

Friday,
25th January, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

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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 25th January, 1884.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I.,
G.M.I.E., *presiding.*

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G.

The Hon'ble H. S. Thomas.

The Hon'ble G. H. P. Evans.

The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.

The Hon'ble Maharájá Luchmessur Singh, Bahádur, of Darbhanga.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Alí.

The Hon'ble W. W. Hunter, LL.D., C.I.E.

The Hon'ble H. J. Reynolds.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, be taken into consideration. He said :—

“ My Lord, this Bill has been amended by the Select Committee on the lines indicated in the last debate in Council. The effect of the amended Bill, so far as it relates exclusively to European British subjects, is explained in the Report of the Committee, and is as follows :—

“(a) the power of appointing Justices of the Peace will remain on its present footing ;

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“(b) all District Magistrates and Sessions Judges will be *ex officio* Justices of the Peace, and will have power to try European British subjects ;

“(c) District Magistrates will be empowered to pass upon a European British subject a sentence extending to six months’ imprisonment or two thousand rupees fine, or both, that is to say, a sentence twice as severe as they are empowered to pass at present, but any European British subject charged before a District Magistrate will have a right to require that he shall be tried by a jury of which not less than half the number shall be Europeans or Americans, or both ; and

“(d) a European British subject committed for trial before a Court of Session will have a similar right even in those districts where trials before the Court of Session are not ordinarily by jury.

“When a jury is claimed before a District Magistrate, and the Magistrate has reason to believe that a jury composed in the manner required by the law cannot conveniently be constituted to try the case before himself, he may transfer it to another District Magistrate or Sessions Judge. The question as to the particular Court to which the case should be transferred is one which must obviously be determined with reference to administrative considerations, and to the varying circumstances of different districts. Accordingly, it is left to general rules, which are to be framed by the High Court with the approval of the Local Government. But there is power for the High Court to make special orders in exceptional cases. The Court to which a case is thus transferred is to try it with all convenient speed, and with the same powers and according to the same procedure as the Magistrate from whose Court it is transferred.

“The provisions which I have described relate exclusively to European British subjects, but the amended Bill contains a few other provisions which are of general application. Amongst them are two amendments which we have adopted on the suggestion of Sir Charles Turner, the Chief Justice of Madras. In accordance with his suggestion, we have amended section 526 of this Code by enabling the High Court to make an order of transfer under that section whenever it appears to the Court that such an order is expedient for the ends of justice. The object of the amendment is to make the section somewhat more elastic than it is in its present form. In connexion with the same section I may mention a minor amendment which we have made for the purpose of removing what appears to be an ambiguity in the present wording, by making it clear that the power to order a transfer includes the power to order a com-

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mittal. We have also adopted the second of Sir Charles Turner's suggestions by requiring the Court below, in cases where it is notified of an intention to apply for a transfer under section 526, to exercise the power of adjournment under section 344. It has been objected to this amendment that it may in some cases enable an accused person to obtain an adjournment on insufficient grounds, and merely for purposes of delay, or for some other improper reason. The objection is not without its weight, but it must be remembered that almost every safeguard which is given to an accused person is liable to a similar objection, and we have endeavoured to frame the section in such a way as to minimize the risk of its being abused. The application for adjournment must be made before the commencement of the hearing. The adjournment need not be granted until the evidence for the prosecution has been taken, and the Courts in granting the adjournment may, under section 344, impose such terms as it thinks fit as a condition of the boon.

“My hon'ble friend Mr. Amr Ali brought forward in Committee certain other amendments, the general object of which was, as he explained to the Committee, to reduce the complication and dangers which may arise under the existing law from Magistrates having to try cases in which they collected evidence for the prosecution, and in a certain sense acted as prosecutors. We fully admit that the combination in the same person of executive and judicial functions is open to serious objection on principle, and we are most anxious to do all that with the limited staff at our disposal we can do to remove or reduce the risk of failure of justice arising from this cause. But at the same time we felt that it would be impossible for us, without further enquiry and consultation with Local Governments and their officers, to insert in the present Bill at this stage any amendment of the Code which would have a wide scope, or might possibly alter to a serious extent the present mode of administering justice in the country. It was for these reasons—reasons the weight of what I am sure that my hon'ble friend fully appreciates—that we were unable to adopt any more than a very small part of the amendments which he has moved. The amendments which were adopted are two. The first enables an accused person, when brought for trial before a Magistrate who has taken cognizance of his case, not on a formal complaint or on a police-report, but on a report from some other person, or on the knowledge or suspicion of the Magistrate himself, to require that his case be transferred to another Court. The second requires a Magistrate, when exercising the power given to him under section 528 of transferring a case from one file to another, to record his reasons in writing. The power is one which is obviously necessary, and the exercise of which forms part of

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the ordinary administration of justice in the country. But it is given in very general terms, and although it is at present liable to be controlled under the revisional powers given by the existing Code, yet the obligation to record reasons may constitute a further salutary check on any abuse of the power.

“These are the only amendments which the Committee have felt themselves in a position to recommend. I observe that my hon’ble friend the Mahárájá of Darbhanga has given notice of an amendment to the effect that all persons, Native as well as others, should have the right to claim trial by jury. I presume that he has given his notice merely for the purpose of placing on record his opinion as to the mode in which the law ought to be altered, and that he has no intention of seriously pressing his amendment on the Council. If he were to do so, the Government would, of course, be compelled to vote against it under present circumstances, for the same reasons as those which prevented the Select Committee from accepting Mr. Amír Ali’s amendment. But I hope he will not do so, for an adverse vote, though given on special grounds, may be misconstrued, and the question is one on which I, for one, should wish to reserve my judgment in the amplest manner.”

The Hon’ble MR. EVANS said :—“It is desirable that I should explain how there come to be matters in the Bill as amended which are beyond its original scope. The question on which the Government and the European British subjects were at issue was this. It was proposed to give jurisdiction to officers, not being European British subjects, over European British subjects, contrary to the arrangement of 1872. It is necessary to bear in mind that the European opposition was directed against the admission of officers not European British subjects, and that amendments meeting the case of these few Native officers would have been sufficient. That would have been a small measure. It was the Government that insisted that the European British subject should also have restored to him the right of trial by jury before European District Magistrates and before European Sessions Judges in non-jury districts. If this enlargement of the rights of the European British subject should create any administrative inconvenience, it is the Government, not the European British subject, which is responsible. With regard to section 526A, known as the Turner clause, it was among the modifications approved of by the Secretary of State ; I had always thought it of very little use and very unworkable. I suggested that it should be given up in Select Committee. But it was the Government that insisted upon its being retained. If this clause turns out a statutory engine of delay in favour of the long purse, whether European or

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Native, the responsibility will rest with Government, and not with the European British subject. As regards the other amendments, they were proposed by my hon'ble friend Mr. Amír Alí and accepted by Government. They have nothing to do with European British subjects more than with Natives. They are small attempts to deal with great evils in the Code, which can never be got rid of unless the executive and judicial functions are completely separated—a step which will involve a very serious change in the administration of the country. Whether these small amendments will in practice do more harm or more good, it is for the local officers to say. The responsibility for these clauses also rests with the Government. In the opinion given by that very experienced District Officer, Mr. Edgar, he shows that the good working of the great changes made in 1872 was due to their being made by consent. Sir Fitzjames Stephen and his colleagues were wise in making them by consent, and were justified by the result. I hope that this consent settlement may be equally successful. Its merit is that, however great its imperfections may be, it restores peace. I hope no one will rake up the ashes of this dead fire, and that cordiality will be restored between the Government and the Europeans and between the Europeans and the Natives. Unless these great elements work cordially together for the welfare of the country, its future prosperity will undoubtedly suffer."

The Motion was put and agreed to.

The Hon'ble THE MAHARÁJÁ OF DARBHANGÁ said :—" I do not know whether I am quite in order in moving this amendment. I would have much sooner preferred that the Motion should have come from some one of the members who were in charge of the Bill in Select Committee. Objection might certainly have been taken to my amendment if the Bill had now stood in its original shape. This Bill was originally supposed to be a Bill to amend the Criminal Procedure Code as regards the exercise of jurisdiction over European British subjects. This, in fact, was the name of the Bill when it went to Select Committee. But now I see that it comes out simply as a Bill to amend the Criminal Procedure Code: no special mention is made of European British subjects. I therefore am led to believe that hon'ble members have now a right to discuss any section of the Criminal Procedure Act that they may wish. The Bill, as originally named, intended to do away with race-distinctions altogether. The original Bill has been, therefore, in a way withdrawn altogether. It has been certainly very much modified in Select Committee, and it can be now supposed to be a Bill to give to every European the right of trial by jury in almost every case. My object is certainly not to question the decision of the Select

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Committee in that respect. I simply wish that this right should be extended to Indian British subjects as well, but with certain restrictions. My amendment does not mean that Natives of India should have in every case the privilege of trial by jury. I simply wish that in all sessions cases the Natives of India should have this privilege; and I do not at present mean to move that they should have the right of demanding trial by jury in cases before the District or any other Magistrates. I am perfectly well aware that it would be necessary to get the opinions of the Local Governments on a general question of this sort. In many places it might be perfectly impossible to get enough proper men to form juries. In other places, on the other hand, it might lead to an increase of expenditure. I simply wish that in every sessions case the accused should have the option of being tried by jury. I do not go so far as to ask the Government to put the European and the Indian subjects on terms of entire equality, as I think a proposal of this sort would not only be unreasonable, but is never likely to be listened to. If the Indians are a conquered race and the Europeans are conquerors, it is preposterous to think that the conquered race and the conquerors can ever legally be put on terms of equality. I do not wish to rob the Europeans of any of their privileges. I have now to move that, after section 2 of the Bill, the following section be inserted :—

“ 3. To section 269, the following proviso shall be added, namely :—

‘ Provided that in trials before a Court of Session, if before the first assessor is appointed, the accused requires to be tried by a jury, the trial shall always be by a jury.’ ”

The Hon'ble Mr. HUNTER said :—“ My Lord, I entirely sympathise with my hon'ble friend, the Mahārājā of Darbhanga, in his desire to see the system of trial by jury extended to the Natives of this country. But I think that the present debate does not afford a suitable occasion for asking the Council to consider so large a proposal. I for one could not give a decision on such a scheme without learning the opinions of the Local Governments; and I think that this view will be shared by those members of the Council who are most anxious to effect the removal of distinctions of race in matters of judicial procedure. The question of the extension of trial by jury has been deliberately placed by the legislature in the hands of the Local Governments. It would be impossible for the Council to re-open this difficult question without referring to those Governments. I shall be glad to see the question thus referred, and I hope that the reference will result in an extended application of the jury-system. But I should strongly object to delay the passing of this Bill until the

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reference was made. To accept the Mahárájá of Darbhanga's amendment would involve such a delay, and would prolong the political agitation which the passing of this Bill is intended to close. If the Mahárájá insists on pressing his amendment, I must therefore oppose it. But in the interests of the Native community, I would ask my hon'ble friend not to press his amendment. I think the wisest course for him, and for those of us who sympathise with his views in this matter, is to trust to the well-known desire of your Lordship to extend as soon as possible, and as widely as practicable, the system of trial by jury to all classes of Her Majesty's subjects in India."

The Hon'ble Mr. Amír Alí said:—"My Lord, though I am inclined to think there are considerable difficulties in the practical working of the present proposal,—difficulties which induced me, I must confess, to refrain from bringing the matter forward in Committee,—I believe the hon'ble the Mahárájá of Darbhanga's amendment is perfectly correct in theory; and, therefore, if he presses it, I shall support the amendment. There are many assessor-districts at the present moment quite as advanced and fitted to receive the jury-system as the so-called jury-districts. In their cases, there would be no difficulty whatever. It is only where the people are not sufficiently advanced to understand the nature of a jury-trial, or to appreciate the duties devolving upon jurors, that there may arise some difficulty. But I should think that in such instances the difficulties can be minimised by administrative arrangements. Personally, I am not an ardent advocate of the extension of the jury-system to those parts of the country which are not prepared for it. In those places, a trial by jury is not always to the advantage of the accused; for, while in trial with assessors the accused has a right of appeal to the High Court on law as well as facts, in the case of a conviction by a jury there is no appeal, except on points of law. Considering the difficulties which surround the question, perhaps the Hon'ble Mahárájá may be inclined not to press the amendment."

The Hon'ble Rai Kristodás Pál said:—"Bearing in mind what fell from your Lordship the other day, deprecating the raising of the general question of extension of jury-trial for Natives, I thought it proper not to bring forward any amendment or motion on the subject. I would have remained silent if my hon'ble friend the Mahárájá of Darbhanga had not brought forward his motion. The subject, however, being mooted in Council, I consider it my duty to support the motion. I need not remind hon'ble members of Council that, in a country where the panchayat-system has been in force from time immemorial, trial by jury cannot be said to be an exotic. The people are familiar with the

institution, and, although it has prevailed here under a different name, its practical working has been the same here as in more civilized countries. It is unnecessary for me to dwell on the well-known advantages of the jury-system, but it is not from any sentimental considerations or a regard for tradition that I support the institution. I do hold that jury-trial is really the bulwark of the liberty of the subject, and that it is a material safeguard of the interests of justice. How the jury-system has been working in Bengal is, I believe, well known to the hon'ble members of this Council. I am well aware that many executive officers are not much in favour of trial by jury, but we should not forget that not a few of them are apt to push their vigour beyond the law. The question lately came, I observe, before the Lieutenant-Governor of Bengal in connection with the police administration report, and I will, with the permission of the Council, read an extract from the Resolution of His Honour showing how essential is the jury-system to the interests of justice, even if thereby now and then miscarriages of justice occur. His Honour remarks :—

'The unwillingness of juries to convict in serious cases involving the issues of life and death may sometimes have been the cause of failures of justice, which would not have occurred had the person been tried by a Judge and assessors. What is now complained of is not, it must be remembered, a new thing. It has been a charge against the system of trial by jury from the first; but it by no means follows that the unsatisfactory results in the trial of murder-cases by jury is solely owing to the unwillingness of the jurors to convict in a case in which a capital sentence would probably be passed. It is in the experience of the Lieutenant-Governor that jurors look with much greater strictness into the evidence and to the conduct of the police-officers than unassisted Judges used to do; and it is much better that it should be so, notwithstanding occasional failures of justice. The over-scrupulousness of juries, if such it may be called, should have its effect on the action of the police and upon the investigations made in Magistrates' Courts, with results which can be only beneficial.'

"Such is the opinion of the responsible head of the Bengal Government, and I believe that all right-minded men who value jury-trial will come to the same conclusion. In fact, I look upon the jury-system as a most useful instrument of self-culture and self-discipline in the administration of the affairs of a nation. It has, however, been urged that all parts of the country are not equally ripe for jury-trial, and that, therefore, the time has not yet arrived for the universal extension of the system to the country. Now, my reply is, that when the wilds of Assam have been declared to be fit for jury-trial, there can scarcely be any part of the country in Bengal, Northern India, Madras or Bombay which cannot be said to be sufficiently advanced for the reception of this boon. I am quite aware that there may be backward parts where jury-trial would not be an unmixed blessing, but as civilization is pro-

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gressing and education is advancing the people of those districts will gradually acquire that knowledge and experience which will enable them to enjoy the privilege without injury. Then it is contended that, as the motion involves what I may call a big change, it ought not to be passed without reference to the Local Governments. I confess I do not look upon the motion in that light. It is true that it contemplates a material change by converting assessor-districts into jury-districts, but, as I have already said, if the Government of Assam could extend the jury-system to all the territories under it, I do not see why this Council, knowing the position of the different provinces, cannot extend the system of jury-trial to the whole country without further reference to the Local Governments. I go further. I submit that the Bill before us introduces large and radical changes into the system of jury-trial as regards European British subjects; that is to say, it gives European British subjects the right to claim a trial by jury before a District Magistrate, which they had never before enjoyed, and yet it has been considered unnecessary to refer the matter to the Local Governments for opinion. So if, in introducing such a big change in respect to the trial of European British subjects, it has not been considered necessary to consult the Local Governments, surely this Council can consistently take action in this matter without reference to Local Governments. I think it is due to the Maharájá to point out that his motion does not at all affect the agreement or arrangement made with regard to the trial of European British subjects. As far as I understand him, he leaves that question where it is, and does not wish to interfere with or disturb the arrangement made. He simply asks that the Indian subject tried in a Sessions Court should have the privilege of demanding a jury just as the European British subject would be entitled to do. In this respect he claims an equality between the European and the Native which I do not think will be considered unreasonable. In fact, from what has fallen from the previous speakers, I perceive that their sympathy is with the motion, though they consider that the present time is not quite opportune for pressing it. Then it may be said that this motion does not come quite within the scope of the Bill because it does not form part of the arrangement made with the opponents of the measure. Now, the hon'ble and learned mover of the Bill has already pointed out that the Select Committee had admitted certain amendments which were outside the agreement. In the same spirit this matter may be entertained, though it is outside the agreement. The object of the motion, as I take it, is to improve the administration of justice, and surely whatever may tend to improve the administration of justice deserves the consideration of the Council.

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How the administration of justice will be improved I think the extract which I have just read from the Resolution of the Lieutenant-Governor clearly explains. I hold that the present motion is quite consistent with the scope of the Bill before us, firstly, because it aims at the establishment of an equality in the eye of the law between the different classes of Her Majesty's subjects, which has been the primary object of the Bill, and secondly, because it is a proposal for the improved administration of justice, which, I submit, is also one of the objects of the Bill. If this motion be carried, I need hardly say that the European British subject will lose nothing, but that the Indian subject will gain a great deal, and this is an important point, worthy of the consideration of the Council. I cannot conclude without saying that my countrymen in all parts of the country lay great stress upon jury-trial; that they have submitted an almost universal prayer that, while the jury-system is to be conceded to the Europeans, it shall also be extended to them without limit or distinction. It pleases me to say, if I may use the expression, that, in carrying on the controversy regarding this Bill, the tone and temper of my countrymen have been most moderate and loyal, and this consideration will, I hope, induce hon'ble members of Council and your Lordship to extend your generous consideration to the one prayer of the Native community on a point regarding which they feel so keenly and earnestly."

The Hon'ble MR. EVANS said :—"The Government of India has already intimated, and apparently on sufficient grounds, that it is not possible for them to consider this important question at this stage. It is therefore, under the peculiar circumstances of this Bill, impossible for me to consider or to vote for any amendment which is not accepted by the Government of India. Everybody knows, as far as we are concerned, that the shape which this Bill now assumes is a matter of consent on both sides, and, if I were to take into consideration any matter which is not consented to by the Government of India, I should feel that I was departing from that arrangement."

The Hon'ble MR. ILBERT said :—"I cannot say that my hon'ble friend the Mahárájá of Darbhanga is out of order in moving the present amendment, and therefore I do not take any technical objection to the motion; nor can I say that it is unnatural that he should give notice of the amendment which stands in his name. But having said thus much, I do not know that I can or need do anything more than repeat the substance of what I have said already. I must under existing circumstances entirely decline to follow my hon'ble friend into the large question which he has raised. My friend the

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Hon'ble Mr. Hunter has very properly directed attention to the present state of the law on the subject. That law is to be found in the section of the Code of Criminal Procedure which says that the Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district. Whether the amendment which has been brought forward by my hon'ble friend the Mahárájá of Darbhanga is or is not based on a correct theory, and whether it is advisable or practicable to apply to all cases and in all districts the extension of the jury-system which he advocates, or only to particular cases and in particular districts, and, if so, to what particular cases and districts, is a question on which, under existing circumstances, I must decline to pronounce an opinion. I have not sufficient information before me to consider the administrative questions thus raised, and therefore I must content myself by saying that the amendment is one which we cannot possibly accept."

His Excellency THE PRESIDENT said:—"I do not propose on the present occasion to enter into the general question of the merits of the jury-system or the desirability of its wider extension in this country. I desire to join my voice to those of Mr. Hunter and Mr. Amír Alí in asking my hon'ble friend the Mahárájá of Darbhanga not to press this proposal on the present occasion. I think that he will certainly not advance the object that he has in view by taking that course. The question which he has raised is one of great importance; it is one which I readily admit deserves very full and careful consideration; but it would be, in my judgment, impossible for the Government to accept at this, the last, stage of the Bill an amendment which would have so wide a scope as that which has been moved by my hon'ble friend, without having had time to consider the subject in all its bearings, or to consult Local Governments and others whose opinions are to be taken upon a large question of this description. If such a course were open to me upon this occasion, I should like to move what is called in Parliament 'the previous question.' But no such thing can be done in this Council, and I can, therefore, only say the Government is not prepared to express an opinion now. I admit that the fact which the hon'ble gentleman, Mr. Kristodás Pál, has alluded to, that there appears to be a strong feeling in the country in favour of the extension of the jury-system, is a matter which of itself deserves our consideration; but to oblige the Government to vote against this motion at this time would be unduly to prejudice the further examination of the subject. I make no complaint on the score of regularity against my hon'ble friend the Mahárájá of Darbhanga for having raised this question, and thereby drawn additional attention to it; but I confess that I

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should very much regret that, by dividing the Council, he should force the Government to pronounce an opinion upon it prematurely, and at the time when they have not the necessary information before them to enable them to form a deliberate judgment upon it. That the question is deserving of consideration I entirely admit, but that it would injure the cause which the Mahárájá has at heart if he were to press for a motion on the present occasion, I cannot for a moment doubt."

The Hon'ble the MAHÁRÁJÁ OF DARBHANGÁ here withdrew his amendment.

The Hon'ble MR. ILBERT moved that the Bill, as amended, be passed.

The Hon'ble MR. AMÍR ALÍ said :—" My Lord, I hope I am in order in offering a few remarks on this motion, in explanation of my reasons for not moving any amendments on the basis of the proposals I put forward in Committee. I have carefully abstained from making any suggestion which was likely to disturb the arrangement in accordance with which the Bill has been amended, or to throw any difficulty in the way of an immediate settlement of the question that has engaged public attention for the last eleven months. Personally, my Lord, I think your Lordship's Government ought to be congratulated in having successfully maintained the principle of the Bill with the consent of the European community. It has been said that, in this matter, the wishes of the European community should not have been considered. I cannot bring myself to agree in this view. No Government can wisely overlook or disregard the sentiments of any class of its subjects, and however much inclined I may feel to deprecate the violent expression of these sentiments in this particular case, I cannot help thinking that in the interests of good government they had to be taken into consideration, and such weight given to them as was consistent with the declared policy of British rule and did not conflict with the just rights of the other subjects of Her Majesty. It is, therefore, with a sense of relief that I view the approaching settlement of this question. With reference to the other points, I desire to say just a few words. There were two objects which I had principally in view in the discussions in Select Committee—*firstly*, to see that the great safeguard which was being provided for the European British subjects of Her Majesty against the illegal exercise of judicial powers may not be turned to the disadvantage of the Natives of India ; and *secondly*, to obtain in favour of the latter certain amendments in those provisions of the Criminal Procedure Code which, owing to the combina-

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tion of judicial and executive functions in the Mufassal magistracy, press heavily upon all classes of the community, resulting frequently in scandalous miscarriage of justice. My Lord, the dangers and difficulties which arise from the combination of the two functions in the Mufassal are not imaginary. Having these two objects in view, I brought forward certain proposals which have received only a partial recognition. With reference to the view of the majority of the Committee regarding the safeguards against any failure of justice owing to the large extension of the jury-system in European cases, I have not thought it right to dissent from my honourable colleagues, as I felt sure, should the apprehensions which are entertained in certain quarters prove true, it will be the duty of Government to correct the evil by applying the most suitable remedy, and it is to be hoped that in such an eventuality all sections of Her Majesty's subjects in this country would cordially join in urging upon the Government to place the administration of criminal justice upon a more satisfactory footing. As regards the second object, I must express my regret that my colleagues did not see their way toward accepting my proposal in its entirety. The amendment I proposed would not have increased the work in the Sessions Court to any appreciable extent, while it would have secured an important safeguard against the inconvenience and dangers arising from the combination of judicial and executive functions on the part of the Mufassal magistracy. My Lord, the satisfactory administration of criminal justice in the Presidency-towns is a sufficient proof of the wisdom of the policy by which the two functions are kept apart, and I have reason to believe that, were the same system in vogue in the Mufassal, the recent agitation would have lost much of its force. I was, however, met with the objection that the proposal I made involved a degree of change which required a more careful consideration than the Committee were in a position to give in the short space of time at their disposal. The extent, therefore, to which my proposal has been adopted is small,—too small in fact to be of any practical value,—but I regard it as a step towards that disjunction of the executive and judicial functions upon which in future must depend the best security of the people in the administration of justice. And in view of the recommendation embodied in the report, which I look upon as the most important and valuable concession to the Natives of India, I have thought it right to refrain from bringing forward the proposal in Council. I venture to hope, my Lord, that this recommendation will receive the earnest and early consideration of Government, and I am sure that my countrymen, knowing the anxious desire which animates your Lordship's Government to deal equitably by all classes of Her Majesty's subjects, will rest

[*Mr. Amír All; Ráí Kristodás Pál.*] [25TH JANUARY,

content for the present with the small modification which has been made in one of the most obnoxious sections of the Criminal Procedure Code. My Lord, it is a distinguishing feature of your Lordship's administration (in saying this, I speak the mind of the Natives of India at large) that for the first time under British rule the wants and wishes of the people have received *due* consideration; and in view of the anxiety prevailing among all classes of the Native community for some substantial improvement in their favour in the criminal law of the country, I trust that the recommendation of the Select Committee will not be allowed to remain a dead-letter. "

The Hon'ble RÁÍ KRISTODÁS PÁL said :—“ My Lord, before the motion is formally put to the vote, I ask your Lordship's permission to say a few words. I feel it would be wrong on my part to raise a fresh discussion upon a subject which has been already discussed threadbare, particularly as the Bill has reached the stage when no discussion will avail one way or another. Remembering also the deliberate decision of Government that the Bill must be based on the lines of the agreement entered into, I could see no room for any substantial amendment which would prove beneficial, and I am confirmed in my opinion by the proceedings of this day. At the same time, in justice to myself, I must candidly confess with due deference that the provisions of the Bill as amended by the Select Committee, as far as I can see, are not calculated to remove the apprehensions which I ventured to express on the last occasion. It cannot be denied that while race-distinction is removed in one direction, that is to say, as regards a very small class of Native officers, it is deepened in another direction, that is to say, as regards the Native population at large, that the anomaly of jury-trial in petty cases, in cases in which a jury is admitted to be ridiculous, remains all the same, if the District Magistrate chooses to try such cases; that the cure of the invidiousness of the law will depend on the forbearance of the Magistrate, if he will not try petty cases, and of the accused, if he will not claim a jury in such cases; that the risk of failure of justice at the hands of a dominant and sympathising jury is not safeguarded in any way, and that the old evils to poor complainants of the transfer of cases to distant Courts, almost amounting to a denial of justice, from districts where a jury may not be available, will be revived in all their rigours. But I will not prolong a dying controversy by raising fresh objections. Your Lordship was pleased to declare, in winding up the debate on the 7th instant, that a failure of justice such as I had apprehended would be an intolerable evil, that if your Lordship had anticipated it, you would not have been a party to the arrangement made, and that should failure of justice or other grave evils hereafter arise out of the proposed

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[*Rai Kristodás Pál.*]

system, it would be the duty of the Government of the day to apply adequate remedies. I accept this assurance of your Lordship with due submission.

“ My Lord, if I have correctly gauged the opinion of my countrymen on this subject, there seems to be a deep conviction among them that the fiery ordeal through which they have passed during the last ten months has brought forth no adequate result, that if they have gained some slight advantages on the one hand, they have lost much more on the other, that the sudden and sad turn which this business has taken at the last moment has fallen like a thunderbolt upon them, and filled them with gloom and dismay. But I should not despond. The main principles of this Bill, though within very narrow limits, being affirmed, I fervently hope that it will prove the precursor of more substantial and abiding reforms. At some favourable time hereafter, when the present storm of passionate feelings and race-animosities, it is to be hoped, will have passed away, when practical experience will have satisfied even the most thorough-going representatives of the domineering class that Native Judges and Magistrates mete out even-handed and uncoloured justice, some hopeful mariner in charge of the vessel of the State, following the signal planted to-day, may steer his course in the same onward path, and give a wider effect to the high hopes and honourable aspirations with which the controversy of the past few months, I am bound to say, has filled the heart of the nation. It is not necessary for me to formulate these hopes and aspirations. Suffice it to say that the nation anxiously looks forward to the establishment of a complete equality in the eye of the law between all classes of Her Majesty's subjects without distinctions of race and religion, to the unconditional extension to Her Indian subjects of the same jury-trial that has been accorded to her British-born subjects,—for it is the bulwark of the liberty of all subjects,—to the removal of the present barrier to the admission into the Covenanted Civil Service through the door of competition, and of the stigma which unjustly attaches to the statutory civilians, by combining, as I conceive, competition with nomination, and to the development of those solid measures of progress which will raise the Native Indians to the level of the European British subjects. The passage of the Bill marks three distinctive and important points, firstly, that the Queen's Proclamation, the Magna Charta of the people of India, has been vindicated with a force, emphasis and earnestness with which it had never before been vindicated; secondly, that a step, albeit a short one, still a well-defined one, has been taken in putting the higher order of covenanted civilians, both European and Native, on a footing of equality which no future Government will dare retrogress; and thirdly, that, if my countrymen prove

[*Rat Kristodás Pál; Mr. Evans; the President.*] [25TH JANUARY,

equal to the occasion, the onward policy is sure to advance. We are certainly more concerned with the present than with the future; but man does not live for the present alone. His manhood will not progress if he does not think of the future—care for the future—live for the future. Relying on the future, I give my adhesion to the present Bill.”

The Hon'ble MR. EVANS said:—“I had not intended to add any observations to those which I have already had the honour to address to the Council to-day, but it is entirely impossible that I should sit silent after the remarks which have been made by the hon'ble Messrs. Amír Alí and Kristodás Pál. I do not intend to follow the last speaker into those matters of controversy which he has freely touched upon, but it is necessary to say one thing most distinctly. I understood the Hon'ble Amír Alí to say that the so-called principle of the Bill was assented to by the European community. I thought I had made it clear on the last occasion—but I will make it clearer now—that I have assented to nothing of the kind, nor have the Europeans generally assented to anything of the kind. They have assented to the passing of this Bill in order to procure peace, but they have retained their own view of their own privileges and rights; and I thought I had made it clear that we no more affirmed the Government view than the Government affirmed our view. My understanding of the settlement is that it is intended to procure peace, and if that stands, well and good. But if my hon'ble friend's countrymen are going to contend that they are entitled to maintain this supposed concession of I know not what principle, and to deprive us of the other portion of the settlement, as he very clearly intimated it is his intention some day or another to do, then I say that the principles of law and natural justice are that, if the settlement is to be ripped up, the parties go back to the *status quo ante*. If any pilot of the future, induced by any such suggestion as this, be so unwise as to guide the vessel of State upon the rock towards which it has lately been steered, then most undoubtedly the Europeans will remember and claim the principles of law and justice; and if any endeavour be made to rip up this settlement, they will take their stand upon the settlement of 1872. God forbid that these things should come to pass. But it is necessary for me to say emphatically that we have not conceded a principle of any kind, or to any extent whatever, but that we hold ourselves free to defend our rights if attacked, and are ready to do so.”

His Excellency THE PRESIDENT said:—“I stated so fully my views upon this subject in the course of the discussion which arose upon the motion that

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[*The President.*]

this Bill be referred to a Select Committee, that I had no intention when I came into this room of making any further observations upon the matter. To the views which I then set forth I entirely adhere, and it is quite needless that I should repeat them now. The Hon'ble Raí Bahádúr Kristodás Pál has repeated briefly some objections which he raised in the former discussion to the practical working of the arrangements now embodied in this Bill. I replied upon that occasion to the remarks which he then made, and as I have seen no reason since then to modify the views which I expressed, I will not take up the time of the Council by repeating what I said at that time. The hon'ble gentleman has remarked that the long controversy which has existed unhappily now for several months has brought to the Natives of the country no adequate result. From that I must entirely dissent. As I stated on the former occasion, I hold that the results which will be secured by this measure are results of the highest importance to the Native community in this country. I then pointed out how the principle upon which this Bill was founded had been maintained, acknowledged, and secured; how a disqualification strongly felt by some of the highest Native Magistrates and Judges in this country would be by this Bill removed, and how the policy which was laid down fifty years ago, and has been steadily pursued since then by successive Governments, has been once more vindicated and affirmed. I believe that these results are of the highest importance to the countrymen of the hon'ble gentleman, and I also venture to think that, though there may be many who may be inclined to criticise—and it is quite fair that they should criticise—the settlement now made, the general feeling of the Native community is that the Bill does uphold and advance a principle to which they attach the highest importance. I cannot, therefore, agree with the hon'ble gentleman in the opinion that those who have supported this Bill and this policy have lost under the recent arrangements more than they have gained. I must entirely adhere to the opinion which I expressed on the previous occasion, that the gains have been large and important, and that, as I then said, nothing has been taken from the Natives, though an additional safeguard has been given to the European community. I do not wish to prolong this discussion. The last thing that I should desire would be to renew for a moment the controversy of the last few months. I earnestly trust that that controversy may now be brought to a close. I hope and believe that the system established by this Bill will be found to work well, and nothing shall be wanting on the part of the Government to secure its successful operation. I might content myself with these remarks, which I have felt bound to make in order to defend the policy, and to point out the results and the gains, of the measure which is now

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about to be passed. But I must, before I conclude, say one or two words on the remarks which fell from the Hon'ble Mr. Amír Alí. And, in the first place, while I thank him very much for the manner in which he spoke of the labours of the present Government of India, I cannot take either to myself or to my colleagues the compliment which he was kind enough to pay us. He said that, under this Government for the first time, the desires and wishes of the Natives had received due attention. That is a statement to which I cannot subscribe, when I recollect the many eminent men who have preceded me in the office which I now fill, and when I know how many previous Governments have worked earnestly for the benefit of the people of this country. Each day has its own tasks; the tasks of twenty years ago were not the tasks of the present moment. We have endeavoured to do our duty in the position in which we have found ourselves placed, and we shall continue to do so; but I must deprecate any comparison between the labours of the present Government and the labours of those which have preceded it. With respect to the other remarks of the Hon'ble Mr. Amír Alí, I only wish to say this—the Government naturally attach great weight to the opinions expressed in the report of a Select Committee, composed as the Select Committee on this Bill has been; and when I find that Select Committee saying, in reference to one of the suggestions of Mr. Amír Alí, 'we are fully sensible of the importance of the point thus raised, and we think it well worthy of the consideration of the Government'—it is unnecessary for me to say that such an observation coming from such a source will receive the fullest and most careful consideration of the Government. And now I have no more to say. I rejoice that this question is brought to a conclusion, and I trust that conclusion is one which, when the heat of this controversy has died away, will enable this measure to work smoothly and satisfactorily. I think that to attain that end was an object which the Government did well to desire. We were not prepared—and we shall never be prepared—to sacrifice the principles for which we have contended, for we believe them to be the true principles of English government in this country; but within the limits of those principles it was our duty to seek for any settlement which would secure a general acquiescence at least in the arrangements which we proposed to make. That object has been attained, and if it is honestly and faithfully kept in view on both sides, it will, I have every confidence, be found that the arrangements now made are consistent alike with the honour of the Government and the advantage of the country."

The Motion was put and agreed to.

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[*Mr. Ilbert.*]

EXPLOSIVES BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to regulate the manufacture, keeping, sale, conveyance and importation of explosives.

The Council adjourned to Friday, the 8th February, 1884.

D. FITZPATRICK,

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

FORT WILLIAM; .

The 9th February, 1884. }