


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 Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART V.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA.

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 Tuesday, the 9th April 1872.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL OF INDIA, K.T., *presiding.*

His Honour the LIEUTENANT-GOVERNOR OF BENGAL.

The Honourable Sir RICHARD TEMPLE, K.C.S.I.

The Honourable J. FITZJAMES STEPHEN, Q.C.

The Honourable B. H. ELLIS.

Major-General the Honourable H. W. NORMAN, C.B.

The Honourable J. F. D. INGLIS.

The Honourable W. ROBINSON, C.S.I.

The Honourable F. S. CHAPMAN.

The Honourable R. STEWART.

The Honourable J. R. BULLEN SMITH.

ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.

The Honourable MR. STEPHEN presented the Report of the Select Committee on the Bill to amend Act XXIV. of 1867 (the Administrator General's Act).

INDIAN CONTRACT BILL.

The Honourable MR. STEPHEN also moved that the Report of the Select Committee on the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership, be taken into consideration. He said:—
v.—93

"MY LORD, this Bill has been under the consideration of Government, in various forms, for no less than five years, and I may accordingly give a short account of the discussion which it has undergone before entering upon what I have to say as to its provisions. It was drafted originally by the Indian Law Commissioners, and is still substantially their Bill, though it has been to a certain extent altered in substance, and also to a certain extent in form and arrangement. The substantial alterations, however, are of no very great importance, except upon one or two points to which I shall have occasion to refer specially. Having been introduced, the Bill was circulated for opinion in the usual manner, and the opinions of the officers consulted, including a considerable body of Native opinion, were obtained in due course. It was adverse to two important provisions only, which were regarded as being unsuitable for India, though the Commissioners considered them as improvements in the existing law of England, upon which, speaking generally, the provisions of the Bill are modelled. Of these I shall speak hereafter.

"There were other differences of opinion between the Council here and the Indian Law Commissioners as to the contents of the Bill, which led to a prolonged discussion, to which I need not refer, between the Government of India and the Secretary of State. The final result was that the Secretary of State left the Government of India to deal with the matters under discussion as they thought proper, but expressed a very decided wish that the Bill should be disposed of as early as possible. The despatch which made this intimation arrived in India about a year ago, just as the Government were about to leave Calcutta. We replied that we did not wish to pass a measure of such general importance at Simla, but that it should be proceeded with as soon as the Government returned to Calcutta. Advantage was taken of the delay which thus arose to subject the Bill to another and a very careful revision. It was compared with the standard text-books on the subject to which it refers, and various alterations were introduced into the arrangement of that part of the Bill which deals with contract in general.

"When the Government returned to Calcutta, it was re-submitted to the Committee, and was by them most carefully reconsidered from end to end, and in particular my honourable friends Messrs. Bullen Smith and Stewart weighed, I may say, every word of it with a degree of care and minute attention, for which I am sure the public ought to feel deeply indebted to them.

"To sum the matter up, the Bill was originally drawn by some of the most distinguished of English lawyers. It has been before all the Local Governments, and opinions have been expressed upon it by all classes of Officers and Judges, European and Native, throughout the Empire. It has been, I may say, before no less than three Committees; for, since it was introduced, the Committee has been changed, as Committees do change in India, at least three times. Its contents have formed the subject of protracted discussion between the Government of India and the Secretary of State. Two Legal Members of Council have had it before them with the advice and assistance of two Secretaries to the Legislative Department, and it has been scrutinized in every detail, with the most minute care, by several of the most eminent merchants of Calcutta, and in particular by my honourable friends Mr. David Cowie, Mr. Bullen Smith, and Mr. Stewart. Under these circumstances, I hope that I shall not be suspected of any personal vanity if I say that I believe it will be found to constitute a useful and sound addition to the law of India. In order to enable the Council to appreciate its importance and its general position, I may perhaps be permitted to make a few general remarks upon our legislation in India.

"The Bill now before the Council forms part of a scheme which has been under consideration and in process of execution for upwards of forty years—the scheme of passing a code of substantive law for India. I think that but few persons are aware either of the nature and extent of the scheme itself, or of the extent to which it has been carried into execution. It may therefore be interesting, as it is certainly strictly relevant to the present measure, to say a few words on these topics.

"Legislation, as everybody knows, has been in active progress in this country ever since the year 1793, though I may observe, by the way, that the practice may be carried somewhat further back; but from the year 1793 to the present time a considerable number, first, of Regulations, and afterwards of Acts, has been passed in every successive year. I can by this time claim a considerable acquaintance with their contents, and, in order to show the position which this Bill occupies, I may make a few remarks upon them.

“The main subject both of the Regulations and of the Acts is procedure and current legislation. With a very few exceptions, they do not deal with substantive law. They establish Courts, civil and criminal: they deal at great length with their modes of proceeding; they lay down in minute detail the manner in which the revenue is to be assessed and collected, and provide for many subjects of minor and occasional interest. As to the laws which the Courts thus established are to administer, they are silent, or rather they speak only in very vague and general terms. Thus they provide that in certain cases the Muhammadan law, in certain other cases the Hindú law, and, in cases not especially provided for, the ‘law of justice, equity, and good conscience,’ shall be followed. With regard to criminal law, they assume, though I do not think that they assert in express terms, that the Muhammadan law is in force, with certain modifications which were introduced into it in order to make it harmonize with English conceptions of justice and humanity.

“It was felt long since that this state of things was not satisfactory, and that it was likely to become less and less satisfactory as the administration of justice became more regular, and the spread of education and the growth of confidence in our system of government led to an increase in the number and activity of lawyers.

“We have heard a good deal lately in this Council of the evils of law and lawyers. I am far from being insensible to the evils of chicanery and quibbling, though I cannot think it wise or dignified to speak in terms of violent and indiscriminate reproach of a profession which always has existed, and which of necessity must exist, in every government which is not conducted by naked military force. The truth upon the whole subject, I think, is abundantly clear. It is simply this: If it is determined to govern according to law, and not by the arbitrary will of the ruler, the only way of avoiding quibbles, chicanery, and all the evils arising from misplaced and selfish ingenuity, is to make the law which is to be administered so clear, short, precise, and comprehensive as to leave the least possible scope for the exercise of those unamiable qualities. Well-designed legislation is the only possible remedy against quibbles and chicanery. All the evils which are dreaded—and I do not say they are unjustly dreaded—from legal practitioners, can be averted in this manner and in no other. To try to avert them by leaving the law undefined, and by entrusting Judges with a wide discretion, is to try to put out the fire by pouring oil upon it. Leave a Judge with no rule, or with one of those leaden rules which can be twisted in any direction, and you at once open to the advocate every sort of topic by which the discretion of the Judge can be guided. Shut the lawyer’s mouth and you fall into the evils of arbitrary government. The one remedy which is really sufficient lies in the precise and perfectly clear definition of the law. This is the province of legislation; and I do earnestly wish (though I almost despair of doing it) that I could make people understand that laws which make that certain which was previously vague, and which lay down a plain rule where there was previously none, are the only means by which the amount of law and litigation in the country can be reduced to its proper limits. Whatever may be the case in other departments of things, homœopathy is the only system by which the malady of litigation and quibbling can be treated. The real antagonist of the pettifogger is the almost equally unpopular Legislative Department.

“The Government of India have been fully impressed with the soundness of these views for a great number of years, and they have formed the basis of legislation ever since the renewal of the Company’s Charter in 1832. The Act which renewed the Charter in that year provided that a fourth Member of Council, who was to be a barrister, should be appointed for the purpose of providing a body of substantive law for British India, in concert with a Law Commission which was appointed in India under the same Act. I need hardly observe that Lord Macaulay was the first person who held this office, or that the first draft of what is now the Indian Penal Code was the firstfruits of his appointment. The draft appeared by Lord Macaulay and his associates did not become law for nearly twenty-four years after the end of his term of office, but it was the first, and by very much the most important, instalment of the body of substantive law which was intended to be formed. It was afterwards considered that the work thus commenced might be more conveniently carried on by a Commission sitting in England, who might prepare drafts of Bills which could afterwards be enacted as law by this Council. Such a Commission was accordingly appointed in December 1861, and continued its labours till 1870, when it resigned, for reasons into which I need not now enter. The only draft prepared by this body which has as yet passed into law is the Indian Succession Act. If, as I hope will be the case, the present Bill passes, it will form the third instalment of substantive law which has been enacted in consequence of

the policy adopted in 1832. It will, I think, interest the Council and the public to know how much more legislation of this character will, in my opinion, be required before the codification of the law of British India can be said to be complete. As the subject is one to which I have given very great attention since I have been in India, and as I shall not trouble them on many future occasions, your Lordship and the Council will perhaps indulge me with a few words on this subject.

“ With reference to codification, I would divide the law into three parts :—

1. Current miscellaneous legislation :
2. Procedure :
3. Substantive Law.

“ Upon the codification of each of these branches of the law a different set of observations arises.

“ By current legislation I mean such measures as are necessary to meet particular cases. All financial legislation is of this character. Acts relating to emigration, telegraphs, and many other subjects might also be referred to. All that can be done with a view to codifying matter of this kind is to have all the Acts which relate to one subject consolidated into a single enactment. The various Consolidation Acts which have recently been passed by or introduced into the Council have very nearly brought about this state of things in the Indian Statute-book. When the following consolidation measures have been passed—the Pledgers Bill, the Christian Marriage Bill, the Local Extent Bill, and the Inland Customs (Northern India) Bill—the current legislation of British India will be very nearly in a satisfactory state. Upon almost every subject the law will be found in a single Act. The few amending Acts which have been found necessary in the course of the last two years have been so drawn that the amended and the amending Acts might in every case be printed as one Act without the smallest difficulty or inconvenience. On this branch of the subject, accordingly, little remains to be done.

“ Under the head of Procedure I include all the laws which regulate the proceedings and powers of Courts of Justice, and the assessment and collection of the land-revenue. As to the Courts of Justice, the two Codes of Civil and Criminal Procedure, the Evidence Act, and the Limitation Act, each reduce to a single enactment the subject of which they treat. Of the Code of Criminal Procedure I will at present say nothing, as I hope to ask the Council to pass it as revised on Tuesday next. It has been found necessary to amend the Code of Civil Procedure by several Acts, and an enormous number of cases have been decided upon it. I hope that my successor will see his way to re-enacting it. The procedure of the High Courts might also, I think, be greatly improved and simplified by a High Courts Act.

“ One branch of the Law of Civil Procedure has been reduced to a shape simple indeed, but not so simple as I could wish. The Civil Courts of each province (Madras only excepted) are regulated by the Civil Courts Acts, each of which replaces a great number of isolated and scattered provisions. The Madras Government opposed, and so prevented, the passing of an Act which would have thrown into a single measure some fourteen or fifteen Acts and Regulations. With this single exception this branch of the law may be said to be codified. I think, however, that when the Code of Civil Procedure is re-enacted, it would not be impossible, and it would certainly be highly desirable, to draw the Code so as to form a general Civil Courts Act, as the revised Code of Criminal Procedure forms a general Criminal Courts Act.

“ As to the Revenue Procedure, the following state of things exists :—

“ In Bengal the law is codified as far as it can be, regard being had to the character of the Permanent Settlement.

“ In the North-Western Provinces the law is in a very unsatisfactory state, but the Bill introduced into this Council a week or two ago will, if it is passed, codify it.

“ In the Panjáb the law is completely codified by Act XXXIII. of 1871.

“ In Bombay it is codified by Act I. of 1865.

“ In Oudh an Act for its codification is under preparation.

“ In Madras the law for the collection of the revenue is codified by Act II. of 1864, but the law as to the assessment of the revenue appears to be completely undefined.

“ In the Central Provinces there is, so far as I have been able to discover, no law whatever on the subject, and legislation is urgently required.

“The system of land-revenue in Burma is peculiar to that province, and no legislation upon the subject appears to be required.

“Hence, the only legislation required to put this part of the law into a satisfactory condition is the North-Western Provinces Bill, and the passing of a Bill for the Central Provinces, which, after legislation for the Panjáb and Oudh, will be no very difficult matter.

With reference to the third branch of the subject, I understand by substantive law those branches of the law which relate to and regulate the common relations of life—relations which continue unchanged under all circumstances.

“It is obvious enough that this branch of the law is by far the most important of all, and also that it is the branch in which the greatest differences exist between the laws suitable for different countries. In all countries, so far as I know, what I have called substantive law deals with much the same sort of subjects, and it is obvious that it must do so, because human life is in all parts of the world substantially very much the same sort of process; but the differences between the way in which some of these subjects are dealt with in some cases are as striking as the substantial resemblance between the manner in which they are dealt with in other cases.

“In order to show how far the process of codification upon these subjects has been already carried in India, and how much further it ought to be carried by the British Government, it will be desirable to enumerate shortly the main heads of substantive law. They will be found, I think, to resolve themselves into the following:—

1. Government ;
2. Criminal Law ;
3. Laws relating to Inheritance ;
4. Laws relating to the Relations of Life—husband and wife, parent and child, master and servant, guardian and ward ;
5. Laws relating to Contract ;
6. Laws relating to Wrongs ;
7. Laws relating to the Enjoyment of Land.

“As to government, the law of this country is contained principally in Acts of Parliament, of which the most important are the *Government of India Act*, the *Indian Councils Act*, and some others which I need not mention. These Acts might, no doubt, be thrown into a much more convenient shape than their present one, but this, if done at all, must be done by Parliament. However, they form, as it is, a written constitution plain and full enough for all practical purposes.

“The Criminal Law is codified in the Penal Code.

“The laws relating to inheritance are mostly Native laws, which, for obvious reasons, we cannot touch; though I am by no means sure that the Hindús, at all events, would not be thankful for an authoritative statement of their customs on this subject, or, at all events, on certain parts of it.

“In so far as Native law and English law do not extend, the Succession Act, X. of 1865, may be regarded as supplying a code on this matter.

“The laws relating to the relations of life—husband and wife, parent and child, master and servant, guardian and ward—are in much the same state as laws relating to inheritance. They are Native customs, supplemented in some cases, and more or less overruled in others, by our legislation. I need hardly remind the Council of our various Marriage Acts, of the abolition of slavery, or of the Acts relating to Minors and the Courts of Wards. There is little room here for codification, though the four Acts about the marriages of Christians have been consolidated and might be thrown into one. The others are obviously subjects on which legislation ought to be slow and cautious.

“As to laws relating to contracts, I will reserve what I have to say till I come to observe upon the Bill which has called for this review.

“As to laws relating to wrongs, there is a distinct and very important gap in our legislation. A good law of torts, as English lawyers call them, would, I think, be a great blessing to this country. It would enable the Legislature to curtail very greatly many of the provisions

of the Penal Code, which are at present, as I have frequently been informed, called into play on the most trifling occasions to gratify private malice. The provisions on defamation, for instance, clearly ought to belong to the law of wrongs, and not to the law of crimes. I think, indeed, that even as a chapter in the law of wrongs it is far too broad.

“The laws relating to the land in India are by far the most intricate, as they are probably the most important, branch of the law. I will say but a very few words about them. The state of the law of land-revenue I have already noticed; it either is, or may soon be, put into a satisfactory shape. The law by which the relation between landlord and tenant is regulated is codified, as far as its form goes, though I say nothing as to its substance, by Acts VIII. (Bengal Council) of 1869, X. of 1859, the Oudh Rent Act, the Panjáb Rent Act, and a Rent Act in Madras (VIII. of 1865). The law regulating the rights of holders of land, as between each other, depends mainly upon Native custom, and, though recorded in the settlement papers of Northern India, could probably not be codified at present, though I suspect that, like many other things, the task would be found to be far less difficult than it is commonly supposed to be, if any one undertook it in earnest.

“The only part of this important branch of the law on which I think we could at present legislate usefully would be the law relating to easements.

“Finally, there is a branch of law which lies between substantive law and procedure, and which in England forms the main part of what, by a strange misnomer, is called equity, as if there was any real or permanent distinction between law and equity. I know of no name in common use for the branch of law in question, but it might perhaps be not quite inappropriately described as the law of Relief. Its principal branches are decrees for specific performance, decrees for the reformation and rescission of contracts, and injunctions against various forms of wrongs. In one sense these things are matters of procedure, but they also partake largely of the nature of substantive law. If, for instance, the question is whether a decree is to be granted for the specific performance of a contract, you must look at the nature of the contract. It would manifestly be absurd to grant specific performance of a contract to marry, or of a contract to paint a picture; and it would be equally absurd not to grant, in case of need, specific performance of a contract to sell land or to grant a lease of a house. Various well-known English equity treatises—*Kerr on Injunctions*, *Seton on Decrees*, and the like—would supply materials for a most useful Act on this subject.

“If we now review the topics which I have thus shortly run over, it will appear that in regard to codification the law of British India stands thus:—

“As regards current legislation it is nearly satisfactory, and may with a very little trouble be made quite satisfactory. Whether it continues to be so will depend upon the question whether the work of consolidation continues to be carried on vigorously, so as to keep pace with the amendments made from time to time in existing Acts.

“As regards procedure the process of codification is complete with the following exceptions:—the Code of Civil Procedure requires re-enactment; a High Courts Act is wanted, and the Revenue Procedure in the Central Provinces is undefined. A Bill for consolidating the Revenue Procedure of the North-Western Provinces is before the Council. An Oudh Bill is in preparation.

“As regards substantive law, we shall have as much of it as will be wanted for a length of time if this Act, a corresponding Act about wrongs, an Act about easements, and an Act upon remedies, such as I have sketched out, are framed and passed into law.

“When all this is done, the Statute-law of India will be, after all, a very small matter. I do not believe that it would fill more than four or five octavo volumes, even if all the Acts of Parliament relating to India, and all the Acts of the subordinate Legislatures, were taken into account; and the really essential part of the whole system would be included in some five or six Acts, which any person of moderate industry might acquaint himself with in a year's study. A young man coming out to India who knew really well the Penal Code, the Succession Act, the Contract Law (assuming it to pass), the two Procedure Codes, the Evidence Act, the Limitation Act, and the Acts of the Province to which he was attached relating to land-revenue, would know more law than nineteen barristers out of twenty know when they are called to the Bar, and it would all be contained in a moderate-sized octavo volume. The most difficult of these Acts, by far—the Succession Act—he would probably never have occasion to use at all; and by far the greater part of the two Procedure Codes consists of matter as to which he would only want to know how to refer to it; the larger part of the

Limitation Act is a mere index. There are parts of the contract law of which he need take little notice, and the same remark applies to parts of the Evidence Act. I do not think that to require a man to acquaint himself fully with the rest of these enactments is to lay upon him any very heavy burden.

“ My Lord, I have trespassed a long time upon your Lordship’s attention in relation to this matter, because I am very anxious, before leaving India, to give to the public some general idea of the progress which has been made in a work which has now been in hand for upwards of forty years, and in which, during my short term of office, I have been endeavouring, to the best of my ability, to tread in the steps of my distinguished predecessors, and to carry out what appears to me to have been their design. My successor, I trust, will be able to complete, during his term of office (that is, if he agrees with my view of the subject), the scheme which I have sketched out, and all that will then remain to be done will be the current work of occasional legislation, and the re-enactment, from time to time, of the various codifying Acts which I have mentioned or referred to. Such re-enactments will, in my judgment, be as necessary as repairs are necessary to a railway. I do not think that any Act of importance ought to last more than ten or twelve years. At the end of that time it should be carefully examined from end to end, and, whilst as much as possible of its general framework and arrangement are retained, it should be improved and corrected at every point at which experience has shown that it required improvement and correction. The Penal Code is admirably good as a whole. It is, I think, by far the best system of Criminal Law in the world, but it might be immensely improved and simplified; and I have no doubt at all that the same will be the case with all the other laws on which so much labour has been expended. I would venture to lay down this general rule. If you want your laws to be really good and simple, you must go on re-enacting them as often as such a number of cases are decided upon them as would make it worth the while of a law-book-seller to bring out a new edition of them.

“ With this long preface, I come to the contents of the Bill itself. It is not, and does not pretend to be, a complete Code upon the branch of the law to which it relates. It consists of nine chapters, which deal with the following subjects:—Contract in general under several heads; the Contract of the Sale of Goods; the Contract of Indemnity and Guarantee; the Contract of Bailment; the Contract of Agency; and the Contract of Partnership. These contracts were chosen to form the subject of the Bill because they are of the commonest occurrence. If an attempt had been made to include within this Act provisions as to every contract on which legal decisions have been given, the Act would have been of most unwieldy dimensions, and would have contained a good deal of matter which would probably have been of very little practical use to Judges or suitors. The New York Code on the subject of obligations has been carefully examined with a view to this Act, and several of its provisions have been adopted. The principal matters contained in the Code which we have omitted are—Shipping Contracts, Trusteeships, Insurance, Contracts by Carriers, Mortgage, Bills of Exchange, and the whole subject of Relief. Of these matters we did not think it desirable to deal with Shipping Contracts, because the persons connected with them in India are very few, and it is desirable, for obvious reasons, that their contracts should be regulated by the law of England. We did not deal with Trusteeship, because the English law on that subject is obviously unsuitable to any country except England and countries where the population is of English descent. We omitted the law relating to Bills of Exchange, because a Bill on that subject was framed some years ago by the Law Commissioners, and was laid aside as unsuitable both to English merchants, who naturally wish to follow the law of England, and to Native merchants, who have customs of their own about hundis which it is not desirable to interfere with. Relief, as I have already said, might, in my judgment, form the subject of a separate Act, and is intermediate between procedure and substantive law. Mortgage is otherwise provided for. As to the Law of Insurance, I have doubts whether it is a matter of much importance out of the Presidency towns, but a Bill on the subject was framed by the Indian Law Commissioners, and can be taken up if it is thought desirable. As to Carriers, it was intended to include the subject in the present Bill; but for the reasons which I stated in Council some time ago, it was thought more desirable that it should be dealt with by a separate Bill, which I hope to introduce when the present matter is disposed of.

“ From this it will appear that, though incomplete, the Bill will probably suffice for a considerable time for the wants of the country. I may add, however, that, as its deficiencies are discovered, it will be easy to enact supplementary chapters which may be read as part of it.

“Of the provisions of the Bill itself it is difficult to speak with much particularity or detail, as they are of a somewhat technical character. I will, however, make a few observations upon them. Substantially the Bill is, as I have already observed, the Bill of the Indian Law Commissioners, though some modifications have been made in it, which I will notice immediately. I have of course studied it with great care, and have compared it chapter by chapter with the authorities on which it is founded. I think, therefore, that I am entitled to say that it appears to me to furnish absolutely conclusive proof of the possibility, not to say the ease, of doing what so many lawyers have affirmed to be impossible, namely, reducing bulky volumes, which it is impossible to understand without enormous labour, and which are as difficult to read as dictionaries, to the form of simple, perspicuous, and consecutive propositions. In illustration of this I would ask any one to compare Chapter X. of this Bill, which consists of fifty-seven short sections, with *Story on Agency*, from which it has been, so to speak, distilled. I need not say anything of Chief Justice Story's ability, or of the position which he holds amongst lawyers. Most of his works, and especially the one in question, were originally delivered as law lectures at Harvard University. They accordingly are written with more of an eye to literary skill and to general arrangement than most works of the kind; but the difference between such a book and a chapter in a code like this (I speak of it without vanity, for I am responsible only for the order in which the sections stand, and for one or two additions to them) is like the difference between a lump of sugar in a sugar-basin and a lump of sugar in a cup of tea. I do not mean to say that there is nothing in *Story on Agency* which is not comprised in these fifty-seven sections. There is a great mass of illustration, exposition, history, and other matter with which a professional lawyer ought to acquaint himself if he wishes thoroughly to understand the chapter; but if the object is either to get a general knowledge of the subject, or to decide a given case in court quickly and with confidence, the chapter of the code is much superior to *Story on Agency*. The habit of counting all manner of collections of different objects would probably give a man great familiarity with the general relations of number, though he might never have heard of the multiplication table; but, both in theory and in practice, the multiplication table is an immense convenience, and the multiplication table is simply an unusually successful case of codification. I might draw illustrations of what has been done in this Act from other parts of it, and in particular from the chapter on the sale of goods. That chapter represents the English law on the subject disembarassed of the inexpressible confusion and intricacy which is thrown over every part of it by the vague language of the Statute of Frauds. I should surprise the Council if I were to give them any idea of the vast mass of matter from which these forty-eight very simple and easy sections have been extracted. In the last edition of *Addison on Contracts* the matter comprised in them (part of which has been omitted for the sake of simplicity) fills seventy-six large octavo pages, and the matter is returned to over and over again in different parts of the book.

“In estimating the importance of the work now presented to the Council, it must be remembered that, though ‘justice, equity, and good conscience’ are the law which Indian Judges are bound to administer, they do in point of fact resort to English law-books for their guidance on questions of this sort, and it is impossible that they should do otherwise, unless they are furnished with some such specific rule as this Act will supply them with.

“I wish that those who think it is easy to solve all legal questions by the mere light of nature, and without the guidance of positive rules, could have heard the discussions which have taken place on various parts of this Bill. I think they would have learnt from them that it is a far more difficult thing than may be supposed at first sight to say what, under given circumstances, is just and equitable. I think they would also have arrived at the conclusion that the deliberate opinions of English Courts, formed after elaborate argument, and made with reference to numerous and varied precedents, form about as good a guide on that subject as is to be had, and I am much mistaken if my honourable friends Messrs. Bullen Smith and Stewart will not confirm what I say.

“I will conclude by saying a few words on the alterations which have been made in the Commissioner's draft. They occur principally in the first part of the Bill, which treats of contracts in general, and they are alterations in form rather than in substance, though I do not by that remark mean to say that I regard them as unimportant. The fact is that in legislation there is a constant and natural tendency to undervalue form, and this tendency is one of the main causes of the extreme intricacy and enormous bulk of the law. I attempted to illustrate this in the case of the Evidence Act. I tried to show, in a speech which I made on that subject, how the whole matter had been thrown into confusion by the excessive ambiguity

of the fundamental terms employed in stating it, and especially by the ambiguity of the words, 'evidence,' 'fact' and 'hearsay.' This confusion has not arisen to the same extent in regard to the law of contract. But it has occurred to a certain degree, and I think that any one who reads the draft of the present Bill, as it was originally published in the Gazette, will find that the fundamental terms of the subject were not defined with complete precision by its learned authors. Thus one of the first sections of the draft Bill was in these words:—

'A contract is an agreement between parties, whereby a party engages to do a thing or engages not to do a thing. A contract may contain several engagements, and they may be either by the same party or by different parties.'

'I do not think that, in the common use of language, there is much difference between an agreement, an engagement, and a contract. Whether, for instance, it was affirmed that two people had agreed to marry, or engaged to marry, or had made a contract that they would marry, most of us would think that the same sense was conveyed, and throughout the Commissioners' draft 'agree,' 'engage' and 'contract' are used indiscriminately. It is therefore natural to ask what is the use of their definition, and why should it not run—'an agreement is a contract by which people engage,' 'an engagement is an agreement by which people contract,' or 'a contract is an engagement by which people agree,' or 'a contract is a contract by which people contract' ?

'I think I could trace the origin of this definition, but to do so would needlessly consume the time of the Council.

'All such definitions conceal the true analysis of the subject, which rests, as all such operations ought to rest, on the broadest and most general facts of human nature. If it is examined in this light, I think that a contract will be found to be composed of the following elements:—

'In the first place, it is obvious that, in order that the relation may exist at all, one party must make a proposal. If that proposal is accepted, the parties are so far at one. They each contemplate a common course of conduct. To use the common phrase, they 'agree.' An accepted proposal, therefore, is an agreement. But the proposal may be either a simple one—as if I propose to a man to make him a present of a hundred rupees—or, as is the more common case, it may involve something to be done on his part—as if I propose to give him a hundred rupees for a horse which he is to give to me. In each case we agree; but in the first case I only promise, and he accepts my promise. In the second case each of us makes a promise, which the other accepts. I promise him money, and he promises me a horse, and these two promises form the consideration for, or cause, each other. We have thus got clear notions of promises and agreements. A promise is a proposal accepted, and an agreement is a promise, or a set of promises, forming the consideration for each other. Every promise is an agreement, but an agreement may, and generally does, consist of more promises than one. But what, it may be asked, is the difference between an agreement and a contract? I answer, every contract is an agreement, but every agreement is not a contract, but only those agreements which can be enforced by law. If one man proposes to another to commit a murder for hire, and the other accepts, there is an agreement, and there are mutual promises; but as the agreement is one which the law will not enforce, and which indeed it would severely punish, there is, as I say, no contract. The use of language is always matter of convenience. If any one chooses to use the words agreement and contract indiscriminately, he can of course do so; but I maintain that by assigning a distinct sense to the different words I have mentioned, which sense corresponds to facts inherent in human nature itself, the whole subject is rendered clear and easy of comprehension and arrangement. I will not weary the Council with a detailed explanation of this, but will content myself with asking any one who doubts it to read and compare together the first chapter of the present Bill and the first chapter of the original draft. Some further explanations on this subject are given in the Report of the Committee, and in a Note which I drew up on the subject for the information of the Committee, and which is recorded in the Legislative Department amongst the papers on the Bill.

'I will conclude by noticing, very shortly, the only points of importance on which we have differed from the Commissioners in substance. The first point is as to the power which they proposed to confer upon every possessor of moveable property to make a good title to a *bonâ fide* purchaser. The following passage from their Report gives their reasons for this proposal:—

‘With regards to goods sold by a person who has no right to sell them, the general rule of English law is that the owner of the goods retains the ownership notwithstanding his having lost the possession of them and their having been sold to a third person. But from this rule there is an exception in the case of goods sold in open market, an expression which, by the custom of London, applies to every shop within the city.’

‘It cannot be denied that the subject is difficult. We have to consider, on one hand, of the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But, on the other hand, still greater weight appears to us to be due to the hardship which a *bond fide* purchaser would suffer were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is, therefore, on the side of a rule favourable to the purchaser; and we think that sound policy with respect to the interests of commerce points to the same conclusion.’

‘We have, therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them.’”

“Our reasons for the opposite view were as follows:—

‘The first question is whether the law ought to proceed upon the assumption that a person whose property had been stolen is negligent.’

‘Thefts are commonly effected in one of three ways by force, by fraud, or by a breach of confidence. It appears to us that in each of these cases it would be improper to speak of the person who lost the property as negligent.’

‘A man is stripped of all his property by robbers, and nearly murdered for defending himself. Is he negligent? A gang of thieves enter a house unperceived, by digging through the wall at night, and carry off the property contained in it. Are the owners of the house negligent? A servant steals plate under his charge. Cattle left by night on an open pasture, or crops not specially watched by night, are stolen. Are the owners in these cases negligent? These are typical instances of the commonest forms of theft; and it appeared to us that, in comparison with them, the cases in which an owner is really negligent—as, for instance, where a man leaves valuable property unwatched in a public place—are of very rare occurrence. We therefore regarded innocence on the part of the owner as the rule, and negligence as the exception.’

‘Assuming, then, that the common case is that in which both the owner and the purchaser of the stolen goods are innocent, upon whom ought the loss to fall? We thought it ought to fall upon the purchaser, for the following reasons:—

‘1st.—The only argument offered in support of the suggestion that it should fall upon the original owner assumes that every man is negligent who depends upon the protection afforded by law to his property, even when it is in his personal custody, and can be taken from him only by personal violence. We thought, on the contrary, that people have a right to expect the law to protect them against superior force, and also against fraud so gross as to amount to crime. Against fraud which amounts only to a civil injury—as in the case of selling an article to which the vendor has no title—prudent men may be expected to protect themselves. The proposed section reversed this. It would protect a man who has been overreached in a bargain, at the expense of another whom it regards as negligent because he has been robbed on the highway.’

‘2nd.—A person who has been robbed by force or fraud suffers a greater injury than a person who has been overreached in a bargain. It follows that if an innocent purchaser is obliged to return stolen goods he will in most cases suffer less than the innocent owner would suffer if the purchaser were allowed to retain them.’

‘3rd.—To give thieves the legal power of effecting a change in property against the will of the true owner recognizes and favours crime. We thought that no one should be permitted to derive any benefit from a crime, even if he was mixed up with it innocently and accidentally, and that, when such a transaction was brought in any form under the notice of the law, things should be restored as far as possible to the condition in which they would have been if the crime had not been committed. The *bond fide* purchase of stolen goods

would derive an advantage from theft if the suggestion of the Commissioners were adopted. Their proposal would enable a thief whose object was revenge to carry out his purpose by the express warrant of law.

‘4th.—The proposed change would favour receivers of stolen goods. Such persons are often in outward appearance respectable. Under the proposed section, the thief would not indeed be able to confer a good title upon the receiver, but the receiver would be able to confer a good title upon his customers.

‘5th.—If the *boná fides* of the purchaser is to be the test of the validity of the transfer, it will become necessary to decide as a fact, in each particular case, whether the purchaser acted in good faith or not. We considered it undesirable to enter upon this inquiry.

‘The Commissioners’ draft left open the question whether, upon the principle that the law presumes innocence, the owner is to prove the purchaser’s bad faith, or whether, upon the principle that a man is bound to prove facts within his knowledge, the purchaser is to prove his own good faith. The adoption of either branch of the alternative would, we thought, be mischievous.

‘If the original owner was to prove the purchaser’s bad faith, receivers of stolen goods would be practically secure. How could a man whose goods had been stolen prove the circumstances under which the thief sold them? How, except by accident, could he ever be able to prove matters connected with the sale which ought to have roused the buyer’s suspicions? How, in short, could he give proof of what did actually pass, or even of what ought to have passed, in another man’s mind upon an occasion as to which his information must be incomplete?

‘If, on the other hand, the purchaser was put to prove his good faith, how was he to do so? The common case would be that he knew nothing of the seller except that he offered the goods for sale at a moderate price. If this was enough, every receiver of stolen goods would escape. If it was not enough, honest purchasers would in most cases be regarded as receivers of stolen goods. They would have to return the property which it was the object of this section to secure to them, and, in doing so, they would lose their characters as well as their money.

‘In short, it was essential to the proposed section that, for the purpose of proving a doubtful matter of fact, we should choose between two rules of evidence, of which one would discourage honesty and the other favour crime. This difficulty might be altogether avoided by preferring the true owner, who must have a good title, to the purchaser, who might be an undetected receiver of stolen goods.

‘6th.—The proposed enactment would remove one of the greatest of the existing motives for the detection of crime. If a man who had lost his property by theft was not to recover it unless he could prove bad faith on the part of the purchaser, he would not care to prosecute the thief. In many parts of India, cattle are the most important kind of property, and cattle-stealing is the commonest of offences. As matters now stand, stolen cattle are systematically tracked, sometimes for hundreds of miles, and for weeks or months together. When discovered the owner retakes them. So well is this system established that there are persons who make it their profession to track stolen cattle, and that buyers take security from sellers to indemnify them if the cattle should have to be given up to their true owners. This constitutes a considerable security against cattle-thefts, but the whole system would come to an end if the owner could not recover his cattle without proving bad faith in the purchaser.

‘7th.—The universal practice of India is that the loss in case of theft should fall on the purchaser. This, the Committee were informed, is the law of all the independent Native States, both within and on the border of our territories. If our law were different, British territory would become an asylum for cattle-stealers, and all the Native States would feel themselves deeply injured.

‘8th.—The effect of the section upon the position of bailees would be very singular and, we thought, undesirable. It would invest every bailee, for whatever purpose, with the power of selling the goods bailed, as he would be able to make a good title to them, and if he offered to account for the price to the true owner it seemed to us very doubtful whether he would be punishable for criminal breach of trust. A lodger sells the furniture of his lodgings for an inadequate sum and pays the money to the landlord. The landlord under the proposed section would lose his property absolutely, and have no remedy at all, unless the transaction

were regarded as a "dishonest misappropriation, which seems rather an abuse of terms. The case was not perhaps likely to happen; but if dishonest persons were once made aware of the existence of such a law, we feared that it would be extensively used for the perpetration of frauds, which it would be very difficult to detect."

"The only other matter of importance on which we have differed with the Commissioners is the question of liquidated damages. The law of England on the question whether, when a man promises in a certain event to pay a specified sum, he is bound or not to pay it in full, is rather intricate; and, in order to avoid that intricacy, the Commissioners proposed to enact that in all cases such penalties should be treated as liquidated damages. We agree that the intricacy should be removed, but, for the reasons assigned in our Report, thought that it should be removed by the converse operation of turning all liquidated damages into penalties. This we proposed to qualify by an exception, which, as it stands in the Bill, is not very neat, and which I propose to amend. It applies to the case of bail-bonds, recognisances, and the like, and to persons who, under the orders of Government, give bonds for the due performance of public duties.

"With these remarks, My Lord, I have the honour to move that the Bill be taken into consideration."

The Honourable Mr. BULLEN SMITH said:—"MY LORD, I very readily respond to the honourable and learned Member's request that I should state to the Council my view of the treatment this Bill has received at the hands of the Committee to which it was entrusted. I believe the Committee undertook their work with a full appreciation of the great importance of the measure, and fully alive to the responsibilities connected with legislation tending in degree to affect the daily conduct of affairs all over the country. Since I have had the honour of a seat in this Council, I have never known a Bill carried through Committee with greater care or more mature deliberation. There has been an earnest wish to produce a measure which should be sound in principle and useful in its practical working, and I do consider that the Bill now before the Council is, on the whole, a good one. It would be wrong in me did I not thankfully acknowledge the large amount of personal attention which the honourable and learned Member in charge has given to this Bill; and I should also add that, in respect of that bailee question to which he has alluded, as well as on various other points, the Honourable Member has not hesitated to give up his own view, although legally and technically correct, in deference to practical considerations which have been urged upon him by other Members of the Committee."

The Honourable Mr. STEWART said:—"MY LORD,—I am unwilling to remain silent in a discussion on a Bill in which the mercantile members of this Council may reasonably be supposed to have taken a somewhat special interest. I regard this Bill as one of extreme gravity and importance; as one, indeed, the importance of which it is almost impossible to overrate, for it embraces the great majority of the transactions of the every-day life of a very large class of the community, and a considerable proportion of the transactions of all, and it is probably not too much to say that there is no adult person in this great Empire who will not come within its scope, or who may not be affected more or less by its provisions. In these circumstances, it is a Bill which has required the most careful, anxious, and patient consideration and attention of the Committee to whom it was referred, and I think I may, as a member of that Committee, hold myself fully justified in absolutely confirming the statement of my honourable friend, that it has not failed to receive such attention and consideration. I wish to add that, though the special experience of individual members of the Committee has been fully utilised, and though, doubtless, we owe the framework of the measure to the Law Commissioners, the Bill, as it now stands, in its re-arrangement and reconstruction, and in some of the principles which it asserts, is not the work of the Commissioners or of the Committee, but of the honourable and learned Member in charge of it, whose candour and impartiality in receiving and considering all suggestions and objections and earnest desire to arrive at the best and soundest conclusion, call for full acknowledgment on the part of those who have had the honour of serving with him on the Committee. The scope of the Bill, as I understand it, is to bring the Indian Law of Contract, as far as may be, into harmony with the English law on the same subject, as established by recognised practice, by statute, and by the latest and best judicial decisions; and I think that if that object has been attained much has been done. Subject to some remarks which I shall offer presently, I consider this Bill a sound and good Bill, likely to prove valuable to the community, and particularly to that section of the community to which I belong, for it renders certain; clear, and easily accessible much that hitherto has been

doubtful, obscure, and practically inaccessible; and to persons engaged in mercantile pursuits it is hardly possible to conceive any greater advantage than certainty and intelligibility in the law which governs their transactions. I go further and say that to mercantile persons a code of law comparatively imperfect in the abstract is, so long as it is fairly reasonable and equitable, and at the same time clear and accessible, more valuable than a system in itself more perfect, but devoid of the two qualifications last named. Whatever the imperfections of this Bill may be, it has at least the merit of being very clear—so clear that, in great part, ‘he who runs may read,’ and that, as I have said, is a great point gained. It is not for me to estimate the value of such a Bill as this to those ‘learned in the law;’ but even to them I should think its value will be considerable; for it will at least save them the necessity of the tedious and repeated references and investigations with which they have now to lay their account. I have spoken of the advantages of the Bill to mercantile persons, and to those who may be called upon to advise regarding disputed matters of contract; but there is another class to whom it will also, I think, prove of great value—I mean the administrators of the law—for it places before them in an accurate and compendious form much information with which it is highly expedient, and indeed absolutely necessary, that they should be acquainted. The present Bill, as my honourable friend has told us, is by no means a complete law of contract, for there are many matters in connection with that vast subject with which it has been impossible, and with which it does not profess, to deal; and I fully approve of the clause by which provision has been made that special customs and incidents of individual branches of trade shall not be affected by this measure, so long as these customs and incidents are not opposed to the provisions of the Bill. I think that it is not desirable to override, but that it is, on the contrary, expedient to recognise, the law of custom when it is a reasonable law, as it will generally be found to be, and when it does not conflict with the well-considered written law embodied in our statutes. But, my Lord, I do not wish it to be understood that I commit myself to an unreserved agreement in all the provisions of this Bill. On certain points I entertain my own opinion—an opinion different from that to which the Bill will give effect; and although, in deference to better information and judgment, or to the precedent of previous legislation in England and elsewhere, I have not thought it right to insist on my own views, I think it well to mention this matter here. It is unnecessary that I should trouble the Council with any lengthened remarks regarding the details of the Bill, but I would say a word regarding one or two of its provisions. It deals firmly with the subject of arbitration in cases of dispute, and I give my unqualified approval to the provision which states that, when a person shall have solemnly and deliberately agreed to arbitrate, it shall be in the power of the Courts to enforce that agreement. I am aware of, and can understand, the jealousy with which the law regards any attempt to oust its own jurisdiction, and I do not think that a casual agreement to arbitrate should be enforced; but I see no reason why a deliberate contract of that nature should not be, and I can see much injustice in holding that under no circumstances is an agreement to arbitrate a contract at all. The partnership clauses are less to my mind. I am one of those who think that the good old rule, or what was understood to be the good old rule, that he who shares in the profits shall likewise share in the losses of an undertaking, is the safest and best rule for general application; but here, I admit, I am behind the age, and it would of course be neither useful nor becoming that I should question the great and important modifications which Parliament as well as this Council have seen fit to make in the law on this subject. My honourable friend thinks, I believe, that I take too strict a view of the nature of a contract, and he is doubtless right in saying that it is not always desirable to insist on the fulfilment of such engagements with absolute exactness; but speaking generally, I do think that the more firmly we insist on the fulfilment of contracts the better; that the leaning of the law, if it is to have a leaning at all, should be in favour of the party against whom the breach has been committed, and my remark is certainly not less, though it may be more, applicable in this country than elsewhere, for the natural habit of the people is in favour of a rather loose way of regarding the matter of contract, and this is a tendency which, I am clear, it should be the object of the law not to encourage, but to check. In making this remark, I desire distinctly to except the better class of Native merchants, whose fidelity to their engagements, and generally honourable conduct of their affairs, are second to those of no class with which I am acquainted. I entirely agree with my honourable friend in considering it right and prudent to defer, in the meantime, any legislation regarding the Carriers’ law; for, especially in view of the great and sweeping changes which have been recommended, and the enormous interests which will be affected, it cannot be well to deal with the matter until we shall be in possession of all that can fairly be urged by those interested in the question. I think it is a question on which it is far better not to legislate at all than to legislate hurriedly, with the probability, if not certainty, of a

necessity for speedy revision of our legislation before us. My Lord, I am opposed to unnecessary legislation, and I am very strongly opposed to unnecessary legislation when it touches mercantile subjects; but the Bill we are considering does not come within this description. It seems to me, as I have said, a good Bill; not perfect, but, on the whole, worthy of the approval of the Council, and worthy of the great reputation of my honourable friend Mr. Stephen, and I shall record my vote in favour of his motion, that it be passed into law, with pleasure and satisfaction."

His Honour THE LIEUTENANT-GOVERNOR wished to express his full and entire concurrence in the view taken by the honourable and learned Member in charge of the Bill, of the extreme advantage of a clear and codified law: if we must have law, if we must have lawyers, he did believe that it was an enormous advantage that the law should be made so clear that, to a certain extent, every man might be his own lawyer. He was aware of the proverb that "a man who is his own lawyer has a fool for his client," but he believed that that proverb was the invention of lawyers and he dissented from it entirely. He believed that it would be an enormous advantage if the principles of the law were made so clear that every intelligent man should, with a little trouble, be able to understand them. He was led to believe that the importance of the Code Napoléon and other well-known Codes was due not so much to their merits or demerits, but to the fact that they laid down the law in a clear and precise form; and he had been told by an eminent jurist who formerly sat in this Council that it was in a great degree owing to the law having been reduced to a simple and codified shape that the French and Swiss and other continental people understood the law so well. That being so, His Honour thought that, in respect of the codification of this immense subject, we were in a very great degree indebted to those who had dealt with the matter and especially to the honourable and learned Member. He felt that his honourable friend had rightly expressed the feeling of the Council when he said that we were under great obligations to the mercantile members who had given us the benefit of their great attention and complete experience. His Honour felt that this was a subject on which all must agree, namely, the enormous advantage of having in the Council men possessing the qualifications and particular knowledge of the subjects embraced in his Bill. He felt that on no occasion had members of the mercantile profession sat in this Council who were more fitted to represent the mercantile and non-official communities in general, and that they had laid the country under very great obligations to them. His Honour was, however, inclined to think that his honourable friend Mr. Stephen had taken a somewhat sanguine view of the extent to which the codification of the substantive law in general had proceeded. It appeared to His Honour that there were a good many subjects on which his honourable friend had dwelt, which he was hardly prepared to say had been codified so far as the honourable Member thought. On the contrary, there were one or two subjects, which the honourable Member had mentioned, as to which it appeared to His Honour there was greater need for codification than had been supposed. He might instance the law of Trustees. It was quite true that the English law of Trustees did not extend to this country. On the other hand, it was well known that a great and vile system to which had been given the name of trusteeship had sprung up all over Bengal: he alluded to the *benámi* system, which it was well known had resulted in an enormous amount of abuse; and His Honour thought that the country would be greatly indebted to any legislator who would take that matter in hand and deal with it successfully.

His Honour had not had the opportunity of going carefully through the Bill as it now stood, so as to enable him to deal with the particular subjects to which allusion had been made by the Honourable Member in charge of the Bill; but he had no doubt that the subject had been wisely dealt with by the Committee. As regards the provisions relating to Contracts of Sale, he thought that the owner of stolen property sold in open market should be entitled to recover his property from the purchaser; but he had some doubt whether a man who lent his horse to another should be entitled to recover it if that other person fraudulently disposed of it in breach of the trust reposed in him. These, however, were minor matters, and His Honour would not therefore trouble the Council further on those subjects at present. He would only now say that, subject to the amendments he had put upon the paper, he believed that the codification of the Law of Contract would effect a great improvement, and had been performed in a very careful manner.

As to the provisions of section 74 of the Bill, on the subject of liquidated damages, His Honour would say that he believed the Committee had done great service in putting it into a shape which, although in some respects opposed to the English law, appeared to be fair and equitable.

The Honourable Mr. STEPHEN would say only one word in reference to what had fallen from his honourable friends as to his work in reference to this Bill, and that was to thank them for the very flattering way in which they had spoken. His Honour the Lieutenant-Governor had, however, made one or two remarks on which he should like to offer some observations. His Honour had quoted a saying of Sir Henry Maine's in reference to the Code Napoléon, about the great quantity of popular information concerning the law which had been diffused by it. With reference to that, Mr. STEPHEN could not refrain from remarking that both the Code Napoléon and the French Code Pénal, although very useful as popular abstracts of the law, were very loose in their terms, and he thought they stood in much need of revision and re-enactment. The Code Napoléon itself was contained in but a few pages, but with the judicial decisions appended to it the book ran to an innumerable number of octavo pages in small type and double columns, compared to which the decisions on a similar quantity of English law were almost thrown into the shade. He had no doubt that, looking to all these drawbacks and the enormous intricacies of those decisions, the propriety of the decennial revisions which he had suggested would become quite apparent: the two things compared together would show the advantage of having codes of law drawn in as simple and concise a form as possible.

With regard to the observations that had been made as to what were called *benami* transactions, Mr. STEPHEN was well aware of the importance of the subject. About a year ago a voluminous mass of papers on this subject was sent up to the Legislative Department, and he had examined them and read the opinions of many officers; it seemed to him that the difficulties of dealing with the subject were so great as to make the duty altogether beyond his power at present: he thought it was far too difficult a subject for him to grapple with now. It appeared to him that it was pre-eminently a subject upon which His Honour and His Honour's advisers were in a position to make valuable suggestions, and he had no doubt that, with such aid, his successor would see his way to deal with the subject.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR would now submit the amendments of which he had given notice. He had already stated that, amidst other avocations, he had not had the opportunity of studying the Bill in all its details; and believing that the Honourable Members who formed the Committee were far better qualified to deal with the subject than he was, he should not have attempted to place on the paper amendments relating to matters of even secondary importance. But he felt constrained by the duty he owed to the people of the country, amongst whom he had spent the greater portion of his life, to move for the amendment of the Bill in respect of certain provisions which seemed to him to affect its very essence and substance in its practical working in this country. The Council would, he hoped, bear with him whilst he made a few general observations on the amendments of which he had given notice, and which he was obliged to refer to before submitting his first amendment to the Council. He had said that he felt himself precluded from submitting for the consideration of the Council anything that was not of vital and primary importance.

The Council were aware, as the honourable and learned Member in charge of the Bill had just explained, that in this country some subjects were governed by exact law; and in respect to other things the only rule was the rule of justice, equity, and good conscience. His Honour might say broadly that with regard to the whole subject of contracts the only law in this country had been the law of justice, equity, and good conscience. He was free to admit that the law which had hitherto been administered in that way must gradually take regular shape, but he would not admit that that shape should be the English law. He thought that there had been in many things far too great a tendency to drift into the English law, but he did not know that it had been so with regard to the law of contracts. It appeared to him that there were many peculiarities in the English law of contract; and he was glad to think that the Courts had refused to admit English law in such cases, and had substituted for it what they considered to be a broader and safer and better law. He had been asked what he meant by "equity." He would answer that question by first saying that he did not mean equity in the sense in which it was now received in England. In England equity law was distinct from the common law, but was just as much fixed law as any other law. What he meant by equity was the primary sense of the word. If he was asked what he meant by that, he would say that in strict law there were fixed and rigid rules whereby justice was done in nine cases, and in justice in perhaps the tenth. There was an English proverb which had recognized this fact

—“Hard cases make bad law;” the meaning of which was that if you dealt equitably with substantially hard cases you made bad law, because you break through the rule. The law was rigid, and applied equally to all cases, and did not look to exceptional circumstances, so that in some cases there must be injustice if rigid rules of law were applied. On the other hand, equity was a rule, which left the Court free to say, in a case where the ordinary rule of law would apply harshly,—“We will not in this case administer the ordinary rules of law; we will take an equitable view of the case; we will make an exception in this particular case.” That being so, if the law had now arrived at the stage at which justice, equity, and good conscience must cease to be the sole rule, we must be very careful what we substituted. We all admitted that this was a very important change, and that we must take care that, in making that change, while we made clear to the people what was the law of the country, we did not introduce any great and essential change likely to be injurious to them. The provision of the law to which, to some extent, he took exception was the simple and radical doctrine of this new law that whatever a man promised that he must perform. He gathered from the Report of the Select Committee that that simple proposition was not in the original draft. Be that as it may, the question which he submitted to the Council was whether we were to maintain in all its integrity and all its rigidity the proposition that whatever a man had promised that he must perform. That was the broad and very important question which he asked the Council to decide. He was quite free to admit that it was a perfectly logical proposition; but he submitted that it was a proposition which could only be equitable in all cases if you supposed that all men and all women were equal; that they were equally clear in their heads; that they were equally foreseeing; that they were equally provident; that one man was not in a position to take advantage of the innocence or improvidence of another. But seeing that men were not equal either socially, morally, or intellectually; that they were not equally foreseeing or equally provident; that some were poor savages, and others acute men of business; that there were vast differences between them; His Honour thought that a law which positively laid down such a broad proposition was likely to lead to great abuse and great injustice. It appeared to him that it would amount to this, that, however ignorant and low in the scale a man might be, if he once made a promise, he must perform it to the last drop of his blood and to the last day of his life. Although the original proposition might seem simple and harmless in reference to the majority of contracts, the practical effect of it would be that it would work very serious harm and very serious injustice in some cases. He was quite free to admit that ordinarily the rule was a good one, and that we could not take into consideration minute differences of intelligence and position between the parties to a contract. But when those differences were extreme it appeared to His Honour that we must make exceptions, and that it was proper to give the Courts power to make such exceptions. It was in that view that he put these amendments on the paper. He was bound to say that the law of contract as laid down in the Bill was altogether a very hard law, not only in the proposition that whatever a man had promised he must perform, but it was also specifically laid down that a mistake of law on the part of one of the parties would in no degree excuse the performance of the contract: that a mistake of fact so made would in no degree excuse its performance: if both parties to the contract made a mistake, it would excuse the performance; but if one of the parties made a mistake of fact, however widely such mistake might affect the contract, however completely he might be in ignorance of the fact or the law, it would in no degree vitiate the contract. The law laid down that ignorance on a question of fact or law did not vitiate the contract. The law being a hard law—being a law which put the ignorant and inexperienced into the hands of the clever and experienced—the question was, should there be exceptions to this general rule? His Honour’s belief was that in all countries there would be found considerable exceptions made to the general rule. In England, there certainly were very considerable exceptions, which were well known to the Equity Courts, and were subject of well-known chapters of Equity Law. England was a mercantile country, in which the people were of an independent character, who, by habit and the practice of hundreds of years, were independent and well able to look after their own interests. Yet not only did exceptions in regard to certain cases exist there, but he wished to point out that, in the administration of English law there was an enormous engine of equity which overruled the law—he meant trial by jury. Although we made a distinction between a Court of Law and a Court of Equity, real equity was found in the system of trial by jury under the Common Law. Every jury might, and frequently did, take upon itself the functions of a Court of Equity; it refused to carry out a contract to its logical end; it refused to give damages which by law a Court might be bound to give. He would suggest a case in point—the case of a good-looking swindler, who traded upon his looks and his rascality, and induced a girl with £100,000 to make a promise to marry him. If that girl broke her promise, no jury in England would give damages to the extent of £100,000, though no doubt the man

lost that amount of money. In such a case the law would be equitably modified, for no jury would be found to give those logical damages. His Honour would remark also that there was a well-known and common verdict of a farthing damages, which did not mean that the contract was invalid, but sometimes said in effect, "serve him right; the law is in his favour, but we will give him the least possible damages that we can." He admitted that a very large proportion of small cases was not tried by jury, but he thought that the practice of the jury system permeated down to the County Courts. From the decision of those Courts there was no appeal, and a system of very rough justice was administered in some of those Courts. If, then, the strict and rigid rules of law were overridden to some extent in England, he thought that they ought not to be enforced in this country so rigidly as was proposed by the Bill. It was a country of great extremes, where there were men very great and powerful, and men very poor and ignorant: the people of this country, although they were sometimes well up to a bargain, and generally were marvellously faithful in the performance of bargains were at other times quite ready to put their hands to anything if they were subjected to a certain pressure. His Honour would ask Honourable Members who had large experience if that were not so. He believed that there were many cases in which poor and ignorant men would put their names to documents without regard to the future consequences of their acts when a certain pressure was brought to bear on them. If, therefore, in England there were exceptions to the rigid rules of law as to contracts, in a country like this there ought to be much larger exceptions. It frequently happened in this country that a man made a bargain, the results of which he did not foresee: he might accept an inadequate consideration in order to get out of some pressing difficulty. He might bind himself for all time. He might yield to a certain pressure to something which was not positive fraud or duress, but undue pressure: and, having done so, the effect of his act would be that he bound himself to perform the contract to the last drop of his blood. His Honour was free to admit that in practice he very often did not so perform it; that he was induced to meet force by fraud; he signed his name to the contract but his hope was that, when the time for performance came he would escape its performance. That was an unwholesome state of things. No doubt the argument cut two ways. He thought there was a great deal of truth in what was said by his honourable friend Mr. Stewart, that people should not be loose in making contracts and in fulfilling them; and that they must be made to understand that when they signed a contract they were bound to fulfil it. In answer to that, His Honour would say that you must teach them gradually; you must not break them in too suddenly: you must not suddenly impose upon them this rigid law, in direct opposition and contradiction to the habits and feelings of the mass of the people of the country. It was on these grounds that he hoped the Council would pause before they thought fit to affirm the principle of this rigid, this dangerous law in this country.

His Honour admitted that there were evils in the state of the law as it now stood, but it appeared to His Honour that there were great difficulties in a more rigid law also. He admitted that it might be said—"Why go on with a loose and undefined law?" But the question was, which was the greater evil? Was it a greater evil to allow the Courts, the Judges of which were appointed and chosen for their sagacity and learning, to decide these matters, or a greater evil to give them no discretion at all? Certainly the discretion would amount to this, that the Judge might say, "this was not a just or a fair bargain, and I cannot enforce it in all its logical severity." That was the question which His Honour submitted to the Council. He should like to propose an equitable clause to the effect that if the Court considered that the bargain was a hard and one-sided one, it should be able to mitigate the damages to any extent to which it thought fit. But he felt that if he did so, he might alarm the Council, and that they might think he proposed to do too much. Therefore, he did not attempt to go the length of that simple proposition, but he had put upon the paper a series of amendments which, without infringing the principle that a contract made must be performed, at the same time gave to the Court a certain power of mitigating the practical operation of the contract, and he had no doubt that the effect of the amendments which he proposed would go far to mitigate the severity of the law in contracts of a hard and one-sided character. This was a matter which intimately concerned the mass of the people of this country; and, whether he should obtain the support of the Council or not, he felt it to be his duty to put his views forward by means of the amendments which he ventured to suggest as calculated to mitigate the severity of the law as it stood in the Bill.

Well, then, he came to the particular amendments he was about to submit to the Council. The first amendment was nothing more than an illustration which he proposed to add to section 16, which defined what was called "undue influence." He need not say anything

about contracts induced by actual fraud or actual duress, because they were not contracts, and would not therefore be enforced. The further exceptions given in the Bill were very well known in English law as contracts made under undue influence : under that head of undue influence were grouped the exceptions which the Equity Courts of England had generally accepted. That being the case, there was a section in the Bill providing for cases of undue influence which in its scope was wide enough. The section ran thus:—

“When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained, then the contract would be void.”

If that clause stood alone, if it were left to the Courts to put their own construction on that section, and to evolve out of it equitable rules, such as those evolved out of the law by the Courts of Equity in England, His Honour was not sure that he should wish to submit the amendment he had drawn, and which he was now about to propose. But his objection was that the illustrations given in the Bill were taken exclusively from the particular cases decided in England. Every one of the illustrations given was an English illustration : each of them was simply the essence of a well-known chapter of English equity law. His Honour's apprehension was that there would be a drifting into English law ; his fear was that, if this section was to go forth to the world with these English illustrations only, the effect would be that the Courts would consider themselves restricted to the English law as it was presented to them by the illustrations given, and they would not exercise that wise power of extending the effect of the section which they ought to be entitled to exercise. If the Council were to adopt the system of illustration in the Bill, he thought it was almost cowardly to refuse to adopt an illustration known to the country and to take illustrations from English law only. In fact, throughout the Bill the drift of the illustrations was too much to show the English rules of law, and not the application which should be made of the provisions of the Bill to the circumstances of this country. Therefore, in the first instance, His Honour would ask the Council to accept a simple Indian illustration of what was called “undue influence.” He asked the Council to say that the case given in the illustration he proposed was a case of undue influence. In order that there might be no mistake, and that it might not be supposed that he asked too much, he would read the illustration :—

“A, a rich and powerful zamíndár, induces B, C, and D, poor and ignorant ryots holding under him, to engage to grow certain produce and to deliver it to him for a term of twenty years, in consideration of an inadequate price for which no independent ryots would have so engaged. A employs undue influence over B, C, and D.”

His Honour would put it to the common sense of the Honourable Members of the Committee to say whether this was not a fair illustration of a case of undue influence. He by no means desired to point unjustly to a particular class, for in taking for his illustration the case of a rich and powerful zamíndár using undue influence over a poor and ignorant ryot, it seemed to him that he was merely taking a case which in this country might occur : and, in doing so, he no more labelled the whole class of zamíndárs than those illustrations taken from the English law labelled the whole class of fathers, lawyers, and doctors. He did not understand that either fathers or lawyers or doctors would consider themselves aggrieved by the introduction of those illustrations ; and he trusted that the zamíndárs and other holders of land would agree that to put into the Code a simple Indian illustration would not libel the whole class. His Honour was sure that, although the mercantile members of the Council might naturally incline to a strictly business point of view ; although straightforwardness of character commended itself to them, he might appeal to them to say whether abuses did not exist in India as elsewhere, and whether they did not agree that the illustration was a fair example of undue influence. He had not attempted to define what were the cases in which undue influence might be said to occur. He had put an extreme case in order that no one might be able to deny that the illustration given was a clear case of undue influence. He had included in the illustration several elements from which undue influence might be inferred : first, the zamíndár, dealing with the ryot, his inferior, over whom he exercised influence, induced him to make a contract by his influence : again, the price was supposed to be inadequate, it was assumed that it was not fair ; it was a consideration such as an independent ryot would not accept : and, thirdly there was an extreme case of excess of time. His Honour had supposed that the zamíndár bound this man down for the long space of twenty years. If the Council were willing to put an illustration of that kind ; if they were not to

refuse to introduce an Indian illustration, then he ventured to say that the case he had put was a fair one, and he hoped the Council would add that illustration to the illustrations attached to section 16, if the present illustrations were to stand there at all.

HIS HONOUR concluded by moving that the above illustration be added to section 16.

The Honourable Mr. BULLEN SMITH said:—“MY LORD, in proportion as I attach great importance to this Bill, and consider it fitted to supply a great and felt want, it would have been to me matter of satisfaction to have seen it pass with the unanimous consent of this Council, and I the more regret disapproval of any of its provisions when that disapproval emanates from so high an authority as His Honour the Lieutenant-Governor of Bengal. It is not my intention to follow His Honour in his criticism upon the Bill generally, although I think it too severe, as the honourable and learned Member in charge will, no doubt, in the course of his reply, take up His Honour's objections, and be able to show that the Bill is not altogether such a blood-thirsty measure as His Honour seems to fear. In reference, however, to His Honour's general complaint that the Bill is a hard one, I would merely say that a Contract Law must, from its very nature, be cast in a somewhat hard mould, and that any attempt to eliminate this element of hardness from it will certainly tend to mar its usefulness, and render it a weak, ineffective measure. Turning to the substantive amendment which His Honour has just proposed, I regret much that I cannot support it, and I earnestly hope that the Council will not permit any such illustration to appear in the Bill. When I first saw the List of business for to-day, I was disposed to think that I could concur in that one of His Honour's proposed amendments which would strike out altogether the illustrations to section sixteen; but it has been represented to me by a judicial officer to whose opinion I attach great weight that well-chosen, clear illustrations to such a section have in this country a peculiar value, and that without them there is apt to grow up a mass of what lawyers call Court-made Law, consisting of decisions given all over the country differing in part from, and perhaps actually opposed to, each other. I therefore would now like to see at least some of the illustrations to section sixteen retained, and would not perhaps object to see His Honour's illustration placed beside them if greatly modified. As that illustration now stands, I must, however, oppose it in the strongest manner, as it appears to me couched in language of extreme exaggeration, indeed—if His Honour will forgive me for saying so—almost sensational in its character, and if we bear in mind the relative positions and circumstances of the parties to the large class of agricultural contracts which such an illustration would affect, and which His Honour probably had in view, the illustration seems eminently calculated to bias the Court and lead up, so to speak, to a foregone conclusion. It appears to me, also, that the practical application of such an illustration would be matter of extreme difficulty and uncertainty. Look at the numerous elements introduced, the degree of each and all of which is to be weighed and estimated by the deciding party; and this brings me to the point where I consider lies the main difference between His Honour and myself. Throughout His Honour's remarks there runs the idea, more or less strongly implied, that this new illustration will come into the Bill as a kind of special provision to meet exceptional cases; but I cannot think that its practical working would partake of this character, at least on this side of India. The conditions set forth by the illustration, namely, power and wealth on the one hand, ignorance and poverty on the other, are not, in my opinion, to be found only in the exceptional cases to which it might be supposed primarily to apply. On the contrary, these conditions attach in degree to almost all the relations of zamindár and ryot: indeed, they depict what may perhaps not incorrectly, however unfortunately, be termed the normal state of things. I consider the admission of this illustration would constitute quite a blot upon the Bill, which is intended to be a law of contract, defining what a contract legally is, the parties to it, the breaches thereof, and other matters. If I understand the object of the Bill rightly, it is intended to be an authoritative guide to those who may have to adjudicate upon contracts; but admit into it such a very leading and suggestive illustration as that proposed and then half its good effect will be lost in respect of a vast mass of contracts, and the adjudicating party thereon will be very much left to become a law unto himself. I speak in the interest of no particular class, but in the interests of the Bill itself. If, as the wording of the proposed illustration would almost imply, His Honour is of opinion that there are classes of agricultural contracts which require special legislation, let them, after due inquiry and proved necessity, be dealt with separately, as has been done in the case of labour contracts for the tea districts. Such legislation might even hereafter come in as one of the chapters which have to be added to this Bill, but do not let us now hastily and prematurely put in anything which will tend—as to my mind this illustration inevitably

would—greatly to curtail and weaken the usefulness of a measure which is perhaps as imperatively called for as any which has of late years been presented to the Council.

The Honourable Mr. STEWART said:—"My LORD, it is with regret that I differ at any time from the Lieutenant-Governor, and I particularly regret that on the present occasion I differ from him widely, and must vote against his amendments. I think that the Bill, as presented by the Select Committee, states plainly and correctly what does and ought to constitute a contract. I think also that it surrounds, and, if the amendments which stand in the name of the Honourable Mr. Stephen should be accepted, will still more effectually surround, its definition with all the safeguards necessary or expedient in a Bill of general application; and it seems to me that it is for those who deem these safeguards insufficient, and believe that practical injustice may result from the working of the Bill as it now stands, to establish that position by the clearest, fullest, and most conclusive evidence, before asking the Council to depart from the clear and definite principles of the measure—principles which seem to me the only reasonable basis on which the legislation we are now considering can proceed. For my own part, I should require a very clear case of necessity to be proved, a very clear practical injustice to be shown, before I should be satisfied that it is the duty of the Legislature to instruct the Courts to assume as a fact that hard bargains are bargains made under undue influence, or before I should be willing to say that the simple fact that a bargain is a hard bargain is a consideration which should be taken into account in determining the compensation for its breach."

The Honourable Mr. CHAPMAN objected to the illustration proposed to be introduced by His Honour, as he considered it was specially directed against a particular class and a particular interest. It indicated as plainly as a finger-post that in cases where a zamindár and ryot were concerned undue influence on the part of the former must be presumed. If His Honour would study the provisions of the Bill, he would see that the sections regarding coercion, undue influence, misrepresentation, and mistakes, &c., afforded ample protection against injustice and fraud. It seemed to him (MR. CHAPMAN) that if, as a rule, people did not know that they were liable to be compelled to perform that which they had pledged themselves to, then the sooner they were taught that they were bound to fulfil their obligations the better.

It was probable that in Bengal, as in other parts of India, there were races which required special protection. For example, the wild and ignorant Santhals were perhaps entitled to such protection. There might be other races and interests which required to be specially guarded. If there were, then he (MR. CHAPMAN) was of opinion that His Honour ought, after due and adequate inquiry, to legislate for such races and interests in his own Council, by (for example) directing that particular contracts should be ratified before officials, who should be obliged to see that the contracts were fair and reasonable.

He (MR. CHAPMAN) did most strongly object to such an illustration as was proposed, and directed against a particular class, being introduced into a broad and general Bill of this kind.

The Honourable Mr. ROBINSON said: "My LORD, I shall vote unhesitatingly for the rejection of all the amendments proposed by His Honour the Lieutenant Governor—except that for the omission of clause 1 of section 25; and that the Bill be passed as reported by the Select Committee, subject to the amendment put on the list of business by the Honourable Mr. Stephen.

"I earnestly trust that those Members who have not had an opportunity of mastering the measure now under discussion as a whole, and of observing the care, impartiality, and ability bestowed on its every detail by the honourable and learned Member, will not lightly admit casual and partial amendments, specious and benevolent though they may at first sight appear. For I truly believe that His Honour's amendments contain just enough of a spirit of error to leaven with partiality, if not to corrupt, the whole measure. They will introduce great confusion, and seriously detract from the usefulness of the Bill.

"The Bill is, in the main, what was transmitted from England, but it has been modified and vastly improved under the able and singularly lucid arrangement of the honourable and learned Member, and by the suggestions of those who have from time to time had their attention and powers concentrated on it,

"Adaptations have been introduced into the Bill, some of which are in the direction of mitigating undue stringency in the Law of Contract as applied to this country; and I am

quite satisfied that we have gone as far as we possibly can go in a general law, with safety and without compromising the spirit and administration of this important branch of justice.

“Indeed, I believe that when this Bill, as it stands, becomes law, it will be found that in some of its provisions it is less rigorous than the law which is actually administered at the present moment in our Courts of justice.

“I hope His Honour will acquit me of any intentional misapprehension of his views of what the policy of law and the spirit of its administration in this country should be. But I must admit, judging from the casual but frequent glimpses which he gives us of his mind in this respect, that my impression is that he would sometimes almost prefer to have no written law at all—prefer to leave all judicial administration very much to what he thinks is equity and good conscience rather than enact precise and certain general laws, with clear and really stringent legal penalties for their infraction.

“This, I think, is precisely the spirit which pervades the amendments before the Council, and their object is to introduce uncertainty and open contention in respect to matters which admit of being laid down with precision by law; and I feel sure that the certain effect of these amendments will be to facilitate—possibly suggest—unjustifiable disputes and dishonest evasion, if not downright fraud.

“I think that what I must term ‘loose-law making’ is especially out of time and out of place at present in India, where good faith is often short-lived between parties to contracts; and our Judges are not as a rule jurists.

“In no country do trade and the well-being of society suffer more from laxity of principle and practice as respects obligations and their fulfilment, than they do in this country. Here, then, if anywhere, the policy of the law should be certain and unequivocal, and the provisions for its enforcement impartially stringent. And more, the general effect of legislation on such a subject as this, should be educational. I believe the spirit of all the amendments to be absolutely the reverse of these objects.

“Now, I must not be misunderstood here. I have listened with great pain to opinions of a general and sweeping character expressed here in the heat of debate, in respect to the truthfulness and integrity of our Native fellow-subjects. I have no sympathy with—I repudiate as wrong—every and any general imputation against them on these scores. I affirm without hesitation that, while the ethnical condition of the people is naturally somewhat different from our own—perhaps, not always intelligible to our alien understanding and sympathies—yet the country and its people are full of that mutual truth and integrity which are essential to social and commercial life. And I think that the truth and faith which are met with, even amongst the lower orders of those who come before our Courts of justice—always a deceptive theatre from which to draw our impressions of the real drama of life of a country like this—bear comparison very fairly with what we meet with, under similar circumstances, in many European countries. But we are not dealing with general propositions, but specific legislation; and I believe that the intelligent, educated and respectable Natives of India are the very last to seek, in behalf of any class of their countrymen, for any derogatory immunity from the stringent moral and legal sanctions which, in other lands and amongst other civilized people, cover obligations of the kind which will be governed by this Bill.

“I do not wish to trouble the Council with any special remarks on the individual amendments proposed by His Honour and their probable and derogating effects on the usefulness and certainty of this law. I doubt not that the honourable and learned Member will deal with them from a legal point of view when he takes up the debate. But I cannot pass over the first, namely, the illustration which His Honour wishes to add to section 16 of the Bill, as an example of ‘undue influence’ which shall render a transaction voidable. All the reasonable protection which His Honour seeks to provide against improper contracts, is, I believe, fully secured by the spirit and letter of the law as the Bill now stands, without holding up any special industry or any individual class as objects of legal suspicion, or any kind of contract as exceptionally open to dispute and cavil.

“His Honour evidently has in view contracts entered into between landed proprietors and their tenants, between agriculturists and those who advance on their crops, and between the capitalists who own indigo, sugar and jute factories and those who grow the raw materials. In fact his amendment would affect almost all the ordinary agricultural contracts of the country. And I gather that he thinks that the law should deal with these with a more or less partial eye and in the interest of the agriculturist and labourer. This is,

I think, the object of the sensational, extra-judicial sketch which His Honour would introduce amongst the leading adjudicated cases which are cited in section 16 to illustrate the principle of this law.

"I do not sympathize with those who think English illustrations are out of place in a *lex loci* for India. I think, on the contrary, that it is far better to employ illustrations untainted by a local or fanciful spirit, taken from the authoritative case-law of England, than to use uncertain India case-law, or, still worse, to invent illustrations whose facts have never been judicially sifted, and whose principle has never been legally defined.

"His Honour's illustration is, I think, objectionable from every point of view that can be imagined. And I would ask His Honour to endeavour to realise to his own mind the slough of uncertainty and contention, and of contradictory decisions, which must be waded through, both by parties to contested agricultural contracts, and by Judges, before anything like legal certainty and precision can be imparted to his comprehensive and contentious adjectives.

"But I think that there are two sides to this matter, and that, on the whole, the country and its poorer classes have by no means the worst of it in these things. The country, and more especially the cultivators who grow the raw material and lay out their labour on the cultivation of the land, benefit vastly by the outlay of capital on such industries as indigo factories in the provinces and by the readiness with which capital is advanced on their crops.

"Now, I believe that, not only the multiplication, but the very existence, of such centres of industry, and the ready supply of money for agricultural purposes, depend on the mutual good faith and on the certainty of obligations as between parties who are dependent on each other in such matters; and I am satisfied that these conditions can only be brought about by an efficient and absolutely impartial Law of Contract and its vigorous and certain administration. I am likewise satisfied that one of the great obstacles to the beneficial employment of capital is the prevalence of carelessness—if not of actual fraud—on the side of the lower orders of parties to transactions of the character which this Bill is intended both to enforce and relieve, if protection be needed. I would, therefore, far rather see an occasional hard bargain—for I do not believe that they are by any means as many as is sometimes alleged by mere philanthropists—enforced, than tolerate uncertainty and encourage disputes by loose and discretionary law, such as I believe would be the consequence of meeting the views of His Honour the Lieutenant-Governor.

"Now, I speak with diffidence as respects Bengal and the North-Western Provinces—though I believe that, even here, over-reaching is far from being the rule, and that the agriculturist has many compensating advantages, which may be set off against some apparent and occasional stringency in contracts to supply raw material, such as indigo and the like, for the use of factories.

"But in respect to Southern India, I have no hesitation in saying that there is no ground whatever for apprehension on this score, or for exceptional legislation. And I know that the cultivators, &c., have, on the whole a very fair time of it. I am sure your Lordship will bear me out in this testimony to the general integrity which rules these matters in the Presidency you have so long and benevolently administered.

"In Ireland, and especially on the Continent of Europe, hard bargains as between tenants and their land-owners and capitalists and labourers, are met with quite as frequently as they are in Southern India. Yet, no one would think of altering the general policy of the law to meet these exceptional cases. And I believe that even greater disadvantages will arise in India by framing the contract law in such a manner as not to enjoin caution and firmly to discourage dishonesty and evasion.

"If there be any special industry in Bengal or elsewhere, the parties to which require exceptional treatment and protection, the right way to meet the case is to legislate specially on their behalf, and not to import an uncertain sound into the general legislation on the subject of contract.

"One other point only I would notice. It is amendment 8; I would only ask this Council, what right have we to dictate to the people of all India the period beyond which every running contract shall be deemed excessive in the eye of the law?

"I wish, my Lord, to add, in the most cordial and emphatic manner I can, my feeble testimony to what has fallen from the Honourable Members who have already borne witness

to our honorable and learned colleague's good work on the Bill before the Council. I believe he has given to India the most lucid, simple, sound and workable law of contract, so far as it goes, which exists in any country and in any tongue. We shall long thankfully remember him by it, and I shall vote with great confidence that the Bill pass."

Major General the Honourable H. W. NORMAN thought that the amendment before the Council should not be accepted, for he believed that the 16th section of the Bill was in itself sufficient to prevent to exercise of undue influence in the making of contracts even by zamindárs over ryots. He also agreed that the wording of the amendment was likely to do harm by inducing the belief that the ryots were to be protected against the zamindárs in contracts entered into between them to an extent which no one in the Council could contemplate.

The Honourable Mr. STEPHEN was very decidedly opposed, not only to this amendment, but to all the amendments of which notice had been given by his Honour the Lieutenant Governor; and he expressed that opinion in spite of the observation which had been addressed by His Honour to the Honourable Mr. Robinson. It was quite clear that all the amendments proposed by His Honour hung together and were substantially one amendment, which, if put into plain language, would be nothing else than that, if the Court thought a contract was a hard bargain, it should have power to disallow it. His Honour would have proposed that, if he dared to propose it, or, as he said, if he dared to hope that the Council would accept it. As it was, this amendment was cut up into eight amendments, so as to enable His Honour to make eight speeches. That was the general observation which Mr. STEPHEN had to make on the whole of the amendments of which His Honour had given notice, and he would add that he did earnestly hope that no substantive amendment would be made which would affect the Bill as a whole. When a Bill like this had been settled by the Select Committee after the most careful consideration; when it had been discussed and re-discussed word by word, it was like a finished picture; and a member proposing an amendment at the present stage of the measure was in the position of a man who came into the room where the picture had been painted, and said, after a most cursory view of it, 'there should be more light here,' or 'there should be more shade there.' But surely the painter, who had studied the subject over and over again, was the better judge of the two. Mr. STEPHEN submitted that the proposed illustration, and in fact every one of the amendments of which His Honour had given notice, would change the whole character of the Bill from top to bottom. The position which His Honour had taken up was—"do not, in the name of equity, hold a man to a hard bargain." That meant nothing less than that the Council should put it in the power of every Munsif, every Subordinate Judge, every Tahsildár in some parts of the country, and every Small Cause Court Judge, to give vent to his momentary feelings of compassion or sympathy by cancelling a bargain after it had been made. Mr. STEPHEN could not imagine anything more unwise. He could not imagine anything more calculated to shake the whole system of law. The whole object of the Bill was to provide that people must perform bargains which they had made, with certain exceptions; and the amendments would override that law. Suppose a man came before a Judge and said—"I shall be ruined if I am held to this bargain; I made a mistake; I never meant to make this bargain." If the Judge were to enter into this, what probability was there that he would arrive at anything like a sound conclusion? It would, in fact, be a system of giving judgment by sympathy. In framing the illustration which his honour had proposed, he overlooked the possibility that the rich and powerful zamindár might have advanced a large amount of capital to his ryots; and that it might be a matter of vital importance to him that the contract should be performed, because the performance of a whole series of contracts might depend upon the decision given in the case. If place were given to these considerations, all contracts would depend upon mere passion and sympathy. The law as it now stood provided all that was necessary in the way of exceptions to the rule that contracts must be performed. It distilled the decisions of the Courts of Equity into specific propositions. Agreements were not to be kept unless the persons entering into the contract were of sound mind, unless they had attained their majority, and unless they were entered into with free consent. The exception of majority operated in a large class of cases. Sound mind was defined by the Bill to be a state of mind in which a person at the time of making a contract is capable of understanding it and of forming a rational judgment as to its effect upon his interests. Free consent was consent not caused by coercion, undue influence, fraud, misrepresentation, or mistake. It was not to be caused by undue influence, which was defined to be—

(1.) When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for

the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained.

“(2.) When a person whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that to which but for such treatment, he would not have consented, although such treatment may not amount to coercion.”

In all these cases the contract was voidable. “Fraud,” again, was widely defined: “misrepresentation” was widely defined. The rule as to “mistake” was perfectly just. If an agreement was set aside because a man said he had made a mistake, there would be an end to all certainty in contracts. A man contracted to deliver a particular quantity of jute: when the time for the fulfilment of the contract arrived, he might say “I made a mistake; I thought I could get the jute at a particular price. I now find that the price has risen: I cannot fulfil the contract.” If it were said that the man should not be bound by the contract, because it was not a prudent one, how was the Judge to know whether the contract was a prudent contract or not at the time when it was made? The Council had heard a great deal about equity; and they were told that “hard cases made bad law.” But His Honour stopped short at that proverb: he had not perhaps heard of another proverb, the converse of the proverb quoted. It was this—“bad law made hard cases.” His Honour said that there was an extremely stringent rule which was maintained by Courts of Law, and that there was another rule which was administered by Courts of Equity; and he then said that the rule which was called equity was the just rule. But MR. STEPHEN would submit that the rational way to proceed was to qualify the rule which was called “Law” by the rule which was called “Equity;” and when that was done, there would be no hard cases. Let us look at the chapter on Equity. If the Council would call to mind the amendment in section 25, of which he had given notice, they would find there a statement of the English equitable rule with regard to damages for breach of contracts, the real rule which His Honour ought to ask for. The amendment proposed was as follows:—

“*Explanation 2.*—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.”

That explanation spoke for itself. It was obviously nothing harsh to say that, if a man made a bad bargain, he ought to stand by it, in the same manner as he would stand by a fair and just one. That brought MR. STEPHEN to the particular illustration which was before the Council. He agreed so entirely with what had been said by the Honourable Members who had preceded him, that it was hardly necessary for him to say much on the subject. It appeared to him that an illustration was never good when it could not be framed without the use of adjectives; and it was much worse when the whole illustration was contained in the force of the adjectives. The whole gist of the illustration put by His Honour was contained in the words “rich and powerful,” “poor and ignorant.” If those words were left out, the illustration word read thus:—

“A, a zamíndár, induces B, C and D, ryots holding under him, to engage to grow certain produce for him in consideration of an inadequate price. The contract is voidable.”

MR. STEPHEN was sure that His Honour would not be offended if he suggested an illustration in lieu of that which His Honour proposed. Suppose it was in these words:—

“C, a rich and powerful Lieutenant Governor, of remarkable force of character, induces S, a Member of Council of feeble intellect, to sell him a horse for a totally inadequate price. C employs undue influence.”

MR. STEPHEN would ask whether His Honour’s proposed illustration would not be read by every Judge, as asserting that all zamíndárs are rich and powerful, and all ryots poor and ignorant, so that, if a zamíndár entered into a contract with his ryots for the cultivation of certain produce, he must have used undue influence.

The fact was, that the illustration really pointed, not to the question of undue influence, but, by implication, to the relative positions of zamíndárs and ryots.

MR. STEPHEN would now offer one or two observations in reference to His Honour’s remarks about juries and Courts of Equity. His Honour said that Courts of Equity entered into the question of the adequacy of the consideration for a contract. MR. STEPHEN begged

to differ from His Honour. He maintained that the rule laid down in the Bill was the rule of equity. The adequacy of the consideration was one of the elements to be taken into account in deciding whether or no a contract had been freely made, but was no ground in itself for setting a contract aside. As to the verdict of juries, and their taking an equitable view as to damages, that was a matter upon which he was entitled, he thought, to speak with some authority. Juries did, in some cases, give damages according to their view of justice. But those were exclusively cases of wrong. In cases in which one man slandered another, or seduced another man's daughter, or committed an assault, the widest possible latitude was left to the jury, who took a great variety of matters into account such as the conduct of the parties, and their social position. But in cases of contract, they did not do so. Breach of promise of marriage was an anomalous case. Damages were given in such cases for wounded feelings, and the person injured and for other matters which cannot be precisely measured; but in common cases of contract, the jury are bound to give damages according to law, and not according to their own fancy. If in such a case, the jury gave too small an amount of damages, it would be a cause for a new trial.

MR. STEPHEN had said everything that he had to say on the whole of the amendments which His Honour had proposed, and which, as he had said before, were all connected: some of them gave the Court power to use their discretion as to the adequacy of the consideration for a contract; another related to the duration of contracts. He could hardly imagine anything more dangerous than putting anything like such provisions in a Bill of this kind. He entirely agreed that on particular subjects and in particular cases, there might be special legislation. But he would entreat the Council not to put into this Code provisions suitable to particular circumstances, merely because His Honour the Lieutenant-Governor was struck with particular cases of inequality between contracting parties. If there was a necessity for special legislation for such cases, there should be most careful inquiry into the matter. Merchants, zamíndárs, and all classes interested in such legislation should be consulted; but if such cases were to be provided for in this Bill, it would be indefinitely postponed. Any suggestion put forward by any one, however high his station, that a contract extending beyond a term of three years was excessive, was a sweeping proposition which could on no account be entertained. His Honour, it was true, did except leases of immoveable property. Would it be said that a contract of partnership extending beyond three years was excessive and ought to be declared void; or that a contract for the construction of a work which lasted for more than three years was to be another exception; or that a contract for apprenticeship for more than three years should be void? MR. STEPHEN had given three instances of contracts extending over three years which occurred to him at the moment. Again, was it to be laid down that a contract not to practise as a physician, when the person sold his good-will, was to be void. MR. STEPHEN would repeat to His Honour what he had said before—"if ground for special legislation can be shown, legislate by all means; but do not ask the Council to include such provisions in a Bill of this nature."

The Honourable SIR RICHARD TEMPLE said that, as the amendment before the Council seemed likely to be lost, he did not feel disposed to enter into the question, although he concurred with what had fallen from his honourable colleague Mr. Stephen. But he must at the same time say that he did not think full justice had been done to the object which His Honour the Lieutenant-Governor had in view. That object was not confined to local or exceptional cases. SIR RICHARD TEMPLE happened to know that the evil sought to be dealt with had been greatly felt in many Provinces of the Empire: he presumed that the proposed illustration would affect some sixty or seventy millions of people. Two Honourable Members had spoken as if it was a question relating only to certain districts in the neighbourhood of Calcutta, and not to several Provinces of the Empire. Nevertheless, SIR RICHARD TEMPLE would venture to assure those Honourable Members that there were other Provinces besides Bengal which were similarly situated in respect to the question involved.

Although he had not had the good fortune to be a Bengal officer, yet he had once had the good fortune to serve under the Bengal Government as a member of the Indigo Commission, and the papers printed with the Report of that Commission showed that contracts of a kind similar to that pictured in the illustration were extremely common in many districts of Bengal. He hoped they were not so now. When the Commission sat in 1860, that class of contracts had existed for many years unchecked by legislation and the administration of the law, and had brought about one of the severest disturbances ever known in Bengal. He mentioned this in justice to His Honour the Lieutenant-Governor and with reference to what might be considered the unsatisfactory replies given to His Honour's objections by several of his colleagues on the left. Now, it certainly appeared to him that the Select Committee had so

carefully and comprehensively worded section 16 of the Bill, that they must have had in mind the very cases which His Honour contemplated when drawing up the illustration he had proposed; and that they must also have intended to meet such cases by the provision in section 23, which rendered void all contracts opposed to public policy. Now, Sir RICHARD TEMPLE should not himself have much hesitation in including under section 16 some well-considered illustration of the nature of that which had been proposed; but at the same time he thought that any illustration was hardly necessary if the wording of the section was considered. The section said—

“When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained.”

He might say that most of the bad Indigo contracts which existed in those days would fall within the terms of that section. There were, no doubt, some unexceptionable contracts, but there were at the same time a great many bad ones. That such was the fact, would be clear from the report of the Indigo Commission of which he had the honour to be a member. Well, those bad indigo contracts no doubt would have been hit by the provision of section 16 to which he had referred; and he thought that the Committee, when drafting that clause, must have had that report in their hands. What the zamíndárs did was to exercise their influence over the ryots to induce them to grow indigo on the best possible lands—lands on which the ryot did not wish to grow indigo—and that, moreover, at prices which did not then pay the ryots, although they might have been fair originally years and years previously: this went on from year to year for a long period of time, until at last many parts of the indigo growing districts burst into flames. He thought that provisions of section 16 were sufficient to meet such cases, and he thought it might be possible to adopt the illustration proposed by His Honour after purging out the objectionable adjectives. But if his honourable colleague, Mr. Stephen, still objected to the illustration, SIR RICHARD TEMPLE would not be prepared to vote for it, because it was a dangerous practice in legislation to introduce such important amendments at almost the last moment. On that ground, he was hardly prepared to give his support to His Honour the Lieutenant-Governor in the face of the remonstrance made by his honourable friend, Mr. Stephen, although he deemed it necessary to place on record his concurrence in the valuable and important observations made by His Honour.

HIS HONOUR THE LIEUTENANT-GOVERNOR said that he should not detain the Council long as regards the general question under discussion. He entirely denied the proposition set forth by his honourable friend Mr. Stephen, that “equity,” in the sense in which HIS HONOUR put it before the Council, was simply the passion of the Judge. Equity, as HIS HONOUR put it, did not mean passion, but the deliberate opinion of a competent Judge. He thought that the superior Judges in the country might be regarded as reasonable and just men. The inferior Judges, too, were good in their way, and if they made mistakes, the law in this country had provided a system of appeal by means of which matters of that kind could at once be set right. It was not a question of fact, but of law, whether in a certain case, a contract ought to be enforced or not: he said that, in such cases, we had a perfectly efficient means of setting right any mistake that might be made. Although English equity had now come to be a system of fixed law, it was originally simply the equity, in our Indian sense, of which the Council had heard so much. He believed that, in early days, the Court of Chancery was assumed to be the fountain of equity, and was not, as now, under the dominion of rigid rules of law. The people of England in those days in effect said—“We will not submit to be under the unmitigated dominion of these lawyers; we shall not give effect to hard law; we will allow certain great officers to interfere when they think that the law of the lawyers operates harshly and unjustly.” That, HIS HONOUR believed to be the origin of English equitable jurisdiction. Then, as regards the practice of juries, he had for a considerable period been daily engaged in taking the verdicts of juries, in the most important cases decided in England, and he ventured to state his belief that the general rule whereby juries estimated damages was not the two and a half years’ income rule to which the Honourable Member had referred. The practice, he rather thought, was for each jurymen to estimate the damages to which he thought the plaintiff was entitled; these sums were added together and the total divided by twelve; that was the measure of damages awarded.

The Honourable Member had said that the upshot and object of the amendments before the Council was simply to give the Court power to absolve a person from performing a hard

bargain. His Honour had opened his heart to the Council, and had explained to them the proposition which he would, if he had dared, have asked them to accept; but he had by no means asked the Council to accept an amendment so broad in its terms as that which had been described by the Honourable Member, but had confined himself to certain specified cases. They were all agreed that there must be certain exceptions to the general rule; and the only question to be decided was, how those exceptions were to be defined. The discussion had gone far abroad from the proposal which he now submitted; he could not complain that it had been so, for he himself had entered on the general subject, but he would remind Honourable Members what was now the proposition before them. The question for the consideration of the Council was simply whether a certain illustration should be added to the illustrations appended to section 16 of the Bill. He was perfectly willing to admit, with his honourable friend Sir Richard Temple—whose testimony was very gratifying to His Honour on this occasion—that the illustration was meant to point to cases which might really occur and which certainly had occurred. He felt that the section of the Bill itself was large and roomy enough for the administration of broad and equitable justice; but, after what he had heard, he might say that he still had the greatest fear, that the effect of the section with the illustrations at present appended to it would be to limit the application of the section to the particular cases recognized by the English law. The Honourable Member in charge of the Bill had told the Council that the illustrations were taken from the English law, and His Honour's great fear was that if section 16 went forth with illustrations which were in fact an embodiment of the cases which the English law recognized as instances of undue influence, there would surely be the greatest danger that, with the constant tendency to drift into English law which was so palpable, the effect would be that the Courts would accept those classes of cases, and no others, as cases of undue influence. Therefore he said that those illustrations, being purely English illustrations, and not so much explanatory, as limiting illustrations the Council should add one or two reasonable illustrations taken from Indian practice; and he submitted that the illustration which he proposed for the consideration of the Council was a reasonable illustration. He had not been convinced that it was unreasonable. On the contrary, some of the observations which had fallen from Honourable Members had led him to the belief that the illustration was a practical illustration. His honourable friend, Sir Richard Temple, had told the Council that such cases were not only known, but were of common occurrence at no very remote period: he had told the Council that he had known of hundreds and thousands of such cases. There might not be many such cases in Bengal proper now-a-days, it was true; matters had much improved; but such cases might any day occur, and he therefore thought he might reasonably ask the Council to include such an illustration amongst those under section 16. If it were objected that the illustration pointed to a particular class, he would say that it was not reasonable that it should be rejected on that account any more than English illustrations pointing to particular classes.

Then, his honourable friend, Mr. Bullen Smith, went further than that. He told the Council, not only that such cases might occur, but that undue influence was the normal relation between zamíndár and ryot. His Honour was quite sure that no man had greater experience regarding the tenure of land than his honourable friend, and when he told the Council that undue influence was the normal condition under which ryots lived, His Honour was surely entitled to give great weight to the statement.

[The Honourable Mr. BULLEN SMITH explained that he had said "influence," not *undue* influence.]

His Honour THE LIEUTENANT-GOVERNOR continued—he thanked the Honourable Member for the correction; he accepted it at once. The Honourable Member was perfectly right; all zamíndárs did not use their power improperly; then he would say "influence." The influence which a father, or a guardian, or a doctor, or a lawyer exercised over a young man or an old and feeble man, or over a young woman, was not generally "undue" influence; but as they exercised influence, the law said that if it found that the bargain which they made was a hard one, then it would hold that the influence which was exercised was "undue influence." When there were two parties, and one had great influence over the other, the law would assume undue influence when the bargain made was a hard one. That seemed to His Honour to be the principal of the English law, and that was what he desired to place before the Council in the illustration which he had submitted for their consideration.

His Excellency THE PRESIDENT said that he would avail himself of this occasion to express his cordial concurrence in the greater part of the observations which had fallen from

His Honour the Lieutenant Governor, and in the general scope of the illustration which he had proposed. His EXCELLENCY agreed with His Honour entirely and thoroughly that a Bill for this country, for India, should be furnished with illustrations which touch on subjects which were familiar to the people. It had been observed by the Honourable Mr. Stephen that to single out a particular class of men and a particular class of contracts by way of example, was to throw a certain amount of obloquy upon them. That, perhaps, might be the case if the illustration was of a decidedly irritating character. But if an illustration suitable to the country was to be selected, it appeared to His EXCELLENCY that it must be selected from the field of that class of contracts in which undue influence or abuse was most likely to exist. There were two classes of contracts in which this description of abuse was most likely to occur: one of these classes were contracts by which persons bound themselves for an exceptionally long or unlimited period of time to give their labour, especially to planters and zamíndárs; and the other was a class of contracts by which a person engaged to raise a particular description of crop for an excessive number of years, and agreed to give the yield of the crop at stated prices. He thought that an illustration properly drawn and bearing on this question, might, most properly and advantageously be introduced.

With reference to the abuses of contracts for labour, His EXCELLENCY presumed that those abuses had been provided for by special legislation which had the effect of protecting the poor, helpless and ignorant from inequitable and unjust contracts. But there was no special legislation which affected the second class of contracts, in which the poor engaged to produce a particular description of cultivation and engaged to deliver the produce at fixed prices for excessive periods of time. He thought, therefore, that an illustration properly worded, with reference to this particular class of contracts, might be advantageously introduced into the law. The Honourable Mr. Bullen Smith had observed that it was not right in a general law like this to interfere with the relations between capital and labour, wealth and poverty, by insinuation; and that the proper way to deal with this question was by special legislation. No doubt, special legislation might be more appropriate; but it seemed to His EXCELLENCY that those questions were of a very delicate and difficult character. He therefore did not abandon the hope of introducing into the Bill an illustration of this kind, properly couched and in a better form, and he thought that such an illustration might have something of the effect of special legislation of the kind suggested. He apprehended that, if a Bill of this kind went forth to the country without any reference to the descriptions of contracts under which it was alleged abuse and oppression had been carried on, he was not without apprehension that the publication of such a law without some illustration such as had been alluded to, might lead the poor to suppose that no amount of pressure exercised by unremunerative contracts, would have any effect in vitiating them; and he was not without apprehension that those who exercised oppression and took advantage of their position in reference to the poor, might think that this law recognized their doings and, in fact, vested them with greater power, and the consequence might be that they might hope to be able to carry on the practices previously complained of with greater safety. His EXCELLENCY therefore considered that an illustration of that kind might be of the greatest advantage: it might give confidence to the poor and weak and inspire the rich and powerful with prudence, and he would therefore give his warm concurrence to an illustration couched in a judicious form. At the same time, he did not think that it would be possible to adopt the illustration as it stood, as its language was of a decidedly irritating and provocative character: and if His Honour the Lieutenant-Governor persevered in presenting the illustration in its present form, His EXCELLENCY would be under the necessity of voting against it. But if His Honour would substitute for his amendment an illustration in a modified form, His EXCELLENCY should be glad to vote for it.

His Honour THE LIEUTENANT-GOVERNOR then proposed to substitute the following illustration for the amendment which he had at first proposed:—

“A, a zamíndár, by his influence, induces B, C and D, ryots holding under him, to engage to grow certain produce and to deliver it to him for an excessive term of years in consideration of a price obviously inadequate. A employs undue influence over B, C, and D.”

His Honour entirely respected the motives which induced his honourable friend, Mr. Bullen Smith, to object to the use of the term “zamíndár” and “ryot.” If these were times when blood was hot and faction was strong, His Honour would have considered those motives as sufficiently binding upon the Council. But we lived in happier times; and he believed that an illustration, like the one he had last proposed, might be introduced into the Bill with

perfect safety. We took advantage of a time when the relations between the zamíndárs and ryots were amicable, to prevent anything of the kind which occurred before, taking place again in future. It seemed to His Honour that, having before them the great evils of former days, the object of the Council should be to point to the objectionable nature of inequitable contracts between particular classes. As in the English examples which were given, there was a connection and dependence and a habitual state of influence between the parties to the contracts, so in the Indian example which was proposed, there was a habitual state of influence and inter-dependence between the ryot and the zamíndár; and he wished to fix the fact that when, under such circumstances, a zamíndár made a hard and inequitable bargain, the contract should be held to be vitiated by reason of undue influence.

The question being put,
The Council divided—

AYES.

His Excellency the President.
His Honour the Lieutenant-Governor.
Honourable Sir R. Temple.
Honourable Mr. Ellis.

NOES.

Honourable Mr. Stephen.
Major General the Honourable H. W. Norman.
Honourable Mr. Inglis.
Honourable Mr. Robinson.
Honourable Mr. Chapman.
Honourable Mr. Stewart.
Honourable Mr. Bullen Smith.

So the amendment was negatived.

His Honour THE LIEUTENANT-GOVERNOR said that his first amendment having been lost, he would ask the Council to omit from section 16 the English illustrations, which would have the effect of very much limiting the operation of the section. The section, he thought, was a good one; but if those illustrations were allowed to stand while no Indian illustration was admitted, they would greatly lead to limit the section to the particular cases laid down by the English law. His Honour appealed to the Council to leave out the illustrations, the omission of which could do no harm, as a moderate concession to the views upon this subject which he had submitted to the Council.

The Honourable MR. STEWART said that, inasmuch as the illustrations seemed to him duly to illustrate the proposition of the text, and as it was desirable that the Courts should be furnished with some illustrations for their guidance in a section like section 16, he thought the illustrations ought to be retained.

The Honourable MR. CHAPMAN was of opinion that, after the discussion that had taken place, the most impartial course would be to omit all illustrations. His reason for voting against His Honour's original illustration was that he thought it was markedly directed against a particular class. In his (MR. CHAPMAN'S) opinion, the Bill already provided for cases in which agricultural, in common with other descriptions of contracts, ought to be set aside. If he had thought otherwise, he would have supported His Honour; but such being the case he did consider, especially after what had passed, that it was just possible, if the other illustrations were retained, and His Honour's excluded, that the Courts might think the section relating to undue influence was not applicable to these agricultural contracts, which no doubt were of the most frequent occurrence. He thought, therefore, the fairest course under the circumstances would be to omit all illustrations, and he would vote accordingly.

The Honourable MR. ROBINSON said:—"My Lord, I would maintain the illustrations; they are needed by our judicial officers to direct them to the principle of the text of the law. I have already said that I believe the authoritative rulings of English case-law are by far the best that can be used in a law of this kind, and the discussion which has already taken place on the subject of the proposed interpolation which has now been negatived, only shows how important it is that they be retained. I think that the proposed omission of the illustrations will damage the perspicacity of the law on the ground which is not fair."

The Honourable MR. ELLIS said that had there been no discussion at all on the point on which the Council had just come to a determination, he should then have said that it was quite unnecessary to omit the illustrations which stood under section 16 for the illustrations would have been taken in their proper sense as illustrating and not limiting the operation of the section. Or had the illustration first proposed by His Honour the Lieutenant-Governor been put to the vote and negatived, MR. ELLIS would still have said that, as the amendment had been rejected for obvious reasons, namely, its pointed invidiousness to a certain class of the people, it was not necessary to omit the other illustrations; for there were reasons for omitting His Honour's illustration, as first proposed, without omitting the illustrations which stood in the Bill. But now that the Council had deliberately rejected an

illustration which they were all agreed would have properly been an illustration of undue influence, he thought it would be prudent to omit all the illustrations which stood in the section; and he would therefore support the motion before the Council.

The Honourable MR. STEPHEN thought that the illustrations explained the Section and should stand. He could not imagine why they should be omitted, because the Council had thought fit to reject some other illustration that had been proposed.

His Excellency THE PRESIDENT said that, after what had passed, it appeared to him that the retention of the illustrations would rather obscure than explain the intention of the section, and he would therefore vote for their omission.

The question being put,

The Council divided.

AYES.

His Excellency the President.
His Honour the Lieutenant-Governor.
Honourable Sir R. Temple.
Honourable Mr. Ellis.
Major General the Honourable H. W. Norman.
Honourable Mr. Inglis.
Honourable Mr. Chapman.

NOES.

Honourable Mr. Stephen.
Honourable Mr. Robinson.
Honourable Mr. Stewart.
Honourable Mr. Bullen Smith.

So the amendment was carried.

His Honour THE LIEUTENANT-GOVERNOR then moved that clause one of section twenty-five and the corresponding illustration (b) be omitted. He said that the clause to which he objected, and which he proposed to omit, provided that a contract without any consideration would be valid, if only it was in writing and had been registered. That was a provision which His Honour thought would not be found in the Contract Law of any country in the world. It amounted to this that if a man was induced to make a promise, although he had received no consideration for that promise, if the promise was a written one and had been registered, he should be bound by it. That was contrary to the principles of the Roman Law, which was the foundation of modern Civil Law, and contrary to the practice of almost every country in the world. He had thought that no consideration was very much the same as a totally inadequate consideration. But it had been suggested to him as an overwhelming argument that it was always the practice of the Native lender to say to the borrower—“You must register the bond before you get the money,” and after the bond had been registered, he might say—“Now you have registered the bond, you shall not have a farthing of the money.”

[The Honourable Mr. STEPHEN said that that would be a case of fraud.]

His Honour the LIEUTENANT-GOVERNOR continued:—It would be on the other party to prove the fraud. On the whole, therefore, he thought that as this provision was a most unusual one, and one not to be found in the Contract Laws of other countries, it ought to be struck out.

The Honourable MR. STEPHEN did not attach much importance to this provision, which was simply intended to represent the English rule that, when you made a contract, you need not prove the consideration. He thought it was superfluous provision, and he would not object to its omission.

The Honourable MR. CHAPMAN would have no objection to the omission of this provision if family affection were held to be a sufficient consideration in certain cases, such as a person undertaking to refrain from service in consideration of being adopted as a son. If cases such as that were provided for, he would have no objection to consent to the omission of the provision under discussion.

The question being put,

The Council divided—

AYES.

His Excellency the President.
His Honour the Lieutenant Governor.
Honourable Mr. Stephen.
Honourable Mr. Ellis.
Honourable Mr. Inglis.
Honourable Mr. Robinson.
Honourable Mr. Chapman.

NOES.

Honourable Sir R. Temple.
Major General the Honourable H. W. Norman.
Honourable Mr. Stewart.
Honourable Mr. Bullen Smith.

So the amendment was carried.

The Honourable MR. STEPHEN then moved that the following be introduced as clause 1 of section 25 :—

“(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless.”

The Motion was put and agreed to.

HIS HONOUR THE LIEUTENANT-GOVERNOR then moved that the following words, after the word “promises,” in line 3 of section 37, be omitted :

“or make compensation to the promisees for the non-performance of them.”

He hoped the Honourable Member in charge of the Bill would not object to the omission of those words : their omission would only have the effect of clearing the ground for the next amendment.

The Honourable MR. STEPHEN thought the words were mere surplusage, and he would not object to their omission.

The Motion was put and agreed to.

HIS HONOUR THE LIEUTENANT-GOVERNOR then moved that, in section 73, line 6, the word “reasonable” be inserted before the word “compensation.” He said that this amendment was also one to which he hoped the Honourable Member in charge of the Bill would not object—not that he hoped the insertion of the word “reasonable” would be of any considerable practical effect, but he wished to mark the fact that the damages which the Court gave for breach of a contract should be “reasonable” rather than “arithmetical ;” that all the circumstances attendant upon the making of the contract should be taken into consideration ; and that the Courts should be empowered only to give that kind of reasonable compensation which a reasonable jury would award for a breach of contract.

The Honourable MR. STEPHEN said that he should certainly oppose this amendment, because His Honour the Lieutenant-Governor attached so much importance to it. If you gave a reasonable definition of the word “reasonable,” the effect of the amendment would come to very little. The words of the section were taken from the *English treatises on the subject*, and formed the only rule which you could lay down in estimating the loss which a party suffered from the breach of a contract. The cases given did really supply the rule by which the Court was to estimate the damages ; but in many cases the damages must, from the nature of things, be arithmetical. No Court would give damages for ten years at once ; it would consider what loss or damage accrued to the party in the usual course of things from the breach of contract. The inconvenience could be remedied by rescinding the contract with one party and making it with another. MR. STEPHEN objected to the amendment, because it formed part of the subsequent amendment on the paper.

HIS HONOUR THE LIEUTENANT-GOVERNOR said that the object of his amendment was to enable the Courts to test the reasonableness of compensation to be awarded. The Courts, it appeared to him, and sometimes given excessive and unreasonable damages, and they had been led to do that by looking at the arithmetical result of the breach of contract. All he wished was that the Courts should be told that, when they came to consider the amount of damages to be awarded for the breach of a contract, they should consider whether the compensation they proposed to award was reasonable or unreasonable, all things being taken into consideration and the arithmetical calculations being checked by common sense.

The question being put,

The Council divided.—

AYES.

His Honour the Lieutenant-Governor.
Honourable Sir R. Temple.
Honourable Mr. Inglis.

NOES.

His Excellency the President.
Honourable Mr. Stephen.
Honourable Mr. Ellis.
Major General the Honourable H. W. Norman.
Honourable Mr. Robinson.
Honourable Mr. Chapman.
Honourable Mr. Stewart.
Honourable Mr. Bullen Smith.

So the amendment was negatived.

His Honour the LIEUTENANT-GOVERNOR said that he now came to another set of amendments. The amendments which he first submitted to the Council had for their object to show whether a contract should, under certain circumstances, be held to be void: the question which he now proposed for the consideration of the Council was the question of damages. His object in proposing these amendments was to give the Courts that amount of reasonable discretion which was exercised as to the amount of damages by juries in England. He would again take the case of the good-looking scoundrel and the young lady with £100,000; and he would say that the consideration in that case must be held to be most inadequate. In that case, the Court, or jury might say "the man by his good looks and bad arts has induced the young lady to make a promise of marriage, and he has thereupon taken out a license for the marriage and bought a new coat; he has suffered damages to this extent, and we don't think he has suffered any other damages: we will therefore take into consideration the damages he has suffered and give him a decree for damages to that extent only." He would first move amendment six, namely, that the following clause be added to section 73:—

"When the consideration for the agreement was, at the time when it was made, very inadequate, below the market-price, or such as would not have induced a prudent and independent man to make the agreement, the circumstance may be taken into consideration in determining what compensation for breach of the contract is reasonable."

The Honourable Mr. STEPHEN observed, that he had said almost all that occurred to him upon this subject, when speaking upon the first illustration which His Honour the Lieutenant-Governor had proposed to add to section 16. The amendment now before the Council put the matter in a broader way. The only illustration which His Honour had put was that of a case of breach of promise of marriage, but if the Council would look into the matter, MR. STEPHEN thought they would perceive that such a case hardly illustrated the subject at all. An action for a breach of promise of marriage was hardly an action for a breach of contract, but an action for wrong. The cases to which the provision before the Council would apply, were purely cases of contract. A man contracted to sell goods at a certain price, and failed to do so. Under the amendment as it was drawn, you would put it into the power of the Court to say, with the party who had broken the contract, that the consideration was very inadequate. You would set the Court to consider whether the consideration was adequate or not, and whether the contract was one which a prudent and independent man would have made. It would put every contract which came before the Court under the arbitration of the Judge: the Judge was to say whether the man ought to have made the contract, and it would really put an end to all liberty of contract whatever. It put a degree of power into the hands of the Judge which MR. STEPHEN could not consent to give.

The Motion was put and negatived.

His Honour the LIEUTENANT-GOVERNOR had not much hope after what had passed that the last amendment would have been accepted, but he must beg the special attention of the Council in regard to the next two amendments which he had upon the paper. It seemed to him absolutely essential that there should be some limit of time with regard to the duration of contracts: it was almost impossible that there should be no law upon that point. It almost amounted to a question whether, as the law stood, and as it would stand under the Bill, a man might contract for slavery, that was to say, make a contract of service for life. If a man might not contract for life, under the rule that it would be a contract contrary to public policy, then might he contract for fifty years, or thirty years, or twenty years? He thought it should be permitted to the Courts to say: "This is an unfair and inequitable contract, and we cannot enforce it;" but there was nothing in the Bill to prevent the Courts enforcing such a contract as that. The Courts might say that a contract for service for life or for fifty years was contrary to public policy; but would never be justified in saying so in the case of a contract for twenty years, or for twelve years, or for five years? There was nothing to settle that question.

His Honour was sanguine that, in this matter, he would have the support of his honourable colleague Mr. Bullen Smith, who knew the people of this country, and how easily they were induced to enter into unreasonable contracts. Contracts for an unreasonable period, His Honour thought, ought not to be enforced in all their literal strictness; it was a very serious thing that they should be enforced. As it appeared to him that this point had not been taken into consideration by the Select Committee, he thought that the Council was bound to give the matter their attention rather than that they should do injustice; and he would therefore ask every Member of the Council to take the matter into his serious

consideration, and to come to the decision which seemed to him to be just. His amendment consisted of two parts; one was that, in the case of contracts for excessive terms, the Court, in assessing damages, should be allowed to take the term of contract into consideration. That was the first of the two amendments which he now moved, and it ran as follows:—

“When the term over which the obligation to perform the contract extends is unusual or excessive, the circumstance may be taken into consideration in determining what compensation for breach of the contract is reasonable.”

The second amendment which he had to propose was a more difficult proposition, inasmuch as it was more definite, although we had not had the opportunity of taking advice upon the subject, he was not quite without hope that the Council would consider it a reasonable proposition. The second amendment was—

“In contracts for the lease of immoveable property, no term is excessive. In all other contracts, when the term for the performance of the contract extends beyond three years from the date of making the contract, such term shall be deemed to be excessive, unless it be shown to be reasonable and usual in contracts of a similar character.”

He believed that in by far the greater portion of contracts relating to labour or service or to moveable property, they ought to be, and would be, performed within three years, and that those the performance of which extended over a longer period than three years were exceptional. He by no means proposed to make such contracts illegal; but all that he desired was that the Courts should consider them as exceptional, unless it could be shown that such contracts were of a usual kind. The Honourable Member in charge of the Bill had given three instances of contracts which usually extended over a period of three years. The first case he put was the case of a contract for marriage. His Honour thought that, if a man promised to marry a lady five years hence, the performance of the contract should not be enforced. Then, with regard to contracts of partnership, His Honour did not think that a partner was usually bound down for more than three years; he thought that a partner was always at liberty to dissolve partnership on giving notice. His honourable friend, Mr. Bullen Smith, would be able to tell the Council if that were not so. The other instance of a contract extending over three years which had been given was the case of the sale of the good-will of a profession; this the Council would admit was an exceptional one, as sales of that kind were very rare in this country. On the whole, His Honour was firmly of opinion that contracts for excessive terms should be dealt with in the way he had proposed in the two amendments which he had read to the Council.

The Honourable Mr. STEPHEN said that it was quite obvious that His Honour's imagination must be struck by some case of long personal service, to induce him to propose a particular rule of this kind for all cases. He asked the Council to make a provision of this kind, and showed that it might be useful to prevent contracts of long personal service: his whole argument came to this form of long personal service. He admitted that if the term of contract was long enough, it might amount to slavery, and that a contract for slavery would be void as being opposed to public policy. If, on the other hand, the contract was a case of bad bargain, and was made under great disadvantages, it would be a case of undue influence. Suppose a man made a bargain to serve another for ten years and failed to keep the contract. the damages in such a case would not be calculated at what the wages for ten years would amount to, or the amount of profit which the master would derive from the ten years' service; but the damages would be calculated rather on the amount of inconvenience that he had suffered, and the expense that he had been put to in getting the services of another man. The Committee did not deal with the subject of specific performance: they did not say that the man must work to the last drop of his blood; what they proposed was that the breaker of a contract must pay that amount of damages which naturally arose in the usual course from the breach of contract. If an arbitrary limit was put, the Council would be acting in the dark and would not know what they were doing.

The Honourable Mr. BULLEN SMITH said that, as His Honour had appealed to him, he would say that he did not hesitate to declare that the amendments proposed allowed to the Courts an amount of discretion which he should be sorry to see given to many of the minor Courts of the country. With regard to the duration of contracts, he, himself, would not object to the number of years that was proposed; but it appeared to him that the Council were not in a position to come to an authoritative conclusion in the matter. He knew of no contracts which went beyond five years; and contracts for twenty years were absolutely beyond his knowledge. That was his information on the subject at present; but as he had

said before, he did not think the Council were in a position to come to a determination upon the matter.

The Honourable Mr. STEWART said that he was not in a position to say that three years was the extreme limit within which a contract should be considered reasonable. He thought this was a subject on which a great deal of evidence would be required.

The question being put,

The Council divided—

AYES.

His Excellency the President.
His Honour the Lieutenant-Governor.
Honourable Sir R. Temple.

NOES.

Honourable Mr. Stephen.
Honourable Mr. Ellis.
Major General the Honourable H. W. Norman.
Honourable Mr. Inglis.
Honourable Mr. Robinson.
Honourable Mr. Chapman.
Honourable Mr. Stewart.
Honourable Mr. Bullen Smith.

So the amendment was negatived.

His Honour THE LIEUTENANT-GOVERNOR's motion was then put that the following clause be added to section 74 :—

“In contracts for the lease of immoveable property, no term is excessive. In all other contracts, when the term for the performance of the contract extends beyond three years from the date of making the contract, such term shall be deemed to be excessive, unless it is shown to be reasonable and usual in contracts of a similar character.”
The Motion was put and negatived.

The Honourable Mr. STEPHEN said the first amendment which he had upon the list was simply with the object of consolidation. There was an Act for avoiding wagers, Act XXI. of 1848, which had been repealed and re-enacted by this Bill; and Act VIII. of 1867 made an exception to that Act. It was proposed to put that exception into a section, and to repeal the Act by the schedule. The effect of the amendment, which was as follows, would be to strike out a single Act from the Statute-book :—

“That Act VIII. of 1867 be placed in the schedule of repealed Acts, and that after and as part of, section thirty, the following be read :

‘This section shall not be deemed to render unlawful a subscription or contribution’ or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards to be award to the winner or winners of any horse-race.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.”

His Honour THE LIEUTENANT-GOVERNOR said he must oppose this proposal by every means in his power. He regarded it, he might almost say, with horror, as a piece of class legislation suddenly proposed without any due notice. He did not mean to express any opinion as to the merits or demerits of horse-racing. He believed there was no pretext whatever for suggesting that, in this country, it led to improvement in the breed of horses or anything of that kind. It was an amusement—a very innocent amusement—to a good many people; an amusement far from innocent to a great many other people who were led into gambling and bad courses. On the whole, he believed that the evil, a good deal, preponderated over the good. Be that as it may, he objected to special legislation to legalize this particular form of gambling by excepting it from a rule which affected gambling in general. And what he most especially and emphatically objected to, was the grossly partial and one-sided character of the clause which would legalize the gambling of the rich whose stake was five hundred rupees and upwards, but left out in the cold the gambling of the poor whose stakes were not so high. The result of this clause would be that, if poor men got up a donkey-race, it would be beyond the pale of the law; but if rich people subscribed large sums to a horse-race, the law would aid them. That was on a par with the justice which, in England, shut up the small gambling-shops, but left Tattersalls untouched; he for one would have no part in such an unfairness.

Turning, again, to the general question, he by no means proposed to put down horse-racing. Excepting certain forms which came under the Penal Code, any one who chose might pay their money and horse-race in a decent manner to their heart's content, for anything he was now going to say; but he did most strongly object to that which was the sole object of the proposed clause, namely, to enable those who could not or would not pay down their money to gamble on credit—on tick, to use a vulgar expression. The effect of this enactment would be that, if the promoters of such affairs were not able to get them up upon ready-money principles, they might induce rash people to put down their names, relying on the law to enforce such promises, although, by the general policy and terms of the law, such promises could *not* be enforced. It must be distinctly understood that the general provision was that such promises were not a ground of action, and His Honour thought that to make this exception in favour of one particular class of transactions was most undesirable. He thought that horse-racing on credit, as well as any other such gambling, was in every way to be discouraged and not to be encouraged by this special provision.

Under all the circumstances, then, His Honour did confidently hope that this Council would not allow this great law to be disfigured by what he again must call this shocking piece of class legislation: there should not be such a blot on this great Code of Contract. We should not by a sudden surprise allow such an excrescence favouring the rich and influential and denying the poor to be tacked on to it and to go down with it to posterity. He would therefore move that all the words in the motion after the words "repealed Acts" be left out.

The Honourable Mr. STEPHEN said that, in answer to the remarks which had fallen from His Honour the Lieutenant-Governor, he would observe that the rule was, that amendments which affected the principle of a Bill, must have notice given of three days. The question before the Council was purely one of consolidation. The Wagering Act was re-enacted in section 30 of this Bill; this was a qualification upon that Act which was left out by mistake. He doubted whether His Honour had considered the subject when he said that this would be a blot in the Bill, and gave vent to such vehement feelings, and looked upon Act VIII. of 1867 with such horror. Mr. STEPHEN did not know whether it was necessary to have passed Act VIII. of 1867 at all; but as the Act had been passed, it was thought well to include it in this Code. The effect of the amendment was simply to leave the law as it stood.

The Honourable Mr. ELLIS said that it did not appear to him that, by adopting this amendment, the Council were in any way legalizing horse-racing; they were merely saying that the provisions of section 30 were not to render unlawful certain proceedings which were allowed under Act VIII. of 1867. It seemed to him that the provision was a harmless one. He objected very strongly to a change in the law being made without any opportunity for discussing whether there was anything objectionable in the law as it stood.

Major General the Honourable H. W. NORMAN said that he agreed with His Honour the Lieutenant-Governor, that this provision would be a blot in the Bill, although he would not go so far as His Honour and propose the repeal of an existing Act without due notice. He regretted very much that Act VIII. of 1867 had a place in the Statute-book; but as it existed, he could not assent to its repeal in this irregular manner.

The Honourable Sir RICHARD TEMPLE thought His Honour the Lieutenant-Governor would admit that it was out of place to repeal an Act without due notice. Act VIII. of 1867 was passed in due course after full discussion; and if His Honour thought the Act was objectionable, the proper course would be for him to take means to ensure its repeal after all the forms of proceedings for the introduction and discussion of a measure had been observed.

His Honour THE LIEUTENANT-GOVERNOR said that he objected to Act VIII. of 1867 being consolidated with this great Code by a side-wind.

The Honourable Mr. STEPHEN said that the Act upon which Act VIII. of 1867 was a rider, was repealed by this Code, and it was much better therefore that that Act itself should stand in its proper place as a rider upon section 30 of the Code; it was a part of the law of the land, and the effect of his motion was simply to consolidate the law. As to the taking of the Council by surprise, he could only say that, if His Honour knew the trouble and worry of looking through all these Acts and finding out what portions of it were necessary, he would not have raised such an objection.

The question being put,
The Council divided:—

AYE.
His Honour the Lieutenant-Governor.

NOES.
His Excellency the President.
Honourable Sir R. Temple.
Honourable Mr. Stephen.
Honourable Mr. Ellis.
Major General the Honourable H. W. Norman.
Honourable Mr. Inglis.
Honourable Mr. Robinson.
Honourable Mr. Chapman.
Honourable Mr. Stewart.
Honourable Mr. Bullen Smith.

So the amendment was negatived.

The Honourable MR. STEPHEN'S motion was then put and agreed to.

The Honourable MR. STEPHEN then moved the following amendments :—

That the following explanation be added to section 25 :—

“*Explanation 2.*—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given;”

and that the following illustrations be added after illustration (e) to section 25 :—

“(f.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

“(g.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.”

That the explanation to section 75 be omitted, and the following be substituted :—

“*Exception.*—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or gives any bound for the performance of any public duty or act in which the public are interested under the provisions of any law or under the orders of the Government of India or of any Local Government, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

“*Explanation.*—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do any act in which the public are interested.”

The Motion was put and agreed to.

The Honourable MR. STEPHEN then moved that the Bill as amended by the Committee be passed.

The Motion was put and agreed to.

CARRIERS BILL.

The Honourable MR. STEPHEN also introduced the Bill to amend the law relating to Carriers. He said, this Bill if it had been drawn a year ago, would have been included in the Code of Contract law which had just been passed. But that course was not taken, and we proposed to introduce it at rather a late period. We consulted the Departments of the Government which were principally interested in the matter, especially the Public Works Department, and we received a strong representation from that Department that the liberty of the Railway Companies in the matter of contracts should be restricted to a degree far beyond that to which it was restricted at present, and that they should be prohibited from limiting their liability on contracts by special conditions. It was considered that it would be improper to carry out a measure of that kind without consulting those concerned; and, accordingly, the Bill was taken out of the Contract Law, and it was proposed that it should be introduced separately and read as part of the Contract Law when it was passed. The opinion of the Government of India upon which those measures were taken would form a part of the papers in connection with this Bill. All that he would now do, would be simply to introduce the Bill.

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 16th April 1862.

H. S. CUNNINGHAM,

*Officiating Secretary to the Council of the Governor General
for making Laws and Regulations.*

CALCUTTA,

The 9th April 1872.

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 Tuesday, the 16th April 1872.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of INDIA, K.T., *presiding.*

His Honour the LIEUTENANT-GOVERNOR of BENGAL.

His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.

The Honourable JOHN STRACHEY.

The Honourable Sir RICHARD TEMPLE, K.C.S.I.

The Honourable J. FITZJAMES STEPHEN, Q.C.

The Honourable B. H. ELLIS.

Major General the Honourable H. W. NORMAN, C.B.

The Honourable J. F. D. INGLIS.

The Honourable W. ROBINSON, C.S.I.

The Honourable F. S. CHAPMAN.

The Honourable R. STEWART.

NATIVE PASSENGER SHIPS ACT AMENDMENT BILL.

The Honourable Mr. CHAPMAN moved that the report of the Select Committee on the Bill to amend Act XII. of 1870 (the Native Passenger Ships Act) be taken into consideration. He said:—"My LORD, Act XII. of 1870 was passed with a view of affording pilgrims proceeding to Jeddah still further protection from the cruel hardships to which they were subjected from overcrowding.

"Owing, however, to no specific mention of steamers having been made, the Law Officers entertained doubts as to the applicability of the Act to that class of vessels. Hence the necessity for this Bill.

"Opportunity has been taken to introduce certain alterations. It is proposed to make the Act applicable to Native Passenger Ships proceeding to every part of the world. Provision has been made to meet the case of foreign vessels leaving Turkish Ports with Native passengers bound to India. It is proposed that, whenever a Convention has been entered into between Her Majesty's Government and that of the Porte, the Commander of any vessel that arrives in a British Port without a clean bill of health obtained in the manner provided for in the Bill, that is to say, with more than the authorized number of passengers, shall be liable to a summary fine of one thousand rupees. This will be the most effectual and practical way of dealing with what is likely to be an increasing evil.

"It was originally proposed to alter the number of persons requisite to constitute a Passenger Ship from thirty to sixty. The object of this alteration was to except vessels belonging to the Peninsular and Oriental, the British India, and other well regulated Companies from what might be fairly considered vexatious and unnecessary provisions. But it has since been pointed out by the Department of the Government immediately interested in this matter, that there are a large class of small vessels carrying less than sixty passengers to the Persian Gulf; and that it would be inexpedient to exempt them from control and supervision. The old provisions have therefore been adhered to; but it is proposed to give the Local Governments discretion to exempt any vessel or class of vessels carrying not more than sixty passengers. This exemption will not of course be allowed in the case of steamers engaged in the Pilgrims-carrying trade; it is proposed, however, to give discretionary power, in the case of those vessels, not to insist on the full amount of space requisite in the case of sailing vessels. This concession has been made in consideration of the comparatively short time likely to be occupied in the voyage.

"An amendment has been introduced with a view to saving the provisions of the Local Act XXV. of 1859. It is hoped that the law, as now proposed to be amended, will prove effectual for the suppression of what are believed to be great abuses and cruelties."

The Honourable Mr. STRACHEY said that this Bill having been originally introduced at the request of the Executive Government in the Department of which he had charge, he

thought it right to say that he believed that the Bill, with the amendments that would be proposed by his honourable friend, Mr. Chapman, would carry out all that was necessary on the subject. There was one other change in the law contained in section 3 to which he did not desire to offer opposition, but which it was right to notice, to the effect that, in the case of a steam vessel, the space to be appropriated for passengers might, under certain circumstances, be reduced. He was of opinion that that section would require to be very carefully worked, and that it would be necessary for the Local Governments to take very great care before they allowed the space to be reduced.

The Motion was put and agreed to.

The Honourable Mr. CHAPMAN then moved the following amendments :—

That after, and as part of, the section substituted by the Bill for section two of Act XII. of 1870, the following be read :—

“The Local Government may, if it thinks fit, exempt any steamer or class of steamers, carrying not more than sixty passengers, being Natives of Asia or Africa, from the operation of this Act, for any period not exceeding one year.

“Such exemption may be from time to time renewed for any period not exceeding one year.”

That, in the definition of ‘Native Passenger Ship’ in section two of the amended Bill, instead of the words “sixty passengers” there be read the words “thirty passengers.”

That the following section be added to the Bill as section six :—

“6. After section 38 of the said Act the following section shall be added as section 39 :—

“39. Nothing in this Act shall affect the provisions of Act XXV. of 1859 (*to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal*).”

The Motion was put and agreed to.

The Honourable Mr. CHAPMAN then moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

PATTERNS AND DESIGNS BILL.

The Honourable Mr. STEWART moved that the report of the Select Committee on the Bill for the protection of Patterns and Designs be taken into consideration. He said that respecting the principle of the Bill he did not think he could add anything to what he had already said. It provided that, in the case of local inventors of patterns and designs, they should, on compliance with the provisions of the Act, enjoy protection for their inventions for the space of three years: The English Acts provided for such protection for various periods ranging up to three years; but it was deemed to be more suitable that the period here should be the uniform one of three years. The inventors of patterns and designs who had registered their designs in England would enjoy in India the same rights and privileges as in England, and their enjoyment would be enforced in the same way, with this difference that, in England, certain remedies by way of fines were provided, while here the remedy would be of a purely civil nature.

The Bill had the approval of his honourable friend, Mr. Stephen, and it might be satisfactory to the Council to know that Mr. Bullen Smith also entirely agreed in the propriety of the Bill. He (Mr. Bullen Smith) had brought the subject to the notice of the Committee of the Chamber of Commerce, and the Bill had met with general approval there. Mr. STEWART regarded the Bill as suitable to the necessities of the times and of commerce, and hoped the Council would regard it favourably.

His Honour THE LIEUTENANT-GOVERNOR thought the Council were well aware that, as regards the whole subject of Patents for inventions, there was a great difference of opinion, and if he were willing to allow this Bill to pass, he by no means committed himself to an opinion in favour of any patent law. Still, if Patents and Copy-rights were to be protected by law, there seemed to him to be no reason why patterns and designs should not have the same privilege accorded to them. No objection appeared to have been taken to the Bill; and His Honour attributed great weight to the opinions of the mercantile members of the Council, Mr. Bullen Smith and Mr. Stewart. The only point upon which he wished to have an opi-

nion was as regards the words in section 4: "the same civil remedies in respect of any infringement thereof in British India, as those to which he would be entitled in the United Kingdom." He wished to know whether there was any danger of a cumbrous chancery procedure being introduced into this country in these matters.

The Honourable Mr. STEPHEN did not think that the words to which His Honour the Lieutenant-Governor referred would alter the form of procedure prevailing here in the least degree: by "civil remedy" was simply meant that fines which were leviable in England should be precluded. The words would have the effect of enabling a man to obtain a decree to restrain a person from wrongfully using a pattern or design of which he was the owner. He thought that no doubt could be entertained as to the meaning of the provision. The Bill was likely to be put in force only in rare instances, and in the large commercial towns in which English law was well understood.

As regards the Bill itself, he accepted what had been stated by His Honour that it did not pledge any one upon the difficult subject of Patents: the whole object of the Bill was simply to make actionable in India what was actionable in England. At present, if a person sustained wrong in the matter of a pattern or design, say in Rangoon, he had to go for his remedy to Westminster Hall, and the whole effect of the Bill would be to give a remedy on the spot.

The Motion was put and agreed to.

The Honourable Mr. STEWART then moved that the Bill be passed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Honourable Mr. STEPHEN presented a supplementary report of the Select Committee on the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter.

The Honourable Mr. STEPHEN also moved that the reports of the Select Committee on the Bill be taken into consideration. He said:—"My Lord, it is now about eighteen months since I had the honour of introducing this Bill, and I need not repeat what I then stated as to the reasons which rendered its introduction desirable. There is, however, a great deal to be said upon the provisions of the Bill itself.

"I need hardly remark that it is one of the most important enactments which can be brought before this Council. I am not sure that it may not be regarded as the most important, perhaps, with the exception of the Penal Code, as it is in reality little less than the body of law by which the practical every-day business of governing this vast empire is carried on by a body of men—I mean the district officers—of whom it is difficult to say whether the smallness of their number in comparison to the incredible magnitude of their duties, or their success in performing the immense task entrusted to them, is most remarkable. The Civil Service, or at all events its most distinguished members, do not appear to bear any particular love to lawyers. I hope they will not be affronted if a lawyer takes the opportunity of his last public appearance in this country to express the profound respect with which they have impressed him. I have seen much of the most energetic sections of what is commonly regarded as the most energetic nation in the world; but I never saw anything to equal the general level of zeal, intelligence, public spirit and vigour maintained by the public service of this country, and nothing could give me greater satisfaction than to be able to believe that I had in some degree lightened their labours and strengthened their hands by increasing the clearness, simplicity and precision of the system of rules by which they are guided in the discharge of their duties.

"To return to the subject of Criminal Procedure. I think that the present Bill is not adequately described by the name which it bears, though I am not prepared to suggest a better; but its nature may be easily described. Of the benefits which England has conferred upon India, the first, and the most important is the general maintenance of peace and order and the suppression of crime. Peace and order are ideas so familiar to the inhabitants of Western Europe, that we are, I think, a little apt to forget that they do not come by nature, like the sun, the wind and the rain. That, till they have given birth to the sentiments and institutions which protect them, they are an artificial state of things which can be maintained in a country like this only by elaborate arrangements made beforehand, and by great personal exertion and resource. The Code contains those arrangements. It is the instrument by which the

peace and order of the country are secured in detail, as the Army is the instrument by which the same object is obtained in gross, and it is obvious that no degree of care which may be required to keep such an instrument in thorough working order can be regarded as excessive.

“I may perhaps be allowed to give, in a very few words, the history of the Code. It has been built up by slow degrees by the labours of successive generations of legislators ever since legislation first began in this country. The very earliest Regulations of 1793 provide for the establishment of a system for the administration of criminal justice. This system was repeatedly altered, varied, and re-adjusted, so as to meet the varying wants of the country and to supply the requirements which were shown by experience to exist. The mass of legislation which thus accumulated was very large, and when the Penal Code was passed in 1860, it was considered a matter of pressing importance to prepare a Code of Criminal Procedure as quickly as possible, in order to act as a companion to it. Act XXV. of 1861 was the result. It threw together all the existing laws on the subject to which it related, and so consolidated an immense mass of Regulations and Acts. I will not say how many, but I think they were counted by the hundred. Act XXV. of 1861 was drawn by men thoroughly well acquainted with the system with which they were concerned; but I am inclined to doubt whether they did not know it rather too well, for they certainly threw the various provisions together with very little regard to arrangement, and without any general plan. Various Acts for the amendment of the Code became necessary after it had been passed. These were consolidated by Act VIII. of 1869. The result was rather to increase than to diminish the confusion which had previously existed. Act VIII. of 1869 was not regarded as a final measure, and a correspondence on several points connected with it, and with the further reform of the system of criminal procedure, took place between the Government of India and the Indian Law Commissioners, who gave their opinion on various matters submitted to them in one of their very latest reports. This report was the cause of the present Bill. I must now say what appears to be necessary upon its provisions.

“I wish, in the first place, to state distinctly my own position with regard to the Bill. Of course, I am fully responsible for it; but at the same time I must observe that I have not been so presumptuous or foolish as to attempt to introduce modifications of my own devising into the working of a system gradually constructed by the minute care and vast practical experience of many successive generations of Indian administrators and statesmen. I have carefully avoided that fault. I have regarded myself, rather as the draftsman and secretary of the Committee, by whom all the important working details of the Bill have been settled, than as its author; and to them, rather than to me, is due any merit which may attach to the practical improvements which I hope this Bill will be found to have introduced in the administration of criminal justice, and in the general maintenance of the public security. I am the more anxious to say this, because, when I last addressed the Council on this subject, I made various criticisms from the point of view of an English lawyer on the administration of justice in this country. I do not wish to retract or to modify what I then said. I still feel that the system of criminal justice in this country is open to serious objection, and would admit, in course of time, of considerable improvement. I think I could suggest means by which those improvements might be brought about quickly and gradually; but the task of the critic differs essentially in my opinion from that of the legislator. The task of the critic is to form and express his opinions as pointedly as possible, in order that they may form the subject of public discussion and gradually produce whatever effect may properly belong to them. The task of the legislator, in reference to an existing system like that of Indian Criminal Procedure, is much more like that of the editor of a law-book. It is his duty to re-arrange, to explain what experience has proved to be obscure, to supply defects, and to make such alterations as harmonize with, and carry out, the leading idea of the system with which he is concerned. The notion that any one could, if he would, or that he ought to wish, if by any accident he had the power, to make a new set of laws for his fellow-creatures out of his own head, and without reference to existing materials, is, to my mind, altogether wild and absurd. This I believe to be true everywhere, but it is emphatically and peculiarly true of India. It is simply impossible to make extensive changes in the administration of this country suddenly. The reason is obvious, though I think people in England are apt not unnaturally to overlook it. It is, that the number of officers is so small, their duties so unremitting, and the nature of the engagements between them and the Government which employs them so stringent, that the whole administration would be thrown into confusion by any change which greatly altered the duties, or involved any serious modification in the position, of the officers concerned.

“Being strongly impressed with these views, the Committee on this Bill unanimously resolved not to interfere materially with the general outline of the existing system; but as

criticism of a general kind has its place and its importance, as well as legislation, I have recorded my impressions as to the administration of justice in India in a Minute, which will be published as a Selection from the Records of Government. I hope it may be of some use in future legislation, both as a record of the manner in which an English lawyer was impressed by what he saw in this country, and as an account of a system of a very remarkable character, of which, so far as I am aware, no complete account exists of modern date and in a popular and easily accessible form.

"I will now proceed to go through the Bill submitted to the Council, making such general remarks upon its contents as I feel qualified to make. Numerous important modifications in the detail of the present system have been made by the Committee. I am not specially responsible for them. Their effect, and the reasons for making them, will be stated by my honourable friends and colleagues, and especially by His Honour the Lieutenant-Governor, whose attendance at the meetings of the Committee has been most assiduous, and to whose wide and long experience a very large, perhaps the largest and most important, part of the alterations made in the existing system is due.

"First, with regard to the arrangement of the Bill I may observe that, though the title of 'Code of Criminal Procedure' has been retained, it does not adequately describe the scope of the measure. It is a complete body of law on three distinct, but closely related, subjects—the constitution of the Criminal Courts, the conduct of criminal proceedings, and the prevention of crimes by interference beforehand.

"The first of these subjects is the constitution of the Criminal Courts. This is distinctly and systematically laid down for the first time in chapters II., III. and IV., which enable us to repeal a large number of Acts and Regulations through which the subject-matter of the chapters in question is at present scattered in the most obscure and fragmentary manner. I need only remind the Council of the Bengal Sessions Judges Act which was passed last summer, in order to show the importance of doing this. Till that Act was passed, the law upon the subject was scattered through, and had to be inferred from several Acts and Regulations so clumsily drawn, that it appeared probable, when the matter came to be carefully examined, that most of the sentences passed by the Bengal Sessions Judges for a whole generation had been illegal. This and similar scandals will, I hope, be effectually prevented by the present Bill, which puts the whole matter in a perfectly distinct shape. This, however, is comparatively speaking a small matter. A far more important one is this. The Bill defines at once, comprehensively, and I hope quite plainly, two matters of importance about Magistrates, which are at present in a state of extreme obscurity and confusion. These are, the powers of Magistrates, and their relation to each other. No branch of the law is either more important, or, as matters stand, more confused. The District Magistrates are, in fact—though their title would hardly convey the notion to a person unacquainted with the subject—the actual Governors of the country, and there is no matter on which, according to my observation, the most experienced Indian Administrators have expended so much care and thought, or to which they attach so much importance, as the definition of their position. It had come, in the course of time and under the teaching of experience, to be defined, though in a clumsy and intricate manner; and the Courts of justice have been greatly perplexed by the difficulty of deciding what might be done by Magistrates of the District, what by full-power Magistrates, and what by subordinate Magistrates of the first or second class. The obscurity appeared to me to arise, as most of the obscurity of law does arise, from the unfounded, but not by any means unnatural, error, into which nearly every one falls, that it is needless to express things which are generally known, and that they may therefore be taken for granted. The result is that such expressions as 'the Magistrate,' 'the Magistrate of the District,' 'full-power Magistrate,' and so forth, are continually used in the existing Acts without any definition of their powers or of their relations to each other.

"This, I hope, we have now made as clear as it can be made, though a certain degree of intricacy is inseparable from the subject-matter, and could not be removed unless the whole of the executive arrangements by which the government of the country is carried on were very deeply modified. The intricacy arises from the following circumstances:—There are three separate points of view in which Magistrates must be regarded. *First*, they have different judicial powers; *secondly*, they have different powers in a multitude of miscellaneous matters connected with procedure, and these miscellaneous powers are liable to variation in particular cases; and, *thirdly*, they stand in various relations to each other. This, no doubt, is intricate; but the intricacy could not be substantially lessened unless Government were prepared to alter the whole organization of the districts, which, of course, is out of the question. All,

therefore, that can be done, is to describe the matter as clearly and shortly as possible. This task we have attempted in the fourth chapter of the Bill. Its leading features are these :

“As regards their judicial powers, Magistrates are divided into three classes according to the maximum sentences which they can pass:—First Class Magistrates can sentence up to two years’ imprisonment, and 1,000 rupees fine; Second Class Magistrates up to six months, and 200 rupees fine; Third Class Magistrates up to one month, and 50 rupees fine.

“Their miscellaneous powers are thirty-seven in number, and these are specified in section 21. In sections 20 to 30, both inclusive, we specify the powers which may be exercised by all Magistrates as such; those which may be exercised by Magistrates of the second and first class, and those which may be exercised by Magistrates in charge of a Division of a District as such. We also specify the powers with which these various classes of Magistrates may be invested, either by the Magistrate of the District, or by the Local Government.

“We next proceed to consider the Magistrates in their relation to the district in which they are quartered, and here we lay down distinctly (I think for the first time) that there shall be, in every District, a Magistrate of the District, to whom all other Magistrates in the District shall be subordinate; and that the Local Government may divide Districts into Divisions, and put Subordinate Magistrates of certain grades in charge of them.

“I think it will be found that the provisions of the Bill throw these various matters into as clear and precise a shape as the nature of the case admits of.

“Having provided for the Judges and Magistrates, we pass to the subject of public prosecutors. My own personal opinion is, that it would be desirable to separate, rather more clearly than they are separated at present, the functions of Magistrates and public prosecutors, and I should have liked to see the sections so drawn as to enable the public prosecutor to command the assistance of the Police in getting up a case for trial. The Committee were, however, of a different opinion, and considered that the public prosecutor ought to be merely an advocate for the prosecution. They are, of course, much more likely to be right than I am; but I hope that the sections as settled will at all events make it clear that a criminal trial in this country is not like a civil action; that the complainant is only a witness; and that if he does conduct the prosecution, he does so only by the permission of the Court. In passing from this subject I wish to repeat and to record my personal regret that the Bill does not provide more distinctly for it. The discussions upon it have made me aware of the fact, that a difference of opinion, which no doubt extends very deep, exists as to the position of District Magistrates. The extreme view on the one side is, that the Magistrate of District should be a sort of king, who should govern his district from bottom to top and from beginning to end, hunting up criminals, trying and punishing them in minor cases, and handing them on for punishment to the Sessions Judge in other cases. The extreme view on the other side is, that the Magistrate should sit still and hear the witnesses brought before him by others; and this difference of opinion reflects itself in a manner which is obvious enough upon the question about public prosecutors.

“We deal next with what an English lawyer would call the law of venue—the law as to the place where a trial should be held. The existing Act copies the English law on this subject, and, in particular, reproduces the bald exceptions to a vague rule which are characteristic of it. We have attempted in this chapter to state the principles on which these exceptions depend, and have turned the exceptions themselves into illustrations. We have also inserted a provision which, unless I am much mistaken, will effectually prevent the undergrowth of cases upon this matter, which has disfigured English law. We propose that, unless it appear that actual injustice resulted from holding the trial in a wrong place, no effect at all shall follow from it.

“The last of the preliminary topics with which we propose to deal is one which has caused some discussion and attention. It relates to the subject of criminal jurisdiction over European British subjects. The proposals of the Committee upon this subject have been before the public for a considerable time, and I think I am entitled to say that, on the whole, they have been very favourably received. I see, from the amendments put upon the paper, that two at least of the members of Council who were not members of the Committee, my honourable friend Mr. Ellis and His Excellency the Commander-in-Chief, object to what we propose. My honourable friend, Mr. Ellis, thinks that, in requiring the Judges and Magistrates by whom Europeans are tried to be themselves Europeans, we concede too much to the feelings of Europeans. My honourable friend, the Commander-in-Chief, thinks that, in empowering first class Magistrates, being also Europeans and Justices of the Peace, to inflict

upon them three months' imprisonment, we make too great a concession to the opposite view of the subject.

"My Lord, I cannot undertake to justify upon principle the terms of a compromise. A compromise must be, essentially, a matter of more or less give-and-take, and 'this measure is not the less a compromise, because we have been obliged to suggest its terms without actually consulting the parties or their representatives. I need not remind your Lordship and the Council of the extreme warmth of feeling which discussions upon a measure of this nature excited at no very distant date; nor need I insist on the great importance to the Government of this country of the existence of harmony between the Government and the general European population. I think I am entitled to say that the manner in which our proposals, made six weeks ago or more, have been received by the public in general, proves that they were not made injudiciously, and I should be sorry, after putting forward these proposals for the express purpose of obtaining an expression of public opinion upon them, and after obtaining what I am entitled to describe as a favourable expression of opinion, to make any material alterations in them at a time when the public views on the subject can hardly be collected. As to the particular proposals made, I shall reserve what I have to say about them till my honourable friends bring forward their amendments. Thus much I think I may say in general, and particularly by way of answer to a petition which has been received from certain persons at Bombay, declaring that the maintenance of any distinction at all between Europeans and Natives in this matter is a great injustice, and contrary to the principles on which the British Government ought to rule. I cannot think so: I do not wish to say any thing offensive to any one; but I must speak plainly on this matter. In countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal, as opposed to territorial, laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost pertinacity by those who are subject to them. The Muhammadan has his personal law. The Hindú has his personal law. Women who, according to the custom of the country, ought not to appear in Court, are excused from appearing in Court. Natives of rank and influence enjoy, in many cases, privileges which stand on precisely the same principle; and are English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? that whilst English Courts are to respect, and even to enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim for absolute identity of law for persons of all races and all habits comes with so bad a grace as from the Natives of this country, filled as it is with every distinction which race, caste and religion can create, and passionately tenacious as are its inhabitants of such distinctions.

"It may be replied that to use this argument is to desert the characteristic principles of English Government, and to make a point against an antagonist by surrendering what we ourselves believe. My answer is that the general principle that all persons should be subject to the same laws is subject to wide exceptions, one of which covers this case. It is obvious enough; but possibly the best way of stating it will be to show how it applies to the particular matter before us. The English people established by military force a regular system of government, and, in particular, a regular system for the administration of justice, in this country, in the place of downright anarchy. The system for administering justice was, and is beyond all question, infinitely better than any system which the English people found here; but it neither is, nor can be, the English system. It must of necessity differ from it in its characteristic features; and although I am not one of those who blindly admire the English system of criminal justice, I say that, if English people in India like it, which they notoriously do, they have a perfect right to have it. I cannot see how the mere fact that a man has, at great expense and trouble, provided the people who live on his estate with drinking water, of which, under previous landlords, they never had enough, is to prevent him from keeping a cellar of wine for his own drinking; and even if I thought water better for his health than wine, it would be for him to judge.

"There is, no doubt, one way in which the present system is a great and real grievance to the Natives. It extends practical impunity to English wrongdoers; I think, however, that the provisions of the Bill effectually dispose of this, for they will subject every European in the country to an effective criminal jurisdiction, able to inflict prompt and severe punishment upon him for any offence which he may have committed.

"I may just notice the provisions of sections 81 and 82 on the subject of the writ of *habeas corpus*. The matter is at present in the greatest confusion, as any one may see for himself by reading the arguments on the subject which took place in the case of the Wahábi convict Amír Klián. I will not detain the Council with a legal argument; but I think it is exceedingly doubtful whether the writ of *habeas corpus* would issue, as matters now stand, to bring up a European unlawfully detained in custody in the Mofussil, and I think it pretty clear that it would not lie to bring up a Native unlawfully detained by a Native in the Mofussil. Into the minor ramifications of the subject, I need not enter. The sections in the Bill make the matter clear. An order equivalent to a writ of *habeas corpus ad subjiciendum* may be issued in respect of European British subjects throughout the whole of India. The writ of *habeas corpus* itself will continue to be issued, as at present, in the Presidency towns, but nowhere else.

"It must not be supposed that personal liberty is at all unprotected in the Mofussil. Wrongful restraint (which is very widely defined) is an offence against the Penal Code. And a person subjected to wrongful restraint can always procure his release by presenting a petition to any Magistrate for a summons or warrant against the person who wrongfully restrains him and by procuring himself to be summoned as a witness. These remarks exhaust all that I have to say on the general part of the Bill.

"I shall pass more rapidly over its detailed provisions, leaving it to my honourable friends and colleagues to state to the Council the grounds of such of the amendments as may appear to deserve special notice.

"Upon the question of arrangement I may observe, that Part III., which immediately follows the general provisions already described, deals with the very earliest stage of criminal proceedings—that which is left in the hands of the Police. This is stated in the existing Code in a confused manner, and it is by no means easy for the reader of it to draw the line between the functions of the Police and those of the Magistrate. The present arrangement, I hope, will make this quite clear. In certain cases, the Police may arrest without warrant. In those, and in certain other specified cases, they may collect evidence, and, in order to enable them to do so, it is necessary to arm them with the power of asking questions and requiring answers. No very material alteration in the present system is suggested. I would remark that there may be some degree of awkwardness in leaving the organization of the Police to be provided for by Act V. of 1861 and other corresponding Acts which apply to different provinces, and in prescribing the most important of their powers and duties in this Act. No doubt the Code would be more complete if it contained the Police Acts; but there are two difficulties in the way which have prevented this arrangement. The first is, that the subject of Police organization is just one of those with which the local legislatures ought to deal. The second is, that very great differences of opinion exist on the subject, with which we are not in a position to deal in reference to the present Bill.

"On the fourth part of the Bill I need make no remark, nor have I much to say on the provisions of the fifth part, which relates to inquiries and trials; I have however one or two remarks to make upon it. Chapter XVIII. contains a most important innovation upon the existing practice, and one which I hope will prove very valuable. It enables the Magistrate of the District and other first class Magistrates, it authorised by the Local Government, to try certain common and simple offences in a summary way, without the elaborate record of evidence which is required under the present law. This is substantially the procedure now followed by English Courts of Petty Session, and by the Police Magistrates in the presidency towns. As far as my opinion goes, I look upon this chapter with great satisfaction, but I am not entitled to any credit which may attach to its introduction into this Bill. It was suggested by others, who will, I have no doubt, explain its provisions more fully.

"On the chapter (XIX.) which relates to trials, I may make a few observations. It embodies the law upon the subject of juries, in which we have made several important alterations. We propose that, if the Judge differs from the jury, he may refer the case for the opinion of the High Court. We also propose that the High Court in the exercise of its powers of revision may, if it thinks fit, set aside the verdict of a jury if the Judge has misdirected them. In other respects we have not altered the existing law.

"I am aware that some of my honourable colleagues think that we have changed the spirit of the whole system so much by these alterations, that it would have been better to sweep it away altogether. I cannot myself think so. I certainly should not have suggested

the introduction of the jury system into India, if I had not found it here, and I cannot say that the opinions given of it by those who have had experience of its working are at all favourable. They were not, however, so altogether unfavourable as to induce us to take the step of recommending its total abolition. In giving the Judge power to refer to the High Court cases in which he differs from the jury, we have no doubt made a considerable alteration upon English precedents. But the alteration if adopted will be entirely in harmony with the whole spirit of Indian criminal procedure, the very essence of which is control and supervision by one set of Courts over another. We do not, of course, mean that the Judge should act in this manner in every case in which he has doubts as to the propriety of a verdict, or even in those cases in which he feels that, if he had been a juror, he would not have returned the same verdict. Our intention is, that he should exercise the power in question in those cases only in which it is necessary to do so in order to prevent a manifest failure of justice; and having regard to the strong motive which the Judge always has for avoiding all future trouble by accepting the view taken by a jury, I think there is little reason to fear that the power will be abused.

“As to the power of the High Court to revise the verdict of a jury which has been misdirected, it is nothing more than what the Court for Crown Cases Reserved does in England, in case of a misdirection which leads to a conviction. Why the same course should not be taken in case of a misdirection which leads to an acquittal, I cannot conceive.

“As to the chapter on Appeals, the only alterations which we have made are that, in certain carefully selected cases, we permit an appeal against an acquittal, and that we allow the Appellate Court to enhance sentences passed if it considers them insufficient. This alteration is one of those which I will leave it to my honourable friends to explain and justify.

“I need notice nothing more in the Bill till I come to Part X., which treats of the charge, judgment and sentence, or what an English lawyer would call the system of criminal pleading. For chapter XXXIII., which relates to the subject of charges, I am peculiarly responsible. The chapter was drawn by me with the view of making as clear and plain as I could a matter which, in England, has given rise to an inordinate amount of quibbling and chicanery. I hope that the sections drawn by me and accepted by the Committee will make it almost, if not quite, impossible that any failure of justice should ever take place in this country by reason of any defect in a charge; for, under these sections, the worst that can happen is, that the Court may think that the prisoner has been misled, and that he ought to have a new trial.

“The only remaining matter contained in the Bill which I need mention specially is chapter XXXVI., the first chapter of Part XI. which relates to the preventive jurisdiction of Magistrates. This chapter sets out in plain terms what is now the law (as I believe, though it is nowhere written down) as to the dispersion of lawful assemblies by military force. It has often appeared to me to be a great hardship on military men that there should be no express written law laying down in precise terms their duty in relation to the dispersion of unlawful assemblies. The Queen's Regulations contain provisions on the subject; but they are not law; at least they have not, as regards Civil Courts in England, the force of law. Various celebrated judgments have laid down the principles of the matter very clearly, but military officers can hardly be expected to be acquainted with the Law Reports. The results of the want of clear precise knowledge on this subject have often been deplorable. Thus, for instance, in the Gordon riots in 1780, London was at the mercy of a mob for two days, because no one chose to give orders to take responsibility as to the employment of the military. At the Bristol riots, fifty years later, a great part of the town was burnt to the ground, because an officer in command of a dragoon regiment did not know that it was his duty to order his men to charge when the town was burning, and there was no Magistrate to give him orders, and I have been told of several instances in which similar evils have occurred in India. In order to show that what is enacted in this Bill is no invention of mine, but merely a statement, with but very slight additions, of the law on this important subject which has long existed in England, I will, with your Lordship's permission, read the statement of the law made by Lord Chief Justice Tindal in his charge to the Grand Jury of Bristol at a Special Commission held in 1832 after the riots:—

‘By the common law, every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the Magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled; he may stay those who are engaged in it from executing their purpose; he stop and prevent others whom he shall see coming up from joining the rest; and not

only has he the authority, but it is *his bounden duty* as a good subject of the King, to perform this to *the utmost of his ability*. If the riot be general and dangerous, he may arm himself against the evil-doers to keep the peace.

‘It would undoubtedly be more prudent to attend and be assistant to the justices, sheriffs, or other ministers of the King in doing this, for the presence and authority of the Magistrate would restrain the proceeding to such extremities until the danger were sufficiently immediate, or until some felony was either committed, or could not be prevented without recourse to arms; and, at all events, the assistance given by men who act in subordination and concert with the civil Magistrate, will be more effectual to attain the object proposed, than any efforts, however well intended, of separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the Magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly; and he may be assured that, whatever is honestly done by him in the execution of that object, will be supported and justified by the common law. The law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation, and invested with the same authority to preserve the peace of the King, as any other subject. If the one is bound to attend the call of the civil Magistrate, so is the other; if the one may interfere for that purpose when the occasion demands it, without the requisition of the Magistrate, so may the other too; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same. Undoubtedly, the same exercise of discretion which requires the private subject to act in subordination to and in aid of the Magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authority, the military subjects of the King not only may, but are bound to do their utmost, of their own authorities, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people. Still further, by the common law, not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer is called upon to do all that in them lies for the suppression of the riot, and each has authority to command all other subjects of the King to assist them in that undertaking. By an early Statute (13 H. IV, cap. 7), any two justices, with the sheriff or under-sheriff of the county, may come with the power of the county, if need be, to arrest any rioters, and shall arrest them; and they have power to record that which they see done in their presence against the law; by which record the offenders shall be convicted, and may afterwards be brought to punishment. And here I must distinctly observe, that *it is not left to the choice or will of the subject, as some have erroneously supposed, to attend or not to the call of the Magistrate, as they think proper, but every man is bound when called upon, under pain of fine and imprisonment, to yield a ready and implicit obedience to the call of the Magistrate and to do his utmost in assisting him to suppress any tumultuous assembly.*’

“The only point on which we have—I will not say altered, but somewhat amplified—the law of England, is in reference to the responsibility of soldiers for acts done in dispersing unlawful assemblies. The English law upon this point is somewhat indefinite, and it is by no means clear that, if a Magistrate calls upon an officer to disperse an assembly, and if the officer orders his troops to fire, and if the troops do fire, and if the Magistrate is mistaken in the view which he takes of the requirements of his case, that his orders protect the officer, or that the officer’s orders protect the soldier. Military men may thus be placed between two conflicting authorities. The soldier may be liable to be tried by Court Martial for disobeying orders if he does not fire, and to be tried at the Assizes for murder if he does. I will not now go into the legal aspects of the matter; but it is by no means clear that, according to the law of England, the actual necessity for the order, as distinguished from the order itself, is not the condition of the legality of an order to attack a mob by military force. This, no doubt, arose from the extreme jealousy with which English lawyers have always regarded the interference of soldiers in civil matters, and this jealousy is to be explained by historical causes which happily do not exist in this country. I think I need hardly insist upon the monstrous injustice of the rule itself, if such it is. What possible means have subordinate officers or private soldiers of knowing whether it is or is not necessary to disperse a particular assembly

or to use more or less force for that purpose? To make a common soldier a murderer for shooting people whom he is ordered to shoot, because a jury afterwards thinks that it was not necessary that they should be shot, seems to me as absurd as to say that every one who deals in any way with stolen goods is to be treated as a receiver whether he knew they were stolen or not. It will, I trust, be made perfectly clear by the provisions of this Bill that no one commits a crime by any act done by him in good faith for keeping the peace. Section 483 protects the Magistrate who orders an assembly to be dispersed by military force, if he regards the measure as necessary to the public security on reasonable grounds and in good faith. Sections 484 and 485 make it the duty of the officer in command to obey the Magistrate's requisition, and whilst they put upon him the responsibility, which he clearly ought to bear, of deciding on the manner in which the requisition is to be carried out, and of doing as little injury to person and property as is consistent with carrying it out effectually, they protect him from all responsibility for the order itself. In the same spirit, section 486 protects every inferior officer and soldier for every act done in obedience to any order which he was bound to obey by the Mutiny Act or the Indian Articles of War.

"We also propose that prosecutions for excess in acts done under these sections should not be permitted without sanction from the Local Government. My own personal experience has led me to feel, perhaps more deeply than most other persons, the necessity for such a provision as this, and has impressed me with the evils which may arise from the defective state of the law, which leaves it in the option of private persons to carry on a series of proceedings, under no public check whatever, which might break a man's heart when he is perfectly innocent. I can imagine cases in which a man who had only done his duty might be baited to death by one prosecution after another, for murder, hurt, mischief and the like, nor do I see how the Government could protect him in the absence of this provision. I do not know that such cases have as yet occurred, but nothing is more likely than their occurrence, as Native lawyers become familiarised with English Law, unless we provide for the matter beforehand.

"The principle of sanction is well established in Indian Law, and is of great value, and this appears to me to be just the sort of case to which it ought to be applied.

"These, my Lord, are the remarks I have to make on the Bill as published in the Gazette. I now turn to the supplementary report, which suggests a very large number of minor amendments. Our object in publishing the Bill in the Gazette for nearly a month before we laid it before the Council, was to obtain as much detailed criticism on it as we possibly could. This supplementary report is the result. It consists principally, indeed almost entirely, of slight additions made to particular sections, for the purpose of clearing up points on which the High Courts had found it necessary to pass decisions. It would be idle to ask the Council to discuss them in detail. A few days ago, the Committee on the Bill held a final meeting, in which every one of them (except a few which were suggested and assented to afterwards) was discussed with minute care. We agreed upon the report which I now submit to the Council, and I ask your Lordship and the Council to accept it. It involves few, if any, alterations of principle, though, I believe, it will add immensely to the value of the Bill, by settling nearly every question which has been shown by experience to be capable of being raised upon it. Though I do not propose to discuss the subject in detail, I should like to make a few observations upon it. I think that it represents very fairly the amount of needless intricacy in which the law of this country is involved by the system of law-reporting which unhappily prevails here. And I would most earnestly direct the attention, both of the Government and of the public, to the evils which arise from it. I have tried to devise means for its mitigation, and I have made some remarks upon the subject in the Minute recorded by me, to which I have already alluded, and which will be published in a few days. On the present occasion, I will simply specify the evil of which I complain. All the High Courts and the Chief Court of the Panjáb have their decisions reported, and the expense of reporting them is borne, to a very great extent, by Government, which pays the reporters' salaries, and subscribes very largely towards the reports. I will give a few illustrations of their character. The Bengal Law Reports for 1868, 1869, 1870 and 1871 fill six enormous volumes, and will, I suppose, fill seven, when the reports for 1871 are completed. The first instalment of the reports for 1871 is a volume of 1,000 pages. As if this was not enough, a little book, called *Sutherland's Weekly Reporter*, is published, which consists principally of prints of all the judgments delivered by all the Benches into which the High Court is divided, as well as those which are delivered in its original jurisdiction. It appears to me that if it were the intention of Government to enervate the administration of justice, to make the appreciation of legal principles impossible, and to foster all the weaknesses which are usually said to be characteristic of the Native intellect,

they could not spend their money better than by encouraging a system like this. I do not believe that one case in twenty of those which are reported is at all worth reporting; and when we think what the High Courts are, it seems to me little less than monstrous to make every division bench into a little legislature, which is to be continually occupied in making binding precedents, with all of which every Court and Magistrate in the country is bound to be acquainted. Careful reports of great cases are perhaps the most instructive kind of legal literature; but I know nothing which so completely enervates the mind, and prevents it from regarding law as a whole, or as depending upon any principles at all, as the habit of continually dwelling upon and referring to minute decisions upon every petty question which occurs. It is this enormous growth of case-law which justifies, so far as they can be justified, the attacks so often made upon lawyers, and it does appear to me that no legal reform could possibly be so important as its reduction to reasonable dimensions. I have made definite and specific proposals on the subject in the Minute to which I refer. I confine myself at present to the remark, that I believe that the Government of India is at present spending considerable sums of money every year in impairing the efficiency and wasting the time of every judicial officer in the country. I hope that this Bill will be found to have stopped a good many of the holes which have been detected in this Code, and to have superseded an immense number of the cases which have been decided on. However, the impression made upon my mind by going through large numbers of them was not, I must confess, by any means favourable. The great mass of them ought never to have been reported at all.

“This concludes what I have to say on the Bill which I now ask the Council to take into consideration; but there is one other subject to which I must refer before I end my speech. I obtained leave some time ago to introduce a Bill for assimilating the Criminal Procedure of the High Court on the original side to that of the other Courts. A Bill had been prepared with that object in the Legislative Department; but I think its form might be considerably improved; and as I do not wish to introduce an imperfect measure, I will content myself with saying how, in my opinion, such a measure ought to be drawn.

“It might begin by providing that, in the presidency towns, there should be two grades of Criminal Courts, the Courts of the Police Magistrates, and the High Court acting as a Court of Session. The Police Magistrates might be expressly empowered to hear the cases which they now hear, according to the procedure laid down in chapter XVIII. on summary trials. In appealable cases, the limit of appeal being fixed somewhat higher than in the Mofussil, they might take a note of the substance of the evidence in English, and the appeals might lie, if an additional Police Magistrate were appointed, to a full bench of Magistrates, with power to refer questions to the High Court. If no addition is made to the number of Police Magistrates, the appeals might go direct to the High Court, which again would find its sessions business diminished if the Magistrates had the same powers as in the Mofussil. Committals to the High Court might be made as at present. The High Court should be declared to be a Court of Session for the trial of such cases; but it should be provided that the chapter of the Code relating to recording evidence should not apply to the Judges of the High Court. They should try with a jury of twelve, who should be constituted as at present and should give a unanimous verdict. The power to reserve cases for the full Court should be maintained as at present. In other respects, the Code of Criminal Procedure might apply. The difference between the Code and the present practice is small. The power of questioning the accused is the principal point of difference, so far as I know, and that is, I think, an undeniable improvement. Several experimental provisions, which in practice have been dead-letters, might, I think, be repealed. They will be found in Act XXIV. of 1866, which was intended to set on foot a system of circuits. No High Court Judge ever has gone in circuit in the Mofussil, at least in Bengal, and I do not myself see what good he would do if he did. There are some provisions relating to the Chief Court of the Panjáb to which similar observations apply.

“These are the remarks which occur to me upon this measure; but I cannot conclude without publicly expressing my thanks and the thanks of the Committee to my friends, Mr. Cunningham, the Secretary, and Captain Newbery, who was put upon special duty to assist us in the preparation of the Bill. It is difficult to exaggerate the minute and anxious labour which they have bestowed upon the Bill, and I wish to add that Captain Newbery put at the disposal of the Committee a complete collection of rulings which he had compiled with a view to a new edition of the present Code. I hope that he has been, to a considerable degree, successful in destroying the value of his own work, or rather, in putting it into a shape in which its value will be permanent and general.”

HIS HONOUR THE LIEUTENANT-GOVERNOR said that the subject of this Bill had been treated so fully, and the principles upon which the Committee had deliberated and discussed the measure had been so clearly explained by the Honourable Member in charge of the Bill, that it would not be necessary for him to say much upon the subject. But inasmuch as he had taken a part in the deliberations of the Committee, he should not allow this important measure to pass wholly in silence. The criminal law was, as the Honourable Member had said, a law of overwhelming importance in this country; he meant not only the law for the administration of criminal justice, but the executive administration as carried on through the Magistrates. The prevailing ideas on the subject of criminal law had been somewhat affected by the English law; and the departures from the rules of the English law which the Committee recommended were founded on this ground, that many of the prominent parts of the English law were based on political considerations, the object of those familiar rules of criminal law being not to bring the criminal to justice, but to protect the people from a tyrannical Government, and the functions of juries of the people having been for many centuries principally directed to the protection of the interests of the people. Not only were those provisions now unnecessary in England, but they were especially out of place in a country where it was not pretended that the subject enjoyed that liberty which was the birth-right of an Englishman; and it was not intended to introduce rules into the criminal law which were designed with the object of securing the liberties of the people. That being so, HIS HONOUR thought they might fairly get rid of some of the rules the object of which was to secure for the people that jealous protection which the English law gave to the accused. It seemed to him that they were not bound to protect the criminal according to any code of fair play, but that their object should be to get at the truth, and anything which would tend to elicit the truth was regarded by the Committee to be desirable for the interests of the accused if he was innocent, for those of the public if he was guilty. That being so, he would say that he had no sympathy whatever for some of those things which his honourable friend Mr. Stephen had called superstitious. For instance, HIS HONOUR did not see why they should not get a man to criminate himself if they could; why they should not do all which they could to get the truth from him; why they should not cross-question him, and adopt every other means, short of absolute torture, to get at the truth. They had already done a good deal in the direction of clearing away English prejudices, and the Committee proposed to make further concessions to common sense in the present Bill. HIS HONOUR thought it right to say that, in his opinion, the Code of Criminal Procedure as now existing was an admirable Code; he thought that the country was under great obligations to the framers of that Code; he had long administered that Code, and thought that it was one of the best Codes of Criminal Procedure that had ever been enacted. On the other hand, he had no doubt that the framers of that Code would be the first to admit that after ten or twelve years the time had arrived when the Council might fairly reconsider its provisions; and the action of the Committee upon this Bill had amounted to this, that they had re-arranged and reconsidered and amended its provisions; but no more: the Bill was simply an emendation of the existing Code, which they acknowledged to be a very valuable piece of legislation.

Then, as to the details of the Bill, some people might think that some of the amendments adopted by the Committee were not of such a nature as to be interesting to the general public; but they were of very great importance nevertheless. Some of the amendments were in the direction of securing the efficiency of the executive. The administration of the criminal law was entrusted to the executive officers of the Government, and if they were overburthened by a cumbrous procedure, they would have no time to attend to their multifarious duties. The tendency hitherto had been to overburthen these executive officers with too heavy a record of judicial work. The result had been, to some extent, to tie our officers to their desks, so that they had not been able to perform their executive duties as efficiently as they should. A great deal, then, that had been done by the Committee, had been done to lighten the labour of the Magistrates. He thought that the course of justice usually was this, that first, in early times, there was very little law; that, in the next stage, there was an excess of law and of writing; that it had been so in India there was no doubt. Then, as our Magistrates and Judges became more efficient, we could, to some extent, relax the rules of written procedure and record, and lighten the labours of the Magistrate. That appeared to be the course which the Committee took in the revision of the Code. You must, to a certain extent, place confidence in your officers. HIS HONOUR'S wish had been, to some extent, to go further; but the Committee had proposed to go a long way in that direction. They proposed that a very large class of petty cases should be recorded in a more summary manner than the way in which they were now recorded, and they hoped that in this way they might hit that happy medium in which there should be a record sufficient for the purposes of justice, but not so long as to

overburthen our officers in keeping it. He hoped that when the next revision of the Code might take place, the labours of the Magistrates might be still further lightened.

HIS HONOUR would only make one or two further observations with regard to certain points noticed by the Honourable Member in charge of the Bill. The first of those subjects was the subject of the appointment of public prosecutors. HIS HONOUR would express his entire and absolute concurrence with his honourable friend in the opinion that the prosecution of a criminal in any serious case should not be looked upon in any degree as a suit between man and man, but should be treated as a public matter, and that whether there should be a prosecution, or no prosecution, should be a subject for the consideration of a public servant appointed for the purpose. HIS HONOUR'S opinion was, that the provisions on this subject which were introduced in the Bill were very beneficial, and he hoped the Council would pass them.

Another subject to which he would draw the attention of the Council was the difficult subject of juries. It was HIS HONOUR'S opinion that, in this country, juries framed on an English model were not altogether beneficial instruments in the administration of criminal justice; at the same time he had not been willing to abandon the jury system altogether, because although he did not think that trial by jury was an unmixed good, he believed that the system had a great effect in the political education of the people. It was a very great object to induce the Natives of the country to take a part in self-government and in the administration of justice, and it was in that respect only that he regarded the maintenance of the jury system in criminal trials to be of some value. At the same time, he felt that the jury system was less fitted for criminal trials than to some trials of a civil nature: he should be glad to dispense with the jury system in criminal trials, if there could be introduced something in the shape of trial by jury in civil cases. The Courts at present laboured under great difficulties in the determination of civil cases: it was in many cases a most difficult matter for them to arrive at the truth. He looked upon a pancháyat somewhat in the light of a jury without the superstitious number of twelve; and he hoped that, if they dispensed with juries in criminal trials, they should be able to introduce something like the jury system in regard to civil cases.

The Honourable Member in charge of the Bill had expressed a scintilla of doubt with regard to the propriety of permitting a Court of appeal to enhance the punishment awarded to a criminal. It seemed to HIS HONOUR that, after all the eminent services which his honourable friend had rendered in the improvement of the administration of justice in this country, the doubt to which he had given expression showed as it were the slightest possible taint of the English-lawyer's prejudice still hanging about him, although he was generally so free from anything of that kind. It appeared to HIS HONOUR that, were we afforded the greatest facilities for an appeal to the superior tribunals, the superior tribunal to whom the criminal appealed should have the power to decide what was the proper punishment for the offence; and if that tribunal considered that the punishment that had been awarded was inadequate, it should be in its power to award an enhanced punishment. More than that, it appeared to him that there was a practical necessity for such a provision. Our law as to criminal appeals was the most liberal law in the world: there was no law that was so liberal as to allow a person to say to his jailor, "I wish to appeal," and the jailor was bound to send the appeal on to the Judge without expense or trouble to the appellant. The result of such a law was that the prisoner could lose nothing by his appeal, and might possibly gain something, and the consequence of such a state of things was that, in some districts, there was no such thing as a case that had not been appealed. HIS HONOUR said that, that was carrying matters to an undesirable extreme, and he thought that it was only fair that, if a man chose to appeal, he should run the risk of his sentence being enhanced by the Appellate Court if it was inadequate.

The Honourable Member in charge of the Bill went at very considerable length into the subject of chapter XI. of the Code, which provided for the dispersion of unlawful assemblies, and attributed to those provisions, perhaps, somewhat greater importance than HIS HONOUR would attribute to them. Happily, unlawful assemblies requiring military force for their dispersion in this country were of extremely rare occurrence. HIS HONOUR'S experience was that organized resistance to authority was almost unknown: it had never happened to him that he had been obliged to resort to the assistance of the military to disperse an assembly, and except in the case of actual war and mutiny, he had never been personally concerned in any case in which the military had acted in suppressing any riot or disturbance whatever. At the same time, he admitted that it was not impossible that such cases might occur, and it would be well to be forearmed, and he believed that the law upon the subject had been laid down as well as it was possible to lay it down.

Then there was another subject incidental to this Code upon which the Honourable Member had dwelt at some length, namely, the question of law reporting. His Honour entirely agreed with Mr. Stephen as to the great evil of the present system of reporting; at the same time, he was not prepared to admit that that fact gave ground for the observations of his honourable friend on the subject of lawyers. The observations upon that subject, which had fallen from His Honour on previous occasions, had reference, not to the Judges, but to the greed of the law practitioners, who had made a bad use of the judgments that had been printed in the reports. Every judgment was a sort of carcase, around which the vultures gathered together to extract from it legal quibbles. He believed that very great injustice had been done to the High Courts owing to the system of misreporting to which the Honourable Member had alluded; people had been supplied with bad abstracts of bad reports, and the result had been a perversion of the judgments of the High Courts, attributing to them errors and absurdities of which they had never been guilty.

Perhaps, he need not follow the Honourable Member in the remarks he had made in regard to the draft of a Bill which His Honour hoped he would leave to the Council for the extension of a system of Criminal Procedure to the presidency towns. His Honour had already expressed his opinion upon that subject; and he had only to say that we should be immensely indebted to the honourable gentleman if he put the matter into train for legislation. He need only further say that, in respect to many Bills, India would always owe to the Honourable Member an enormous debt of gratitude, and that he believed that Honourable Members would agree with him in fully expressing that gratitude.

The Honourable Member's motion included the consideration of the supplementary report on the Bill. It was true that that supplementary report had been put in at a very late period, and that a very long time had not been allowed to elapse for the consideration of it. But it might be some comfort to some Honourable Members who had not had the full opportunity which His Honour had of considering the amendments which accompanied the supplementary report, to know that he had criticized those amendments with great care and some jealousy, and although he was not prepared to say that the whole of those amendments were absolutely necessary, he believed by far the greater number of them to be unobjectionable, and some extremely necessary. The greater part of them were of a verbal nature and not very important; and he hoped the Council would accept the report of the Committee with the addition of one or two small amendments which he proposed to submit for consideration.

The Motion was put and agreed to.

The Honourable Mr. STEPHEN also moved that the amendments mentioned in the supplementary report be adopted.

The Motion was put and agreed to.

The Honourable Mr. ELLIS said that there were three amendments in his name on the notice paper. But the second of those amendments was not connected with the other two in any way: he would not therefore refer to that amendment at present. He proposed at present to ask the Council to consider the first and third amendments, which were substantially the same in purport and effect. As a preliminary, he begged leave to express his sense of the great ability with which the honourable member in charge of the Bill, and the Select Committee, had dealt with the subject, and his appreciation of the very great labour they had bestowed on it. He thought that the thanks of the Council were due to them in a special degree for the very provisions in respect of which he had to move these two amendments. With the honourable member in charge of the Bill, he was exceedingly glad to notice the excellent spirit in which these new provisions with regard to the jurisdiction over European British subjects had been received by the public generally—a spirit which was very different from that in which some similar propositions had been received a few years ago. The matter seemed to have been looked upon at the present time very properly as a simple question of administration. The difficulty attending the conviction in the Mofussil of offenders being European British subjects, was admitted to be a great evil, and the question was how to remove the evil, without risk of injustice being done to those concerned. The provisions which had been devised by the Committee for solving the problem how to deal with such cases were not in the main objected to by Mr. ELLIS: on the contrary, he thought, the Committee had shown much wisdom in framing the sections in the manner in which they had been drawn. He did not hold with those who conceived that it was necessary to deal with Europeans and Natives in precisely the same manner. There were to his mind administrative reasons that would justify a difference; but he did not believe that it was necessary to deal with the question on the broad basis on which the honourable member in charge of the Bill had dealt with it. It had appeared to him that there were abundant reasons why we should not trust Tahsildárs

and Deputy Collectors to deal with the class of European offenders. They were often ignorant of the language and always ignorant of the feelings and customs of the Europeans, and he thought therefore that it would be very imprudent to give them any power to deal with Europeans of the class with which they would be brought into contact. That being so, he cordially endorsed the main principle of the sections drafted by the Committee; and he considered that the Committee had done rightly in limiting the cognizance of such cases to Justices of the Peace and high officers in the position of Sessions Judges. But, then, he thought that the Committee had made an invidious distinction, which was not called for and which he desired to see removed. Admitting that the officers who should take cognizance of offences by Europeans should not be of a lower standing than Justices of the Peace and Sessions Judges, he saw no reason why Natives who were qualified to be appointed Justices of the Peace should not have cognizance of these cases in common with their European compeers. The only object of making a person a Justice of the Peace was to enable him to deal with European British subjects: the appointment had no other significance whatever. And if it was admitted that a Native could, under any circumstances, be appointed a Justice of the Peace, it must be admitted that he would then be qualified to deal with offences committed by European British subjects. The point then for the consideration of the Council was, who could be appointed a Justice of the Peace? Setting aside the case of the presidency towns, which was alien to the subject under consideration, the only persons who could be appointed Justices of the Peace were European British subjects and Covenanted Civil Servants. It was as a Covenanted Civil Servant, and in that capacity alone, that a Native could take cognizance of these cases as a Justice of the Peace. MR. ELLIS might be allowed to paraphrase the words of his honourable colleague, Mr. Stephen, in discussing the Bráhmó Marriage Bill, and address the Native Civil Servant in these words—“ We have instituted schools and universities for your benefit; we have taught you the arts and sciences; we have thrown open the services to you by which you can obtain a high position in the land. We have not only done that, but we have urged your going to England to make yourselves acquainted with our institutions and people, and to learn their usages and manners. We have done all this, and when you return having by your ability attained to the dignity of a member of the Covenanted Civil Service, we tell you that you are not fit to deal with a European British subject and to sentence him to one week's imprisonment.” MR. ELLIS thought that all this was inconsistent and anomalous. When you admitted Natives to be Justices of the Peace, you ought not to place any bar to the powers which they might exercise in common with other Justices of the Peace. But it might be urged that, in the position of a Sessions Judge, any Native would be empowered by the proposed amendment to exercise jurisdiction over European British subjects. In answer to this, he would say that, if a Native be appointed to this office, he must be appointed exceptionally, showing that he was by his judicial knowledge and other qualifications competent to exercise jurisdiction equal to that of the Covenanted Civil Servants with whom he would be associated. MR. ELLIS would say therefore that, in making the invidious distinction which was now proposed, if we excluded any Justice of the Peace from the exercise of certain powers, we were really casting a stigma on the whole educated Native population of India. He might also urge that there would be considerable inconvenience in having such a distinction. But he preferred to put it on the broad ground that, if you had Native Covenanted Civil Servants, you ought not to bar them from exercising the powers of a Civil Servant, among which powers is the jurisdiction of a Justice of the Peace over European British subjects. By Act II. of 1869, certain Natives might be appointed Justices of the Peace, and on what ground, he would ask, was it proposed to restrict their powers as Justices of the Peace? The only argument that he had heard adduced was that we were conferring new powers on Justices of the Peace, and not taking away old powers, and that this being a compromise, the Committee were pledged to act as they had proposed in their preliminary report, and that we ought not to disturb that promise. In answer to that, he would assert that we were not merely conferring new privileges. By Act II. of 1869, Justices of the Peace (and Natives might attain that position) had the privilege of dealing with Europeans in certain cases: for instance, they could fine to a certain amount; they could commit for trial to the High Courts and exercise all other powers of a Justice of the Peace. These powers, though conferred so recently as 1869, would be taken away by the present Bill. But the second objection was perhaps a more important one, and in regard to that, he might say, in the first place, that he did not see that any pledge had been given, or, if given, that it was only given to an extent which was quite compatible with the amendment which he now proposed. He was not aware to whom that pledge was supposed to be given: he presumed that it was not to the Native public, though they were deeply concerned in the proper administration of justice on wrong-doers. Was it,

then, the European public to whom the pledge was given? He could not consider that the European public outside these walls, consisting of Government officials, of merchants, traders, planters, and the like, were in any way more interested in the matter, than the Members of this Council themselves were. They all had the good of the country at heart, and desired that some steps should be taken to remedy the present inconvenient state of things with respect to Europeans in the Mofussil and that the remedy should be as effectual as it could be, consistently with security against injustice. The only persons, therefore, to whom any pledge could possibly be held to have been given, was the class of persons most interested—he meant the class of Europeans who by misfortune had fallen into crime; and with regard to them, he objected wholly to its being supposed that these new sections which the Committee had devised tended only to their prejudice, detriment, and hurt. In one respect, these sections might be supposed to act to their detriment; for, under the present system, the criminals frequently escaped conviction; but that was nothing to the boon which was conferred upon the European criminal by these sections, by giving him the opportunity of having speedy justice administered, and the chance of a very much lighter punishment than he might otherwise have obtained. MR. ELLIS would mention one instance which had occurred in the Bombay Presidency. A European stole a common blanket worth two rupees: he was committed to the High Court for trial; but as the Sessions had only just concluded, he was kept in confinement for upwards of two months awaiting trial. When he was tried and convicted, the Judge discharged the prisoner because he had suffered more punishment than should have been awarded to him for his offence. The poor man had been in jail for upwards of two months; but even if a Native Civil Servant were acting as a Justice of the Peace, the amount of punishment that would have been awarded under the proposed amended system, would have been one week's imprisonment at the outside. Therefore MR. ELLIS said that the provisions which had been devised by the Committee were a boon to the criminal; for while he would have speedy justice with the chance of three months' imprisonment, he might otherwise have been sent up to the High Court and got a year's imprisonment. Thus, the provisions that had been proposed should be adopted in the interests of the European himself. But all the boons promised to the criminal by the preliminary Report had not been given by the Bill as drawn; the first recommendations of the Committee having been materially altered. The first recommendations held out a hope to the criminal that, by confessing his crime and not objecting to the jurisdiction, he would get off with a less amount of punishment. That provision had been omitted. Thus, the recommendations in the preliminary Report had not been adhered to. But, on the other hand, the formal Resolution in that Report had been adhered to; and to this Resolution his proposed amendment was in no way opposed. In fact he fully concurred in it and wished to carry it out precisely as framed by the Committee. The Resolution was worded thus:—

“We are of opinion that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might, with advantage, be extended in the case of European British subjects.”

There was not a word in this restricting the power to European Justices, and why the Committee should consider themselves pledged to subsidiary recommendation which they themselves had altered, he could not understand. Moreover, great stress had been laid upon the circumstance that the compromise had been assented to by the public, and that the provisions as sketched out in the preliminary Report had met with general approval, the evidence of this being the little opposition offered by the Press. But MR. ELLIS claimed for his amendment precisely the same admission; he would claim for it general acceptance; for in the Bill as originally drafted, there was no such limitation that a Justice of the Peace should be a European British subject. In section 44 it was provided:—

“Any Justice of the Peace may, and no other person shall, commit, or hold to bail, any European British subject to take his trial before a High Court.”

Section 47 also enacted:—

“Every person exercising the full powers of a Magistrate, and being also a Justice of the Peace, shall have power to inquire into and determine in a summary way complaints of offences committed by a European British subject outside the local limits of the ordinary original criminal jurisdiction of the High Courts, and on which a summons ordinarily issues in the first instance, and, in case of conviction, to inflict on the offender a fine not exceeding five hundred rupees, and, in default of payment, imprisonment for a term not exceeding two months, in some place of confinement within the District, which, in the opinion of the Magistrate, is fit for receiving such offender, or, if there be no such place, then in the presidency gaol.”

Now, to these sections no more opposition had been offered than to the subsequent report of the Committee, and therefore he might say with safety, that if it was asserted that no objection had been taken to the Bill in the form in which it had been presented by the Committee, his proposition had also been accepted by the public, and no ground of pledge or compromise could be urged against the amendment which he proposed. He would therefore move—

(1.) That the first paragraph of section 72 be omitted.

That, instead of the second paragraph of the same section the following be substituted :—

“No Magistrate shall have jurisdiction to inquire into a complaint or try a charge against a European British subject unless he is a Magistrate of the first class and a Justice of the Peace.

(3.) That section 77 be omitted, and that the second paragraph of the present section 76 be numbered 77.

The Honourable MR. CHAPMAN agreed with very much that had fallen from his honourable friend, but he felt himself unable to support the amendment, for the very plain and conclusive reason, that he, as a member of the Select Committee, considered himself bound to adhere to the pledge he had given the European community, that under the altered law an Englishman should retain his privilege of being tried by an Englishman. It must be remembered that the Bill before the Council would deprive our countrymen of privileges which they had hitherto exclusively enjoyed, and on which they set the highest value, without in any way interfering with the rights of the Natives of this country. He (Mr. Ellis) was old enough to remember the loud outcry with which the proposal to withdraw from Englishmen their right to be tried exclusively by the Supreme Courts of the several presidency towns was received some two and twenty years ago; and MR. CHAPMAN could not help being struck with the moderation, loyalty and good sense with which the present proposed alterations had been generally accepted by the press and public. He could not consent to an amendment which might have the appearance of drawing back in the slightest degree from the pledge which he considered had been held forth. For his own part he disclaimed any race or caste feeling in the matter.

The Honourable Mr. ROBINSON said :—“MY LORD, I must express great regret that our honourable colleague has brought forward this motion and put the matter before us on what appears to me an incorrect issue.

“The facts, as it appears to me, are simply these. In the Provinces, European British subjects, ever since the commencement of our rule, have been, and still are, for all practical purposes, subject to the criminal jurisdiction of Justices of the Peace of English extraction alone.

“I am not going to discuss the theory or policy of this condition. This is a matter which is, I think, foreign to a revision of the Criminal Procedure Code. But such is the actual state of things with which the Select Committee on the Bill had to do when the subject of dealing with European British offenders came under their consideration.

“The Committee deliberately resolved not to alter the existing and practical condition of matters, with reference to any accidental state of the *personnel* of any special branch of the public services in India.

“The exigencies of the time clearly call for an extension of the jurisdiction of up-country Justices of the Peace in respect to the trial and punishment of European British offenders; and the Committee adopted this view. They therefore resolved to propose to increase the powers of that class of officers who now alone have practically any jurisdiction over European British subjects and to make some useful adaptations of the existing Courts—when presided over by English Justices of the Peace—in respect to the disposal of cases in which European British subjects are defendants.

“The Committee proposed to give English Justices of the Peace who may be First Class Magistrates, powers to pass sentence of imprisonment up to three months; and to English Justices of the Peace who may be Sessions Judges, power to pass such sentence up to one year, as against European British offenders. Beyond this, the Committee resolved to leave the jurisdiction over European British subjects where they found it, namely, with the High Court in its original jurisdiction.

“This is all that has been done.

“These proposals were placed before the Council and before the European community

in our preliminary report some time ago. And the right time for our honourable colleague to have taken objections to the principle so adopted, was when that report was presented.

“The proposals went out from this Council with the Honourable Member’s concurrence, and they have met with singularly considerate acceptance at the hands of our European British fellow-subjects, with whom alone we have to do in this matter. We cannot, I think, simply on some after-thought of our honourable colleague, pass into this Bill an amendment which will have the effect of transgressing the broad principle of the existing practice, and of surprising our European fellow-subjects into a condition which they were not asked to consider.

“But I will look at this matter from a practical point of view, presuming that I believe my honourable colleague will acquit me from any want of respect for, or confidence in, our intelligent Native public officers—least of all of the class to which he alludes.

“I have had much to do with Native Magistracy of all classes, superior Native Police officers, and the like; and I can only say that I believe that these would, as a rule, far rather have nothing to do with cases in which Europeans are implicated, and their unpleasant concomitants.

“The European British wrong-doer is not always an agreeable inmate in any Court, howsoever presided over. The persons who take part in cases in which Europeans are implicated are by no means always attractive neighbours, and the kind of interest and criticism is evoked above, around, and below in any up-country station by an European case, is, as a rule, anything but pleasant. Be this as it may. The cases in which Europeans are involved are almost invariably troublesome and invidious, even when we ourselves are the judges of our countrymen’s conduct.

“Now, Native Magistrates have not, I believe, the slightest misgivings in the matter of impartial justice being done by every European Magistrate, even when a fellow-countryman is the defendant; nor do they think that Native interests do not receive quite as efficient protection at their hands as they could at the hands of any Native Magistrate. I believe therefore that there is scarcely a Native Magistrate in the country, not even excepting those on whose behalf jurisdiction over European offenders is sought by the Honourable Mr. Ellis, who would not infinitely rather have nothing to do with such defendants and such cases, who would not far rather pass them on to the broader shoulders of their European equals or superiors. Practically, therefore, I think that the Honourable Member’s motion is futile, and we ought not to postpone the passing of this Bill until this material change in the principle of what has already been published under the authority of this Council can be promulgated for discussion. I think also that the discussion would be productive of far more harm than good.”

The Honourable Mr. INGLIS said that he regretted that the Honourable Mr. Ellis had thought it necessary to raise a discussion on the question to which the amendment proposed by him referred. He did not intend to go into the question on its merits, as he considered that he was bound by the terms of the recommendation he had signed with the other members of the Select Committee in January last, and which was subsequently printed in the Government Gazette for the information of the public. The Committee in this paper distinctly stated that they proposed to give power to try offences committed by the European British subject only to Judges and Magistrates who were themselves European British subjects. The Honourable Members accepted the proposals then laid before them in a manner which reflected much credit on their liberality and good sense. The condition that a European British subject was to be tried only by his fellow-countrymen was no doubt considered by them as one of great importance, and he thought that they had no right now at this eleventh hour to go back for the term of the compromise proposed two months ago, and accepted by the public.

His Honour THE LIEUTENANT-GOVERNOR seldom had greater difficulty in making up his mind than upon the motion before the Council. The fact was that this was one of those matters of sentiment with which it was very difficult to deal, although, in practice, its decision would affect only this single question, whether the Local Governments should have the power of appointing a very few Native gentlemen, who were members of the Civil Service, to be also Justices of the Peace, for the purpose of dealing with the limited number of cases of which they were likely to have cognizance under these provisions. He entirely acquiesced in the general view of the case which was put forward by the Honourable Member in charge of the Bill; as he truly stated, the real and practical evil was that, at present, Europeans in the Mofussil committed petty offences with impunity. That had been found to be a practical evil, and

these provisions were designed to meet that evil, as far as it was possible to meet it. For the sake of vesting the powers of a Justice of the Peace in the three or four Native gentlemen who had entered the Civil Service, His Honour should not have thought it necessary to disturb the decision of the Select Committee. But he found that, owing to ignorance of the law, he had put his name to a report which he should not have signed if he had known of the existence of Act II. of 1869. He found now that that Act in effect settled this question, that was to say, that the Government should not have the power to appoint any person a Justice of the Peace who was not either a European British subject or a Covenanted Civil Servant. That being so, he should most decidedly have said that it was much better not to re-open this question, and that the Council should adhere to the decision which had been come to by the passing of Act II. of 1869, namely, that a Justice of the Peace must be either a European British subject or a Covenanted Civil Servant. To re-open that question and to limit the powers that might be exercised by any Justices who were Covenanted Civil Servants appeared to His Honour to be somewhat invidious, and would be, as it were, setting themselves against the policy hitherto pursued. Viewing the matter in that light, he should be inclined to vote for the motion before the Council.

Then came the consideration that there was said to be some sort of pledge to the European community, and the fact that they had in the most handsome manner accepted the proposals of the Committee. Here His Honour found himself in some difficulty, because, as his honourable friend, Mr. Ellis, had pointed out, there was some sort of contradiction in the Resolution of the Committee. The Resolution to which his honourable friend had referred was as follows :—

“We are of opinion that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might, with advantage, be extended in the case of European British subjects.”

There was not a word in that Resolution limiting the legal definition of a Justice ; but in the subsequent paragraphs, the Committee, in their recommendation, had added the words “and a European British subject :” it so happened that neither the European nor the Native community had commented upon those words.

Under all the circumstances he felt so much doubt that he would inform his conscience by listening to the opinions of those who were to follow him before deciding which way he should vote.

Major General the Honourable H. W. NORMAN regretted his inability to support the amendment of his honourable colleague Mr. Ellis. In proposing the amendment he had not the slightest doubt that his honourable friend was actuated by a sincere desire to avoid the appearance of want of confidence in the entire impartiality of Native Magistrates or of favouritism towards Europeans. Major General H. W. NORMAN was aware that, in the Presidency towns, the trial of Europeans by Native Justices was not infrequent, and as far as he had heard, it had been attended with no bad results : but he did not think it desirable that the powers exercised by Native Justices in the Presidency towns should be extended to the Mofussil. He had the highest regard for the Natives of the country, and, particularly, for those who had attained the very important position of a Magistrate of the first class ; but looking to the peculiarities of our position here and to the great differences of character between Natives and Europeans, he thought it was undesirable to allow the trial of European British subjects by Natives in the Mofussil.

The Honourable Mr. STEPHEN had only a very few words to say upon this subject. He would first point out that there was no kind of relation between the case of the Native who had learned to abjure the idolatry of his fathers and thus placed himself under a disability to contract a lawful marriage, and the Native who had entered the Civil Service and was unable to exercise certain jurisdiction over European British subjects. He said then, and he said now, that it was a cruel thing to make a man give up his caste and then place him under civil disabilities, by telling him that he could not contract a valid marriage. The privilege as to jurisdiction was the privilege of the prisoner not the privilege of the Judge. The European had an objection to be tried by the Native. Considering the position in which he stood, the question was whether you would put him in a position in which he did not at present stand. You placed no slight upon the Native by saying that he could only try a man of his own race. What was there against the feelings of the Native in saying that? Why should any one feel a slight because he was told that this particular man was to be tried in a particular way? On the other hand, it was a feeling, and not an unnatural one, that a man should wish to be tried by his own countrymen.

The Honourable Mr. STRACHEY would merely say that he was unable to support the motion of his honourable friend Mr. Ellis. It appeared to him that no question of principle was really involved in the amendment. Nobody pretended for one moment that the provisions of the Bill as they now stood were symmetrical; on the contrary, they represented a compromise which was open to criticism of every kind. It appeared to him that, if his honourable friend's amendment were accepted, it would be just as much a compromise as the provisions of the Bill now were; and he did not see that the matter of principle would be altered in one way or another. He felt himself bound to adhere to the compromise which he understood had been accepted by the public two or three months ago, and, for his own part, he never had any doubt whatever as to the meaning of the Resolution of the Select Committee of which he had been a Member. Under these circumstances, he felt himself bound to vote against the amendment.

His Excellency THE COMMANDER-IN-CHIEF said that the Native members of the Covenanted Civil Service having been to Europe, having become acquainted with European feelings, ideas and customs, and having qualified themselves to take their places with the European members of the Civil Service, HIS EXCELLENCY would frankly accept them as real members of the Covenanted Civil Service, and allow them to exercise all the functions which the European members exercised.

HIS EXCELLENCY understood that the amendment of his honourable friend, Mr. Ellis, did not extend the power of Justice of the Peace to any Native Magistrates who were not Covenanted Civilians out of the Presidency towns, and under this understanding would vote for the amendment.

HIS EXCELLENCY THE PRESIDENT said that his vote would be given in conformity with the opinion which had been expressed by His Excellency the Commander-in-Chief. He was not a competent Judge of the force which might attach to the engagement or compromise which it was said had been entered into with the public, because he was not here at the time when the preliminary Report of the Committee had been presented, and he had taken no share in the recommendations of the Committee. He did not know what the effect of that declaration had been on the public feeling and in the expression of public sentiment on that subject. He could not, however, agree with the honourable member in charge of the Bill in thinking that the educated Native community of the country would not deem themselves exposed to some degree of slight or stigma or discouragement by the restrictions which would be imposed upon them if this amendment should not be passed. HIS EXCELLENCY thought that the restriction would embody a stigma on the Native community in general. It was equivalent to stating that under no circumstances, as far as the administration of the law was concerned, could the Native attain to that degree of impartiality and courage which would justify the Government in reposing in his hands the power of trying European British subjects. HIS EXCELLENCY thought that the proposed restriction would be held to be offensive and discouraging to the educated classes of the Native community. He thought also that it would be unjust and discouraging to those enterprising members of the Native community who at great expense to themselves, and at great sacrifice, had gone to England and had devoted themselves to the attainment of those qualifications which had enabled them to pass a severe competitive examination for admission to the Civil Service. He thought it would be a grievous discouragement to say to them—"You are not competent to administer justice to European British subjects." He thought that by the restriction we in effect said to the European—"You are not to be tried in the Mofussil by the agency by which you are tried in the High Courts and in the Courts of the Magistrates in the presidency towns, with the general approval and sanction of the European and Native communities." It was saying in effect that the Native who had attained to the position of a Sessions Judge was not competent to try a European British subject, but that he might try him when he became a Judge of the High Court and sat beside a European Judge. HIS EXCELLENCY could not but help thinking that there was practically no greater disparity in permitting these Native Civil Servants to try a European British subject, than in permitting Native Justices in the presidency towns to try him. There appeared to HIS EXCELLENCY to be no such broad distinction whatever between the conditions of society and of public opinion in this respect between the presidency towns and the Mofussil. There were now a great number of public spirited men and a great deal of public spirit all over the Provinces. Communications by rail, the dissemination of newspapers both in English and the Vernacular, and a great variety of other circumstances had destroyed that distinction which formerly existed between the presidency towns and the Mofussil. There was not that distinction of light and darkness which existed formerly; there was now almost equal light in the Mofussil and in the presidency towns. HIS EXCELLENCY did not himself consider that there was the slightest possibility that in the rare case of a Civil

and Sessions Judge trying a European British subject in the Mofussil there would be an abuse of justice. It had been said that if this distinction was obliterated it would be offensive or hurtful to our European fellow subjects. He thought that there might be some dissatisfaction, but he did not think that the irritation or dissatisfaction would be of a sustained character. He believed that the actual cases in which the penalty of imprisonment would be awarded would be extremely rare: there would not be a frequency of those cases which were likely to cause dissatisfaction. On the other hand, His EXCELLENCY had the greatest confidence in the justice and generosity of his countrymen. He thought that the generosity which they had extended to the exercise of judicial functions by Natives in the presidency towns, would very soon be extended to the exercise of justice by Natives in the Mofussil, and that there would be no permanent dissatisfaction or irritation or grievance caused by the obliteration of the distinction which now existed. His EXCELLENCY'S very hearty concurrence would therefore be given to the honourable Mr. Ellis' amendment.

The Honourable Mr. ELLIS said that after the observations which had fallen from His Excellency the President in favour of the amendment, he hardly required to say anything further upon the subject. But he desired, with reference to what had fallen from his honourable friend, General Norman, to add his testimony to the efficiency with which Native Magistrates had performed their duties in the presidency towns, in the administration of justice to both Europeans and Natives; and he had no hesitation in saying that they had performed their duties with as much credit and efficiency as the European Magistrates. And if they had done that, he saw no reason why Natives in the position of Covenanted Civil Servants or Sessions Judges should not be equally competent to administer justice to the European in the Mofussil. His honourable friend, Mr. Stephen, had remarked that, in this matter, we were not to consult the feelings of the Judge, but of those who were to be subjected to the jurisdiction; in answer to that, Mr. ELLIS would say that he saw no reason why that which did not hurt the feelings of Europeans in the presidency towns, should hurt them in the Mofussil.

His Honour THE LIEUTENANT-GOVERNOR said that, as his honourable friend Mr. Ellis had put it, the first Report of the Committee had placed before the public certain matter for consideration. Under all the circumstances, he should not have thought himself justified in now making any radical alteration in the propositions put forward by the Committee. But it appeared to His Honour that what was now proposed was a minimum of change. It was not proposed to impose upon the European public the general liability to be tried by Native Magistrates, but only the possibility of being placed under the jurisdiction of three or four Natives who had qualified themselves for admission into the ranks of the Covenanted Civil Service, and who, under the existing law, might be Justices of the Peace. After consideration, and having listened to the arguments and given due weight to the weighty considerations which His Excellency the President had placed before the Council, His Honour was prepared to vote in favour of the very limited change which was proposed by the amendment.

The Honourable SIR RICHARD TEMPLE said that the reason why he had not expressed any opinion at an earlier stage of this debate was this, that he felt that this question did slightly involve that larger and graver question as to whether civil appointments of the higher classes should be thrown open to the Natives. But that had already been decided by the supreme authority of Parliament. That having been decided, he thought that the inference was undeniable that, if the Natives were eligible to all the great offices of the administration, it seemed improper and unreasonable to say that they should not sit as Judges over Europeans in the Mofussil for offences of the trivial nature over which it was proposed to give Justices of the Peace cognizance. After what had fallen from honourable members, he felt that he ought not to give a silent vote on this subject. He would vote in favour of the amendment of his honourable colleague Mr. Ellis.

The question being put,
The Council divided--

AYES.

His Excellency the President.
His Honour the Lieutenant-Governor.
His Excellency the Commander-in-Chief.
Honourable Sir R. Temple.
Honourable Mr. Ellis.

NOES.

Honourable Mr. Strachey.
Honourable Mr. Stephen.
Major General the Honourable H. W. Norman.
Honourable Mr. Inglis.
Honourable Mr. Robinson.
Honourable Mr. Chapman.
Honourable Mr. Stewart.

So the amendment was negatived.

The Honourable Mr. ELLIS then moved—

That in section 76, instead of the words “ but not Assistant Sessions Judges,” the following be substituted :—

“ and, when specially empowered in that behalf by Government, Assistant Sessions Judges, who have been Assistant Sessions Judges for not less than three years.”

In doing so he said that there were Sessions Judges who had been Sessions Judges for a day only, and there were Assistant Sessions Judges who had held their office for many years. These Assistant Judges exercised very many of the functions of District Judges. Moreover, in the scheme framed for the judicial administration of the Panjáb, it was proposed to place whole Districts in charge of Assistant Judges; but under the wording of this Bill, those Assistant Judges would not be able to take cognizance of cases against European British subjects; therefore in one half of the districts of the Panjáb there would be no judicial officer empowered to try such cases. The matter was a simple one of administration, not involving any new principle, and he would not therefore dilate on it.

The Honourable Mr. CHAPMAN said he quite concurred in what had fallen from his honourable friend Mr. Ellis. He believed that the proposal now made would be a very valuable addition to the Bill.

The Motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF moved—

“ That the second paragraph of section 74 be omitted.”

That section 79 be omitted.”

He said that he felt under a great disadvantage in moving the amendments of which he had given notice, because a large majority of the Council were Members of the Select Committee and were pledged to the Report—the whole Report, and nothing but the Report of the Committee. Therefore the amendment which he now proposed could only be regarded as his protest against an extension of the powers of Magistrates for dealing with European British subjects.

HIS EXCELLENCY objected to the increased powers proposed to be given by section 74 to Magistrates for the punishment of European British subjects. He considered the Magistrates had at present quite as wide powers as it was necessary to give them. He was not aware of any reason why European British subjects required more repression than heretofore.

He could not but think that the complete silence with which the public had received the intimation of the increased powers which it was proposed to give to Magistrates, was owing to the supposition that they were intended only for the suppression of the loafer, the troublesome and irrepressible European vagrant. But as his honourable friend, Mr. Chapman, had remarked, it was not only the loafer, but persons of the highest respectability who might be subject to this jurisdiction.

If it was the loafer against whom these powers were directed, he certainly would never be able to pay a large fine; his lot would invariably be imprisonment, which is not likely to render him, in person or character, better able to gain a livelihood than before.

He thought the manner of dealing with loafers should be a different one. HIS EXCELLENCY was of opinion that, as in the case of persons brought from Australia in charge of horses those who brought out and let loafers loose on the country, should be bound to provide for their deportation and thus prevent their becoming a nuisance to the country.

If the person against whom the increased Magisterial powers are directed is the European settler, planter, or merchant, he would ask what have they been doing lately to require greater severity of treatment?

His honourable colleague, Mr. Ellis, had rather dilated on the delight which the European should feel at being promptly put into jail for three months; but an imprisonment for three months in the hot weather was a very serious punishment.

It might be the case of a poor man unable to make a proper representation of his case, or he might be ignorant of his right of appeal.

In by far the greater number of Magistrates' jurisdictions, there are no places in which an European could be imprisoned, without injury to his health, in the hot weather in India. HIS EXCELLENCY would ask whether the Government were prepared to supply every Magis-

trate with a prison suitable for the confinement of European offenders during the hot weather; or whether the prisoner, when sentenced, is to be sent to the place of confinement for prisoners sentenced by the higher Courts? If so, HIS EXCELLENCY thought it would be better if the prisoner were to be sent at once to the higher Court to be tried there.

He said he was jealous of the liberty of the European British subject in India, because he laboured under great disadvantages. In places where Europeans are numerous, there is a chance that there may be European witnesses, but in remote places there is every probability that he may be at the mercy of Native witnesses.

HIS EXCELLENCY objected to trust the fate of the European offender to the single judgment of the one Magistrate. He had no objection whatever to the Sessions Judge, as he is an officer of wider experience, and he has a jury or assessors to assist his decisions; but a Magistrate who has resided for some time in remote districts, is very apt to adopt peculiar notions which might affect his decisions.

HIS EXCELLENCY could mention a case which came under his own knowledge.

A full-power Magistrate, whom he would, for the sake of convenience, call Mr. Full-power Magistrate Robinson, and who was not in any way connected with his honourable colleague, reviewed the case of a soldier who was pursuing some life-convicts who were effecting their escape. In the dark night he overtook them, having outstripped his comrades, and they, seeing but one man, mobbed and tried to disarm him: being obliged to use his weapons he bayoneted his most troublesome assailant, giving him three stabs. Mr. Full-power Magistrate Robinson wrote a severe report on the soldier's proceedings, because he gave three stabs when, in the opinion of the Magistrate, one would have been sufficient. HIS EXCELLENCY was convinced from the Magistrate's report that he was a good and humane young man, but HIS EXCELLENCY much feared that he would have punished the soldier, had he had the power, very severely.

In another case, a Magistrate in a secluded district acquired a dislike, almost amounting to hatred, of Europeans, and would not let one come near him or enter his presence. HIS EXCELLENCY with another officer (now living), was refused admittance to him, although they called on public business. HIS EXCELLENCY could not help fearing that if that gentleman had had to sentence an European, the sentence would have been a hard one.

In another case, a Magistrate was personally concerned and endeavoured to bring the case on for trial in the Courts of his own station, presided over by his brother Magistrate, where local feelings were naturally in a state of irritation.

HIS EXCELLENCY had mentioned these instances to show that it was not expedient to entrust a Magistrate with these extended powers, considering the extreme severity of the punishment of imprisonment to Europeans in this country.

HIS EXCELLENCY thought it might be assumed that Military Law was severe enough. But the Commanding Officer of a Regiment, who seldom attained that position under twenty years' service, and often not until a much longer period, and is an officer of long administrative experience, could only sentence a soldier to imprisonment for twenty-eight days.

A Regimental Court Martial, consisting usually of five, and never less than three officers, could only sentence to forty-two days' imprisonment. HIS EXCELLENCY therefore did not see why a Magistrate of only a few years' service should have power to inflict a sentence of imprisonment for so long a period as three months, on his own unaided judgment.

In making these remarks he desired to guard himself against being thought to underrate the value of the Civil Service to which the Magistrates belong.

His experience during many years' service had enabled him to verify the high opinion expressed by his honourable colleague, Mr. Stephen, of the Civil Service, which HIS EXCELLENCY had been associated with under circumstances that had enabled him to appreciate their high honour and rectitude, and their devotion to their duties. HIS EXCELLENCY had the highest respect and regard for the Civil Service of India, and he believed that it was unsurpassed by any similar body in the world. HIS EXCELLENCY trusted that he should not be misunderstood, because he objected to an extension of power which might fall into the hands of young Magistrates, who were placed under circumstances not tending to develop a mature judgment.

The Honourable Mr. STEWART said that he was one of the Committee which drafted the Resolutions upon which these provisions had been based, and he took very much the same view of the subject as the Honourable Member in charge of the Bill. He thought that, practically, they were bound by the recommendations of the Committee in their preliminary report.

The Honourable Mr. CHAPMAN said that the papers before the Council were exceedingly voluminous, and His Excellency the Commander-in-Chief had not perhaps read the whole of them. The testimony which they bore upon the subject under discussion was quite concurrent from all quarters that the evil must be dealt with, and the Committee had stopped far short of the recommendation of the local authorities. He thought that if His Excellency would duly consider the inconvenience and expense of sending down a host of witnesses in every trivial case of theft, he would admit that it was a great hardship upon them.

With reference to His Excellency's remarks as to there being no suitable places for the confinement of Europeans, if he referred to the Bill he would find that it was provided that sentences of imprisonment of Europeans were only to be carried out in places which the Local Government considered fit for the purpose. A Magistrate had the power of sentencing a native to imprisonment for two years, to order him to be flogged, and to fine him. Surely the same man was competent to deal with the case of a European British subject, and sentence him to three months' imprisonment? MR. CHAPMAN thought that the class of men who would be entrusted with these powers were fully qualified to exercise them; he thought that they were quite as qualified to sentence a European to imprisonment for three months, as the Sessions Judge was to inflict a much severer punishment; and it very frequently happened that the Magistrate of the District was a man of quite as much experience, if not greater experience, than the Sessions Judge.

His Honour THE LIEUTENANT-GOVERNOR said that he would only notice two points in connection with the remarks of His Excellency the Commander-in-Chief. His Excellency asked whether planters and merchants in the Mofussil were a worse or better class of men now than they used to be. His Honour would answer most decidedly that he admitted that they were a better class of men than they were formerly. It must, however, be remembered that since the year 1853 the Government were under a Statutory obligation imposed by the British Parliament to improve the administration of justice in the country, and they were now fulfilling that obligation. And as regards planters and merchants in the country, although they were not a worse class of men, but on the contrary a more loyal and much better class of men, yet they were now a much more numerous class: the loafer also was a much more numerous class, and it was necessary for the peace of the country that he should be made amenable to the law.

On the other point, as regards the provision of suitable accommodation for the confinement of Europeans, His Honour hoped and believed that there were very few places in which suitable places had not already been provided for the purpose by the erection of Central Jails all over the country. Besides, as his honourable friend, Mr. Chapman, had observed, under the provisions of the Bill, sentences of imprisonment imposed upon Europeans could only be carried out at places appointed by the Government for the purpose; and the Government would be bound not to permit the imprisonment of a European in a place which was not suitable for the purpose: European prisoners would be sent to a place where there was good accommodation. It was well known that the greatest difficulty and inconvenience had been found in the prosecution of European British subjects charged with offences, in consequence of its being necessary to bring down to the High Court all the witnesses in the case. But under the provisions now under consideration, the prisoner having been sentenced to imprisonment, the grievance to him to be sent to the place of confinement would not be a very great one, and his deportation would not be attended with very great offence to the State, now that there were increased facilities for travelling by rail and steamer.

The Honourable Mr. ELLIS said the observations which he desired to make had in a great measure been anticipated by the remarks which had fallen from His Honour the Lieutenant-Governor and his honourable friend, Mr. Chapman. But he did not wish to give a silent vote upon this question. He grieved to say that he was unable to concur in the arguments which had been adduced by His Excellency the Commander-in-Chief; in fact, His Excellency would perhaps already be prepared for the announcement Mr. ELLIS had made. He could not look upon this chapter of the Code altogether in the light of an injury to the criminal. He thought that under these provisions the European would enjoy more liberty than he did at present, there being so many cases in which he would enjoy speedy justice and be dealt with lightly with the view of saving the witnesses from long and harrassing journies; and on the whole he thought that the criminal would not be worse off under the proposed than under the existing system. He could not view the regulations which the Council were making at all in the light that they would affect planters and such classes of Europeans in a prominent degree, or that they were likely to be concerned in a larger number of cases of the description contemplated. He considered such classes of Europeans as far above such considerations. It

was with the loafer, and the unfortunate people who from want of proper means of subsistence had been driven to crime, that we had to deal. And as means of punishment were provided, by the existence of that very means of punishment we should prevent a great deal of crime being committed by that class of men. The knowledge that punishment would swiftly follow crime was the best deterrent of crime.

With reference to His Excellency the Commander-in-Chief's remark as to the amount of imprisonment that could be awarded by the Commanding Officer of a regiment, Mr. ELLIS would observe, that there was this difference between the powers that might be entrusted to a military Officer and the powers that were exercised by a Magistrate, that a Commanding Officer's business was to be martial, not judicial-minded. It was a Magistrate's business, on the other hand, to be judicial-minded; he was accustomed to administer justice, and in that particular respect he might be considered to be far better qualified than the Commanding Officer of a regiment. On those grounds Mr. ELLIS regretted that he was unable to concur in the amendment of His Excellency the Commander-in-Chief.

The Honourable SIR RICHARD TEMPLE said that, although he was unwilling to trouble the Council with any remarks upon this subject, yet as a member of the Government he felt bound to add his testimony, and to say that from his experience of very many parts of the country, it appeared to him there was great necessity for those provisions of the Bill which empowered Magistrates to try Europeans for petty offences. He believed that those provisions arose out of the necessities of the age, and the progress which we had made in the development of the resources of the country, considering that the expansion of Railways all over the country and the immense increase of industrial enterprise had caused the influx of a large number of our countrymen: without any disparagement to them as a body, it must be admitted that some of them occasionally fell into trouble and into evil ways. That was a fact which there was no shutting their eyes to. The increase of Europeans of what might be called the working classes had been very great: it was one of the necessary circumstances concomitant with some of the greatest improvements of the age. If unhappily individuals of European classes, then, committed offences, the Council had to consider not only the offenders themselves, but also the persons with whom they might come into contact. He did not believe that the offenders themselves would be placed in any worse position by the enactment of these provisions, than that in which they would otherwise be. He admitted that sometimes a Magistrate might be hasty in respect to affairs of this nature, but still he was confident that through the great progress of public opinion in the country, that opinion would be brought to bear upon them, and that there was little or no danger of Magistrates abusing or misusing the powers entrusted to them. At the same time, the Council were bound to remember that, under the present state of the law on the subject, a great many who committed crimes escaped punishment, and a great many innocent persons suffered in consequence. We must not only think of the criminal, but we must think of the unhappy circumstances of those who came into contact with those criminals. They were persons who had at least as much claim upon our sympathy as any other class, and they would receive considerable relief by these new provisions.

On those grounds he felt it his duty, not only to vote for the provisions contained in the Bill, but also to take the first opportunity of expressing his views upon the subject.

His Excellency THE COMMANDER-IN-CHIEF observed that his honourable friend, Mr. Chapman, had spoken of the experience of Magistrates; but HIS EXCELLENCY was informed that Magistrates of only two or three years might be invested with the full powers of a Magistrate and Justice of the Peace on passing the necessary examinations.

With reference to the remarks of his honourable friend, Mr. Ellis, that these provisions were directed against the lower orders of the European population, HIS EXCELLENCY would observe that a fine of rupees one thousand was not a punishment which might be said to be directed against a poor man, but rather against the higher classes of Europeans.

HIS EXCELLENCY THE PRESIDENT regretted that he was not able to support the amendment of His Excellency the Commander-in-Chief; his inability to do so was not from any want of sympathy or consideration for the class of persons in whose behalf the Council were desired to interfere, but from a sincere conviction of the necessity of some provisions such as those which were contained in the Bill. A great deal had been said about the loafer, and a bad name had been given to a class of Europeans who did not always deserve the stigma that had been cast upon them. It was in Madras that an attempt was first made to afford some place of refuge, to an injured class of our countrymen in this country, and then the discovery was made what the real condition of these unfortunate people was. When first, what was called, the "Loafer's Home" was established in Madras a great deal of laborious

attention was paid to it by his honourable friend, Mr. Robinson, and THE PRESIDENT thought Mr. Robinson would concur with him when he said that, in the great majority of cases, the members of the humbler orders of our countrymen were more unfortunate than guilty. Mr. Robinson discovered a great number of valuable elements in the character of these men, who found it impossible in this country to maintain a respectable state in society. THE PRESIDENT did not wish to apply harsh terms to the humbler orders of his countrymen; it must, however, be allowed that there was a class of Europeans now in this country in reference to whom a temperate but speedy means of justice was necessary; and he could not doubt that the class of Magistrates in whom it was proposed to vest these powers were quite competent to inflict the petty sentences which were contemplated by this code. He agreed with His Excellency the Commander-in-Chief in thinking that there was something inconsistent in reference to the amount of fine which it was proposed by these provisions to authorize the Magistrate to inflict; and if His Excellency had confined his amendment to a reduction in the amount of fine, THE PRESIDENT would have been glad to support the proposition; but if His Excellency was determined to press the whole of his amendment, THE PRESIDENT would feel himself compelled to vote against it. THE PRESIDENT could not admit the force of the objection which His Excellency the Commander-in-Chief had raised on the ground that there were no proper places for the detention of European prisoners. THE PRESIDENT believed that the institution of Central Jails which were nearly completed over the whole of India, provided proper places for the imprisonment of European British subjects of the humbler orders, and in such places as those in which Central Jails had not yet been provided, it appeared to him that there would be no difficulty in transporting a prisoner to some adjacent prison.

The question being put,

The Council divided—

AYE.

His Excellency the Commander-in-Chief.

NOES.

His Excellency the President.
His Honour the Lieutenant-Governor.
Honourable Mr. Strachey.
Honourable Sir R. Temple.
Honourable Mr. Stephen.
Honourable Mr. Ellis.
Major General the Honourable H. W. Norman.
Honourable Mr. Inglis.
Honourable Mr. Robinson.
Honourable Mr. Chapman.
Honourable Mr. Stewart.

So the amendment was negatived.

His Excellency THE COMMANDER-IN-CHIEF moved that, in section 488, last line, instead of the words "Local Government" the words "Government of India, or the Government of Madras or Bombay" be substituted. He said:—

"MY LORD,—In the case of such disturbance of the peace as is contemplated in Part XI. Chapters XXVI. and XXVII., I consider that it would be a security against possible complications if the sanction of the Government of India, or the Government of Madras or Bombay, were obtained to the prosecution of a Magistrate, officer, or soldier, for any act done under the provisions contained in sections four hundred and eighty-two, four hundred and eighty-four, and four hundred and eighty-seven, instead of the prosecutions being instituted by the Local Governments. The term 'Local Government' includes the smaller agencies where local authorities are more liable to be influenced by local feelings than the presidential Governments.

"By adopting the amendment which I propose, such an anomaly as the payment by the State, at the same time, of the prosecution and defence of a person prosecuted, would be avoided.

"With telegraph communication everywhere, no possible evil would arise from the delay in seeking the sanction of the Governor General, or Governor in Council, before plunging the Government into a prosecution which it might consider it necessary to defend. I believe that, by adopting my amendment, you will obtain a security against inexpedient prosecutions, and will lose nothing in the efficiency of administration."

HIS HONOUR THE LIEUTENANT-GOVERNOR said that it was perhaps not unnatural or out of place that he should wish the power of directing prosecutions under this section to be left in the hands of the Local Government. He should have thought that there was a certain

consistency in the amendment if His Excellency had proposed in all cases to require the sanction of the Government of India to these prosecutions. It seemed to His Honour that such proceedings would be extremely cumbersome. He objected to the power of sanctioning prosecutions being vested in the Governments of Madras and Bombay, and not in the Government of Bengal, and the other Local Governments. His impression had been that the protection proposed to be given applied specially to soldiers. But as he now understood the provision, it related to Civil as well as Military Officers. As regards Civilians and soldiers equally, he thought the Civil Government should decide the matter; he did not think it ought to be decided by the Military authorities whether a prosecution of an officer or soldier should or should not be permitted. He thought it was not respectful to the other Local Governments to exclude them from the exercise of this discretionary power.

Major General the Honourable H. W. NORMAN entirely supported the amendment. The control of the armies in India was vested in the Government of India and in the Governments of Madras and Bombay, and not in the other Local Governments; and it would be more satisfactory to the members of those Armies not to be sent to trial under the provisions of this Code without the sanction of the Governments under which they served. It was in the power of those Governments to consult with their respective Commanders-in-Chief, an advantage not possessed by other Governments. He would therefore support the amendment.

He desired to take this opportunity to say how much he thought the public were indebted to the Honourable Member, Mr. Stephen, for this comprehensive Bill which he had prepared, and for the simplification of the law on several very important subjects. The profession to which Major General H. W. NORMAN belonged were particularly indebted to Mr. Stephen for those provisions of the law which the Council were now discussing. Nothing of the kind existed in the English law, and much embarrassment and hardship had arisen in consequence. But no such embarrassment could in future take place in this country with these clear provisions of the law to guide those concerned. He thought the provisions of section 487 would be most useful, as cases may often arise in India where it is desirable for a Military Officer to act in the absence of any Magistrate: section 488 also, he thought, would be most valuable in protecting officers and troops from vindictive prosecutions.

The Honourable Mr. ELLIS said that, if the question before the Council had been merely, whether a Magistrate who suppressed a riot with the aid of the troops should be prosecuted under the orders of the Local Government or of the Supreme Government, he should, without hesitation, have said that the matter might safely be left to the discretion of the Local Government of the Province in which the case occurred. But as the Military also were concerned, he thought it would be wise to limit the power of ordering prosecutions to the Government of India and the Governments of Madras and Bombay. He had not the slightest wish to detract from the dignity of the office which His Honour the Lieutenant-Governor held: the difference in this respect between the position of the Governments of Madras and Bombay, and the Government of Bengal, consisted in this that, while those Governments could act with the advice of their respective Commanders-in-Chief, His Honour the Lieutenant-Governor had no Commander-in-Chief to advise him, and could not have those considerations placed before him which it was the duty of a Commander-in-Chief to put forward. He should therefore vote for the amendment of His Excellency the Commander-in-Chief.

The Honourable Sir RICHARD TEMPLE concurred with what had fallen from his honourable colleague Mr. Ellis. He desired to explain that in his estimation the position as a Civil Government occupied by the several Local Governments under the Lieutenant-Governor was in no wise inferior to that of the Governments of Madras and Bombay: indeed, some of those Local Governments were of the greatest importance. But the question before the Council was not a civil question: it was really a military question. And inasmuch as the Bengal Army was under the control of the Government of India, and not under the Government of Bengal, it appeared to him necessary that the sanction requisite for the prosecution of soldiers under this provision should be under the authority of the Government of India.

The Honourable Mr. STEPHEN said that he must oppose the amendment. It appeared to him that the object with which this section was inserted in the Code, was to protect soldiers and Magisterial officers from prosecution at the hands of private persons when charges were brought against them. He could hardly imagine that a man who was placed in the important position of a Lieutenant-Governor or a Chief Commissioner, should be considered unfit to exercise the discretion vested in the Local Governments under this section. He thought that the difficulty that would be attendant upon obtaining the sanction of the Government of India to a prosecution, would be tantamount to prohibiting prosecutions altogether. He thought, therefore, that the power to accord this sanction should be given

to the Local Governments, and if it were retained in the hands of the Government of India, it would almost have the effect of placing persons engaged in putting down a riot above the law altogether.

The question being put,
The Council divided—

AYES.

His Excellency the President.
His Excellency the Commander-in-Chief.
Honourable Sir R. Temple.
Honourable Mr. Ellis.
Major General the Honourable H. W. Norman.

Honourable Mr. Robinson.
Honourable Mr. Chapman.
Honourable Mr. Stewart.

So the amendment was carried.

The Honourable Mr. CHAPMAN then moved—

“ That the following words be added to section 54 :—

‘ Every Sessions Judge, Additional Sessions Judge, Joint Sessions Judge, Assistant Sessions Judge, and every Magistrate shall, in his executive capacity, be subordinate to the Local Government.’ ”

He said the object of the amendment was to make known to all officers discharging judicial functions that, in matters of an administrative or executive character, they were bound to obey the orders of the Government under which they were employed. He thought that no Sessions Judge should have it in his power to question, for example, the right of the Government to nominate him to the duty of sitting on an examination Committee. It was true that in point of practice the Government always had the power to enforce obedience to orders of this kind; but still he thought the opportunity should not be lost of explicitly declaring in this Code the subordination of officers in all matters not affecting their judicial independence.

He did not, on reflection, think his amendment had been happily worded, or that its proposed place in the Code had been happily selected. He would, with the permission of His Lordship and the Council, alter the amendment and insert, at the end of section V., the following words:—“ These four grades of officers shall, in matters not otherwise provided for in this Code, be subject to the orders and control of the Local Government.”

After some conversation the Council divided :—

AYES.

Honourable Mr. Strachey.
Honourable Sir R. Temple.
Honourable Mr. Ellis.
Major General Honourable H. W. Norman.
Honourable Mr. Chapman.

NOES.

His Excellency the President
His Honour the Lieutenant-Governor.
His Excellency the Commander-in-Chief.
Honourable Mr. Stephen.
Honourable Mr. Inglis.
Honourable Mr. Robinson.
Honourable Mr. Stewart.

So the amendment was negatived.

The Honourable Mr. CHAPMAN then moved—

“ That, instead of section 126, the following be substituted :—

“ ‘ 126. A Police officer making an investigation under this chapter shall, day by day, enter his proceedings in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances elicited by his investigation. He shall forward day by day a copy of such diary to the District Superintendent of Police, who shall without delay bring to the notice of the Magistrate of the District any part of such diary which he considers it to be important that such Magistrate shall know.

“ ‘ The Magistrate of the District may call for and inspect such diary.

“ ‘ In cases where there is no District Superintendent of Police, the Police officer shall forward day by day a copy of the diary to the Magistrate of the District.

“ ‘Such diary shall not be evidence of the facts stated therein, except against the Police officer who made it, nor shall it form part of the record.

Use of diaries by Criminal Courts.

“ ‘Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. The prisoner and his agents shall not be entitled to call for them, nor shall he or they be entitled to see them, merely because they are referred to by the Court; but if they are used by the Police officer, who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.’”

He said, the effect of this amendment would be to retain the law as it now stood, whereas the Bill proposed to do away with all legal provision as to the particular authority to whom this diary should be sent.

He was happy to think it would not be necessary for him to enter on a long disquisition on the vexed question of Police administration, because he believed he was quite at one with His Honour the Lieutenant-Governor, and his honourable friends, Messrs. Strachey, Inglis, and Robinson in condemning the theory that the Magistrate should sit with solemn judicial dignity, and only adjudicate on such evidence as might be brought before him. On the contrary, he (Mr. CHAPMAN) was very decidedly of opinion that it was the bounden duty of the Magistracy of this country to co-operate energetically with the Police in the detection and suppression of crime,—to be in short ‘a terror to evil-doers’. But while holding this view, he was not prepared to go the length of saying that there should be no separate Police organization. If District Superintendents of Police were to be maintained at all, it was essential that this diary should be forwarded to them without delay. It was particularly necessary that the history of the crime of a District should be contemporaneously recorded in one central office. Let the Council consider the great advantage of District Superintendents being able promptly to communicate with each other the intelligence of the commission of organized and systematic crime. Again, if the Superintendents were not kept immediately informed of the occurrence of every crime in their Districts, how were they to direct and stimulate the exertions of their men, and how were they to exercise any control over them by way of reward and punishment?

If Superintendents were not furnished with these diaries, he did not see how they could fairly and reasonably be held responsible for the peace and security of their Districts. He would have them responsible to the Magistrate of the District and to him alone.

This question had been very fully discussed in Committee. The principal arguments he (Mr. CHAPMAN) had heard adduced in support of the change were, that it was advisable that the diary should be sent to the Magistrate nearest the scene of the crime, when the Superintendent might be at a distance, and that the subject was one which had much better be left to the Local Government to deal with as they might think best. His reply to the first of these arguments was, that the provisions of Sections 137 and 138 of the Bill rendered it obligatory on the Police to send intimation to the nearest Magistrate having jurisdiction, and made it the duty of such Magistrate to repair to the scene of the crime, if necessary, and to assist in its investigation. The fullest means were thus provided for the Magistrate being promptly informed, and for his being left without excuse if he failed to do his duty in the way of direct and active personal exertion. Then, as to the argument about discretion being left to the Local Government. The system of District Superintendents had now been established throughout India, and if the principle he had advocated was sound, he thought there was no question as to the advisability of its being made generally applicable. He (Mr. CHAPMAN) would earnestly beg to point out to the Council that his amendment involved no change in the existing law; and that he considered the onus of showing cause for the alteration contained in the Bill rested on his honourable friends who differed from him. The alteration was calculated, in his opinion, to introduce a most dangerous and radical change in the Police organization of the country.

The Honourable Mr. ROBINSON said:—“ My Lord, the object of this amendment is to restore to the Bill the purely executive direction which is contained in the existing Criminal Procedure Code as to what is to be done with the diary which is directed to be kept by a Police officer who may be investigating, on behalf of the Magistrate having jurisdiction, into a cognizable case.

“ The provisions of the existing law in respect to this matter import an uncertain sound into it in respect to the relation between the Police who are engaged in tracing out an offence

and the Magistrate before whom the case is eventually to be brought for trial or committal, and they may be used—and, in fact, probably have been used in some places—to justify the executive Police in refusing to the local Magistracy information as to what the Police are doing in respect of a case for which the Magistrates are responsible in their executive and judicial capacity, as well as the Police.

“The law, as the Council are aware, requires that immediate intelligence of the occurrence of any grave crime be conveyed to the Magistrate having jurisdiction. He is empowered to take up the case himself and to adopt all means for detection. But, in fact, he generally leaves this, as is intended, to the Police, who are, in the words of the Police Law (Act XXIV. of 1859), ‘placed at his disposal for the detection of crime’ within his (the Magistrate’s) division.

“The executive Police are, on their part, required to keep a diary of all steps taken during this professional investigation for the information of the Magistrates and Courts, if required, and of their own superior office.

“The object of this provision is sufficiently obvious. It enables the responsible Magistrate, as well as the superior officers of Police to see what is being done from day to day in the case, and to judge whether the Police are doing their duty; it secures a valuable check against irregularity of procedure in respect to the particular case to which it relates, and if such irregularity occurs, it provides a useful auxiliary towards the detection of them.

“Now, it is clear that no one can be more directly interested—to no one is this information so indispensable—as to the responsible Magistrate within whose jurisdiction the offence occurred and who has finally to dispose of the case. This officer is generally near the spot, and if kept constantly advised of what is going on, he has peculiar advantages for aiding the Police by his influence and advice as to the detection of the offence and the hearing of any evidence which may be forthcoming. He enjoys, too, special opportunities for hearing of, and checking in the bud, any impropriety into which the executive Police may be betrayed during the investigation. It is therefore all-important that this responsible Magistrate should know what is transpiring through a daily diary.

“The diary is a quasi-judicial document. It may be called for by Courts, &c., and is therefore a record of ascertained facts and occurrences, not of Police theories and surmises in respect to the circumstances of the offence, or of unsifted suspicions and intelligence. These need not be brought on record until they have passed into the category of judicial evidence. This diary is in fact a confidential but authoritative communication between the official persons who are both responsible for the case, namely, the Magistrate having jurisdiction and his executive Police, and the former must have it. A copy of this daily diary can be sent to the District Superintendent of Police, or a mere mention of the matters noted thereon can be shown in the general diary of Police working, &c., within the station through the Superintendent, and the information it contains goes to the Magistrate of the District.

“I hope the Council will thus see that there can be no doubt that the Magistrate having jurisdiction should have this document submitted to him, and that the efficient working, as well as the due support, of the Police are essentially involved in thus coupling-up these two bodies in respect to their joint responsibilities for the conduct of a case in the early stages of investigation, and thereby insisting on mutual confidence and co-operation and efficient check.

“The present law only provides that a copy of the diary is to be sent to the District Superintendent of Police, who shall bring to the knowledge of the Magistrate of the District what he sees fit, and so on; but it does not deny the same information to the Magistrate having jurisdiction.

“Now, it appears that this somewhat limited and fragmentary direction of law has been construed by Police officers in some parts as justifying them in refusing information in respect to any individual case to the really responsible official, namely, the Magistrate having jurisdiction, and as justifying them in simply ignoring, in their Police detection, every and any Magistrate, except the Magistrate of the District, to whom the District Superintendent of Police communicates as much or as little as he pleases about cases, subject, of course, to the chance of his requiring the actual production of the diary. Police officers of this school simply treat the subordinate executive Magistracy of all grades as purely judicial officers, before whom they prosecute their cases very much in the same exclusive spirit as they would before a Sessions Court, and deny them any communication with the Police in respect to cases actually pending before them.

“Where this is the position assumed by the Police throughout a district, I am sure things cannot possibly work with the harmony and mutual confidence which are indispensable. The Police place themselves in a position alike too weak as respects real efficient working and detection—for they cut themselves off from the aid and advice of the Magistracy of all ranks—and too strong as respects the relative positions of the Magistracy and the executive Police. In fact, they override the Magistracy.

“The Select Committee on the Bill perceived how the direction of the existing law, thus alluded to, is capable of misconstruction, and myself and others probably would have wished to see things put on a clearer and more distinct footing by law, and would have incorporated a direction in the Bill to the effect that the diary of each special case shall be submitted to the Magistrate having jurisdiction, a copy being sent to the District Superintendent of Police, who would bring to the notice of the Magistrate what he thought worth informing him about. But the matter is of so purely executive a character that, as suggested in the early discussion on the reconstruction of the Code of Criminal Procedure, it had better be left in the hands of the Local Government. These best know the state of their Police and Magistracy, and may safely be left to give directions as to whom the diary is to be submitted to in a manner that will best suit all parties.

“I am afraid I have unduly occupied the time of the Council on this matter. I have done so because the thing has been made a great deal of—a very great deal more than is at all desirable. It has been represented as the very keystone of Police working, and of the District Superintendent’s control over, and responsibility as to, the District force, and so on. Why, it has no more to do with the internal economy and efficient working of the general Police, than the proceedings of a regimental Court Martial has to do with the command or efficiency of a regiment or brigade. It is a short skeleton diary relating to an individual case under investigation by the Police, and has nothing to do with internal economy of the district force, or even of the station within which the offence occurred. The general administration is conducted from information supplied by station-house reports, general diaries, occurrence reports and the like, which come together in the Superintendent’s office from all parts of the district, and are there collated. From this general information, a daily report of all important occurrences in the district is prepared, and laid before the District Magistrate every twenty-four hours. Amongst other items of information thus communicated are of course notices of what has taken place in respect to each of the important cases in the hands of the Police all over the district. It is exactly of the same character as the ‘case-diary’ which has been described and which is kept for the use of the Magistrate having jurisdiction and of the Court.

“The matter is purely executive and of little importance as respects the administration of the general Police of a district, and the Bill, as now drawn, not only removes a source of misapprehension, but leaves Local Governments to adjust the matter in the manner that best suits the character of their Police and Subordinate Magistrates.

“I trust that the Council will reject the amendment.”

The Honourable Mr. INGLIS said:—“MY LORD,—I hope the Council will reject this amendment. I think that the use these Police diaries are to be put to is a purely executive matter, which should be left open for the orders of the Local Governments, and is altogether foreign to the Bill now before the Council. Accordingly the Select Committee, after considerable discussion, decided to omit any direction on the subject.

“Act V. of 1861, the Police Act, is curiously vague in the matter of the relations between the Magistrate of the District and the District Superintendent of Police, and very widely different opinions had been held on this subject, all supported by arguments based on the provisions of the Act. One party contending that the Police are a body altogether separate and independent of the Magistrate of the District; the other, that they are completely under his authority and control: both of them, however, referring to Act V. in support of their opinions. Those who consider that the Police should be an independent and separate department refer to those clauses in the Procedure Code which the Committee have decided on omitting as indicating a vague way that the Police are, to a certain and undefined extent, independent of the Magistrate of the District. Indeed, the Honourable Mr. Chapman says that his intention in now proposing their re-introduction is to show that it is the District Police Officer, and not the Magistrate of the District who should be held responsible by Government for the suppression and detection of crime.

“Now, I hold a very decided opinion on this point. I consider that the Magistrate of the District should be, in all matters and in all departments, the supreme head and controlling authority, and that the proper position for the District Superintendent of Police is that of one

of his Assistants in special charge of the Police; but whether this opinion is correct or not I think that this is neither the time nor the occasion on which it should be finally decided, and that it would be a mistake to prejudge in any way the decision that may be come to hereafter by the insertion of a couple of altogether unnecessary clauses to a Bill with which they have no proper connection."

HIS HONOUR THE LIEUTENANT-GOVERNOR said that he should also vote against this amendment to which he objected, not so much for what it expressed, as for what it really meant. He believed that they were all, including the Honourable Mr. Chapman himself, agreed that the District Superintendent of Police should be under the orders and control of the Magistrate of the District, and yet the Honourable Member spoke of the independence of the Police. HIS HONOUR believed it would be admitted that no one could speak more authoritatively upon this subject than the honourable Mr. Robinson, and he strongly advocated the subordination of the Police to the Magistracy. The fact appeared to be, as the Honourable Mr. Inglis told the Council, that these few words were sought to be inserted in order to maintain a remnant of that Police independence of which the Honourable Mr. Chapman had spoken. HIS HONOUR thought that the arguments which had been brought forward in support of the amendment were amply met by what the Honourable Member in charge of the Bill had said, that it was not desirable to introduce a Police law into this Bill: he told the Council that that was a matter which should not be imported into this Bill, and the Committee thought fit to accede to the Honourable Member's argument and leave the matter out of this Bill altogether. In voting now against the amendment, HIS HONOUR did so on the ground put forward by his honourable friend Mr. Inglis, that it was a Police matter, which each local administration could settle as they thought fit. The question was not whether the District Superintendent of Police should have certain information furnished to him, but whether this law should contain any specific provision upon that point. The fact of no provision upon the point being contained in this Code, by no means involved that the Police Superintendent should be kept in ignorance of what was going on in the District. It would always be in the power of the Executive Government to direct in what form the information should be supplied to the Police Superintendent, or for the Police law to prescribe any particular course. It appeared to HIS HONOUR that it was not necessary that, in every petty case of theft, the full proceedings should be sent to the District Superintendent for his information. The determination of such questions should, HIS HONOUR thought, be left to the Police law and the executive. The Police was established upon a different basis in different parts of the country; and even from a purely Police point of view it might not be desirable in all cases that the same rule should be followed. In Bengal, for instance, there were Police Sub-Divisional Inspectors to whom reports were submitted of the occurrences within their jurisdiction. But the result of the proposed amendment would be, that those reports must be sent direct to the District Superintendent, instead of to the Inspector, who would thus be kept in complete ignorance of what was going on within his jurisdiction.

The Honourable MR. ELLIS said that he merely desired to express his entire concurrence with what had fallen from his honourable friend Mr. Chapman, with the single exception that he did not agree, as his honourable friend did, in all points with HIS HONOUR the Lieutenant-Governor and the Honourable Mr. Strachey on the general question of Police. But that was not a matter which was now under consideration. MR. ELLIS laid stress upon the amendment, not because there was any great difference between it and the section as framed in the Bill, but because he perceived that there was a desire, by a side-wind, to re-introduce the old objectionable system of combining in the same officer the exercise of Police and judicial functions.

The Honourable MR. STEPHEN knew nothing by experience of the subject under discussion, but he objected to the character of this Code being depreciated by the introduction of these provisions. What his honourable friend, Mr. Chapman, proposed was exactly the existing law; but by striking out this section, a wide change was effected in section 7 of Act V. of 1861. Take the matter in the way in which HIS HONOUR the Lieutenant-Governor put it: what he said was as much as to say that he did not like Act V. of 1861; he wanted to put the administration of the Police on a different footing from that in which it stood now. MR. STEPHEN thought that Mr. Chapman's exposition of the effect of the amendment was the true one, and he should therefore vote for the amendment so as to keep the law as it stood. If any of the Local Governments did not like the law, it was within their competency to alter Act V. of 1861.

The Honourable MR. STRACHEY said that it appeared to him to be of little real importance whether the section remained as it stood, or whether his honourable friend Mr. Chapman's

amendment were adopted. He, for his part, had only one ground for objecting to the amendment. He hardly knew why it was so, but the Council had been told that in this amendment was involved the question whether or not the Police were to have a semi-independent existence. If this were the case, the amendment acquired an importance which did not appear on its face. If there was any question on which he had a decided opinion it was this. As to Act V. of 1861, he thought it unnecessary to say anything, because, as a matter of fact, no human being could ever say what the most important section in that Act meant. It had been interpreted in a different way in almost every Province. Sometimes, the District Superintendent of Police had been almost independent, and at another time the District Superintendent had been a mere assistant to the Magistrate of the District without any independent authority whatever. Act V. of 1861 was at different times held to be consistent with both of these opposite views.

Mr. STRACHEY spoke of the Bengal Presidency only, and in it he believed there was no Province in which an attempt had not been made to convert the Police into a semi-independent body separate from the Magistrate of the District, the most important officer in some respects in the whole country, the man on whom the whole executive power of the Government in the interior of the District really depended. This separation of the Police from the authority of the Magistrate had done extreme mischief, and he believed there was no part of the Upper Provinces in which the executive authority had not been more or less weakened. During the last few years, however, the tendency had been in the other direction, and the Magistrate of the District had, to a considerable extent, got back his authority. He must give his vote against the amendment.

His Excellency THE COMMANDER-IN-CHIEF said that he would vote in favour of the amendment, as he thought its tendency would be to support the authority of the Sub-Divisional Officers. In reality the District Magistrate and Collector was every thing in the District; he was in fact the king of the District, and the Police ought to be in complete subordination to his authority, and to the authority of the Subordinate Magistrates in charge of Sub-Divisions of Districts.

The Honourable Mr. CHAPMAN would not, at that late hour, detain the Council with many remarks. He wished distinctly and emphatically to repudiate the idea that he was in favour of making the Superintendents independent of the Magistrate. In his opinion the Police should not be independent of the Magistrate, but, at the same time, their organization should be established on a separate and distinct basis. He would place the Superintendent of Police and his men directly and immediately under the orders of the Magistrate of the District; but this was very different from saying that he should be at the beck and call of every Subordinate Magistrate. He supposed that, in an ordinary District, there were some twenty-four Subordinate Magistrates of different grades. Now, let the Council consider the effect of diaries being sent indiscriminately to officers of this class without the District Superintendent being communicated with. All he could say was that, if this was to be sanctioned and adopted, the sooner a financial saving was effected by the abolition of the office of District Superintendent the better. In the course of the consideration of this Bill, his honourable friend on his left had told the Committee some very startling facts connected with Police and Magisterial administration in the Madras Presidency. It seemed there were officers in charge of police-stations on Rupees 14 per mensem, and Magistrates on Rupees 40. Let the Council consider for a moment the effect of two corrupt officers of this class playing into each other's hands?

His Honour the Lieutenant-Governor had said that he (Mr. CHAPMAN) was endeavouring by a side-wind to introduce a very important change. He could not too plainly say that there was no foundation whatever for such an assertion. All he wished was to retain the law on its present footing, and it was His Honour, and Honourable Members who shared His Honour's views, who wanted to effect what he (Mr. CHAPMAN) considered a most dangerous innovation. The matter was of the greatest importance, and he begged the Council would carefully consider the effect of their votes. He could not too strongly assure Honourable Members, and especially his friend Mr. Strachey, that it was not his wish or intention to place the Superintendent in a position of independence towards the Magistrate of the District. All he contended for was that the Superintendent should not be liable to be interfered with, and his authority and responsibility weakened, by every Subordinate Magistrate of the District.

The question being put,
The Council divided—

AYES.

His Excellency the Commander-in-Chief.
Honourable Sir R. Temple.
Honourable Mr. Stephen.
Honourable Mr. Ellis.
Major General the Honourable H. W. Norman.
Honourable Mr. Chapman.
The numbers being equal, the President gave his casting vote with the Noes.
So the amendment was negatived.

NOES.

His Excellency the President.
His Honour the Lieutenant-Governor.
Honourable Mr. Strachey.
Honourable Mr. Inglis.
Honourable Mr. Robinson.
Honourable Mr. Stewart.

The Honourable MR. CHAPMAN then moved—

“ That the following be inserted as paragraphs one and two before the present paragraph one of section 188 :—

“ “ Offences under chapter XX. (relating to Marriage) and chapter XXI. (of defamation) of the Indian Penal Code, and offences of the class described in section 148 of this Code may be compounded. No other offence may be compounded.” ”

“ Instead of the exception to section 214 of the Indian Penal Code, the following shall be read :—

“ “ The provisions of sections 213 and 214 do not extend to any offence which may be lawfully compounded.” ”

It had been pointed out to him (MR. CHAPMAN) that the Code would be defective in a very important particular if no specification were made of the offences which might be compounded. He had consulted a Judge of great experience, and the only doubt that authority had expressed was whether the amendment went far enough, and whether other offences, especially those relating to religion, might not be included. His amendment, if agreed to, would have the effect of clearing up perhaps the only really obscure and doubtful provision of the Penal Code.

His Honour THE LIEUTENANT-GOVERNOR said that he must oppose this amendment. It appeared to him that the matter required elucidation in a great degree. No one understood the present law, still it was very difficult to deal with, and could not be disposed of in this summary way. The offences included under section 148 of the Code included a great variety of cases, and His Honour did not think that the Honourable Member had exercised sufficient care in drawing up the amendment; there might be included in it a vast number of cases that ought not to be compounded. You might go through hundreds of cases that would fall within the provisions of section 148 and ought not to be compounded, and there might be many other cases which were not included in the amendment, but which ought to be compoundable.

The Honourable Mr. STEPHEN said that he hoped to be able to confirm, in the strongest way, what had fallen from His Honour the Lieutenant-Governor on this subject. Take the matter step by step. Offences under Chapter under XX. of the Penal Code, relating to Marriage, were included as compoundable offences. Mr. STEPHEN would ask whether it was intended that bigamy, which was punishable with seven years' imprisonment, should be made a compoundable offence? The Honourable Member had, no doubt, thought only of the case of adultery. Then, we came to the chapter relating to Defamation, with regard to which Mr. STEPHEN would say nothing. Then, we came to the offences included under section 148 of this Bill, the effect of making all of which compoundable offences would be something frightful: you would, in fact, put in the power of people to extort money by making all those offences compoundable. Look again to the offences under chapter X. of the Penal Code, regarding Contempts of the Lawful Authority of Public Servants, most of which were punishable with imprisonment for six months. A person might obtain an order from a public servant under that chapter directing another person to abstain from doing a certain act, and then compound the matter by offering not to put that order into execution. What an instrument of extortion and oppression would be put into the hands of people by such a provision! Then, again take offences under chapter XIV. of the Penal Code relating to Offences affecting the Public Health, Safety, Convenience, Decency, and Morals: there were hundreds of such offences in which the public were interested! The truth was, that this was one of the most obscure questions with which one

could deal, and any attempt to provide for it by a definition of this kind would be most hazardous. Take the offence under section 323 of the Penal Code, voluntarily causing hurt: although the offence there provided for was of the most personal nature, a person would not be able to compound it, because the punishment for voluntarily causing hurt extended to imprisonment for one year. Take, again, the case of assault with intent to dishonour; that was an offence which a person could not compound, because the punishment extended beyond six months' imprisonment. The fact was that, until a law was introduced which defined actionable wrongs in the way in which we had tried to define contracts, you would not be in a position to say what offences were compoundable and what offences were not compoundable. the only other way of doing the thing was to go through the schedule to the Code of Criminal Procedure, case by case, and add a column stating what offences were compoundable and what offences were not compoundable.

The Honourable Mr. CHAPMAN said that, after what had fallen from the Honourable Mr. Stephen, he would, with the permission of the President, withdraw the amendment.

The amendment was by leave withdrawn.

The Honourable MR. CHAPMAN then moved—

“That the following words be added to section 295:—

“For the purposes of this section, every Magistrate in a Sessions Division shall be deemed to be subordinate to the Sessions Judge of the Division.”

In doing so, he said, he was no advocate for interfering with the independence and authority of the Magistrate of the District, but he considered that there should be no doubt as to the right of the Judge to call for, for purposes of revision, the proceedings of either the Magistrate of a District or of any other Magistrate subordinate to him.

The Motion was put and agreed to.

The Honourable MR. STEPHEN moved the following amendments:—

“That, at the end of section 186, the following be added:—

“If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit.”

Where accused person does not understand the proceedings.

That the following clause be inserted after section 274:—

“The provisions of this and the last preceding section shall not apply to appeals from Saving sentences on European orders passed on European British subjects under section seventy-four or seventy-six.”

That the words “and all officers and soldiers acting under his orders shall have the protection mentioned in section four hundred and eighty-six” be inserted after the word “Magistrate” in line 8 of section 487.

The Motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF moved that the words “whether European or Native” be inserted after the word “Troops” in line 5 of section 484.

The Motion was put and agreed to.

The Honourable MR. STEPHEN then moved that the Bill as amended, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 17th April 1872.

H. S. CUNNINGHAM,

*Officiating Secretary to the Council of the Governor General
for making Laws and Regulations.*

CALCUTTA,

The 16th April 1872.