal by the Crown, I am glad to see that the objections to it are now confined to a narrower range than formerly. I had the honour some few

weeks ago to meet a deputation of the Indian League, at which they contended that it was not just or expedient to allow such an appeal at all, and I on my part did my best to point out that in India appeals were found to be necessary things; necessary evils it may be, but still necessary things; that we had therefore allowed them to the prisoner, and that for the welfare of society, they ought to be allowed to the Crown. I cannot however flatter myself that it is owing to any eloquence of mine that the fundamental objection then felt by them has now disappeared. I suspect that the change is owing to the eloquence of events: for we have recently seen here in Calcutta under our very eyes two striking cases, in which the Lieutenant Governor of Bengal has had to speak his mind, and which I should think would convince the most sceptical that an appeal by the Crown may be a great benefit to society.

"The subject is one on which the Government have lately been making enquiries how the law of 1872 works, and we find that the right of appeal is one which is exercised sparingly and cautiously by the Local Governments, and that both executive and judicial officers are agreed that its operation is beneficial.

"No doubt it is a power which should only be exerted in adequate cases: and if that precaution is observed, it is certain that the suspicion, which so far as I know was only due to its novelty, and which has already died away to a great extent, will wholly disappear; and this appeal will be looked upon as an integral and valuable part of our criminal system.

"But I turn now to the special objections taken by the memorialists. The first is as follows:—

"'In connection with the subject of appeal, your memorialists further feel themselves bound to protest against the anomalous and inequitable character of the distinction laid down in section 168 of the Bill, by which it is proposed not only to reserve to the Government a right, denied to the subject, of appealing against an order of acquittal or dismissal, but while the period for an appeal is limited, in the case of private individuals, to a period of one month from the date of the order appealed against, a period of two months is allowed to the Government for the same purpose.

"'The grievous inequality involved in these provisions is, your memorialists submit, materially aggravated by the circumstance that the Magistrates are appointed, and may be dismissed, by the very authority on whom it is proposed to confer this extraordinary and exclusive right of appeal, and by the vast disparity in power and position between the Government and private suitors.'

"The complaint then is, not that any appeal is given at all, but that there is an inequality between the Crown and the prisoner. The first allegation of

inequality is very oddly put, because the memorial complains that the right of appeal against an acquittal is given to the Government, but is denied to the subject. That certainly is so, but then I never heard of a prisoner who desired to appeal against his own acquittal. I suppose the memorial must mean that a prisoner cannot appeal against his conviction. But then the statement, though ceasing to be absurd, would become untrue, for the Bill does allow an appeal by the prisoner against any conviction in a case beyond the present summary jurisdiction of the Magistrates. So the inequality is reduced to this, that the Crown may appeal in all cases, and the prisoner only in the more important ones. But such an inequality as that is a necessary inequality, unless we are to say that prisoners shall have a right of appeal in every case, even if they are fined a pie or imprisoned till the rising of the Court. If there is a conviction, you can distinguish between a light sentence and a heavy one, and say that there may be an appeal in one case and none in the other. But if there is an acquittal, how can such a distinction be drawn? One acquittal is the same as another acquittal, so far as regards the sentence passed. Moreover, though the Crown does not appeal in petty cases, it may wish to appeal on an important question of law, and such questions may arise in a case which is otherwise of no great importance. If anybody will show us a plan for exact equality between Crown and prisoner, we may consider it, but nobody has shown us such a plan, and I believe nobody can do so. If the Crown is to have an appeal at all, the cases for appeal must be left to its discretion. It has not yet busied itself with appeals in petty cases, and I venture to say that it will never do so.

"The other ground of inequality alleged by the memorial is that the Crown has a longer time for appealing than the prisoner has. I must say that these gentlemen seem to have looked on this matter as one of pure arithmetic. They seem to have reasoned thus: a right of appeal is a good thing, therefore a person who enjoys that right for two months is twice as well off as one who enjoys it for only one month. But I beg to say that the right of appeal is not a luxury or matter of enjoyment to some favoured person. It is, as my friend the Lieutenant Governor well knows, a difficult and responsible duty, to be discharged by high and responsible officers. To enable them to discharge it properly, time must be given for the case to reach their hands. They must take legal advice, and they must make such enquiries as are necessary to understand the exact nature of the case and to judge whether it calls for an appeal. If time is not allowed for these things, the public will not get the amount of benefit which the right of appeal by the Crown is calculated to confer. Cases will be appealed in a hurry which further enquiry would show were not worthy

of appeal, merely because the time is running out within which the Government must make up its mind. This provision of the Bill has been framed in the public interest, and for the purpose of having the question of appeal or no appeal maturely decided by the high officers who have to exercise their discretion on it.

"I say moreover that, looking at the question merely as one of time, and of work to be done in a given time, the prisoner has before him a very simple problem to be decided by himself alone; the Crown a complicated one on which several opinions must be taken, and that one month to the prisoner is a more liberal allowance of time than two months to the Crown.

"The next objection taken to an appeal by the Crown is thus stated—

"'A similar objection applies, in the opinion of your memorialists, to the further provision contained in this section, by which it is declared that, in cases so appealed, the High Court may direct a new trial by any Presidency Magistrate; for however justifiable the distrust implied in an application for the removal of a trial may sometimes be in the case of a private suitor, it seems neither decorous nor politic that the Government, in whose favour alone this power could be exercised, should call in question the competency of a Magistrate selected by itself.'

"Here are distinct assertions that certain powers are given in favour of the Crown which are not given in favour of the subject. And whatever may be the value of the argument on pure logical grounds, I decline to examine it, because no one of the assertions on which it rests has any foundation in fact. It is not true that the power of directing a new trial can be exercised only in favour of the Crown, for by section 174 of the Bill it can be exercised in favour of the prisoner. The section under consideration says nothing about the removal of a trial, but speaks only of a new trial. And even if a new trial is ordered to take place before another Magistrate, in the first place that will be the act of the High Court and not of the Government, and in the second place it will not involve any question of the competency of the Magistrate, but only of his fallibility. Unfortunately we are all fallible however competent we may be, and it is in consequence of this common touch of nature, that any appeal at all is necessary.

"So much I have to say of the reasons which are actually expressed in these objections. But besides these it seems to me that there is underlying the whole an idea as false and mischievous as any idea can be; an idea not plainly expressed, probably an attempt to express it would at once show its true character, but so far implied, that if you take it away, the words used become meaningless and lifeless. The idea I speak of is, that in this matter of

criminal procedure the interests of the public and those of the Government are contradictory and antagonistic to one another. And I am the more desirous of remarking on it because it enters more or less into other arguments put forward in the paper I am commenting on, and in other utterances both on this measure and on cognate ones.

"Now I ask, what is the meaning of all these insinuations about the great disparity in power between Government and private suitors, which means prisoners: about Magistrates being appointed and removed by Governments, and about its being indecorous and impolitic that Government should call in question the competency of a Magistrate selected by itself? If these expressions mean anything at all, they mean that the Government is to be looked upon as a wicked Government, prone to use Courts of Justice as engines of oppression, and to disgrace Magistrates who are too upright to comply with its wishes. Anything more contrary to the fact, anything more purely imaginary, it is impossible to conceive. The various branches of the Indian Executive Government, being human, are liable to make mistakes, but they certainly do administer the criminal law, whether as original prosecutors or as appellants, in perfect good faith and in the public interest; and since I have been in India I have never heard it so much as alleged that a single appeal from an acquittal or a single prosecution originated by the Government was a vindictive or an improper proceeding. But if there is nothing of that kind to be found in our society, all these remarks are gratuitous insinuations which had better be omitted.

"In the year 1874, when we were making some small alterations in the Criminal Procedure Code, some other friends of ours—the British Indian Association, then represented by the Maháráját Ramánáth Tagore and now by the two able gentlemen who sit at this table—urged us to revise the Code, and to take away some powers that had been given to the Crown; amongst others, this power of appealing from an acquittal. On that occasion I objected to proceed upon speculative grounds, and asked to be supplied with evidence that the power in question had been worked harshly. No such evidence was forthcoming, and the Council did not think it desirable to make the suggested alterations. So I would tell these memorialists that an ounce of fact will be of greater value than a hundredweight of insinuations that Government is in the habit of abusing power given to it for the public good.

"I do not indeed suppose that the memorialists have formulated to their own minds the proposition which they must maintain in order to gain a footing for the kind of argument I am speaking of. On the contrary, I feel sure that

they, in common with other educated Indian gentlemen, would disclaim all such ideas. All suggestions of this kind seem to me to be mere borrowed plumes which do not fit the borrower. They are borrowed from speeches and writings of purely English origin, which, whatever may be thought of their value as applied to England, are applicable to certain phenomena of English society and certain phases of English history which find no counterpart or similitude in India.

"I will further illustrate this extraordinary preference of speculation to hard facts from the comments which the same paper makes on section 17 of the Bill. That is the section which enables a Presidency Magistrate to set at liberty a woman or a female child under the age of 14 years who is detained for an unlawful purpose. Upon this the memorialists say that it involves an innovation in the existing law, if it is not in direct conflict with sections 372 and 373 of the Penal Code, and that it is fraught with the gravest mischief. Now I can assure the memorialists that there is no conflict between this section and the Penal Code, for the two laws relate to quite different subjects. Whether the practical suggestion which they go on to make is a good one or a bad one I really do not know; but I know that it would require a great deal of enquiry before we could adopt it. I do not now enter into that matter; for the point to which I wish to draw the attention of the Council is, that our section is no innovation at all. It has been the law in Calcutta for at least twenty years, and if it is calculated to produce the evils which these gentlemen apprehend, those evils would certainly have come to the surface. I ask where is the evidence that this provision has produced any evil at all? There is no such evidence. The evils which the memorialists have conjectured are so invisible, so completely non-existent, that they actually do not know that the law they so fear has been long at work in Calcutta.

"I pass now to the question of enhancement of punishment on appeals by prisoners. On this point it appears to me that the memorialists have made one sound stricture. It does not seem to me a matter of great importance, but it is sound and just as far as it goes; and my friend Mr. Hope is about to move an amendment which will meet the objection made by the memorialists. But what is their objection to the principle? It is thus stated,—

"'Section 174 of the Bill gives the High Court, on appeal, power to enhance any punishment that has been awarded by a Magistrate. Your memorialists are aware that the Code of Criminal Procedure already vests the Appellate Courts with a similar power in cases tried in the Mufassal; but they submit that, though the provision is one which, in rare cases, may promote the ends of justice, this consideration is of trifling moment compared with the fact

that the fear it must create is calculated to deter innocent persons from exercising the right of appeal, and that it is thus opposed to the principles of both justice and humanity.'

"Now, of this argument as of the former ones, I must say that it is a pure speculation without any basis of fact or probability. I ask what evidence there is of the assertion that any one, be he innocent or be he guilty, is deterred from appealing by the fear of enhanced punishment? There is no such evidence. Speaking of the matter as one of probability, I should say that an innocent man would never be deterred by such a consideration. A man who knows in his own conscience that he is innocent, is just the man who will not suppose that the higher Court will punish him more heavily. On the contrary, he will go to it in the hope that his innocence will be made clear. No doubt the guilty conscience which makes cowards of us all may be so deterred, and if so, I do not see the harm of it. But I cannot believe that the motive would operate at all except in those cases in which a man, being guilty, had the good luck to escape in the lower Court with a very light punishment. Such a man, if his punishment could by no means be increased, might hope that luck would befriend him in the Court above more than it had already done in the Court below. But if he knows that his punishment can be increased, he may think twice over it. Such cases are not likely to be numerous enough to affect the bulk; and in fact we have no reason to believe that the percentage of appeals has been affected by the change in the law which was effected in the year 1872.

"I may add that this change of the law is one which has also been the subject of recent enquiry by the Government, and the result of the enquiry is that the Courts have used their power with much discretion and with quite satisfactory results.

"The third general objection taken by the memorialists has already been observed upon, namely, the extension of the power of the Presidency Magistrates. They speak of its magnitude in rather exaggerated terms, and say that it can only be justified by some sudden emergency or some very general increase of criminality. Surely it can be justified by showing that it conduces to the general convenience and to the despatch of business; that it is a jurisdiction which is worked without mischief and with benefit over all India except the Presidency-towns; that it is of the same nature as that which has long worked in the Presidency-towns themselves, only with more safeguards attached to it; and that the circumstances of the Presidency-towns, though differing in some respects from the Mufassal, do not differ in this respect that we should be inclined to give a less amount of jurisdiction to the Presidency-town Magis-

trates than we give to Magistrates in the Mufassal. All we purpose is to give to the Presidency Magistrate the same amount of jurisdiction as a first class Mufassal Magistrate has. Is there any reason for thinking them unfit to exercise such powers? I have heard none. Is there any reason for thinking them fit? I will answer in the words of the British Indian Association, who sent us in a paper when they were opposing this Bill in a prior stage.

"The paper I should say is a very well written one, very interesting from its history of the law, and it has exercised great influence on the deliberations of the Select Committee, and has had a considerable share in moulding the Bill into its present shape. Hear what it says:

"'The present limits of the summary jurisdiction of the Magistrates of the Presidency-towns has worked satisfactorily, and your memorialists are not aware that any public inconvenience has accrued therefrom.'

"Now, speaking broadly, the Presidency Magistrates have for twenty years and upwards been able to inflict fines to the extent of Rs. 200 and imprisonment for a term of six months. That they can do without keeping any record, and with no appeal from them to the High Court; and no sort of complaint is made. Is it likely that they will begin to abuse their powers because they are empowered to pass heavier sentences coupled with the obligation of keeping a record and with the liability of appeal to the High Court? Is it not rather more prudent and more wise to argue from the known to the unknown, and to conclude that those who have been found faithful in a few things may well be made rulers over many things?

"My Hon'ble friend Mr. Cowie has told us that we are overshooting the mark. He has not told us how far we are overshooting the mark, or indeed what the mark is. That I suppose he leaves us to find out. I say that it is impossible to draw any line in such a matter as this, that will be perfectly satisfactory to all minds. I believe I am not misrepresenting the Lieutenant Governor of Bengal when I say that in his opinion we are undershooting the mark, for he thinks that some more jurisdiction may well be conferred on the Town Magistrates.

"Every time such a subject is discussed, there will be some differences of opinion. For an illustration, I turn again to the paper of the British Indian Association. I find that in the year 1856, when it was proposed to confer on the Magistrates of Calcutta the larger jurisdiction which they have since exercised, a most weighty opinion was given against the proposal. Sir Lawrence Peel

advised the Government that they ought not to give so large a jurisdiction to a single Magistrate. But the Association go on to tell us that the Bill was passed into law without material modifications, and also that the result had been perfect contentment.

"I dare say the same thing will happen twenty years hence, when the Government of the day come to propose some further extension of the system. The Council will then be told that in the year 1877 two eminent Members of Council, who will then I hope be enjoying a combination of ease with dignity, had opposed the extension of the Magistrates' powers and had said that it would be a dangerous thing to give them so much power. And I trust that the Law Member of that day will be able to answer as I do now. 'Nevertheless, the Bill was carried with no material change, and the result has been perfect contentment.'

"Now one of the great objects of this Bill has been to assimilate the procedure of the Presidency-towns and that of the rest of India so far as their varying circumstances will admit. In several respects material to the present purpose the circumstances of the two localities differ: and those who study this Bill and compare it with the Code of 1872 will find corresponding differences. But where is the reason why a Presidency Magistrate should not have as large a jurisdiction as a Mufassal Magistrate, except that it has not been so hitherto? The only reason I have heard assigned is that the Town Magistrate is generally a younger man. But on the other hand, he has the advantage of a Bar, a Press, a Public, and the close proximity of the High Court, to which the prisoner may appeal, or which can of its own motion, directly it hears of any thing going wrong, call up any case from a Magistrate to itself.

"No doubt to a certain extent jury-trials will be displaced. They will not however be displaced to the extent which is urged in this memorial, nor to the extent which my hon'ble colleagues appear to suppose, because, they put their objection as though every case which may be dealt with by the Magistrate must be dealt with by him. They have not observed that the Magistrate has full discretion to commit to the High Court—a discretion which doubtless he will exercise in important cases. Neither have they observed that, under the large powers given to it by the Act of 1875, the High Court has a discretion to call up any case they please from the Magistrate's file. I ask whether such safeguards are not ample? Is it not certain that if a case is of such importance as to demand the intervention of a jury, it will find itself before a jury,

either by the discretion of the Magistrate himself, or by the intervention of the High Court using the more simple process that we have substituted for the writ of *certiorari?*

"I cannot at all go along with my friend Mr. Hope in his onslaught upon juries. I am an English lawyer and have seen something both of Judges and juries, and I say that, apart from political considerations and looking simply at the object of getting justice, there are many kinds of cases which I would sooner take before a jury than before a Judge. I admit that there are difficulties and drawbacks in the way of working the system in India, but I have certainly no abstract dislike to the jury-system. As far as my mind is concerned, it has never for a moment entered into it to advocate this extension of powers from any preference of some other tribunal to a jury. I rest my case upon the public convenience and upon the wisdom of extending a system which has answered so completely as our system in the Presidency-towns. These arguments are strongly reinforced by what my hon'ble friend Mr. Dalyell has told us to-day of the procedure in Madras. The prisoner there has the rather curious privilege of electing his tribunal: on the one side the High Court and a jury, on the other the Magistrate. And it seems that almost invariably—or I think I understood Mr. Dalyell to say quite invariably—he elects to be tried by the Magistrate.

"Let the Council bear in mind that jury-trials are, and have long been, displaced by the jurisdiction of Presidency Magistrates in the majority of cases, and that not a word of complaint is heard. If you wish to be consistent and say that all criminal cases must be tried by juries, you must alter the law in that direction. But can any reason be assigned why we should keep the line drawn exactly at its present point? Why should we not draw it at a different point, if we can thereby relieve our hard-worked High Courts and jurors of some more of those cases which we are told take up a great deal of their time and constantly turn out to be of a very petty character?

"On this point also the memorialists have insinuated that the Magistrate is appointed and removed by the Local Government, as if the Local Government was a lion going about seeking whom it may devour, or as if a Magistrate's Court was a lurking den in which the innocent may be privily murdered. But I will only remind the Council of what I said before on this topic, and will pass it over without further remark.

"When sinister imputations have been set aside; when hard facts have been substituted for guesses; when exaggerated statements have been reduced to

their true dimensions, I think it will be seen that this measure is only a natural, moderate and timely extension of a system which has been thoroughly tried by experience and found to be good and suited to the circumstances of India. I do not often venture to prophesy, because it is a very dangerous trade. But in this case I feel very certain that the arrangements provided by this Bill will work with greater ease and certainty, and with no greater amount of complaint, than the law which is now at work, and that in a few years those who now still forebode evil will have quite forgotten their fears, or if they remember them, will wonder why they should have been excited by so simple and reasonable a change.

"Therefore I hope the Council will accept the Report and pass the Bill without material alteration."

The Hon'ble SIR EDWARD BAYLEY wished to say but a very few words. Indeed after the very able and complete exposition which his hon'ble friend Sir Arthur Hobhouse had just given of the operation of those sections of the Bill to which objection had been taken, there was very little that remained to be said. He only wished to refer to one or two points, one of them of a purely personal nature. He desired, in the first place, to recognize the testimony which his hon'ble friend Mahárájá Narendra Krishna had borne to the general usefulness of the Bill in its present shape, to the effect that it was an improvement in the procedure which now obtained in the Magistrates' Courts; and that if regard was had to the Bill in its general aspect, there was much to satisfy the public that it was a measure calculated to consolidate and improve the existing procedure of the Courts, even if a difference of opinion existed on some minor points.

In the second place, he wished especially to express his own entire concurrence in the opinion which had been given by his hon'ble friend Sir Arthur Hobhouse in regard to juries, and to say that he did not in the least concur in the opinion which the hon'ble Mover had expressed as regards the usefulness of the jury-system. He quite admitted that its usefulness as a judicial instrument was not unqualified, though he was not wholly prepared to condemn it even in that respect, and he agreed with Mahárájá Narendra Krishna and some of the memorials which were addressed to the Council, that it should not be regarded solely as a judicial instrument. It was something more; he would not say that it was exactly a political institution, because, though no doubt the jury-system in our own country had played an important part in

history, it had not done so, and was never perhaps likely to do so, in India. It had, however, what he might call a legislative function. He recollected many years ago, when he was a pupil of an hon'ble gentleman who subsequently sat with great honour in this Council—Sir Henry Maine—he recollected his remarking with regard to legislation, that in many instances legislation had a share in maturing and advancing public opinion, while on the other hand, public opinion had often exercised a most salutary influence in correcting legislation; and he recollected Sir Henry Maine giving two instances in which these reacting influences had been experienced. One was the case of the law as to duelling, in which legislation had proceeded in advance of public opinion, and had brought it into harmony with true morality; the other was as regards infanticide, and in that instance a strong expression of public opinion had brought the law, originally severe even to cruelty, into a humane and useful shape. There was no doubt that an expression of public opinion upon the condition of the law was often valuable, and the action of juries was one of the most ordinary means of so expressing the law. It was certain as a matter of fact that by the continued action of juries the improvement in the law of infanticide was brought about, and therefore he thought the institution was one not lightly to be discarded.

He came now to some remarks which were made by his hon'ble friend Mr. Cowie, and which, if he understood him rightly, had not been quite completely answered by Sir Arthur Hobhouse. He understood that Mr. Cowie would draw the line at six months, and he understood the hon'ble gentleman to say that he could see there was no earthly reason why a power which was limited in the case of the London Magistrates should be in any way extended in Calcutta.

[The Hon'ble MR. COWIE explained that he would draw the line at six months without appeal, and twelve months with an appeal.]

The hon'ble gentleman's argument seemed to be, either that there was some inherent propriety in limiting to six months cases which should not go to a jury, and that in fact British legislation always recognized this line of distinction, or else that there was no difference between the circumstances of London and Calcutta. As regards the first argument, he thought it had no exact foundation. He himself recollected many years ago going the round of a petty sessions in Ireland with an officer who was there called a Resident Magistrate. He remembered perfectly that at that time the law certainly admitted much heavier punishments being given by Magistrates in petty

sessions without the intervention of juries. He was not in a position to say what the law was now, but he believed it had not been materially altered as to the extent of jurisdiction. The presiding Magistrate in practice, he believed, was usually now a Barrister. At that time it was not so. In that particular case the gentleman was a military officer who held the Peninsular and Waterloo medals, and he did his work very well. Having himself some experience of magisterial work in India, SIR EDWARD BAYLEY was very much struck with the curious analogy in the character of the cases disposed of and in the way in which they were treated. He believed also—he was not quite certain—that in some of our colonies which legislated for themselves large powers were given to Magistrates to deal with certain cases without the intervention of juries. He believed that his hon'ble colleague Sir Andrew Clarke could confirm him on this point; and that in some colonies, as was said now to be the case in Madras by the Hon'ble Mr. Dalyell, a prisoner was allowed to elect to be dealt with summarily by the Magistrate in preference to being committed for trial to a superior Court. Therefore he thought there was no inherent principle in English law which regulated the limit of punishment to be given with or without the intervention of a jury to six months. He thought that nobody who sat here for a moment would doubt that the circumstances of London and Calcutta were not exactly the same, though in many respects certainly we might wish that they were. But with respect to the particular circumstances which bore on this question, there was no doubt, as his hon'ble friend the Lieutenant-Governor had pointed out, that we had not the same abundance or quality of material for juries, nor had we the same facility for employing the superior Courts, as existed in London. The superior Courts in London especially were comparatively numerous. It was not so in the Presidency-towns, where we had only one such Court, and that much overworked. There was therefore no similarity in the circumstances of London to those of Calcutta, and no principle in law which limited the summary trial of criminal cases to six months' imprisonment. He believed that if the Council had done anything, it had rather undershot the mark than overshot it. He himself, as a member of the Committee, was personally in favour of still further enlarging the powers of the Magistrates. But he coincided with the majority of the Committee in thinking that probably as an experiment it would be safer to limit it to the period fixed in the Bill. He had no doubt, as his hon'ble friend Sir Arthur Hobhouse had said, that experience would show that we ought to have proceeded still further.

The Motion was put and agreed to.

The Hon'ble MR. HOPE moved that, for clause (*b*) of section 174 the following be substituted :—

"(*b*) enhance any punishment which has been awarded, but not so as to inflict a greater punishment for the offence which, in the opinion of the High Court, he has committed, than the Presidency Magistrate could have inflicted for such offence, or"

The Motion was put and agreed to.

The Hon'ble MR. HOPE moved that the definition of "Pleader" be omitted

The Motion was put and agreed to.

The Hon'ble MR. HOPE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

STRAITS SETTLEMENTS EMIGRATION BILL.

The Hon'ble SIR ARTHUR HOBHOUSE presented the Report of the Select Committee on the Bill to regulate the Emigration of Native Labourers from the Presidency of Fort Saint George to the Straits Settlements.

PANJAB COURTS ACT AMENDMENT BILL.

The Hon'ble MR. EGERTON asked leave to postpone the motion for leave to introduce a Bill to consolidate and amend the law relating to Courts in the Panjáb.

Leave was granted.

The Council adjourned to Wednesday, the 14th March 1877.

CALCUTTA,
The 28th February 1877.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

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