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PETITION *of the United Company of*
 MERCHANTS *trading to the East-Indies.*

To the Honourable the COMMONS of Great Britain in
Parliament assembled,

Sheweth,

THAT by an Act of the Thirteenth of His present Majesty, intituled, "An Act for the establishing certain Regulations for the better Management of the Affairs of the *East India* Company, as well in *India* as in *Europe*," the whole Civil and Military Government of the Presidency of *Fort William* in *Bengal*, and the Ordering, Management, and Government, of all the Territorial Acquisitions and Revenues in the Kingdoms of *Bengal*, *Babar*, and *Orissa*, are vested in the Governor General and Council of the said Presidency, in like Manner, to all Intents and Purposes whatsoever, as the same were at the Time of passing the Act, or at any Time before might have been exercised by the President and Council, or Select Committee, in the said Kingdoms, subject to the Orders received from the Court of Directors; and that, by the said Act, His Majesty was empowered to erect and constitute a Supreme Court of Judicature at *Fort William* aforesaid, with full Powers and Authority to exercise and perform all Civil, Criminal, Admiralty, and Ecclesiastical Jurisdiction over all *British* Subjects resident in the said Kingdoms or Provinces under the Protection of the said United *East India* Company, and to hear and determine all Complaints against any of His Majesty's Subjects, for any Crimes, Misdemeanors, or Oppressions,

preffions, committed or to be committed, and also to entertain, hear, and determine, any Suit, Action, or Complaint, against any Person who shall, at the Time when such Debt or Cause of Action or Complaint shall have arisen, have been employed by, or shall then have been directly or indirectly in the Service of, the said United *East India* Company, or of any of His Majesty's Subjects, and against any Inhabitant of the said Kingdoms, for a Debt arising on any Contract, or Agreement in Writing, with any of His Majesty's Subjects, where the Cause of Action shall exceed the Sum of Five Hundred current Rupees, and where the said Inhabitant shall have agreed in the said Contract, that, in case of Disputes, the Matter shall be heard and determined in the said Supreme Court of Judicature, which said Power and Authority His Majesty hath been graciously pleased to carry into Execution by His Royal Charter, bearing Date the 26th Day of *March*, in the Fourteenth Year of His Majesty's Reign; and that, by the said Act and Charter, Two independent Powers have been erected, that of the Governor General and Council entrusted with the Supreme Authority of Government, and that of the Judges entrusted with the Supreme Administration of Justice within the Provinces of *Bengal, Babar, and Orissa*, between whom very alarming Contentions have arisen, which have proceeded to such Extremity, that a Military Force has been employed to resist the Process of the Court, and this extraordinary Interposition avowed and justified upon the Plea of Necessity, since, without this Interposition, the Governor General and Council affirm, that the Revenues must have been lost, the Natives of high Rank disgraced, and the Provinces involved in Confusion; and that your Petitioners apprehend these Contentions have principally arisen from Defects in the Institution itself, which has established Two Powers perfectly distinct and independent, without providing sufficient Means to prevent their Collision; and this Opinion your Petitioners are more inclined to adopt, by observing, that the Governor General and Council on the one Hand, and the Judges on the other, were unanimous in every Measure taken throughout this unhappy Contest: That the express Reference in the said Act to the Powers exercised by former Presidents and Council, as well as the Nature of the Subject, decide on the Intention of the Legislature,

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statute, not to prescribe any definite Limits to the Authority of the Governor General and Council in the Civil and Military Government of the Provinces and the Management of the Revenues: Probably, where a small Number of Strangers govern an extensive Territory, in which a despotic Power has ever before prevailed, and collect the Revenues of that Territory adapted to the Nature of their former Government, it will ever be impossible to prescribe any certain known Rules of Conduct to Men entrusted with such an Authority; much less will it be possible to apply the Laws of this Country to so novel a Situation; neither do your Petitioners apprehend that the Court of Justice established by His Majesty's Charter can be rendered subordinate to the Governor General and Council, as the *British* Inhabitants in their Petition to this Honourable House have requested, without totally defeating the Ends of its Institution; since, therefore, both these Powers must subsist independent of each other, some Limit seems necessary to prevent their Opposition, which can only be productive of Disgrace and Ruin: for this Purpose it seems not sufficient that the Distinction between private Acts of Individuals and public Acts of Government should be recognized as a Principle: This the Judges have already done, but Experience has demonstrated, that a rigid Adherence to Forms, and strict Interpretation of Law, unavoidable in Judges where private Rights are concerned, will greatly impede, if not in many Instances wholly suspend, the Functions of Government: Indeed, if Men, exercising an undefined Authority, should be bound to state their Defence with technical Precision, to set forth former Practice as a Custom to prove the Act within the Power exercised by former Presidents and Council; and be entangled by all the strict Rules of Evidence, such a legal Exemption must be merely nominal: Your Petitioners, therefore, humbly submit to the Wisdom of this Honourable House, whether the Object may not be better attained, by permitting Persons to allege generally, that the Act complained of was done under an Authority derived from the Governor-General and Council; making their Certificate, upon a Reference to them, conclusive Evidence of this Fact, always permitting the Judges to proceed where Corruption was

was imputed as the Foundation of the Action entertained by the Court: By such a Provision, every Individual, acting honestly in any Department of Government, will enjoy the protection necessary in an unsettled State, where Dominion must be upheld by the Sword, and the Country regulated, as the Occasion shall require, by a large discretionary Power; while the Attention of the Governor-General and Council will be drawn to the most questionable Conduct of Inferiors, who may be punished by Censure, Suspension, or Dismission; and every Act, where Corruption is imputed, will be submitted to the more rigorous Investigation of an *English* Court of Law: Your Petitioners find likewise, by Papers transmitted to them, that Men sitting in the Administration of Justice have been subjected to large Damages where no unworthy Motive was even suggested, Men have consequently been unwilling to act without an Indemnity from the Company, and had they not been protected by the Governor-General and Council, at a great Expence to the Company, the Administration of Justice throughout the Country must have been suspended: The Decision may be consonant to the Rules of the Supreme Court of Judicature, and to the Laws by which the Judges are obliged to proceed, but is certainly inconsistent with the present State of the Country: Where *British* Subjects preside in Courts which administer Justice according to the antient Laws and Customs of the Country, a Delegation of Authority to those versed in the respective Laws of the *Gentoes* or *Mahomedans*, as the Case may require, seems necessary, and the Practice has long prevailed: To examine the Conduct of these Delegates, to hear Objections to their Report, and finally to decree upon the Rights of Litigants thus ascertained, appear to be the whole Duty of a Judge under such Circumstances; yet Acts of this Nature have been deemed Trespasses in the Plaintiff, in the Delegates, and the Judges; should Acts done in such, or the like Situations, be hereafter examined by the rigorous Maxims adapted to a more perfect Judicature, should the Parties be embarrassed in their Defence by technical Forms in alledging and proving the Authority of the Court, and the Regularity of their Proceeding, much Injustice seems unavoidable:

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able: Your Petitioners, therefore, humbly submit to the Wisdom of this Honourable House, whether it may not be just to leave the Officers, and other Persons acting under the Authority of these Courts, wholly to the Controul of the Judges of the said Courts, and to subject the Judges to the Supreme Court of Judicature, only where Corruption, or other criminal Motive, shall be proved in a Prosecution by Information or Indictment, leaving their Errors or Irregularities to be redressed by Appeal to the Superior Courts of the Country? And whether it may not be expedient to render the intended Protection effectual by making the necessary Allegations few and simple, and at the same Time to facilitate the Proof of these Allegations by making the Certificate of the Judges conclusive Evidence that the Act complained of was done under their Authority, and the Certificate of the Governor-General and Council conclusive Evidence of the Appointment of the Persons claiming to act as the Judges of the Court? And here your Petitioners think themselves compelled, by Humanity and Justice, to entreat the Attention of this Honourable House to the unhappy Situation of the *Cauzee* and *Muftees*, who now languish in Confinement without a Possibility of Relief, except from Parliament: Your Petitioners are further alarmed by the Embarrassment in the Management and Collection of the Revenues created by the Jurisdiction of the Supreme Court, which have been represented to your Petitioners to be so great and extensive as to threaten the Loss of those Supplies which can alone provide for the Government and Defence of the Provinces, or render the Possession of these beneficial to *Great-Britain*: And your Petitioners, in examining these Papers, discover abundant Proofs of the Truth of that Opinion which the Legislature, in the Act of the Thirteenth of His present Majesty, seem already to have adopted, that the Administration of Justice by an *English* Court of Judicature is wholly incompatible, not only with the State of Government in every Part of the Country, but likewise with the Laws, Customs, Religion, and Manners, of the People, which, among the *Hindoos* who constitute the great Body of the Nation, enter so much into the Observances of common Life,

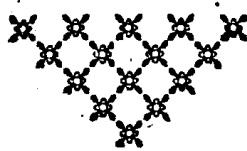
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and are so blended with the Character and Nature of the People, that a Violation of these must be felt as the most insupportable Tyranny : Without presuming to decide whether those who hold Districts, and become responsible with their Sureties for the Revenues of these Districts to the Company (be they hereditary Zemindars, or more temporary Farmers) are, or are not, comprehended under the general Words of the Charter, as directly or indirectly in the Service of the Company, your Petitioners think it their Duty to represent to this Honourable House, that the ordinary Process of the Supreme Court, antecedent even to the Decision of the Question of Jurisdiction, will produce little less than Confusion : Your Petitioners are willing to ascribe the Outrages which have been committed, by entering the Apartments of the Women, and the Defilement of the Place of Worship, to the Ignorance of the inferior Officers of the Court ; but by the ordinary Process, which cannot be withheld, Men of high Rank, possessing themselves a local Jurisdiction and extensive Authority, and Women of the same Description, who cannot appear without Disgrace, are brought from the most distant Parts of the Provinces to *Calcutta*, and must there give Bail, frequently for very large Sums, by Persons resident in *Calcutta*, or be committed to Gaol ; they may then plead to the Jurisdiction, but must verify that Plea upon Oath, which alone dishonours them, and, after a long Delay, may possibly obtain a Decision in their Favour : In the mean Time, the Districts they govern are involved in Confusion, the Revenues lost, themselves and Families disgraced, and all these Disorders produced by a Judicature administered according to unknown Laws, in an unknown Tongue, and totally repugnant to the simple Forms in which they have been accustomed to behold the Administration of Justice, where the Profession of an Advocate is unknown : The People hear, see, and feel the Injuries ; but cannot comprehend the Benefit intended ; and such have been their Terrors, that the Renters of the *Patna* and other Districts have petitioned to be discharged from their Engagements with the Company, representing the Lawyers as the Masters of Right, and that whomsoever they favour, he must prevail : Your
Petitioners

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Petitioners apprehend, that the Supreme Court must be restrained from a direct Interference with the Management of the Revenues, either by its ordinary Process, or by Writs of *Habeas Corpus*, or the Provinces cannot be retained in a Manner beneficial to *Great Britain*: And your Petitioners humbly submit, that with respect to the Natives in general, nothing more can be done, than to give a regular Administration of Justice, prompt and simple in its Forms, on a more permanent Establishment than that which is derived from temporary Regulations made by those intrusted with the executive Government, vesting an Authority in the Supreme Court to watch over the Integrity of these Judges: Whether such an Arrangement can be best made by Laws framed in *England*, or by a local Legislature created by Parliament, your Petitioners do not presume to determine; but should the former Plan be adopted, your Petitioners humbly represent, that if the Nomination and Removal of the *Europeans* who preside in these Courts be not given to the Governor-General and Council, who direct the Residence of *Europeans* employed in other Duties of Executive Government, the Expence of Salaries necessary on a separate Establishment will become too heavy a Burthen; should the latter Plan be approved, your Petitioners humbly submit, that a Reference of the intended Regulations, before such Regulations be established, to the Provincial Chiefs and Councils who may be obliged to report their Opinions and Reasons at large upon the Subject, may furnish much valuable Information, not only to those to whom the Legislative Power is given, but also to those whose final Approbation in *England* may be thought a proper Controul on the local Legislature; and that the Mode already adopted by Parliament, of requiring these Laws to be registered in the Supreme Court, may be a useful Restraint on any intended temporary Arrangements of the Executive Government, and tend to moderate a Power which cannot accurately be defined: Your Petitioners, with great Humility, submit the Whole of what is here suggested to the Wisdom of this Honourable House; but the Court of Directors, intrusted with the important Concerns of
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the *East India* Company, think they should have been wanting to their Duty, if they had not, in the Name and on Behalf of the Company, conveyed the Impressions which they have received from the Papers transmitted to them to this Honourable House, from whom alone your Petitioners can expect Redress : Your Petitioners therefore humbly pray, that the Governor-General and Council, and those who have acted under them, may be indemnified for the Resistance made to the Process of the Supreme Court, and that such Laws may be provided in future as may prevent the Return of the like Disorders.



LETTER *from the Court of Directors*
to the Right Honourable Lord WEYMOUTH.
Dated November 19, 1777.

*To the Right Honourable Lord Viscount WEYMOUTH, one
of His Majesty's Principal Secretaries of State.*

My Lord,

IT is not without reluctance that we trouble your Lordship a second time on the subject of the several letters and papers addressed to us, either by the Governor-General and Council, or by the Judges of the Supreme Court of Judicature in *Bengal*; of these we have lately transmitted Copies to your Lordship; and the necessity we feel of giving precise instructions to the Governor-General and Council, as well for their own conduct as for that of the subordinate settlements, and our earnest desire to conform ourselves in these instructions to what, his Majesty in his wisdom shall see fit, compel us to apply again to your Lordship on this subject.

In the papers to which we refer your Lordship, it is stated, that the jurisdiction exercised by the Supreme Court of Judicature, established by his Majesty's Letters Patent at *Bengal*, has involved the Servants of the Company and Officers of the Revenue acting under their authority in circumstances of difficulty and distress.

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That

That the exercise of this jurisdiction must inevitably tend to render the collection of the Company's revenues impracticable; to abridge the power of the Supreme Council and subordinate Factories, and thereby to prevent the carrying of any useful plan into execution for settling the country, and for establishing the government thereof on a solid and permanent foundation.

That another consequence to be feared from the exercise of this jurisdiction is, the alienation of the minds of the natives, who cannot without great concern see a body of laws introduced, which clash with their constitutional peculiarities, and with their religious sentiments and prejudices; and who must feel the most sensible alarms on finding themselves exposed to have their persons seized, and their laws of property changed, by the orders of a Court, to whose jurisdiction they were strangers.

Nor can we suppose that these fears and apprehensions will appear to your Lordship to be without foundation, when in the annexed papers you observe it to be stated,

1. That the Court has extended its jurisdictions to *Persons*, whom it does not appear to have been the intention of the King or Parliament to submit to its jurisdiction.
2. That it has taken cognizance of *matters*, both originally and pending the suit, the exclusive cognizance of which we humbly conceive it to have been the intention of the King and Parliament to leave to other Courts.
3. That it has claimed a right of demanding evidence, and of inspecting records, which, we conceive, it had no right to demand or inspect.

Under the first head your Lordship will observe it is stated,

That writs have been issued by the Supreme Court into all parts of the Provinces, for bringing up *Zemindars*, farmers, and other natives,

natives, proprietors of lands, to the Court of *Calcutta*, at the suit, and to answer to complaints of natives.

That by such a writ, among others, *Rajah Cheyton Sing, Zemindar of Bissenpore*, a native of high rank and consideration, neither directly nor indirectly a Servant of the Company, was ordered to be brought before the Supreme Court at *Calcutta*.

That the Committee of *Burdwan* having, out of regard, as well to the rank of this *Rajah*, as to the interests of the Company, (to whom he stood considerably indebted as a Renter) offered bail for his appearance within the space of twenty days, that bail was accepted by the Sheriff; but some of the proceedings not having been made within the time required by the rules of the Court (which rules it is conceived a person not subject to its jurisdiction is not bound to know) an officer of the Court was dispatched with a second peremptory order, not to accept bail, but to bring the *Rajah* before the Court for contempt.

That the said *Rajah*, having been brought to *Fort-William* by a *Capias*, was then arrested as an *inhabitant of Calcutta*, confined for a considerable time in the common gaol, and said to be subject to the jurisdiction of the Court, *for holding an employment under the Company, and for receiving a certain salary for the year, or otherwise*; though, in fact, he only receives, as a principal *Zemindar*, a portion of the rents of his *own* lands, under the title of an allowance or pension from the Company, whose Representatives, in their character of *Duan*, have thought fit to transfer the management of those lands to other persons. That the whole proceedings against him appear to our Servants at *Fort-William* replete with irregularity and injustice; and to be so much the more alarming, as almost all the *Zemindars* of the country, standing in the same predicament, would feel themselves exposed to the same dangers. It is further stated, that before it can be determined,

whether the single circumstance of natives of *Bengal* receiving a small portion of their own estates for their subsistence, constitutes an employment under the *Dewan*, so as to subject them to the legal jurisdiction of the Court, “the parties are sure to suffer every distress and oppression with which the attorneys of the Court can easily contrive to harass and intimidate them;” to all which they must submit, as well as finally to the jurisdiction of the Court, unless they are advised to plead to that jurisdiction, and are able to prove a negative; that is, unless a native of *Bengal* be able, from an Act of Parliament, which the Governor-General and Council have declared liable to different constructions, to prove himself not subject to the jurisdiction of the Supreme Court.

That a like writ was issued to bring *Bissempore*, another native, a farmer of a part of the districts, called *Khas Talooks*, to answer before the Court in a plea of trespass, set up against him by *Bridgo Kishore*, *Malzamin* of *Arzem Gunge*, likewise a native.

That a like writ was issued to bring *Sibnarain*, the *Zemindar*, and *Ramsunker Buboy*, *Naib* of the *Pergunnabs* of *Chunderdeep*, &c. to answer in a plea of debt to *Oodul San*, formerly *Naib* of the same *Pergunnab*.

That like writs have been issued for arresting for debt two persons, servants of the *Nizamut*, who had never been in the employ, either of the Company, or of any *British* subject.

That on a prosecution for debt, a warrant was likewise issued to apprehend *Annunderain Roy*, *Zemindar* of the 7 *Anna* division of *Tumlook*, who is a farmer of his own lands, collects the revenues merely as farmer, and not as an Officer of the Company, or of the country Government.

That another native, named *Ramconta Bobooby*, who was in confinement in the *Cutcherry* to answer two decrees of the *Duannee Adaw-*

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Adawlut, was seized by a Sheriff's officer, while under charge of an escort of the officers of the said *Cutcherry*, where he had been to adjust his accounts, respecting arrears of revenue, for which he was security.

That Petitions have also been presented to the Governor-General and Council from five principal *Zemindars*, complaining of warrants having been issued from the Supreme Court, and of the prejudice arising from the abuse of the authority vested in the persons sent to execute those writs.

That the Committee of Revenue at *Calcutta* have represented to the Governor-General and Council, that the *Arzees*, or Petitions of the said *Zemindars* speak so clearly for themselves, that they need little comment; but the Committee however observe, that the *Peons*, or Officers, sent by the Supreme Court to the *Zemindar* of *7 Anna Tumlook*, had acted in a most unjustifiable manner, not only in prohibiting his women from fire and water, but particularly in entering their apartments, which till that time had by all Governments been held sacred; and they express their hope, that such unwarrantable behaviour will be noticed by the Governor-General and Council in the manner it deserves; as such acts of violence, and such violation of the *Hindoo* Laws, must not only disgrace us as a national body with the natives, but likewise breed a disgust in their minds, that may tend to the most serious consequences; not to mention the inevitable loss occasioned to the revenue, which they have reason to think will be great from the heavy balances remaining to be collected; and they further observe, that by the servants of Government being seized and confined in gaol, and the confusion occasioned thereby in the *Mofussul*, they have the most melancholy prospect before them.

That though they have frequently troubled the Governor-General and Council on subjects of this nature, they beg leave to repeat, that from daily experience they find the authority with which they are invested, absolutely, or very nearly, annihilated. That their

their black servants fear to do their duty, and that they know not how to compel them, for the reasons above-mentioned; that from despair of being able to conduct the business of their department, either to their own credit, or to the satisfaction of the Governor-General and Council, they are almost tempted to request permission to resign their several employments in the revenue branch; but as they consider such a step might subject them to the censure of deserting the interests of the Company, at a time when the most strenuous services are required, they determine to persevere in the best manner they are able, in their endeavours for their service; relying at the same time on their justice not to hold them responsible for that success in their affairs which they have it not in their power to ensure.

Your Lordship will permit us to observe, that the Petitioners above-mentioned declare they are the King's (meaning the *Mogul's*) *Zemindars*; that they are neither in the service of the Company, nor of any *English* gentleman; that, having had no practice in *English* Courts, they can form no idea thereof; that they are required to give *Pottab*, or Leaseholders, in *Calcutta* for securities, which they cannot expect to obtain; that therefore they are distressed beyond measure; and request if any man have any just claim upon them, that he may be obliged to prefer it, either in the *Kbalsa*, which is the Revenue-office, or in the *Adawlut*, which is the *Duannee* Court of Judicature; but that they are terrified at the thoughts of the Supreme Court.

That when they attend at *Calcutta*, for the purpose of paying the Government's revenue, warrants are issued against them by the Supreme Court, in consequence of old bonds produced, which have been executed by their fathers and grandfathers; and that by the said warrants they are put in fear of their lives.

That a like representation has been received from the *Zemindar* of *Cberruleah*, and *Muddoleah*, setting forth, that his Deputy had
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had been apprehended by warrant from the Supreme Court, and conveyed to *Calcutta*. And the *Zemindar* of *Cherruleah* has assured the Provincial Council, that his *Naib*, or Deputy, never was employed in the service of any *British* subject; and the *Naib* of *Chunderdeep* (above-mentioned) had just before, at the suit of *Ond-up Seen*, made affidavit to that effect, before the Chief of the said Council, under a commission issued by the Supreme Court of Judicature for that purpose.

And the said Council further represent, that the Members of Administration are unable to take any cautionary measures till the warrant of the Supreme Court has operated; that the subsequent dismissal of the suit in cases where the process is stopped by the defendant's affidavit, that he never was employed in the service of any *British* subject, affords no reparation for the detriment sustained in the interim by Government, owing to the extreme difficulty of recovering balances from the inferior landholders, when the proper season of payment is elapsed.

That a Petition has likewise been presented by *Ramjoy Sing*, a native of *India*, and *Naib* of *Nooroolapore*, stating, that a warrant has issued against him from the Supreme Court, though he declared he is not, nor ever was, in the service of the *English*; and offers to make affidavit that he is not amenable to the said Court.

In all these instances we humbly conceive, that the persons, over whom the Court has extended its jurisdiction, do not fall within any of the classes of persons over whom jurisdiction is given to the Court, either by the Act of Parliament, or by his Majesty's Charter of Justice.

Both in the Act and in the Charter, *three*, and *only* three classes of persons are described, over whom jurisdiction is given to the Court.

1. *British Subjects*, residing in the kingdoms or provinces of *Bengal*, *Babar* and *Orissa*, under the protection of the Company.

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2. Persons employed *directly* or indirectly, in the service of the Company, or any of his Majesty's subjects.

3. Inhabitants of *India*, entering into *written* contracts with any of his Majesty's subjects, and in such contracts *stipulating*, that, in case of dispute, the matter shall be heard and determined in the Supreme Court.

But your Lordship will perceive, that in the instances above recited, the persons over whom the Court assumed jurisdiction, do not fall within either of these classes; they are not *British* subjects. It is not pretended, that in any written contract with *British* subjects, they had made the stipulation necessary to bring them within the jurisdiction of the Court; nor, as we conceive, could they be said to be *employed* by, or to be in the service of the Company, or of *British* subjects. Persons employed as servants, perform services, and receive a stipend for those services. Farmers perform no services, receive no stipend; they only convey one property in exchange for another property.

We must farther submit it to your Lordship's wisdom, whether the bare circumstances of receiving an annual, or other stated payment, can of itself, in all cases, be sufficient to bring persons, otherwise exempted, within the jurisdiction of the Court.

The second head of complaint which occurs in the annexed papers is, that the Supreme Court of Judicature has taken cognizance of *matters*, both originally, and pending the suit, the exclusive cognizance of which, we conceive it to have been the intention of the King and of Parliament to leave to other Courts.

And here your Lordship will allow us to observe, it is in the Governor and Council that the act for the better management of the affairs of the Company has vested, in express terms, *the ordering, management, and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Babar, and Orissa, in like manner*

to all intents and purposes whatsoever, as the same then (at the passing of the Act were, or at any time heretofore might have been exercised by the President and Council, or Select Committee in the said kingdoms.

By these words, we humbly conceive it to have been the intention of the Legislature to vest in the *Dewanee* Courts and Provincial Councils, subject only to the controul of the Governor-General and Council established by this Act, the exclusive jurisdiction in all causes which merely concern the revenue, in the same manner as before the passing this Act the same had been vested in the *Dewanee* Courts or Provincial Councils, subject only to the controul of the ancient President and Council. And this idea we conceive to be the better founded, because where it was the intention of his Majesty, or the Parliament, to convey the *whole* of the jurisdiction of any ancient Court to the new Court of Judicature, the ancient Court is declared to be *abolished*; and it is expressly commanded, that the records, muniments, and proceedings thereof, be deposited in the custody of the new Court. Where it was intended to give the new Court any *participation* in, or *controul* over, an ancient Court, such participation and controul is given in express words.

We cannot therefore but conclude, that if it had been the intention of the King, or of Parliament, to transfer the jurisdiction of the Company, as *Dewan* of Bengal, *Babar*, and *Orissa*, (which jurisdiction is exercised either by the *Dewanee* Courts, or by the respective Councils of the several Presidencies) to this new Court, or had it been the intention of the King, or of Parliament, to give to this Court a participation in, or controul over the others, there would have been clauses, containing specifick provisions for that purpose. Whereas neither the Act nor the Charter have, in this respect, made any alteration in the rights of the Company, or in the powers heretofore exercised by their Representatives in matters of revenue.

Yet your Lordship will observe it stated, that one of the Judges, in a charge to the Grand Jury, asserts, "that a very erroneous opinion has been formed by the Governor-General and Council, distinguishing the situation of the *East-India* Company, as *Dewan*, from the common condition of a trading Company. That he makes no scruple of avowing a decided opinion, that no true distinction can be made in reason, in law, or in justice, between the *East-India* Company, as a trading Company, and the *East-India* Company, as *Dewan* of these Provinces." With respect to the management of the territorial revenues, your Lordship will observe it stated, that the same Judge, on the same occasion declares, "That the only true interpretation of the Act of Parliament is, that the management and government attributed by the Act to the Council are not exclusive, but subject to the jurisdiction of the King's Court, (meaning the Supreme Court of Judicature in *Bengal*,) and that it will be equally penal in the Company, or in those acting under them, to disobey the orders and mandatory process of the Court, in matters *which merely concern the revenues*, as in any other matter or thing whatsoever."

And your Lordship will perceive, that in this charge Mr. Justice *Le Maistre* does not deliver his own single opinion, but speaks the language of the Bench; a language confirmed and supported by the frequent claim and exercise of a supreme controuling jurisdiction, *in matters which merely concern the revenues*. In the perusal of the annexed papers, instances will occur to your Lordship where this jurisdiction has been actually exercised by the Court; others, where, though not actually exercised by the Court, it has been held out *in terrorem* by the officers of the Court; and so far as it appears from these papers, without any mark of disapprobation on the part of the Court; for there your Lordship will find it stated,

That *Bancaram Roy*, a *Gentoo*, confined by order of the *Dewan* *Adawlut* at *Moorsbedabad*, was brought up by a writ of Habeas Corpus, directed to the keeper of the jail of the *Adawlut*, and discharged by order of the Supreme Court.

That *Humi Kishen Tagore*, of *Calcutta*, and farmer of the *Pergunnah* of *Aursab*, in the province of *Burdwan*, having underlet a part of the *Pergunnah* to *Colly Persaud Bose* and *Ram Persaud Bose*, and the said undertenants being considerably in arrears to the farmer, he applied in the usual form for relief to the Council of Revenue at *Burdwan*, where, and where only, by the practice of the country, and by the faith of Government, he had a right to be relieved. That on this application the usual orders were issued for the immediate payment of the sum, or for the appearance of the defendants at *Burdwan*, to shew cause why they ought not to be compelled to pay. That on the receipt of these orders, the defendants promised to make good their payments; but after various delays and evasions, they signified by their attorney to the plaintiff, that they, the defendants, were amenable to the Supreme Court alone, and would commence a prosecution against the plaintiff for the demand made on them in the Revenue-Council of *Burdwan*.

That in the case of *Nunny Hurry Byssaack*, against *Ramnaut Mundell*, farmer of the *Colly Gunge*, an attorney of the Supreme Court sent a formal notice to *Ramnaut Mundell*, that he should institute a suit in that Court for the recovery of a sum of upwards of 37,000 *Rupees*, which the plaintiff pretended to be due to him from the defendant for monies had and received on account of the farm, and which therefore was, we conceive, to be sued for, and recoverable only before the Council of Revenue.

That a general opinion seemed to prevail among the *Pykars*, or *Salt-Brokers*, that they should be supported by the Supreme Court in their refusal to have their salt weighed at the times, and

in the manner prescribed by the Governor-General and Council. An opinion in which they were confirmed by the Attornies of the Court.

That *Comaul-ul-Deen*, farmer of *Hidgelee*, having been committed to prison by the Provincial Council of Revenue of *Calcutta* for a debt due from him to the Company, amounting to one hundred and thirty one thousand *Rupees*, applied to the Judges for a writ of Habeas Corpus, which writ was immediately granted.

But though the return to this writ stated the rights of the Company, as *Dewan*, and the power of the Provincial Council to “seize, imprison, and in prison to detain and keep the person or persons indebted, and in arrears, till he, or they, shall have paid or satisfied, the rents and revenues so due and in arrears”—Yet, because the *Return* did not state, in *technical terms*, what it had stated in substance, namely, a power in the Provincial Council to commit without *Bail or Mainprize*, the return was declared insufficient; and the President of the *Calcutta* Committee was ordered to accept of bail, with an intimation, that *Comaul-ul-Deen* should not be again taken into custody, till his under renter should have been called upon to pay the rents, and proved insolvent.

That the Governor-General and Council, in their Revenue-Department, having heard the report of the proceedings in this cause, and having ascertained, beyond a doubt, by the most careful examination of competent witnesses, that *Comaul-ul-Deen* was the principal farmer, was indeed the only person who had any specific engagement with the Company; that *Bussunt Roy*, to whom it was pretended *Comaul-ul-Deen* had transferred the farm, with the approbation of the Provincial Council, had never been admitted as a tenant, nor ever been considered by the Council in any other light, than as the agent of *Comaul-ul-Deen*; and having further learned, from the examination of persons skilled in the laws and customs of the *Dewanee Adawlut*, and who supported their opi-

nions by many precedents fully in point, that it was the ostensible farmer, he who had entered into specific engagements with the Government, from whom all arrears should in the first instance be recovered; gave orders to the Committee of Revenue of *Calcutta* to proceed against *Comaul-ul-Deen* in the usual manner.

That, in consequence of these orders, the Provincial Council of *Calcutta* did, as it was usual to do in such cases, a second time take *Comaul-ul-Deen* into custody, giving him at the same time this mark of distinction, that he was confined, not in the common gaol, but in the *Cutcherry*.

That *Comaul-ul-Deen* applied to the Court for a second writ of Habeas Corpus, which he obtained, and in consequence of that writ was discharged from the custody of the *Dewanee Adawlut*.

That, not content with releasing *Comaul-ul-Deen*, the Court proceeded to censure Mr. *Cottrell*, President of the Committee of *Calcutta*, and that a writ was issued against him, commanding him to appear, and answer for a supposed contempt of the Court; when, in fact, all his contempt consisted in the imputed breach of a promise, which it appears he never made, nor was empowered to make, and in his having carried into execution the orders of the Provincial Council of *Calcutta*, the Board at which he presided, and which orders it was his duty to carry into execution.

That, Mr. *Cottrell* having attended the Supreme Court, in obedience to their writs, no enquiry was made into the charge, no evidence examined to support or disprove it, nor in short no notice whatever taken of the supposed offence.

That, in consequence of this interference of the Supreme Court, *Comaul-ul-Deen* ordered suits to be instituted against the Members of the Committee of Revenue at *Calcutta* for trespass and false imprisonment; and although we are by late advices informed that judgment has been given for the defendants, yet we have the mortification to find, that the balance due in July 1776, from *Comaul-ul-Deen*

ul-Deen to the Company, was *Sicca Rupees* 113,130, besides a quantity of salt, to the value of *Rupees* 224,000, amounting together to a sum exceeding 39,000 pounds sterling, of which a very small part has been received, and concerning which (and also another balance of 77,000 *Rupees*, owed to the Company from the farms of *Burridge-butt* and *Hattigur*) the Committee of Revenue report, that they see no reason to doubt but they would have been recovered, had not the Committee been "*arrested in their operations by the interference of an higher Power,*" to which they were obliged tacitly and implicitly to submit. That they were compelled by necessity and duty to state the above transactions to the Governor-General and Council, and even to repeat their representations, because the recovery of the demands of Government become daily more and more precarious. That it was with the utmost concern they saw so large a part of the Company's property in such a situation; but that, having declared their apprehensions of the consequences, they hoped a proper allowance would be made for the difficulties of their station, *and that they should not be held responsible for losses, which it was not in their power to prevent.*

That three *Pottabs*, or Grants, made by Government to *Godadbur Barber*, *Sam Dopa*, and *Sitteram Barber*, natives of *India*, for a small quantity of land in *Calcutta*, appear to have been set aside by the Supreme Court of Judicature, and the land decreed to *Ramcant Paul*, another native of *India*.

That, in the case of *Joseph Pavesey*, an *Italian*, whom the Chief at *Patna* seized on a complaint from the *Amuldar* of *Hadjepore*, the power of seizing unlicensed *British* subjects, and the power of expelling Foreigners, who clandestinely enter the country and commit acts of violence and outrage, though the one be delegated by Parliament, and the other inherent in every Government, were not indeed expressly denied, but rendered doubtful by a declaration delivered from the Bench.

After

After the perusal of these facts, your Lordship will not be surprized to learn, that in some instances the operation of the *Dewanee* Courts is suspended, in others, the Court abolished, and that the Governor-General and Council are discouraged from taking cognizance of appeals from the Country Courts, under the apprehension that their jurisdiction may be disputed, and their decrees annulled by the *Supremé Court*. Nor will your Lordship be surprized to find it so often repeated by the Members of our Council at *Bengal*, that by this interference of the Judges, in matters where they conceive it not to have been the intention of the Legislature that they should interfere, by their taking to themselves the cognizance of matters, the exclusive cognizance of which, as they conceive, is left to other Courts; the Company's office of *Dewan* is in effect annihilated, and the Country Government, in that respect, totally subverted.

Under the third head of complaint stated in the annexed papers, namely, the claim made by the Court of demanding evidence, and inspecting records, which it is conceived they had no right to demand or inspect, your Lordship will observe,

That in an action brought by Mr. *Stuart* against Mr. *Auriol*, for the recovery of 1800 *Rupees*, being the amount of one months salary annexed to the office of Secretary of the Council, the Plaintiff's attorney addressed a letter to Mr. *Bruere*, assistant Secretary of the Board, requiring him to produce in Court the following records of the Board, *viz.*

1. A General Letter, dated some time in the year 1770, from the then President and Council at *Calcutta*, to the Court of Directors in *England*.

2. A General Letter, of the 10th of *April*, 1771, from the Court of Directors to the President and Council at *Calcutta*.

3. The Proceedings in Council of the 26th of *September*, 1772.

4. The

4. The Instructions sent out by the Court of Directors to the Governor-General and Council, in pursuance of the Act of the 13th of his present Majesty.

5. The Consultations of the Governor-General and Council of the 21st and 24th of *August* then last past.

That Mr. *Bruere*, having communicated this letter to the Board, the requisition contained in it appeared to them so extraordinary and unprecedented, that it was resolved by a majority of the Board not to comply therewith.

That, in consequence of this refusal, Mr. *Bruere* was served with a subpoena *duces tecum*, and having attended the Court without the papers, he was told, that, by not producing the papers, he had brought all the damages of the suit upon himself; and having answered, that he could not produce in Court the records of Council, without the express orders of the Board; and that the Board being acquainted with the requisition of the plaintiff's attorney, had ordered him not to produce the papers demanded; he was required by the Court to declare, whether *all* the Members of the Board had been unanimous in giving the order not to produce the papers; and if not, which of the Members had voted for, and which against the producing of the papers; and it being objected by the Council for the defendant, that Mr. *Bruere* could not answer the questions, without a *breach of his trust as Secretary to the Board*, the Court insisted on his giving positive answers thereto, and divulging, in *open Court*, the separate opinions of the several Members, of the Board; assigning, as a reason for this order, that the with-holding of the papers was a direct denial of justice, and that, as the *Board was no Corporation*, the individual Members who had concurred in the refusal, were each of them severally liable to *Actions* for such refusal.

That

That the Court would then have charged the said Mr. *Bruere* with a message to the Board, intimating, that the Court supposed the refusal of the Board to have arisen only from an idea that the requisition came from a wrong quarter, and informing them, that such requisitions were always made by the attorney of one or other of the parties; thereby implying, that the requisition was a matter of *right*; and adding, that the Court *required* the papers to be produced in evidence of the trial of the cause; but Mr. *Bruere* having declined to be the bearer of the said message, Mr. *Sbrimpton*, Prothonotary of the Court, was ordered to deliver the same.

That the Board persisting in their former resolution, not to send the papers demanded, according to the general requisition, but desirous at the same time of shewing all possible attention to the Court, determined to comply with what they conceived to be the real intent and object of the requisition.

For this purpose, knowing that many of the papers demanded, contained matters totally foreign from the suit in question; and conceiving that neither such instructions from the Directors, nor such letters to the Directors, had no relation to the suit; and that such proceedings of the Council as contained either matter foreign to the suit, or even the opinions of the individual Members of the Board respecting the subject of the cause depending, were not matters of a nature which ought to be divulged, or which could be given in evidence; the Board therefore determined that the Secretary should extract the proceedings of the Council relative to Mr. *Stewart's* taking possession of the office of Secretary, with the exceptions, and under the restrictions above-mentioned, and should attend the Court therewith, and produce the same, if he were thereto required; with which resolution the Prothonotary of the Court was desired to acquaint the Court

Nor was this the only instance in which the Judges have demanded, as a matter of right, the inspection of the minutes of the Board, or in which the individual Members thereof have been declared responsible for their respective opinions delivered in Council; for your Lordship will observe,

That a similar demand, and a declaration to that effect, were made on occasion of some intelligence conveyed to the Judges, by we know not whom, that the Board had found it necessary to represent to the Court of Directors the great dangers arising from what the Board judged to be an improper extension of the jurisdiction of the Supreme Court.

That on occasion of a paper, which the Board had judged to be a *Libel* on the Judges, and as such had ordered it to be burnt; the Judges, not satisfied with this mark of the Board's attention to the honour of the Court, demanded a copy, not only of the libel, but also of the minutes of the Council, though, in neither of the last instances could they legally know, that any minutes stood upon the consultations relative to the subjects in question; and the Judges further required the Board to enter on the minutes certain papers, which the Judges called an answer to the libel.

The consequences of such claims cannot escape your Lordship. If the power assumed by the Judges, of inspecting the Minutes of the Council, of knowing and publishing the opinion of each individual Member of the Board, be legal, how is it possible that the Board can act as a Council of State? If the doctrine laid down by the Judges, that each Member is answerable for his opinion in an action of damages to any man who shall think he suffers by any resolution of the Board, be law, how is it possible that the Board should debate with freedom, or act with vigour and firmness, when no one Member can either debate or act with personal safety?

The last head of complaint upon which we shall venture to trouble your Lordship, is respecting the criminal law of *England* being in force and binding upon the natives of *Bengal*, though utterly repugnant to those laws and customs by which they have formerly been governed.

And here your Lordship will permit us to observe, that *Maha Rajah Nundcomar*, a native of high rank in *Bengal*, was indicted, tried, convicted, and executed for an offence which was not capital by the laws of the country where the offence was committed.

This, my Lord, we conceive to be a matter of most serious importance, and big with consequences the most alarming to the natives of *India*.

The general principle which the Judges seem to have laid down in their proceedings against *Nundcomar* is, that *all* the criminal law of *England* is in force, and binding upon *all* the inhabitants within the circle of their jurisdiction in *Bengal*. This principle, though it may perhaps have been adopted by the ancient Courts of Judicature, established by the Charters of their late Majesties *Geo. I.* and *II.*, would, as we conceive, prove so fatal, if pursued through all its consequences, that we might reasonably have expected that the Judges would at least have softened it in the application.

For supposing it not to be in the power of the Judges to mitigate or vary the punishment affixed by the criminal law of *England* to particular offences, your Lordship will nevertheless, perhaps, be of opinion, that as the prisoner had been thus tried, convicted, and condemned, by a law of another country, it would have been a matter of *prudence*, at least, in the Court, to have exercised the power especially given them in the Charter, of respiting the execution of the sentence, till his Majesty's pleasure could be known, instead of proceeding to execution within so short a space of time after conviction; an authority which existed no where else within that settlement, and

which must be supposed to have been given for the purpose of leaving his Majesty the power of mitigating, in instances of this nature, the severity of the law.

The execution of *Nundcomar* appears to us the more extraordinary, when we consider, that so late as the year 1765, the inhabitants of *Calcutta* were exceedingly alarmed, at the circumstance of a native of *Bengal* having been capitally convicted upon an indictment for forgery; that the Court of Directors petitioned his Majesty in behalf of the convict; and that the royal clemency was forthwith extended on that occasion.

In the case, my Lord, to which we allude, it is stated by the President and Council of *Fort-William*, that the principal black inhabitants of the place had preferred a petition to them in favour of *Radachurn Metre*, then under sentence of death for forgery; soliciting them to defer the execution of the same, and recommending the delinquent to his Majesty for mercy; and the said President and Council observe, that in order to give those people the fullest conviction of our lenity *as well as justice*, and in hopes that his *condemnation* would be a sufficient example to deter others from committing the like offence, which, as the President and Council declare, *is not held so infamous* in the eyes of the Petitioners, they had agreed to comply with their application.

The Petition in favour of the Convict was filed, “ The humble
“ Petition of the native inhabitants of *Calcutta*, together with the
“ Merchants, Banyans, and others, whose estates, interests, or habitations, are in any part of the kingdoms of *Bengal*, *Babar*, or *Orissa*,
“ within the jurisdiction of the *English* ;” and it contains the most striking description of the impressions made upon the natives in general, by the conviction of *Radachurn Metre* for forgery.

It states “ the general consternation, astonishment, and even panic,
“ with which the natives at all parts under the denomination of the
“ *English*, are seized by this example of *Radachurn Metre*, that they

“ find themselves subject to the pains and penalties of laws to which
 “ they are utter strangers; and that they are liable through ignorance
 “ unwillingly to incur them. That as they are no ways interested in
 “ those laws, they cannot tell when they transgress them, many things
 “ being, as they observe, capital by the English laws, which are only
 “ fineable by the laws of their forefathers, subject to which they have
 “ hitherto been bred, lived, and governed, and that, till very lately, un-
 “ der the English Flag.”

And a late Governor of *Bengal*, who was upwards of twenty years resident in the country, observes on this occasion, that so extravagant did the sentence against *Radachurn Metre* appear, and such was the disproportion in the eyes of the natives between the crime and the punishment, that the principal inhabitants of *Calcutta* expressed their astonishment and alarm, in a petition to the Governor and Council; and upon a proper representation the convict received a pardon.

We beg your Lordship to consider what will be the consequences, if the Judges proceed upon the principles of declaring all the other parts of the criminal law of *England* to be in force in *Bengal*? and they must so proceed, if they mean to be consistent with themselves. Can it be just, or prudent, to introduce all the different species of felony, created by that which is called the *Black Act*? or to involve, as what is called the *Coventry Act* involves, offences of different degrees in one common punishment? or to introduce the endless, and almost inexplicable distinctions, by which certain acts are or are not burglary? Can certain offenders be transported to his Majesty's colonies in *America*? or sent to work upon the river *Thames*? Shall every man convicted for the first time of *Bigamy*, which is allowed, protected, nay, almost commanded by their law, be burnt in the hand if he can read, and hanged if he cannot read.

These

These, my Lord, are some only of the consequences which we conceive must follow, if the criminal law of *England* be suffered to remain in force, and binding upon the natives of *Bengal*. If it were legal to try, to convict, and execute *Nundcomar* for forgery on the statute of *George* the Second, it must, as we conceive, be equally legal to try, convict, and to punish the *Subabdar* of *Bengal*, and all his court, for bigamy, upon the statute of *James* the First.

In stating the dangers which we apprehend from the jurisdiction exercised by the Supreme Court of Judicature, we should hold ourselves inexcusable if we did not, at the same time, submit to your Lordship's consideration, such reasons as the Judges have thought proper to address to us in relation thereto. Your Lordship will find them in the papers to which we refer in the margin.

We shall not presume to make particular observations upon these papers, but we do not hesitate to declare it as our opinion, that if the Supreme Court be not restrained from controuling the *Duanny* Courts from exercising jurisdiction, and interfering in matters which merely respect the revenues of *Bengal*, the difficulties in collecting them will be insuperable, and the loss to the Company immense.

That there may be an absolute necessity for determining the bounds between the authority of the Supreme Court and the Council, the Judges themselves admit. That necessity we conceive is now become evident. We apprehend, with our Servants in *Bengal*, that the very being of government in *India* depends upon having the power of each of its constituent branches fixed and declared; upon having the limits of the jurisdiction of the Supreme Court ascertained; upon having it known to the people, what persons and matters are, and what persons and matters are not within its jurisdiction.

It is therefore, my Lord, that through your Lordship we beg leave to submit to his Majesty's consideration the instances above

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recited, in which jurisdiction has been exercised by the Supreme Court of Judicature at *Bengal*, and deemed incompatible with the powers given by Parliament to the Governor-General and Council, which are said to obstruct the administration of Government, tend to alienate the minds of the natives, and we fear, must prevent the establishing of the government of that country on any settled or permanent foundation.

We therefore, my Lord, most earnestly renew our request, that his Majesty will be pleased to give such orders therein, as to him in his wisdom shall seem fit.

We are, with great Respect,

East-India House,
Nov. 19, 1777.

My Lord,

Your Lordship's most obedient,

And most humble Servants,

GEORGE CUMMING,	GEORGE WOMBWELL,
GEORGE TATEM,	WILLIAM DEVAYNES,
THO. CHEAP,	JOHN PURLING,
JOHN SMITH,	FREDERICK PIGOU,
JOHN MICHIE,	ROBERT GREGORY,
SAMUEL PEACH,	BENJAMIN BOOTH,
CHARLES BODDAM,	JOHN ROBERTS,
JOSEPH SPARKES,	JOHN HARRISON,
RICHARD HALL,	HENRY SAVAGE,
JAMES MOFFAT,	JOHN MANSHIP,

NATH. SMITH,
T. B. ROUS,
RICHARD BECHER.