

(3) A

INDIAN LAW COMMISSION.

C O P I E S

OF THE

Rare section

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

[Presented to Parliament in pursuance of the Act 3 & 4 W.M. IV. c. 85, s. 54]

Last India House,
26 May 1843.

JAMES C. MELVILL

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Ordered, by The House of Commons, to be Printed,
30 May 1843.

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East India House, }
26 May 1843. }

T. L. Peacock,
Examiner of India Correspondence

SPECIAL REPORTS
OF THE
INDIAN LAW COMMISSIONERS.

— No. 1. —

PROPOSED ACT FOR AMENDING THE LAW REGARDING
THE LIMITATION OF SUITS.

No. 1.
Act for amending
the Law regarding
the Limitation of
Suits

(No. 319)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Madlock*, Esq. Secretary to the Government of India, Legislative Department

Legis. Cons.
5 April 1841
No. 11

Sir,

I AM directed by the Right honourable the Governor of Bengal to forward, for the consideration and orders of the Right honourable the Governor-general in Council, a letter from the register of the *Sudder Dewany Adawlat*, No. 436, of the 22d January 1st, with enclosures, on the subject of the law of limitation of time in respect to the bringing of suits for real and personal property, and in respect to the execution of decrees. With these papers is also forwarded an extract* from the Resolution of the Governor of Bengal on the same subject, which is alluded to in the enclosures above noted.

Judicial Dep.

2. The Governor of Bengal is of opinion that the existing laws on this subject require amendment of the kind now proposed, and further, that the draft Acts submitted by the Court may be made the basis of useful legislation.

3. His Lordship directs me, however, to remark, that he is disposed to doubt the necessity for any distinction, or at all events so wide a distinction as is now observed, in respect to limitation of time, between suits for real and suits for personal property, and that he does not see any reason for allowing, as is done in Mr. Smyth's draft, two sorts of terms, the first general and the second special.

4. For instance, in suits for personal property, Mr. Smyth's proposition is, to fix six years as the limit in the first place but afterwards, on cause shown, to grant four years more, after 10 years he proposes to bar them altogether.

5. The Government thinks that the term, whatever it be, should be fixed once for all, and that after the expiration of the term fixed, no cause shown should avail to procure admission for a suit.

* Paras 39 to 42

I have, &c
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
2 March 1841

EXTRACT from a Resolution of the Government of Bengal in the Judicial
Department, under date the 1st of December 1840

39. THE Governor is aware that the constant attention of the Court is given to this subject, and it is doubtless one which fully deserves all the attention they can give it. His Lordship is, however, of opinion that some improvement might be obtained from limiting the period within which execution may be applied for. There is, apparently, no reason for allowing, as is now done, many years to elapse between an award and the application for its execution, especially as every day's delay

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delay is sure to make execution more difficult, by removing proofs and witnesses, and adding to the complication of circumstances. One year from the date of the decree appears amply sufficient for all purposes for which delay can be needed; and it may be surmised that a man who does not sue out execution within that term has usually no such good reason for his delay as would, in ordinary cases, countervail the evil it occasions. At the expiration of a year he who had not sued out execution might be refused it, unless after a suit to revive execution, and after a further term even greater difficulties might be opposed to him. Eventually a time should be fixed, after which the courts should presume the decree satisfied, and refuse to interfere. At present, not to speak of land cases, which may be delayed for 59 years, a creditor may leave his debt 12 years unsued for, and after suing and obtaining a tardy decree, may sue out execution after the expiration of more than 12 years more.

40. It is no wonder his Lordship thinks that under such a law execution of decrees should be proverbially difficult, and so often indeed impossible.

41. In reporting their opinion upon this point, the Court are requested at the same time to state their view of the general law of limitation, which is in many respects open to objection.

42. In some districts, where the quantity of work of that description admitted of such a measure, it might be found advantageous to employ a principal sudder ameen entirely in executing decrees, until at least the existing arrear were brought down. Upon this suggestion also the Court's opinion is requested.

(A true Extract.)

(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

(No. 436)

Legis. Cons.
5 April 1841.
No. 12.
Enclosure.

From *J. Hawkins*, Esq. Register, Fort William, to *F. J. Halliday*, Esq. Secretary to Government in the Judicial Department.

Sir,

Sudder Dewanny
Adawlut.
Present R. H. Rat-
tray, C. Tucker,
E. Lee Warner,
and D. C. Smyth,
Esqrs. Judges, and
J. F. M. Reid, Esq.
Temporary Judge

WITH reference to the observations of the Right honourable the Governor (in his Resolution on the Civil Report for 1839) regarding the tardy execution of decrees, I am directed by the Court to request you will lay before his Lordship copy of a Minute by Mr. D. C. Smyth, and drafts of two Acts, intended respectively to limit the period within which claims to property should be preferred and execution of decrees sued out, which appear to them calculated to remedy the inconveniences noticed.

2. The Court have communicated to the civil judges (in a circular, dated the 15th instant,) the sentiments of the Governor regarding the disposal of old suits.

3. The other suggestions of his Lordship contained in that Resolution will receive due attention from the Court.

Fort William,
22 January 1841.

I have, &c.
~~(signed)~~ *J. Hawkins,*
Register

NOTE by Mr. *Carmichael Smyth*.

I BEG leave to lay before the Court two draft Acts, prepared by me, with reference to the suggestion contained in the Government Resolution of the 1st December last.

The first relates to the law of limitation; a subject that I brought before this Court more than 10 years ago, when judge of the district of Hooghly. I then advocated the necessity of reducing the period within which suits should be instituted for the recovery of money and other personal property to six years, and my more mature judgment and experience satisfies me that this alteration of the law is indispensably necessary. I am also perfectly satisfied that some further limitation must be placed on the period within which suits for land or other immoveable property may be instituted. At present, as very truly stated in the Government Resolution, a suit for land may be delayed for 59 years, it may also be pending in the courts
four

four or five years, and when finally decided the decree may again remain unexecuted for 12 years more; so that the party cast may have to account for mesne profits for 76 years! The draft Act would alter the law as follows.—

No. 1.
Act for amending
the Law regarding
the Limitation of
Suits.

1. Suits for personal property to be instituted within six years after the cause of action shall have arisen.

2. On showing sufficient cause, such suits may be heard within the period of 10 years.

3. After 10 years no suit for personal property to be entertained, on any plea whatever.

4. Suits for immoveable property to be instituted within 12 years after the cause of action shall have arisen

5. On showing sufficient cause, such suits may be heard within the period of 20 years.

6. After 20 years no suits for immoveable property to be entertained, on any plea whatever.

The second draft Act relates to the execution of decrees, and I would follow the law of England on this subject

I would not allow execution to be taken out after a year, unless upon a suit "to revive execution." After the expiration of 12 months, the decree holders should therefore be obliged to proceed, regularly, not summarily; we should then really know what business the courts had before them. At present, issues of the greatest interest to the parties are either disposed of with all the haste and expedition of a summary investigation, or else they lie dormant in the decree,* (juree sherista) with a mass of other undisposed of cases, and are never brought to a satisfactory termination. Believing, therefore, as I do most sincerely, that an alteration of the law on this subject is urgently called for, and agreeing entirely in the remarks contained in the Government Resolution, I would send these two drafts up and press an early consideration of this subject

(signed) D. C. Smyth.

DRAFT OF ACT relating to Law of Limitation.

1. BE it enacted, that the several courts of judicature are prohibited from hearing, trying, or determining the merits of any suit for the recovery of money or other personal property, against any person or persons, if the cause of action shall have arisen six years before any suit shall have been commenced on account of it, unless the complainant can show, by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money, or that he directly preferred his claim within that period to a court of competent jurisdiction to try the demand, and shall assign satisfactory reasons to the court why he did not proceed in the suit, or shall prove that, either from minority or other good and sufficient cause, he had been precluded from obtaining redress.

2. And be it enacted, that no suit for the recovery of money or other personal property shall be cognizable in any court of justice, on any plea whatever, if the cause of action shall have arisen 10 years before the institution of such suit.

3. And be it enacted that the provisions of Section 14, Regulation III. 1793; are declared applicable solely to private claims of right to lands, houses, or other permanent property.

4. And be it enacted, that no suit for the recovery of lands, houses, or other immoveable property shall be cognizable in any court of justice if the cause of action shall have arisen 20 years before the institution of such suit; nor shall any plea on the part of the plaintiff, for the non-prosecution of his claim after the lapse of such period, be deemed a sufficient ground for taking judicial cognizance of any suit so preferred

5. Provided always, and be it enacted, that all suits that may be now pending, or that may be instituted within the period of three years from the 1st of January 1841, shall be heard, tried, and determined in the same way that they might have been at any time before the passing of this Act, anything therein contained to the contrary notwithstanding.

* The office for executing decrees.

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the Law regarding
the Limitation of
Suits.

DRAFT of ACT relating to Execution of Decrees.

1. Be it enacted, that no decree of a civil court of judicature shall be executed summarily, in the manner now prescribed by the Regulations, unless application for the same shall be preferred within the period of one year from the date on which the decree may have been passed.

2. And be it enacted, that every application for the execution of a decree of a civil court of judicature, preferred after the expiration of the period above mentioned, shall be considered as a suit instituted to revive execution of the same, and shall be subject to the rules enacted by Regulation IV. 1793, and the other Regulations in force for receiving, trying, and deciding suits or complaints declared cognizable by the civil courts of judicature; and to the several stamp duties prescribed by Clause 8, Schedule (B.), Regulation X. 1829, on the institution of suits and appeals in those courts.

3. And be it enacted, that, in the trial of such suit, the defendant shall not be at liberty to impugna the merits of the original judgment; but he may show that the matter in dispute has been adjusted subsequent to the date of the original judgment or decree.

4. And be it enacted, that the civil courts of judicature are prohibited from hearing, trying, or determining any suit instituted to revive execution of a decree, unless the same shall be preferred within the period of six years from the date on which the decree may have been passed; nor shall any plea whatever on the part of the decree holder, for the non-execution of the decree after the lapse of such period, be deemed a sufficient ground for taking cognizance of any suit so instituted.

5. Provided always, and be it enacted, that all applications for the execution of decrees that may be now pending, or that may be preferred within the period of one year from the of 1841, shall be executed summarily, and in the same way that they might have been at any time before the passing of this Act, anything therein contained to the contrary notwithstanding.

(signed) J. Hawkins, Register.

MINUTE by the Honourable A. Amos, Esq. dated the 23d March 1841.

Legis. Cons.
5 April 1841.
No. 13.
Limitations of
Suits

I HAVE prepared this draft Act for the "limitation of suits," which comprises the subject of Mr. Smyth's two drafts; but it is more extensive in its operation, and is more enlarged, and it presents considerable modification of Mr. Smyth's proposed clauses. I offer this, however, chiefly as a scheme for a general Act on the subject, which, after publication, will no doubt elicit various suggestions from the supreme and mofussil courts and the Law Commission. I thought it more desirable to take these means for obtaining such suggestions at the earliest moment, rather than to consume time in elaborating the details of the Act according to my own notions.

The supreme courts are considerably behind the modern amendments in the English statutes of limitations. I have endeavoured to give them the English law of the present day in the first section of the draft. The judges of the supreme courts may properly be requested to offer suggestions upon this subject, if any occur to them.

I was very desirous, in furtherance of the design of the Legislature in the Charter Act, to have taken this opportunity for proposing one general law of limitations for all persons and places in India. But the judges here think that this would be very inexpedient, unless we were prepared to make very extensive alterations in the substantive law as administered by the supreme courts. We are certainly not in a condition to make very organic changes at the present moment in the substantive law as administered in the supreme courts; though, as will be seen in the Report of the Law Commission on the subject of the *lex loci*, some essential changes in the English substantive law are proposed as concerns British subjects and others resident in the mofussil. I am afraid we must just now admit our present inability to rectify the anomaly, that a man shall be safe in the possession of immovable property against private claims after 12 years in the mofussil, whilst in Calcutta it must continue to require 20 at least.

Notwithstanding

Notwithstanding this want of uniformity, the draft Act accomplishes a considerable object in the way of uniformity, by enacting one rule for the three presidencies, and obviating the reference to three separate codes. It also comprises several regulations and isolated parts of regulations in the different codes, thereby affording much benefit from the process of consolidation.

I have introduced several clauses borrowed from provisions of English law, sometimes with slight modifications, which may tend to make the two systems approximate more nearly to each other, and at the same time give greater certainty to the practice of the mofussil courts. These clauses will, I trust, be carefully examined by the judges of those courts.

I have ventured materially to alter several of the provisions contained in the Regulations of the different presidencies. This has been done, with regard to the Bengal Code, to a considerable extent by Mr. Smyth, but I have gone further. It would make this Minute inconveniently long, were I to discuss the reasons for each alteration that I have made in the Regulations or in Mr. Smyth's draft. But I may observe generally, that the Regulations upon this subject contain several very lax provisions, and are sometimes expressed not in very precise terms.* I may observe further, that the sudder courts appear, in many instances, to have almost annihilated the efficacy of several rules in regard to limitations, by giving a very wide interpretation to the exceptions to those rules, availing themselves of the loose phraseology of the Regulations †

I have taken this opportunity of imposing a limit of time for convictions before magistrates, which seems to be wanted.

I have derived great assistance from the suggestions of Mr. Millett with regard to this draft, and I send herewith his Note on the Madras and Bombay Regulations. He explained to me verbally the course of the Bengal Regulations and constructions, together with his own views on the subject. Thus this draft may be considered, in some measure, an anticipation of the labours of the Law Commission, and composed out of materials collected by them. The draft is, however, by no means in that finished state in which, after much more mature consideration than has been given to it, it would have been presented by the Law Commission.

(signed) A Amos

AN ACT for amending the Law with respect to the Limitation of Suits

Legis Cons.
5 April 1841
No 14
Enclosure.

1. WHEREAS it is expedient to extend to Her Majesty's supreme courts within the territories of the East India Company various amendments recently made in the English statute law respecting the limitation of suits, and whereas it is also expedient to modify the law with respect to the limitation of suits as administered in the courts of the East India Company, and to consolidate various enactments upon that subject applicable to different presidencies, and whereas it is also expedient to enact some provisions for limiting the period of certain legal proceedings, with reference as well to the law of England as to the Regulations of the different presidencies. It is hereby enacted, that so much of the statutes 2 & 3 Will. 4, c. 71, 3 & 4 Will. 4, c. 4, 3 & 4 Will. 4, c. 27, as relates to the limitation of suits, and so much of the same as relates to forms of action abolished by those statutes, or any of them, shall be extended to Her Majesty's courts within the territories of the East India Company, provided always, that wherever in those statutes any period is limited with reference to the time of passing the same, the corresponding period in the present Act shall be six months from the time of passing thereof.

2. And it is hereby enacted, that the several courts of the East India Company are

* *Ex gr.* Reg. III. of 1793, "unless the complainant can show that the defendant admitted the truth of the demand, or promised to pay the money, or that he preferred his claim to a court of competent jurisdiction, or shall prove that either from minority, or other good and sufficient cause," he had been precluded from obtaining redress.

Reg. II of 1805, s. 3, the limitation of 12 years shall not be applicable if the person in possession shall have acquired possession by "violence, fraud, or by any other unjust, dishonest means whatever."

† *Ex gr.* Held by Sudder Court, that preferring claim to a court, which claim is noursuted, takes a case out of the Regulation.

Depositing a document in a court held a "sufficient cause" for not enforcing a claim under it in another court.

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Suits.

are prohibited from trying any suit other than for the recovery of immoveable property, or of some right derived from such property, or any suit for reviving a decree, as hereinafter mentioned, if the cause of action shall have arisen six years before the commencement of such suit.

3. And it is hereby enacted, that the courts of the East India Company aforesaid are prohibited from trying any suit for the recovery of immoveable property, or for any right derived out of such property, if the cause of action shall have arisen 12 years before the commencement of such suit.

4. And it is hereby enacted, that no decree of any civil court of the East India Company shall be executed summarily in the manner now prescribed by the Regulations, unless application for the same shall have been preferred within the period of one year from the date on which the decree may have been passed.

5. And it is hereby enacted, that every application for the execution of a decree of any such civil court as aforesaid, preferred after the expiration of one year from the time of passing thereof, shall be considered as a suit instituted to revive the execution of the same, and shall be subject to the rules enacted by Regulation IV. 1795, and the other Regulations in force for receiving, trying, and deciding suits declared cognizable by civil courts of judicature, and to the several stamp duties prescribed by Clause 8, Schedule (B.), Regulation X, of 1829, on the institution of suits and appeals in those courts: provided always, that no stamp duty or fees payable by the plaintiff in any such suit for reviving a decree shall in any case be recoverable from the defendant; and provided also, that in any such suit the defendant shall not be allowed to impugn the merits of the original decree.

5. And it is hereby enacted, that if any person shall at the time of the cause of action first accruing be under any of the disabilities of infancy, idiotcy, lunacy, or absence beyond seas, then such person, or the person claiming through him, may commence a suit in any such civil court as aforesaid, within three years after the person to whom the right shall have first accrued as aforesaid shall have ceased to be under any such disability, or shall have died (whichever shall have first happened): provided always that the disability by reason of absence beyond seas shall in no case be admissible beyond the period of 20 years.

6. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that when any person shall be under any of the disabilities aforesaid at the time when the cause of action first accrues, and such disability may have been removed, or the party may have died under such disability no further period for commencing a suit shall be allowed by reason of any disability of any other person.

7. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that in every case of a concealed fraud, the right to bring a suit shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might have been first known or discovered.

8. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that the cause of action for the recovery of immoveable property or rights derived therefrom shall be deemed to have first accrued when the claimant shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits or of rent, and shall while entitled thereto have been dispossessed or have discontinued such possession or receipt, then such cause of action shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; in other cases the cause of action shall be deemed to have first accrued when the claimant was first entitled to the possession of the estate or interest claimed: provided always, that no possession by a mortgagee or depositary, or any person claiming under them, shall be deemed adverse, so far as to bar the remedy of any claimant by reason of length of time, unless where the person claiming under any such mortgagee or depositary shall have held possession for the space of 12 years without recognising the title of the claimant, and shall have obtained possession under a title *bonâ fide* believed to have conveyed an absolute right of property.

9. And it is hereby provided, in regard to suits in such civil courts as aforesaid, that any acknowledgment in writing, and signed, shall preclude the person signing the same from pleading the aforesaid limitations against the party in whose favour such acknowledgment may have been given, except so far as relates to the lapse of time after the date of such acknowledgment, or the last of such acknowledgments.

10. And it is hereby enacted, that all suits for penal damages brought in any

Vide Sec. 6 & 7,
Reg II. of 1805.

such

such civil courts as aforesaid shall be preferred within one year after the cause of action shall have arisen, and that no period be allowed for disabilities in such cases.

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11. And it is hereby enacted, that no conviction before any magistrate or justice of the peace for any offence punishable by fine, or by fine and imprisonment, shall be deemed valid, unless the offence shall have been committed within one year from the date of such conviction.

12. And it is hereby provided, that this Act shall not extend to any suits for the recovery of the public revenue, or for any public right or claim whatever.

13. And it is hereby provided, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined in the same way that they might have been at any time before the passing of this Act.

FORT WILLIAM, Legislative Department, 5 April 1841.

Legis. Cons.
5 April 1841.
No 15

The following Draft of a proposed Act was read in Council for the first time on the 5th of April 1841.

ACT No. — of 1841.

AN ACT for Amending the Law with respect to the Limitation of Suits and Summary Proceedings.

1. WHEREAS it is expedient to extend Her Majesty's supreme courts within the territories of the East India Company various amendments recently made in the English statute law respecting the limitation of suits: and whereas it is also expedient to modify the law with respect to the limitation of suits as administered in the courts of the East India Company, and to consolidate various enactments upon that subject applicable to different presidencies: and whereas it is also expedient to enact some provisions for limiting the period of certain legal proceedings, with reference as well to the law of England as to the Regulations of the different presidencies;

It is hereby enacted, that so much of the statutes 2 & 3 Will. 4; c. 71, 3 & 4 Will. 4, c. 42; 3 & 4 Will. 4, c. 27, as relates to the limitation of suits, and so much of the same as relates to forms of action abolished by those statutes, or any of them, shall be extended to Her Majesty's courts within the territories of the East India Company: Provided always, that wherever in those statutes any period is limited with reference to the time of passing the same, the corresponding period in the present Act shall be six months from the time of passing thereof.

2. And it is hereby enacted, that the several courts of the East India Company are prohibited, except for special and sufficient reasons, to be stated on the face of the decree, from trying any suit other than for the recovery of immoveable property, or of some right derived from such property, or any suit for reviving a decree, as hereinafter mentioned; if the cause of action shall have arisen six years before the commencement of such suit.

3. And it is hereby enacted, that the courts of the East India Company aforesaid are prohibited from trying any suit for the recovery of immoveable property, or for any right derived out of such property, if the cause of action shall have arisen 12 years before the commencement of such suit.

4. And it is hereby enacted, that no decree of any civil court of the East India Company shall be executed summarily in the manner now prescribed by the Regulations, unless application for the same shall have been preferred within the period of one year from the date on which the decree may have been passed.

5. And it is hereby enacted, that every application for the execution of a decree of any such civil court as aforesaid, preferred after the expiration of one year from the time of passing thereof, shall be considered as a suit instituted to revive the execution of the same, and shall be subject to the rules enacted by Regulation IV. 1793, and the other Regulations in force for receiving, trying, and deciding suits declared cognizable by civil courts of judicature, and to the several stamp duties prescribed by Clause 8, Schedule (B.), Regulation X. of 1829, on the institution of suits and appeals in those courts: provided always, that no stamp duty or fees payable in any such suit for reviving a decree shall in any case be recoverable from the defendant;

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defendant; and provided also, that in any such suit the defendant shall not be allowed to impugn the merits of the original decree.

6. And it is hereby enacted, that if any person shall at the time of the cause of action first accruing be under any of the disabilities of infancy, idiotcy, lunacy, or absence beyond seas, then such person, or the person claiming through him, may commence a suit in any such civil court as aforesaid, within three years after the person to whom the right shall have first accrued as aforesaid shall have ceased to be under any such disability, or shall have died (whichever shall have first happened): provided always, that the disability by reason of absence beyond seas shall in no case be admissible beyond the period of 20 years.

7. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that when any person shall be under any of the disabilities aforesaid at the time when the cause of action first accrues, and such disability may have been removed, or the party may have died under such disability, no further period for commencing a suit shall be allowed by reason of any disability of any other person.

8. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that in every case of a concealed fraud, the right to bring a suit shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered.

9. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that the cause of action for the recovery of immoveable property, or rights derived therefrom, shall be deemed to have first accrued when the claimant shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits or of rent, and shall while entitled thereto have been dispossessed or have discontinued in such possession or receipt, then such cause of action shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; in other cases, the cause of action shall be deemed to have first accrued when the claimant was first entitled to the possession of the estate or interest claimed provided always, that no possession by a mortgagee or depositary, or any person claiming under them, shall be deemed adverse so as to bar the remedy of any claimant by reason of length of time, unless where the person claiming under any such mortgagee or depositary shall have held possession for the space of 12 years, without recognising the title of the claimant, and shall have obtained possession under a title *bond fide* believed to have conveyed an absolute right of property.

10. And it is hereby provided, in regard to suits in such civil courts as aforesaid, that any acknowledgement in writing, and signed, shall preclude the person signing the same from pleading the aforesaid limitations against the party in whose favour such acknowledgement may have been given, except so far as relates to the lapse of time after the date of such acknowledgement, or the last of such acknowledgments.

11. And it is hereby enacted, that all suits for penal damages brought in any such civil courts as aforesaid, shall be preferred within one year after the cause of action shall have arisen, and that no period be allowed for disabilities in such cases.

12. And it is hereby enacted, that no conviction before any magistrate or justice of the peace for any offence punishable by fine, or by fine and imprisonment, shall be deemed valid, unless the offence shall have been committed within one year from the date of such conviction.

13. And it is hereby provided, that this Act shall not extend to any suits for the recovery of the public revenue, or for any public right or claim whatever.

14. And it is hereby provided, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined in the same way that they might have been at any time before the passing of this Act.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 5th day of July next.

(signed) T. H. Maddock,
Secretary to Government of India.

INDIAN LAW COMMISSIONERS.

From the Supreme Government to the Honourable the Judges of the Supreme Courts at Fort William, Madras, and Bombay, dated the 5th April 1841.

No. 1.
Act for amending the Law regarding the Limitation of Suits

Honourable Sirs,

WE have the honour to forward to you, for any observations or remarks which you may desire to offer, the accompanying printed copy of the draft of a proposed Act for amending the law with respect to the limitation of suits and summary proceedings, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette.

Legis Cons.
5 April 1841,
No. 16.
Legislative.

We have, &c.

(signed) *Auckland* *W. Casement.*
W. W. Bird. *H. S. Prinsep.*
Fort William, 5 April 1841

From *T. H. Maddock*, Esq. Secretary to the Government of India, to Secretaries Governments of Bengal, Madras, Bombay, and North West Provinces.

Legis Cons.
5 April 1841.
No 17.

Sir,

I AM directed by the Right honourable the Governor-general in Council to transmit to you, for submission to the *the accompanying printed copy of the draft of a proposed Act for amending the law with respect to the limitation of suits and summary proceedings, this day read in Council for the first time, and published for general information, for any observation on its provisions which his Lordship in Council may be desirous to offer previous to its final enactment into law.*

Legislative.

I have, &c.

(signed) *T. H. Maddock,*
Secy to the Gov' of India
Fort William, 5 April 1841.

Honor

(No. 65)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons.
5 April 1841.
No 17 A.

Sir,

By direction of the Right honourable the Governor-general in Council, I transmit to you, for submission to the Law Commissioners, the accompanying copies of papers noted in the margin, on the subject of the draft Act (also forwarded herewith) this day read in Council for the first time, for amending the law with respect to the limitation of suits and summary proceedings, and have to request that if any ~~suggestion or modification~~ modifications should occur to the Commissioners on its provisions, they may be communicated for the information of his Lordship in Council, before the expiration of the period fixed for its reconsideration.

Letter from Secretary Government of Bengal, dated 2 March 1841, No. 319, with Enclosure
Minute by the Hon. A Amos, Esq. dated 23 March 1841, with Enclosure.

I have, &c.

(signed) *F. J. Halliday,*
Jun' Secy to Gov' of India.
Council Chamber,
5 April 1841.

From the Honourable the Judges of the Supreme Court at Madras to the Right honourable the Earl of *Auckland*, G. C. B. Governor-general of India in Council, &c. &c. &c., dated the 27th April 1841.

Legis Cons.
12 July 1841.
No. 30.

My Lord,

WE have the honour to acknowledge the receipt of your Lordship's letter of the 5th instant, enclosing a printed copy of the draft of a proposed Act with respect to the limitation of suits and summary proceedings, for which we beg to return our thanks to your Lordship, and at the same time to state that we have no observations to offer thereupon.

We have, &c.

(signed) *Robert Conyn.*
Edwd. J. Gambier.

No. 1.
Act for amending
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Legis. Cons.
12 July 1841.
No. 31.

From the Honourable Sir *E. Perry*, Knt., Puisne Judge, Bombay, to the Right
honourable the Governor-general in Council, &c. &c. &c.

My Lord and Honourable Sirs,

I HAVE the honour to acknowledge the receipt of your letter of the 5th of April last, enclosing a printed copy of the draft of a proposed Act for the limitation of suits, and I am requested by his Lordship the Chief Justice of this presidency to state that we concur in the expediency of such a measure being passed, and that we have no remarks to offer on the terms of the Act proposed.

Bombay, 4 May 1841.

I have, &c.
(signed) *E. Perry*.

(No. 1514, of 1841.—Judicial Department.)

Legis. Cons.
12 July 1841
No. 32.

From *J. P. Willoughby*, Esq. Secretary to Government of Bombay, to *T. H. Maddock*, Esq. Secretary to the Government of India, in the Legislative Department.

Sir,

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 5th of April last, No. 43, with its enclosure, and to transmit to you, for the purpose of being laid before the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the deputy-register of the Sudder Foujdaree Adalut, dated 28th ultimo, communicating the opinion of the judges of that court in regard to the proposed Act for amending the law with respect to the limitation of suits and summary proceedings.

Bombay Castle, 2 June 1841.

I have, &c.
(signed) *J. P. Willoughby*,
Secretary to Government.

Legis. Cons.
12 July 1841.
No. 33
Enclosure.

(No. 993, of 1841.)

From *W. H. Harrison*, Esq. Deputy-Register, Bombay, to *J. P. Willoughby*, Esq. Secretary to Government, Judicial Department.

Sir,

I AM directed to acknowledge the receipt of your letter, dated 24th ultimo, transmitting copy of a letter from the Secretary to Government of India in the Legislative Department, and of a draft Act therein referred to, for amending the law in respect to the limitation of suits and summary proceedings, and requesting the judges to submit their opinions and suggestions upon the provisions of the latter, and in reply to forward to you the accompanying observations of the court on the several clauses of the Act.

Clause 2, the judges observe, does not except actions for penal damages which, by clause 11 of this Act, shall be preferred within one year; nor does it except the provisions of clause 10. These points are all more clearly provided for in the Bombay Code. Hereditary offices, such as those of patells coolkurnies, district zemindars, &c., and which are regarded in this country as even more valuable, and are more highly prized than immoveable property, are not excepted from the provisions of clause 2. This the judges consider particularly objectionable, and as contrary to the peculiar habits and feelings of the native community. Sections 1, 2, 3, 4, of Regulation V. of 1827, of the Bombay Code, are in their opinion far preferable to the provisions of both this and the next or 3d clause of the proposed Act.

Clause 4, Mr. Marriott considers to be a judicious law, and on 5 that gentleman observes, that to make this section applicable to the Bombay Code, the following should be added after the word "rules," in the sixth line, for the trial of the "original suits," and the remaining part of the section should be omitted as far as "defendant" in the last line but two.

Mr. Giberne, on clause 4 and 5, considers the practice of our courts preferable

Messrs. Marriott,
Bell, and Giberne.

o the provisions of these two clauses. By a circular from the Suder Dewanee Adawlut it was ruled that no decision should be summarily executed after the expiration of one year from its date, without first calling upon the opposite party to state his objections, if he had any to offer; it then rested with the judge to admit or reject those objections, referring in the latter case, the applicant to procedure by action; or if no objection existed, directing the execution of the decree, by which procedure the parties are spared additional expense and trouble, and the debtor is often less liable to be pressed for immediate payment, most probably saved from the claim of further interest, which is limited by Regulation to the date of the decree in the first instance, but which would doubtless be demanded beyond that date. It must be allowed, in the event of a fresh action, moreover, a decree is now declared, subject to the provisions of Sect. 4 of Regulation V of 1827, of the Bombay Code.

Clause 6. Mr Giberne considers the provisions of the Bombay Regulations in Clauses 3 and 4 of Sect. 8 of Regulation V. of 1827, more equitable; the term "beyond seas," can hardly apply in the present-day to natives of this country, who, nevertheless, are frequently obliged to absent themselves for many years in distant lands of this peninsula; and the 7th clause of this Act is, that gentleman thinks, unjust to the heirs of the person referred to: the provisions in the above quoted section are more just.

Clause 8, Mr. Giberne remarks, appears sufficiently provided for in Clause 2 of Sect. 1 of Regulation V. of 1827.

The judges are of opinion, on clause 9, that the provisions of this clause are far inferior to the law of the Bombay Code, and particularly on the subject of mortgage, which is herein rather obscure. ~~If understood correctly,~~ it is intended that no length of time shall be a bar to the rightful owner claiming his property from his mortgage, but he cannot claim it from a party holding the property under such mortgage; that is, after a purchaser has held possession for 12 years, believing his right and title thereunto absolute and undoubted. It appears to the court that this clause and clause 8 may often run counter to each other in the same case; by way of illustration: suppose *A* mortgages his property (house and lands) to *B*, and goes to a distant country, *B* immediately sells it to *C*, *C* holds it for upwards of 12 years, recognising no other claimant, and believing that he had obtained an absolute right of property. *A* returns after 12 years' absence, and sues both *B* and *C* for his property; by clause 9 of the Act, *A* must be nonsuited, *C* having held possession under the mortgage for the space of 12 years without recognizing the title of *A*, having obtained possession under a title *bond fide* believed to have conveyed to him an absolute right of property. But by Clause 8 of this Act, the law is in *A*'s favour, for *B* had no right to sell the property mortgaged to him by *A*; and as he concealed this part of the transaction when selling the property to *C*, he committed a concealed fraud; hence the latter clause provides for an award in favour of *A*. Judges would be puzzled which clause to adopt.

~~Clause 10.~~ The judges are of opinion that this is provided for in a preferable manner in Sect 7 of Regulation V. of 1827, and the provisions of clause 2 of the above section are not provided for in this Act.

Clause 11. It appears to the judges that the provisions of this clause, but certainly those of the foregoing one, should be excepted in clause 2 of this Act, otherwise they run counter to each other.

Clause 12. By the provisions of this clause, as they now stand, in reference to our laws, I am desired to observe, that magistrates will be obliged to hand up for trial of the session courts all offences, however trifling, if committed above one year from the date of the appearance of the offender, as magistrates have not the power by our Regulations to pardon offenders. This is so evidently objectionable, that it cannot certainly be intended, and it may be presumed that the object is to remit the prosecution of offenders coming within the jurisdiction of the magistrates, unless the offenders are brought up within the year after the date on which the offence was committed; this, however, is considered very objectionable in many points of view; the court would rather allow a discretion to the magistrates, which they now do not possess by law, either to prosecute or dismiss such cases.

The judges observe that the greater number of the provisions of this Act refer to points already governed by the laws of the Bombay Code, but to which no allusion has been made; if this or any similar Act is to be passed, the different sections of the Bombay Regulations referring to the same points, should be repealed, otherwise considerable confusion may be anticipated in the application of the

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different laws. In clause 5 of this Act, some Regulations are referred to inapplicable to this presidency, and the code is not specified.

Bombay, Sudder Dewanee Adalat,
28 May 1841.

I have, &c.

(signed) *W. H. Harrison,*
Deputy Register.

(True copy.)
(signed)

J. P. Willoughby,
Secretary to Government.

(No 1131)

Legis Cons.
12 July 1841.
No 34

From *J. Thomason, Esq* Secretary to the Government of the North West Provinces, to *T. H. Maddock, Esq.* Secretary to Government of India, Legislative Department, Fort. William

Sir,

Judicial Dep

I AM directed by the Lieutenant-governor to forward the accompanying copy of a letter from the register to the Allahabad Court of Sudder Dewany Adawlut, dated 21st ultimo, expressing the sentiments of the judges on the draft of a proposed Act received with your letter, No. 44, of the 5th April.

2. With some slight exceptions, the court seem generally to approve of the projected law, an opinion in which, as his Honor cannot concur, he has requested me to detail the following grounds of his dissatisfaction with its provisions.

3 Section 1 seems to bear upon matters cognizable by Her Majesty's Courts, and being of general application to all the presidencies, had better be kept separate from provisions like those in the sequel, to have effect only within the territory under the Company's courts, within the presidency of Fort William. It is true, that there is no limitation in words to the above effect, but the Regulations cited in the following sections are those of Bengal only, and this shows that presidency to be alone therein intended.

4. Sections 2 and 3 fix a term of six and of twelve years, for the entertainment of suits for moveable and immoveable property respectively; but, in the former, an exception, "for special and sufficient reasons," is inserted, not in the latter. In his Honor's opinion, there can be no argument for the exception in the one case that will not hold good in the other; for, whatever description of property a suit may be, a peremptory order of rejection after so brief a time as even 12 years, will sometimes operate very harshly. The best provision against the abuse of any discretion in such a matter, is to direct, as is done in cases of revision of judgment, the inferior court to obtain the sanction of its immediate superior for acting on the exception.

5. Section 4 would, in the opinion of the Lieutenant-governor, be improved by making five years instead of one, the period within which a decree may be summarily executed. Men in trade, or in service, may often be prevented suing out execution for a year, with no fault of theirs.

6 Section 5 is one that the people will be slow to apprehend; that after gaining a decree they are to go the whole process over again, as what, in his Honor's opinion, they will account a gratuitous grievance, especially if the term of the preceding section be not prolonged.

7. The provisions of sections 6, 7, and 8 seem to the Lieutenant-governor to be unexceptionable, though he is not quite aware of the defect in the existing law, which they are required to supply.

8. In section 9, it appears to his Honor that the first part might be rendered more clear, by leaving out the passage from the 10th line, beginning with, "then such cause of action," &c. &c.; or at least detaching it from what precedes, and making of it a distinct sentence, beginning, "In these cases, such cause of action," &c.

9. The latter portion of this section seems to the Lieutenant-governor open to the objection of mutilating the existing law regarding mortgages. Section 8, Regulation XVII. of 1806, distinctly provides, that no mortgage can foreclose, and no conditional become an absolute sale, excepting by the mortgagee applying to a court of justice to issue a notice to the mortgagor, or seller, to pay within a year;

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year; a most salutary enactment, directed to the protection of the weak and the improvident, against the powerful and the crafty.

10. But, by the wording of the passage under consideration, it seems to be meant that a party having "obtained possession, from a mortgagee, under a title *bond fide* believed to have conveyed an absolute right of property," may not, if he has held for 12 years, be ousted, provided he has not, during that time, recognised the right of the claimant.

11. His Honor conceives that the probable working of such a rule may be thus employed. A mortgages his house, field, or garden, to B, and departs to trade, or in quest of service, to a distant land; as soon as A is gone, B goes through the form of giving a deed of absolute sale to his servant, friend, or creature, C; A thrives, makes money, and returns to redeem his property. He finds it in the real or ostensible possession of C, who, on the strength of the deed from B, asserts that he has had possession under a title believed to convey an absolute right, and sets him at defiance.

12. In this manner, the object of one of the best laws in our statute book, Regulation XVII of 1806, will, in his Honor's opinion, be defeated, and the protection which it afforded to the needy, the absent, or the simple, will be transferred to the wealthy, the settled, and the designing.

13. Section 12, relating to the administration of criminal justice, appears to the Lieutenant-governor, however expedient in itself, to be out of place where it is.

14. Section 13 is, the Lieutenant-governor doubts not, indispensable; but the necessity for its insertion presents a strong argument against the whole draft.

15. Section 14 is, in his Honor's opinion, a most advisable rule to enact, if what he still hopes may not happen, the draft to which he sees so many objections should ever pass into a law.

I have, &c.

(signed) J. Thomason,

Secretary to the Government of the N. W. P.

Agra, 21 June 1841.

Abstract

Forwards copy of letter from the Sudder Dewanny Adawlut, containing the sentiments of the judges on the draft of proposed Act for amending the Law regarding the limitation of suits and summary proceedings.

(No. 914.)

From M. Smith, Esq. Register, Allahabad, to J. Thomason, Esq. Secretary to the Honourable the Lieutenant-governor in the Judicial Department, North-western Provinces, Agra.

Sudder Dewanny
Adawlut,
North-west
Provinces
Present: B. Taylor,
G. P. Thompson,
F. Currie, and
H. H. Thomas,
Esqrs. Judges.
Sentiments of court
communicated on
draft of proposed
Act for amending
the law regarding
the limitation of
suits and summary
proceedings.

Sir,

I am directed to acknowledge the receipt of Mr. Edwards' letter, No: 768, dated 27th ult., asking the opinion of the court on the draft of a proposed Act for amending the law regarding the limitation of suits and summary proceedings, and to request that you will submit for the consideration of the Honourable the Lieutenant-governor, the few remarks that suggest themselves to the court as follows:

2. The object of the proposed law and the generality of its provisions appear to the court wise and excellent.

3. The 2d and following sections (in the words of the preamble in section 1) "modify the law with respect to the limitation of suits, as administered in the courts of the East India Company;" and it seems to the court that greater clearness would be attained by the modified Regulations, or parts of Regulations, alluded to being specified in the Act.

4. Regarding the exception (in section 2) allowing of "special and sufficient reasons" being stated on the face of the decree, the court observe, that the wording appears too indefinite; and that a more precise statement of what should be held to constitute such reasons would tend to the avoidance of confusion, and the securing of uniformity of practice in the courts. The court see no objection

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to its being declared that the disabilities specified in section 6 shall constitute the only sufficient reason for delay in the institution of suits under this section.

5. Mr. Taylor is disposed to doubt whether the provision in section 5, regarding execution of decrees, ought to extend to decrees passed in *ex parte* decisions.

6. The wording of section 8, in respect to the definition of the time when the right to bring a suit in cases of concealed fraud, shall be deemed to have first accrued, seems to Mr. Thompson too indefinite, and the provision of section 12 is deemed by the court open to objection, as appearing to hold out a temptation to resist or evade the magistrates' process.

Allahabad, 21 May 1841.

I have, &c.

(signed) M. Smith, Register.
(True copy.)

(signed) J. Thomason,
Secy to the Govt of the N. W. P.

(No. 988.)

Legis. Cons.
12 July 1841.
No. 35

From F. J. Halliday, Esq. Secretary to the Government of Bengal, to
T. H. Maddock, Esq. Secretary to the Government of India, Judicial Department.

Sir,

Judicial Dep.

I AM directed by the Right hon. the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government the accompanying original letter, No. 2028, from the register of the Sudder Dewanny Adawlut, dated the 4th instant, submitting the court's remarks and suggestions on the provisions of the proposed "Act for amending the law with respect to the limitation of suits and summary proceedings," the draft of which accompanied your letter, No. 45, dated the 5th April last, together with a revised draft framed by the court in accordance with those suggestions.

I have, &c.

Fort William, 22 June, 1841.

(signed) F. J. Halliday,
Secy to Govt of Bengal.

P S.—Pleas to return the original enclosures.

(No. 2028.)

Legis. Cons.
12 July 1841.
No. 36.
Enclosure.

From J. Hawkins, Esq. Register, Fort William, to F. J. Halliday, Esq. Secretary to Government of Bengal, in the Judicial Department, Fort William.

Sir,

Sudder Dewanny
Adawlut.
Present R. H. Rat-
tray, C. Tucker,
E. Lee Warner,
and D. C. Smyth,
Esqs. Judges, and
J. F. M. Reid, Esq.
Temporary Judge.

I AM directed to acknowledge the receipt of the orders of the Right hon. the Governor of Bengal, No. 645, dated 20th April, forwarding a letter (No. 45, dated 5th January,) from the Secretary to the government of India in the Legislative Department, together with the draft of a proposed Act for amending the law with respect to the limitation of suits and summary proceedings which accompanied it, and to request that you will submit the following observations for his Lordship's consideration.

2. The court suggest that in section 2 of the proposed Act, the words "to be written in the decree" be substituted for "stated on the face of the decree," as being more easily rendered into the native languages.

3. In section 3 the court suggest the insertion, after the word "prohibited," of "except for special and sufficient reasons, to be inserted in the decree."

4. The court observe that by section 2 provision is made for the period within which suits for personal property are to be instituted; and in like manner by section 3, in suits for real property; section 5 provides for the period within which execution of a decree may be sued out, but no provision is made regarding the period

period in which a suit is to be brought for reviving execution of a decree, supposing that the period laid down in section 4 has been exceeded. It may indeed be intended by the terms of section 5, noted in the margin,* that an application for execution of a decree preferred after the expiration of a year, shall be subject to the rules of limitation laid down in sections 2 and 3, as the case may be, for moveable or immoveable property. This, however, is by no means clear, especially as section 9 makes no mention of the period when, in such a case, the cause of action shall be held to have arisen. The court are of opinion that this point should be specially provided for; and that as the merits of the original decree cannot be impugned, the institution of a suit for reviving execution of a decree should be limited in all cases to six years from the date on which the decree ceased to be susceptible of execution under section 4 of the Act.

5. The court are of opinion that section 6 is unnecessary, as the term "special and sufficient reasons" in sections 2 and 3 appears to them fully to provide for the cases of disability contemplated by its provisions. The wording of the section is, moreover, rather obscure; as the effect of it may be, in some instances of disability, to curtail the periods of limitations allowed by sections 2 and 3. Thus, for instance, in the event of the cause of action having arisen one year before the disability ceased to have effect, the whole term allowed to bring the action might be held as only four years instead of six or 12, as already provided. The court are fully aware that the terms of the section, taken in consideration with the rest of the Act, do not necessarily require such a construction, the object being to grant, in cases of disability, an extension of three years beyond the general fixed limitation; but as the law would apply to the courts of the native judges, who, in their interpretation of the section, would probably confine themselves to its express terms, the court consider it desirable that, if enacted, the phraseology should be so clear as not to leave a doubt of its meaning.

6. The court are not able to form any opinion of the provisions of section 7, as they do not clearly understand the kind of cases which would be affected by it. They would suggest that the section be omitted.

7. They would also suggest that section 9 be omitted. They consider any definition of the term "cause of action" to be unnecessary, and that cases of mortgage should come under the general law of limitation.

8. Section 12 being wholly foreign to the general subject of the Act, should, in the opinion of the court, be also omitted.

9. In the 14th section the court recommend that 12 months be substituted for six months.

10. A draft, containing all the alterations suggested by the court, is herewith submitted for the consideration of his Lordship.

I have, &c.
(signed) J. Hawkins, Register.

Fort William, 4 June 1841.

DRAFT of an ACT for amending the Law with respect to the Limitation of Suits and Summary Proceedings.

1. WHEREAS it is expedient to extend to Her Majesty's Supreme Courts within the territories of the East India Company various amendments recently made in the English statute law respecting the limitation of suits; and whereas it is also expedient to modify the law with respect to the limitation of suits as administered in the courts of the East India Company, and to consolidate various enactments upon that subject applicable to different presidencies: and whereas it is also expedient to enact some provisions for limiting the period of certain legal proceedings with reference as well to the law of England as to the Regulations of the different presidencies:

It is hereby enacted, that so much of the Statutes 2 & 3 Will. 4, c. 71, 3 & 4 Will. 4, c. 42, 3 & 4 Will. 4, c. 27, as relates to the limitation of suits, and so much of the same as relates to forms of action abolished by those statutes, or any of them, shall be extended to Her Majesty's Courts within the territories of the East India Company: provided always, that wherever in those statutes any period is limited with reference to the time of passing the same, the correspond-

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* Shall be considered as a suit instituted to revive the execution of the same.

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ing period in the present Act shall be six months from the time of passing thereof.

2. And it is hereby enacted, that the several of courts the East India Company are prohibited, except for special and sufficient reasons, to be inserted in the decree, from trying any suit other than for the recovery of immoveable property, or of some right derived from such property, or any suit for reviving a decree as hereinafter mentioned, if the cause of action shall have arisen six years before the commencement of such suit.

3. And it is hereby enacted, that the courts of the East India Company aforesaid are prohibited, except for special and sufficient reasons, to be inserted in the decree, from trying any suit for the recovery of immoveable property, or for any right derived out of such property, if the cause of action shall have arisen 12 years before the commencement of such suit.

4. And it is hereby enacted, that no decree of any civil court of the East India Company shall be executed summarily in the manner now prescribed by the Regulations, unless application for the same shall have been preferred within the period of one year from the date on which the decree may have been passed.

5. And it is hereby enacted, that every application for the execution of a decree of any such civil court as aforesaid, preferred after the expiration of one year from the time of passing thereof, shall be considered as a suit instituted to revive the execution of the same, and shall be subject to the rules enacted by Regulation IV. 1793, and the other Regulations in force for receiving, trying, and deciding suits declared cognizable by civil courts of judicature, and to the several stamp duties prescribed by Clause 8, Schedule (B), Regulation X. of 1829, on the institution of suits and appeals in those courts: provided always, that the several courts of the East India Company are prohibited, except for special and sufficient reasons, to be inserted in the decree, from trying any suit for reviving execution of a decree, unless the same be brought within six years from the expiration of the period allowed for suing out execution under section 4 of this Act, and provided that no stamp duty or fees, payable by the plaintiff, in any such suit for reviving a decree, shall in any case be recoverable from the defendant; and provided also, that in any such suit the defendant shall not be allowed to impugn the merits of the original decree.

6. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that in every case of a concealed fraud, the right to bring a suit shall be deemed to have first arisen at and not before the time at which such fraud shall, or with reasonable diligence might have been first known or discovered.

7. And it is hereby provided, in regard to suits in such civil courts as aforesaid, that any acknowledgment in writing, and signed, shall preclude the person signing the same from pleading the aforesaid limitations against the party in whose favour such acknowledgment may have been given, except so far as relates to the lapse of time after the date of such acknowledgment or the last of such acknowledgments.

8. And it is hereby enacted, that all suits for penal damages, brought in any such civil courts as aforesaid, shall be preferred within one year after the cause of action shall have arisen, and that no period be allowed for disabilities in such cases.

9. And it is hereby provided, that this Act shall not extend to any suits for the recovery of the public revenue, or for any public right or claim whatever.

10. And it is hereby provided, that all suits that may be now pending, or that may be instituted within the period of 12 months from the date of the passing of this Act, shall be tried and determined in the same way that they might have been at any time before the passing of this Act.

(signed) J. Hawkins, Register.

(No. 88.)

From *F. J. Halliday*, Esq. Officiating Secretary to Government of India, to
J. C. C. Sutherland, Esq. Secretary to the Indian Law Commission.

Legis. Consr.
19 July 1841.
No. 37.
Legislative Dep.

Sir,
IN continuation of my letter, No. 65, of the 5th April last, I am directed by the Governor-general in Council to transmit to you, for submission to the Law Commissioners, the accompanying copies of papers noted in the margin,* containing observations on the proposed draft Act for amending the law with respect to the limitation of suits and summary proceedings.

* Letter from the Honourable the Judges of the Supreme Court at Madras, dated 27 April 1841.
" from ditto of Bombay, dated 4 May 1841.
" from Secretary Government of Bombay, dated 2 June 1841, with Enclosure
" from Secretary Government of North West Provinces, dated 21 June 1841, with Enclosure.
" from Secretary Government of Bengal, dated 22 June 1841, with Enclosure.

Fort William,
12 July 1841.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to Government of India.

(No. 490.)

From *H. Chamier*, Esq. Chief Secretary to Government, Fort St. George, to
T. H. Maddock, Esq. Secretary to the Government of India.

Legis Cons
26 July 1841.
No. 17

Sir,
WITH reference to your letter of the 5th of April last, No. 42, in the Legislative Department, I am directed by the Right hon. the Governor in Council to transmit, for the information of the Government of India, the accompanying copy of one from the judges of the Sudder Udalut, dated the 28th ult, No. 78, containing their observations on the provisions of the proposed Act for amending the law with respect to the limitation of suits and summary proceedings.

Judicial Dep

2. The judges suggest, that as the draft Act appears intended to apply to the districts under the three presidencies, all allusion to the local Code of Bengal, which is inapplicable to the territories under Madras and Bombay, be omitted, and they also observe that the expression "absence beyond seas," seems objectionable, as it would scarcely ever include pilgrimages of Hindoos, which are the most frequent causes of prolonged absence from home

Fort St. George,
3 July 1841.

I have, &c.
(signed) *H. Chamier*, Chief Secretary.

(No. 78.)

From *W. Douglas*, Esq. Register Sudder and Foujdaree Udalut, Fort St. George, to the Chief Secretary to Government.

Legis Cons
26 July 1841.
No. 18.
Enclosure.

Sir,
Para. 1. WITH reference to the draft Act in the Gazette of the 27th April last, respecting the limitation of suits, I am directed by the Court of Sudder and Foujdaree Udalut to suggest that, as it appears intended to apply to the districts under all the three presidencies, all allusion to the local Code of Bengal, which is inapplicable to the territories under Madras and Bombay, be omitted, by leaving out in section 5 the following words: "The rules enacted by Regulation IV. 1793, and," and by inserting the words "existing law," instead of Clause 8, Section B, Regulation X. "1816."

2. The expression "absence beyond seas," strikes the court as objectionable, because it would scarcely ever include pilgrimages of Hindoos; which are perhaps the most frequent causes of prolonged absence from home.

Sudder and Foujdaree Udalut Register's Office,
28 June 1841.

(signed) *W. Douglas*,
Register.

(A true copy.)

300.

(signed) *H. Chamier*, Chief Secretary,
C 4

No. 1.
Act for amending
the Law regarding
the Limitation of
Suits.

Legis. Cons.
26 July 1841.
No. 19.
Legislative Dep.

(No. 101.)
From *F. J. Halliday*, Esq. Officiating Secretary to Government of India, to
J. C. C. Sutherland, Esq. Secretary Indian Law Commission.

Sir,
WITH reference to my letter, No. 65, of the 6th April last, and subsequent dates, I have the honour, by direction of the Right hon. the Governor-general in Council, to transmit to you, for submission to the Law Commission, the accompanying copy of a communication from the Chief Secretary to the Government of Fort St. George, No. 490, dated the 3d instant, containing observations of the judges of the *Sudder Adawlut* at that presidency on the proposed Act for amending the law with respect to the limitation of suits and summary proceedings.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to Government of India.

Fort William,
26 July 1841.

Legis Cons
21 March 1842.
No. 26.

To the Right honourable the Earl of *Auckland*, G. C. B. Governor-general of
India, in Council.

From Mr Secretary
Maddock,
dated 5th April and
26th July 1841.

IN pursuance of the instructions of your Lordship in Council we have considered the proposed Act for amending the law with respect to the limitation of suits, and having been led to examine the subject generally, we have now the honour to report thereupon, and to submit the rules which, with a few formal alterations, we design to introduce in the codes, the preparation of which is entrusted to the Law Commission. We have put those rules in the shape of an Act, with a view to their being brought into early operation, if your Lordship in Council shall approve of the principles and provisions we recommend.

Your Lordship in Council will perceive that we propose to introduce positive as well as negative prescription. By the former a title is acquired by long possession, by the latter, sometimes only the right to bring an action is barred, sometimes also the title is extinguished, by long dispossession. Positive prescription is not recognised by the Codes of Bengal and Madras; negative prescription is recognised, but only as precluding the institution of suits. By the Bombay Code, prescription is recognised as conveying "a sufficient right of property."

By the English law positive prescription is allowed only in respect of incorporeal hereditaments, but long possession or enjoyment is protected by the rules for the limitation of actions; and by a late statute it is provided, in respect of real property, that at the determination of the period limited for bringing an action the right and title of the owner shall be extinguished.

Positive prescrip-
tion.

Although the negative prescription created by rules of limitation, by preventing actions for the recovery of property from persons who have had adverse possession for a certain time, secures the occupants in their possession, it yet leaves the property in an anomalous and undetermined state. The law takes away the remedy of the party whose right it still admits, and protects the interest of the party in possession, while it refuses to acknowledge any right in him. Hence a variety of difficult and perplexing questions may arise. With a view to impart a more uniform and simple character to the law, and to obviate the uncertainties which are apt to proceed from separating rights from remedies, we propose to allow a positive prescription in respect of all corporeal property, moveable as well as immoveable, and incorporeal rights derived out of or affecting immoveable property and hereditary offices, by which a title shall be acquired by uninterrupted possession or enjoyment for a certain time, provided that in the case of property and offices, possession shall have been held, mediately or immediately, as by virtue of a proprietary right, it being explained that violent dispossession remedied by the interposition of authority shall not be deemed an interruption within the meaning of the Act. And further, with respect to rights derived out of or affecting immoveable property, we propose, in favour of the owner of such property, that they shall be extinguished by disuse for a certain time. A special provision to this effect appears to be necessary from the nature of the case. For as the rights in question are rights *in re aliena*, the owner of the property affected could not himself acquire them by possession or enjoyment, and the object is really to exonerate the property from the charges or servitudes to which it was subject under such rights existing in another.

another party. For instance, a right of way or a right to light over the land to *B* might be acquired by *A* under the general rule of positive prescription we propose, but if such a right should be disused by *A* for the period of prescription, it could not be said to be transferred to *B*. It is necessary, therefore, to extinguish the right of *A* in order to exonerate the land of *B*.

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Suits.

The framers of the statute 2 & 3 Will. 4, c. 71, have apparently not thought it right to deviate so far from the English notion of title by prescription as considerations of convenience seem to us to recommend.

According to the English notion in its purity, the possession or enjoyment which gives title by prescription ought to have no assignable beginning, and no end, that is to say, it should occupy, or be held to occupy, the whole of time down to the present moment. This notion is so far modified by the statute, that now the possession or enjoyment may have a beginning, but even now it must not have an end, for by the fourth section, "each of the respective periods of years herein-before mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question." The section then provides that nothing shall be deemed an interruption unless it shall have been acquiesced in for one year.

So that even now no length of enjoyment will give a title to a way, (for example,) as indefeasible as a title by grant, for every title to a way by prescription founded upon uninterrupted enjoyment for any length of time, may always be defeated by an interruption of one year; whereas the principle suggested by a regard to convenience seems to us to be that a title once gained by prescription should not be lost, until in the case of corporeal hereditaments, a title by prescription to the same subject matter is gained by some other person, or in the case of incorporeal hereditaments, until the time provided in general for exonerating the property affected thereby shall have elapsed. In other words, that a title by prescription should be as indefeasible as any other title.

Since no right other than a right to an incorporeal hereditament can be acquired by prescription according to English law, this deviation from what seems to us the principle recommended by convenience is comparatively unimportant; but as we allow a title to land to be acquired by prescription, very absurd consequences would follow if we adopted the same doctrine. If a man who had acquired a title to land by 12 years' possession could lose his title by one year's interruption, there would be reclaimed and cultivated land without any lawful owner. It is worth remarking, too, that the principle for which we contend has been applied by Lord Chief Justice Tindal to that presumption of a seisin in fee which arises, according to English law, from 20 years' possession, which presumption supplies in some degree the place of prescription.

In the case of *Doe dem. Harding v. Cooke*, 7 Bingham, 346, the Chief Justice thus expresses himself—"In this case it was proved that the elder Harding and his son held the premises for 23 years, and during that time received and increased the rent, an unequivocal act of ownership from which the law presumes a seisin in fee. The father died seised, and the lessor of the plaintiff is the only son who is shown to have survived him. That would be enough, even in a writ of right, to call on the tenant to establish a stronger claim. It is admitted on the part of the defendant that this would have been sufficient if the ejectment had been brought within a year or two after the lessor of the plaintiff had been out of possession; but if two years would not have preponderated against the lessor of the plaintiff, I cannot see why any period short of 20 years should be supposed to raise a counter presumption sufficient to outweigh the presumption arising from the first 20 years." In this case the defendant had been 10 years in possession.

With respect to all matters to which positive prescription is not applicable, we propose to allow a negative prescription by barring suits after the lapse of a certain time, and extinguishing the right of the party who might have brought a suit within the time limited.

Negative prescrip-
tion

The period of positive prescription for the acquisition of a title which we propose with respect to immoveable property and hereditary offices, viz., 12 years, is the same as is now applicable by the rules of limitation in the codes of Bengal and Madras to suits for such property, &c., and as is proposed to be applied to such suits generally by the draft Act read in Council, and published on the 5th April 1841. The limitation applicable to such suits by the Bombay Code is 30 years. It is as formerly the same as that fixed by the codes of Bengal and Madras. The

Periods of positive
prescription

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extension from 12 to 30 years was made in 1823. We have no reason to think that the period of limitation which has been observed from the first establishment of the courts in the presidencies of Bengal and Madras has been found in practice to be too contracted, or that there are any peculiar circumstances which render it advisable to allow a longer period for the acquisition of rights of the same kind in the presidency of Bombay.

The period of positive prescription which we propose with respect to moveable property is six years, the same as the period of limitation proposed in the published draft Act, to be applied generally to suits other than for immoveable property, and which we recommend to be applied to the generality of suits for debts and damages. As the mere fact of possession already gives a right in respect to moveable property until an adverse title shall be proved, and sometimes against an adverse title, we have introduced a proviso that the proposed prescription shall not be construed to affect rights now arising from periods of negative prescription.

By the existing codes of Bengal* and Madras, there is only one period of limitation, viz. 12 years, for all sorts of suits, with exception in the Bengal Regulations of suits for penalties and penal damages, and suits against the awards of the revenue authorities in matters of rent, which are limited to one year. By the Bombay Code suits for damages on account of injury to the person and reputation, and for the recovery of the privileges of caste, are limited to one year; and suits for debts not founded upon or supported by writings, and for damages other than those above specified, are limited to six years. All other suits, except suits for the recovery of immoveable property, are limited to 12 years.

The published draft Act, as we have remarked, reduces the limitation to be applied to all suits other than for immoveable property to six years, except suits for penal damages, which are required to be prosecuted within one year.

Limitation of suits,
or negative pre-
scription.

We propose three periods of limitation for suits other than for property and rights, subject to positive prescription, viz. 12 years, six years, and one year.

There is only one class of suits, for the prosecution of which we propose to allow so long a period as 12 years, viz. suits for the recovery of legacies. It seems to be advisable to allow an extraordinary latitude in such cases, because legatees may often remain in ignorance of the bequests made to them without there being any reason to infer laches on their part, since executors are under no obligation to seek them out and apprise them of the benefit they have become entitled to. We may observe that by the English statute 3 & 4 Will. 4, c. 27, sect. 40, the longest period of limitation, 20 years, is allowed for suits for the recovery of legacies, as for the recovery of lands and for money charged upon lands. It will be remarked that the period of limitation we propose in the case of legacies is the same as the period of positive prescription for immoveable property. In case of legacies being withheld by means of concealed fraud, the general provision in regard to the remedy for wrongs done by such means will be applicable.

We have adopted the limitation of six years as the general rule for suits for debt and damages, conforming to the published draft, in making no difference between debts upon specialty and debts upon simple contract. But we think it advisable to contract the limitation to one year in regard to suits for wages and hire, and for the recovery of simple debts for supplies and accommodations furnished in the expectation of prompt payment, and usually discharged monthly or at shorter periods. We follow the Bombay Code in recommending that the limitation of one year be applied also to suits for damages on account of injuries to the person and reputation, including in the latter, defamation by libel as well as words spoken. The English law makes a difference in the limitation for actions for libel, and for actions for words spoken; but we believe that the former are usually brought within the time prescribed for the latter, and that the case is considered suspicious when the action is brought at a later period.†

There is no special limitation in the Regulations of Madras and Bombay for suits for the recovery of penal damages and penalties. We follow the published draft in applying the limitation of one year prescribed by the Bengal Code to all suits of this nature, which can be brought in the ordinary civil courts under the existing

* An extension is allowed specially in respect of suits for real property in cases of fraud or violence, by Bengal Regulation II. of 1805

† Suits in the ecclesiastical courts for defamatory words must be commenced within six months; and in the criminal courts informations for libel will not be granted unless applied for within the next term

existing Regulations of the several presidencies. It is to be observed, however, that the penalties expressly prescribed in the Regulations are chiefly for offences against the revenue laws and the laws relating to distraint, which, generally speaking, are not recoverable in the civil courts, but are adjudicable by the revenue authorities, or in the criminal department. By the Bengal Regulations, in some cases, the period limited for recovery of penalties adjudicable by the revenue authorities is confined to six months. To prosecutions of penalties adjudicable by the magistrates and revenue officers, the limitation of one year will be applicable under the provisions which we have introduced in sect. 17, unless where a shorter period is specially prescribed by any existing law.

The summary decisions of the civil courts on claims arising incidentally in the execution of process for the satisfaction of decrees are open to the same course of appeal as decisions in regular suits—and after all, the same claims may be brought before the courts for further investigation and adjudication in regular suits. To these suits, there is at present no special limitation by the Regulations of any of the presidencies. We are inclined to think it advisable that some rule should be prescribed to bring such cases to a final settlement without delay. What we would suggest for consideration is, that, after a summary inquiry has been made, and a decision passed upon it, the party dissatisfied should be barred of his remedy if he does not institute a regular suit within the period of one year, to be reckoned from the date of the first decision, or of the decision in appeal, if an appeal has been preferred. This appears to be expedient in order that the suspense of the party in whose favour the court's summary award has been given may be early terminated, and that he may be either assured in the possession which he holds under that award, or warned to defend it against a definite claim.

We retain the provision of the Bengal Code which assigns the same period of limitation to regular suits brought to contest the summary awards of the revenue authorities in matters connected with arrears or exactions of rent. By the Madras Code an appeal is open to the zillah judge by regular suit from the decision of the revenue authorities in such cases; but the time allowed for instituting such suit is only 30 days. By the Bombay Code the collector is vested with civil cognizance in the first instance of all disputes regarding rent, and proceeds in such cases according to the rules prescribed for the civil courts in the trial of regular suits. From the decisions of the collector a regular appeal lies to the zillah judge within 90 days. The proposed provision will therefore not be applicable in the Bombay presidency. Nor do we intend to supersede the present rule in the Madras presidency. We mean that one year should be the maximum period of limitation for suits of this description; but we would leave undisturbed for the present any shorter periods of limitation that may be prescribed by existing Regulations.

Reg VIII. of 1831,
sec 6.

Reg V. of 1822,
sec. 16

Reg. XVII. of 1827,
chap. 8.

It will be observed that we have introduced a provision to this effect, having a general reference to all the limitations proposed. Under its operation the special rule of the Madras Code just adverted to, will be maintained; as well as another which appears to be of sufficient importance to be noticed particularly, whereby persons confined by collectors for arrears of revenue which they deny to be justly due, are at liberty to prosecute the collectors, but are required to institute their action within three months.

Sec 3

Lastly, we have brought under the limitation of one year suits founded on the right of pre-emption. We think it proper that a right of this kind should be asserted promptly, or be considered as foregone.

Under the proposed rules of prescription, in order to make a prescriptive title in opposition to any other title that may be proved, it will be necessary to show that the possession was adverse thereto; and in the case of incorporeal rights, prescription will not take effect if the enjoyment shall have been permitted by express consent or agreement in writing.

Rules of prescrip-
tion.

As to what shall be accounted adverse possession, and from what periods, in different cases, the commencement of it shall be reckoned, some directions are given, which perhaps will be sufficient for the general guidance of the courts.

To secure rights in remainder, it will be observed, that we have provided that prescription shall not be allowed on the ground of possession against a title which shall have accrued after the possession commenced, but from the time at which the title accrued.

In the case of property purchased *bona fide* for valuable consideration from a trustee, or from a depositary, or mortgagee, or from a party who shall have

acquired it by a concealed fraud, we propose to allow prescription in favour of the purchaser to run in the last case from the time of the first acquisition, in the other cases from the time of the acquisition by purchase. The stat. 3 & 4 Will. 4, c. 27, likewise makes a distinction in favour of the purchaser of property acquired by a concealed fraud, supposing him to have dealt in the matter *bonâ fide*. The ground of the distinction is the presumption, that under the circumstances supposed, the purchaser had no reason to suspect any defect in the title of the seller, but on the contrary, every reason to believe it to be good and sufficient, from possession having been taken without opposition, and held independently without challenge; whereas the purchaser from a trustee, &c. might by due diligence discover the nature of the interest under which the seller had occupied, and so learn that his possession had not been adverse.

In the case of trust property, we do not allow a prescriptive title to be acquired by possession for any length of time, except as above by a *bonâ fide* purchaser for valuable consideration.

It will be observed that we have provided, that a title by prescription shall be acquired by the uninterrupted possession of moveable property for 30 years, and of immoveable property for 60 years, by or through a mortgagee or depositary, unless a written acknowledgment of the title of the mortgagor or depositor shall have been given in the meantime. After much deliberation we have come to the conclusion that it is advisable to recognize possession for such lengthened periods as extinguishing the rights of the mortgagors or depositors, unless care shall have been taken to preserve them by obtaining an express acknowledgment from the parties in possession. The former owners having so long neglected to redeem their property, and having omitted to secure their right in this manner, may be considered to have virtually abandoned it, and we think it expedient that a new ownership should then be established of course in the actual possessors. We may observe that sect. 28 of the statute 3 & 4 Will. 4, c. 27, bars a mortgagor after 20 years from the time the mortgagee took possession, when there has been no intermediate acknowledgment in writing of the mortgagor's title. We have gone upon the same principle, but we think the habits of the people in this country in respect to mortgages would be too violently interfered with by the time for redeeming them being contracted to so short a period.

With respect to property of which possession has been acquired by a concealed fraud, we have followed the principle of section 8 of the published draft, which corresponds with that of sect. 26 of the statute 3 & 4 Will. 4, c. 27, in providing that the possession shall not be deemed adverse to the party having a lawful title until the time when the fraud might with reasonable diligence have been discovered by him; and we have conformed to the statute also in allowing exception from this rule, when the possession has passed from the fraudulent party to a *bonâ fide* purchaser. We have gone beyond the statute in allowing a further exception in favour of a party not privy to the fraud, who has succeeded to it by inheritance or devise. The codes of Bengal and Bombay both admit the principle of protecting a person in possession of property under a title acquired *bonâ fide*, notwithstanding fraud on the part of the person from whom it was acquired. The Bengal Code extends the privilege to any "fair title believed to have conveyed a right of possession and property," besides title by "inheritance, purchase and fair donation" which are particularly specified. The Bombay Code allows it to any "title believed to be good." This code further allows a title by prescription to the fraudulent party, by possession for a period double the ordinary term. The Madras Code has no special provision for cases of fraud. We think that the protection we propose may properly be allowed to the heir or devisee coming into possession by the death of the fraudulent party, but as properly denied to any one acquiring possession from him by donation, or in any way without valuable consideration during his life. We are aware that donation among Hindoos is a common mode of disposing of property, in anticipation of death, but it would not be easy to distinguish cases of this kind, and the object may be effected, if the proposed disposition is not contrary to law, by means of a testamentary paper.

The provisions referred to in the statute, and also in the codes of Bengal and Bombay, are confined to immoveable property. We see no reason for this restriction, and the provisions we propose on this subject as well as those regarding trusts, deposits, and mortgages above noticed, are intended to be applied to property of all kinds.

The general rule laid down is, that the period of limitation applicable to every case shall be reckoned from the time the cause of action arose. Rules of limitation.

With respect to suits for the recovery of legacies and debts, we have provided that where written acknowledgments* have been given, or payments† made on account of principal or interest, a new period of limitation shall be reckoned from the date of the acknowledgment or payment. With respect to suits for balances upon account current between merchants and traders, it is directed that the limitation shall be reckoned from the close of the year in the accounts of which there is the last entry indicating a continuance of mutual dealings.

In suits for damages for wrong done by a concealed fraud, it is provided that the cause of action shall be deemed to have arisen at the time such fraud was or might have been discovered.

We propose that in computing the periods of prescription, positive and negative, the time shall be excluded during which, in the former case, any party entitled to interrupt the possession upon which a prescriptive title is claimed, in the latter case the party desiring to bring a suit, or any party through whom he claims shall have been under the disability of infancy or unsoundness of mind, or shall have been absent, subject to the following restrictive conditions, viz that the time excluded by reason of infancy and unsoundness of mind shall not exceed 18 years; and that the time excluded by reason of absence shall not exceed five years, and that the absence shall be contiguous from the time the title accrued or the cause of action arose, and with respect to suits of the kinds described in clause 1, section 9, excepting suits for penal damages, in which we think the limitation should never be relaxed, that the time excluded for any such cause shall not exceed five years.

Exceptions from the rules of prescription, positive and negative, on account of disabilities.

By the published draft, an exception from the prescribed limitations is allowed for disability from infancy, idiocy, lunacy, or absence beyond seas, at the time the cause of action arose, in the person then entitled to sue, but not for disability in any person afterwards entitled to sue in succession to him. The period of three years is allowed for bringing a suit, after the person to whom the right shall have first accrued shall have ceased to be under any such disability, or shall have died, whichever shall have first happened, with a proviso that disability by reason of absence shall not be admissible beyond 20 years.

By the codes of Bengal and Madras exception is allowed on account of the minority of the claimant or "other good and sufficient cause." The Bombay Code makes such allowance only for minority, or continued insanity.

We have thought it proper to specify the causes for which exception from the rules of prescription shall be allowed, and not to leave any discretion to the courts. We see no reason to provide for any other but those we have specified. The rules we propose, it will be observed, provide for natural disabilities occurring successively to parties successively interested, subject to the restriction of a maximum period beyond which no allowance is to be made.

Absence is allowed to bar prescription, positive and negative, but for no longer time than five years over the stated period, and only when the party first entitled to interrupt possession, or to bring a suit, was absent at the time the title accrued, or the cause of action arose, and continued absent for the whole time claimed. The absence must be out of the Company's territories, the territories contiguous, and the island of Ceylon, instead of beyond seas as it stands in the published draft. It would not be expedient to allow absence merely out of the Company's territories to bar prescription, and we think it is not too strict to deny the proposed indulgence to persons who have resided anywhere within the contiguous territories or the adjacent island of Ceylon, while they have been out of the limits of the Company's dominion. Allowing five years for absence, the periods of prescription for the acquisition of property will be extended to 17 and 11 years, and for barring suits to 17, 11, and 6 years; and we do not think it reasonable that they should be longer protracted for such a cause, which generally depends more or less on the will.

It will be observed, that we have provided that in computing the period of positive prescription in regard to moveable property, and of negative prescription in regard to all suits, the time shall be excluded during which the party claiming prescription, or the defendant in a suit, shall have been absent out of the territories

* According to sec 40 of the published draft Act.

† Act 3 & 4 Will. 4, c. 42, sec. 5.

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territories of the East India Company. The absence of the person having adverse possession of immovable property need not prevent a party entitled to the property from taking the necessary steps to recover it, as the absent party must have a local representative; but nothing generally could be done in such a predicament for the recovery of moveable property in the possession of the absentee, or of debts or damages for which he may be liable: hence, arises the necessity for the provision proposed. In such cases the difficulty arises from the party being beyond the reach of process, and therefore allowance must be made for his absence when he has been out of the Company's territories, although he may have been residing within the contiguous territories, or the island of Ceylon.

Further, we propose that, in computing the period for the acquisition of a title by prescription, the time shall be excluded during which a suit brought *bonâ fide* to interrupt the possession shall have been pending, and shall have been diligently prosecuted, in any court of judicature, which from defect of jurisdiction or other cause shall have been unable to decide upon it, or shall have passed a decision, which on appeal shall have been annulled for such cause; and a corresponding provision is proposed in respect to the computation of the period of limitation under such circumstances.

Following the principle of section 34 of the Act 3 & 4 Will. 4, clause 27, we have introduced in section 15, a provision to extinguish the right when the legal remedy is barred by the limitations proposed to be enacted.

We propose to substitute the provisions in section 23 for that contained in section 12, of the published draft. It will be observed that we mean them to be applied to offences punishable by a magistrate or justice of the peace, by fine only, which will embrace penalties for breaches of the revenue laws in cases cognisable by the magistrates, and also offences of the same nature cognisable by officers of revenue, intending to include under this designation officers of the salt, opium, and abkarry departments.

We have not thought it advisable to introduce into this draft a provision corresponding with section 5 of the published draft, by which it is proposed "that every application for the execution of a decree preferred after the expiration of one year from the time of passing thereof, shall be considered as a suit," and subject to the rules for regular suits, and the stamp duties chargeable thereon. We have no information to lead us to believe that laches often occurs on the part of decree holders in respect to execution, when there are visible means by which to obtain satisfaction of the judgment in their favour, and without such laches it may be deemed hard to subject them indiscriminately to heavy costs, when upon the discovery of means after the lapse of a year they come to the courts for assistance to make them available. It occurs to us, however, that it may be proper to fix a certain period of years after which process of execution shall not be allowed by the courts.

But the considerations upon which ~~this seems to be~~ advisable belong properly to the subject of insolvency which we are now investigating, and ~~in submitting our~~ views on that subject we shall state them fully.

Her Majesty's
Supreme Courts.

It will be observed, that the draft Act now submitted is not intended to have force in respect of property situated or being within the local limits of the jurisdiction of any of Her Majesty's Supreme Courts, or of suits or actions in those courts. It is thought to be very desirable, however, that the periods of limitation or negative prescription, should be the same both for causes subject to the jurisdiction of Her Majesty's courts, and for causes subject to the jurisdiction of the courts of the East India Company throughout the British territories in India, and that the rules should be assimilated as nearly as circumstances will admit, especially in respect of the allowance to be made for disabilities; and it appears to us that the present opportunity might be conveniently taken to effect this important object.

Morton's Reports,
p. 345.

With respect to actions in Her Majesty's courts in which Hindoos or Mahomedans are parties, if the case falls within the exception of 21 Geo. 3, c. 70, sect. 17, which provides that questions of "inheritance and succession," and "matters of contract and dealing," shall be governed by Hindoo law when the parties are Hindoos, and by Mahomedan law when the parties are Mahomedans, it has been recently decided by the Supreme Courts at Calcutta and Madras that the limitations of the English law do not apply to them. It seems to be expedient to apply a definite and common rule to such cases, and it appears to us that the

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most fitting will be that which is to govern the like cases, and the like parties, in the courts of the East India Company.

By the English laws at present in force in Her Majesty's courts, and by the new laws proposed to be extended to them, the ordinary period of limitation for personal actions, or actions upon contracts, and for wrongs, in which parties are not Hindoos or Mahomedans, is six years, as proposed in our scheme for the majority of actions of the same description in the courts of the East India Company.

The personal actions proposed by us to be brought under the limitation of six years, for which a longer period is specially allowed by English law, are :

1. Actions of covenant or debt upon any bond or other specialty
2. Of debt or *scire facias* upon any recognisance.
3. Of debt for arrearages of rent upon an indenture or demise.
4. For recovery of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land, or rent, or legacies.

We have thought it advisable to avoid the distinction of debts upon specialties not hitherto recognised by the laws administered in the Company's courts in the presidencies of Bengal and Madras, considering the general provision in our draft, whereby written acknowledgments will bar the limitation, to be sufficient and best suited to this country. We may here observe, that in England, at the time when the distinction in favour of specialties arose, almost every written instrument was under seal, and was a specialty. We are not aware that there is any serious objection to applying the limitation of six years to Her Majesty's courts, as well as to the Company's courts, with respect to the special causes of action above described, subject to the said general provision by which the period can be extended from time to time by agreement between the parties. With regard to the bonds which are in use among natives, it appears that the Supreme Court at Calcutta does not regard them as specialties, but as simple contracts only, because they are not under seal.

With respect to the actions upon contracts, and for wrongs to which by our scheme the limitation of one year is proposed to be applied, the limitation of the English law is various. With regard to the simple debts, which we propose to bring under this short limitation, the common limitation of six years applies; while for actions for assault, and other personal injuries, the period limited is four years, and for defamatory words, and for penalties or penal damages, two years.

Shorter periods of limitation are prescribed by particular statutes in respect of particular wrongs, of which any that may be in force in India might remain in force, under a provision similar to sect. 13 of our draft.

For the recovery of legacies, the longest period of limitation is allowed by the English law, as it is by our draft. If the maximum we have proposed is adopted, it will be 12 years instead of 20.

With respect to actions and suits for real property, the period of limitation prescribed by the stat. 3 & 4 Will. 4, c. 27, intended to be extended to Her Majesty's courts in India, is 20 years.

The stat. 2 & 3 Will. 4, c. 71, also intended to be extended, enacts that no claim to any right of common, or other profit, or benefit from, or upon any land which has been enjoyed by the claimant without interruption for 30 years, shall be defeated "by showing only that such right, or profit, or benefit, was first taken or enjoyed at any time prior to such period of 30 years;" and that when such right, profit, or benefit, shall have been enjoyed for 60 years, "the right thereto shall be deemed absolute and indefeasible," unless it was so enjoyed under a written agreement. This statute contains a similar provision regarding ways and other easements, water-courses, and water, with a difference in the periods of limitation, which are 20 and 40 years respectively.

We think it would be convenient that the period of uninterrupted enjoyment, which is to give a good title to these incorporeal hereditaments, should be the same as the period of adverse possession of corporeal hereditaments which is to bar the actions and the rights of all persons out of possession.

In regard to the limitation to be applied to suits relating to real property, it does not appear to us that the English law is recommended by any peculiar fitness to the state of such property in India; and when the law which is now observed in Her Majesty's courts is about to be modified, it seems to be deserving of consideration whether, instead of simply extending the late English statutes to them, it

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would not be better to adopt the period of limitation which has been in force throughout the greater part of India from the first establishment of the Company's courts, if not to give a title by prescription, upon the ground of uninterrupted possession, for the same period, according to our scheme. Of this alternative, the latter course we think preferable, and seeing that the Act 3 & 4 Will. 4, c. 27, has gone the length of extinguishing the free-existing right and title when a suit has not been brought against the party in possession within the period of limitation, by which, practically, the possessor acquires an indefeasible right, for most purposes equivalent to a proprietary title, and considering that the reasons which led the Legislature to do so, must appear to require that a complete title should be created, we hope that Her Majesty's judges, whom your Lordship in Council will probably consult, will be disposed to concur with us, and if this principle be adopted with respect to immoveable property, we do not apprehend that there will be any objection to applying it also to moveable property.

A considerable difference between the scheme we have proposed, and the rules of the English law, will be found in the exceptions for disabilities. The period of 20 years, limited by the 3 & 4 Will. 4, c. 27, for actions relating to real property, is capable of enlargement in case of disability in the person first entitled to bring the action; but not beyond 40 years, and no further time is allowed for a succession of disabilities. The maximum period to which the ordinary time of prescription may be extended by our scheme is 30 years, which may include disabilities in successive parties. We take 18 years, the longest period of minority specified in the existing Regulations, as a standard for the extreme extension, which is only two years short of the extreme extension allowed by the English law. By allowing for disabilities in successive parties within the maximum period of 30 years, we think we provide better against occasional injustice, than if we allowed a maximum of 40 years in the case of a party being under a disability at the time when the cause of action arose, or according to our view when the title first accrued, but admitted of no further extension in the event of his being succeeded by a person also under a disability; as for example, a lunatic father succeeded by a minor or lunatic son. In such a case, under the English law, the limitation would run from the death of the father, and if that event occurred immediately after the right accrued to him, the right of the son, notwithstanding his disability, might be forever lost by an adverse possession of little more than 20 years, whereas by our rule it could not be lost under such circumstances by an adverse possession of less than 30 years.

Another difference is, that we do not admit coverture as a disability; it appears to us to be unnecessary.

A further difference will be found in the exception on account of absence, which we put upon a distinct footing as a disability, depending more or less upon the will. We think we have made a sufficient allowance for this disability, under all ordinary circumstances, in permitting the periods of prescription to be extended for five years. We do not think it necessary to provide for successive disabilities by reason of absence.

According to our scheme, the same rules will govern the exceptions to be admitted in suits other than for immoveable property, but by the English law there appears to be no maximum period of limitation in respect of personal actions in cases of disability. It would seem that, however long the disability may have continued, the party who may have been prevented by it from bringing his action, is at liberty to sue at any time within the period of limitation after the cessation of such disability. We do not see reason for this distinction between actions for real property and other actions.

We are of opinion, that if the periods of limitation be made the same for suits in Her Majesty's courts and those of the East India Company, the rules regarding disabilities should be also assimilated; otherwise the desired object will be partly frustrated, and there will remain a discrepancy, which will be inconvenient. For instance, a party entitled to estates within and without the limits of any of Her Majesty's courts, might, with respect to the portion of his property situated without such limits, find his title extinct, while with respect to that situated within them it remained valid. Such incongruities we think it highly expedient to put an end to.

If after consulting Her Majesty's judges, your Lordship in Council should be of opinion that it is advisable to make the provisions of the draft Act herewith submitted, applicable to Her Majesty's courts, so far as we have recommended, we shall

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shall be prepared to modify and extend the draft accordingly, or to frame a separate Act for that purpose, as may appear to be most convenient.

We submit this our Report for the consideration of your Lordship in Council.

India Law Commission,
26 February 1842.

(signed) *A. Amos.* *D. Elliott.*
C. H. Cameron. *H. Borradorie*
F. Millett.

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AN ACT concerning the Acquirement and Extinction of Rights by Prescription, in the Territories subject to the Government of the East India Company, without the Local Jurisdiction of Her Majesty's Courts at Calcutta, Madras, and Bombay, and in the Straits Settlements; and for the Limitation of Suits in the Courts of the East India Company.

Legis. Cons
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No 27
Enclosure

Sect. 1. It is hereby enacted, that, subject to the exceptions hereinafter mentioned, a title by prescription shall be acquired in respect of property, moveable and immoveable, and hereditary offices, by uninterrupted possession, mediate or immediate, as proprietor, for six years, in the case of moveable property, and for 12 years in the case of immoveable property and hereditary offices; provided that if any other title be proved, the possession shall have been adverse thereto; and provided that nothing herein contained shall be construed to affect any right arising from possession of moveable property now recognised by law.

Prescription.

Sect. 2. And it is hereby enacted, that in the case of any benefits, liberties, or privileges derived out of, or affecting any immoveable property which shall have been enjoyed without interruption for 12 years, a right to the enjoyment thereof against the owner of the property shall be acquired by prescription, subject to the exceptions hereinafter mentioned, unless such benefits, liberties, or privileges shall have been enjoyed by some consent or agreement expressly given or made for that purpose by some deed or writing.

Sect. 3. And it is hereby enacted, that when a right to any such benefits, liberties, or privileges as aforesaid, whether acquired by prescription or otherwise, shall have been disused for 12 years, the right shall be extinguished.

Sect. 4. And it is hereby enacted, that when a party shall have been forcibly dispossessed of immoveable property, or shall have been prevented from enjoying some benefit, liberty, or privilege derived out of, or affecting immoveable property, and shall have applied within the time limited by any law now in force, or within one month, to the proper authority for assistance to recover the possession or the use thereof, and shall have recovered the same, the period during which his possession or enjoyment was interrupted in such manner shall not be considered an interruption within the meaning of this Act.

Sect. 5. And it is hereby enacted, that when the possession upon which a title by prescription is claimed shall have been acquired by the deprivation of another party who was previously in possession, or, in opposition to a title which had accrued, but upon which possession had not been taken, or having been taken had been previously interrupted, it shall be deemed adverse in respect of the party so deprived of possession, and of any one claiming in the same right, or in respect of the parties interested in the said title, as the case may be, from the time at which the possession actually commenced; and that when an adverse title shall have accrued after the possession was acquired, the possession shall be deemed adverse to the parties interested therein from the time at which such title accrued.

Sect. 6. And it is hereby enacted, that possession acquired by a *bona fide* purchaser for valuable consideration from a trustee, or from a depositary or mortgagee, shall be deemed adverse to the mortgagor or depositor, or beneficial owner under the trust, from the time of the acquisition by purchase.

Sect. 7. And it is hereby enacted, that a title by prescription shall be acquired by possession by or through a depositary or mortgagee which shall have continued without interruption for 30 years in the case of moveable property, and 60 years in the case of immoveable property, unless in the meantime an acknowledgement of the title of the mortgagor or depositor, or of his right of redemption, shall have been given to him or some person claiming his interest, in writing, signed by the mortgagee or depositary, or the person claiming through him; in which case, prescription shall not take effect until possession shall have been had without interruption.

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ruption for 30 or 60 years, as the property may be moveable or immoveable, from the date of such acknowledgment.

Sect. 8. And it is hereby enacted, that in the case of a concealed fraud by which a party shall have been deprived of any property, the possession thereof shall not be deemed adverse to the party entitled until the time at which such fraud shall, or with reasonable diligence might, have been first known by him, except when it shall have been acquired by a *bona fide* purchaser for a valuable consideration, or when a party shall have succeeded to it by inheritance or devise; in the former case, adverse possession shall be deemed to have commenced from the time that the party entitled was deprived of the property by means of such fraud; in the latter, from the time of the succession; provided it shall not appear that the party to whom the possession devolved assisted in the commission of the fraud, or at the time he entered into possession knew, or had reason to believe, that the fraud had been committed.

Sect. 9. And it is hereby enacted, that when a party having a right to any estate or interest in reversion or remainder shall have become entitled to the same in possession by reason of any forfeiture or breach of condition, but shall have waived his action to recover thereupon, possession shall not be deemed adverse to him, or any party claiming in the same right, until the determination of the previous right.

Limitation of suits

Sect. 10. And it is hereby enacted, that suits other than for property and rights to which the above rules are applicable shall not be admitted in the courts of judicature of the East India Company, except as hereinafter provided, unless they are instituted respectively within the periods specified in the following section.

Sect. 11.—1st. Within one year from the time the cause of action arose:

Suits for penal damages or pecuniary penalties or forfeitures, for the breach of any law or regulation:

Suits for damages for injury to the person and personal property, or to the reputation.

Suits for debt for wages of servants, artisans, and labourers; for hire of animals and vehicles; for retail supplies of victuals and articles of daily consumption, for tavern bills and bills for board and lodging, and for lodging only, for the rent of buildings; and on any other account subject by established custom to settlement by the month, or a shorter period:

Suits to alter or set aside summary decisions or orders of the ordinary courts of judicature:

Suits to alter or set aside summary awards by collectors and other officers of revenue in disputes regarding arrears and exactions of rent:

Suits founded on the right of pre-emption in cases to be governed by a law or usage which recognises such right.

2d. Within six years from the time the cause of action arose:

All suits for debts and damages upon contracts, or for wrongs, other than are described in clause 1 of this section, and for the enforcement of contracts.

3d. Within 12 years from the time the cause of action arose:

Suits for the recovery of legacies.

Sect. 12. Provided, that suits against trustees shall not be barred by any length of time.

Sect. 13. And provided, that where by any law a shorter period is specially prescribed for the institution of a particular suit, the limitation so prescribed shall still be observed, notwithstanding this action.

Sect. 14.—1st. And it is hereby enacted, with respect to suits for the recovery of legacies and for debts, that if an acknowledgement shall have been made by the party liable within the period of limitation applicable to the case, either by writing, signed by him, or by part payment or part satisfaction on account of principal or interest due thereon, then a new period of limitation shall be reckoned, according to the nature of the case, from the date of such acknowledgment or payment or satisfaction.

2d. Provided, that if there be two or more parties liable, no one of them shall be chargeable by reason only of a written acknowledgment made or signed by any other.

Sect. 15. And it is hereby enacted, that in suits for balances upon accounts current between merchants and traders who have had mutual dealings, the period of limitation shall be computed from the close of the year in the accounts of which there

there is the last entry indicating the continuance of mutual dealings, reckoning the year as it is reckoned in the accounts.

Sect. 16. And it is hereby enacted, that in suits for damages for wrong done by a concealed fraud, the cause of action shall be deemed to have first arisen at the time at which such fraud shall, or with reasonable diligence might, have been first known by the party wronged.

Sect. 17. And it is hereby enacted, that in computing the periods of prescription specified in sections 1 and 2, the time shall be excluded during which some party entitled to interrupt the possession or enjoyment shall have been under the disability of infancy, or unsoundness of mind, or shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, provided that no longer time than 18 years shall be excluded on account of any such disability, and no longer time than five years on account of such absence, and provided that the absence shall have been continuous from the time the title accrued.

Sect. 18. And it is hereby enacted, that in computing the period of prescription specified in section 1 in the case of moveable property, the time shall be excluded during which the party in possession shall have been absent out of the territories of the East India Company

Sect. 19. And it is hereby enacted, that in computing the periods of prescription specified in sections 1 and 2, the time shall be excluded during which any suit brought *bonâ fide* to interrupt the possession shall have been pending, and shall have been diligently prosecuted in any court of judicature, which, from defect of jurisdiction, or other cause, shall have been unable to decide upon it, or shall have passed a decision which shall have been annulled on appeal for such cause

Sect. 20. And it is hereby enacted, that the provision of section 3 shall not have effect when the party entitled to use the benefits, liberties, or privileges therein referred to shall have been under any of the disabilities specified in section 17, except as subject to the provisions contained in that section

Sect. 21. And it is hereby enacted, that in computing the periods of limitation specified in section 11, the time shall be excluded during which the claimant, or any person through whom he claims, shall have been under the disability of infancy or unsoundness of mind; provided, in respect of the suits described in clauses 2 and 3 of the said section, that no longer time than 18 years shall be so excluded, and in respect of the suits specified in clause 1 of the same section, excepting suits for penal damages, that no longer time than five years shall be so excluded, provided further, that suits for penal damages shall never be admitted after the expiration of one year.

Sect. 22. And it is hereby enacted, that in all suits described in section 11, except suits for penal damages, when the claimant, or the person through whom he claims, shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, at the time the cause of action arose, and shall have continued so absent, the time of such continued absence shall be excluded in computing the prescribed period of limitation, provided that no longer time than five years shall be so excluded

Sect. 23. And it is hereby enacted, that in all suits described in section 11, the time during which the defendant shall have been absent out of the territories of the East India Company shall be excluded in computing the prescribed period of limitation.

Sect. 24. And it is hereby enacted, that in computing the period of limitation applicable to any case, the time shall be excluded during which the claimant, or the person through whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same party, or some party whom he represents, *bonâ fide* and with due diligence, in any court of judicature, which from defect of jurisdiction, or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause

Sect. 25. And it is hereby enacted, that when by the provisions of this Act a person is barred from bringing a suit for the recovery of any legacy, debt, or damages, his right to the legacy, debt, or damages, for which a suit might have been brought by him but for those provisions, shall be extinguished unless such right is secured by some mortgage, pledge, or lien.

Sect. 26. And it is hereby enacted, that no complaint or information shall be proceeded upon by any magistrate or justice of the peace against any person for

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any offence punishable by fine only, or by any officer of revenue against any person liable to any penalty or forfeiture, unless such complaint or information shall have been received within one year from the commission of the act charged, or within any shorter period that may be prescribed by any existing law for preferring such complaint or information.

Sect. 27. And it is hereby provided, that this Act shall not be construed to affect the provisions of Section 10, Regulation XIX. 1793, extended to Cuttack by Section 24, Regulation XII. 1805, Section 10, Regulation XLI. 1795, and Section 6, Regulation XXXI. 1803; extended to the territories ceded by Dowlut Rao Scindiah and the Peishwah by Section 21, Regulation VIII. 1805, of the Bengal Code.

Sect. 28. And it is hereby provided, that this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue, or for any public claim whatever.

Sect. 29. And it is hereby enacted, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed.

Sect. 30. And it is hereby enacted, that the provisions of this Act concerning the acquisition and extinction of rights shall not be of force in respect of any property situated or being within the local jurisdiction of Her Majesty's supreme courts at Calcutta, Madras, and Bombay, and of the Recorder's court in the Straits of Malacca, and that the rules of limitation contained in this Act shall not be applied to any suits or actions in those courts.

Fort William, Legislative Department, the 21st March 1842.

Legis Cons.
21 March 1842.
No. 28.

THE following Draft of a proposed Act was read in Council for the first time on the 21st March 1842.

ACT, No. — of 1842.

AN Act concerning the Acquisition and Extinction of Rights by Prescription in the Territories subject to the Government of the East India Company, without the Local Jurisdiction of Her Majesty's Courts at Calcutta, Madras, and Bombay, and in the Straits Settlements; and for the Limitation of Suits in the Courts of the East India Company.

Prescription.

Sect. 1. It is hereby enacted, that, subject to the exceptions hereinafter mentioned, a title by prescription shall be acquired in respect of property, moveable and immoveable, and hereditary offices, by uninterrupted possession, mediate or immediate, as proprietor, for six years, in the case of moveable property, and for 12 years in the case of immoveable property and hereditary offices; provided that if any other title be proved, the possession shall have been adverse thereto; and provided that nothing herein contained shall be construed to affect any right arising from possession of moveable property now recognised by law.

Sect. 2. And it is hereby enacted, that in the case of any benefits, liberties, or privileges, derived out of, or affecting any immoveable property which shall have been enjoyed without interruption for 12 years, a right to the enjoyment thereof against the owner of the property shall be acquired by prescription, subject to the exceptions hereinafter mentioned, unless such benefits, liberties, or privileges, shall have been enjoyed by some consent or agreement expressly given or made for that purpose by some deed or writing.

Sect. 3. And it is hereby enacted, that when a right to any such benefits, liberties, or privileges as aforesaid, whether acquired by prescription or otherwise, shall have been disused for 12 years, the right shall be extinguished.

Sect. 4. And it is hereby enacted, that when a party shall have been forcibly dispossessed of immoveable property, or shall have been prevented from enjoying some benefit, liberty, or privilege derived out of or affecting immoveable property, and shall have applied within the time limited by any law now in force, or within one month, to the proper authority for assistance to recover the possession or the use thereof, and shall have recovered the same, the period during which his possession or enjoyment was interrupted, in such manner shall not be considered an interruption within the meaning of this Act.

Sect. 5.

Sect. 5. And it is hereby enacted, that when the possession upon which a title by prescription is claimed shall have been acquired by the deprivation of another party who was previously in possession, or in opposition to a title which had accrued, but upon which possession had not been taken, or having been taken had been previously interrupted, it shall be deemed adverse in respect of the party so deprived of possession, and of any one claiming in the same right, or in respect of the parties interested in the said title, as the case may be, from the time at which the possession actually commenced; and that when an adverse title shall have accrued after the possession was acquired, the possession shall be deemed adverse to the parties interested therein from the time at which such title accrued.

Sect. 6. And it is hereby enacted, that possession acquired by a *bond fide* purchaser for valuable consideration from a trustee, or from a depositary or mortgagee, shall be deemed adverse to the mortgagor or depositor, or beneficial owner under the trust, from the time of the acquisition by purchase.

Sect. 7. And it is hereby enacted, that a title by prescription shall be acquired by possession by or through a depositary or mortgagee, which shall have continued without interruption for 30 years in the case of moveable property, and 60 years in the case of immoveable property, unless in the meantime an acknowledgment of the title of the mortgagor or depositor, or of his right of redemption, shall have been given to him, or some person claiming his interest, in writing, signed by the mortgagee or depositary, or the person claiming through him, in which case prescription shall not take effect until possession shall have been had without interruption for 30 or 60 years, as the property may be moveable or immoveable, from the date of such acknowledgment.

Sect. 8. And it is hereby enacted, that in the case of a concealed fraud by which a party shall have been deprived of any property, the possession thereof shall not be deemed adverse to the party entitled until the time at which such fraud shall, or with reasonable diligence might, have been first known by him, except when it shall have been acquired by a *bond fide* purchaser for a valuable consideration, or when a party shall have succeeded to it by inheritance or devise; in the former case, adverse possession shall be deemed to have commenced from the time that the party entitled was deprived of the property by means of such fraud; in the latter, from the time of the succession; provided it shall not appear that the party to whom the possession devolved assisted in the commission of the fraud, or at the time he entered into possession knew, or had reason to believe, that the fraud had been committed.

Sect. 9. And it is hereby enacted, that when a party having a right to any estate or interest in reversion or remainder shall have become entitled to the same in possession by reason of any forfeiture or breach of condition, but shall have waived his action to recover thereupon, possession shall not be deemed adverse to him, or any party claiming in the same right, until the determination of the previous right.

Sect. 10. And it is hereby enacted, that suits other than for property and rights to which the above rules are applicable shall not be admitted in the courts of judicature of the East India Company, except as hereinafter provided, unless they are instituted respectively within the period specified in the following section.

Limitation of suits.

Sect. 11.—1st. Within one year from the time the cause of action arose:

Suits for penal damages or pecuniary penalties or forfeitures, for the breach of any law or regulation.

Suits for damage for injury to the person and personal property, or to the reputation:

Suits for debt, on account of wages of servants, artizans, and labourers; for hire of animals and vehicles; for retail supplies of victuals and articles of daily consumption, for tavern bills and bills for board and lodging; and for lodging only; for the rent of building; and on any other account subject by established custom to settlement by the month, or a shorter period:

Suits to alter or set aside summary decisions or orders of the ordinary courts of judicature:

Suits to alter or set aside summary awards by collectors and other officers of revenue in disputes regarding arrears and exactions of rent:

Suits founded on the right of pre-emption in cases to be governed by a law or usage which recognises such right.

SPECIAL REPORTS OF THE

2d. Within six years from the time the cause of action arose :

All suits for debts and damages upon contracts, or for wrongs, other than are described in clause 1 of this section, and for the enforcement of contracts.

3d. Within 12 years from the time the cause of action arose :

Suits for the recovery of legacies.

Sect. 12. Provided, that suits against trustees shall not be barred by any length of time.

Sect. 13. And provided, that where by any law a shorter period is specially prescribed for the institution of a particular suit, the limitation so prescribed shall still be observed, notwithstanding this Act.

Sect. 14 —1st. And it is hereby enacted, with respect to suits for the recovery of legacies and for debts, that if an acknowledgment shall have been made by the party liable within the period of limitation applicable to the case, either by writing signed by him, or by part payment or part satisfaction on account of principal or interest due thereon, then a new period of limitation shall be reckoned, according to the nature of the case, from the date of such acknowledgment or payment or satisfaction.

2d Provided, that if there be two or more parties liable, no one of them shall be chargeable by reason only of a written acknowledgment made or signed by any other.

Sect. 15. And it is hereby enacted, that in suits for balances upon accounts current between merchants and traders who have had mutual dealings, the period of limitation shall be computed from the close of the year in the accounts of which there is the last entry indicating the continuance of mutual dealings, reckoning the year as it is reckoned in the accounts.

Sect. 16. And it is hereby enacted, that in suits for damages for wrong done by a concealed fraud, the cause of action shall be deemed to have first arisen at the time at which such fraud shall, or with reasonable diligence might, have been first known by the party wronged

Sect. 17. And it is hereby enacted, that in computing the periods of prescription specified in sections 1 and 2, the time shall be excluded during which some party entitled to interrupt the possession or enjoyment shall have been under the disability of infancy, or unsoundness of mind, or shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, provided that no longer time than 18 years shall be excluded on account of any such disability, and no longer time than five years on account of such absence, and provided that the absence shall have been continuous from the time the title accrued.

Sect. 18. And it is hereby enacted, that in computing the period of prescription specified in section 1, in the case of moveable property, the time shall be excluded during which the party in possession shall have been absent out of the territories of the East India Company.

Sect. 19. And it is hereby enacted; that in computing the periods of prescription specified in sections 1 and 2, the time shall be excluded, during which any suit brought *bonâ fide* to interrupt the possession shall have been pending, and shall have been diligently prosecuted in any court of judicature, which, from defect of jurisdiction, or other cause, shall have been unable to decide upon it, or shall have passed a decision which shall have been annulled on appeal for any such cause.

Sect. 20. And it is hereby enacted, that the provision of section 3 shall not have effect when the party entitled to use the benefits, liberties, or privileges therein referred to, shall have been under any of the disabilities specified in section 17, except as subject to the provisions contained in that section.

Sect. 21. And it is hereby enacted, that in computing the periods of limitation specified in section 11 the time shall be excluded during which the claimant, or any person through whom he claims, shall have been under the disability of infancy or unsoundness of mind; provided, in respect of the suits described in clauses 2 or 3 of the said section, that no longer time than 18 years shall be so excluded; and in respect of the suits specified in clause 1 of the same section, excepting suits for penal damages, that no longer time than five years shall be so excluded; provided further, that suits for penal damages shall never be admitted after the expiration of one year.

Sect. 22. And it is hereby enacted, that in all suits described in section 11, except suits for penal damages, when the claimant, or the person through whom he claims, shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, at the time the cause of action arose, and shall have continued so absent, the time of such continued absence shall be excluded in computing the prescribed period of limitation, provided that no longer time than five years shall be so excluded.

Sect 23 And it is hereby enacted, that in all suits described in section 11, the time during which the defendant shall have been absent out of the territories of the East India Company shall be excluded in computing the prescribed period of limitation

Sect. 24. And it is hereby enacted, that in computing the period of limitation applicable to any case, the time shall be excluded during which the claimant, or the person through whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same party, or some party whom he represents, *bonâ fide* and with due diligence, in any court of judicature, which, from defect of jurisdiction, or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause,

Sect. 25. And it is hereby enacted, that when by the provisions of this Act a person is barred from bringing a suit for the recovery of any legacy, debt, or damages, his right to the legacy, debt, or damages, for which a suit might have been brought by him but for those provisions, shall be extinguished unless such right is secured by some mortgage, pledge, or lien.

Sect 26. And it is hereby enacted, that no complaint or information shall be proceeded upon by any magistrate or justice of the peace against any person for any offence punishable by fine only, or by any officer of revenue against any person liable to any penalty or forfeiture, unless such complaint or information shall have been received within one year from the commission of the act charged, or within any shorter period that may be prescribed by any existing law for preferring such complaint or information.

Sect. 27. And it is hereby provided, that this Act shall not be construed to affect the provisions of Section 10, Regulation XIX 1793, extended to Cuttack by Section 24, Regulation XII. 1805, Section 10, Regulation XLI. 1795, and Section 6, Regulation XXXI. 1803, extended to the territories ceded by Dowlat Rao Scindiah and the Peishwah by Section 21, Regulation VIII 1805, of the Bengal Code.

Sect. 28. And it is hereby provided, that this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue, or for any public claim whatever.

Sect. 29. And it is hereby enacted, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed

Sect. 30. And it is hereby enacted, that the provisions of this Act concerning the acquisition and extinction of rights shall not be of force in respect of any property situated or being within the local jurisdiction of Her Majesty's supreme courts at Calcutta, Madras, and Bombay, and of the Recorder's court in the Straits of Malacca, and that the rules of limitation contained in this Act shall not be applied to any suits or actions in those courts.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council after the 21st day of June next.

(signed) T. H. Maddock,
Secretary to the Government of India.

From F. J. Halliday, Esq. Officiating Secretary to the Government of India, to Secretaries Governments of Bengal, North West Provinces, Madras, and Bombay, and Government Straits Settlements, and Officiating Advocate-general.

Legis. Cons.
21 March 1842.
No. 29.

Sir,
I AM directed to transmit to you, for submission to the _____, the accompanying Report from the Law Commissioners, dated the 26th February last, on the
300. E 4 Act

No. 1.
Act for amending
the Law regarding
the Limitation of
Suits.

Government Straits
Settlements.

Your.

Act for amending the law with respect to the limitation of suits, together with draft of an Act submitted by the Commissioners on the acquirement and extinction of rights by prescription in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's courts at Calcutta, Madras, and Bombay, and on the Straits settlements, and for the limitation of suits in the courts of the East India Company, and to request that *the opinions of the Sudder Court*, and of any other officer competent to advise on the subject discussed together, with that of *his Honor*, may be submitted for the consideration of the Supreme Government.

2. With the view of distributing the Report and Act, copies of each are forwarded.

Fort William,
21 March 1842.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to Government of India.

Legis. Cons.
21 March 1842.
No. 30.

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to the Honourable the Judges of the Supreme Courts at Calcutta, Madras, and Bombay.

Honourable Sirs,

Legis. Dep.

WE have the honour to forward to you the accompanying Report, dated the 26 February last, submitted by the Law Commissioners, on the proposed Act for amending the law with respect to the limitation of suits, together with an Act concerning the acquirement and extinction of rights by prescription in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's courts at Calcutta, Madras, and Bombay, and in the Straits settlements, and for the limitation of suits in the courts of the East India Company, referred to by the Commissioners, and will feel obliged by any observations or suggestions you may offer on the subject.

Fort William,
21 March 1842.

We have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

(No. 752.)

Legis. Cons.
5 Aug. 1842.
No. 9.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. F. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Judicial Dep.
(No. 34.)

Sir,

IN compliance with the requisition conveyed by your letter, dated the 21st March last, I am directed by the Hon. the Deputy-governor of Bengal, to transmit, for the information of the Supreme Government, the accompanying copy of a letter* from the register of the Court of Sudder Dewanny Adawlut.

* No. 2067 of 17th
inst.

No reply has yet been received to the letter which was addressed to the secretary to the Sudder Board of Revenue on the same subject.

Fort William,
20 June 1842.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 2067.)

Sudder Dewanny
Adawlut.
Present: R. H. Rat-
tray, C. Tucker,
E. Lee Warner, and
J. F. M. Reid, Esqrs.
Judges.

From *J. Hawkins*, Esq. Register, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 601, of the 16th ultimo, and to state, for the information of the Honourable the Deputy-governor,

governor, that they have no particular remarks to offer regarding the proposed Act concerning limitations, which they consider well calculated to meet the objects in view.

Act for amending the Law regarding the Limitation of Suits

Fort William,
17 June 1842.

I have, &c.
(signed) *J. Hawks,*
Register.

(True copy.)

(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

(No. 1633.)

(No. 3 of 1842.)

From the Secretary to the Government of Bombay to *F. J. Halliday, Esq.*
Officiating Secretary to the Government of India in the Legislative Department.

Legis Cons
5 Aug 1842.
No. 10
Judicial Dep.

Sir,

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 21st of March last, No. 86, with its enclosures, and in reply, to transmit to you, for submission to the Honourable the President in Council, copy of a letter from the register of the Sudder Dewanny Adawlut, dated the 15th instant, submitting the opinion of the judges of that court on the proposed Act for amending the law in respect to the limitation of suits, and concerning the acquirement and extinction of rights by prescription in the territories subject to the courts of the East India Company, without the local jurisdiction of Her Majesty's courts.

Submits the opinion of the Sudder Judges on the Act for amending the law in respect to the limitation of suits, and concerning the acquirement and extinction of rights by prescription in the territories subject to the Company without the local jurisdiction of Her Majesty's courts

2. I am at the same time instructed to observe, that your letter now acknowledged, bearing date the 21st of March, was received in Bombay on the 20th of May. The Governor in Council has thought it necessary to notice this circumstance in consequence of the 21st of last month having been fixed for the reconsideration of the proposed Act.

Bombay Castle,
20 July 1842.

I have, &c.
(signed) *J. P. Willoughby,*
Secretary to Government.

From the Register of the Sudder Dewanny Adawlut to the Secretary to the Government, Judicial Department, Bombay.

Legis Cons.
5 Aug 1842
No. 1
Enclosure

Sir,

I AM directed to acknowledge the receipt of your letter, dated 23d May last, No. 1166, and accompaniments, forwarding for the opinion of the judges a draft of a proposed Act for amending the law in respect to the limitation of suits, and concerning the acquirement and extinction of rights by prescription in the territories subject to the courts of the East India Company.

Present A. Bell
G. Giberne, Jno.
Pyne, Esqrs

2. In reply, the judges instruct me to state that they are of opinion the draft Act submitted is far preferable to that dated the 5th April 1841, and transmitted for their observations, with your letter of the 26th of that month, and they have no objection to offer to any of its provisions, with the exception of limitation of one year from the date of communication, prescribed in section 26, within which it is necessary complaint or information should be lodged against those liable, to enable a revenue officer to take cognizance of the same. Hereditary officers, such as patells, coolurnies, and district zemindars, are sometimes guilty of great misconduct, as concealment or misappropriation of land revenue, and neglect of duty, &c., for which they are rendered liable by the Bombay Regulations to the forfeiture of their wuttuns, or hereditary rights; such offences it is believed are not unfrequently brought to light after the expiration of a year; and by the provisions of this section these offenders will in all such cases escape punishment, and the penal provisions of sections 17 and 23 of Regulation XVI. of 1827 will become injuriously imperative.

300.

3. I am

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Act for amending
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3. I am likewise desired to observe, that the repeal of the existing law is not provided for in the draft Act.

Bombay, Sudder Dewanny Adawlut,
15 July 1842.

I have, &c.

(signed) *W. H. Harrison,*
Register.

(True copy)

(signed) *J. P. Willoughby,*
Secretary to Government

Legis. Cons.
5 Aug 1842.
No 12.

From the Honourable the Chief Justice of the Supreme Court, Fort William, to
the Honourable the President of the Council of India in Council.

Honourable Sirs,

I HAVE the honour to lay before you some observations on the changes which the Law Commissioners have recommended for adoption in the law of prescription and limitation of suits, as it is now administered in the supreme courts of this presidency, and at Madras

The enactment of a positive prescription, and the mere alteration of the periods of limitation of suits, would in my opinion disturb in so slight a degree the general conformity of the law as administered here to the law of England, that I think no objection arises to the recommendations of the Law Commissioners on that ground.

I should have considered 12 years too short a period for establishing a prescriptive right, or for the limitation of suits, had it not been so long in existence, apparently without objection or inconvenience; and the obvious advantages of the same period prevailing within the local limits of the jurisdiction of the Supreme Court which prevails without those limits, induce me to concur in the recommendation of the Law Commissioners to abridge the period of limitation as to immoveable property.

The enactment of a limitation in favour of the heir, or devise of a fraudulent trustee, appears to me to be objectionable. It might operate as an inducement to a trustee to violate the trust reposed in him, and on the ground of convenience, as well as of justice, I think the claims of the defrauded cestuique trusts most entitled to consideration.

It is necessary, in my opinion, to make a distinction as to the period of limitation upon acquisitions by concealed frauds between such acquisitions of goods and chattels and similar acquisitions of immoveable property. In both cases the party defrauded may for a while be kept in ignorance of the fraud; but if the fraud be committed with respect to moveables, the defrauded person may, though acquainted with the fraud, remain in ignorance of the actual possession and locality of the goods. If he subsequently discover the possession of them, he may recover them, or their value, from the possessor, unless that person has acquired a title to them, which by the law as it now exists can rarely be, unless by a sale in market overt. The limitation of the suit against such a party should date, as it appears to me, from the discovery of the possession, and not from the discovery of the fraud, nor from the time of the possessor's acquisition. The remedy of the defrauded or deprived person against the actual wrongdoers might not be worth pursuing, and he might even be in ignorance of the persons. It is proper that he should have a right to pursue the goods, but I should be glad to see it limited to the pursuit against persons not *bonâ fide* purchasers for valuable consideration without notice. The law already gives full protection to a purchaser *bonâ fide* for valuable consideration, and without notice, in the case of a transfer of immoveable property. The common law contemplated that a similar purchaser of goods and chattels should enjoy a like protection, but the limitation to a sale in market overt renders in modern times this protection precarious and narrow.

I think the period of six years too short as a period of limitation in the case of specialties, and that the limitation in those cases should be the longest period of limitation, viz. 12 years. If it be thought necessary to have a conformity of limitation in the case of suits in respect of specialties upon simple contracts, I should prefer an extension of the time in the latter case to 12 years to an abridgement of the time in the former case to six years. In the cases of a judgment of a mortgage deed, with a covenant for the payment of the mortgage money and interest, and of a common money bond, whether accompanied with a warrant of attorney

to confess judgment or otherwise, all of which are in daily use as securities for money, the repayment of which is not immediately contemplated, so short a period of limitation would be found very inconvenient. In the case of the mortgage, the lender might lose one of his remedies, whilst no presumption whatever arose of the satisfaction of the debt, and if the mortgaged property proved insufficient in value he would be remediless; in the case of the judgment, no presumption whatever of any payment would in fact arise; and whilst it might be kept alive for the purposes of execution, it would be unavailable for the purposes of suit; and in the case of the common money bond, it would also lose much of its value as a security from the necessity of resorting within a few years for new security to an embarrassed and perhaps fraudulent debtor. As the limitation would commence if the debtor were once within the jurisdiction after the debt existed, and would continue to run notwithstanding his absence, there would be frequently no means whereby a creditor could obtain a fresh security or acknowledgment, and it might not be in his power to institute a suit so as to keep his claim alive against his debtor.

I see no sufficient reason for an exception from the general period of limitation in the case of suits for wages and hire, or in that of suits for the recovery of supplies and accommodation furnished in the expectation of prompt payment, and usually discharged monthly or at shorter periods. This provision is comprehensive enough to embrace a great number of cases in which the limitation of one year would be found too short.

I have, &c.

Supreme Court House,
11 July 1842.

(signed) *Lawrence Peel*,
Chief Justice

From the Hon Sir *J. P. Grant*, Knt. Puisne Judge, Fort William, to the Hon the Vice-President of the Council of India in Council.

Honourable Sirs,

The judges received from the Legislative Council, some considerable time ago, the draft of an Act then depending in Council for amending the law with respect to the limitation of suits and summary proceedings, whereby it was meant to extend to cases within the jurisdiction of Her Majesty's courts, to be determined according to the laws of England, the Act 2 & 3 Gul 4, c. 71, for shortening the time of prescription in certain cases, and the Acts 3 & 4 Gul. 4, c. 27, and 3 & 4 Gul. 4, c. 42, or parts thereof, accompanied by a letter, dated 5th April 1841, desiring our opinion regarding the passing of that Act.

I delivered to the then chief justice, Sir Edward Ryan, in order to its forming part of the answer from the judges then proposed to be prepared by the chief justice and transmitted to the Legislative Council, my opinion that there was no objection to the extending these enactments in cases within the English law and under our jurisdiction, observing upon some parts of the draft Act, which in my opinion were not conformable to the English statute, or required some alteration to suit the circumstances of India. What the circumstances were which induced the chief justice to delay communicating to the Legislative Council the opinions of the judges upon this proposed Act I am not aware, but I believe no such letter was drawn up. It is probable that he knew of its being in contemplation to substitute a different Act for that then proposed.

I considered the opinion desired by the Legislative Council upon this occasion one which it was the duty of the judges, when so desired, to give, being in truth nothing else than an opinion, which it is the business of the judges judicially to form and announce upon many existing Acts of Parliament, viz. whether, assuming, as they are bound to assume, that an Act passed by the British Legislature is a just and politic Act, to operate in England, and it forming a part of the law of England at the time the English law was introduced within the new jurisdiction of the King's courts in India, there is anything in the circumstances as regards persons and things within the jurisdiction of these courts which renders that law inapplicable here, and thereby creates a presumption in law that the Legislature did not intend it to extend to this settlement; so in regard to the projected Act for extending to this and the other jurisdictions of Her Majesty's supreme courts the Acts 2 & 3 and 3 & 4 Gul. 4, above-mentioned, we were, in my opinion, bound to assume that these enactments are just and politic generally as an amend-

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ment of the laws of England, where those laws prevail, and the opinion demanded of us by the Legislative Council appeared to me to be, whether there was anything in the circumstances here which, if known to Parliament, would have induced them to abstain from extending it to our jurisdiction, or the contrary. I was of opinion that there was no ground for presuming that Parliament, if its attention had been turned to India, would not have extended that Act to our jurisdiction; and I considered it to be my duty to give this to the Legislative Council as my judicial opinion.

I have now received, in common with the other judges, a printed draft of an Act concerning the acquirement and extinction of rights by prescription in the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's courts, &c., accompanied by a printed copy of a letter to the Governor-general in Council from the members of the Law Commission, under date 26th February 1842. The draft of the Act above mentioned appears to have been read in Council for the first time on the 21st March 1842. These papers are accompanied by a letter to the judges from the Governor-general in Council, stating that they will feel obliged by any observations or suggestions we may offer on the subject.

The opinion which it is desired that I should give upon the present occasion is of a very different description from that which was desired of me upon the last occasion.

Presuming that the questions which the Legislative Council desire to be answered by the judges are those suggested by the Law Commissioners, it appears that it is thought by those learned persons to be very desirable that the periods of limitation, or negative prescription, as they term it, should be the same both for causes subject to the jurisdiction of Her Majesty's courts, and for causes subject to the jurisdiction of the courts of the East India Company throughout the British territories in India, especially in respect of the allowance to be made for disabilities; that in actions in which Hindoos or Mahomedans are parties, it is expedient to apply a definite and common rule in Her Majesty's courts and those of the East India Company, and that the most fitting will be that which is to govern the like cases and the like parties in the courts of the East India Company; and it appears that the learned Commissioners propose to introduce periods of limitation, or, as they express themselves, of negative prescription, extending as well to British subjects and others subject to the jurisdiction of Her Majesty's courts, and to the territory within the limits of the presidencies, as to persons and territories beyond that jurisdiction, varying most materially, and in a great variety of instances, from the periods known to the laws of England as they now stand, with amendments under the Acts of King William 4, which appeared to Parliament to be sufficient amendments of the laws of England in these respects, and with equally material variations from the English laws so amended in the exceptions they propose for disabilities. They express a hope that Her Majesty's judges will be disposed to concur with them; and they say, that if after consulting Her Majesty's judges the Governor-general in Council shall be of opinion that it is advisable to make the provisions of the draft Act submitted applicable to Her Majesty's courts, so far as they the Commissioners have recommended, they will be prepared to modify and extend the draft accordingly, or to frame a separate Act for that purpose, as may appear to be most convenient.

The question, therefore, upon which my opinion is demanded is this: whether Acts recently passed by Parliament, upon the suggestion and with the entire concurrence of the great law officers of the Crown, after mature deliberation, are fit and proper laws to have been rendered part of the laws of England, or whether they are not imperfect and require alteration and amendment? I cannot think that it is within the limits of my duty, as one of Her Majesty's judges in this colony, to give a judicial or public opinion upon this matter, still less can I think it within my duty so to pronounce an opinion that these Acts of Parliament are in any respect unfit and improper to form part of that law, or framed with so little attention to what is expedient as to require material alterations and amendments.

If I were inclined to entertain such opinion I should do so with great hesitation and doubt, as having no such confidence in my own knowledge and ability as to put them in the balance against such authority, nor should I venture, if I occupied a legislative instead of a judicial station, to recommend in opposition to that authority, the carrying the reforms introduced to a certain extent by those laws further than Parliament has gone, because I might think, that the principle upon which these reforms

reforms are made might justify the so doing, for I have always considered it the highest mark of legislative wisdom rather to leave reforms in the law short of apparent perfection, than at once to deviate too widely from what has been established in its practice for a great length of time.

But upon matters which concern the policy of laws which have been made or are proposed to be made, I consider it not to be within my province to enter, I may, however, be permitted to say, that the laws which Her Majesty's court here is commanded by its charter to administer, are the laws of England as administered by the Court of Queen's Bench in England, in matters of common law, and the equity administered by the High Court of Chancery there in matters of equity, and that it would, therefore, appear advisable when changes are introduced into the law or equity administered by those courts in England, that the same changes should be introduced in the law or equity administered by Her Majesty's courts here, unless there be circumstances existing in this settlement which make any of these changes inapplicable to the condition here of those of Her Majesty's subjects who have come here believing that they were to live under the law of England, and the jurisdiction of a court administering that law.

An English merchant or tradesman coming out to such a settlement must be supposed generally acquainted with the laws of England as they affect matters coming within the ordinary scope of his transactions, and it must be attended with great inconvenience and embarrassment, and risk of loss to him, to find the law passing under the name of the law of England as he left it behind him, and this more especially, if the difference be in parts of the law which, like those the learned Law Commissioners propose to deal with, govern the permanence and security of all his rights, and all property of every description.

These inconveniences must be increased by the additional difficulty imposed upon the lawyers who are to be consulted, and the judges who are to decide upon the transactions affecting those rights, if these persons are to find on their arrival here that they have to make themselves acquainted with a new law concerning transactions and rights among persons living in other respects under the law of England, differing from that law as it exists in England. The differences introduced in any particular matter may be so few and simple, that the actual amount of the difficulty supposed may in that particular matter be small, but the principle appears to me to be the same, that the law of England is one system of law, the parts of which hang together; not indeed a system framed upon speculative opinions regarding the principles which ought to govern the transactions of men, but a system which has grown up with those transactions and adjusted itself to their nature and extent; and it must be believed that the great law officers of the Crown were well acquainted with that system and the practical operation of all its parts, engaged in the stirring business of the courts before whom actual transactions of every description are daily brought for discussion and adjudication, and the members of the legislature, acting under the control of the opinions of the land-owners, merchants, and tradesmen of England, will not introduce alterations in the law conflicting with the practical working of the system in any of its parts, or if any should fall upon occasion into such an error, that it will not be corrected after no great lapse of time, under the influence of public opinion in matters in which all those influential classes of the society have so deep an interest. Neither do I think that in the present state of public opinion in England, there is any reason to apprehend that reforms in the law will not be carried far enough by Parliament; perhaps I may rather lean to the belief that men inclined to moderate change and gradual melioration are in danger of being impelled upon a course of supposed reformation, further and more rapidly than their judgments approve. It cannot, I think, be in any case advisable, in a settlement where the law of England is the law, to outstrip the Parliament of England in the reformation of English law.

There is a further consideration upon this matter which appears to me of great importance. Scarcely any law has ever been made, and, I believe, none embracing subjects of great extent and detail, which has been found in practice so framed as that its terms have been free from uncertainty in many circumstances to which it has been necessary to apply it. To frame such a law, seems beyond the power of the human intellect, and it is only by the decisions of courts of justice that laws of any considerable extent in their operation ever acquire certainty. It is therefore of great importance that the courts whose decisions are to fix the interpretation, should be those of the greatest learning and authority, and the most extensive

acquaintance with the variety of cases to which in practice the law falls to be applied. The judges of Her Majesty's courts in India, most properly consider the decisions of the Courts of Westminster Hall binding upon them; but if a law be passed in India affecting matters to be governed generally by the law of England, which differs materially from the law of England upon such matters, not only will the Queen's courts in India be left without the advantage of those guides in these matters, but the means of preserving an uniformity in the law will be thrown away as regards the decisions of the Queen's courts in India, who having no guide of acknowledged paramount authority, must pronounce their decisions upon the probably varying opinions of their judges, till in the course of time the practice of each particular court shall be settled by what shall be considered a course of precedents.

It is for the Legislative Council to consider whether this is a state of the law which is desirable in any matter, and whether there are not considerations which render it peculiarly undesirable upon so extensive and complicated a matter as the fixing the nature and length of the possession, and of the abstinence from enforcing a right, and the precise circumstances in various cases affecting either, which shall respectively confer upon the possession of any of the various subjects of property, servitude, inheritance, pledge, an exemption from any investigation of the title upon which such possession was acquired, although demanded by one asserting a proprietary right, or shall exclude from the assertion of each particular variety of the multifarious rights arising from the relations and dealings of mankind, every person claiming such right, although he should be otherwise indisputably entitled. My duty is confined to the stating to the Legislative Council the inconveniences which, in my opinion, would attend such a state of the law in the practice of the court in which I have the honour to sit, and I humbly think that these inconveniences, resulting from the law applicable to English cases here, being different from the law of England, ought not to be incurred unless under the pressure of some strong necessity, arising from a difference in the circumstances which Englishmen are placed in here and in England.

The vicinity of the territory more immediately under the jurisdiction of Her Majesty's Supreme Court, to territory subject to a different jurisdiction and to different rules for the decision of its courts, does not appear to me to constitute any such necessity, or even any motive for incurring these inconveniences, neither am I acquainted with any other circumstance which does so, but I think there are two classes of cases in which it would be convenient, unless the suggestion I am about to offer be adopted, in the last of them, that the law of prescription in our court should be the same with that of the mofussil, and in which the inconvenience I have last mentioned would not arise, nor would the other objections apply to them: I mean in rights concerning immoveable property in the mofussil, in whomsoever vested, and in the prosecution of all rights where Mahomedans or Hindoos shall be the parties; unless it shall be thought more advisable to extend to these classes within our jurisdiction the English law, as regards prescription and limitation of suits and actions, as it now stands under the above-mentioned statute of Gul. 4, in place of the Hindoo and Mussulman laws of prescription.

Their own laws are preserved to these classes in suits and actions in Her Majesty's courts, in cases of inheritance and contract and dealing with one another. There is little if any difference in matters of contract and dealing between their laws and the law of England, except in regard to prescription and the limitation of actions, which must in all countries be matter of positive institution by the municipal law. It humbly appears to me that it would be attended with great convenience to the administration of justice in Her Majesty's courts if this distinction in matters of contract and dealing between the laws affecting these two classes, and other classes of persons subject to their jurisdiction in the manner I have mentioned were removed.

All questions regarding immoveable property are, according to the general principle of law, everywhere decided by the laws of the country where the property is situated, and I see no reason why the case of British subjects, as they are designated, having, or pretending to have, rights concerning immoveable property in the provinces of India, should be subject to a different rule.

I do not observe that it is desired of me to express any opinion upon the policy of the law proposed to be introduced into the mofussil, nor indeed do I think I could do so without impropriety; and having stated the grounds upon which I am humbly of opinion that no law differing from the Acts of Parliament can be introduced

introduced within the jurisdiction of her Majesty's courts without inconvenience, it is unnecessary that I should offer an opinion upon any of the enactments of the law proposed by the learned Commissioners, I have only to request that my abstaining from so doing may not be construed to infer an assent to its policy in all its parts.

Supreme Court House,
11 July 1842.

I have, &c.
(signed) *J. P. Grant.*

No. 1.
Act for amending
the Law regarding
the Limitation of
Suits

From the Hon. Sir *H. W. Seton*, Knt. Puisne Judge, Fort William, to the
Hon. the President of the Council of India in Council.

Legis. Cons
5 Aug 1842
No 14

Honourable Sirs,

As a general principle, I think that where any alteration is intended to be introduced in the law administered by the Supreme Court, in consequence of a similar alteration in the law of England, it is advisable that it should be effected by extending the Act of Parliament by which the alteration is made to this country, either simply, or with such modifications as may be required, rather than by re-enacting it here in an altered shape. By this means, the benefit of the decisions at home upon the construction of it will be obtained, and the uniformity of the law administered in the Supreme Court and the courts in England preserved. But, on the other hand, I think that the uniformity between the practice of the Supreme Court and the courts of the East India Company, particularly in a matter of such general importance as that of limitation, is equally desirable, and, as both are not to be attained, ought in this instance to be preferred.

I concur, therefore, with the Commissioners in thinking that the periods of limitation and allowance for disabilities should be the same in both courts, and in order to give full effect to this principle, should suggest that the period of the minority of Hindoos should be made the same in the Supreme Court as in the Company's courts. It has already been done in the case of Mahomedans, and was long ago recommended by Sir E. East (See his Minute, Report of H. of L. 1830, page 138, an abstract of which is subjoined) I concur in all the observations of the chief justice.

Supreme Court House,
11 July 1842.

I have, &c.
(signed) *H. W. Seton.*

EXTRACT REFERRED TO

"A Hindoo minor attains his full age, and the entire possession of his property, at 16. It is easy to believe, and the fact is notorious, that at this early age the possession of wealth, within his immediate power of disposal, attracts about him a swarm of necessitous and greedy dependents and profligate associates, bent upon the spoliation and waste of his substance. The government long ago became conscious of this evil; and have, I believe, in part rectified it, by a Regulation extending the period of minority to 18 in the mofussil, but in Calcutta the old rule remains in force. This always appeared to me a grievous defect"

From the Honourable the Judges of the Supreme Court at Madras, to the Honourable *W. W. Bird*, President of the Council of India, Fort William, dated Madras, the 4th June 1842.

Legis. Cons
5 Aug 1842
No 15

Honourable Sir,

We have the honour to acknowledge the receipt of your letter of the 21st March last, accompanied by a Report of the Law Commissioners on the proposed Act for amending the law with respect to limitation of suits, together with an Act concerning the acquirement and extinction of rights by prescription, and for the limitation of suits.

There are only two provisions in the proposed Act, as to the propriety of which we are disposed to entertain any doubts.

1 The first is the limitation in respect of suits for the recovery of legacies. The Law Commissioners have fixed a more extended period in this case than in others, because legatees may often remain in ignorance of the bequests made to them.

No. 1.
Act for amending
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them. We cannot concur with them in thinking that this is a sufficient reason for establishing a limitation of 12 years rather than one of a shorter period. The time at which it is most probable that a legatee will become acquainted with a bequest made in his favour, is the time when he first hears of the testator's decease, or shortly afterwards. If he does not then hear of his legacy, the probability of his being informed of it in any succeeding year, is not an increasing, but in general a diminishing probability. It is only in cases where the legatee is out of the country, or where the place of his abode is unknown; that length of time affords a greater chance of the information being communicated to him, and for this purpose 12 years must surely be deemed a period of unnecessary length.

We are disposed to think that the limitation in respect to suits for legacies, instead of commencing at the time when the right of action accrues, should rather have reference to the legatee's receiving notice of the bequest. It will then become in some measure the interest of the executor to convey such information. If he can withhold it (and the Commissioners very justly remark, that executors are under no obligation to seek legatees out) and can afterwards take advantage of his omission by pleading the Act of Limitations, it may then happen that an executor who has kept a yearly account in his books of an unpaid legacy, and of the interest due upon it, will be able, as soon as the twelfth year is completed, to close the account and put the proceeds of it into his own pocket; as the Act is now framed, nothing short of proving a fraudulent concealment on the part of the executor will enable a legatee to prevent this defence being successfully pleaded.

We think it will be best to provide against the occurrence of cases of this description by giving executors an inducement to apprise legatees of the benefits to which they are entitled; and we therefore venture to suggest that instead of the limitation now proposed in respect of suits for legacies, all such suits should be instituted within . . . years from the time the plaintiff had notice that a present right to receive such legacy had accrued to him; we leave the number of years in blank, because we are not able to make any positive recommendation as to the period which ought to be established. But we are inclined to think that six years would be sufficient for this purpose.

2. We have some doubts as to the expediency of the enactment, in section 8 of the proposed Act, in favour of a party succeeding by inheritance or devise. Upon principle, we think he ought not to be put in a better situation than the ancestor or testator under whom he claims. The proviso in the latter part of this section, and which is necessarily imported into it in consequence of the effect thus given to the Act of succession, is one which appears to us likely to give rise to a great deal of litigation; and this affords, in our judgment, an additional reason for omitting altogether the clause which gives so great an advantage to an heir or devisee.

We beg, in conclusion, to observe, that we think it highly desirable that the periods of limitation, and also the rules regarding disabilities, should be the same within the jurisdiction of Her Majesty's courts as within that of the courts of the East India Company.

We have, &c.

(signed) Edward J. Gambier,
John W. Norton.

Legis. Cons.
5 Aug. 1842.
No. 16.

Legis. Dep

From F. J. Halliday, Esq. Officiating Secretary to the Government of India, to
J. C. C. Sutherland, Esq. Secretary Indian Law Commission.

Sir,

WITH reference to the report, dated the 26th February 1842, submitted by the Law Commissioners on the proposed Act for amending the law with respect to the limitation of suits, I am directed by the Honourable the President in Council to transmit to you, for their information, copies of opinions submitted by the following authorities, viz. Chief Justice, Supreme Court, Calcutta, dated 11 July; Sir J. P. Grant, dated 11 July; Sir H. W. Seton, dated 11 July; Judge Supreme Court at Madras, dated 4 June; Judges Sudder Adawlut of Bombay in their registrar's letter, dated 15 July 1842; Judges Sudder Dewanny Adawlut of Calcutta, in their registrar's letter, dated 17 June 1842.

Council Chamber,
5 August 1842.

I have, &c.
(signed) F. J. Halliday,
Officiating Secretary Government of India.

From *C. R. Prinsep*, Esq. Officiating Advocate-general, to *F. J. Halliday*, Esq.
Officiating Secretary to the Government of India, dated 10 October 1842.

Sir,

I HAVE the honour to return herewith my reply to the reference made to me by yours, under date the 21st March last, transmitting the report and draft Act of the Law Commissioners relative to the limitation of suits.

The numerous references made from the different offices of government during the period of my officiating as Advocate-general, will, I hope, be a sufficient excuse for the delay that has intervened between the reference and this my reply.

I have, &c.

(signed) *C. R. Prinsep*,
Officiating Advocate-general.

Opinion.

IN calling for my opinion on this report and draft Act of the Law Commission, I presume that the government meant my attention to be drawn principally to the concluding passages of the report, wherein is suggested the propriety of extending the proposed innovations to Her Majesty's courts, and to property within their local jurisdiction, that being a matter on which I might be supposed to be better able to give an opinion than upon their application to the rest of the Company's territory, and to property and persons subject to the Company's courts. To that recommendation, therefore, I shall in great measure confine the remarks that occur to me on the matters of the report and draft Act in question.

That the uniformity of the law on this, and all other points throughout the Company's territories, and its general applicability to the inhabitants of all classes, is a most desirable object, no one will deny; the only subject of doubt is, the best mode of attaining that desirable end; whether by assimilating or approximating the law of these territories to the law prevalent in the paramount state, and its other dependencies, or by establishing for them, and within them, a general law distinct and different from that of the paramount state, and subjecting all classes alike to its provisions. The Law Commission has recommended the latter course, which is obviously but one step towards uniformity; for it will not be disputed, that uniformity of law throughout this portion only of the empire is, a secondary benefit to uniformity throughout the empire at large; and that, until the latter shall be despaired of, the former is not the true object to be aimed at. It is to be presumed, that the Law Commission thought it hopeless to aim at the more extensive benefit, and therefore contented themselves with the more limited one. I think they have despaired without cause, and that there would be even less of difficulty in the introduction of the English rules of legal limitation and prescription *in toto*, than in the establishment of the rules proposed in this report and draft now before me. Not that I would hold up the English rules as the wisest of all rules; but that whatever objections they may be liable to, are greatly overbalanced by the great and obvious benefits of general uniformity; and I confess it seems to me that general uniformity in this particular with the rest of the empire may be obtained, not only without injustice or inconvenience, but with more ease and advantage to all parties concerned, than the local uniformity aimed at by the report and draft of the Law Commission. If so, there can be no question as to the propriety of preferring the former to the latter, and thus avoiding the anomaly of isolating the Indian territories of Great Britain in this important point of jurisprudence, and that, too, while avowedly aiming at uniformity. I will briefly state the reasons that have brought me to this conviction.

The remark of the Law Commission on the English period of limitation for real property, "that it does not appear to be recommended by peculiar fitness to the state of such property in India," is scarcely correct, for the reasons hereafter given, but might have been applied with greater justice to the period of 12 years adopted by the Commission from the Regulations of Bengal and Madras, as the period of limitation for property of the same description throughout British India. When first introduced by Regulation, and applied equally to real and personal property, it was great innovation upon the law of the majority (Hindoo), which had fixed 20 years for realty and 10 years for personalty; so that, while the period of the former was abridged, that for the latter was prolonged. In Bombay, as noticed in the report, the new period of 12 years was found much too short, and so late as 1823 was extended to 30 years. Thus, it is not even now

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the general rule for the Company's territories; and as to personalty, the Law Commissioners' recommendation of the shorter period of six years only has condemned it as inexpedient. Their recommendation, therefore, would introduce into all three presidencies a great innovation as to one of the two grand divisions of property, and into one of them (Bombay) as to personalty also.

It appears to me worthy of serious consideration, whether, on the eve of such extensive innovation, it would not be better to adopt at once the English period of 20 years for realty, as well as that of six years for personalty, and thereby at once to assimilate the law on this head throughout this portion of the empire, with that prevalent in the paramount state, and generally throughout the colonial possessions of Great Britain. The following reasons may be stated for adopting this course, in preference to that suggested by the Law Commission, to me they appear quite convincing.

1st. By no other expedient will general uniformity on this point be attained, for it is not to be supposed that the Legislature of Great Britain, or of any of its colonies, will look to that of India for a model. The paramount legislature will alone be regarded; and, though the periods and rules of limitation it has laid down may not be the best that could have been chosen, they are certainly not inferior in respect of convenience or of equity to those of the Regulation Law of India, so far as realty is concerned, and are admitted to be preferable in respect of personalty, by the recommendation of the Law Commission itself.

2d. There may be inexpediency in extending the period of legal limitation; there can be no injustice, for it is only allowing a man longer time to claim his own. In shortening the period there often is great injustice, for it deprives parties of rights without notice, as in the case of absentees, who may reckon on the continuance of the law existing at the time of their departure; or in the case of infant heirs and legatees, whose ancestors or testators may have done so. None could with reason complain of the extension from 12 to 20 years, as to realty; many might have just cause to complain of the reduction of limitation, as to personalty, from twelve to six years, and even to shorter periods in some particular matters.

3d. The period of 20 years as to realty is that expressly prescribed by Hindoo law, and still regarded with reverence by the great majority of the population. To the Mahomedan it is a matter of indifference, for Mahomedan law appears to admit of no period of limitation to claims. Thus the English period is peculiarly fitted to a community of Hindoos.

4th. The term of 20 years exceeds the full period of one minority, whether of a Hindoo (16 years) or of a Mahomedan (17 for females, 18 for males). This is a point that should always be looked to, for otherwise, the extra time allowed for claims after attaining majority becomes unequal, and may be even cut down to nothing. It is true that it has been disregarded in the English period of 20 years, but that has been justly regarded as a blemish, and many have thought and think, as I do, that 20 years is too short a period. Having been once adopted, however, it is better to adhere to it for the sake of uniformity, though beyond all doubt it makes a longer allowance of time for claim necessary, after the legal disability of infancy has ceased.

5th. It is difficult to assign any reason why limitation as to realty should be stricter in India than in Europe. Habits of procrastination are more general and inveterate in the East than in the West; communications far less frequent; often wholly cut off, and the range of territory to which the proposed local rule of limitation is to apply is infinitely greater than all the British isles together. The Law Commission itself has admitted the necessity of extending the period of limitation in the case of mortgage or deposit, to no less than five times the ordinary periods, although suits by the mortgagee, &c. for recovery of money are somewhat inconsistently limited to six years; by which arrangement the creditor will be compelled to retain in his hands a redeemable, and, therefore, often an unsaleable property, for 24 years, if personalty, and 48 years, if realty.

For the above reasons, I take the liberty of suggesting, that instead of applying the innovation recommended by the Law Commissioners to property within the jurisdiction of Her Majesty's courts, the rules of limitation prevailing in England should be adopted in regard to real as well as personal property, and thus an important step be made towards general uniformity of the laws of the empire at large, at the expense of innovations, certainly not more violent, and, as it seems to me more just and equitable than those suggested by the report and draft Act submitted to me.

Shook

Should the government concur in this view of the matter, it will follow almost of course that such deviations from the English rules and exceptions as have been suggested by the Law Commission must, for the most part, be abandoned, else the object of uniformity would hardly be attained. Fortunately few, if any, of those deviations are of sufficient importance to cause any hesitation, and some do not appear to me to be improvements; for instance, the distinction between positive and negative prescription seems to me to be little better than a verbal distinction. A title founded on mere adverse possession will always, in the estimation of mankind, be a mere negative title, *i. e.* based on the inability of the rightful claimant to recover his own by legal process, and therefore very different from a title that can be traced to a legal origin. The disallowance of coverture is a disability exempting from limitation, and would, in the case of Christian females (or any but Hindoo and Mahomedan), be a positive denial of justice, so long as the law shall leave them under incapacity to sue: it is not now a ground of disability or exemption in Mahomedan or Hindoo females, who may hold property independent of their husbands, and sue and be sued alone. Again, the exemption contained in sections 19 and 24 of the draft Act seems hardly warranted by principles of justice. A claimant who prefers his claim to an incompetent tribunal is surely not more deserving than one that prefers it defectively to a competent one and fails to recover. Nor, for my part, can I see the policy of putting on the same footing of limitation claims founded on deeds of mortgage, bonds, and other formal instruments, known as specialties in English law, and those founded upon mere verbal transactions. In the one class there is a documentary and lasting evidence, in the other not; and one of the chief motives, or rather excuses for legislative interference in the way of limitation, which is at best one act of injustice in nine cases out of ten, is to afford relief from the loss of evidence or its uncertainty. Such specialty securities are indeed, for the most part, unknown to a great proportion of the Company's subjects; but those who resort to them usually do so from a wish to secure to themselves the legal advantages incident to them, amongst which permanency is the principal. One more point only I will remark upon, and that is the provision contained in section 28 of the draft Act, abolishing all limitation whatever in respect of public property or rights, or suits for recovery of revenue, or for any public claim whatever. It has been the boast of recent English legislation, that on the matter of limitation it has laboured to put limits to the claims of the Crown; it is strange to find a contrary course taken for the advantage of a delegated authority.

I have not thought it necessary to go through the proposed deviations from the existing English rules of limitation, item by item. It appears sufficient to note some of the most prominent, by way of exemplifying how little is to be gained by the proposed departure from uniformity in the details. Having stated above my reasons for questioning the policy, ~~and even~~ justice of adopting in the gross an independent plan and scale of limitation for British India, I have only to conclude with the hope that, whenever extensive alterations in the law of limitation shall be resolved upon, the opportunity may not be lost of approximating, in this important particular, the institutions of this part of the empire to those of the paramount state, and of all its British dependencies. The more the matter is examined the easier it will appear to effect this change; which, in fact, would be neither violent in degree, nor repugnant to the principles, or even prejudices, of any important class of the population.

(signed) C R. Prinsep,
Officiating Advocate-General

10 October 1842.

(No. 86.)

From F. J. Halliday, Esq. Officiating Secretary to Government of India, to
J. C. C. Sutherland, Esq. Secretary to the Indian Law Commission.

Sir,

I AM directed by the Honourable the President in Council, to transmit to you for submission to the Law Commissioners, in continuation of my letter No 82, dated the 28th ultimo, the accompanying copies of a letter and opinion submitted by the officiating Advocate-general, in the report and draft of Act relative to the limitation of suits.

Council Chamber,
11 November 1842.

I have, &c.
(signed) F. J. Halliday,
Officiating Secretary to Government of India.

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11 Nov. 1842
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Act for amending
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the Limitation of
Suits.

— No. 2. —

ABOLISHING THE RECORDER'S COURT IN THE STRAITS.

No. 2
Abolishing the
Recorder's Court
in the Straits.

Legis. Cons.
22 Jan 1838.
No. 1.

(No. 60.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the General Department, under date the 8th June 1836.

READ again the under-mentioned Papers :

Public General Letter, No. 66 of 1831, from the Honourable Court of Directors, dated the 27th of July, relative to the Charter for the Administration of Justice at Prince of Wales' Island, Singapore, and Malacca, and the powers of the resident and deputy resident.

Letter from the Secretary to the Governor-general, dated the 21st December 1831.

Letter to the Advocate-general, dated the 10th January 1832.

Letter from the Advocate-general, dated the 9th February 1832.

Letter to the Resident at Singapore, dated the 14th February 1832.

Public General Letter, No 61 of 1832, dated the 8th August, conveying instructions respecting the Recorder's Court expenses.

Letter to the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 15th January 1833.

Read a letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 22d December 1834, with statements exhibiting the receipts and disbursements attendant on his Majesty's Court of Judicature in the Straits, during the years 1832-33 and 1833-34.

Read a letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 28th July 1835, with the original papers addressed to him by Sir Benjamin Malkin on the close of his official connexion with the Straits government, which he conceives likely to prove useful to the legislative authorities in the preparation of new Regulations, and in framing a new charter of justice for the settlements.

Read a letter from the Secretary to the Government of Bengal to the Secretary to the Government of India, dated the 2d September 1835, submitting the above-mentioned papers for the consideration of the legislative authorities.

Order.

Ordered, That the above-mentioned papers be transferred to the Legislative Department of the government of India, in which various questions referring to his Majesty's courts at the different presidencies are now under consideration.

(True extract.)

(signed) H. T. Prinsep,
Secretary to Government.

PUBLIC DEPARTMENT, No. 66 of 1831.

Our Governr-general in Council at Fort William in Bengal.

Legis. Cons.
22 Jan. 1838.
No 2.
Enclosure.

Para 2, sent to the
Advocate-general
on the 10th Jan.
1832.

Para. 1. IN our despatch, dated the 23d of February last, we intimated an intention of obtaining a new charter for the administration of justice at Prince of Wales' Island, Singapore, and Malacca, and you were at the same time apprised that Mr. Fullerton was "mistaken in supposing that the alteration in the government could cause the present charter to become inoperative."

2. We have now to acquaint you that, upon further consideration, it has been deemed expedient to continue the old charter for the present; and in order that all doubt may be removed regarding the powers, under that charter, of the resident and deputy residents, we have determined and hereby declare that, for the purpose of administering justice under his Majesty's charter, the resident at Singapore stands, and that the resident at Singapore for the time being shall stand, appointed and designated governor or president of the united settlements of Prince of Wales' Island.

Island, Singapore, and Malacca; and that the first assistant to the said resident at Singapore stands, and that the first assistant for the time being to the resident at Singapore shall stand, appointed and designated as resident councillor at Singapore, and that the deputy residents at Prince of Wales' Island and Malacca stand, and the deputy resident at Prince of Wales' Island and Malacca for the time being shall stand, appointed and designated as resident councillors at those places respectively.

We are, &c.

London, 27 July 1831,	(signed) <i>Robert Campbell.</i> <i>John G. Ravenshaw.</i> <i>John Morris.</i> <i>H. Shank.</i> <i>Geo. Lyall</i> <i>John Forbes.</i> <i>G. Raikes.</i>	<i>J. L. Lushington.</i> <i>John Loch.</i> <i>C. Mills.</i> <i>Wm Young.</i> <i>Wm. Stanley Clarke.</i> <i>J. Thornhill.</i> <i>J. Petty Muspratt.</i>
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(No. 1.)

From *H. T. Prinsep*, Esq. Secretary to the Governor-general, to *G. A. Bushby*, Esq. Officiating Secretary to Government, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 764, dated the 6th instant,* forwarding a public general letter, No. 66 of 1831, from the Honourable the Court of Directors, and in reply, to state his Lordship's opinion that the orders contained in that despatch should be communicated immediately to the resident at Singapore, and to the other officers concerned, and be otherwise promulgated for general information.

General Department
* Financial.

2. The Governor-general further conceives that it will be proper to take the opinion of the law officers of this government as to the course of proceeding to be adopted by the local officers of the Eastern settlements under the new appointments conferred upon them by the Honourable Court, in order to provide for the administration of justice therein under the existing charter.

Camp Putundee,
21 December 1831.

I have, &c.
(signed) *H. T. Prinsep*,
Secretary to the Governor-general.

From *G. A. Bushby*, Esq. Secretary to the Government of India, to the
~~Advocate-General~~

Sir,

I AM directed by the Honourable the Vice-president in Council to transmit for your information the accompanying extract from a despatch in the Public Department from the Honourable the Court of Directors, bearing date the 27th of July last, and to request that you will at as early a period as possible advise this government as to the course of proceeding to be adopted by the local officers of the Eastern settlements under the appointments conferred upon them by the Honourable Court, in order to provide for the administration of justice therein according to the existing charter.

Para 2.

Fort William,
10 January 1832

I have, &c.
(signed) *G. A. Bushby*,
Secretary to Government.

From *John Pearson*, Esq. Advocate-General, to *G. A. Bushby*, Esq. Secretary to the Government.

Sir,

I HAVE the honour to acknowledge the receipt of your letter and enclosure relative to the administration of justice in the Eastern settlements.

2. I conceive that it is competent to the Court of Directors to limit or lessen the power of the governor or president in other respects, without affecting his judicial functions under the charter of justice. I would apply the same remark to the other officers mentioned in the letter of the Court of Directors. Upon a supposition,

then, that the different places, Prince of Wales' Island, Malacca, and Singapore, are under the same governor, and that the government (whatever may be its powers) is administered by the persons now termed governor and resident councillors—(For the reasons of my attaching importance to these circumstances, see Charter of Justice, page 8.)—I think that the court of judicature may resume its office and act in the same manner as after the recall of the recorder, and before the change which took place antecedently to the departure of Mr. Fullerton. I presume, however, they will usually retain in other matters the same titles they are authorized to assume in the court of justice. Without attaching any undue importance to names, a contrary practice would, it is probable, lead to disputes and difficulties. I need not add, that as it is the law of England which is to be administered by the court, it is of importance, in the absence of a professional judge, to proceed with great caution in all cases of importance.

Fort William,
9 February 1832.

I have, &c.
(signed) *John Pearson,*
Advocate-general.

From *G. A. Bushby*, Esq. Secretary to Government, to *R. Ibbetson*, Esq.
Resident at Singapore, dated the 4th February 1832.

Sir,

I AM directed by the Honourable the Vice-president in Council to transmit for your information the accompanying copy of a public general letter, dated the 27th of July 1831, from the Honourable the Court of Directors, intimating that it has been deemed expedient to continue for the present the Charter of 1826, for the administration of justice at Prince of Wales' Island, Singapore, and Malacca, and for the purpose of administering justice under the same, appointing the resident at Singapore for the time being governor or resident of the united settlement of Prince of Wales' Island, Singapore, and Malacca, and the first assistant for the time being to the resident at Singapore, councillor at Singapore, and the deputy resident at Prince of Wales' Island and Malacca for the time being, resident councillors at those places respectively

2. You are requested to communicate these appointments to the several officers concerned, and otherwise to promulgate them for general information throughout the settlements in the Straits.

3. The Advocate-general having been consulted as to the course of proceeding to be adopted by the local officers for carrying into effect the objects of their new appointments, I am directed to transmit a copy of Mr. Pearson's letter upon the subject, dated the 9th instant, for your information and guidance.

I have, &c.
(signed) *G. A. Bushby,*
Secretary to Government.

PUBLIC DEPARTMENT, No. 61 of 1832.

Our Governor-general in Council at Fort William in Bengal.

Para. 1. UPON the occasion of a new appointment to the office of recorder of Prince of Wales' Island, Singapore, and Malacca, we think it expedient to issue specific instructions with respect to his circuit expenses, being very desirous of avoiding the recurrence of the mischievous discussions which took place between the late recorder and the local government.

2. We desire that the expenses incurred under each of the following heads be defrayed by the government, viz:—

Suitable accommodation in a vessel to be taken up by the resident;

Tonnage for private baggage, public records, and official books;

Accommodation for servants, public and private;

Batta to servants, public and private,

Chambers or lodgings suitable for the temporary residence of the recorder, containing every article of furniture except plate and linen; and

All expenses incidental to the shipping and landing baggage.

3. The personal and private expenses of the recorder and his table expenses on board and on shore during circuit are to be borne by himself.

4. The recorder's clerk is to be paid the same salary as was paid to the clerk of the late recorder.

We are, &c.
(signed) *John G. Ravenshaw.* *Robert Campbell.*
C. Manjoribank's. *H. Shanks.*
J. Morris *H. St. George Tucker.*
W. Astell *J. R. Carnac.*
John Masterman *J. L. Lushington*
J. Baillie. *N. B. Edmondstone*
Russell Ellce.

London,
8 August 1832.

From *G. A. Bushby*, Esq. Officiating Secretary to Government, to *R. Ibbetson* Esq. Governor of Prince of Wales' Island, Singapore, and Malacca.

Sir,

I am directed to transmit for your information and guidance the accompanying extract from a public general letter, No 61 of 1832, from the Honourable the Court of Directors, dated the 8th August last, regulating the circuit expenses of the recorder of Prince of Wales' Island, Singapore, and Malacca, and directing payment of the same salary to the present recorder's clerk as was paid to the clerk of the late recorder.

Public Department
Para 1 to 4

Fort William,
15 January 1833

I have, &c.
(signed) *G. A. Bushby*,
Officiating Secretary to Government.

(No 47)

From *S. G. Bonham*, Esq. Acting Governor, Prince of Wales' Island, &c. to *H. T. Prinsep*, Esq. Secretary to Government, Fort William.

Sir,

Adverting to my letter of 21st October, No. 22, wherein I promised to prepare and submit, for the information of Government, the expenses attendant on his Majesty's court of judicature in these Straits, I have now the honour to enclose a document exhibiting the receipts and disbursements during the years 1832-33, and 1833-34, the one exhibiting a loss to government of Rs. 61,699, and the other of Rs 1,16,313. 15 a 8 p.

General Department
No 1

2. The difference in the expense for the two years is to be accounted principally by the office of recorder being vacant during the greater part of 1832-33, Sir Benjamin Mallin having only arrived on the 15th of February 1833, so that deducting his pay and establishment, included under the head of 1832-33, and the circuit charges for the same period, two months and a half, amounting to Rs. 10,076. 8 a. 7 p., it would appear that the court charges for these settlements, without the recorder, would be Rs. 51,923 6 a., I conceive, however, that these charges would be susceptible of some reduction, which I have submitted in a comparative statement, marked (A.)

(A)

3. Comparing the expenses of the two years, it will be seen that the surplus charge for 1833-34, with the recorder present, aggregated Rs. 1,16,313.; to which must be added the court charges paid at the close of 1832-33, as had the recorder not been present they certainly would not have been incurred; they amount to Rs 4,585. 12 a. 3 p.; but as it is necessary the registrar should accompany the court, I would put his and the governor's extra expenses for the circuit at Rs. 1,500; so that deducting this sum from the expenses absolutely incurred, the result is a dead loss of Rs. 1,19,399. 11 a. 11 p.

4. The amount fairly to be debited, on account of the presence of the recorder, appears to be:

His salary	-	-	-	-	-	-	-	-	-	Rs.	37,890	-	-
His establishment	-	-	-	-	-	-	-	-	-	-	4,392	-	-
Circuit charges incurred at the close of 1832, being on account of circuits of 1833/34	-	-	-	-	-	-	-	-	-	-	4,585	12	5
Ditto	-	-	-	-	-	-	-	-	-	-	25,047	13	5
Carried forward	-	-	-	-	-	-	-	-	-	-	71,915	9	8

No. 2.
Abolishing the
Recorder's Court
in the Straits.

	Brought forward - - -	Rs.	71,915	9	8
Mr. Ibbetson's circuit expenses, incurred for the first circuit, cost government nothing; but doubtless some addition must be made to the governor's establishment if he is to perform circuit, say, each trip as follows:					
Governor's passage and contingencies	-	Rs. 800	-	-	-
Registrar's ditto - - ditto	-	-	400	-	-
Other contingent charges	-	-	800	-	-
		Rs. 2,000	-	-	-
For two circuits, amount to	-	-	Rs. 4,000	-	-
Add establishment clerk, at Rs. 200.	-	-	2,400	-	-
Three peons, at 12 each, Rs. 36.	-	-	432	-	-
			6,832	-	-
		Rs.	65,083	9	8

(B) and (C)

5. Independent of the expense, however, there are many reasons which make the law of England unmodified, and administered as it must be by an English lawyer, inapplicable at these stations. In criminal matters, I fully admit, but little improvement can take place; but in civil ones, and the documents enclosed, marked (B.) and (C.), will, I think, fully prove that I have had some experience, I conceive that there is room for great improvement, especially when administered by the recorder; because he cannot, nor from his peculiar education can it be expected he will, see the necessity of modifying the law of England to circumstances. In these past ten years I have known four recorders, so that they can have hardly time to make themselves at all acquainted with the prejudices and characters of the inhabitants frequenting these settlements. It may, indeed, be said, that such knowledge is not necessary for the pure administration of justice; but from this I must beg to dissent, because in civil cases the judge not being assisted by a jury has to find the fact himself, to do which, with any certainty, a knowledge of the language, character, and prejudices of the parties before him is by no means unnecessary, more especially as without it the evidence must be conveyed through at least one, and in many instances more interpreters, who, being aware that they are not likely to be detected, are apt to interpret somewhat carelessly.

6. In corroboration of this opinion I will simply quote one instance: I have already, in a letter of 15th May last, recommended that the gaming farms should be reinstated. It is not necessary here to discuss whether it is advisable that the restrictions should be reimposed, but let it be presumed that the Right Honourable the Governor-general of India in Council is of opinion that it is advisable they should be, and issue orders that the gaming farms should be put on their old footing, can these orders be carried into effect so long as the court exists in its present shape, bound to punish and abate all matters deemed offences in the English Statute-book, in which gaming is clearly included? Perhaps, however, the extensive powers now vested in the Supreme Government of India, in its legislative capacity, may obviate this and other inconveniences; heretofore it certainly had not the power, and the result would have been that, had the Regulation been passed after due consideration by the highest power in this country, or by any other less than an express Act of Parliament, it would not have been recognised by our court, or be carried into execution; though it is needless to add, the reasons that may have induced the Legislature to prevent gaming in England by no means extend to these distant and, I may nearly say, semi-barbarous stations.

7. From the above remarks it will be gathered, as my opinion, that justice, civil and criminal, ought to be administered in these straits on a scale less expensive than the present; and with this view, in my capacity as a judge of the court, and by that means having access to the documents, I have compiled the Statements (B.) & (C.), setting forth what has been done in the civil and criminal side of the court for the years 1832-33, and 1833-34; the date of its last coming again into operation, as also before whom the causes have been disposed of. The results are as follows: Amount litigated, \$ 521,521; of which \$ 289,228 were disposed of before the lay judge, and \$ 232,293 before the recorder; criminal cases tried

tried, 205, of which 16 were disposed of at Singapore and 47 at Penang before the lay judges, and the remainder before the lay judges and recorder. The papers to which I have at present access do not show before whom the criminal cases were disposed of at Malacca.

8. Mr. Fullerton, than whom few could be better qualified, both from experience and talent, fully discussed the merits of the question in a council, at which the Right honourable the Governor-general in Council presided; and as his Minute contains all that I can say, and will doubtless be considered of more weight than anything I might say, I beg to enclose it for reference. An extract of a minute by the Right honourable Lord William Bentinck is also appended, who it will be seen fully concurred with Mr. Fullerton on the subject.

9. To assist the Right honourable the Governor-general of India in Council in forming a judgment of the necessity of a professional judge being stationed in the Straits, and the consequent expense, I would observe, that since October 1824, say 10 years, the court has been carried on without one for four years and six months, or nearly half the time; viz. from the decease of Sir Francis Bayley to the arrival of Sir John Claridge, from Sir John Clardge's recall until the abolition of the late government, and from the reopening of the court until the arrival of the present recorder; and as I was one of the judges appointed under the charter at the opening of the court in 1832, I can safely assert, as far as Singapore was concerned, no difficulty was experienced, though the court had extremely heavy calendars of prisoners to try, and a great weight of civil business to dispose of, the accumulation of 22 months, the time the court was in abeyance.

From the end of Oct 1824	
to Sept. 1827, say -	- 35 m ^{ths} .
Sept 1829 to June 1830 -	9 "
April 1832 to Feb. 1833 -	10 "
	<hr/>
	12) 54 "
	<hr/>
	Years 4 6 "

10. Should what I have had the honour to submit induce the Supreme Government of India to conclude that the presence of the recorder is not necessary, and that his salary and other expenses incidental on his presence might be saved to the state, then I would suggest that on the removal of the present recorder to another bench, or the appointment becoming vacant, that it should not be again filled up, and the judicial business of these stations should be carried on by the governor and resident councillor in the way it was during the vacancy of the office alluded to in the last paragraph, by which measure no necessity exists for the repeal or modification in the present letters patent.

See printed copy
of Charter, pp 13
and 55

11. As however there can be no doubt that the presence of a professional judge is desirable (but in my opinion by no means absolutely essential, provided efficient and qualified servants are nominated to the office of governor and resident councillor), I would suggest, should it be in contemplation to modify the present charter, that provision should be made for one of the judges of the Calcutta bench being allowed to visit the Straits, and take his seat on the bench, on the same footing as the recorder does at present, once a year, or as often as might be thought desirable by government. This would enable the lay judges in cases of difficulty to await his arrival, by which means nearly the same professional assistance would be obtainable as at present, and with the aid of a steam-vessel, might be effected at perhaps 10,000 to 12,000 rupees, instead of 65,083 rupees, as under the present system.

12. On the other hand, if it is deemed proper that a system of judicature similar to the present, the most perfect and expensive that could be devised, giving the inhabitants, both European and native, the privileges and immunities enjoyed by our fellow-subjects in England, which the latter certainly neither require nor comprehend, should be continued, then it appears to me the system that is pursued at the presidencies should be adopted here, and that a tax or duty on the trade should be immediately imposed. At present the European inhabitants absolutely pay no tax whatever for the protection they receive, except on the consumption of spirituous liquors if bought in retail; a state of things for which I confess I see no good cause, more especially when it is remembered that during last year the expenditure on account of these settlements over the receipts amounted to 8,32,273 sicca rupees. This subject is however so ably and fully discussed in Mr. Fullerton's Minute, that I beg to refer the Right honourable the Governor-general in Council to it for any further information that may be required.

See Mr. Church's
letter, 9 Aug. 1834.

Prince of Wales' Island,
22 December 1834.

I have, &c.
(signed) S. G. Bonham,
Acting Governor.

STATEMENT exhibiting the RECEIPTS and DISBURSEMENTS on Account of the Court of Judicature at *Prince of Wales' Island, Singapore, and Malacca*, during 1832-33, and 1833-34.

Dr.

Cr.

	1832/33	1833/34.	TOTAL.		1832/33.	1833/34.	—	TOTAL.
	Rs. a. p.	Rs. a. p.	Rs. a. p.		Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
At Penang :				Recorder at Penang .				
Fees from the court, per ann.	9,914 7 8	11,407 4 3	21,321 11 11	His salary - - -	4,961 12 6	25,260 - -	30,221 12 6	
At Singapore :				His establishment - - -	519 - -	4,330 - -	4,849 - -	35,070 12 6
Fees from the court, per ann.	10,776 8 7	9,022 - 1	19,798 8 8	At Singapore :				
At Malacca :				His salary - - -	- - -	12,630 - -	- - -	12,630 - -
Fees from the court, per ann.	8,895 8 2	2,933 4 11	7,828 13 1	His establishment - - -	- - -	- - -	- - -	
At Penang :				At Malacca :				
Amercements, fines, &c.	- - -	- - -	- - -	His salary - - -	- - -	- - -	- - -	
At Singapore :				His establishment - - -	- - -	- - -	- - -	
Amercements, fines, &c.	- - -	526 4 -	526 4 -	Contingencies - - -	14,400 - -	14,400 - -	28,800 - -	
At Malacca .				His establishment - - -	17,911 9 2	18,087 - -	35,998 9 2	64,926 9 7
Amercements, fines, &c.	- - -	42 1 7	42 1 7	Contingencies - - -	13 5 -	114 11 5	128 - 5	
				At Singapore :				
				His salary - - -	- - -	- - -	- - -	
				His establishment - - -	11,300 7 9	13,027 4 7	24,327 12 4	
				Contingencies - - -	145 3 4	287 6 -	432 9 11	24,760 6 3
				At Malacca :				
				His salary - - -	- - -	- - -	- - -	
				His establishment - - -	10,450 - -	9,636 - -	20,086 - -	
				Contingencies - - -	320 7 10	11 - 11	331 8 9	20,417 8 9
				Sheriff at Penang :				
				His establishment - - -	4,200 - -	4,200 - -	8,400 - -	
				Dieting prisoners, &c. - - -	2,284 11 8	1,328 9 -	3,612 4 8	12,013 4 8
				At Singapore :				
				His establishment - - -	4,200 - -	4,200 - -	8,400 - -	
				Dieting prisoners, &c. - - -	2,099 6 9	1,368 7 6	3,467 14 3	11,867 14 3
				At Malacca :				
				His establishment - - -	4,200 - -	4,200 - -	8,400 - -	
				Dieting prisoners, &c. - - -	1,420 11 7	801 1 7	2,221 13 2	10,621 13 2

CIRCUIT CHARGES			
Amount freight of 3,000 bags of rice from Malacca to Penang, per Australia, at 8 annas per bag, carried to the credit of this head	-	1,500 - -	-
Transport of 400 troops from Malacca to Singapore, per Australia	-	1,500 - -	3,000 - -
Balance, being excess of disbursements	61,699 14 7	1,16,313 15 8	1,78,013 14 3
<i>Rs.</i>	87,286 7 -	1,43,244 14 6	2,30,531 5 6

Coroner at Penang :			
His salary	1,400 - -	1,200 - -	2,600 - -
His establishment	140 - -	120 - -	260 - -
Contingencies	80 3 8	355 8 1	435 11 9
			3,295 11 9
At Singapore:			
His salary	1,200 - -	1,200 - -	2,400 - -
His establishment	120 - -	120 - -	240 - -
Contingencies	8 6 9	- - -	8 6 9
			2,648 6 9
At Malacca :			
His salary	1,200 - -	1,200 - -	2,400 - -
His establishment	120 - -	120 - -	240 - -
Contingencies	5 4 2	- - -	5 4 2
			2,645 4 2
CIRCUIT CHARGES :			
At Penang			
Freight of the ship Edward	3,000 - -	5,320 - -	8,320 - -
Ditto - ditto - Australia	- - -	12,266 10 8	12,266 10 8
Expenses of the registrar	96 - -	309 9 7	405 9 7
Batta to clerks, interpreters, servants, &c.	476 8 -	2,501 3 8	2,977 11 8
Boat-hire, &c, shipping and landing recorder's baggage	250 - -	227 14 4	477 14 4
			24,447 14 3
At Singapore			
Freight of the ship Edward	- - -	4,123 - -	4,123 - -
Batta to clerks, interpreters, &c	376 - -	- - -	376 - -
Passage money of ditto, ditto, from Penang	192 1 7	- - -	192 1 7
Boat-hire, &c, landing and shipping of recorder's baggage	195 2 8	127 11 -	322 13 8
			5,013 15 3
At Malacca:			
Boat-hire, &c, landing and shipping of the recorder's baggage	- - -	171 12 2	171 12 2
<i>Rs.</i>	87,286 7 -	1,43,244 14 6	2,30,531 5 6

INDIAN LAW COMMISSIONERS.

SPECIAL REPORTS OF THE

No 2.
Abolishing the
Recorder's Court
in the Straits.

(A.)

COMPARATIVE STATEMENT of Expenses incurred on Account of the Court of Justice,
and what Mr. Bonham is of opinion would amply suffice.

Present Establishment.		Proposed Establishment.	
Penang:	Rs. a. p.		Rs. a. p.
Recorder - - - -	37,890 - -	- - - -	10,000 - -
Registrar - - - -	16,800 - -	- - - -	6,000 - -
Clerks - - - -	10,800 - -	- - - -	4,547 - -
Interpreters, criers, &c. - -	4,547 - -	- - - -	4,547 - -
Recorder's establishment - -	4,392 - -	- - - -	- - - -
Governor's ditto - - - -	- - - -	Clerk and two peons - -	2,440 - -
Singapore:			
Clerks - - - -	8,400 - -	- - - -	8,400 - -
Interpreters - - - -	3,605 7 -	- - - -	3,605 7 -
Malacca:			
Clerks - - - -	6,000 - -	- - - -	3,600 - -
Interpreters - - - -	2,526 - -	- - - -	2,526 - -
*Circuit charges for 1833-4	29,633 9 8		
		Extra expenses of all sorts for Governor, each trip 800 rupees, two circuits annually - Rs. 1,600 Registrar's ditto, at 400 rupees, for two trips - - - 800 Other contingencies unforeseen, at 800 rupees per trip, two circuits - 1,600	4,000 - -
Rs.	1,24,594 - 8	Rs.	45,118 7 -

	Rs.	a. p.
Present expenses - - - -	- 1,24,594	- 8
Proposed ditto - - - -	- 45,118	7 -

Proposed saving - Rs. 79,475 9 8 annually.

* Circuit charges taken from absolute payments.

Prince of Wales' Island, 22 Dec. 1834.

(signed) S. G. B.

(B.)

AMOUNT Litigated at Prince of Wales' Island, Singapore, and Malacca, during 1832-33,
and 1833-34.

	Resident Councillor.	Recorder.	TOTAL.
	Span. Dol.	Span. Dol.	Span. Dol.
At Prince of Wales' Island - - - -	68,910	192,653	261,563
At Singapore - - - -	205,498	36,024	241,522
At Malacca - - - -	14,820	3,616	18,436
Spanish Dollars	289,228	232,293	521,521

Total proceedings instituted before lay Judges	Spanish Dollars	289,228
Ditto - - - - Recorder		232,293

Spanish Dollars 521,521

Prince of Wales' Island,
22 Dec. 1834.

(signed) S. G. Bonham,
Acting Governor.

CRIMINAL CASES decided before the Court of Judicature, *Prince of Wales' Island, Singapore, and Malacca*, in 1832-33, and 1833-34.

PRINCE OF WALES' ISLAND.			SINGAPORE.			MALACCA	CRIMES	
Governor and Resident Councillor.	Recorder.	Number of Indictments	Governor and Resident Councillor	Recorder.	Number of Indictments	Governor, Resident Councillor, and Recorder, generally.		
Number of Indictments	Number of Indictments.	TOTAL	Number of Indictments.	Number of Indictments	TOTAL	Number of Indictments		
10	9	19	3	7	10	10	murder - - - - -	39
1	1	2	-	-	-	1	-- murder, with accessory before the fact.	3
-	1	1	-	-	-	1	-- murder, with accessory after the fact.	2
-	1	1	1	3	4	-	manslaughter - - - - -	5
8	7	15	-	3	3	5	-- stabbing, cutting, and wounding, with intent to kill and murder, with counts to do some bodily harm, to disfigure, to maim, &c.	23
1	-	1	-	-	-	1	-- shooting, with intent to kill and murder.	2
-	1	1	-	-	-	-	-- attempting to shoot, with intent to kill and murder.	1
1	-	1	-	-	-	1	-- assault, with intent to kill and murder.	2
-	-	-	-	-	-	1	assault and false imprisonment	1
-	4	4	-	-	-	1	common assault - - - - -	5
1	-	1	-	-	-	-	-- assaulting a peace-officer in the execution of his duty	1
-	-	-	-	4	1	-	-- assaulting a woman quick with child	1
-	1	1	-	-	-	-	rape - - - - -	1
-	1	1	-	-	-	-	-- assault, with intent to commit a rape.	1
-	2	2	-	2	2	-	-- carnally knowing and abusing a girl above eight and under ten years of age	4
-	-	-	-	-	-	1	-- unlawful abduction of a girl under 16 years of age.	2
-	-	-	-	-	-	1	-- fraudulently enticing away a child under the age of ten years	1
-	-	1	-	-	-	-	buggery - - - - -	1
-	1	2	-	-	-	2	robbery - - - - -	4
-	2	16	5	16	21	10	burglary - - - - -	47
-	1	3	1	6	7	7	-- stealing in a dwelling-house, to the value of 50 sicca rupees.	17
-	-	1	1	-	1	-	-- stealing in a dwelling-house, some person therein put in fear	2
-	1	1	1	1	2	1	house-breaking and larceny -	4
-	-	-	1	-	1	-	-- attempting to enter and steal from a warehouse	1
-	4	4	-	-	-	1	arson - - - - -	4
3	5	8	3	35	38	18	larceny - - - - -	64
-	-	-	-	5	5	12	receiving stolen goods - - -	17
-	3	3	-	4	4	-	-- receiving stolen goods, as for a substantive felony.	7
-	1	1	-	-	-	-	-- being an accessory before the fact to a felony, as for a substantive felony.	1
-	-	-	-	-	-	3	embezzlement.	5
-	-	-	-	-	-	1	-- pledging goods entrusted to, as an agent for sale.	1

SPECIAL REPORTS OF THE

PRINCE OF WALES' ISLAND			SINGAPORE.			MALACCA	CRIMES.
Governor and Resident Councillor	Recorder	Number of Indictments	Governor and Resident Councillor	Recorder	Number of Indictments.	Governor, Resident Councillor, and Recorder, generally.	
Number of Indictments.	Number of Indictments.	TOTAL	Number of Indictments.	Number of Indictments	TOTAL.	Number of Indictments	
-	-	-	-	-	-	1	-- obtaining a creese under a false pretence. 1
6	-	6	-	-	-	-	extortion - - - - 6
4	-	4	-	-	-	-	forgery - - - - 4
-	1	1	-	-	-	-	perjury - - - - 1
-	1	1	-	-	-	-	subornation of perjury - - 1
-	-	-	-	-	-	3	slavery - - - - 3
-	-	-	-	1	1	-	-- purchasing a female, in order to her being dealt with as a slave. 1
-	-	-	-	-	-	3	- - maliciously maiming and wounding cattle. 3
47	58	105	16	84	100	84	289

TOTAL of Prince of Wales' Island, Singapore, and Malacca - - - - 289

(signed) S G. Bonham,
Acting Governor.

MINUTE by Mr. Fullerton, dated 1st February 1829.

PRINCE of Wales' Island, Singapore, and Malacca are three settlements now under one government, and the object of our inquiry and consideration is their administration on a scale as economical as may be consistent with efficiency

For that administration a certain number of civil servants and native establishments are required, and for their defence a certain number of troops; the number of either need not in the slightest degree be affected by the form of administration, whether such be that of a separate government under the Court of Directors, or of a dependent one under that of Bengal. The mere personal staff allowed to a governor, a private and military secretary, not exceeding Rs. 1,000. per month, form but an immaterial excess, and this constitutes the only additional charge.

The following is the establishment of covenanted servants requisite for the conduct of the civil administration :

3 Residents at Rs. 2,105 -	Rs.	6,315
3 Deputies, or head assistants at Rs. 1,500 -		4,500
3 Assistants at Rs. 1,000 -		3,000
		<u>13,815</u>
1 Governor at	Rs.	5,262
1 Secretary at		1,500
1 Head assistant at		1,000
		<u>7,762</u>
		<u>21,577</u>

3 Supernumeraries, supposed to be absent on leave, drawing the furlough allowance.

Prince of Wales' Island :

One resident, one deputy or head assistant, one assistant; three.

The same at Malacca and the same at Singapore, making nine in all, to which may be added three for the general controlling duties, if such be exercised on the spot; if on the principle of a separate government, as follows: one governor, one secretary, one head assistant, also register to court of appeal, as hereinafter described making 12 in all; but as three furloughs are allowed, we may state the full number 15. The allowances on the existing scale I place on the margin.

If separate presidencies, each acting independent of the other, are all directly under the Supreme Government, without an intermediate control,

controlling authority, only the nine civil servants will be required. Whether such local controlling authority be necessary, is a matter of opinion. In my own opinion, an efficient administration cannot well be established without it, more particularly as affording intermediate appeal within the local Judicial Department. It must, moreover, be remembered that these settlements are far distant from other presidencies; with the local authorities must rest the maintenance of all political relations with the Netherlands Government, the Siamese and numerous other eastern states; the support of the British interests in these distant regions require the presence of action more prompt and decisive than a mere insulated residency could have.

If the administration be conducted as a dependent government, under the Supreme, but with an intermediate controlling authority, then the office will be filled by a head commissioner or lieutenant-governor, with the secretary and assistant under him.

If under a separate government, under the Court of Directors, subject only to the general control of the Supreme Government, as settled by statute, then the present system may remain as it is, established of course on the most economical principles. Reductions have been made, and are still in progress. It must be recollected that these settlements have to bear heavy transfers of servants from Bencoolen at very high allowance, which may be reduced by degrees; some increase has been unavoidable at Malacca and Singapore, for there in reality neither civil government nor administration of justice had any existence; but these are even now far more than met by reduction of superfluities at Prince of Wales' Island, and further equalization yet remains to be perfected. The whole principle pursued, and to be continued with a view to economy, has been to spread out the Penang establishment in the other two, reducing the former even in a greater proportion than the additions to the latter.*

The transfer
amounted to
S. Rs. 2,14,000 per
annum.

I am not aware that the expense need be greater under a separate and distinct government than under a dependent one; the question simply is, whether the pay of the governor, resident councillor, and other civil servants, will be greater if appointed directly by the Honourable Court on a separate scale, than if appointed by the Governor-general, and of course on the Bengal scale. If we judge from past experience, we must conclude that the expense will be less. Under the first, the Governor of Penang receives only 5,200 rupees per month, the Lieutenant-governor of Bencoolen received from 7,000 to 8,000, the pay of a resident councillor is only 2,105, that of Singapore, under Bengal, was 4,000; of Malacca, 2,500, besides military pay (being held by a major), and that of Tenasserim 3,000; and the allowances at Bencoolen generally exceeded those at Penang for the same class of servants.

The number above stated, 12 present, is all I contemplate as adequate to all the civil duties, collection of revenue, administration of justice, civil and criminal magistracy, and police. Allowing the absentees, the number would be 15; the present number fixed is 17; casualties would soon meet the difference; two are now employed at Tavay and Mirgue, &c.; and if those provinces were supplied from us, not a single addition to civil establishments would be required, nor to the medical, as the latter is now constituted. In all other governments the executive and judicial functionaries are distinct, but at all governments there is duty enough to be done in each department to require the exclusive appropriation of one set of officers; and from the extent of the official powers, and liability to abuse, there may be a necessity for such separation. This is not the case at these three settlements: land revenue can scarcely be said to exist, and all that we collect arises from the excise, the exclusive right of retailing certain articles; that right is sold every year to the highest bidder for a certain monthly sum, and scarcely gives rise to a single dispute or requires any exertion of authority. The main duty of the Civil Department at these settlements is the police. The nature of the population, three-fourths of which are the refuse of all the surrounding countries; the confined limits; the facility of ingress, and abstraction of property, are indeed such, as to constitute the police almost the exclusive duty of government. There seems, therefore, no necessity for separate officers for the two functions, executive and judicial,

* This might have been done with full effect as to management without the Bencoolen servants.

No. 2.
Abolishing the
Recorder's Court
in the Straits.

judicial, and such can only involve double expense, counteraction to each other, and being quite unintelligible to the people of these distant regions, yet uncivilized, has no other effect than lessening the authority, and bringing government into contempt.

The residents at each settlement should be the responsible superintendents, directors, and controllers of all the executive departments, taking such share of duty to themselves, and employing their assistants in what manner they see fit.

The residents should, moreover, be the judges and magistrates; should try all civil suits above 500 rupees, referring those under that sum to their assistants; and should have power to punish all misdemeanors, affrays, petty assaults, and petty thefts, not exceeding 50 rupees, by corporal punishment, not exceeding 36 stripes; by imprisonment with hard labour, as far as two years; by fine, as far as 200 rupees; and for all crimes of great magnitude to commit for trial before the court of circuit, to be established as hereinafter described.

The judge should have power to refer to his assistants for trial all suits under 500 rupees, with appeal to himself if parties desire it.

The judge as magistrate should have power to refer to his assistants all inquiries on the criminal side, revising proceedings before punishment, with power of remitting such when he deems necessary.

In all judgments exceeding 2,000 rupees appeal should be open to the court of circuit, as hereunder described; in all cases exceeding 3,000 rupees appeal should further be open to the King and Council.

The governor, or other controlling authority, should proceed on circuit twice a year, and besides exercising general supervision in the Executive Department, try all criminals committed, and all appeals pending; the resident sitting also with the governor, but the latter having the casting vote.

The civil process should be by plaint and answers delivered, written or taken down by officer of the court, examination of witnesses, and exhibits and judgment according to equity and right. In all cases of importance, when either party required it, jury of four or seven might be impanelled to give their verdict; and this in commercial cases would probably be the most satisfactory to the merchants of the place.

British-born subjects should be amenable to these courts, as they are in other parts of India; but in all cases exceeding 2,000 rupees, with right of appeal to the Supreme Court at Calcutta, instead of the governor and councillor as the court of appeal. They should be subject to the magistrates also in manner prescribed by Act 53 Geo. 3, c. 155, s. 105 & 107, against any act done by the government of these settlements in its executive capacity. Parties deeming themselves grieved might appeal to the Supreme Government; if not satisfied, a suit may be entered in the Supreme Court at Calcutta, and defended by the Company's advocate-general, if deemed necessary by the Governor-general in Council.

If the administration of justice entirely by civil public servants be objected to, there could be no difficulty in attaching five merchants, settlers, as assessors, on the same principle as a mayor's court, the resident as mayor, the others as aldermen, and the Governor and Council holding only, as formerly at Madras and Bombay, the courts of oyer and terminer. Any one of the modes here proposed would be preferable to the present, which is more expensive and worse adapted than any system which could be devised.

The criminal trials should be conducted before a petty jury, on information or arraignment, drawn up from the magistrate's proceedings in each case, by the register of the court, in precise and distinct form; specifying the crime, place, and time, as in a regular indictment, but divested of the technical formalities on points not affecting the criminality of the offence; evidence to be taken on oath before the court; witnesses for prisoners examined, and judgment given on verdict of guilty, sentence might be executed, judges having power of mitigating punishment; a correct record of depositions taken before the magistrates; evidence and proceedings before the court to be kept and transmitted to the Court of Directors; a clear and distinct specification of crimes and their punishments to be drawn up and framed into a Regulation to be enacted for that purpose. All inhabitants should be liable to trial before these courts, except British-born European subjects. British subjects, military, may be deemed liable to trial for all crimes and offences by court-martial, as in India, beyond 120 miles from the presidencies; other British subjects to be amenable to the court at Calcutta, sent for trial on commitment by the resident acting as magistrate; all depositions and

witnesses

witnesses to be sent to Calcutta; adverting to the class and description of British inhabitants, such a case would scarcely occur.

There is yet another mode of proceeding by which justice may be administered, and still a considerable saving take place, namely, to constitute this government exactly like the other governments of India; to fix one of the settlements (Malacca, for example) as the presidency, to have there a governor and two councillors, to reduce these at the other two to the rank of residents only, with powers of zillah judges, on 2,000 *l.* per annum, to establish the King's Court on the original scale at which it formerly stood; to limit its jurisdiction over natives to the presidency town, and four miles round; allowing it over European British subjects, the Company, and their servants, the same powers held by the Supreme Courts. If deemed unadvisable to make the Governor and Members of Council the judges, make a mayor's court of it, as formerly at Madras and Bombay, leaving justice to be administered at the other two places, and beyond four miles from the presidency town, by provincial courts; three zillah courts, one judge of appeal and circuit, and the Governor in Council, the Sudder Adawlut. This would only require one more civil servant, but would cost more than the other plan by the full allowance of the King's judges and Court, but would certainly be more convenient and economical than the present, and its expenses would not exceed the receipt framed as hereinafter proposed.

For the native establishments in the Civil Departments, I am not aware that the constitution of a government would require a greater expense than any other: the records, the accounts, and the police would be much the same under any system. The main expense at present is the paraphernalia of an English court of justice, registers, clerks, sheriffs, coroners, &c. &c. The same set of native officers may do all under a resident, and a very small fee in the administration of justice would pay the expense; I would say from 5 to 10 per cent in amount, decreed leviable from the *mald fide* party at the close of the suit, the demand of fees in advance, *in limine* I would entirely reject.

The military would be exactly the same under one system as another. I should say, native infantry one regiment, of 1,200 rank and file, divided between the three settlements as circumstances may require.

Artillery: one captain, two subalterns, 40 European artillery to the garrison of Fort Cornwallis; one company Goloundauze, ditto, ditto, one company Goloundauze, divided between Singapore and Malacca, and one officer at each station: no general or division staff are required, except a paymaster. The local staff may stand as follows at each station.—

1 Fort Adjutant at Prince of Wales' Island.

1 Cantonment ditto at Singapore.

1 ditto ditto at Malacca.

3 in all, acting also as Commissaries and Sub-paymasters at the two latter

The senior officer of artillery to superintend the arsenal.

The artillery officer at the other stations may also be in charge of the military stores and ammunition and ordnance; and either they or the cantonment adjutant may in common act as executive officer or engineer in charge of public buildings. When works of magnitude are going on, a superintending officer (professional) may be employed, as at present.

The office of town major and military secretary may be continued, as at present, united; the Governor holds a commission as commander-in-chief of the town and garrison of the settlement at which he may reside for the time being, and which is then the seat of government. The military secretary and town major will accompany the Governor; the detail duties will be conducted by the fort or cantonment adjutant, acting under orders of the Governor, through the town major, while the Governor is present; while absent, the fort or cantonment adjutant will act under the orders of the senior officer commanding the troops in cantonment. From the nature of the government, there being no military Board, the military secretary* now acts under the orders of the Governor, as a controlling authority on the Ordnance and Military Store Departments, in so far as to pass indents for stores,

* I should say the resident councillor, were I not doubtful as to the propriety of a public servant exercising any military functions without a military commission.

stores, and sanction issues required in common routine, under the appointment of the inspector-general; the Governor's military secretary also superintended and controlled all the works, buildings, and repairs; and with a view to economy, the former practice may be reverted to. The nature of government, indeed, generally requires the Governor to take a more direct part in the detail and transactions of all departments than at other presidencies; and hence the private and military secretaries are indispensable.

A local medical establishment has been fixed by the Honourable Court as follows:—Three surgeons and five assistant surgeons, for the following reasons: I think the whole of this establishment might be dispensed with; we have no troops of our own, and we should borrow medical officers from the establishment that supplies the military. It is not probable that other governments would entirely approve of their troops being attended by local surgeons; such was done while the Bengal troops were here, without objection, but has been objected to by the Madras military authorities; the local establishment would therefore be surplus to demand. I am of opinion that at Prince of Wales' Island, there should be one surgeon, and one assistant surgeon for local duty of the place, general hospital, &c., one for the native regiment; three in all. At Singapore, one for the local duty, one for the troops, and the same for Malacca; making in all, one surgeon, 26 assistant surgeons for all duties; instead of three surgeons and five assistant surgeons exclusively for local duty, besides those intended for the troops, which could not be less than three, and would make in all a number more than required. The Clerical Department consists of only two clergymen for the three settlements; there should be four, one for each settlement, and a spare one; this would be saved by the reduction of the Medical Department. Of the charges of the settlements, a great portion is such as would arise under any form. Pensions and political charges, besides sums expended on account of other governments; all these swell the amount of charge, and being expended under the government of Prince of Wales' Island, unless minutely scrutinized, lead to the erroneous conclusion that they arise out of the form of administration, while in fact they are matters of course, and would be unavoidable under any form. It seems to be concluded that if the office of Governor were to cease, all the expenses in supporting the place would be saved; as well might it be supposed that if the governments of Bengal, Madras, and Bombay, were bound into residences, that the whole charge of their establishments would be saved.

As to the revenue to be raised to support the expenses, I am of opinion it should be drawn from the following sources:—

1. A duty of two and a half, or even three per cent. on one side of the trade, the export.

Country rate

2. A tax on lands and houses, rated in money, at the value of one-tenth of the produce of lands or valued rent of the houses, to support the expense of police, cleaning streets, repairing roads, bridges, supporting gaols, and all other expenses for which rates are raised in an English country. A tax on horses, carts, and carriages, as now raised in Prince of Wales' Island.

3. Rent of the exclusive privileges of retailing spirits, keeping houses for smoking opium, retailing opium, less than a chest, for consumption; keeping houses for gaming, ditto for retailing toddy and bang-seeri, or betel; ditto pawnbrokers' shops, shop tax, and market stalls.

4. Fines and fees in the Judicial Department.—These I have little doubt would meet all expenses, duly regulated.

The argument against the first is a general one, that it would affect the trade; the argument *e contrario* must be equally so; such a tax could never affect a prosperous trade; it has not that effect in other places, nor had it at Prince of Wales' Island. The trade was greater when the rate of duty was highest, and has been much less since they were taken off than when the duties were levied; a certain proof that it is not the duty which affects the trade, they are everywhere paid; and in settlements where trade is the sole object of their establishment, it seems unaccountable that they have no existence. The objection to duties on trade appears most extraordinary, when it is considered that the Dutch at Batavia levy no less than 25 per cent. on British piece goods, on a tariff rated at least 60 per cent. above the invoice value, and there appears to be no diminution of import; and yet it is argued that the levy only of two and a half per cent. here ruins the trade;

trade; duties on the trade afford the only certain source of revenue, the one established and understood and general throughout the whole of these Eastern regions, Dutch, Siamese, Malays, and Cochin-Chinese. Singapore has been viewed as a channel for giving vent to the extensive sale of our European manufactures, and so it has hitherto proved; but it has given vent on equally favourable terms to the produce and manufactures of every other country. It opened the vast regions of the Eastern Islands, till then unsupplied, but the period must arrive, and to all appearance it is not distant, when those countries must be saturated, like other parts of the world, with British manufactures; that period will not be accelerated by the levy of two and a half per cent. on the passing trade, nor would our forbearance retard it. But if the extension of British manufactures, and the promotion of British industry and enterprise be an object, why extend exemption from duty to imports and exports from and to other countries; why allow the piece goods of the Netherlands, of Germany, or of France, to be imported on the same terms with our own, why allow to other nations gratuitously the benefits of an establishment so costly to ourselves? The course of proceeding I am here contemplating would be easily pursued allow the import of British manufactures, and of all goods whatever, free, if imported in a British ship from Great Britain; levy two and a half per cent. on all goods the produce or manufacture of India or any British settlements on this side the Cape, imported in British ships, levy five per cent. on all imports whatever in foreign ships, there are objections to the levy of duties on imports of the produce of the Straits and neighbouring places in junks, prahus, &c., let them be imported free in all British ships bound for Great Britain or any place beyond the Cape of Good Hope, let such be exported free; let all such be liable to a duty of two and a half per cent. if exported in a British ship for any port of India, or any British settlement on this side the Cape of Good Hope. if exported in foreign ships, let them be subject to a duty of five per cent. If any article be exported in a British ship bound beyond the Cape, on which import duty has been levied, let a proportionate drawback be given. Such a course, while it could not affect the trade of Great Britain, would assist at least in the establishment of a better relation between receipt and expenditure at these settlements.

The second is supported by the Established rate on the eastern side of the Bay of Bengal; and considering the security and protection enjoyed against foreign aggression and domestic violence, is certainly not too much to pay, it is, in fact, a country rate.

The third; of the articles taxed, four are pure vices; the principal of them, opium smoking and gambling by Malays and Chinese, no law or police regulation can prevent, vices that cannot be suppressed are fit subjects of taxation, and the good of the public requires, that if they cannot be prevented they should be brought under cognizance and restraint; but they will not be lasting sources of revenue, the vices themselves diminish under settled habits and progressive civilization, and the revenues with them. They continue high at Singapore, because the whole population consists of wandering savages (except gaming, untaxed since 1812), the others have diminished at Penang, as the population has become indigenous and settled, at Malacca, a European settlement of 300 years' standing, they scarcely exist. There is, consequently, four times more revenue realized at Singapore from a population of 11,000, than from one of 32,000 at Malacca.

The fourth arises out of the administration of justice, and requires no remark. Were the system of administration here described adopted, there can be little doubt every expense would be met without abolishing the local government and tacking these settlements to another, neither the Bengal nor the Madras government have more time on their hands than required for their proper duties: I am satisfied no saving would take place.

I conclude with a few general observations. These settlements have been viewed only as a depôt for trade; and it has been argued that as such, one or two companies of seapoys, and a few peons, would answer every purpose of security. A mere depôt might be on an island half a mile square, in a town of the same dimensions, and there is no doubt the establishment contemplated would be sufficient. But what in reality is the state of these settlements? they are not mere depôts, they extend over thousands of square miles; they now contain a population of 120,000, and every day increasing; we give them a system of judicature the most finished, the most perfect, the most expensive in the world under a King's Court; we give them all the privileges and immunities of our subjects in the

mother country, which they neither require, nor understand. It seems, moreover, to be expected, that we are to extirpate piracy from the Eastern Seas; and for all this the great body of our inhabitants pay nothing; for the revenue now collected from excise is paid by a very small part of the population: arrack drinkers, opium smokers, and gamblers, those who really derive the benefit, protection, and profits of the trade, pay literally nothing, and yet we are surprised that these settlements should be a dead weight on our finances. We have only to follow the course followed at all other places, and apply here those principles applied in every other part of the world, the result will be the same, they will pay their own expenses; and if the authorities in England would declare the above officially to be the rule of proceeding, with the knowledge I now possess, I should not hesitate in undertaking the duty of squaring receipt and expenditure in the course of six months.

Penang, 1 February 1829.

(signed) *R. Fullerton.*

P. S.—Since writing the foregoing, I find the grand jury at Singapore, composed of the merchants of the place, have made a presentment against the gaming farm, which must of course be followed by its abolition, or the indictment of public officers conducting it: here we have 71,000 rupees at once struck off from our receipts, by the very people who enjoy the protection and profit of the trade, for the support of which the Company alone are made to pay. The gaming farm was presented and abolished at Penang, where we lost 1,20,000 rupees. Gaming amongst the Chinese cannot be prevented, and the police peons now pocket the government revenue, while gaming goes on, and is a greater nuisance than ever, and admitted to be so by the very people who signed the presentment. Thus we find the new-established principles of free trade preclude the possibility of our drawing funds for our support from that which has long been considered, admitted, and acted on, as the only legitimate source of revenue, by the Dutch, Malays, Siamese, Cochin-Chinese, and every Eastern state. A plausible moral theory, contradicted by facts, that vice is encouraged by taxation, deprives us of the half that remains: the same argument would take away the duty on opium smoking and arrack drinking, and then we are left to the lands, that only source which in these Eastern countries has never been looked to, and cannot, therefore, be made available, from want of inhabitants, and because contrary to customs and usage. The recorder, in his charge at Malacca, recommended a similar presentment, but although note was made, the discontinuance of the gaming farm must result.

Malacca, 11 March 1829.

(signed) *R. Fullerton.*

(True copy.)

(signed) *S G Bonham, Acting Governor.*

EXTRACT MINUTE by the Right honourable the Governor-general in Council,
dated 17 March 1829.

Para. 3. WITH respect to the Judicial Establishment, I concur entirely with Mr. Fullerton in the opinion expressed in his note, as to the inapplicability of the present system of judicature to the state of things in the Eastern settlements. An essential reform is required, not only in consideration of economy, but for the well-being of these settlements; and it seems indispensable, with a view to these objects, that the administration of justice should be placed upon a different footing. Mr. Fullerton has explained the several forms which might be substituted for the present, in the note above recorded, and I shall, upon my return to Bengal, bring the subject distinctly before Council, in the hope that we may concur in a representation to the Honourable Court of Directors, and to the other authorities of England, with a view to solicit a re-consideration of the present charter of justice, and the establishment of some less expensive and better plan of judicial administration.

4 Mr Fullerton has also suggested, that much of that part of the charge for judicial officers, which has been increased by the local government, at the suggestion of the Honourable the Recorder, or in consequence of presentments made by different grand juries, is susceptible of reduction. The sanction of the Supreme Government,

Government, if required, will, I am confident, be readily given to any measures directed to this end, and it will be highly satisfactory to them to find in the plan hereafter to be submitted by Mr. Fullerton, that the expense of the judicial establishments will again be brought within the limit of 1824-25, or very nearly so.

(True extract.)

(signed) S G. Bonham, Acting Governor.

(No. 27.)

From K. Murchison, Esq. Governor of Prince of Wales's Island, to the Secretary to Government, Fort William.

Sir,

I do myself the honour to transmit, in original, two valuable papers addressed to me by Sir Benjamin Malkin, on the close of his official connexion with the Straits government, which I conceive likely to prove very useful to the legislative authorities, in the preparation of new Regulations for these settlements, and in framing a new charter of justice.

2. The first of these letters, dated the 6th July, points out various imperfections attaching to all the revenue Regulations. I submit these without comment, as they consist chiefly of objections of a legal nature. In regard to Sir Benjamin's remarks upon the evil arising out of the monopoly system as now conducted, I cannot withhold my concurrence in the opinions he expresses as to the oppression and the crime, generally, it is calculated to foster; but I deny the possibility of its being conducted under the direct superintendence of government, with its present limited establishments and means of management, even if there existed no objection to a system that would bring its officers into perpetual collision with the public.

3. The evil arising from the influx of vast quantities of copper coin is truly stated by Sir Benjamin; it has existed ever since the first establishment of Singapore, but the remedy is beyond the powers of the local authorities.

4. The letter, dated 7th, touches upon a variety of points connected with the charter and the administration of law under its provisions, to all of which I solicit attention. These include remarks upon the judicial appointments vested in the Governor in Council by the charter; remarks upon the interest allowed by government on cash deposits by the court, as in the savings banks, and upon the establishment of a pauper-house. On this last subject I shall hereafter report, at present the revenue of the Pork Farm averaging 1,000 rupees per mensem, is devoted to that object; but the institution is so largely, if not altogether appropriated to Chinese (though the regulation is general as to the application of the fund), that it does not afford suitable accommodation for Christian, Hindoo, and Mussulman paupers.

5. The next topic is a revised table of fees for the court, requiring no particular remark; but the observations upon the charter which follow, marked (A.), I beg to point out to particular notice, as well as Sir Benjamin's remarks upon the duties and salaries of the clerks, swearers, and interpreters of the court. The reduction to which allusion is made, in the salaries of the inferior officers, was recommended by Mr. Church and sanctioned by the Supreme Government, on the supposition, probably, that the professional judge, or the registrar at least, had been previously consulted. On becoming aware that this was not the case, I trust the reduction may at least be modified by the Honourable the Governor-general of India in Council. I fully concur in all that Sir Benjamin has expressed as to the evil consequences of making the court's servants liable to such serious diminution of salary, or even to dismissal, excepting in cases of misconduct. It is a pleasing duty to solicit attention to Sir Benjamin's opinion of Mr. Kerr's merits; an opinion in which, I am certain, every individual in the Straits most cordially concurs.

6. The latter portion of the letter has reference to points of mere local interest, with which I should not have troubled the Supreme Government if I could have readily abstracted them; but I am unwilling to mutilate these documents, and their great length precludes me from taking copies of those parts more immediately connected with the subjects referred to the notice of the Supreme Government.

No. 2
Abolishing the
Recorder's Court
in the Straits

7. In conclusion, I beg to intimate that Sir Benjamin, who is now proceeding to Calcutta, will be happy to enter into direct communication with government on all the matters discussed in the letters now transmitted.

I have, &c.

Prince of Wales' Island,
28 July 1835.

(signed) *K. Murchison*,
Governor.

From Sir *B. H. Malkin*, Kt. to the Honourable *Kenneth Murchison*, Esq.,
Governor of Prince of Wales' Island, Singapore, and Malacca.

Sir,

1. At the close of my official connexion with these settlements I am desirous of addressing you on a variety of subjects of much importance to their well-being. I have been unwilling to do so before from feeling it undesirable in my judicial situation unnecessarily at all to interfere, even by suggestion, with the administrative powers. I have not indeed been prevented from occasionally addressing individual members of the government on some matters connected strictly with the legal condition of the settlements, but I have not hitherto thought it desirable to express any opinion on mere questions of policy. The reason for my abstaining, however, has ceased to exist, and I should be unwilling to quit this place without securing myself against the danger of misunderstanding, by showing that my silence has not in all cases proceeded from acquiescence.

2. My letter is likely to omit many suggestions which have from time to time occurred to me, but I wish at least to state officially my views on several subjects of practical importance, which seem to me to be at present questionable or misunderstood. In doing so I may run some risk of repetition, as some of my former letters, although unofficial in form, may have been treated as official in substance, but if this has been at all the case, I am not aware to what extent.

3. The first and most important question is the expediency of the complete abrogation of all the existing Regulations for all these settlements, (except that for the assessment, which I have never seen,) and either their re-enactment, with certain modifications, by an authority subject to no dispute, or the substitution of a completely new system of taxation, &c. for them. The Regulations in existence, as far as I am aware, with the exception already referred to, are only those of 1830, (modified in some small points by one of 1831 and one of 1833) and the Penang Land Regulation of 1831.

4. My opinion against the legality of the Singapore Land Regulation has already been judicially declared. A well-devised registry law would, in my judgment, be a great benefit to these settlements; and although I would not myself recommend either that or the Penang Regulation as a precedent to be implicitly followed, I had rather see them re-enacted, with certain modifications, than merely declared null. One alteration in particular seems to me of first-rate importance, the collector's office is one from which original grants issue, and which in many cases therefore confers a title. The registry office ought to be most strictly confined to its own duties, the authenticating and making public not titles, but the documents on which they depend. It has nothing to do with the question whether a conveyance is well drawn, or whether the parties have title to convey; it merely provides against its loss or suppression, leaving the question of its effect or legality to the proper tribunals; it ought, therefore, to be kept quite distinct from the land office, and from everything which seems to confer title. Under the present Regulation the course adopted is exactly contrary; it is therefore hardly possible to prevent an ignorant population from attaching to the mere fact of registry a false, in addition to its intended, effect; and even the managers of the office themselves may sometimes have difficulty in drawing the line between their powers of granting new, and their duty of registering derivative titles.

5. You will collect from what I have said, that I consider the Penang Regulation invalid, as well as that for Singapore. This is an opinion which I have before intimated both to Mr. Murchison and to Mr. Bonham; but as these were not strictly official communications, and as there are objections to the Penang Regulation quite distinct from that on which the Singapore Regulation was declared illegal, I had better shortly explain them. The Governor in Council of Prince of

Wales

Wales' Island, Singapore, and Malacca, by whose authority the Singapore Regulation was passed, had no power at all of passing regulations, except for "imposing duties and taxes." The Singapore Regulation was declared illegal, as not being one for these purposes at all; and the same argument would apply to the Penang Regulation also, if it were only under the stat. 53 Geo. 3, c. 155, s. 98, that it could be supported.

6. The Regulation, however, professes to be passed by the Bengal government, and I believe there has been a notion that it may be valid under their general powers of passing Regulations, independent of the taxing power given in the 53 Geo. 3, to which only, if even to that, they could succeed, as substituted for the local government, for the local government had no other.

7. Now, I very much doubt whether, even if the Bengal government had *prima facie* the power contended for in places which might from time to time become subordinate to them, it would apply to the Straits settlements. In these the King, by his charter, had fixed the law, and had abstained from giving any power to alter it. It would be a very large construction of the power given to the Company to vary the government, and annex these settlements to any other presidency, to say that it implied the right of subjecting them not merely to a different administration, but to a new legislature.

8. But, besides this, I do not know where the supposed power of the Bengal government originates. They had no legislative authority, except what was expressly given them; and I know of no delegation of such power to them, except that contained in the statute 13 Geo. 3, c. 63, s. 36, and the subsequent statutes grounded upon it, which enable them to make Regulations for the good order and civil government of the settlement at Fort William, and other factories and places subordinate, or to be subordinate thereto, and that given by the statute 21 Geo. 3, c. 70, s. 23, and the subsequent Acts grounded on it, which give the power of "framing Regulations for the provincial courts and councils." It is upon these latter provisions that the power of legislation for the Mofussil is supposed to depend.

9. Now, I am not aware that the former Acts have ever been supposed to extend to such a case as that of the Straits settlements since their annexation to Bengal, but, at all events, if the Regulation is to be maintained under them, it is void for want of registration, not here, but at Calcutta. If, on the other hand, the second class of statutes is referred to, they only extend to the making of Regulations for ~~provincial courts and councils~~; and however general their operation may have been in framing a new system of law through the intervention of those courts and councils, they can have no effect when none such exist, as is the case here.

10. On these grounds, which have been somewhat more fully communicated to Mr. Murchison before, I am clearly of opinion that the Penang Land Regulation rests on no legal authority, and that a new one therefore should be obtained with all prudent dispatch, and that no attempt should be made to enforce that now existing. I do not now trouble you with any suggestions as to the provisions of a new one; indeed I do not think it necessary at present to do more in any of these observations than to point out the expediency of some change. I shall have abundant opportunity at Calcutta to make any comment on the particular changes proposed, if it is wished that I should do so.

11. It may be desirable to observe, that although many of the objects of a new Regulation might be obtained without one, by making them matters of contract and condition in the grants of the government, this would be but an inadequate substitute for a valid law. Continual questions would arise as to the parties who were to be bound by the stipulations, and the stipulations themselves would require to be most carefully drawn and considered. I am the rather induced to mention this, by having recently seen the form of some grants issued about the year 1828, and I believe continued until they were supposed to be superseded by the Regulation now under discussion. It might therefore possibly be thought expedient to return to these forms, pending the receipt of a new and valid Regulation; I therefore beg to call attention to one of their provisions. Besides several stipulations as to payment of rent, keeping up of landmarks, and registry, the grants are declared to be "further subject to such other conditions as the said united Company, their successors, or assigns may hereafter think proper to require in their favour, as permanent lords of the soil." A provision so unreasonable in itself, or

likely to be so fertile in litigation, I think I never saw. Nothing except the singular improvidence of the inhabitants of these settlements can account for such a grant, so vague and liable to be so materially altered *ex post facto*, having been accepted in a single instance. Any man who cares to know what it is that he buys would refuse it.

12. Before I quit the subject of the lands, I will mention another circumstance connected with them. Province Wellesley is not included in the 81st section of the recent statute, 3 & 4 Gul. 4, c. 85, which defines the territories in which British subjects may reside without license. There seems to be no reason why this power of residence should not extend to that district as well as to Prince of Wales' Island, but the date of its coming into our possession was probably forgotten, and so it was omitted in the list of acquisitions since the year 1800, to which the privilege was applied. The question is of little importance to holders of land who enjoy it under the Company's grant, or from whom the Company have accepted rent, and who would therefore probably be treated as having the Company's license (*see* Mr. Phillips's Minute on Landed Tenures, pp. 58. 62); but it might perhaps affect purchasers from them, and the extent and revocability of the licences might come in question. It would therefore be very expedient to set all such disputes at rest, by obtaining an extension of the privilege of unlicensed residence to Province Wellesley, under the provisions of the 83d section of the statute.

13. The remaining Regulations are all revenue Regulations, and are legal, if at all, by virtue of the statute 53 Geo. 3, c. 155, s. 98 (note 1). They all establish monopolies, and all therefore, besides particular difficulties arising on each of them, raise the great question whether that statute gave the power of establishing monopolies.

14. On this subject I expressed myself in the following terms, in a letter to Mr. Ibbetson, dated 9th October 1833, which has, I believe, been treated as a document of a public character: "I cannot but feel some doubt how far a power of taxation gives the power of establishing monopolies, or at all events of making all the provisions necessary to enforce them. I do not however mention this as a practical objection," (to the enactment by the then existing authorities of new Regulations for monopolies); "the practice is too inveterate in India to be now set aside by any Indian court; but I cannot pass it over entirely without observation, as I much doubt whether anything but long usage has sanctioned it." Similarly, in reference to one of the monopolies existing in the Straits before the present Regulations, Sir C. E. Grey, Sir John Franks, and Sir E. Ryan, in answer to questions submitted to them by Sir John Claridge, said, "Considering the existence of the opium monopoly throughout British India, we cannot take upon us to say that such a Regulation is not one which might be established under the 53 Geo. 3, c. 155, s. 98;" a form of expression which seems very clearly to intimate that the universal practice would prevent them from pronouncing it illegal, rather than that they felt fairly convinced of its legality, if the question were to be considered as open.

15. I am not disposed decidedly to vary from the opinion above expressed, but the inclination of my mind, were the question treated as an open one, yet stronger than before, that the establishment of a monopoly, though it may produce revenue, is not the imposition of a duty or tax, and therefore, not within the statute 53 Geo. 3, c. 155, s. 98; and, besides this, I do not think it clear that the existence of monopolies in India generally depends on that statute, or the 54 Geo. 3, referring to it as a criterion, and if not, as their existence here does so depend, a decision against them here would not affect the general question, and consequently the general usage would have little weight as authority in the particular doubt. With respect to the mofussil, these restrictions on trade might perhaps be supported as valid under the general legislative power of the different governments, and even with respect to the places where registration in the King's Court is required, and where, therefore, the Regulations are to be "not repugnant to the laws of the realm." I am not certain that a Regulation ought to be refused merely because it was not conformable to the statutes of James 1, against monopolies, which were not forbidden by the common law of the country.

16. I would not be understood to attach much weight to these arguments, or to intimate any very material doubt as to the practical validity of monopolies here; but I think there is doubt enough to make it desirable, now that there exists an authority

authority of unquestioned jurisdiction, to have these Regulations reviewed, and either altered or abrogated, if unfit to be continued, or re-enacted if their continuance is desirable. But besides this general question, there are particular difficulties arising in all the Regulations, which by themselves seem sufficient to call for a revision of them. I will not pretend to point out all which might be raised, but I will give a few samples of the questions that may arise.

17. The Opium Regulation contains clauses prohibiting the preparation of opium for smoking, or the selling it in small quantities in vessels within 10 miles of the coast of any of these settlements; and it gives the magistrates the same power in these cases as over similar offences committed on shore, and it allows vessels to be searched under a magistrate's warrant. What power had the local government to make laws affecting the conduct of persons not necessarily or probably their subjects, not necessarily even the subjects of Great Britain, on the high seas, in one of the great thoroughfares of the world? Has even the new Legislative Council of India such a power? The commission of any of the acts in question, outside of these harbours, for the purpose of evading the local regulations, might be a fraud upon them, and an offence against them, but this Regulation would prohibit a sale of opium never intended to be brought within our territories, to persons not at all our subjects (Note 2). If the Regulation is valid, a magistrate would be bound to convict, and in this, as in all these Regulations, he has not even the power of mitigating the penalty.

19. Again, the farmers of opium, suree, toddy, and spirits, are disabled from selling their articles except for the current coin, and are made liable to a penalty if they do so. This may be a good rule, but where is the authority by which it is imposed, and a new crime created? The statute 53 Geo. 3, c. 155, s. 99, gives power "to make laws and regulations respecting the duties and taxes authorised by the Act; and to impose fines, penalties, and forfeitures for the non-payment of such duties and taxes on the breach of such laws and regulations." But how are these laws and regulations respecting a duty or tax? The tax, if it be one at all, arises out of the monopoly. There may be laws which the monopoly makes convenient, or possibly almost necessary for the protection of the purchaser, but how does it "respect" the duty or tax? Surely the only object of the statute was to give all powers necessary for the protection of the revenue, not, where a general power of legislation had been refused, to give a particular one in all cases which could by possibility be hitched upon the subject-matter of these Regulations.

20. The same observation seems to apply, and it is unnecessary to explain it in detail, to the 12th and 21st sections of the Spirit Farm Regulation, and to the 7th section of that for the Pork Farm. Most of the acts prohibited by the latter may be punishable, independently of the Regulation, as frauds or nuisances, but that does not give the government the power of making them into a new crime, or fixing an absolute penalty; and it is clear that these provisions have nothing to do with the protection of the revenue.

21. I give these rather as specimens than as a catalogue of the difficulties arising on these Regulations. That on Pawnbrokerage and the Market Regulation seem to require a different consideration, for besides similar doubts which may exist with respect to many particular provisions contained in them (and among others it may be worth mentioning that the original Pawnbroking Regulation treats the government, and the amended one the local authorities, as authorised to vary the legal rates of interest), I do not see how it is possible to torture either of them into the imposition of a duty or tax, opium, suree, &c. may be treated as indirectly taxed by the establishment of a monopoly which gives the government a revenue derived out of the price; but what is the subject-matter of the tax, or who are the persons taxed by either of these latter Regulations? The Market Regulation, indeed, is ostensibly for police, and not for revenue; and the amended Pawnbroking Regulation is simply passed by the Governor-general in Council. It applies, however, to Prince of Wales' Island, and therefore is void under the 53 Geo. 3, c. 155, s. 98, for want of the sanction of the Court of Directors and approbation of the Board of Control, if treated as the imposition of a duty or tax; if sought to be supported in any other way, the observations made on the Prince of Wales' Island Land Regulation apply to it also.

22. The objections hitherto suggested affected the legal validity of the existing Regulations; and when I formerly addressed Mr. Ibbetson, at his own desire,
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with respect to certain projected alterations, I confined myself exclusively to considerations of that kind; but I have already said that the reason of my doing so has now ceased, and I think it therefore desirable to add some observations as to the inexpediency of continuing the existing system.

23. The necessity of some revision will, I think, at once appear, by adverting to the absence in all of them, except in some parts of the amended Pawnbroking Regulation, of any power of mitigating penalties; an evil in itself where the penalties are so severe, and still more mischievously so when we look also to the acts which in some instances may be crimes under these Regulations. By the Opium Regulation, a druggist selling raw opium for medical purposes is liable to fines of 200, 500, and 1,000 rupees, or to imprisonment and hard labour in irons for 6, 12, and 24 months, for there is no exception in his favour. By the Suree Regulation, the grower of suree within the limits of the Regulation—and here a party will be liable to the penalties or exempt from them, as he may live on one or the other side of a ditch (Note 3)—will be liable to a fine of 100, 200, or 400 rupees, or to imprisonment for three, six, or twelve months, if he is found in possession of suree of his own growth, without having taken it to the renter, sold it to him, and repurchased it. The Toddy and Baang Regulation provides for the case of persons found in possession of their own produce, but the Suree Regulation makes it imperative on the government to fix a price at which the renter is to retail, as well as the price at which he is to buy; and the Pork Farm Regulation contains a similar provision, but the farmers of opium, spirits, and toddy, and baang, are left unfettered as to their price of sale. There may be a reason for this latter distinction, and perhaps a good one, but it is at least worthy of consideration whether this absence of uniformity in enactments generally of the same nature does not do more harm, by producing confusion among a people very little likely to become well acquainted with the contents of these Regulations, than it can do good by incidental advantage in each particular case.

24. The provisions of the Spirit Farm Regulation are peculiarly complicated and obscure; the revenue was originally to be derived from Asiatic spirituous liquors, the exclusive privilege was of retailing them only; but the Regulation contained provisions for preventing the sale of wine or European spirits in small quantities, without paying a duty to the renter, and for preventing their removal without permits. And the alteration made in 1831, only removed the difficulty as to European and other spirits, it left it unaffected as to wine. This perhaps ought rather to have been mentioned under the former head of want of authority; but it is worth consideration here, too, for the duty may be paid over and over again, on successive resales. Again, the distillation of spirituous liquors is already prohibited; no one may use the produce of his ground in this way. This may be convenient for the purposes of the farm, but is it either reasonable, or a Regulation "respecting the duty." Again, the importers of Asiatic spirits, except Bengal rum and Batavia arrack, and of samsooe are to sell them to the renter at the market price of the day; the provisions on this subject are confused and obscure, but they rather seem to import that no one but the renter shall purchase these articles; if so, what does "the market price of the day" mean? The 19th section indeed provides that a true and just written account shall be furnished to the renter, of market price of the samsoo, but it does not say by whom, or from what it is to be collected.

25. By the Pawnbroking Regulations, whether the original or the amended one, if the keeper of a shop attempts to quell a disturbance, fails, and does not apply to the nearest police officer for assistance, he is to be treated as a party concerned in the riot; this is invalid in the present Regulations for reasons already given, but would it be reasonable in any new one? The same Regulations affix definite pecuniary penalties to the very definite crime of "in any way contravening the spirit" of the section which prohibits any persons, except those licensed, from exercising the trade of pawnbroker. I have already alluded to the power given to the local authorities to fix the rate of interest, but it is perhaps worth while to mention that it is only very recently that this has been done at Prince of Wales' Island in any formal way; that for want of it, it is a question at present undecided and likely to be raised, whether the pawnbroker can charge interest up to the day of redemption only, or for the whole month in which the redemption takes place, which has been an usual practice, and that the provisions of the Regulation as to the time a
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which pledges may be sold, and the application of the surplus, have been altogether disregarded.

26 The penalties of the Market Farm Regulation have no reference whatever to the provision by the government of sufficient markets. At Malacca the markets are so situated that it has been found almost impossible to enforce the Regulation with respect to some of the less valuable articles offered for sale; but what has been done in consequence of a toll, not authorised by the Regulation anywhere (for the profit to be derived under the Regulation is by stall hire), has been demanded at a distance from the market. This practice is of course illegal, but I am not sure that it is confined to Malacca; if I am rightly informed, for I do not wish to speak positively except on matters which have been proved before me, or which are within my own personal knowledge, the persons in charge of the market here have made similar demands.

27. These inconveniences, and I believe others might be easily discovered, seem to me to furnish abundant reason for a revision of the existing Regulations. But there remains a much more important question; if it is either necessary or expedient to make any change, is the monopoly system one which ought not to be retained at all?

28. In considering this, I will not enter into any of the general arguments against monopolies, these are well known and obvious; they did not indeed prevent the Parliament from allowing the continuance of the opium and salt monopolies for purposes of revenue, but a decided opinion was expressed by all parties as to the expedience of abolishing them as soon as the loss could be afforded.

29 I will however confine my observations to monopolies as they exist here, to their practical effect in the manner in which they are, perhaps necessarily, administered. I leave out of consideration even the enhancement of price, which, as the monopolies are at present nearly confined to articles of luxury or intemperance, may be no evil. This observation will not, however, I believe, apply to the suree farm, nor to that of pork, which however stands on a separate ground, as the revenue is appropriated by the Regulation to local purposes of great importance and benefit to the classes principally affected by the exaction.

30. The first point to which I would particularly call attention is the enormous power put into the hands of the farmers and the persons in their employ. This is an objection to all monopolies, but its importance very much depends on the character of the persons likely to be engaged in them. Now to whom is this authority here confided? I believe that the farms are sold most rigidly to the best bidder, the only criterion of fitness being his ability to deposit the rent for a certain portion of his occupation, and the main security of the government, whether any bonds from sureties are taken or not, being the power of resale in the event of default, before the amount of this deposit is exhausted. Perhaps this is all the government can do; perhaps an inquiry into the character or respectability of the proposed farmer would be too vague and dangerous a criterion to act on, but I believe the practical effect has been, that in very many instances the farms have been let to persons neither of wealth nor of respectability, and not unfrequently to mere nominal purchasers, put forward to take the responsibilities of misconduct, but not really allowed the management of the concern, which was reserved for the substantial purchasers, who have occasionally been convicts, even if convicts have not, of which I am sure, been formally received as the ostensible farmers: whatever, therefore, there may be of exaction or of fraud, may be done by persons screened from observation; while all punishment, and often all civil liability, falls on some one hired, like the nominal proprietor of a libellous newspaper, to bear the legal consequences of another man's crimes or default (Note 4).

31. If such be the persons to whom the monopolies are given, it becomes very important to see what practically are their powers. If the government kept the monopoly in their own hands, they would at least retain the power of passing over trivial cases, and not subjecting persons, if only slightly culpable, to the heavy and unmitigable penalties of the Regulations. But what probability is there that the farmer, selected, or rather unselected, as he is, will attend to any such considerations? even if he acts honestly, and attempts to gain no more than his right, what likelihood is there of his flinching from the most complete enforcement

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of it? It is his interest to do so in all cases; and under the Spirit Regulation, though only under that (another curious instance of want of uniformity), he has the further inducement of a share of the penalty, if he himself becomes the informer.

32. A yet more formidable power of oppression, and inducement to exercise it, consists in the opportunity of harassing persons who have not really infringed the Regulations at all, or who have only infringed those parts of them which are of the most questionable authority. Looking to the character and habits of many of the nations which resort to our ports, what likelihood is there that they would resist a demand made by a person under some colour of official character, who represented that a Regulation, of which the foreigner had never heard, had been infringed, pointed out the penalties which would follow on conviction, and offered to take a moderate compromise instead of proceeding to enforce them? Cases of this kind can rarely be known in detail; but no one, I believe, can deny the probability of their existing, or does practically doubt that they do exist to a large extent. For instance, when I was last at Singapore, I heard of the probability of proceedings before the magistrates, under circumstances which, if correctly represented, would not have supported any conviction. The case, however, never came forward at all, but I believe every one who heard anything of it, supposed, not that the farmer had found out his mistake, but that he had driven the defendant to a compromise. I may here also refer again to the case mentioned in Note (2)

33. The evil, however, does not rest here; the power of oppression given to the farmer is perhaps hardly so great as that placed in the hands of the peons, and other subordinates whom he employs. Under the most favourable circumstances, such officers are not likely to be very immaculate. But it is clear that the best security for the conduct of these functionaries would be, their being immediately in the employ of the government, or of farmers whose personal respectability was ascertained. If the farmer is a corrupt and fraudulent man, the more oppression his servants exercise, if it only prove successful, the more highly will he value them. And accordingly, what is the character which, whether they deserve it or not, they in fact bear? I am told, indeed, that they have been considered by a bench of magistrates to be persons in whom a right to search houses and persons, without even a magistrate's warrant, might properly be, and was vested; but I have already judicially declared my dissent from the law of that opinion, which is not likely again to be acted upon; and I believe that, such as it was, it proceeded on a supposition of financial necessity, not from any consideration of the danger of abuse. But with this single exception, I hear on all sides distrust of the character of all peons of this description, those in the service of the Government, who, I suppose, are the best that can be procured, not excepted; and I certainly have known both a grand and a petty jury find bills and verdicts against persons of this description, with which in some cases I have not been absolutely dissatisfied, in others I have, but in all I could not but think a person, free from the obnoxious character, would hardly have been put upon his trial, or convicted without stronger testimony.

34. If, however, I am rightly informed, the mischief spreads yet wider, at least in one instance. The revenue derived at Singapore from the opium farm, has increased very remarkably of late, and the solution I have generally heard of it, has been that some Chinese connected with the Hooeys, or fraternities in the island, have become the farmers, and have been able to afford a much larger rent than their predecessors, from the additional power which this connexion gives them of detecting any smuggling. In short, they gain the advantage of having, besides their establishment of peons, an irregular body of spies and intelligencers scattered in great numbers over the island. Now if I hear any bodies of men universally denounced as dangerous, any system of union treated as mischievous, it is these very Hooeys, which derive in this manner an indirect support from the monopoly system. I do not mean that the government, because they derive incidentally some addition of revenue from their existence, would show any undue favour to these associations; but these bodies, tyrannical and oppressive as they are said to be, but checked in some degree by being afraid to attract much public notice, can hardly fail to have their powers practically increased, if they can venture into public, and at once exercise oppression on their enemies, and procure pecuniary benefit to some of their members, by a real or pretended assertion of the

the law. And here, as before, the danger is not merely of undue severity in the open enforcement of the claims of the monopolist, but still more of under-hand tyranny, by threats of proceedings perhaps really untenable.

35. These are the principal local arguments which occur to me; and I have already said that I do not wish to retail those of a more general nature, with which every one is acquainted. The local considerations, however, seem to me of sufficient weight to make it a serious question, whether monopolies are expedient here, even if their continuance on the continent of India is desirable.

36. I am aware that their abolition would render an entirely new system of revenue necessary. It would be impossible to raise even the amount now received by a system of direct taxation of the same articles. The Singapore opium farm, rents, I believe, for 4,800 dollars a month; and I am told that the consumption in that time is not more than about three chests. The opium, therefore, which sells for about 550 dollars a chest, that sum consisting of a monopoly price at Calcutta, with freight, insurance, and the merchant's profit added to it, is farther taxed at Singapore to the extent of very nearly 300 per cent on its import price there; and the whole price of it to the farmer is about 15 times its original value in the grower's hands in Bengal. Before it gets to the customer, the farmer has to pay his establishment of peons, to keep the requisite shops, or to give under-lessees the profit necessary to induce them to keep them, and to get a profit on his adventure equivalent to his large outlay. It is quite improbable that the government could levy successfully an impost of corresponding amount, even allowing for the fact that the farmer's profits would not have to be included; yet there is no reason why the government peons should be less effective than the farmer's. The only account that can be given of the difference is, that the government would not have the benefit of the system of indirect espionage already referred to, and that their peons would be confined to the fair and honest enforcement of the law; but if so, the present system is only effective by means indefensible, and an evil in themselves.

37. The government, probably, would be equally powerless in enforcing the suree farm to its full extent. The retail price under the Regulation appeared, when a case connected with that farm came before me at Malacca, to be treble that fixed there for the purchase by the renter; and in consequence of my deciding that the renter was bound to take all suree tendered to him at the fixed price, the farm was resold; and I believe a lower rate fixed for his purchases. The re-sale was only justice to the renter, who had purchased the farm under an impression, which the officers of the government also entertained, that he need only buy what he pleased. But it may well be questioned whether the reduction of price was justice to the growers, who had had a rate fixed by competent authority for the year; and also, whether the government had any authority during that year to make the alteration; but however that be, the enhancement of price was originally 200 per cent, and more after the alteration; and I suppose the rates are not materially different at Singapore and Prince of Wales' Island. Considering the nature of the article, the manner in which it is grown, and the small quantities in which it is retailed, this, though less striking than the former case, is an amount of duty which it would perhaps be equally difficult to levy by legitimate means.

38. Similar observations might probably apply to some of the other monopolies; but enough has been said to show that I am not blind to the financial difficulties attending any alteration; this, however, does not affect the necessity of considering whether the present system is fit to be continued, if no adequate substitute can be devised after due inquiry and consideration, the impossibility of finding one might be a reason for the continuance, by competent authority and with proper modifications, of the present system; but at all events, the evils which exist, furnish, as it appears to me, ample reason for endeavouring to remove them by introducing some new plan. It would be foreign to my purpose to enter into consideration of the feasibility of such a change, or the most desirable way of making it; but I know nothing in the circumstances of these settlements to make it impossible.

39. I have no further observations which I wish at present to offer on the existing Regulations; but there are two other subjects connected with legislation which I will take this opportunity of mentioning.

40. The first is the notion very generally entertained of the expediency of re-establishing a gambling farm. This question has long been a matter of discussion in the Straits, from the time when such a monopoly existed, throughout the period of its discontinuance till now, when the general course of opinion seems to be in favour

favour of its re-establishment. As a practical question, I hardly think it worth discussion, for it cannot be re-established except by a fundamental alteration of the law; and I do not believe that any legislative body, competent to make such an alteration, will consent to do it. But the arguments by which the expediency of such a change is supported, raise some questions to which it may be desirable to advert; and I feel anxious also to explain the grounds of my own opinion; because I entertain high respect for the judgment of some of those who wish for such a change, though in the particular case, I see nothing like soundness in the arguments which are generally used in support of their views.

41. I have already said that nothing can be done without a fundamental alteration in the law. Gambling, whenever and wherever committed, is an offence against the law as it stands; no government, in its executive capacity, can license the commission of a crime, and no authority empowered under the 55 Geo. 3, to impose duties and taxes, can repeal part of the general criminal law for the purpose; they can make some new offences of smuggling, but they can legalize nothing which is forbidden on grounds unconnected with revenue. The farmers of the monopoly, therefore, if it were established, would be indictable, unless the laws against gaming are abrogated generally, or unless the Legislature have nerve enough to pass a law, leaving the practice illegal in itself, but permitting it in the government gambling house. The prohibition must be made fiscal only, before the licence can be effective.

42. Now, what are the common arguments in support of the establishment of such a monopoly, besides the advantage to the revenue, I believe they may be reduced to four: the inexpediency of absolutely preventing gambling, at least as far as the Chinese are concerned; the hardship of prohibiting it when practices equally pernicious, as opium smoking and spirit drinking are allowed; the direct benefit of having it carried on, if at all, in public and well-known places, and the inefficiency of the present system in preventing it.

43. To the first argument, as it proposes to rest on Chinese feelings and usages, I would only answer, that I believe the most respectable Chinese inhabitants of these settlements would deny that the proposed indulgence was required by their habits and notions, or was any boon to their population. To the second it might be sufficient to answer, that the existence of one evil is no reason for the toleration of another. But as more weight seems to be attached to it than I can at all understand (I believe Mr. Fullerton even went so far as to represent that the declaration of the illegality of the gambling farm would render it necessary to discontinue those of opium and spirits also, on this very principle), it may be worth while to point out not only that gambling is a legal crime, and that opium smoking and spirit drinking are not, but also that all gaming is an evil, while the other practices are not necessarily so, unless in excess, or at least that no harm can be done by the absolute prohibition of gaming, which at the very best can only be a harmless extravagance; but the use of spirits, or even opium, may be, and often is, a matter of necessity.

44. The weight of the third argument depends entirely, I think, on the amount of crime arising out of gaming, but not consisting in it, which would be prevented by greater publicity; for the whole amount of gambling itself would certainly be rather increased than diminished. With an effective police, this, in small places like these, could not be great; but I doubt the fact of such an increase of crime so occasioned. I have been occasionally referred to the example of Paris, where there are licensed gaming houses, as showing the advantage of the system. I should refer with great confidence to it for the opposite purpose. That the licensed gaming houses of Paris are better conducted than some of the low illicit bells of London, I entertain no doubt; but that the aggregate of crime and misery traceable to the pernicious habit of gambling, the suicides and murders, as well as the ruin and insanity arising out of it, is incomparably greater in Paris than in London, I believe no one who inquires can be ignorant. Much of this may depend on the different characters and habits and principles of the people; but surely much may be traced to the sanction given to gaming by the law, which removes all restrictions of shame, if it does not break down all restraints of principle, and allows men of the gravest character and most venerable station to be the uncensured and uncensuring spectators of scenes which any person of ordinary attention to decency in England would avoid. If, indeed, the principles of the argument now under discussion are to be admitted, I do not see any reason for stopping at gambling houses; the establishment of licensed brothels al-

would produce revenue; would prevent some of the crimes now committed in low houses of ill fame, and would have the example of Paris to support it.

45. There remains the alleged inefficiency of the present system. Now I have already pointed out as one of the inconveniences of a system of monopolies, that the farmer has nothing to guide his discretion in fully enforcing the law, except the consideration of his own interest. In this manner, undoubtedly, the farmer's peons might be more efficient than the regular police; they would watch many places which the police would think it better not to meddle with. The farmer would seek for information, not merely whether there existed low illicit gambling houses, but whether parties had not, by their private amusements at home, subjected themselves to the penalties of the law. Any officer or merchant might have spies in his house to see whether his guests did not occasionally trespass within the forbidden limits; the members of the government would be exposed to the same inquisition, or if not, only because the farmer would have some foolish or dishonest notion that it was not his interest to be strict in such quarters. No man can be further than myself from wishing to encourage gaming in any class of society, but I do not think this kind of interference would be desirable, nor do I believe it to be wished by those who complain of the inefficiency of the present system; but it would be a probable consequence of the alteration, unless Malay and Chinese gambling are to be prohibited, and English gambling to be legalized, or unless there is to be a general qualification, by property, to break the law.

46. What I believe to be really meant by the objection, however, is, that the police do not enforce the law; that it is better worth their while to be quiet, even in cases where they ought to interfere; if so, it is a great evil, but how would the alteration remove it? or else, why should not the evil be removed without the change of system? I have already pointed out as one of the evils of the monopoly system, the danger that the farmer will rather encourage than discountenance mere oppression on the part of his peons. This kind of efficiency, however, is not, I suppose, what is desired. But if, independently of this, the present police is inefficient in the suppression of gambling, it must be from inadequate force, from inactivity, or from corruption. Now, inadequacy of force may as easily be removed by increasing the police, as by creating a farm, and authorizing the farmer to employ peons; and inactivity, or mere corruption, may be guarded against as well by an active supervision of the police, and a more careful selection of its members by the existing authorities, as by the transfer of a certain portion of their duties to a body of men under the superintendence of a person directly interested in their efficiency. If anything more is meant than this, distinct from the dishonest efficiency already referred to, it must be one of two things, either that the present superintendents of police have their hands too full of other business to be able to give the necessary attention to the conduct of their subordinates, or that those subordinates are so ill paid as to be exposed to corruption, which they would not be in the employment of more liberal private masters, for if it is merely that the class from which these officers are taken is not worthy of confidence on any terms, this would be a great calamity, but it would not be lessened by making them unfaithful servants of a private instead of a public employer.

47. Now I shall offer no opinion whether the establishments here have in fact been reduced to a scale below that necessary for efficiency; but if they have, the remedy is by restoring them to a competent force, not by transferring part of their duties to a mischievous institution. In the same manner, if a private employer could get trustworthy peons by paying them better, but not without it, the government also ought to pay theirs better, and get the best services. Economy is a great object, but it is not economy to put up with bad services because you do not like to pay for good ones. I express no opinion whether the present pay is not adequate to the procurement of faithful services, I only address myself to any argument founded in a supposed inadequacy.

48. On these grounds I entertain the strongest conviction, that a gambling farm would be mischievous as well as illegal, and that the arguments against it are much too strong to be at any time overruled by the mere consideration of the paltry revenue to be derived from it, but especially when the whole revenue system may probably be the subject of revision.

49. The only remaining subject of this letter is, the expediency of establishing a legal copper coinage, I mention it rather to draw attention to it, than to enter into any lengthened discussion of it. I believe it indeed to be desirable, and I think, if well managed, it might be carried into effect without material expense

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to the government, or injustice to the holders of the present coin. There may be material objection, considering the great variety of nations who trade here, to throwing any serious obstacle in the way of their dealings, and there being, I believe, large quantities of the most worthless coin; yet I cannot fancy any of these difficulties insuperable. The evils of the present system are great. At Penang, within three years, the value of the dollar (or, rather, of the pice) has fluctuated from 135 to 105 pice, and the government has been obliged, contrary to their general practice, to receive a large quantity of copper coin, not, I believe, strictly in payment, but at all events in deposit from some of the farmers; and I believe material loss was occasioned by the transaction. The loss to individual holders of such coin must of course often have been very serious, and must be renewed on the present system, whenever it shall please any Birmingham foundry to pour in a fresh supply of the miserable trash that now passes as currency.

These are all the subjects of a legislative nature on which I am at present desirous to trouble you. I am aware that no legislative measures can now be taken here; but still you may have occasion to make some suggestions on some of the subjects referred to, or may be consulted upon them; and I have therefore wished to make you acquainted with my own views. Should they coincide with your own, you may probably have some opportunity of acting on them; should you differ from them, you will at least learn from them what sort of opposition your own notions may perhaps be exposed to. I have a few other observations to make, but they had better form the subject of a distinct communication.

I have, &c.

Prince of Wales' Island,
6 July 1835.

(signed) *B. H. Malkin.*

From *B. H. Malkin*, Esq. to the Honourable *Kenneth Murchison*, Esq., Governor of Prince of Wales' Island, Singapore, and Malacca.

Sir,

IN my letter of July 6th I mentioned that I should probably wish to address you again. The subjects of this letter will be chiefly of an executive nature, and most of them connected with the court of judicature. There are, however, more general considerations involved, though the transactions of the court have principally been the means of bringing the questions to my notice.

The first I will mention is one to which I have before called the attention of individual members of government, but I have never, I believe, hitherto mentioned it in any regularly official letter. I first adverted to it in a communication made to Mr. Ibbetson, when he had it in contemplation to establish a distinct court of requests for Province Wellesley. I then intimated a doubt, which I still entertain, whether such an act was within the power of the local authorities. Another course, however, was then adopted, and the particular power then discussed is now perhaps of little importance. But the same question, although in a different degree, affects the temporary appointments directed to be made by the Governor in Council of Prince of Wales' Island, Singapore, and Malacca, and these are many and important; the sheriff, coroner, justices of the peace, commissioners of the court of requests, committee of assessors, and most likely some others. Probably these appointments, the propriety of which must depend on local knowledge, may be made by the chief local authorities, notwithstanding the abolition of the government. But I do not feel at all sure that the principle which I very early applied to the judicial functions of those officers would extend to any of an executive nature, especially when, as in other cases, the appointment is not to be made by the Governor or any other functionary individually, but by the Governor in Council, holding a situation and exercising an authority which has now ceased to exist. I continue, therefore, to think the only safe course, till some alteration is made in the provisions of the charter, or, at least (if that would be sufficient), some permanent delegation of these powers obtained from the Bengal government, is to have such appointments made by both authorities; for an appointment simply by the Bengal government would be exposed to objections perhaps equally serious, though different with those which apply to a mere act of the local officers.

The next matter to which I would advert is, the manner in which interest is allowed by the government on money in the hands either of the court or of the

the savings bank. The two do not stand exactly on the same footing, but the general inconvenience of one part of the present system is the same in each.

In consequence of an application to Mr. Ibbetson on these subjects, he proposed to the Bengal government that four per cent. interest should be paid on these monies when deposited in the Company's treasury. The general scheme of the proposal was acceded to, but with certain modifications; the allowance of interest to the savings bank being made to correspond with the rules of that established in Calcutta, and the court funds being permitted, in common with those of private individuals, to be subscribed into a four per cent. loan, at the favourable exchange of 206 sicca rupees for 100 dollars.

All subscribers to the savings bank therefore are obliged to take government paper for their deposits, if they exceed 500 rupees, and the court funds labor under the same disadvantage, and originally also under that of not being allowed to receive any interest for sums below the smallest government notes, or for fractional parts of 100 rupees above that sum. The latter inconvenience, however, has been remedied by the practice of the court to order all such sums to be invested in the savings bank, an advantage which could not be contemplated in the foundation of that institution, (for it was then supposed that interest would be granted on the court funds without the restrictions afterwards imposed,) but which has proved not the least important benefit derived from it.

The variation however from the original plan has been productive of considerable loss to the parties interested in the court funds, and is likely to produce much more; this is owing to local circumstances, which probably were not remembered by the Bengal government when they directed the alteration. The same spirit of liberality which induced them to sanction the grant of interest at all, would, I think, have prevented them from clogging it with the present conditions if they had known their mischief. Almost the whole of the court funds is in the hands of the accountant-general, in dollars, they are all therefore subscribed into the loan at a loss of about two per cent., from the difference between the exchange directed by the government for these purposes, and that currently obtaining, I believe, under the sanction of the government here. But a further evil arises from the certainty, that from the very limited market existing here for government paper, any large sum can only be realized at a further considerable loss. All sales of large amount will be at a discount; and this seems to me to furnish an answer to the observation in the 3d paragraph of the despatch No. 103, addressed to Mr. Garling, and bearing date 28th January 1834, which denies the expediency of making any special provision for persons interested in the court funds here, and observes, that the accountant-general may conform to the practice of the same offices at the presidencies of India. There the accountant-general has a market to resort to; he has the chance of buying at a discount and selling at a premium, ~~but here, with the same powers~~ in theory, he has them not in practice. His only way of investing money with promptitude and safety is, to subscribe it into the treasury under the terms of the despatch, and his only way of getting it out is by sale, which is almost certain to be an unfavourable one.

It is also to be observed, that the loss to the parties can very seldom be any benefit to the government; they gain nothing in the payment of interest, for that is paid at four per cent. whether the money is invested in government paper or not, and even the unfavourable rate of exchange gives them no advantage, for of course they pay the interest at the same rate as they receive the deposit; and the same principle will apply to the paying off the note; and the probability of loss in selling the note at a low price is no gain to the government, unless they become the purchasers; but this will very seldom be the case; they will seldom wish it, and the mere fact of their being in the market would probably, where the demand is so limited as here, make a perceptible advance in the price of the bill.

Practically, therefore, we are not asking for any favor for these classes of deposits, which they do not receive on the continent of India; we only wish to be exempted from an inequality derived from the different operation of the same rules under varying circumstances. The same argument might apply, in a certain degree, to all deposits received here, but I do not treat them all as on the same footing. With whatever terms the government may choose to clog the accommodation they afford, it is a short answer to all private depositors, that they are free to accept or refuse, and that they need not subscribe at all unless they like the conditions; but this is not the case with the funds either of the court or the savings bank; they must be invested securely, and they must be easily convertible

on demand; and there are no means open of investing them so as to satisfy these requisites, except by deposit in the treasury. They are both also entitled to the favor ordinarily shown to charitable institutions, for the court funds belong in so large a proportion to widows and infants, many of them annuitants to a very small amount, and without other support, that they fairly come under the description; and the savings bank has at present the additional claim of being conducted at the expense of private subscribers, though the Bengal government has sanctioned the principle, that the expenses of these institutions should be borne by the public. I hope it will not be necessary here to resort to that principle, for I believe the subordinate officers of the government would not be likely, full as their hands are of other business, to pay so much attention to its details as those persons now separately employed upon them; and the business would probably be cast on them, as it would not be of sufficient amount to warrant by itself any increase of the government establishments; but without wishing to see the present practice altered, we are perhaps entitled to some consideration in consequence of it.

I think it probable that some application, in conformity with the above observations, may in any case be made to the Governor-general in Council; but if you agree with them it will probably come with more weight from the local government than from any private quarter.

In the same letter to Mr. Ibbetson, I called his attention to the expediency of erecting here, as in all other King's Courts in India, a pauper establishment. There may be difficulties attending it, especially at Singapore and Malacca; I mention it however not now again to discuss it, but merely to draw attention to it. There was however another subject, which I mentioned at the same time, to which also I will shortly advert. I then intimated a wish that the table of fees now in force in the court should be modified, particularly with respect to the fees on administrations and probates, and the per-centages paid on petitions, affidavits to hold to bail, and judgments; and also that the government would allow the court, without prejudice to the existing arrangement as to the payment of its officers, to remit or suspend the payment of fees altogether in certain cases, not necessarily connected with absolute pauperism. This last I continue to think desirable; but with respect to the alteration of the table of fees, except with regard to probates and administrations which have been already dealt with, I have not been able to devise any method by which the same amount could be more unexceptionably raised, and I have therefore suggested no alteration. The evils of the present system, such as they are, would be very much diminished by the grant of the power of occasional remittal already referred to.

I should hardly have thought it necessary to mention this mere non-proposal of any change, had not I myself formerly spoken of the supposed pressure of the present system, and had not the grand jury here once referred to the subject as a grievance. I thought it therefore desirable to show that it had not been simply passed over. And while I mention it, I may also draw attention to the practical operation of the change actually made in the administration and probate fees. The benefit has been very considerable, in inducing persons interested in small properties to come forward and obtain legal titles to them. And I believe that the financial effect has decidedly been favourable, rather than unfavourable to the government. If indeed all the parties now claiming administration or probate had made the same claims under the old system, the amount received would probably have been greater under it; but it is quite clear that only a very small number of these claims would have been advanced, and the increase of payment on a few large estates must have been amply sufficient to cover the defalcation on the few small ones, which would on the former plan have been legally dealt with. To the public, therefore, there has been advantage in the more regular course of proceeding introduced; to the government certainly no loss, and probably some gain. No one has suffered, except the court and the registrar's office, which have had a very considerable increase of labour cast upon them.

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I have often had occasion to advert to the very loose manner in which the charter constituting the court of judicature is framed. It would undoubtedly be desirable on this account, and also for the purpose of introducing some powers and provisions which are much wanted, that the charter should be carefully revised. The expediency of doing so has been often talked of, and the task may not improbably be undertaken. I do not wish to enter into any detailed consideration of the alterations which might be expedient, but as it is to be hoped that no change would be hastily made, and if made with due deliberation, the local authorities

rities would of course be applied to for information, it may not be inexpedient for me to subjoin a list of subjects to which attention might in such case be beneficially directed. In some instances no change might be desirable, but they all seem to me to be worth consideration. I do not here include any suggestions arising on merely technical grounds, which I should probably, in the event of any change, have the opportunity of making, but merely point out matters of general consideration. Some of them would admit, if it were thought desirable, of a more speedy dispatch, of being made the subject of enactment by the Legislative Council, but most of them would require an alteration of the charter, and I have therefore included them all as in some degree connected with each other, and with the court of judicature, in this letter.

It seems to me then very desirable, that either by a provision of a new charter or by an independent alteration of the law, the testimony of convicts should be rendered legally receivable here. Admiralty jurisdiction is confessedly wanted. There can, I think, be as little doubt that it would be very desirable to remove the uncertainty which now attaches to the liability of officers and soldiers to the jurisdiction of the courts here in certain civil matters. It is clear that the existing difficulty would never have arisen unless from the circumstance of these settlements having been forgotten by the framers of the Mutiny Act, when they were providing for the cases of Calcutta, Madras, and Bombay.

There is, I think, not much more doubt that it would be expedient to give the magistrates in quarter sessions the power of trying small felonies with a jury. It would in that case, indeed, be necessary to depart from the present practice of holding the quarter sessions from week to week by adjournments; but in my judgment that change would be in itself an improvement. I am aware of the one argument in favour of the present system, the expediency of an early dispatch of business of small moment, but I have never doubted that much more harm was done by the laxity and inaccuracy introduced, than good by the promptitude. There ought to be as full and careful investigation, proceedings as regularly had, and depositions as regularly taken and returned, on a committal to the quarter sessions, as to the sessions of oyer and terminer. But I believe none of these exist, the preliminary and final investigations are either absolutely jumbled together, or at least the first is very cursorily conducted.

It is very desirable, I think, to make the quarter sessions an independent court. It is now only a peculiar session of the court of judicature; its acts therefore are the acts of that court, which thus loses in most cases the power of inquiring into them. I know nothing else material to the quarter sessions, ~~except the more accurate definition of their power with respect to roads, bridges, &c, and the manner in which the expenses occasioned by their order are to be defrayed.~~ Perhaps it might be well to impose some check on the unlimited power now given to the government of removing magistrates.

It would be desirable to remove the uncertainties which now exist as to the power of the Governor and resident councillor as judges in the absence of the recorder. I offer no suggestions at present as to the most expedient course, except that the provision of page 33 of the charter, that the recorder should always be summoned to meet them, ought to be expunged or greatly altered. It has been retained from the charter of Prince of Wales' Island only, is quite inapplicable to the united settlements, and is practically a dead letter, but it may cause confusion. There may be another matter of very serious consideration, connected with the office of the lay judges. In the present administration of these settlements, everything being finally referred to Calcutta and decided there, it may become a question whether the office of governor is one of any utility, and whether the chief local authority at each place might not now beneficially communicate at once with the Bengal government. This is very little a subject for my discussion, except for the sake of observing, that in case of such an alteration, an alteration of the charter, and completely a new constitution of the court, would become necessary. It is, perhaps, hardly worth while to notice the doubt which has arisen, whether the governor or acting governor, when there are both, has the custody of the seal; which, however, in the event of any alteration, would perhaps be most properly vested in the recorder. At all events, the existing question might be set at rest.

Is there any reason why the judges should be exempted from indictments for misdemeanors?

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I think it worth consideration whether grand juries might not beneficially be abolished. The petty juries, whose functions are far more important, would be improved by the admixture of the present grand juries, and the whole amount of service, which now often presses hard on individuals, would be diminished. A new course of proceeding would become necessary; but this would easily be devised. Perhaps it would be desirable also that a new charter should either exempt particular classes of inhabitants from serving, or else give the court the same power of framing rules to this effect, which the courts at Calcutta, Madras, and Bombay have under the statute 7 Geo. 4, c. 37.

With respect to the process of the court, it would perhaps be an improvement that these settlements should be put on the footing of distinct counties, and a sheriff appointed for each; and also that sequestration of the goods of an absent debtor should be, under due restrictions, obtainable, without the delay of having the preliminary process returned for all the three places. It might also be convenient to have a separate accountant-general at each place. A material saving of expense might be effected by allowing some proceedings which are now required to be under the seal of the court, and to be served or executed by the sheriff, to be exempted from those formalities.

The doubt already adverted to, whether the sheriff and other officers should be appointed by the local authorities or the Bengal government, should of course be set at rest by express provisions in a new charter, as far as it applies to officers acting under its provisions.

The last subject connected with the charter on which it at present occurs to me to make any observation (though in all these communications I fear I may have omitted many things which I have thought of before, and may, if they again occur to my recollection, have to express some opinion or take some steps upon hereafter), are connected with the registrar's department. The great question here would be, whether it would not be expedient to settle and render irrevocable in the new charter the present or some similar arrangement between the Company and the court, by which the officers are paid by salaries, and the fees taken for the benefit of the Company. I believe that such a change, properly and judiciously made, would be desirable. The present system has, I think, been found to work well, its advantages are obvious; and I have not heard of any objection to it, except a supposed loss of money to the Company by receiving less in fees than they pay as salaries. I do not know the exact state of this account, but a mere balance-sheet of sums actually received and paid, will not show it; and I believe when, in addition to the fees actually received, allowance is made for the exemption of the Company from fees in their own cases and in criminal business, for which as an expense necessarily incidental to the court, they are bound to provide, they would not be found losers in the general result.

It may appear, however, that the present arrangement, without any alteration in the charter, gives all the benefits sought for. It gives them, but it does not secure them. The existing arrangement is one which either the Court of Directors or the court of judicature can at any time, giving reasonable notice, annul. It is not, I hope, likely to be annulled; I do not think the court of judicature is likely to propose its abandonment, and the recent decision of the Court of Directors in favour of a large proportion of Mr. Kerr's claim upon them, seems to show also that they do not wish, even prospectively, to depart from it. But the greatest evil of the administration of India seems to me to be a want of fixedness. It is an evil perhaps almost inseparable from government by a fluctuating body; but it renders everything uncertain. While it exists no one knows what are his prospects or expectations, and the power of getting good and faithful service is very much affected by this ignorance. Many a man might be induced to enter the service of the government and of the Court, even in the lower situations connected with them, if he knew that with good conduct he was secure of the salary offered him, and had the chance of promotion, who will prefer any other employment when he knows that he is likely to be suddenly reduced to a small portion of his former allowance, after long service, and without fault. I do not mean that over-payments ought to be continued merely because they are old; that any system of payment ought not to be liable to occasional revision, with due regard, however to the claims of persons actually employed; but the general presumption should be in favour of what exists. Alteration is evil in itself, and the burden of proving an advantage lies on those who propose, not who resist a change.

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It may be said that reduction of expense is *prima facie* that advantage which I require as sufficient to authorize a change, and casts the burden of proof on those resisting alteration. It is a fact on that side of the question undoubtedly, but not by itself enough. The more extravagant the reduction, the stronger the argument from mere reduction becomes; yet a diminution of a tenth in the salary of an officer might seem *prima facie* reasonable, when every one would at once treat a diminution of three quarters as absurd. The problem, therefore, is a complicated one, and must be dealt with as such.

Although, however, these general considerations may be applicable to the principle consulted by the alteration I suggest, they have comparatively little bearing on the particular question. The feeling of security is desirable, and it is as much destroyed by petty as by material fluctuations; but I do not think it probable that any one who takes the trouble of making himself acquainted with the duties performed by the subordinate officers of the registrar's establishment, and the qualifications required for their proper discharge, would wish, except, possibly, in a manner which I shall presently advert to, to introduce any material alteration. The highest emoluments of the registrar's clerks at present are not at all more than sufficient to give the court a fair likelihood of commanding the services of gentlemen of that education, integrity, and diligence which are required for the principal situations in the registrar's offices, and which their present holders, I am happy to say, possess. In looking to what is required, it may not be superfluous to advert to the facts, that at Malacca and Singapore a large portion of the registrar's business is carried through by his chief clerk in his absence; that if it has not lately been so at Prince of Wales' Island, the difference has arisen merely out of the accident of my chiefly residing there, and of the other judges of the court having for that, or any other reason, generally abstained from transacting any business during my absence; that besides this, the longer establishment of a court there, and the more complicated matters with which it has had to deal, have made necessary an intimate knowledge of multifarious and minute details contained in its earlier records, to which nothing analogous exists, at least at Singapore, and which fully counterbalances the greater independence and responsibility of the chief clerks at the more recent settlements, which also, as already observed, is only an accident; and lastly, and chiefly, that it is very desirable that the chief clerks should be fully qualified, in the event of any occasional absence of the registrar, to discharge his duties, and on the absolute vacancy of the office, to furnish a successor. No persons so competent are likely to be usually found, though an individual of paramount claims might occasionally be discovered and appointed.

There is, however, one change which might perhaps be beneficially effected hereafter without increase, and possibly with a trivial reduction of expense. It is a question of doubt and difficulty, and I have no decided opinion on it; but I think it worth consideration, whether, upon an average, the duties of the registrar's office might not be better performed by a separate registrar at each place than by one general registrar of the court. The local registrar would of course be more highly paid than the existing head clerks, and the office would therefore be likely to command a higher rate of qualification in the holder. It is not very probable that the augmented salary would procure services more valuable than those of the present chief clerks; indeed, they would probably be considered to have a strong claim to the supposed offices. But I do not know if any vacancy should occur among them, that the present salaries entitle us to expect equal competence and character in their successors. On any remuneration at all likely to be offered, it would be no ill fortune to be so well supplied. On the other hand, the larger emoluments of the single registrar might occasionally secure the services of a man of higher pretensions, and more independent station, than any who could reasonably be expected to be a candidate for the mere local situations. The balance of average advantage it would require much thought and judgment to determine; but the question is, at all events, very fit for consideration.

It is, perhaps, hardly necessary for me, in addressing any local officer, to mention that any such alteration is only desirable, if at all, when some change becomes unavoidable. While matters can remain as they are, it would be the greatest folly to disturb them. Mr. Kerr's long services, his intimate knowledge of the proceedings of the court for nearly 20 years, his accessibility, his legal information, his acquaintance with the habits and feelings of the people, his sound judgment, his elevated character, and the confidence he enjoys as well as deserves, will render his vacating the office he holds the greatest calamity which can befall the

community of these settlements. No speculative or pecuniary advantages which could be derived from a change would be any compensation for its causing him to discontinue his services sooner than otherwise he would; such an alteration as that suggested, even if on the whole desirable, should therefore be carefully postponed till Mr. Kerr has ceased to hold his present situation. The expediency of innovation at all is matter of serious doubt and question; the mischief of immediate change seems to me to admit of none.

A new charter, however, might easily provide for the retention of the present system while Mr. Kerr continues in office, and either legalize or compel the alteration of it after that time. Even if the suggestion were adopted that the salaries of the different officers should be fixed by the charter, there would be no difficulty in continuing and establishing the existing arrangements under the present circumstances, and making other provisions prospectively.

In an inferior degree, the same considerations apply to the other officers engaged in the service of the court, though not now forming a part of its establishment, the interpreters, crier, swearers, &c. At present they are merely supplied to the court by the government; the court therefore cannot interfere in the regulations of their salaries, or the selection of the individuals, except by requiring competent officers, chosen with a decent regard to character and situation. On a recent occasion, indeed, when a reduction of most of these salaries took place, I felt entitled, as an individual, to point out to Mr. Church, with whom I believe the measure originated, certain considerations which he appeared to me to have overlooked, and certain arguments which I thought he had neglected. But as a judge of the court, I had no power of interfering, and was not in fact in any way consulted on the subject. The measure was suggested to the Bengal government, and adopted before I even heard of its being in contemplation. I make no objection to this: it was in the discretion of the government. I should indeed have supposed beforehand that the information of the judge, who principally presides in the court, and of the registrar who superintends the chief business of his office, might have supplied some material facts; and the only reasons which I have known advanced in support of the alteration, have certainly not convinced me that such information was superfluous.

Without entering again into any discussion of that question (on which I suppose the opinion already intimated by me can easily be referred to, as I requested Mr. Church to communicate it, so far as its unofficial character would allow, to the functionaries who had finally to carry into effect, or to modify the proposed reductions), I may again express my own unchanged conviction of the inexpediency of a very large portion of those changes. I do this, not for the sake of volunteering an unnecessary declaration of dissent, but because these alterations furnish a very material part of the argument on which I may, and very probably shall rely on any occasion which may offer, to show the expedience of departing from the existing system, as to the appointment, dismissal, and remuneration of these officers. It is a question of opinion, but my own decided belief is, that the present system, as lately acted on, is not likely to secure competent services. In saying this, I refer not so much to the actual lowering of the salaries, though a large proportion of those proposed in the recent scale of reduction are in my judgment unreasonably low, as to the manner in which everything like certainty or confidence is removed. What likelihood is there that a man of tolerable fitness can be induced to accept (for it is a very different question how far, and how fairly an actual holder may be forced by circumstances to retain) a situation of small emolument, with the knowledge that it merely depends on the pleasure of any new governor to make a display of economy by reducing the pittance he receives, and that even 25 years' service, with a peculiar competence and ability derived from it, is no security against the immediate diminution of more than half a salary? And it is to be observed that in many of these cases continued service is most important. No officers more want practice than interpreters.

It is easy to say that there is no real danger of mischievous alteration; that any thing unreasonable will be disapproved in Bengal; but the Bengal government of themselves know nothing about the case except the net amount of reduction, and receive their information as to the expediency of the particular changes only from their servants who have devised them. Besides, how are these subordinate officers to make known their claims? how to be supported during the period of suspense before a decision? Have they any assurance that representations made by them, or on their behalf, will be brought before the Bengal government at all, if they fail?

to raise doubt in the minds of the local authorities? or if submitted by any other channel, will not the delay occasioned by the necessity of referring to the officers of government on the spot render the period of uncertainty yet longer and more ruinous? Is it even certain that a party making such an appeal would not be dismissed for his contumacy in remonstrating, or that he would not be prevented from so appealing by the fear of such a consequence?

I cannot ask such questions as some of these without feeling that apology may seem to be due for them; I do not however ask them with reference to particular individuals. I hope that none among those who may now or hereafter have the power would be disposed to act in the manner suggested, but I have left England too recently not to feel that upon such subjects the tone of feeling and opinion is very different there and here. I cannot but see that power and right are confused together here, in a manner in which nobody confuses them at home; and where the principles of judgment are different from my own, I cannot feel very certain of the conduct which will correspond to them. Long habits of domination; the subordination of a timid and inferior people, the quitting England before English habits of thought and action are formed, may account for the difference which I seem to myself to trace as decidedly in the conduct of Indian governments to their own officers and servants, as in the more limited and lower sphere of my own personal observation. But the difference unquestionably exists there is a tone in the opinions of the privileged orders of Indian society, which at least tends to an arbitrary course of conduct, and I therefore feel justified in alluding to arbitrary measures as possible, though I should hope very improbable, in practice.

What extent of change would be advisable on these grounds I am not at present prepared to say it might be sufficient to fix irrevocably the salaries of these officers; it might be more expedient to give the court, instead of, or concurrently with the government, the control of all matters connected with their appointment and dismissal, and if that were not completely fixed, their remuneration also, it might be better to place them on the footing of the registrar's clerks, appointed by him individually, but subject to the approbation of the court. I offer no opinion which or what combination of these plans would be the best, but any of them would, in my judgment, be an improvement on that now in operation.

Before concluding this letter, I would shortly advert to the sessions of oyer and terminer lately held by Mr. Bonham and Mr. Wingrove at Singapore. I observe that Mr. Bonham, in his charge to the grand jury, according to the note of it in the Singapore Chronicle, which bears the appearance of being a trustworthy representation, mentions it to be his opinion and that of Mr. Wingrove, "as well as the honourable the recorder, that, under certain limitations, it is expedient that the court should sit and act in the manner" which it did. This statement of my concurrence is perfectly correct. I do not know that, without entering into needless detail, my opinion could be more accurately represented, and yet I think it may give rise to a supposition that my views and Mr. Bonham's on the subject coincided more completely than I believe they do. They differ, I am afraid, in two respects, first, with regard to the "certain limitations" within which it is desirable that the power should be exercised, and secondly, and more materially, with respect to the principle on which the expediency is to be determined. On the first subject I will enter into no detail, merely stating my own impression that a limitation to offences, the punishment of which could not exceed seven or 14 years' transportation, with or without a proviso including cases of manslaughter, in the power given, would have been preferable to the limitation selected of all cases not capital. I have no notion that the course adopted has been undesirable in the present case, or is likely to be, except in some instances; but I cannot but think that if the present becomes a customary limitation, the lay judges of the court may easily have questions to try occasionally, which they would be very glad, but would not have the power, to postpone. Among the cases included in the present power I would refer particularly to charges of breaking by night into the curtilage of a dwelling house; of stealing from the person, without violence; of coming, and above all of forgery, as hedged round with legal difficulties. But the great difference between us lies in the principle on which the power in question is to be given. I should collect from Mr. Bonham's charge, and I think I know it from the tenor of his communications with myself on the subject, that he thinks he ought to try all cases, criminal and civil, which there is not distinctly some reason for his refusing, that the cases which are postponed or excepted are the exception to the general rule. In my opinion the general rule is, that cases are

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to be left till the recorder is present, except where there is distinctly serious inconvenience in the postponement.

The practical difference, especially in civil cases, where there are greater powers both of postponement and revision, may be very little; for I have no doubt that in my own application of my own views the exception would very generally be larger than the rule; and that in very few, if any, cases tried at Singapore in the absence of the recorder, it would be thought by me desirable that his presence should have been waited for. But the principle is an important one, and seems to me to admit of little doubt. In saying this, I have nothing to do with any question which may be raised as to the advantage of having a King's court at all, or a professionally-educated judge. I believe the continuance of such an establishment to be desirable, but my opinion on the present subject is not founded on that belief. We administer justice under the King's charter; and doing so we are, I apprehend, bound to administer it in conformity with the principles of that instrument, and it seems to me to be impossible to read it, without seeing that the object of the grantors of it was to secure the benefit, as they considered it, of the attendance of the professional judge in all cases where there was not some paramount inconvenience to render it inexpedient. Provisions were made to meet such cases; but, as I understand the charter, they were intended to apply to such cases only. And if so, the question is, as I have stated it, is there any material harm in leaving such a case or class of cases for the arrival of the recorder, nor is there any harm or danger in trying it in his absence. The practical result, as I have already said, may not often be different, but in cases which are near the dividing point, the division may very probably be one way or the other, as the one or the other principle is adopted.

Letters of April 27
and May 30.

I subjoin to this letter a copy of some observations recently addressed by me to the commissioners of the court of requests at Prince of Wales' Island. They require no explanation, all the facts on which they depend being stated in them. The circumstances adverted to seem to furnish some matter for consideration in the event of any revision of the rules or proceedings of those courts, and may possibly be worth attention, even with reference to the existing practice at Singapore and Malacca, as well as here. I therefore transmit the papers to you, though not strictly or immediately connected with your official duties. I have not yet received any answer to the second paper, probably in consequence of Mr. Church's illness, so that I have no means at present of saying whether the suggestions contained in it are likely to be acted upon.

I have, &c.

Prince of Wales' Island,
7 July 1835.

(signed) *B. H. Malkin.*

(No. 689.)

From *G. A. Bushby*, Esq. Secretary to the Government of Bengal, to
G. A. Bushby, Esq. Secretary to the Government of India, General
Department.

Sir,

General Department.

I AM directed by the Honourable the Governor of Bengal to transmit to you the accompanying letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 28th July last, together with the two original papers mentioned therein, addressed to him by the Honourable Sir Benjamin Malkin, and to request that you will lay the same before the Honourable the Governor-general of India in Council.

I have, &c.

Fort William,
2 September 1835.

(signed) *G. A. Bushby*,
Secretary to the Government of Bengal.

(No. 112)

EXTRACT from the Proceedings of the Right Honourable the Governor-general of India in Council, in the General Department, under date the 9th August 1837.

(No. 269)

To the Honourable Sir *B. H. Malkin*, Knt

Honourable Sir,

THE Governor-general of India in Council has lately had under his consideration the condition of the settlements of 'Prince of Wales' Island, Malacca, and Singapore, which have now for some years been incorporated with the presidency of Fort William in Bengal, but of which the administration is of necessity conducted upon a very different system, requiring revision in every department.

General Department

2 In the consideration of this subject his Lordship in Council has derived much benefit from the notes and observations communicated by you to the government before quitting the situation of recorder of His Majesty's court for those settlements, which was held by you for a considerable period.

3 Amongst the matters which have occupied the anxious attention of the government, is the best means of providing for the administration of justice, both civil and criminal, to the mixed population of these settlements, and in particular whether His Majesty's court can by any means be made more efficient and less expensive, or other judicatories can be provided to perform the whole, or part of the functions now vested in that court.

4. The Right honourable the Governor-general has recorded a Minute in which the various branches of this question are discussed in some detail. Before, however, determining upon the proceedings proper to be instituted thereupon, it is the wish of his Lordship in Council to benefit further by your experience. I have accordingly been directed to furnish you with an extract of so much of his Lordship's Minute as refers to the administration of justice in the Straits settlements, and to solicit, if you see no objection to making the communication, your opinion on the several propositions discussed therein, with any suggestions that may occur to you as proper to be offered to the consideration of the Council, either in its executive or legislative capacity.

Council Chamber,
5 July 1837.

I have, &c
(signed) *H. T. Prinsep*,
Secretary to Government

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 5th instant, enclosing extracts from a Minute of the Governor-general, bearing date the 9th of February last, and desiring my opinion on the several propositions discussed therein. The Minute naturally divides itself into two parts, propositions of immediate legislation here, and suggestions of alterations in the general judicial system of the settlements in the Straits, to be recommended for adoption by competent authority in England. The considerations affecting the latter subject are more complicated and depend more on detail, and therefore require more time for their discussion than those which attach to the former. It will therefore, I apprehend, be more convenient, as the two are perfectly distinct, for me to postpone, for a very short time, I hope, the notice of the more complicated question, and to offer without delay the few suggestions which occur to me with reference to the other, which, as it is brought forward for immediate action, is much the more urgent.

On the alterations proposed for immediate introduction, however, with one exception, I have hardly anything to observe, as I have on a former occasion expressed my opinion of their expedience. There are one or two matters of detail only on which I will beg to offer a few suggestions.

The plan of constituting a court of petty sessions, with powers analogous to those of the quarter sessions in England, appears fully to meet the inconveniences with reference to which I had suggested the empowering the magistrates in quarter sessions to try small felonies with a jury; and to avoid the difficulties arising from the constitution of the quarter sessions, as a peculiar session of the court of judi-

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cature,

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cature, I would only suggest for consideration, whether it would not be expedient to except from their jurisdiction perjury, and some misdemeanors, especially the obtaining of goods under false pretences, and some other cases of frauds and embezzlements not treated as felonies, on which difficult questions may occur, and severe punishment in case of guilt ought to be inflicted. Indeed it is difficult to assign any reason why, if the petty sessions are not to try felonies except where six months is sufficient punishment, they are to be empowered to try misdemeanors without a similar limitation. There is another difficulty attending this part of the arrangement. If the petty sessions have an unlimited power to try all felonies, not capital, or all felonies falling within any other limitation which may be adopted, but are disabled from inflicting punishment beyond six months' imprisonment, or such other measure as may be fixed, the committing magistrate would have a large discretion, of very difficult exercise, in committing for trial at the petty sessions or before the court of judicature; and if he exercised it unwisely, or with too much lenity, many serious offences would receive very slight punishment. If, on the other hand, their power of punishing is not limited, or not limited so closely, but the extent of fit punishment is still made the criterion what cases are to be within their jurisdiction, the committing magistrate has still the same discretion—for it is not easy to say in whom else it can be reposed—with the additional possible anomaly, that he may commit for an offence as not requiring more than the limited punishment, and the petty sessions, on new evidence, or from difference of opinion, may punish to an extent, the supposed disproportion of which to his offence furnished the reason for subjecting the criminal to their jurisdiction. It would, I think, be very desirable, if possible, to define more accurately the cases cognizable by the petty sessions, and the latitude to be allowed to a magistrate in committing for trial there, or in the sessions of oyer and terminer.

The appointment of separate local accountants-general is, I apprehend, desirable, though of no very great importance. The accountant-general, receiving no emolument, can make no provision, except by application to personal friends, for the discharge of his duties where he is not personally present, and is himself liable, for the court can know of no one else, for the acts of parties over whom he has in fact no control. It would be desirable also to get rid of the necessity of the accountant-general's being in the service of the Company.

It seems worthy of consideration whether the doubts as to the authority by which the sheriff, coroner, and other officers should be appointed, could not be best removed by allowing the local authorities to make the appointments, subject to confirmation by, or reserving a veto to, the Governor of Bengal. I do not know to what extent this might be inconsistent with the practice of the government, and the difference is not of importance enough to make it worth while to introduce a material anomaly. But if there be no strong objection of this kind, it seems more convenient, looking especially to the uncertainty and tardiness of communication with the Straits, to render it unnecessary to resort in the first instance to Calcutta for appointments, which must generally be made upon local information, and which, in case of emergency arising from death or disqualification, the local authorities must have the power of filling up by temporary acting appointments. In the event of the death of the sheriff, the whole process of the court would be stopped for months, if it were necessary to announce his death at Calcutta, and procure the appointment of a successor thence; for the authority of his deputy, even while there continues to be a deputy, ceases with his own, and the provisions for awarding process to other persons than the sheriff extend only to the case of his being a party, or disqualified by relationship, or other good cause of challenge.

These are all the observations I have to make, except with reference to the subject of legislation as to the succession to landed property.

It is not now quite accurate to state, as is stated in para. 425 of the Governor-general's Minute, "that it has not been yet judicially decided how the real property of Asiatics descends" in the settlements in the Straits. No decision indeed has been had, as far as I am aware, precisely on a question of inheritance; but the general principles were brought into question, and determined, as far as my opinion could determine them, in two cases which occurred not long before I quitted the Straits. In one of these, the rights of a Dutch widow at Malacca came under discussion. The principal question was as to the construction of her husband's will; but that failing, under circumstances of the estate, to give her any beneficial interest, it became necessary to determine her rights independently.

of it; and they were held to be those of a widow according to the English law, not the Dutch law formerly received at Malacca. The second was a case with reference to the will of a Mahometan, in which I have a full note of the judgment I delivered, which I annex to this letter, as containing a fuller discussion of the question of law involved than I will insert in this letter. The opinion of Sir Ralph Rice, there referred to, is contained in his evidence before the Select Committee of the House of Lords, on the Affairs of the East India Company, in 1830.

The principle of those decisions of course applies to questions of inheritance also, which therefore cannot now be considered as entirely untouched by judicial determination. But were it so, I do not apprehend there could exist much uncertainty on the construction of the charter; nor do I understand the Governor-general's views on that subject at all to differ from my own.

There is a wide distinction between the law of procedure merely, and the law by which rights are constituted and determined. On the former I need at present say nothing, as I shall be under the necessity, in my next letter, of making some statements on that subject, entirely I believe in concurrence with the opinion expressed by his Lordship as to the proper mode of carrying the charter into effect, but much at variance with the information he appears to have received as to the manner in which it has been actually administered. But with respect to the law whereby rights are constituted and established, I understood the Governor-general to consider that it at present is, and ought in general for the present to continue, the law of England, modified indeed by considerations how far some of its particular provisions and enactments are suitable to the circumstances of the colony, and administered in all cases with a large and liberal regard to the manner, usages, and religions of the different nations subject to its operation, but containing no provisions or principles which cannot be based upon that law so modified and construed. None of the provisions giving the Hindoos and Mahometans subject to the jurisdiction of the Supreme Court here, and at Madras and Bombay, the benefit of their own laws in certain cases, extend to the Straits, where it is clear that only one law is established for all inhabitants, to whatever extent the application of that law may be different, from consideration of the different institutions of the various classes of residents there. It is true that the court is "to pass judgment and sentence according to justice and right;" but justice and right must always be just and rightful administration of the law which actually exists, and eminently so in the case of succession to property, where there is no general and antecedent principle, but the right is necessarily the creature of arbitrary institution, and the just administration of the law can therefore only signify the correct interpretation of the established rule. Indeed the words referred to, occur in the charters of all the supreme courts on the continent of India, as well as in that of the settlements in the Straits, and have never been considered to affect the question what law those courts were to administer.

If I am right in these views, it follows that all land held by tenures, amounting by the terms of the grant to a freehold interest, passes not to the executor for the benefit of the next of kin, but to the heir at law. Who this heir may be, may occasionally depend on considerations of native usage and religion. These probably ought to be more liberally regarded in questions of legitimacy and relationship than almost in any other. It would seem very difficult, for instance, to refuse to treat a Hindoo son by adoption as a son, and consequently as an heir, in the absence of other sons; or to declare the eldest son of a Mahometan not to be the heir, because his father had two wives at once, and he was the son of the second marriage. But whatever degree of accommodation might in such cases be given to the usages of different classes, the foundation of the law remains the English law of inheritance, and all titles which have been deduced on a different supposition are imperfect, and require confirmation.

Indeed, even if I am wrong in my construction of the law, the necessity of some such measure as that suggested in my letter to the Right honourable Charles Grant, to which reference is made in the Minute of the Governor-general, remains nearly unaffected. Among the English settlers, at all events, even if all classes are to be held entitled to their own laws, the English law of inheritance would be the rule according to which their freehold estates would devolve, yet such estates have generally, I believe uniformly in cases of death, been conveyed by the executor or administrator. Among the native inhabitants, conveyances have not unfrequently, I believe, been taken (especially before the law requiring registration, and the practice of the Government officers, mentioned in the letter already referred to, of

refusing to register grants not made by an executor or administrator) from the parties considered to be beneficially entitled, on the supposition of the application of their own law. One class or other of these conveyances must be invalid, even if the English law of inheritance (administered as already suggested) is not considered to obtain; either the conveyance by the executor or administrator is void, because his interest is unknown to their law, or the conveyance by the parties beneficially interested is invalid for want of the executor's being a party, if the legal title resides in him. In this case, there might indeed be a good equitable title, but the legal title would necessarily be imperfect.

On any construction of the law therefore, it is of the highest importance to pass an Act, establishing and confirming in the most absolute manner all titles with respect to which no litigation exists at the date of the Act, and which would be good if either the heir at law, the executor, or administrator, the persons beneficially entitled to the property on the supposition of its being personalty or a chattel interest, according to the law of England, or the persons entitled according to the law of the country of the deceased person, had the right of conveying. It would be desirable also to confirm to all such vendors the purchase-money which they have received; and it is of great consequence I think that such an Act should pass before the institution of any inquiries, such as those contemplated by the Governor-general in the 425th paragraph of his Minute. It would be very difficult to institute such inquiries without disclosing fully the nature of the present difficulties, but impossible to do so without drawing attention to the existence of some difficulty on the subject; and the whole fabric is so rotten, on any construction of the law, that attention cannot be seriously drawn to the question without setting in motion all the doubts which it is so desirable to quiet, and unsettling all the titles which it is wished to establish.

But I think it is very desirable to go farther. A law merely quieting existing titles, and leaving the law of inheritance or succession doubtful for the future, would do but part of the good required; and even if there is no doubt, there might be considerable anomaly and awkwardness in a law which, establishing all titles derived on one understanding, left a rule in existence, completely at variance with that understanding, and left it only for a time, with the strong probability that, upon inquiry, a new law on the subject would shortly be introduced. It is therefore very desirable that any Act confirming existing titles should be accompanied by provisions determining the law for the future; and although inquiry ought generally, and naturally, to precede such legislation, I cannot but think it would be beneficially dispensed with here.

The mischief resulting from such an inquiry before the confirmation of existing titles, and the inconvenience of separating such confirmation from any legislation intended for the future, I have already sufficiently stated. These, however, would not be enough to warrant legislation without investigation, if I felt that there was much difficulty as to the nature of that legislation; but it seems to me that the provisions of the recent Act concerning Parsee property would so well suit the circumstances of the case, that they might be at once adopted without danger. It is only at Prince of Wales' Island, and probably at Malacca, that they would have much operation; for all the grants at Singapore are for terms of years only, and are therefore already chattels real.

The only objections to the establishment of such a law seem to be these, that it would be better to give completely to each class of inhabitants their own laws and customs of descent and succession; that the existing law of inheritance, treating that as the law of England, is preferable; or that some other law might be framed, better adapted to the circumstances of the Straits, as a rule of general adoption.

With respect to the first of these, I need not say more than I have already stated in the letter so often referred to, as to the exceeding inconvenience of giving their own law to all the members of a population so various, and so mixed, as that of the settlements in the Straits. Nor do I think much argument can be adduced in favour of the second course, that of confirming or continuing the English law of inheritance: it is only to the English settlers that this course could, with any degree of probability, recommend itself; and it would, in fact, be as remote from their practice, and as alien from their notions, as from those of any other inhabitants of the settlements.

The third objection to immediate legislation is, undoubtedly, of more importance. It is, however, to be observed, that the laws and usages of all the nations

to be found in the Straits settlements, except the English, and the practice and understanding even of the English themselves, are adverse to any principles of primogeniture or undivided inheritance, and recognise some rule of partition. Now no rules of partition, especially if administered on the principles of the charter (which need not be abrogated on this subject), with due regard to the manners, usages, and religions of the different parties subject to their operation, can differ very widely from each other; they all must generally favour the same objects, and in a large proportion of instances, where the different claimants all stand in the same relation to the deceased, they will probably all favour each in the same degree. The principal differences among the rights of members of the family will arise upon those assigned to widows on the practice of division *per capita* or *per stirpes*, and on the distance to which the principle of representation is to be carried. Besides this, in some instances certain classes of religious advisers and of spiritual uses might lose a benefit to which, under the complete introduction of the law of the parties, they would be entitled. Nothing, however, short of that complete introduction could save the latter rights, which certainly would not be protected by any measure of general legislation; and with respect to the family rights, differing as they do among the different nations in question, some classes of inhabitants must of necessity, on the establishment of any general principle, find their own institutions more nearly assigned to them than others. There is no injustice done to any of them; for the introduction of any law of partition will bring their legal rights much more nearly into conformity with their own notions than at present; and the precise degree in which different classes receive this benefit is a matter of comparatively little importance, if the law is such as to work conveniently for all; it at least requires much less scrupulous determination than ought to be bestowed on the abrogation of an existing law. Here no law has had any substantial existence; the law not having been followed, the usage having rested on no authority.

There remains one consideration common to all the objections I have noticed; I mean, the extent to which their importance is diminished by the existence of the full and unfettered power of disposing of all property by will. Where this exists, the question of the rule of inheritance is deprived of much the greater part of its importance. It is not indeed immaterial, either in its direct operation on property with respect to which no will is made, or in its indirect effect in influencing the opinions and habits of a people, and guiding them in some degree even with respect to the dispositions made by themselves. But giving full effect to these considerations, still they raise questions of policy only, not of right; and questions requiring no local inquiry, for they must turn on the general preference to be given to one principle of succession over another.

For these reasons, it seems to me that the mischiefs incidental to local inquiry, in this particular case, outweigh its advantages; and indeed, that the advantages amount to little more than the appearance of adhering to a correct general principle. I should not, however, wish to press this conclusion so strongly as I am now anxious to do, were it not for the peculiar circumstances of the present time, which seem to furnish a reason for departing from the ordinary course. The mere fact of Mr. Young's mission to the Straits, drawing attention as it must do to the general condition of landed tenures there, greatly enhances the necessity of immediate retrospective legislation for the protection of existing titles - the necessity of such legislation makes it at least very desirable that the rights of succession to land in future should be determined at the same time; and the presence of Mr. Young in the Straits, for the purposes of inquiry and examination, insures the fullest information on the working of any measure adopted. If, therefore, the effect of legislation without the usual precautions should be to work any evil or injustice, of which I entertain no apprehension, there is the best security for its ascertainment or redress.

I have only now to request you to communicate these observations to the Governor-general in Council, and to apologise, I fear with too much reason, for their unexpected length. In the present state, however, of the business of the court, I could not find time to condense and reconstruct them without occasioning more delay than I should wish on a matter of immediate consideration.

Alipore, 17 July 1837.

I have, &c.
(signed) B. H. Malkin.

No. 2.
Abolishing the
Recorder's Court
in the Straits

Copy Judgment in the Goods of Abdull J., deceased, 31st March 1835.

THIS was an application to set aside the administration granted to the widow of the deceased, a Mahometan, and to admit an alleged will to probate. There was no dispute as to the execution of the paper treated as a will; but it was urged on the part of the widow that the will was inoperative, as not being conformable to the rules of the Mahometan law; the fact that it was not so conformable is admitted, and the only question is, whether for that reason the will ought not to be admitted to probate.

It would be sufficient for the decision of the present case to observe, that the will is only at variance with the rules of the Mahometan law, inasmuch as it professes to pass the whole property, and by that law, the power of the testator to bequeath his property extends only over a third part of it. As to that third part, the testator has not exceeded his power, and the will is at all events good *pro tanto*. The consequence is, that the administration granted to the widow must be revoked, as having been obtained on the supposition that there existed no will at all; and the will must be admitted to probate (or rather, as I will mention hereafter, a course slightly different adopted), as being an authentic instrument, of some force and validity, the question, to what extent it will be operative, remaining unaffected by the mere fact of such admission. This result seems too obvious to require any authority to support it; but such authority, if wanted, will be found in the case of *Syed Ally v. Syed Kullee Mulla Khan*, 5u T. Suangy, Rep. II., 180.

As a general rule, I have been unwilling to express any opinion on points of law not necessarily coming before me for decision. And accordingly, in several cases, where the same principle as that contended for in the present case has come incidentally in question, I have avoided expressing any opinion upon it; the parties in some instances having all wished their own law to be carried into effect, and the only question having been what was its true interpretation, and in others the party insisting on the benefit of his own law, having clearly failed to make out a claim, even upon his own principles. I am not willing, however, to avoid declaring my opinion in this case, partly because the expression of it, though not necessary to the disposal of the present application, may prevent the parties from having recourse to farther litigation, which otherwise must almost necessarily ensue, and partly because, as the question is not very likely again to be raised before me, I should be unwilling to have it supposed, as it easily might, from my having sometimes avoided its determination, that I felt it to become of any considerable doubt. I, indeed, have in substance expressed my opinion upon it before; and for that reason also, I am the less unwilling now, without absolute necessity, to declare it.

I refer to the case of *Rodyk and others v. Wilhamson and others* (24th May 1834), in which I expressed my opinion, that I was bound by the uniform course of authority to hold that the introduction of the King's charter into these settlements had introduced the existing law of England also, except in some cases where it was modified by express provision, and had abrogated any law previously existing. I intimated much doubt, indeed, whether I should have agreed in such a construction of the effect of a charter had the question been a new one; but I felt bound by the weight of authority, and decided against the continuance of the Dutch law at Malacca accordingly. The Mahometan law can stand on no better footing, unless by the express provisions of the charter; for the statutes giving the Mahometan and Gentoo inhabitants within the jurisdiction of the King's courts at Calcutta, Madras, and Bombay the benefit of their own laws, apply only to persons so resident. The bulk of the inhabitants of India are otherwise protected.

It may be worth while, however, before adverting to the terms of the charter to observe that though the Mahometan law cannot, independently of them, stand on a better footing here than the Dutch law at Malacca, it may very easily stand on a worse. To place it on the same, it would be necessary to prove that it existed, not as the custom of a particular portion of the inhabitants, but as the law of the place, up to the time of the first charter. I believe it would be very difficult to prove the existence of any definite system of law applying to Prince of Wales' Island or Province Wellesley previous to their occupation by the English; but that law, whatever it was, would be the only law entitled to the same consideration as the Dutch law at Malacca; indeed, even that would not in general

policy, though it might in strict legal argument, for there might be much hardship in depriving the settled inhabitants of Malacca, of a system which they had long understood and enjoyed, but more in requiring the persons who resorted to these new and almost uninhabited districts (for such they were when we got them) to conform, as settlers must, unless there is an express exception in their favour, to the law of the land they settled in.

I have said that I consider myself as having, in substance, disposed of the present question in the case *Rodyk v Williamson*; for all the arguments applicable to the present case would have applied to that also, the laws, customs, &c. of the Dutch being just as much preserved to them as those of any other class of inhabitants, except inasmuch as they may be less repugnant to the English law, and therefore less frequently affected by its introduction, and the Dutch law being also, which perhaps the Mahometan law might be proved to have been here, but that would be a matter of evidence, the law of the country before the charter. The latter argument, however, was disposed of in that case, nor was it there contended that the general words of the charter, saving the different inhabitants their several religions, manners, and customs, had the operation now ascribed to them.

Nor, in my opinion, can any such operation be sustained. If the question were entirely a new one, it would seem to me to admit of very little doubt. The operation contended for is quite unlimited. It gives to all the inhabitants of these places the full benefit of their own laws, religions, and customs; for no line is drawn to confine the effect of the words relied on, either to any particular nations, or to any particular rights. The effect contended for therefore goes far beyond the state of the law at Calcutta, Madras, or Bombay, where the benefit, if it be one, is confined to Mahometans and Hindoos, and is limited to certain classes of rights and privileges. This is not a very probable operation of a charter made for the administration of law to a new population, and where therefore the reasons for such a reservation on the continent of India did not, at least to the same extent, exist.

I confess I am unable to see any words in the charter which can bear out such a result. The passage relied on with respect to the present question is in page 21: "That the said court of judicature shall have and exercise jurisdiction as an ecclesiastical court, so far as the several religions, manners, and customs of the inhabitants will admit." There are, however, similar passages on other subjects in pp. 41, 43, 47, 53; these all differ in the minutæ of expression, but I think there can be but little doubt that they were all meant to give the same kind of protection. It would be a very dangerous way of construing a document so loose in its expression as the charter to attribute all casual variations of phrase to a definite intention of affixing a different meaning. But in the general impression the charter seems to have intended to give a certain degree of protection and indulgence to the various nations resorting here, not very clearly defined, yet perhaps easily enough applied in particular cases, but not generally, to sanction or recognise their law. In the words of page 43, respecting the criminal proceedings of the court, "due attention is to be had to the several religions, manners, and usages of the native inhabitants," or as expressed in page 41, process is to be accommodated to such religions, manners, and usages, "so far as the same can consist with the due execution of the law and the attainment of substantial justice." In this last extract "the law" is clearly distinct from those native laws which are to be favoured subordinately to it.

I see no reason to ascribe a different consideration to the words giving ecclesiastical jurisdiction. And it is to be observed that in the detailed provisions respecting such jurisdiction no such words are found; they are only inserted in the general description of the jurisdiction of the court; it might therefore be open to contend that they applied only to other matters of ecclesiastical cognizance not expressly included in the subsequent minute directions. But without insisting on this, which would probably be too strict a construction, I think there is abundantly enough in these provisions of the charter to show that no such recognition of the different laws of different inhabitants could obtain. The court here is to grant probate and administration of the wills and effects of all the inhabitants, and all other persons who shall leave property here, the courts in the presidencies of India have such jurisdiction given them only over the estates of British subjects; and accordingly it has been held at Madras (*Chelunnal v. Garrow*, Sir T. Strange, II. 153, recognised in *Syed Ally v. Syed Kullee Mulla Khan*, Ib. 186,) that no

probate or administration was necessary in the case of native estates, though the court did not refuse to grant it. In the same manner it would not be here; for certainly it is neither Malay nor Hindoo nor Chinese law that a party can have no representative character unless derived from the court of judicature established here under the charter of the King of England, and proceeding according to the law used in the diocese of London. The mere fact, therefore, that administration and probate have always been applied for, seems almost to negative, as far as general usage and understanding is material, the argument advanced.

This observation is important, because Mr. Caunter, on the part of the widow, relies much on the general practice of the court as invalidating the will, and recognising the national law of the testator. No decisions, however, are cited in detail, and much of the practice referred to might be only like that which has obtained before myself, that where the parties contested a matter on the footing of their own law, the court did not interfere to insist on their adopting another. In many cases, too, the laws and usages would be material: the propriety of an administrator's account, for instance, might depend on the religious usages of his nation as to burial; the propriety of his application of property might sometimes depend upon a native law or custom of marriage. And in respect of wills, to one case of which Mr. Caunter adverted rather more particularly than to any other instance, everything, as far as the will is acted on at all, must depend on its construction merely. I should say that the court ought very readily to collect from the expressions of a will that the testator intended his property, so far as not particularly disposed of, to follow the law to which he was accustomed. Thus in a will very recently exhibited before me, I should have no doubt that a direction by a Mahometan, that the property should be distributed "according to the law of God," imported a distribution by the Mahometan law of descent. If such a party disposed of the third part of his property, expressly as that which only he could alienate by will, I should treat it as a clear declaration of his expectation and intention that the rest should follow the course of that law by which, and by which only, his power was so limited. I put plain and easy cases on purpose; but the same principle would very often, in my judgment, have to be applied. But all these would be decisions not on the legality, but on the construction of a particular will, and such, in the absence of minute information, I should believe to be the character of most or all of the testamentary cases referred to.

On the whole, I should entertain little doubt on the question, had I not the authority of Sir Ralph Rice against me. I cannot, however, but think, that though his opinion undoubtedly differed in some degree from mine, it must either be inaccurately reported in the passages referred to by Mr. Caunter, or else must have been given without reference at the time to the provisions of the charter, under which he had ceased to act for nearly seven years. I came to this conclusion, because I find him drawing a marked distinction between the civil and criminal law, for which, even independently of the general principle already adverted to, of putting the same construction on provisions generally similar, I do not find that warrant in the special wording of the charter which he seems to have considered to exist. With respect to the criminal law, Sir R. Rice (Act 1836, p. 174, of the Evidence before the House of Lords, 1830) expresses himself in a manner not much differing from my own, though corresponding perhaps to a rather wider interpretation of the clauses protecting the natives. But he draws a distinction between the criminal law and that affecting civil rights, with respect to which he says, that the court was bound by the clause in the charter to administer the law to every part of our mixed population according to their respective laws and customs. Now, in the detailed provisions as to the prosecution of civil suits, no reference whatever is made to the religious manners or customs of the parties, except as to the administration of oaths and the framing of process, where the passage in page 41, already referred to, is to be found. And in the general description of the jurisdiction of the court nothing of the kind is said in the enumeration of the causes at action and parties subject to it; and the words of the clause giving it the same authority as the courts of common law and equity in England are only that these powers are to be exercised "as far as circumstances will admit." The distinction thereof between the civil and criminal law would seem to be rather against than in favour of the more extended adoption of the native laws into the former; and I cannot therefore but think that there must be some error, either in the report of the learned judge's examination, or in his recollection of the words of the charter.

Still,

Still it is evident that his practice must have been in some degree contrary to the opinion I have expressed. Under these circumstances, I cannot but distrust my own judgment; still, as the case, independently of this one authority, seems to me a clear one, I must act on my own impression. The question will probably still be considered doubtful, but I ought not, at all events, to leave it as one where a decided opinion had been expressed, or on one side only, when my own is equally clear on the other.

It may be desirable to call to notice, that it is the fault of native holders of property if any inconvenience results from the present decision, supposing it to be established as law. The law to which I consider them as subject gives the most unlimited freedom of disposal of property by will, and any man therefore who wishes his possessions to devolve according to the Mahometan, Chinese, or other law, has only to make his will to that effect, and the court will be bound to ascertain that law and apply it for him.

The general result is, that the administration granted to the widow must be revoked, the will of Abdullah being established as a valid instrument. Still it does not appear to me to amount to a complete will, constituting Growk the executor of all his property; it is only a disposal of part in his favour, and contains nothing to show that he was intended to have the general management, if not, he is not designated as executor, and he can only obtain administration with the will annexed in the usual manner, by giving notice and filing a proper petition. The present petition may, however, if he wishes it, be amended to that effect, without payment of costs. But it is necessary to observe, that the widow may very probably have a better claim to administration with the will annexed than he, if she wishes to dispute his right. Where the testator constitutes an executor, the court has nothing to do with the selection; the will, if effective at all, is effective in that particular. But where the will appoints none, and administration is therefore necessary, the court has its usual duties to perform, and the parties their usual rights to enforce. The fact that the testamentary paper gives a benefit to a particular individual, may, according to the circumstances of the case, be a strong reason for either selecting him for the administration, or for excluding him from it. But the regular course of petition and notice must be adopted, to give the parties interested an opportunity of coming in and urging their claims.

The prayer therefore of Growk's petition is granted, as far as it respects the revocation of the administration granted to the widow. As far as the grant of any powers to himself is concerned, the petition must be amended. It would be premature to make any order about the costs, while it is yet uncertain who will have the general management of the estate. But I entertain no doubt that the widow will finally be entitled to receive the costs of her present opposition out of the estate. The question must at least be considered as one very fit for discussion; and the estate therefore may properly be charged with the costs incurred, in consequence of the doubtful legality of the course adopted by the testator.

(No 373.)

To *W. R. Young*, Esq. Commissioner for the Eastern Settlements

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you for consideration and such confidential communication to the Governor and Recorder of the Eastern settlements as you may deem expedient, the accompanying copy of a letter from the Honourable Sir B. H. Malkin, Knt., dated the 17th ultimo, and of its enclosure. Sir Benjamin's suggestions for the settlement of the law in respect to real property have been transferred to the Legislative Department, in order that the expediency of promptly remedying some of the evils pointed out may be there taken into consideration.

General Department

I have, &c.

(signed) *H. T. Prinsep*,
Secretary to Government.

Fort William,
9 August 1837.

No. 2.
Abolishing the
Recorder's Court
in the Straits

Ordered,* that a copy of the correspondence with the Hon. Sir Benjamin H. Malkin, Knt. and of the letter his day addressed to the Commissioner for the Eastern settlements, be transmitted to the Legislative Department for further consideration.

(True extract.)

(signed)

H. T. Prinsep,
Secretary to Government.

Legis Cons.
11 Sept. 1837
No. 3.
Enclosure.

EXTRACT from a MINUTE by the Right honourable the Governor-general, dated the 9th February 1837, referred to in the 4th Para. of the Letter to Sir B. H. Malkin, Knt., dated the 5th July 1837.

THE RECORDER'S COURT.

404. IN the former part of this Minute, I have mentioned the aggregate amount of saving that would be effected by the abolition of the Recorder's Court, after allowing for the probable expense of an efficient and more economical system to be substituted for it, but I postponed entering into the details in that place, which was appropriated to the consideration of financial matters, because the excessive expense of this court, though it is a great argument with me, is not the chief reason that induces me to recommend its abolition.

405 The last governor of the Straits, Mr. Fullerton, Lord William Bentinck, who visited the Straits, and every public officer who has served there, and who has had an opportunity of delivering an opinion, have agreed in thinking that the Recorder's Court ought to be abolished, as unsuitable to local circumstances, and uselessly expensive. But though I am disposed to concur in the result which all have arrived at, I do not feel the force of all the arguments that have weighed with many of those who object to the court. I am therefore anxious, as this is a question that must be decided by other authority than ours, in reviewing all that has been recorded on this subject, not only to explain the reasons which have actuated my judgment on it, but also to mention those which have not, but my opinion should be understood to go further than it does.

406. It is necessary carefully to separate two things altogether distinct from one another in discussing this subject, viz. the propriety of having a learned judge from England, specially fixed in them for the administration of justice; for the particular law to be administered, and the particular system by which the law shall be administered, have no necessary connexion with each other. It is quite feasible either to introduce an entirely new law, and still to leave the Recorder's Court as it is now, or to leave the law unchanged, and to provide for its administration without a recorder.

407. When the court in the Straits is without a recorder, the remaining judges are not the less bound to execute the laws of England to the best of their knowledge. Thus Mr. Bonham's argument, though directed against the court, if good at all, can only be good against the law. He gives as a reason why "the law of England, unmodified, and administered as it must be by an English lawyer, (is) inapplicable at these stations," that if the late government had wished to introduce a gambling farm, on a full conviction that it would have a beneficial effect, the court would not have supported it, because, he says, it is bound to abate whatever the British statutes require to be abated, and they require the abatement of gaming-houses. It is clear that, with his views, Mr. Bonham himself, if he were alone on the bench, would be as much bound to refuse to support a gaming farm, under existing law, as any recorder could be; and then, if the law be altered by competent authority, the whole of this argument against a recorder falls to the ground.

Another argument with Mr. Bonham is, that a professional lawyer is less likely to "see the necessity of modifying the law of England to circumstances." This, too, unless it be taken as an argument against the applicability of English law

to

22 Dec 1834,
para 5 (unanswered).

* Order — Letter to the Honourable Sir B. H. Malkin, knight, dated 5 July 1837. Letter from ditto, dated 17 July, with its enclosure. Letter to the Commissioner for the Eastern settlements, dated 9 August. Extract from Governor-general's Minute, dated 9 February 1837, paras. 404 to 421, 423 to 427, and 429 to the end.

to these possessions, does not appear to me to carry weight with it. Perhaps a sound lawyer would feel himself unfettered by rules not applicable to his colony, which an unprofessional man would be very bold to disregard. At any rate, whatever be the law, he who is best skilled in it must, *cæteris paribus*, administer it best everywhere. The late Mr. Fullerton's objections do not seem to be raised so much by the expense of the court, as by other reasons; since one of his propositions of reform* was to have two sets of courts, as in India, one a King's court, for a presidency such as Malacca, within a circle of four miles radius, where he would have a governor and two members of council, and another set of independent provincial courts for the rest of the Malacca province, and for Singapore and Penang.

408. One of his objections was, that the executive government has little else to do than to attend to the police, and that "there seems, therefore, no necessity for separate officers for the two functions, executive and judicial," in other words, that there is not enough of work to occupy the time of two men, one as a judicial officer, and the other as an executive officer. This seems rather inconsistent with the proposal just alluded to, but I believe it to be nevertheless very true, and if so, it can only be viewed as a strong argument against having a purely judicial officer exclusively attached to these settlements, without any reference to his being an English lawyer or an Indian civilian.

409. Mr. Fullerton's other objection was, that the administration of the executive and judicial functions of government by different individuals causes the one to counteract the other, is unintelligible to the people of these settlements, lessens the authority of the government, and brings it into contempt. His remedy was to introduce a double system of courts, one for Europeans, to whom he would have given an appeal, in certain cases, from the local resident to an exclusively judicial tribunal in the Supreme Court at Calcutta; and the other for all other persons, to whom he would have given a similar appeal to the local governor. It appears that, as far as the courts of the resident and governor were concerned, he did not propose to substitute any particular rules or laws for the English law.

410. I cannot admit the validity of this objection; I do not think the respect in which governments are held by a barbarous, any more than by a civilized people, depends in any degree on the opinion they may have of the personal power of the individual functionaries of government. I think that no people are so blind as not to form their opinions of a government from the general result which they see and feel, rather than from their knowledge of internal arrangements amongst men in power, which, unless they affect that result, are of no importance to any one else. I believe that an independent tribunal for judging civil and criminal causes improves the general result of a government, for reasons which, as they apply solely to the civilized rulers, and not to the uncivilized people, are as strong in respect to these possessions as to Great Britain. And as such a tribunal is as much an integral portion of our administration as any other public authority, if its effect be good, I cannot see how its presence can bring our government into contempt.

411. With these opinions, although I think the details of the present judicial system in the Straits urgently to require alteration, in the reform which I propose the great principle of judicial independence will be kept invariably in view. If the poverty of these possessions, and their distance from one another, make it impossible for them to support the more perfect institutions of large and wealthy communities without inflicting injustice to others, I still think much may be done for them without infringing materially the above great principle, and without giving them establishments disproportionate to their means and wants. My scheme is shortly this, to make the executive officer, whom we must keep up at any rate, employ the time that would otherwise be wasted in original judicial business, and to leave an appeal open to a perfectly independent tribunal, which shall periodically visit each place where the causes of litigation arise.

412. I will first remark upon the court, and afterwards upon the law, now established in the Straits.

413. My great objections to the present Recorder's Court are more nearly the same

* See his Minute of 1st February 1829, enclosed in Acting Governor's letter of 22d December 1834 (unanswered).

SPECIAL REPORTS OF THE

No. 2
Abolishing the
Recorder's Court
in the Straits

Para 5 of 2 Dec.
1834 (unanswered)

same with those very forcibly urged by Lord W. Bentinck, from whose Minute I have made an extract in the margin,* as distinct from the question of law; they are the extravagant costliness of this court, which I will enter upon in detail presently, and its involving the necessity of conducting the original suits of the people in a language which they do not understand. Now, I can conceive no court of first instance, conducting its business in a language known to the people whose business it conducts, and working under the eye of a civilized government, so bad as not to be better than any court where the contrary is the case. Mr. Bonham mentions the necessity of conveying the evidence to the judge who decides upon it, sometimes through more than one interpreter, each of whom, he affirms, "being conscious that he is not likely to be detected, is apt to interpret somewhat carelessly." In places like these, whatever language may be employed, interpretation would often be necessary; but by having a judge who knows nothing but English, it is rendered always necessary, for even English evidence ought to be interpreted for the public as other evidence for the bench.

414. But the direct inconvenience arising from the necessity of interpretation is far from the greatest objection to the use of any but a well-known language in a court of original jurisdiction. How can we expect the people to feel satisfied at the way in which justice is administered, if they can follow no part of the process, no part of the arguments on either side, and no part of the judgment? And so long as they can know nothing of all this, how can we hope to lead them to take an interest in the judicial business of the country, and to make each man feel that the rights of others hang by the same line as his own, and so create, by very slow but very sure means, some greater feeling of respect for justice and truth, by which alone society is held together? Let us make the law as simple as we may, so long as it is administered without the knowledge of the people, it will appear to them a barbarous juggle; if it were a question between a cheap court that can only use a foreign language and a dear one that can use the vernacular language, I would, I think, prefer the latter, and when both advantages unite, I cannot hesitate.

415. I come, therefore, to the conclusion, that the business of the courts must be conducted in the Malayan language, that being the one most generally understood in these places. All the children of Chinese born in the settlements speak Malay as their mother tongue; and these, with the Malays, form the bulk of the population. All foreign residents, whether English, native Chinese, Chuliahs, Bengalees, or others, find it necessary to acquire this language more or less. It is said to be remarkably easy, and being a written as well as a spoken language, and now generally written in the Arabic character, (being that which is said to be the most readily written, and the most easily read of any,) it has advantages, as a language for courts of justice, which few of the Indian vernacular dialects possess.

416. This great improvement alone would render the assistance of a recorder useless for all original jurisdiction, and I think I can provide for all appellate jurisdiction sufficiently well, and much less expensively, otherwise.

417. I now

* "What has been said of the unsuitableness of the civil establishment applies with much greater force to the judicial part of the system. In the paper marked (three) will be found the expense of administering justice in the three settlements, amounting to near two lacs and 50,000 rupees, one half of the whole income of the three settlements. If the population had been entirely English, and entitled as such to the benefit of English law, some cheaper mode of administration would be indispensable. But the Europeans, as will be seen by the statement (and of these a few only are of unmixed blood), do not form one hundredth part of the population, and to subject the ninety-nine-hundredths to a law, the language of which is totally unknown to them, and the provisions of which are probably understood only by the learned judge himself, is an arrangement consistent neither with reason nor justice. The people ought to have the means of becoming acquainted with the code by which their actions are to be judged, and upon which their lives and property depend. Can anything be less adapted to a society always changing and itinerant, and making use of our ports as places of barter rather than of residence, than the slow process of English law, with all its intricacy, its technicalities, and fictions? In the presidencies of India, where the law of England is perhaps equally inapplicable, the understanding of the law may be obtained, at a dear rate indeed, from legal advisers, but such is the poverty of our possessions to the eastward, that no barrister, and only one attorney, has settled in these islands. Surely, under such circumstances, the simplest code, the most summary process, the least formal and the earliest decision; in short, some tribunal like a court of requests, is all that can be necessary. The chief local civil officer, as in our zillahs in India, would amply suffice for this purpose." From Minute of Governor-general, dated 6th June 1829, recorded in Consultation of 23d id.

417. I now come to speak of the law. Mr. Bonham does not contemplate an entire change of the law; some modification in particular points, where the English law, as it is in England, is inapplicable or injurious, seems to be all that he recommends. This, at least, is my own view of what ought to be done; indeed, those who would entirely abrogate the existing law have not said how they would supply its place. In India we have a foundation of Mahomedan and Hindoo law; we have removed in practice their more material defects, and, with them, our Regulations, as a superstructure merely, do tolerably well for our present wants; but we could not introduce our Regulations by themselves, for though they might make rules of practice they would not make law. We could not introduce the Hindoo law for people not Hindoos; neither should we have any excuse for introducing the Mahomedan law, at least for Penang and Singapore, which are colonized deserts. The Malaya are but imperfectly converted Mussulmans, who retain more of their old customs than they have borrowed from their new religion; and, indeed, if we are to take the law of the majority we must introduce Chinese law into Singapore; and if we are to take that of the most important class we must do the same at Penang, and perhaps even at Malacca. We have, as yet, no new code of our own to give these settlements, and much time must necessarily elapse before so great a work can be properly matured. It must take as long to make a complete code for the Straits as for all India, because the variety of the inhabitants is as great there as here, and it is on this circumstance, and not on the number of inhabitants, that the difficulty of original legislation depends.

418. Under these circumstances, and in the present condition of our legislative business, I think we must all agree that it is not immediately desirable that any general abrogation of the existing law of these settlements should be immediately made, either by the Legislative Council or by his Majesty. In inquiring into the partial modifications that it may be advisable to make in the law of England, as applicable to these places, I have not paid much attention to the vague assertions which we have before us of difficulties, delays, and technicalities, assumed to be inseparable from English law, but I am prepared to endeavour to remedy all that has been definitely shown to be bad in the existing system, and to call for practical reports on all points that the local officers may still think to require amendment. I am anxious to lose no time, now that the Council has abundant power for the purpose, in remedying all acknowledged evil, and making all improvements that are immediately practicable, and I should be very sorry if it were thought necessary to postpone all amendment, for I know not how long, because we have it not yet in our power to introduce, universally, a perfect system.

419. Sir B. Malkin* has laid before us some practical suggestions which I think well worthy of consideration. I will here notice the matters on which we may immediately legislate with advantage.

1st. The making the testimony of convicts legally receivable. I can see no objection to such a rule being universal; but in a convict settlement it appears indispensable, otherwise many crimes committed amongst a crowd of convicts must remain unpunishable. No court is likely to give too much weight to a convict's evidence.

2d. The removal of the uncertainty now attaching to the liability of officers and soldiers in actions of debt, and all personal actions wherein the value in question does not exceed 400 sicca rupees, to any other than a military court of requests. The stat. 4 Geo. 4, c. 81, s. 57, takes all such actions in places without the jurisdiction of the court of requests at Calcutta, Madras, and Bombay (in which places they would be cognizable in the court of requests) from out the cognizance of any tribunal other than a military court of requests. As this is evidently an omission, from the framers of that statute not having in mind the fact of the existence of a local court of requests at each station in the Straits, as at Calcutta, Madras, and Bombay, I see no objection to a law enacting that no person whatever, within the territories in question, shall be free from liability to the civil courts therein established in all civil matters, by reason of his rank, calling, or profession.

3d. The

* Letter from Sir B. Malkin, dated 7 July 1835, enclosed in a letter from Governor of Prince of Wales' Island, &c. dated 28 July 1835 (unanswered).

3d The giving the magistrates in quarter sessions the power of trying small felonies with a jury. I see no objection to our doing what will be equivalent to this at once. The impropriety of the practice mentioned of jumbling together the preliminary proceedings previous to committal and the trial at sessions, or of omitting the former altogether, is manifest, and the practice ought to be stopped. No prisoners not duly committed on the responsibility of some magistrate ought to be tried at sessions. If the adjournment from time to time have introduced laxity, it is probable that giving the resident councillor the power of summoning the sessions when necessary, at intervals of not less than one month or more than three months, would prevent that evil, without causing too much delay in the trial of prisoners. The defect alluded to by the late recorder, viz. the quarter sessions, as now constituted, being a peculiar session of the Court of Judicature, and the consequent impossibility of the recorder or the other judges inquiring into and reviewing its acts, may I think be obviated by erecting a new court of sessions, instead of altering the jurisdiction of the Court of Judicature sitting in quarter sessions, in the manner authorised by the present charter. I propose therefore to pass an Act empowering the Governor of Bengal to appoint such of the justices of the peace as he may choose chairman and justices of a court of petty sessions, with the necessary powers to summon a jury of five, and to try for such offences as may now be tried at quarter sessions, and also for all such small felonies, of a specified description, that may be sufficiently punished by imprisonment with hard labour for six months. All the orders of the said court to be subject to the review of the Court of Judicature, and the Governor of the Straits having the power to nominate persons temporarily to fill vacancies. The resident councillor appears to be the proper person to be chairman, as he will not commit prisoners as a magistrate, and therefore will not have to try his own commitments.

420. As this plan will render the holding of courts of general and quarter sessions unnecessary, it does not seem requisite to define more accurately their power as to roads, bridges, &c., or to appropriate funds for the carrying of their orders on these subjects into effect, as suggested by the late recorder. Any representation from the magistrates, the grand jury, or any body of respectable inhabitants ought to meet with attention from government, but I do not see anything in the constitution of the bench of justices of the peace, who are appointed by government from amongst the English gentry, that entitles them to spend the money of the whole settlement according to their orders.

4th. To make each settlement a distinct country, with a sheriff at each. The present plan is to have one sheriff (who appears to be paid entirely by fees, for there is no charge in his accounts for his salary *), who has a deputy at each place, receiving Rs. 200 a month. This is expensive to suitors, as well as to the State, by causing a necessity of three returns in some cases where one would be enough. I see no objection to enacting a law for this purpose immediately. One officer would be saved, the salaries of the deputy sheriffs being sufficient for the local sheriffs. At the same time legal provision might be made for a local accountant-general being appointed at each settlement, if this should be thought necessary, and the appointment expedient. Under the charter there is one accountant-general, who must be a civil servant, and is, I believe, not paid.

5th. To exempt certain proceedings now required to be under the seal of the court, and to be served or executed by the sheriff, from those formalities. I propose that the governor be directed to report, after consulting with the recorder the other judges, to what processes the desired exemption can properly be extended.

6th. To set at rest doubts as to the authority by whom the sheriff, coroner, and other officers should be appointed, which have arisen in consequence of the charter directing such officers to be appointed by the Governor in Council of the Straits, whilst the real authority of government has been transferred to the Governor of Bengal. I can see no objection to our passing an Act legalizing existing appointments and authorising them in future to be made by the Governor of Bengal, in place of the Governor in Council of Penang, Singapore, and Malacca.

421 The

* There is no account of the value of these fees, but it has been roughly estimated at about Rs. 400 a month, by a gentleman for some time attached to the Straits. This has not been included in any of the succeeding calculations.

421. The other points noticed by Sir B. Malkin must remain till the pleasure of his Majesty be taken on the subject of the court's charter. These are,

1st. the want of an admiralty jurisdiction, which I see was provided for by the Act of Parliament, but omitted in the King's charter; but upon this point a special reference has already been made from the Legislative Department to the Home Government.

2d. The propriety of expunging or altering the provision in page 33 of the charter for the summoning of the recorder by any of the other judges of the Court, before making any order, or doing any act out of Court or in vacation, that may be so made or done by the judges of the Court of King's Bench. Apparently the resident councillors try causes, each at their own settlements, when the recorder is sitting in court elsewhere; and I imagine that they do so either under the clause preceding the above proviso, or in the clause in page 13, or that in page 55, which allows the governor, or a resident councillor with his permission, to summon a special court. This is clearly beneficial, but in such cases the summoning a recorder, who is 600 miles off, is a needless form. Perhaps it may be doubtful whether the charter intended to authorise the separate trial of causes in different places at the same time by different judges; for if it had, this proviso could hardly have been inserted; but if it did not, it was a great omission. Should the Recorder's Court remain, the power ought to be distinctly given, and no proviso inconsistent with the circumstances of the three settlements ought to be inserted. The clause in page 55 of the charter apparently empowers each resident councillor to summon a special court when he pleases, but in that case there is no provision requiring the recorder to be summoned.

3d. The altering the constitution of the court in consequence of the abolition of the government, whose members are the lay judges. As far as this should alter the titles of governor and resident councillor, and allow those officers to be called by designations more suitable to their real duties, this would be unobjectionable. But I would not recommend the taking away of judicial powers under the charter from the chief local authorities, without giving them some other judicial powers instead; for each settlement ought to have a stationary tribunal for small matters.

4th. The propriety of removing the exemption to the judges of the court from indictments for misdemeanors.

5th. The propriety of abolishing grand juries and making grand jurymen serve on the petit juries; also of authorizing the court to frame rules regarding the jury list and jurymen. If the charter be surrendered and no new one be granted, the above suggestions will no longer be applicable. The suggestions also for immediate legislation, which have been before stated, are offered only for consideration, and I would solicit in respect to them the sentiments of the Council.

423. Before we can make any more important changes in the law for these settlements, we must have full and distinct reports of the points wherein it is now felt to be inapplicable to their condition. In looking over the charter, I see no manifestation of his Majesty's pleasure having been to enforce the operation of more of the English law than is suitable to the circumstances of these colonies; on the contrary, I see an anxious wish to adapt the law to the place. As a court of oyer and terminer, the judges are required "to administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as our courts of oyer and terminer in England." And as a civil court, though the powers of our common law, equity, and ecclesiastical courts are given them, they are not required to exercise them "in the manner and form" adopted in those courts. One simple uniform course of procedure is laid down for causes of every description. Any person may complain verbally, or in writing, to any of the judges or the registrar, on which it is the duty of the recorder or the registrar to reduce the substance of the plaint into the form of a written petition, divested of extraneous matter, the prayer of which shall be so framed "that justice shall be done as the case shall require." This is to be explained to the person or persons complained of, and their answer treated in the same way, and "no matters of mere form" are to be admitted as pleas. Defendants may be compelled in all cases to make answer or discovery on oath, as in equity in England. Litigants are allowed to amend or withdraw the above plants, answers, &c, as "substantial justice" may seem to the court to require. After

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examining the allegations of the parties and the evidence adduced by them, for which reasonable days shall be assigned, the court is "to give and pass judgment and sentence according to justice and right." As to the law to be followed, there is not a word said about it; but surely these last words intend that the most liberal construction possible shall be given to that principle of the law of England which in colonies under English law invalidates all laws incompatible with the actual circumstances of such colonies. Mr. Bonham anticipates little improvement in criminal justice by abolishing the court as now constituted, but much improvement in civil justice. Now if it be true, as is said, that the procedure of this court is expensive, dilatory, complicated, and incomprehensible to the natives, more than a court conducted in an unknown language must always be, it seems to me that the reason of this is not to be found in any necessity arising out of the specific provisions, or the general spirit of the charter. If I were to constitute a new court, I do not know how I could simplify the process more, or fit it better for an ignorant population, in a place where independent professional advice is not obtainable. The imposing it as a duty on the court to prepare the case of the parties, and even to receive and record methodically their verbal addresses, is a recurrence to a primitive simplicity of process in a court of English law of which we have yet no instance in an Indian court.

424. As to procedure, it may be right to call the attention of the court to these considerations, and to suggest to the judges that they should make every practicable improvement in their forms of process consistent with the obvious intention of their charter. And as to law, I propose to call on the local authorities, after communicating with the court, and all persons who may be likely to give useful information, to report all real wants or subjects of complaint, and to point out remedies for them.

425. From some observations of Sir R. Rice, a former recorder, reported in Mr. Phillips' Minute, it seems that it has not been yet judicially decided how the real property of Asiatics descends, whether to the eldest son or heir, or to the next of kin, or to the heirs by the law and religion of the deceased. It seems that administrations have been granted as if the English law did not apply, but that it is very doubtful whether that arrangement could be maintained if contested. I think this subject ought to be inquired into, and it ought to be ascertained whether making both the real and personal property of Malays, Hundoos, Chinese, and Parsees inheritable according to their own laws respectively, would be considered a benefit by those classes, or whether one rule applicable to all might not be adopted, even though that rule should not be consonant with the English law.

See Appendix, No.
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426. On this subject I beg to refer to a copy of a letter from the Honourable Sir B. Malkin to the Right honourable C. Grant, without date, which has been obligingly furnished me. In the latter part of this letter mention is made of the peculiar rapidity with which landed property in these places deteriorates, if left to itself, whilst executors, though generally on the spot when the owner dies, have no legal authority to go to any expense for its preservation, and the heir is often too far away to take the necessary measures in time. This is an inconvenience arising from local peculiarities which I think ought to be immediately obviated by legal enactment.

Governor of Prince
of Wales' Island,
&c. 3 Oct. 1836,
with enclosures
(unanswered).

427. I notice in the margin a representation from the Agricultural and Horticultural Society of Singapore, complaining of depredations being committed in plantations with impunity under the existing law, owing to Mr. Wynn's Act having repealed former Acts under which such delinquencies were punishable, without providing anew any penalties for them. As this can only have been an accidental omission in Mr. Wynn's Act, there seems no objection to taking the advocate-general's opinion on the state of the law, and immediately remedying the omissions, if necessary, by an Act of the Legislative Council. Captain Low has submitted a proposed draft of an Act for the same purpose, which, however, is not altogether approved of by Mr. Murchison.

Governor of Prince
of Wales' Island,
&c. 5 Nov. 1836,
with enclosures
(unanswered).

429. I now proceed to detail the expenses of the Recorder's Court:

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General Charges	Per Mensem.		Per Annum.		Rs. a. p.	No. 2 Abolishing the Recorder's Court in the Straits.
	Rs.	a. p.	Rs.	a. p.		
Recorder's salary	3,367	15 -	40,415	10 -		
Clerk to ditto, at	300	- - (A)	-	-		
2 soubaidars, at	24	- -	-	-		
1 jemadar, at	22	- -	-	-		
2 peons, at	20	- -	-	-		
	336	- -	4,589	13 -		
Register's salary	1,463	1 -	-	-	45,005	- -
Sheriff (no salary).					17,506	- - (B)
Accountant-general (ditto).						
1 clerk to ditto	20	- -	-	-	240	- - (C)
Contingencies, average of three years					1,072	- -
Passages of recorder and re- gister on circuit, average of three years			9,856	4 -		
Ditto of clerk, &c.			1,845	12 -		
Batta of clerks, &c. on circuit			1,326	14 -		
Contingencies on ditto			76	5 -		
					13,105	- - *
TOTAL General Charges - - - - Rs.					76,978	- -
Local Charges.						
1 head clerk to register	522	8 - (B)	-	-		
1 clerk	209	- -	-	-		
1 chief interpreter	150	- -	-	-		
1 second ditto	20	- -	-	-		
1 sweaver	50	- - (D)	-	-		
2 writers, at 20/	40	- -	-	-		
2 swearers	24	- -	-	-		
3 peons	30	- -	-	-		
	1,045	8 -	12,546	- -		
1 deputy sheriff	209	- -	-	-		
1 coroner	104	8 - (E)	-	-		
1 peon to ditto	10	7 2	-	-		
	323	15 2	3,887	- -		
At Penang						
1 head clerk to register	522	8 - (B ²)	-	-		
1 clerk	313	8 2 1/2 (F)	-	-		
1 ditto	104	8 1/2 (G)	-	-		
2 interpreters	200	- -	-	-		
2 ditto and writers	80	- -	-	-		
2 swearers	16	- -	-	-		
1 crier	50	- - (H)	-	-		
1 shroff	20	- - (I)	-	-		
3 peons	30	- -	-	-		
	1,336	8 9	16,038	- -		
1 deputy sheriff	209	- -	-	-		
1 coroner	104	8 - (J)	-	-		
1 peon to ditto	10	7 2	-	-		
	323	15 2	3,887	- -		
At Malacca.						
1 head clerk to register	522	8 - (B ³)	-	-		
1 head interpreter	100	- -	-	-		
1 interpreter	20	- -	-	-		

(continued)

* This does not show the proper charge on this account, for one circuit of Sir B. Malkin was performed in the H. C. S. Clive, and last year the recorder only made one circuit; but two circuits are indispensable for the proper conduct of the judicial business, civil and criminal. The true average cost is about S. Rs. 12,000 for each circuit.

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	Per Mensem.		Per Annum.			
	Rs.	a. p.	Rs.	a. p.	Rs.	a. p.
<i>At Malacca—continued.</i>						
1 writer and sweaver - - -	50	- -	-	-	-	-
1 third sweaver - - -	10	- -	-	-	-	-
1 shroff - - - - -	20	- - (κ)	-	-	-	-
2 peons - - - - -	20	- -	-	-	-	-
	742	8 -	8,910	- -		
1 deputy sheriff - - -	104	8 -	-	-		
1 peon, to assist recorder as coroner - - - - -	10	- -	-	-		
	114	8 -	1,374	- -		
TOTAL Local Charges - - - -				Rs.	46,642	- -
GRAND TOTAL - - - -				Rs.	1,23,620	- -

430. This charge is exclusive of the charge for court-houses, subsistence of prisoners, &c., which would be nearly the same whatever tribunal were substituted for the Recorder's Court. The whole of it is specially incurred by reason of the peculiar form of this court, and it cannot be materially diminished until the court be abolished. The reduction of this sum, therefore, depends mainly on the authorities at home.

431. To the above amount the following sums must be added, to show the entire cost of the Court of Judicature at present :

	Rs.	a.	p.
One moiety of the present salary of the governor - - -	18,000	-	-
Ditto - - ditto - - resident councillor of Singapore	15,000	-	-
Ditto - - ditto - - - - ditto - - - Penang	12,000	-	-
Ditto - - ditto - - - - ditto - - - Malacca	12,000	-	-
TOTAL of Moiety of Salaries of Lay Judges - - -	57,000	-	-

Making the whole amount of the cost of this court Rs. 1,80,620.

We have it in our power to reduce this last charge of Rs. 57,000 to Rs. 39,000. Besides the above, there are the following judicial charges incurred in these settlements :

	Rs.	a.	p.	Rs.	a.	p.
Moiety of Salaries of—						
1 assistant resident, Singapore - - -	5,000	-	-			
1 - - ditto - - Penang - - -	5,000	-	-			
Second ditto - - ditto - - -	4,831	-	-			
1 - - ditto - - Malacca - - -	6,480	-	-			
TOTAL - - - - -				21,311	-	-
N. B. The above officers, with other duties, are also magistrates and commissioners of courts of requests.						
Establishment of Police and Courts of Request—						
At Singapore - - - - -	11,232	-	-			
At Penang - - - - -	20,112	-	-			
At Malacca - - - - -	7,020	-	-			
				38,364	-	-
Judicial Contingent Charges (average of three years) :						
At Singapore - - - - -	9,904	6	-			
At Penang - - - - -	7,853	9	-			
At Malacca - - - - -	3,536	6	-			
				21,294	-	-

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1 gaoler, 1 turnkey, 1 bailiff, and 2 peons at Singapore	Rs.	a.	p.	Rs.	a.	p.
- - - - -	1,880	-	-			
Additional gaoler, and establishment for lunatic prisoners at ditto	600	-	-			
1 gaoler, &c. at Penang	2,360	-	-			
Ditto - ditto - Malacca	1,881	-	-			
	6,721	-	-			
Rent of court-house at Singapore	4,041	-	-*	10,762	-	-
				Rs.	91,731	-

432 The above charges, which do not include the cost of police, maintained out of the house assessment fund, of which we have no information, are incurred in the Judicial Department, independently of the Recorder's Court, and we have it in our power to reduce them. The total judicial charges of these settlements thus appear to be—

Charge of Recorder's Court, necessarily dependent on the present form of that court	Rs.	a.	p.	Rs.	a.	p.
- - - - -	1,23,620	-	-			
Charge of ditto on account of its lay Judges	57,000	-	-			
Total of Court of Judicature				1,80,620	-	-
All other judicial charges, exclusive of police				91,731	-	-
TOTAL Judicial Charges			Rs.	2,72,351	-	-

433. This sum is more than one-half of the whole annual revenue of these possessions,† and the greater proportion of it, viz Co's Rs 1,80,620, is incurred on account of one court of judicature. A great part of it, viz Co's Rs. 1,23,620, or nearly half the whole judicial charge, is incurred merely because that court is made a recorder's court, on the model of an English court of law. The value of the matter disputed in the court in the year 1832-33, and 1833-34, averaged yearly no more than Co's Rs. 5,86,711,‡ and this includes an arrear of two years for which the court had been closed, so that one-half of this sum, viz. Co's Rs. 2,93,355, was the true yearly value of the property litigated at the three settlements for the four years from 1830-31 to 1833-34, being but a little more than the regular annual judicial charges, and but about three-fifths more than the yearly cost of the court in which the property was litigated.

434. The salaries paid to most of the officers of court are paid under an arrangement entered into between the court and the government, whereby the latter take the fees of court, and pay the officers fixed salaries for so long as the latter continue to receive the fees. It may be said that the expense of the court is unfairly stated, because the fees, which amounted in 1834-35 to Co's Rs. 45,415, are received by government per contra, but the fees are already included in the gross revenue as I state it, and I cannot therefore admit this.

See Appendix,
No. 24.

435 This charge of Rs 1,80,620 is so enormous for the court of judicature of a population of no more than 184,912 souls, of whom there are not 500 Europeans out of the Company's service, that it would, in my opinion, be an improper waste of the public money, if the people themselves could pay for it; but when I observe that the people cannot pay for it, and that the people of India, whose judicial establishments are much below what they require, are forced to maintain such a tribunal for settlements so inconsiderable, I feel that I should not be doing my duty if I were not to bring the subject to the notice of those who alone can remedy the evil, with my strongest recommendation that the Recorder's Court be altogether abolished, and the charter surrendered to the Crown

436. All

* At Penang the court-house belongs to government, and, with the recorder's chambers, is valued at S. Rs 37,000. The total value of judicial buildings at Penang is, S. Rs. 1,26,826, at Malacca the court is held in the stadthouse, which, with its out offices, is valued at S. Rs 44,610.

† Revenue in 1834/35. Co's Rs. 5,23,266.

‡ Or an aggregate of Sp Drs. 5,21,521. See Acting Governor's letter of 22d December 1834.

(Unanswered.)

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436. All that we can of ourselves do is not much, compared with the magnitude of the evil. By the reduction of Rs. 36,000 that I propose to make in the salaries of the four civil servants who are the lay judges, the item marked (L) will be lessened by one moiety of those reductions, viz. by Rs. 18,000 from Rs. 57,000; therefore that item will be reduced to Rs. 39,000; and it might require very little more than this to provide amply for the judicial business of these places according to a scheme to which I shall immediately advert.

437. So long as the recorder is kept up, the only remaining reductions that appear to me practicable are shown in the Appendix, No. 23.

438. They amount in all to Rs. 27,450, a small sum compared with the expense of the court, but well worth saving when we remember that it is enough to make up for two-thirds of the pawn farm proposed to be abolished.

439. Deducting this from Rs. 1,23,620, there will be left Rs. 96,170 as the sum that will remain solely debitable to the recordership, after every possible reduction consequent. Allowing for this prospective reduction, and the reduction from the salaries of the lay judges, (a part of which will be immediate) the least possible ultimate cost of the court will be Rs. 1,35,170, a sum more than equal to one-fourth of the revenue, not for the judicial expenses of these possessions, but for one court of judicature in them.

Recorder, &c.	-	-	Rs.
Lay judges	-	-	96,170
		-	39,000
			<u>Rs. 1,35,170</u>

440. A scheme has been submitted to me for consideration, which might be explained to the Honourable Court as one that might possibly with advantage be substituted for the present inefficient and costly system. The main feature of this scheme, namely, the sending of an Indian king's judge in circuit to the Straits, is one that appears in a proposition of Mr. Bonham's.

441. To have one paid magistrate and an assistant magistrate at each settlement, who shall also have charge of their revenues; both to be justices of the peace, and both to have consequently the power of commitment, but the assistant to be generally under the orders of the magistrate, who should have power to review the assistant's orders. To empower them both to punish for slight misdemeanors, petty thefts, &c., and to empower the magistrate to try small felonies by a jury of five, and to sentence persons thereby convicted to one year's imprisonment with hard labour. To make all the orders of the magistrate and his assistant appealable to the resident of the three settlements, who should be able to remit sentences, but not to interfere with verdicts.

442. To direct the Governor of Bengal to make natives, or others, justices of the peace in the interior, where necessary.

443. To make the magistrate and his assistant commissioners of a court of requests, to sit one at a time, as may be convenient, and to increase largely the jurisdiction of the court of requests, which now does not go beyond debts to the amount of 32 dollars.

444. To have one resident for the three settlements, who, besides hearing appeals from the magistrate, shall be a civil and criminal judge, holding his court at each settlement alternately, with power to summon juries, to try appeals from the court of requests, and to all original civil cases, with or without a jury of five, according to the desire of the parties, giving either party a right to require a jury; and with power to try all criminal cases, with a jury of five, excepting only in cases wherein a British-born subject shall be accused of a crime, for which, if found guilty, he would be liable to suffer death. To empower the resident, as judge, to postpone or adjourn the trial of any case, civil or criminal, for the arrival of his Majesty's judge on circuit.

445. To empower the resident, as judge, to pass judgment in civil cases, and, if not appealed from, at his discretion either to execute it, or to grant a new trial; and either to postpone sentence in criminal cases, for the arrival of his Majesty's judge, or to pass it according to law, and to authorize or postpone execution thereof at his discretion, excepting only in capital cases, in which judgment shall not be executed until a report of the trial shall have been submitted to his Majesty's judge on circuit, or to one of the judges of his Majesty's court in Calcutta, and the sentence approved and confirmed by him.

446. To obtain the gracious pleasure of his Majesty to the proceeding of one of his Majesty's judges of the Supreme Court in Calcutta to the settlements in the Straits once a year, or oftener if need be, for the trial, with or without a jury, of all original cases, civil or criminal, that may be referred to him; for the trial of all appeals, civil and criminal, from the decision of the commissioner; and

See para 11 of
Acting Governor's
letter of 22d Dec.
1834

for the hearing and passing orders on all petitions. To empower him to call for any proceedings of any local judicial officers, with any statements or explanations he may require, and generally to vest him with the powers of the Court of King's Bench and the Court of Chancery, together with all necessary ecclesiastical and admiralty powers within the settlements. It would apparently be necessary, in order to the exercise, in the first instance, of the powers of an Admiralty Court always on the spot, to solicit that the resident's court be invested with admiralty jurisdiction by his Majesty, if such should be his royal pleasure.

447. It may be convenient to authorize the sending on this circuit of a judge from Madras, if it should ever be found inconvenient for one to quit the bench at Calcutta, but as it is always much easier to go and return from and to Calcutta than from and to Malacca, and as it would be better, if possible, to have the revision of the courts in the Straits made by one court than by two independent courts, it would be preferable that generally a judge should go from hence, whereby any general superintendence that occasion might require might, with the greater propriety, remain with the court at Calcutta.

448. The law by which all matters are to be decided, to remain of course as the law now stands, excepting where altered in the meanwhile by Act of Parliament, or Act of the Council of India.

449. This scheme might perhaps answer every good purpose of the present system, and be free from its disadvantages. The only reason for having an English professional judge amongst this population of Malays and Chinese, was on account of the few English merchants who reside amongst them. There are about four or five mercantile firms and merchants trading on their own account at Singapore, and perhaps 20 agents for houses in London, Liverpool, and Glasgow. At Penang there are scarcely any, and at Malacca I believe none at all. Now, it seems extravagant to keep up an expensive court on the spot merely for the sake of these few individuals, and it is certainly unjust to impose a peculiar and expensive tribunal on some 180,000 Asiatics for their sake.

450. By the scheme to which I have alluded, or any other affording the same advantages of economy which, in the judgment of the authorities at home, may be deemed preferable, I would seek to give to the body of the people a vernacular court, whilst the small European community will still have its most important cases tried by a professional judge, and an appeal on points of law in all cases to a professional judge, and a great general improvement of this kind could well be effected, with a saving to the community equal to more than one-fifth of the taxes which they now pay.

451. I do not believe that there would be in an arrangement of this nature a disadvantage, to any class, to set off against the great general advantage. The apparent disadvantages are, to the English, the following.

1st. The having a professional judge with them only once a year. But how stands the case truly? The judge is most wanted by the English at Singapore, where they are most numerous, but he has always resided at Penang, making circuits only to Singapore. Last year there was but one circuit made, and though the recorder staid a long time at Singapore, that was an accident. More than two circuits in a year never, I believe, have been made. Mr Bonham shows that, from October 1824 to February 1833, a period of eight years and four months, the settlements have had the benefit of a recorder's presence for only two years. During four years and six months of that time, the court was open without a recorder, and the lay judges performed the whole judicial business, without the assistance in any way of a professional judge, or any appeal to one. During the remainder of the above period, namely, one year and ten months, the court was shut altogether, under what appears to have been a misconception of the effect of the abolition of the late government; but had no such misconception occurred, the lay judges would have done the whole business for these 22 months also, for there was no recorder present. Thus the certain presence of a professional judge once a year will really be more than any one settlement has had under the present system. If a power of reference to Calcutta on special cases be given, upon the consent of both parties, to which I can see no objection, still greater facilities to the dispatch of business will exist.

452. Another apparent objection is, that the Calcutta judge will be a stranger to the Straits. But, in the first place, this will not matter much, as he will have little original matter to try, excepting in special English cases; and in the next place, he will be little more of a stranger than the recorder has hitherto been:

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for in the last 12 years there have been five different recorders, none of whom have remained longer than two years in the Straits, and none of whom, I presume, have professed a knowledge of the language.

453. The following may be taken as an estimate* of the expenses of salaries, establishment, passage-money, and contingencies, which would be incurred under the scheme alluded to, instead of those now incurred on account of the present court.

	Rs. a. p.			Per Annum.		
	Rs.	a.	p.	Rs.	a.	p.
Moiety of salary of governor as judge	-	-	-	15,000	-	-
One head English clerk of civil and criminal court, at 400/	4,800	-	-			
One junior clerk* of ditto, ditto	2,400	-	-			
One head Malay clerk to ditto, ditto, at 100/	1,200	-	-			
One 2d ditto, ditto, at 60/	720	-	-			
Two ditto, ditto, at 80/	960	-	-			
Two interpreters, † at 150/	1,800	-	-			
Three swearers, at 36/	432	-	-			
Peons and servants, 50/	600	-	-			
Contingencies, average as at present	-	-	-	12,912	-	-
Circuit ditto - ditto - ditto	-	-	-	1,072	-	-
Passage of his Majesty's judge and his clerk once a year to and from the Straits, say	5,000	-	- †	76	-	-
Providing accommodation for his Majesty's judge at Penang, § table during the circuit, and all other charges, say	3,000	-	-			
Extra allowance to clerk for circuit, say	1,500	-	-			
Batta to servants, say	500	-	-			
TOTAL COST of Circuit of his Majesty's Judges				10,000	-	-
Extra charge of four circuits of establishment on governor's circuits				2,000	-	-
Add, for incidental expenses not calculated for				3,940	-	-
				Rs. 45,000	-	-

See para 432	Rs	
* Actual cost now (A)	-	1,80,620
By proposed plan (B)	-	45,000
Nominal saving	-	1,35,620
Deduct amount of salaries of lay judges included in (A) = 57,000 - 1,500, which has already been deducted as a part of (B.)	-	42,000
Real saving	-	Rs. 93,620

454 By deducting this from the actual cost of the recorder's court now,* we have a saving of Rs. 1,35,620 per annum to the Judicial Department, whereof Rs. 93,620 is a real item, solely attributable to the abolition of the court, and Rs. 42,000 is in this view only a nominal item, because the salaries of the lay judges are drawn independently of this court.

455. If, upon the going off of all present incumbents, we should ever be able to carry into effect all the reductions in the establishment of the court contemplated in paras. 437 and 438, out of this real saving of Rs. 93,620 a sum of Rs. 27,450 may be saved at some future indefinite time, without the abolition of the court. But this is at best doubtful, for it supposes not only that all those reductions are in themselves proper, but that they will be submitted to by the recorders of future times, without such a degree of opposition as would make it more expedient to abandon than to enforce them. And even if effected, it cannot be fairly treated as a gain to the general revenue, for wherever the establishment can be reduced below the aggregate amount of fees, the pretext by which the surplus fees are taken

* The clerks must understand the Malay language, so as to translate papers for the King's judge, either in writing or *videlicet*, and act as Malay interpreters before him. The head clerk must also be the accountant of the court.

† For Chinese, and for Telinga and Hindoostanee.

‡ Mr Bonham estimates this at Rs. 10,000 or Rs 12,000, but with a steamer to take the judge about, in the Straits, it is impossible that the passage to and fro can properly come up to this sum. Probably Mr. B. meant to include all charges in consequence of the circuit.

§ At Singapore there is excellent accommodation over the court-house, which is not wanted for the governor, as that being his chief residence his own home will be there. At Malacca there is also accommodation in the stadthouse, now given to the recorder on circuit.

taken will be at an end, and therefore that surplus ought no longer to be exacted from litigants.

456. In conclusion, I must repeat, that to feel the value of this proposed saving as an economical measure, we ought to compare the above sum of Rs. 93,620 with the population who will be relieved by it, which consists of only 184,912 souls, and with the revenue they now pay us, which is (inclusive of Co.'s Rs. 45,415 from judicial fees) no more than Co.'s Rs. 5,23,266 per annum.

(True extract.)

(signed) *H. T. Prinsep,*
Secretary to Government.

9 February 1837.

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(No. 158.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the General Department, under date the 18th October 1837.

Legis. Cons
22 Jan. 1838
No. 3

READ a letter from the Honourable Sir Benjamin Malkin, knight, dated the 16th September last, submitting observations and suggestions on the subject of the Recorder's Court in the Eastern settlements, which were left unnoticed in his letter of the 17th July last.

Read a Minute by the Honourable Henry Shakespear, dated the 27th September, on the above.

Read a Minute by the Governor-general, dated 16th instant, on ditto.

Ordered, that the above-mentioned papers be sent in original, in continuation of Extract No. 112, dated the 9th August last, to the Legislative Department, in which department the question what courts of justice should be provided for the Eastern settlements is under consideration, and from which a reference was made to the Honourable Court of Directors on that subject.

The lamented illness and decease of Sir Benjamin Malkin prevents the government from making to him the acknowledgments due for his valuable suggestions and ready aid in the discussion of this important subject.

Ordered that the original papers now sent be returned to this department when no longer required

(True extract.)

(signed) *H. T. Prinsep,*
Secretary to the Government.

From the Hon. Sir *B. H. Malkin*, Knt. Puisne Judge, Fort William, to *H. T. Prinsep*, Esq. Secretary to Government, in the General Department.

Legis. Cons
22 Jan 1838.
No. 4
Enclosure

Sir,

I HAVE now the honour of forwarding to you the observations which have occurred to me in reference to those parts of the Governor-general's Minute of the 9th February 1837 which I left unnoticed in my letter of the 17th July last. My principal object will be to lay before his Lordship in Council a statement of some facts on which he appears to me to have received inaccurate or no information, and of some considerations which could not arise till those facts were fully known, rather than to express much of opinion as to the expediency of the changes contemplated.

2. In doing this I shall probably appear more the advocate of the existing system than I should wish. This is unavoidable, for the necessity of my entering into the explanations which I am about to give arises from the circumstance that, as far as I can judge, only one side of the question has at present been stated. It falls upon me, therefore, to state the other, and to state little else, for I am not aware that any of the considerations unfavourable to the continuance of the court have failed to be presented to the Governor-general, or require any further elucidation or enforcement.

3. It is undoubtedly one strong argument against the continuance of the court in its present footing, that persons whose situations give them excellent opportunities of judging, should form so unfavourable an opinion of it as they appear to

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have expressed. I do not, however, collect from his Lordship's Minute that this opinion, with one very material exception, is derived from more than one class—the officers of government in the Straits. His Lordship's words are, that “the last governor of the Straits, Mr. Fullerton, Lord William Bentinck, who visited the Straits, and every public officer who has served there, and who has had an opportunity of delivering an opinion, have agreed in thinking that the Recorder's Court ought to be abolished, as unsuitable to local circumstances and needlessly expensive.” There does not appear to be any expression of the sentiments either of the officers of the court unconnected with the government, or of the merchants or other inhabitants of the place for whose benefit and protection the court is chiefly established. As far, therefore, as the force of opinion goes, with the exception of that of Lord William Bentinck, of which I would always speak with the highest respect, though I do not conceive that his very short and hurried visit to the Straits could have at all added to his other means of appreciating this subject, the unfavourable judgment expressed is confined to one class, and that the class most likely to be jealous of all interference, and hostile to any co-ordinate authority. That Mr. Fullerton was so is well known, and indeed sufficiently appears from the statement of his opinions in the 409th para. of the Governor-general's Minute, and it is equally notorious that his hostility was quickened and excited by continual disagreement between him and the only recorder who was in office during the period of his government. Who the other officers are, with the exception of Mr. Bonham, who have expressed the sentiments referred to, I am not aware; if, however, I am right in thinking that there are very serious considerations in favour of the present constitution of the court which have entirely escaped their notice, it is not very unreasonable to suppose that this blindness must have resulted from something of dislike to its institution, a dislike, I am happy to say from my own experience, perfectly compatible with goodwill to the individual functionaries engaged in it.

4. Perhaps, however, I have dwelt too long on an argument from authority, to which, though prominently stated at the head of the Governor-general's observations on the subject, his Lordship does not seem to attach very great importance, or to attribute any great weight of reasoning to most of the papers in which the opinions referred to have been expressed, I pass therefore to the most material points for consideration, the alleged inefficiency of the present system, and the probability that the changes contemplated would produce improvement. I postpone for the present the mere question of expense, as of subordinate, though very considerable importance.

5. In my observations on this subject I shall only consider the existing and proposed systems, as applicable to the administration of the present law of the settlements, with any such temporary or particular modifications as are referred to in the 417th paragraph of the Governor-general's Minute. No other changes appear to be contemplated as of immediate probability; and it will be soon enough to consider how the administration of a completely new system can be best provided for when the nature of the system is ascertained. If it should differ much from the present, the best mode of administering it will probably differ also from the best mode of carrying that which now exists into effect; a consideration which perhaps furnishes some ground for doubting how far it is expedient to interpose another fundamental change in the construction and operation of the court; for doubting it, at least, unless the present evil is really as great as it is represented to be.

6. The evil, however, is undoubtedly stated to be urgent. Mr. Bonham, it is said, in paragraph 423, “anticipates little improvement in criminal justice by abolishing the court, as now constituted, but much improvement in civil justice;” and the procedure of the court is stated to have been represented as “expensive, dilatory, complicated, and incomprehensible to the natives, more than a court conducted in an unknown language must always be.”

7. These are statements which, if fully substantiated, certainly show much need of change. I had entertained an intention of asking for a fuller communication of the papers in which these views have been expressed, but I have abandoned it. I do not, indeed, know exactly how far the details of the plan explained in the latter part of the Governor-general's Minute correspond with Mr. Bonham's suggestions, but his scheme obviously involves the abolition at least of all original investigation in civil cases by a professional judge, and makes the alleged improvement in civil justice to consist not merely in a simpler procedure. His

great objection appears from passages stated in paragraph 407, to be the manner in which the law must be administered by an English lawyer.

If I am right in this understanding of his views, I have no occasion to inquire more minutely into them; and with respect to other representations, especially any which have been made as to the procedure of the court, as my own impressions of what has actually been the case differ very materially from those which appear to have been communicated, I had rather make my own statement of facts within my knowledge, than enter into any particular consideration of other accounts, and run any risk of conflicting assertions on mere matters of detail.

8. The alleged improvement in the administration of civil justice may arise in two ways: a better decision of questions of law, a better determination of matters of fact. With respect to the former, I need say nothing after the observation already made by the Governor-general in the 407th paragraph. His Lordship is fully aware that the more relaxed interpretation of the law, which Mr Bonham appears to consider desirable, would very generally be an interpretation against law, and that an English lawyer, unless he be a merely pedantic one, is no more disqualified than any other functionary to administer the law of England, with a due accommodation to circumstances.

9. With respect to the better determination of facts, little except mere vague opinion can be obtained. Whether Mr. Bonham may prefer the unsophisticated judgment of a non-professional man, or whether I may think most favourably of the more educated opinion of a lawyer, is of little importance. There is no such public in the Straits, none at least that watches the proceedings of the courts, as to render other opinions of much value; and Mr. Bonham's and my own, or that of any other recorder, merely amount to this, that where their conclusions do not agree, each prefers his own; I may say this without any disparagement of Mr. Bonham's services in the ascertainment of facts. I had occasion sometimes to reconsider cases previously investigated by him, and to the best of my recollection, our opinions on facts very seldom differed on the same evidence, though I think I remember instances of determinations altered on fuller investigation.

10. I ought, perhaps, to apologise for treating Mr. Bonham so completely as the principal informant on these subjects. No other name, however, occurs in the Governor-general's Minute, and no other officer now in the Straits has taken nearly so active a part in the administration of justice, or consequently possessed nearly equal means of forming an opinion; I am not aware, indeed, that any others have acted at all, except Mr. Garling, at Malacca, where the whole amount of judicial business is very trivial, and Mr. Wingrove occasionally at Singapore, during the absence of Mr. Bonham, and while he was himself officiating as resident councillor, too short a period to give his opinion, if it has been expressed, the weight to which in most cases it would be eminently entitled, I do not feel, therefore, that I underrate the importance of the representations made, when I attribute them principally to Mr. Bonham. Yet there are considerations which might, I think, have made Mr. Bonham doubt the judgment he has expressed. He does not contend that the administration of criminal justice would be improved by the change he recommends. Of this he has full means of judging, for the lay judges of the court generally, and Mr. Bonham in particular, used to take their seat in the court with the recorder during a very large portion of the criminal sessions. But I am not aware that he ever (I speak of course merely of my own time) was present during any of the civil proceedings held before the recorder, with the exception of a few occasions immediately after my arrival in the Straits, when, as a stranger, I requested his assistance, and once for the purpose of expressing his opinion on a question as to the relative functions of the judges, on which he and Mr. Ibbeston, the then governor, differed for a time, but finally concurred with me. He may have been oftener present than I recollect, but in this I cannot be mistaken, that it was his habit to attend at the criminal proceedings of which he approves, and not at the civil proceedings which he censures.

11. With respect again to the statements made as to the procedure of the court, I need only refer to the 423d para of the Governor-general's Minute, to show that the fault, if it exists, arises not from the provisions of the charter, but from the manner in which the charter has been administered by the judges. How this has been done by others than myself, whether they be lay or professional judges, I cannot say, but my own recollection of the practice of the court, in a very large proportion of the cases brought before it, is very different from the account

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given of it. I refer especially to those cases, a very large proportion of the whole, in which no professional assistance was employed, but the complainant came immediately to the court with his statement of alleged grievances; in many of these cases, where he had no claim to redress even on his own showing; this was explained to him at the instant, and his claim was quieted, without the actual institution of any suit, or the incurring of any expense. In many others, where he appeared to have a claim of such a nature as to admit of an easy adjustment with the opposite party, the defendant was desired, without the issuing of any regular process or institution of any regular suit, to attend with the plaintiff on an early day, and the case was very frequently arranged without difficulty or expense, on hearing the statement and admissions of each party. It was only when it was clear, in the first instance, that there must be a disputed question, to be settled by evidence, or where these attempts at a preliminary and amicable adjustment failed, or where the nature of the arrangement was such that it required some act of the court to authenticate and secure it, that any formal proceedings were adopted in these cases; and even then they were of the simplest description, the parties going to the registrar's office, and having their own statement of facts on each side taken down, with the rejection of all the immaterial circumstances with which the party's own narrative never failed to abound, and receiving information what were the points really asserted and denied, and the matters which it was necessary to support by evidence. I am not aware that there is anything "complicated or unintelligible" in this; and as to delay (except in some cases where evidence might be at a distance, or not easily accessible, or where a case of more than usual perplexity required more than usual preparation, or where the parties themselves would not take the trouble of giving early information as to the witnesses they wished to produce, or active assistance in their discovery), I believe there was very seldom a case of the kind I have described which, if it went to a trial at all, was not finally and completely disposed of within a fortnight or three weeks from its institution, and often considerably sooner. I speak from recollection, and have no means of ascertaining a correct average; but I have no fear of being materially inaccurate. Such proceedings could hardly be expensive, except indeed that, where any suit was actually instituted, there was a per-centage paid (one per cent., I think) on the amount of the claim; and, where there was a judgment, the same proportion was paid on the amount recovered. Besides this, where there was an arrest, which, however, hardly ever happened in the class of cases I am now speaking of, there was a further payment of one per cent. on the amount sworn to. These charges, however, were not occasioned by the procedure of the court, they would be the same whatever procedure was adopted, and would be fit to be abolished or retained as they were or were not found oppressive, or as the necessity of raising a fund in some degree commensurate with the expenses of the court was denied or admitted. The mere fees paid in the office of the court for specific work done were certainly low in amount, for the rate of payment was not high, and the simplicity of the proceedings made the whole quantity of work little in each case.

12. In cases where professional agents were employed, there was of course more of expense, more of complication occasionally, and somewhat more of delay; yet even in these cases, the general outline of the proceedings was the same as in contested cases of the nature I have already explained. Indeed, as there had been no professional judge there for some years before my arrival, and only an agent practising in the court who had practised before my predecessor, the proceedings of the agents naturally followed, in a great degree, the example of the cases conducted entirely by myself and the officers of the court; and I occasionally anticipated that my successor might complain of me as not having done enough towards confining the practitioners in the court to a technical and regular conduct of business; I certainly did not expect to hear that the proceedings were too artificial. Again, with respect to delay, though as I have already stated there was occasionally more in these cases than in the other class, they were in much the largest proportion of instances dispatched with equal rapidity; and that the delay could never be very long will appear from this, that I was never more than six weeks at Singapore on any single circuit; that I very rarely found more than one or two causes commenced before the resident judge or judges of the court, and awaiting my arrival; and that I believe I never left a single cause which had been pending before me undisposed of, except in a few instances where parties came in to commence proceedings within three or four days of the time fixed for
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my departure, and when it could not be delayed without unsettling arrangements previously made at other settlements. At Penang I have known one or two cases involving the settlement of family accounts, or requiring the production of evidence relating to a distant period, which have been rather slower in maturing; but three months would even then, I believe, decidedly exceed the longest duration of any cause that was heard before me.

13. What procedure of the court is particularly referred to I am, of course, not able to say, it may be that of other recorders, who may have adopted a more strict and technical course than I thought expedient, though I have no knowledge that this has been so, or it may be that non-professional judges, in cases especially where professional agency has been employed, have allowed themselves to be hampered and perplexed by objections which a lawyer would have felt less difficulty in breaking through. But I think I may say that the procedure of the court has not been uniformly objectionable on the ground of expense, complication, or delay, the complaints made of it, and that if these are the faults imputed to it, the court need not be remodelled (independently of considerations of expense, of which I am now not speaking) on the ground of its being necessarily, or having been uniformly an evil.

14. Still, even if faults have been imputed to the existing system which really are not found in it, the new system of administration may be likely to work better, or, at least, as well. The principal advantage expected from the change, besides the correction of those imputed evils of delay, intricacy, and formality which I have already spoken of, appears to be the introduction of the Malay language into the proceedings of the court. To this, both the Governor-general, in paragraphs 413, 14, 15, and Lord William Bentinck, in the passage there referred to, attach high importance. The arguments in favor of this change are very forcibly stated, but they do not, I think, apply so completely as they are supposed to the state of the Straits settlements. As far as I am aware, the necessity of interpretation would not be nearly so completely done away, and the proceedings adopted would not be made so generally intelligible, as the Governor-general imagines. At Singapore especially, where Chinese are continually flocking in, a large portion of Chinese do not understand Malay at all, and there is often difficulty even in procuring Chinese interpretation, from the variety of dialects of that language. The Chuliahs again, a large and very litigious portion of the people, and at Penang an important one, seldom stay more than a few years in the country; often only one or two seasons, live very much among themselves, and speak little except their own language. Although, therefore, it is perfectly true that most foreign residents "find it necessary to acquire the Malay language more or less," the acquirements of a very large portion of them are very small, not enough to enable them to give evidence or understand proceedings in that language, except very imperfectly, and yet, perhaps, in many instances sufficient to enable them to do so in some degree, and thus to allow the proceedings to be conducted in a language ill understood and inaccurately spoken. Interpretation is undoubtedly a great evil, but where the choice is between interpretation and the forcing parties to use a language which they speak with difficulty, I have always found the former the less inconvenience.

15. These observations only apply to the question as it respects the suitors of the court, and bear only on the degree and amount of advantage supposed to be obtained. But the question affects the judges also, and still more materially, they, at least, ought to have a full and intimate knowledge of the language in which they are to receive evidence, to deliver their judgments, and, I suppose, to record their proceedings. Now this can only be secured by their being long resident among a Malay population; I doubt, indeed, even if that can be said to secure it. I doubt whether the majority of the government officers now in the Straits, although they have long resided there, would be found to have that degree of knowledge. They would all, probably, be able to get on, but that ought not to be enough; on this however I will not dwell. If the familiar knowledge of the language became more important, as the proposed change would make it, the requisite familiarity would probably be obtained; but it could only be obtained by length of residence, and it would be best obtained by that residence commencing early. For these purposes the service of the Straits, even if nominally attached to that of Bengal, would in substance remain a distinct service, consisting of three or four young men in preparation for those important duties, and of a similar number of men of maturer age, discharging them with little prospect of being ever removed from

their appointments, for the difference of language, manners, and institutions would render long-continued service in the Straits no preparation for service elsewhere. It is intended, I understand, from the Governor-general's Minute, materially to reduce the emoluments of the government officers of the Straits; the highest situations which can be reached there will consequently be very small prizes when compared with those to which all Indian officers look forward as what they are likely ultimately to attain. If, therefore, the service of the Straits continues nominally distinct, it will be an ineligible service, and command only candidates of an inferior description; if it becomes a part of the Bengal service, the appointments will be ineligible appointments, and as such will be given to officers of little promise. All stations must have their share of such appointments, but there would be great danger that the proposed plan would condemn the Straits to an habitually inferior administration.

16. Were it not for this danger I should not treat the proposed plan, or almost any other which would secure the service of competent and intelligent men, as insufficient for the due administration of justice in much the largest proportion of the cases arising in the Straits. With respect to them, it is not a question of the law of England, or any other law, it is the law of all countries alike, that a man who receives goods which he has bought shall pay their price, and that the seller who has received the price shall deliver the goods; that a borrower shall repay the loan, and that a person who injures another's property shall make good the damage. The bulk of the business of the court in the Straits consists in enforcing these rights; and this may be sufficiently done by any person of sound sense and discriminating understanding, though the habits of a particular profession may give some degree of peculiar facility or unfitness (for both are occasionally imputed) for judging of evidence.

17. The mere local transactions of the Straits are generally of the character abovementioned, and this just as much with respect to Europeans as to others. Indeed the most difficult and complicated cases in point of evidence have generally arisen at Penang, where the earlier occupation of the island has given more opportunity for the creation of complicated family relations, and doubtful and imperfect derivative titles. It was partly from the accident of my visiting Penang first, partly at the suggestion of the officers of the government who wished me to have my own house, where they had no public buildings available for my occupation, and would therefore have had to incur expense in procuring me accommodation if I only visited that place on circuit, that I fixed my principal residence there; but I felt fully convinced afterwards, that partly from the considerations I have mentioned, partly for temporary and occasional reasons, which it is not necessary to discuss, it was the place in which it was most desirable, for the general administration of justice in the Straits, that I should spend the longest time. And the same would, I apprehend, be the case with my successors to the present time. Had I considered the services of the recorder desirable, as is suggested with reference chiefly to the European portion of the population, of course Singapore ought to have been my principal residence; but I entirely deny the existence of any such reason as Europeans I never considered them entitled to any preference.

18. The peculiar importance of having a professional judge in the Straits, arises in my judgment out of the commercial character of the settlements there, and the resort thither of foreigners of all nations. An erroneous decision on the regularity or irregularity of the presentment of a bill of exchange, or the sufficiency of the notice of its dishonour, would compel a merchant to make payment at Singapore which he ought to be able to recover from the next party to the bill in London, but would not, because they would require real regularity. This is a case not unlikely to arise; a Company's servant unconnected with mercantile business would probably draw his notions of it very much from the practice of the place where he lived. At Singapore this practice is very lax, so much so that an attempt was once made before me to establish "a custom of Singapore," to transact ordinary mercantile business in an irregular manner; of course I did not recognize any such custom, or treat men who had received their mercantile education in Great Britain or India, as entitled to relieve themselves from the ordinary restraints of the regular conduct of business, by setting up any lax usage of so recent introduction. Nor (though some of the passages referred to by the Governor-general in the 40th para. seem to show that judges appointed under more favourable circumstances than they would be on the projected plan, might

be ready enough to dispense with the rules of law in any case where they thought it inexpedient to apply them; do I suppose that any non-professional judge would have allowed of such a custom, claimed expressly as an exception from the ordinary rules of law, but he might very easily fancy that the practice of the place where he lived was the real "usage and custom" of merchants all over the world, and the consequence might be such as I have already adverted to.

19. This is only an instance, and negotiable instruments are more likely than anything else to furnish such instances, and occasion such inconvenience. But similar difficulties might arise on a variety of other mercantile contracts and securities. The law of insurance, for example, is one of considerable intricacy, and there are agents in the Straits for several insurance companies, and no insurances probably are effected except by them; but in these cases the parties really interested will generally be resident at a distance, and will construe their contracts and estimate their liabilities according to the ordinary and legal understanding on such subjects.

20. There remains another class of cases, of less frequent occurrence, but in which the consequences of an erroneous decision might be yet more important. I refer to those in which international rights might come in question, or national interests might be involved. A case occurred just before I left the Straits, and was adjudicated on by my successor, Sir Edward Gambier, in which the salvage of the cargo of an American ship, or rather a claim in the nature of salvage, was the matter of dispute. The circumstances were very peculiar, and it is not necessary to enter into any detail of them; but it was a case full of difficulty, and one which, in the event of any decision decidedly illegal, might not improbably have become the subject of controversy on the part, not of any private individual only, but of the American government. The court in the Straits is now about to receive Admiralty jurisdiction, a change most desirable in itself, but which is likely to lead to the more frequent occurrence of questions involving similar considerations and open to similar consequences.

21. I do not advert to these circumstances as furnishing any decisive argument against the proposed change, but their existence introduces additional difficulty into the subject, and gives at least a much better reason for the institution and continuance of the court as it has existed, than that assumed, of its being useful only for the sake of the few European inhabitants. It is necessary, therefore, as it appears to me, to state them, for the purpose of putting the question on its true grounds, whatever may be its decision when it is so placed.

22. This result probably ought very much to depend on the efficiency of the projected scheme of appeal. And I would not treat this as decidedly insufficient, though there are many inconveniences attending any plan which relies on appeal to correct the deficiencies of an ill-constituted court of original jurisdiction. If the court of appeal act principally as a court of error, it will leave much of inadequate and unskilful decision uncorrected, for it must assume the propriety of everything which is not ascertained to be wrong, if on the other hand it acts more strictly as a court of appeal, and rehears all matters where the parties are dissatisfied with the decisions, there is the danger, especially if the original administration is unsatisfactory, that almost all cases where there is a possibility of doubt, and where the party is not prevented by poverty, will undergo the delay and expense of two trials. These are evils not equally attaching to the present system, where the absence of the recorder from a particular settlement has been much compensated by the opportunity of consultation in the earliest stages of a cause, or previous to its final decision; for such, however mischievous the opinion of a professional judge may have been considered, was the very frequent practice.

23. Still I do not consider this plan of appeal as decidedly insufficient, though I cannot see in it any improvement, except upon the score of expense; but to make it at all efficient, it would be necessary, I think, looking to the amount of business likely to be brought before the appellate judge, and especially to the very fluctuating character of the population, which makes delay in the final administration of justice peculiarly liable to amount to a denial of it altogether, that there should not be less than two of these circuits of appeal in the year, and this leads to important considerations, as to the best mode of carrying the plan into effect, if it be decided to adopt it.

24. But before discussing these, I must advert to one passage of the Governor-general's Minute, founded on information which I cannot exactly call inaccurate, but which certainly does not lead to a very trustworthy conclusion. I refer to the

observation in the 451st paragraph, "that the certain presence of a professional judge once a year will really be more than any one settlement has had under the present system." This is founded on a statement of Mr. Bonham's, that from October 1824 to February 1833, a period of eight years and four months, the settlements have had the benefit of a recorder's presence for only two years. I have already said that this information is not inaccurate. I proceed to show, that like all other averages deduced from a picked season, it cannot be depended on for any trustworthy result. In this particular instance the general principle I have stated applies with rather singular force; the period selected extends from the death of Sir Francis Bayly to my own assumption of office in the Straits, two dates which there could be no reason for choosing, except that they included the most of vacancy, and excluded the most of fulness, of the office of recorder which could be attained. neither date had anything else to fix it as a boundary. The circumstances of the time also were very peculiar. Owing to negligence in some office at home, the charter under which Sir John Claridge derived his authority did not reach the Straits till more than a year after his arrival there; during that period Sir John Claridge offered his services, and they were generally accepted, as a sort of assessor to the lay judges of the court; during this time the judgments were of course, in form, the judgments of the lay judges, and there was not the "presence of a recorder," and the lay judges performed the whole judicial business without the assistance of a "professional judge," but not so completely without professional assistance as to allow that period to be fairly reckoned into the account of vacancy. After a time the unhappy differences between Mr. Fullerton and Sir John Claridge occasioned the recall of the latter to England, to meet the inquiries which took place, and thus for two years and a half there was the absence of the recorder without the vacancy of his office; and at the end of that time the recorder appointed had to proceed from England to Penang. The circumstances are too peculiar to render the long intermissions in question of much importance in estimating the probable average of vacant periods; I do not of course mean that this interval ought to be excluded in forming any average, though the particulars I have referred to might prevent a mere numerical average from being of any very great value; but, certainly it ought not to be taken as the whole experience from which the average is to be derived, especially where the informant must probably have remembered, and certainly might have known, that from the first opening of the court in 1807 to the date at which the period he has chosen commences, was no less than 17 years, during which the office of recorder was vacant only for very short intermissions between the departure of one judge and the arrival of his successor, and probably for not more than a year in all, and where, from the date at which his period closes to the present time, he must certainly have known that the office has not been a single day vacant.

25. This is perhaps the most convenient place for noticing also an observation contained in the following (the 452d) paragraph: that the proposed judge of appeal, though he will be a stranger to the Straits, will be little more so than the recorder has hitherto been. It is certainly true that of late the recorder has never been more than a very limited time in the Straits; it was not formerly so to the same extent, for Sir Edmund Stanley served at Penang for eight years before his removal to Madras, and Sir Ralph Rice for nearly seven before he went to Bombay. The evil, however, of late has been a very great one, but it is one not necessarily incidental to the system; it would cease to exist if the system of translation were abolished, and there is no good reason for its continuance, for the Straits furnish very little of an apprenticeship for the continent of India.

This is no new opinion taken up in answer to the argument suggested; it is one which Sir John Claridge expressed most decidedly during his tenure of office, and which I stated myself, as strongly as I could, to Lord Glenelg, while I was in the Straits, and when I had no expectation of being removed from them, though, in fact, my appointment to Calcutta took place about the same time that I dispatched my opinion against such changes; I have, therefore, rather a better right than usual to condemn a system of which I have myself received the benefit.

26. But to return to the consideration of the projected plan of appeal. I have already stated my reasons for thinking that there ought not to be less than two circuits in the year; reasons, it will be observed, which do not depend on any comparison of the proposed and existing system, but on the actual nature and amount of business. It is impossible to estimate with any correctness the length of time necessary for each circuit, but I do not imagine that three months would, at the commencement

commencement of the system, be an exaggerated conjecture, when due allowance is made for the length of the voyage and the slowness with which any new system works at first; nor do I think the time would be much shortened afterwards, unless the local judicature performed its functions better than I venture to anticipate that it would under the reduced and unfavourable circumstances to which I have already referred. None of our vacations here are so long as this, and the two longest, which are fixed to the periods much most convenient for the administration of justice here, commence at the interval of less than four months from each other, and would not therefore correspond to convenient times for the fixing of two circuits, which ought to divide the year as equally as possible. On both accounts a judge could not be sent from Calcutta for the complete and adequate dispatch of the business required to be transacted, without leaving the Calcutta Bench for a very material portion of the busiest times of the year, in the worst of all conditions for the administration of justice, for such I consider a bench of two judges, many persons think a single judge preferable to a bench, though I confess I do not concur in the opinion. But no one, I believe, seriously doubts that a bench of two judges is the worst possible arrangement. Sir James Mackintosh, indeed, during his tenure of office at Bombay, was anxious to have a colleague; but there were many circumstances in his character which would make him wish for divided labour and divided responsibility; and his only reason for wishing for a single colleague was probably the feeling that he could expect no success in asking for more. With this exception, I believe no one has ever treated such a constitution of a court as in itself eligible.

27. Such however, practically, though not according to their charters, is the constitution of the courts at Madras and Bombay, and there is one very important reason for not further reducing these establishments, that without any provision for the temporary administration of justice during illness or upon death, it would be dangerous to leave any court provided only with a single judge. But though the risk avoided is a sufficient reason in this country, and at this distance from England, for preferring a court of two judges to a court of one, there is nothing but evil in reducing a court of three judges to a court of two, and it is to me a very serious objection to the plan of appeal proposed, that it would, if unmodified, have that operation during a material portion of the year at Calcutta: the judges, who would get a pleasant and healthy expedition, would be the only gainers.

28. The plan seems, however, to admit of an easy modification. If there were at any one of the presidencies where it was thought most desirable to make the addition, an extra judge, and the judges of that presidency were authorised to supply any occasional vacancies whenever they occurred, there would be the means of providing for these circuits, and also of meeting all temporary exigencies. It would then be unnecessary to have more than one judge at Madras and Bombay, if the additional judge was stationed at Calcutta, or if it were thought more eligible to station him at Madras or Bombay, the same provisions would be sufficient, with only the addition of a power to the Calcutta judges to make these circuits in the Straits, in the event of a vacancy, or the permanent illness of a judge at the other presidencies, so that the additional judge for a time was obliged to be stationary. In this manner the bench of Calcutta might still sometimes be reduced to two judges only, but it would only be an occasional inconvenience on the plan proposed; it is a continually recurring incident of the system. Perhaps, however, on this account, and still more from the considerations stated by the Governor-general in the 447th para. of his minute, Calcutta would be the most convenient place for the additional judge to be stationed at.

29. If the proposed alterations take place, I cannot but think that this modification of the proposed plan would improve the constitution of the courts at Madras and Bombay, and it would produce some reduction of expense also. It may appear that the same provisions might be sufficient also for Calcutta; the presence of a single supernumerary judge, however, would not be enough to provide for all contingencies, which the presence of a full bench in Calcutta furnishes the means of meeting in cases of emergency. On the contrary, if there were only four judges of the Supreme Courts in India, the death or permanent illness of one of them would render the presence of the others necessary all the year at their own presidencies, for there is business requiring immediate dispatch all the year round, and thus the provisions for circuits in the Straits would entirely fail. And even independently of this consideration, the business of the court in Calcutta is more

in point of labour, and more important in point of amount, than it would be safe or satisfactory to leave permanently in the hands of a single judge, liable to all the accidents and disqualifications of an Indian climate, and with no power of redressing his errors or omissions except by the tedious and expensive process of an appeal in England. Where even that remedy exists, a single judge at Calcutta would find it hardly possible, at any period of the year, to secure to himself three days consecutively of intermission from his duties of attendance in court or at chambers: the consideration and examination of authorities, accounts, and documents, out of court, I do not speak of. This is a statement which will, perhaps, hardly be anticipated, but the duties which are easily divided among several, would all have to be performed by one. As it is, without speaking of the public business of the term and sittings, which is not likely to be overlooked, during the periods of vacation, one judge sits twice a week regularly in chambers, and, on an average, rather more than once a fortnight in the Insolvent Court. The business of chambers occasionally includes very heavy and important equity motions. The business of the Insolvent Court has become in this place (not at Madras or Bombay, where they have happily been exempt from the great failures which have occurred here since the passing of the Insolvent law), one of the most important occupations of the court. The Insolvent Court, indeed, is in substance much more a Court of Bankruptcy than a mere Insolvent Court in the English notion of such an establishment, and here it has unfortunately had to deal with several of the largest failures which ever took place in the commercial world, and which have led, and are still leading, to investigations of unusual complexity and importance. This business in chambers and in the Insolvent Court is not interrupted by the sessions of oyer and terminer, for one judge sits to dispatch it while another is engaged on the criminal side of the court. But were there only one judge here, either the civil business now dispatched during the criminal sittings must be postponed till their close, and added to the engagements of the rest of the vacation, or, which would be more convenient to everybody, except jurors and witnesses, there must be occasional intermissions of the criminal sessions to allow the dispatch of other business, and the sessions of oyer and terminer would thus be prolonged. In either case there would be entailed on a single judge a degree of labour, when combined with his necessary occupation out of court on court business, which could not safely be imposed on any one, without the opportunity which other functionaries whose labours are nearly unremitting possess, of temporary and occasional relief by the substitution of an acting officer in case of temporary disqualification; the additional judge indeed, when not necessarily employed elsewhere, might occasionally interchange duties with the judge of Calcutta; but this would be undesirable unless rendered necessary by circumstances, from the impossibility of finding any period when the approaching business was not so closely connected with that which had preceded as to render it very expedient that the same judge should dispatch it.

30. It will be observed, that the above proposal nearly coincides with that suggested, on different reasons, by the Calcutta civil finance committee, in the 5th paragraph of their letter to the Governor-general in Council, of 28th June 1830, as printed in the General Appendix to the Report of the Select Committee of the House of Commons on the Affairs of the East India Company, in 1832. It is partly on their authority, partly from the practice of not filling the third seat at Madras and Bombay, and not from any personal knowledge, that I infer that the administration of justice there would not require the presence of the full court, which I think necessary to be retained at Calcutta, and which the finance committee did not propose to abolish there. But on these matters, connected with other localities, I wish rather to be considered, as offering suggestions, than expressing any decided opinion, except that of the preference of one judge to two only.

31. I have now closed all the observations which I propose to make on the plan suggested, treating it as a measure of actual improvement. If am right in the apprehensions I entertain with respect to the constitution and efficiency of the proposed courts of original jurisdiction, I confess I cannot but fear that the general effect of the change would be that of retrogression, even if these apprehensions are exaggerated, still I can see nothing of advance.

32. On the other hand, I do not see, except on the ground of those apprehensions, any reason to suppose that the proposed system would not, with the modification I have suggested as to the provisions for appeal, secure a very sufficient administration.

administration of justice. If the original court proved really a bad one, no appeal would remedy the evil at all completely; if it were merely less good than might be desired, the remedy might be sufficient, and the general system very tolerable in its operation; if this were considered to be its nature, the question of economy would very fairly come into the account.

33. I fear, however, that the amount of saving to be expected from the proposed change, is overrated. Considerable reductions in the salary of the lay judges are said to be intended, and a reduction of 18,000 rupees in the expenses of the court to be thus rendered possible even in the present system. It is said, also, in paragraph 455, to be possible to save a sum of 27,450 rupees at some future time, without the abolition of the court. The particulars of these reductions are not stated, and I have no means of judging of their feasibility or eligibility, but if they can be made without rendering the court inefficient, they ought of course by degrees to be so. If made, they reduce the real saving which is now estimated at 93,620 rupees to the sum of 66,170 rupees, a considerable and important sum, though hardly large enough to form a very material article of charge on the general revenues of India, which it is the object to protect, but even this saving must, I think, be materially reduced. I cannot enter into detail on this subject, though I much doubt whether the actual expenditure of the new court would not be greater than the estimate made of it, unless efficiency were completely sacrificed to economy. In particular, I very much question whether the services of competent clerks, considering the variety and extent of the duties imposed on them, that they are to be interpreters, translators, and accountants, as well as to perform the ordinary duties of clerks, could be secured for the salaries assigned them; but as I can assign no numerical amount to any increase which may become necessary on this score, I will not include it in my observations.

34. But at all events, if I am right in thinking two circuits necessary, the expense of a second circuit will have to be added to the expense of the proposed new court, and deducted from the amount of saving, which will therefore, according to the estimate of the 453d paragraph, be reduced by 10,000 rupees.

35. It will also be reduced by a material diminution of the expense attributed to the existing court. It is true, as the Governor-general observes in a note on the 429th paragraph, that the circuit expenses of the court have been underrated; they have been so even more than appears there, for I went two circuits in the "Clive," with the exception of the voyage from Malacca to Penang on the second of them, which was performed in another vessel, the "Clive" being dispatched on a different service, this more than counterbalances a circumstance which is not worth mentioning, except inasmuch as it furnishes some evidence of the bias imputable to all information received on these subjects, namely, that the vessels taken up for the conveyance of the recorder, were always used during his stay at the places he visited, in the transaction of other government business, the transport of troops, the removal of commissariat stores, &c. &c., but that the whole amount of the hire of the vessel has been, I believe, uniformly charged to the debt of the court, without any allowance for the expenses thus incidentally avoided, a smaller instance of the same kind may be found in the charging against the court the whole rent of what is called the court house at Singapore, though it contained also a very large portion of the government offices.

36. These circumstances, however, are immaterial to the present question. The latter charge is not included among those which the Governor-general attributes peculiarly to the existence of the recorder's court. The former is one which for the future, and we are considering prospective savings only, ought to be altogether omitted. The Governor-general, in a note to the 453d paragraph, reduces the estimate formed by Mr. Bonham of the cost of the proposed court, by disallowing anything for the expense of conveyance in the Straits, because there is a steamer stationed there. The same expense must be disallowed, for the same reason, in any prospective estimate of the charges of continuing the present system; and the consequence is, that the sum of 11,702 rupees, the sum charged for circuit expenses on the accounts as they are now framed, omitting the items for batta and contingencies, which would remain unaffected, and which are not reduced by the circumstance that some of the voyages were performed on board the Clive, must be deducted from the estimated expenses of the court as it exists, and consequently from the anticipated saving. This saving, therefore, would be reduced by these two sums of 10,000 and 11,702 rupees, and would finally amount only to 44,468. The difference between this sum and that stated in the Governor-

general's Minute, may not very materially affect the question; but if the statement relied on is, as it seems to me, erroneous to this extent, it is at least desirable to correct it.

37. There might appear to be another ground of reducing the estimated saving, for if the present system of procedure is expensive, any improvement which reduced that expenditure, would reduce the receipts of the courts, and therefore apparently increase its expenses. I have already, however, explained the grounds on which I am of opinion, that no material diminution of expense could be expected, except by the abolition of the per-centages which I have explained. Nor is it in any case very material, as the Governor-general has made no allowance for these fees in his estimates, and has, I think, correctly omitted them both for the reason stated in the 434th paragraph, and also because, even if they were considered at all to diminish the pressure on the government, they still form part of the cost of the court, although when separately treated, they throw part of that cost upon the suitors. They do not, therefore, affect the question, how great is the total deficiency of Straits revenue, though they would alter the proportion of that deficiency attributable to the court; nor do they vary the disproportion said to exist between the cost of the court, and the pecuniary importance of the business dispatched by it.

38. This is undoubtedly great, as it always must be where a small community has institutions, not insufficient for a large one. I have already stated the reasons which in this case make such establishments desirable, unless the price paid for them is too large for the benefit. Nothing that I am about to say will probably very materially vary the elements for the determination of that question; but at present these statements of facts would in some respects mislead, and it is therefore desirable to correct them. I refer to the statement made of the whole amount of property litigated at the three settlements, which is said to have been no more than 2,93,355 rupees yearly, when proper allowances are made for the effects of the closure of the court. This result is attained by assuming that the whole of the business, which would have occurred during years of the closure, remained for dispatch to the two following years.

39. Nothing can be more unlike the real state of the case when the court was closed, it was the current opinion, an opinion I believe arising very much from the expectations professed by officers of the government, that it would never be reopened. It was, I suppose, imagined that, at some period or other, some provisions would be made for some administration of justice; but their nature, and the time when they might be expected, were all uncertain. The only thing that the officers of government seemed sure of on that, and on every subsequent occasion of an expected vacancy, was that no other recorders would ever be sent out. And this, according to the opinion entertained by the same functionaries of the effect of the change made in the constitution of the Straits government, involved an absolute cesser, or intermission of justice, till some entirely new provisions were made for its administration. The consequence was (a consequence natural everywhere, but especially where, from the continual fluctuations of the population, delay of justice most peculiarly corresponded to its denial), that everything was settled by arbitration or compromise, and compromise often on the most inadequate terms, because anything was preferable to nothing; and the practical result was, that when I arrived in the Straits in February 1833, I found no heavy arrear of business awaiting me, as I had expected; a very few causes indeed there were, but not I believe enough to make the amount decided on in my first year materially, if at all, exceed the average of those which followed it. It is indeed true that the court had been for several months reopened, but Mr. Ibbetson, who had dispatched a great deal of criminal business, had as far as he could, postponed all civil business for my arrival, yet the result was such as I have described.

40. The practice which I have mentioned, of disposing of many cases by concession and arrangement between the parties, moderated, if I may use the term, by the judge, is also to be borne in mind on this subject. These cases occupied a large portion of the attention of the judge; but would not, from the manner in which they were settled, be included in any return of regular business: this would not very materially affect the numerical results of any such return; for of course these cases were generally of small amount, but they are by no means to be left out of view in considering the real utility and efficacy of the court.

41. There is another reason also why this mere statement of the amount of property adjudicated on, conveys an inadequate notion of the functions of the court;

I apprehend

I apprehend that it does not include the value of property in respect of which administration or probate is granted. This amount ought not to be reckoned equally with that of property adversely-litigated; but still it forms a very material element in the statement of the services rendered by the court, and it will become of yet more importance, if any measure of the nature of that to which I took the liberty of calling attention in my last letter should be adopted; but it is of still more consequence to observe, that any mere pecuniary statement necessarily altogether omits the criminal proceedings of the court; under the circumstances of the Straits, perhaps its most important and laborious functions. The calendars of the Straits are very fluctuating, though more, perhaps, from the uncertainty of the detection of crime than from any very great variation in the amount of crime committed; but they are sometimes very heavy, especially with regard to crimes against the person. I remember having held two successive sessions of oyer and terminer at Penang, with none but trivial offences in the calendar, and on the second occasion with only one of these, and then, after an interval of only three months, I found six murders standing for trial, and, I think, five other cases where a coroner's jury had found inquisitions of wilful murder, but no party had been apprehended. This is the heaviest list of offences I remember; but even on the two former occasions there were several similar inquisitions, though the cases for trial were as trifling as I have mentioned.

42. Many of these latter observations may be of little importance with respect to the chief practical question, as to the alteration of the judicature; but I thought I should best fulfil the purpose for which the Governor-general's Minute was communicated to me, if I supplied everything which occurred to me as necessary to a complete understanding of the existing system. I have already expressed my regret that the manner in which one set of facts only have been hitherto represented, made it unavoidable for me to do little but detail the opposite.

43. I am not aware that I need further prolong this letter, except by a few observations on the 421st and 428th paragraphs of the Minute, as the provisions recommended in the former of these are generally based on suggestions of my own, I need not notice them, except where something of explanation appears necessary, as the provisions would become important if the court is not entirely remodelled in the manner suggested.

44. The first passage which calls for any observation is the second recommendation of the 421st paragraph. There can be no doubt of the expediency of getting rid of the provisions for summoning the recorder, &c., in the 33d page of the charter; and it would, I think, be very expedient to provide more clearly and distinctly for the discharge of judicial duties by the lay judges at the settlements, where the recorder is not at the time present. I am myself, however, satisfied of the legality of such proceedings, which I consider to be founded entirely on the provision in the 13th page of the charter. When that provision was first introduced in the charter for Prince of Wales' Island only, it was probably intended merely to meet cases of occasional exigency; as for instance, when the recorder was disabled by illness, yet there was neither his absence, nor the vacancy of his office to introduce the other provisions of the charter. When the same charter, with very few modifications, though many might have been beneficially introduced to suit the altered circumstances of the settlements, was granted to Prince of Wales' Island, Singapore, and Malacca, this provision gained a wider operation, and enabled the government, which had formerly only had the opportunity of removing occasional difficulties, to remedy a permanent inconvenience. I accordingly found the court in operation at all the settlements, and felt that it was not exceeding its power, except indeed that the necessary preliminary of a regular authority by the Governor so to act, had been omitted. This, however, was supplied for the future, and as far as ratification could supply the want of previous authority, for the past also, and no one ever raised the question whether that ratification would be available. The only difficulty that I have heard suggested on this subject was, that it seemed contrary to the notion of a single court that it should be holding concurrent sittings in different places at the same time, and that on this ground an Act of Parliament had been required in England, to enable the quarter-sessions to hear appeals and criminal cases at the same time, in different rooms. The argument is not without force, and it might be well in any future modification of the charter to defeat it, by a more express grant of the necessary, or at least most convenient authority; but I thought the provisions of the 13th page too decidedly contemplated the occurrence of such proceedings to

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make me hesitate about upholding them, even if I might have felt that there was doubt enough to prevent me from recommending such a course, if hitherto-unpractised. To procure its abandonment on any ground of illegality, would have been to declare void all the proceedings had under it; and this of course I could not do, without being satisfied that they were so, which was not my opinion.

45. But while the provisions of the 13th page acquired additional efficacy by the extension of the functions of the court, those of the 33d page became completely inapplicable, and liable to produce serious inconvenience. The provisions for summoning the recorder admitted of being evaded by the practice which I advised, that the lay judges should make no orders, and do no acts whatever, except in court. But there might have been great difficulty on cases of habeas corpus, had any occurred, because the power given to the Governor in the 13th page, could not enable him to dispense with an express provision of the charter. The truth is, that the section had been merely copied from the old into the new charter, without any consideration how it would apply; and perhaps the same is the case with the provision of the 55th page. This however might sometimes be convenient; a court might be convened by the Governor, or resident councillor, in expectation of the recorder's arrival; juries summoned and witnesses subpoenaed, even though the judge convening the court had not, for want of the authorization required in the 13th page, power to sit in it for any other purpose, but to adjourn it; and it might occasionally be convenient for the dispatch of business to do so. But the real power of the lay judges to transact business in the absence of the recorder, rests, I apprehend, entirely on the provisions of page 13, and is not affected by the other passages referred to. The whole charter is in many respects so ill-devised an instrument, as applied to the present jurisdiction of the court, that difficulties must always arise in considering it; but I apprehend the construction I have stated, to express the true constitution of the court.

46. The next suggestion (the third of the 421st para.) proceeds, I think, on a misconception of the nature of the difficulty I anticipated. I have never considered the retention of the mere names of government and resident councillor of any importance; on the contrary, in almost the first case I decided as recorder, I held that the closure of the court on account of the discontinuance of those titles was illegal, and that as long as there continued to be one general head of the three settlements, and a principal local officer at each, those gentlemen were the lay judges of the court, by whatever names of office they might be described. In determining thus, I apprehend that I only expressed the same opinion as that entertained by the Court of Directors, acting, doubtless, under legal advice, who, when they directed the resumption of the former titles of office for the purposes of the court, did it expressly for the mere removal of doubts, and with an intimation that the court ought not to have been closed. But questions of more difficulty might arise, if by any change in the general system of administration there ceased to be officers filling situations at all of the same character as those contemplated by the charter; and I imagined it possible that any alteration made might destroy the united character of the settlements, and make each perfectly independent, and corresponding directly with Calcutta. It there had thus ceased to be any general head of the settlements, it would become difficult or impossible to carry into effect the provisions of the charter, for there would be no one holding functions analogous to those of the governor. There would, therefore, not merely be a vacancy of the office of one of the judges, but there would be a permanent and fundamental alteration in the constitution of the court; and my object in drawing attention to the subject was to point out this difficulty, and the doubt which might arise whether a change of the system of government which would involve these consequences would even be legal, unless a corresponding alteration of the charter was obtained from the proper authority. I never contemplated the taking away judicial power from the local authorities; I was only apprehensive that in a possible event either they might lose it, unless care was taken to preserve it to them, or also a change, considered desirable in itself, might fail of its effect, because it would involve consequences which could not be allowed. No such change, however, has been made, or appears to be contemplated, and the suggestions made with respect to it, therefore, lose their importance, even if the more general and sweeping alterations advised should not be adopted.

47. The fourth suggestion of the 421st paragraph, the propriety of removing the exemption of the judges of the court from indictments for misdemeanors, is

one which occurred to me in looking through the charter for the last time, before closing my letter to Mr. Murchison. I threw it out for consideration without intending particularly to recommend it, though I can see no good reason against its adoption. I have reason, however, to know that the recommendation has given great displeasure to some of the lay judges of the court, and it may perhaps be a question whether the change is of sufficient importance to make it desirable to enforce it where these feelings exist. There is a similar exemption here, by statute, of the members of the government, and as in the Straits the members of the government were the judges of the court, this will probably explain the provision, and might render it proper, at least while there existed an independent government in those settlements.

48. The suggestion of the 428th paragraph, that a bankrupt or insolvent law is perhaps required, is one of great importance. I know no place where such a law is more wanted. The amount of property which it would preserve to creditors would, I believe, be very considerable, and the quantity of fraud which it would check very great; but it would add very materially to the amount of that kind of business which I have referred to as furnishing the principal reason for continuing a professional judge in the Straits, business arising out of commercial engagements contracted with parties at a distance. These engagements, indeed, now exist, and it may seem to make little difference whether they are the subject of inquiry by the court in its ordinary jurisdiction, or under special powers given to it upon cases of insolvency. But this is not the case. In very many instances where the affairs of a party become embarrassed, the creditors on the spot have so much greater facility of enforcing their claims, that they sweep away everything; and by the time that the creditor at a distance becomes aware of the necessity of vindicating his rights, he becomes aware also that he could gain no practical advantage by doing so, when this was reserved to him in the shape of a dividend rateably with other creditors, his claim would be advanced, as it is, it sleeps.

49. I have now finished the observations I feel it necessary to make, for where I have already expressed my opinion in the letter referred to, I do not feel it necessary to restate it, except in cases where it requires to be in any degree explained or qualified. But I may perhaps be allowed to mention, with reference to 422d paragraph of the Governor-general's Minute, the circumstances of two of the cases to which I referred, as furnishing some reason for my thinking that some of the reductions made did really offend against the principles which his Lordship recognises as fully as myself, and did not fall within the exception which he makes as to places whose emoluments have long been notoriously extravagant and unsuitable, one of them was a reduction from 64 to 60 rupees a month, a change so small, that the only substantial effect would be the introduction of that feeling of insecurity which we agree in deprecating. The other, to which I most particularly referred in my letter to Mr. Murchison, was not a slight reduction as far as the individual was concerned. I there stated, it as the reduction of more than half a salary, after 25 years' service, I believe the reduction was to 20 rupees from 52. Now both these officers were interpreters, both therefore, even on their original salaries, receiving less than the amount assigned to interpreters by the Governor-general in his scheme of expenditure for the new judicial establishments, neither therefore fall within the exception of persons receiving extravagant emoluments. I mention these as the extreme cases of severe and of trivial reductions. Many other of the reductions made might fall between them, but of these I have less distinct recollection; nor should I in any case feel it necessary to detail them, as my principal object in now adverting to the subject is merely to show the real nature of those cases where my observations or interference had most peculiarly that character of advocacy of particular interests, which may, from the circumstances I have already referred to, perhaps be attributed to the present letter.

50. I have now only, in conclusion, to request you to lay the above observations before the Governor-general in Council. In combination with my letter of the 17th July, they furnish all the information and suggestions I can offer on the very important subjects of his Lordship's Minute.

I have, &c.

Allipore, 16 Sept. 1837.

(signed) B. H. Malkin.

No 2.
Abolishing the
Recorder's Court
in the Straits.

Sir B Malkin's
letters on the Re-
corder's Court in
the Straits.

MINUTE by the Honourable *H. Shakespear*, dated 27th September 1837.

THE passing of the late Act on the succession to landed property in the Straits has disposed of one of the most important points discussed in Sir Benjamin Malkin's letter of the 17th July. The reference to Mr. Commissioner Young will probably elicit some useful information as to the expediency of constituting courts of petty or quarter sessions, the appointment of local accountants-general, and the sheriffs and other officers of the court.

In his second letter, of the 16th September, Sir Benjamin Malkin has entered more fully into the system of administration of justice in the Recorder's Court. The process of arbitration and adjustment, described in the 11th paragraph, is worthy of all commendation, and places the procedure of the court under Sir Benjamin Malkin's control in a very favourable light; yet in its nature it would seem to depend very much on the personal character and disposition of the judge; indeed, Sir Benjamin seems to anticipate that his successor might complain of his not restricting the practitioners to a more technical and regular conduct of business. The argument, therefore, as far as it goes, is in favour of a reform of the court, by relaxing from the strict technicalities and requirements of English law.

Sir Benjamin, however, strongly contends, and apparently with justice, that the court needs not to be remodelled, on the ground of expense to the suitor, or on the score of complication or delay; but he is less successful, I think, in establishing the propriety of keeping up so costly a machinery for the distribution of justice in the settlements; while it seems quite clear that, if a judge of the Supreme Court from Calcutta must proceed twice in the year to hold sessions in the Straits, little or nothing will be gained in the way of economy by substituting such an arrangement in the room of the recorder's office.

I have read these remarks with great attention and interest; but the grounds assigned for keeping up the Recorder's Court are not sufficiently strong to induce me to alter the opinion I formerly expressed as to the inexpediency, and justice of incurring the present inordinate expense for the administration of justice to a population not exceeding one-sixth of that of one of our ordinary zillah jurisdictions.

Nor do the difficulties of allowing an appeal on the record to the Supreme Court at Calcutta from the local courts in all civil cases of magnitude, similar to the appeal from the Supreme Court itself to the Privy Council, present themselves to my mind as at all insuperable; indeed, I can see no more simple arrangement, none more consonant to existing institutions. While a reference for confirmation of sentence, either to that court or to the government, as in cases of court-martial, might be made in criminal cases, in which the sentence exceeded 14 years' imprisonment, all other cases, beyond the competency of the magistrate to decide, to be disposed of by a quarter sessions and a jury.

Under any circumstances, the institutions of these settlements must be imperfect; but the more I reflect on the subject, the more I feel persuaded that all the essential objects of justice might be obtained by such an arrangement as I have suggested.

(signed) *H. Shakespear.*

MINUTE by the Governor-General, dated 16th October 1837

Sir B Malkin's
note on the admi-
nistration of justice
in the Straits

I AGREE with Mr. Shakespear in thinking that the valuable paper communicated to us by Sir Benjamin Malkin, whilst it points out many merits which attended the administration of justice in the Straits during his tenure of the recordership, and perhaps remarks justly upon some inaccuracies in my former Minute, by no means establishes a case against the absolute necessity of reforming the costly and cumbrous machinery of the present judicial establishments in those settlements.

Many of our arguments upon this subject would, however, be shaken, if it were positively shown that two circuits in the year are absolutely necessary, for nothing would be gained in economy by sending a judge from Calcutta for this purpose;

bw

but an English law court is, even in the opinion of Sir Benjamin Malkin, but little wanted in the Straits, except in a few cases of international right and of mercantile law, and occasionally of landed property in Penang, and surely these rare cases cannot absolutely require two annual circuits, and might, indeed, be almost entirely provided for by local tribunals, with a power of appeal, on points of law, to the courts of Calcutta. The same appeal, or reference for confirmation, might exist in criminal cases of magnitude; and the frequent discussion of the subject, and the many, and I think greater difficulties which seem to attend every other plan, have rather led me, upon reflection, to prefer, even to the annual circuit of a judge from Calcutta or Madras, the best magistracy and the best courts, which, at a moderate expense, can locally administer justice, with regulations for appeal or reference, as above described.

The other and more comprehensive plan, which is ably discussed by Sir Benjamin Malkin, of a court of four judges at Calcutta, and of courts of one judge only at each of the subordinate presidencies, with, I presume, a right of appeal to the former, has much to recommend it, and is well worthy of the careful attention of the home authorities. It would certainly give facilities to the proposal of an annual circuit to the settlements; but the scheme goes far beyond one which has primary reference to the Straits, it is a scheme for all India; it is connected with the much mooted and not very popular question of a single judgeship. Perhaps as a plan for strengthening the Calcutta Bench it hardly goes far enough, for we must look, at some period, to see one combined court of appeal, consisting of King's and Company's judges. But the time for the consideration of an organic change of this kind is not yet arrived.

I need scarcely add that Sir Benjamin Malkin's paper should be submitted to the Honourable Court with the other documents on this subject.

(signed) *Auckland*

(No. 5)

READ the following extracts from the proceedings of Government in the General Department

Legis. Cons
22 January 1838
No 5

EXTRACT, dated 8th June 1836.

No 60. Forwarding for consideration papers connected with the administration of justice by the Recorder's Court in the Straits settlements, and the attendant expenses.

EXTRACT, dated 18th October 1837

No. 158. Forwarding letter from the late Sir Benjamin Malkin, Knight, and Minutes by the Governor-general and Mr. Shakespear, on the subject of the Recorder's Court in the settlements.

Resolution.—A separate letter having been this day addressed to the Honourable Court of Directors, requesting authority, under sec. 46 of the Charter Act, to abolish the Recorder's Court as soon as efficient provision can be made for the more economical administration of justice in the settlements of Prince of Wales' Island, Singapore, and Malacca,

Ordered, that the original papers which accompanied the foregoing extracts be now returned to the General Department.

Fort William,
22 January 1838.

(signed) *R. W. Mangles,*
Officiating Secretary to Government of India.

No. 2.
Abolishing the
Recorder's Court
in the Straits.

(No. 15.)

RESOLUTION, dated 24th June 1839.

Legis. Cons
24 June 1839.
No 59

READ despatch from the Honourable the Court of Directors, dated the 19th February 1839, No. 2.

Ordered, that a reference be made to the General Department for copies of all papers recorded in that department relating to the question of abolishing the Recorder's Court of Prince of Wales' Island, Singapore, and Malacca, in order to their being referred to the Indian Law Commissioners, pursuant to the orders of the Honourable Court contained in their despatch above cited.

(No. 153)

EXTRACT from the Proceedings of the Honourable the President of the Council of India in Council, in the General Department, under date the 28th August 1839.

Legis Cons
16 Sept 1839
No. 27

READ an extract (No. 15) from the proceedings of the Honourable the President of the Council of India in Council, in the Legislative Department, under date the 24th June last, requiring copies of all papers recorded in this department relative to the question of abolishing the Recorder's Court of Prince of Wales' Island, Singapore, and Malacca.

Ordered, that the following papers on the subject of the Recorder's Court in the Eastern settlements be transmitted in original to the Legislative Department, in reply to the extract from that department above referred to:—

Public General Letter (No. 66 of 1831) from the Honourable the Court of Directors, dated the 27th of July, relative to the Charter for the Administration of Justice at Prince of Wales' Island, Singapore, and Malacca, and the Powers of the Resident and Deputy Resident.

Letter from the Secretary to the Governor-general, dated the 21st December 1831.

Letter to the Advocate-general, dated the 10th January 1832.

Letter from Advocate-general, dated the 9th February 1832.

Letter to the Resident at Singapore, dated the 14th February 1832.

Public General Letter (No. 61 of 1832), dated the 8th August, conveying Instructions respecting the Recorder's Court Expenses.

Letter to the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 15th January 1833.

Letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated 23d July 1834.—General Consultation, 8th September 1834 (Nos. 7 and 8).

Letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated 21st October 1834.—General Consultation, 22d December 1834 (Nos. 18 to 20).

Letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 22d December 1834, with six Enclosures, being statements exhibiting the receipts and disbursements attendant on his Majesty's Court of Judicature in the Straits, during the years 1832-33 and 1833-34.—General Consultation, 24th May 1837 (Nos. 100 to 106).

Letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated 4th February 1835.—General Consultation, 25th March 1835 (No. 5).

Letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 28th July 1835, with two Enclosures, being original papers addressed to him by Sir Benjamin Malkin, on the close of his official connexion with the Straits Government, which he conceives likely to prove useful to the legislative authorities in the preparation of new Regulations, and in framing a new Charter of Justice for the Settlements.—General Consultation, 24th May 1837 (Nos. 108 to 110).

Letter from the Secretary to the Government of Bengal to the Secretary to the Government of India, dated the 2d September 1835, submitting the above-mentioned

mentioned papers for the consideration of the Legislative Authorities.—General Consultation, 24th May 1837 (No. 107).

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 14th December 1835.—General Proceedings, 10th February 1836 (Nos 3 to 5).

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 5th November 1836.—General Proceedings, 25th October 1837 (Nos. 6 to 8).

Note by Governor of Prince of Wales' Island, Singapore, and Malacca: Land Tenures, Eastern Settlements, and Recorder's Court.—General Consultation, 24th May 1837 (No 78).

Minute by the Right honourable the Governor-general, and two Enclosures, with other papers connected therewith, on the Recorder's Court, &c, Eastern Settlements.—General Consultation, 24th May 1837 (Nos. 111 to 143).

Letter to the Honourable Sir B. Malkin, transmitting copies of papers on the Recorder's Court.—General Consultation, 9th August 1837 (Nos. 15 to 18).

Resolution: Recorder's Court, Eastern Settlements.—General Consultation, 18th October 1837 (No. 1).

Letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated 4th October 1837.—General Proceedings, 8th November 1837 (Nos 3 and 4).

Letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, Powers of Admiralty Jurisdiction in the Court of Judicature in the Straits.—General Consultation, 6th December 1837 (Nos. 11 and 12).

Letter from the Honourable Sir W. Norris, Recorder of Prince of Wales' Island, Singapore, and Malacca, dated 12th January 1838.—General Proceedings, 14th March 1838 (Nos. 3 to 5).

Letter from the Honourable Sir B. Malkin, and Minutes by the Honourable H. Shakespear, Esq., and the Right honourable the Governor-general, on the Recorder's Court, Eastern Settlements.—General Consultation, 28th February 1838 (Nos. 2 to 5).

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 27th January 1838.—General Proceedings, 25th April 1838 (Nos. 3 to 5).

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 13th September 1838.—General Consultation, 24th October 1838 (Nos 18 to 20).

Ordered, that the foregoing papers be returned to this department when no longer required.

(True extract.)

(signed) H. T. Prinsep,
Secretary to the Government of India.

(No. 380.)

From J. P. Grant, Esq. Officiating Secretary to the Government of India, to J. C. C. Sutherland, Esq. Secretary to the Indian Law Commission.

Legis Cons
16 Sept. 1839.
No 28.

Sir,

I AM directed to request you will lay before the Indian Law Commissioners for their consideration the accompanying papers, as per list enclosed, relative to a proposal for the abolition of the Recorder's Court of Prince of Wales' Island, Singapore, and Malacca.

Legislative Dept.

2. You will perceive that the Honourable the Court of Directors have desired that this question should be immediately referred to the Law Commission.

3. You are requested to return the original papers, when no longer required.

I am, &c.

(signed) J. P. Grant,
Officiating Secretary to the Government
of India.

Council Chamber,
16 Sept. 1839.

No 2.
Abolishing the
Recorder's Court
in the Straits.

LIST of PAPERS relative to the Abolition of the Recorder's Court of the *Prince of Wales' Island, Singapore, and Malacca.*

Extract from a Despatch from the Honourable the Court of Directors, dated the 19th February last (paras. 2 & 3), with its Enclosures.

Public General Letter (No. 66 of 1831) from the Court of Directors, dated 27th July.

Letter from Secretary to the Governor-general, dated 21st December 1831.

Letter to the Advocate-general - - - - - 10th January 1832.

Letter from - - ditto - - - - - 9th February 1832.

Letter to the Resident at Singapore - - - - - 14th February 1832.

Public General Letter (No. 61 of 1832) from the Court of Directors, dated 8th August.

Letter to the Governor of Prince of Wales' Island, Singapore, and Malacca, dated 15th January 1833.

Letter from Acting Governor of ditto, dated 23d July 1834.

Letter to - - - ditto - - - - - 8th Sept. 1834.

Letter from - - - ditto - - - - - 21st Oct. 1834, with 1 Enclosure.

Letter to - - - ditto - - - - - 22d Dec. 1834.

Letter from - - - ditto - - - - - 22d Dec. 1834, with 6 Enclosures.

Letter from - - - ditto - - - - - 4th February 1835.

Letter from Governor of ditto - - - - - 28th July 1835, with 2 Enclosures.

Letter from Secretary to the Government of Bengal to Secretary to the Government of India, dated 2d September 1835.

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 14th December 1835, with one Enclosure.

Letter to ditto, dated 10th February 1836.

Letter from ditto, dated 5th November 1836, with one Enclosure.

Letter to Commissioner for the Eastern Settlements, dated 25th October 1837.

Note by Governor of Prince of Wales' Island, Singapore, and Malacca, not dated.

Minute by the Right honourable the Governor-general, dated 9th February 1837, with several Enclosures.

Minute by the Honourable Mr. Ross, dated 22d March 1837.

Minute by the Honourable Mr. Shakespear, dated 28th March 1837.

Minute by the Honourable Mr. Ross, dated 6th May 1837.

Draft of Act.

Resolution, dated 24th May 1837.

Letter to Commissioner for the Eastern Settlements, dated 24th May 1837.

Letter to Governor of Prince of Wales' Island, Singapore, and Malacca, dated 24th May 1837.

Letter to the Honourable the Recorder of ditto, dated 24th May 1837.

Letter to the Honourable Sir B. Malkin, dated 5th July 1837.

Letter from ditto, dated 17th July 1837, with one Enclosure.

Letter to Commissioner for the Eastern Settlements, dated 9th August 1837.

Resolution, dated 18th October 1837.

Letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated 4th October 1837.

Letter to ditto, dated 8th November 1837.

Letter from ditto, dated 1st November 1837.

Letter from the Honourable the Recorder of Prince of Wales' Island, Singapore, and Malacca, dated 12th January 1838, with one Enclosure.

Letter to ditto, dated 14th March 1838.

Letter from the Honourable Sir B. Malkin, dated 16th September 1837.

Minute by the Honourable H. Shakespear, Esq. dated 27th September 1837.

Minute by the Right honourable the Governor-general, dated 16th October 1837.

Extract, Legislative Department, dated 22d January 1838.

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 27th January 1838, with one Enclosure.

Letter to ditto, dated 25th April 1838.

Letter from ditto, dated 13th September 1838, with one Enclosure.

Letter to ditto, dated 24th October 1838.

Resolution, Legislative Department, dated 22d January 1838.

(No. 47.)

EXTRACT from the Proceedings of the Right Honourable the Governor-General of India in Council, in the General Department, under date the 18th March 1840.

Legis. Cons.
13 April 1840
No. 16

READ again the following papers on the subject of the collection of rents in the Straits settlements .

Letter from Mr. Commissioner Young, dated 1st Nov. 1837, with Enclosures.

Ditto - - - ditto - - - ditto - - 24th July 1838.

Ditto - . - ditto - - - ditto - - 2d Oct 1838, with Enclosures.

Two extracts from the Legislative Department (Nos. 19 and 21), dated 21st May and 19th July 1838, with a Memorandum by Mr. Deputy Secretary J. P. Grant thereon.

Read letter from Secretary to Government of Bengal, General Department, dated 30th January 1839, with enclosures.

Ditto from Officiating ditto, dated 4th instant, No. 292 (A.), with ditto.

The papers above recorded relate to the framing of Regulations for the future management of the land revenue of the Eastern settlements, a duty which, by Sect. 2 of Act XVI. of 1839, has been thrown upon the government of Bengal. They have been referred to the government of India, in order that the principles to be followed out in those Regulations may be fully considered and laid down by the authority that has passed the Act; and the reference is required because the rules now in force in the Eastern settlements were laid down by the Supreme Government in the instructions furnished to Mr. Young (paras. 14 to 31), when he was appointed Commissioner in May 1837, and those rules, and the principles on which they were framed, cannot of course be changed or deviated from in any respect without the sanction of the same authority.

2 As the result of the mission of Mr. Young, the government of India has now to decide whether the system of leases enjoined in those instructions, in conformity with the orders of the Honourable Court of Directors, and maintained in the Act recently passed, is that best calculated to promote the ends of the government and the prosperity of the settlements, and is to be made the basis of all future proceedings in regard to the lands of the Eastern settlements, or whether deviations from the leading principle of that system are expedient, and if so deemed by the Governor-general in Council, whether its authority is sufficient to give effect to the changes determined upon, as a reference to the Honourable Court is necessary to obtain the previous sanction of the authority with whom the system of limited leases originated.

3. The letter of the Governor of the Straits settlements, dated 25th September last, submits the following points as requiring to be definitively settled .—

First. The rate of rent to be assessed upon individuals in possession of land without legal title, to be exempted from rent of the kind referred to in Section 2 of Act XVI. 1829.

Second. The rate of rent to be demanded from future applicants for grants or leases.

Third. If the government adhere to the terms of clearing leases, explained in paras. 23, 24, 25, and 26, of the instructions to Mr. Young, as noted in the margin, is the local executive to be competent to grant leases on more advantageous terms, and to draw the advantage by fine as well as enhanced rent?

Fourth. It is strongly urged that when a rent of five rupees can be obtained for land at Singapore, the lease be made to run for 99 years.

Fifth The question is asked, Whether the rent for the renewed period of 30 years is to be fixed in the first lease, and on what terms?

Lease to be for 20 years only, renewable for 30, for so much land as may have been for five years cultivated with spices and other specified superior products.

For the first five years	- -	no rent.
For the second five years	- -	4 annas per acre
For the third five years	- -	8 annas —
For the fourth five years	- -	1 rupee —
For the fifth five years	- -	2 rupees —

(Making 25 years.)

The lease to be given upon auction bid, to the highest offer above these rates, and the rent to be payable on the whole quantity of land taken, not on the cleared land only.

Sixth. The entertainment of official surveyors, the manner of employing them, and the rate of fee to be levied, are points submitted for consideration and orders.

4. Of the above questions, the first is so far the most urgent that there is a large number of persons who are waiting in suspense for the further Orders and Regulations of the government to settle the condition of their properties. These parties may be divided into three classes,—

First. Those in possession of ancient tenures, which they have claimed to hold free or upon favoured terms, but the decision of the Commissioner has passed against them, leaving them at the mercy of government as to the terms in which they are to retain possession.

Second. Persons who have been allowed to settle and clear land upon an understanding with the government officers that they are to pay such rent as may be settled by government for persons of their class.

Third. Persons who have occupied lands unknown to the government officers, and who are discovered, upon information or otherwise, to have cleared and to be in possession of valuable spots.

5. The scheme of land assessment laid down in the instructions furnished to Mr. Young contained no provision for the cases of any of these. Unconditional ejectment would, however, be a hard measure to be dealt out to any of them; and as the government only desires rent, and not the occupation of the land for other purposes than those to which it is turned by the occupants, it is clearly its interest, as it must be its inclination and wish, not to disturb possession, provided a proper rent is accepted and paid.

6. To all of these parties, therefore, even to the unlicensed and secret squatter, terms must be offered before any process of ejectment is served, and the following may be the principle of the rules established :

7. To an ancient occupant whose claim to exemption from rent, or to favoured terms, has been negatived by the decision of adequate authority, a lease at the maximum rate of three rupees per acre for all the land occupied, with arrears from the date of decree.

8. The lease to be for 30 years, *quasi* in renewal, on the terms in which a new settler might claim after clearing under a first lease of 20 years.

9. To a settler of more recent date, under expressed or implied liability to the terms to be settled by government, the rate of rent that would have been demandable if the settlement had been originally made under a lease on the terms authorised by the government, that is, with the rate of rent now assessable under those terms. In both these cases the arrears of rent for the period of past occupation may be remitted under the condition of prompt attendance to take out a renewed lease, and the subjection of the tenure to a competition bid for assessment of the rent value may be excused, out of consideration for the permissive occupancy.

10. To unlicensed squatters, the terms to be tendered should be regulated by the full-rent value at the time of discovery; and this value need not be restricted to the rates set down in the instructions to Mr. Young, but may be assessed in such manner as the governor of the settlements may deem most fair and equitable. If refused the unlicensed occupant may be required to quit, and the lease may be granted for 20 years to any one willing to take on the best terms that can be obtained. In these cases, the Governor-general in Council would not demand from occupants any rent for years prior to that of discovery and service of the demand, in the form and manner prescribed.

11. It will be necessary, in settling the terms of all leases of the above description with occupants, that the land possessed or claimed should be measured and mapped, and the boundaries defined accurately in the leases, for the difficulty assumed to preclude survey at the time of granting a lease for first clearance cannot have existence in respect to tenures of either of the above descriptions.

12. The next point submitted by the government of the Straits settlement refers to the terms on which clearance leases are to be granted to fresh applicants and this opens the great question, whether to persevere in the system of temporary leases as the exclusive method in which to give out the land for clearance. In the instructions to Mr. W. Young, this system was specifically enjoined; and in Section 4 of the Act recently passed, the collector is prohibited from granting clearance leases on any other terms. Until, therefore, the law should be altered

there can be no discretionary power given to exceed this period in respect to leases for such purposes.

13. Mr. Bonham, however, strongly urges the expediency of granting leases for 99 years for all land at Singapore for which the maximum rent of five rupees per acre can be obtained. He points out, that under the authority given to him to dispose of land within the town of Singapore on these terms for the long period, a sum of 17,841 rupees has been realised in fines upon leases granted for 37 acres only, at an annual rent of Rs. 1,838. 14. 9. There are many valuable spots adjacent to the town that would be taken on similar terms for garden or building purposes, were he permitted to grant the extended lease, and so secure the title for a period sufficient to warrant an outlay of capital upon intended speculations.

14. There is no doubt that there is a strong feeling in the population of the Straits settlements against the system of temporary leases, even though declared renewable, the local authorities have protested against it, and Mr Young, the officer specially deputed by the government of India to investigate the condition of things, and carry out the system, if possible, has returned with a conviction of its inaptitude to the localities of those settlements, and has strongly urged the inexpediency of endeavouring to force the non-alienation principle under every possible discouragement, against authority, against experience, and against every reasonable hope of success.

15. Mr. Young has pronounced the failure of the experiment to be already apparent, in the unwillingness of speculators to take clearance leases on the limited terms proposed.

16. The dense primeval jungle of these tropical regions requires a capital for clearance that would not be repaid by the uncertain return of a short period of lease, and settlements must be gradually formed and extended, with a labour and perseverance, which an assured and perpetual property in the soil so made productive can alone repay.

17. The inclination of the government of India has always been in favour of very extended leases for the promotion of clearance and the cultivation of valuable productions; and the Governor-general in Council, if permitted by the instructions of the Honourable Court of Directors, would be well disposed not only to permit leases for 99 years of land adjacent to the town of Singapore, but, under the condition of an auction, to secure the present value of any lands applied for, to grant a lease for that period to any intending settler, adopting the terms upon which land is disposed of at the settlements of the Crown in Australia and North America, which are the result of long experience and deep consideration of the subject.

18. The Governor-general in Council having been restrained hitherto by the positive and often repeated injunction of the Honourable Court of Directors against the grant of any lease for clearance that shall extend beyond the limited period already allowed, viz., 20 years, renewable for a further period of 30, does not think he would be warranted in deviating from that system, without a further special reference for sanction. Pending this reference, therefore, the terms for settlers must be those of the paragraphs of the instructions to Mr. Young, already cited, with the modifications proposed in para. 142 of that gentleman's letter, dated 27th September 1838, so far as these can be acted upon consistently with the law recently passed. Mr. Young's suggestions were offered in the following words: "If, however, contrary to my earnest hopes and recommendations, it should be resolved to persevere in the leasing system, the difficulties of which have been fully detailed, the only suggestions in the way of amendment of the plan now in force which I can offer, are, 1st. That the leases be granted unconditionally for 50 years, leaving the lessees altogether unrestricted in regard to the nature of their cultivation, the amount of their outlay, or other circumstances connected with their undertakings. 2d. That the period of exemption from payment of the rent be limited to two years; that from the second to the fifth year the rent be at the rate of four annas per acre; that from the fifth to the tenth year the rent be at the rate of eight annas per acre; and that from the 10th to the 20th year the rate be one rupee per acre; and that from the 20th to the 50th year the rate be three rupees per acre. The certainty of obtaining a lease for the extended period of 50 years under any circumstances, would, I think, reconcile the lessee to the abridgement of the rent-free period now allowed (the great liability of which to abuse must, I think, be obvious to government), and the reduction of the fixed rent for the renewed term from the present proposed rate of five rupees to three rupees would, I conceive,

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obviate objection to the suggested modification of the intermediate rates, which I think, as modified, are by no means unreasonably high. The rate of five rupees per acre contemplated in the 269th paragraph of the Governor-general's Minute as an equitable rent to be taken for the whole term of the renewed lease, seemed to me, as advised on my first arrival in the Straits, to be not excessive, but subsequent inquiry and observation have led me to the conclusion that it is greatly too high for a general average. Captain Low, in his 'Dissertation on Penang and Province Wellesley,' page 269, estimates the rent of good rice land at four dollars per orlong; but I have met with no practical man in the Straits who does not consider this a most exaggerated estimate. Indeed Captain Low himself has informed me, that since the above statement was written rice has fallen to about half its former value, and that consequently four rupees would now express the rent per orlong of good rice land. He adds, 'I do not apprehend that government will ever be able to obtain this even as an average rent, which last I incline to think will range from two to three rupees per orlong for rice land.' I am therefore, decidedly of opinion that the highest rate of rent taken during the currency of the lease should not exceed three rupees per acre. Some cultivation, such as spices, would no doubt, if prosperous, be capable of bearing a much higher rent than three rupees per acre. But it appears to me to be indispensable that the rates to be paid throughout the entire period of the lease should be clearly defined in the outset, and, for the reasons I have stated, being most averse from the drawing of any distinctions between different sorts of cultivation, I think that the average rate cannot be taken higher than that proposed by me. On this point, and on that referred to in the 131st paragraph of this report, I take the liberty of submitting a copy of a letter addressed by me to the resident councillors at the three stations."

19. Consistently with these recommendations, the rent for future clearance leases may be adjusted as follows, in modification of the terms above cited from the government instructions to Mr. Young of May 1837; viz. rent free for two years; from the second to the fifth year, at four annas per acre; from the fifth to the tenth year, eight annas per acre; from the tenth to the twentieth year, one rupee, and the occupant on these terms to have the option of renewal for 30 years after the close of the 20 years' lease, whatever may be the purposes to which the land is appropriated, on payment of rent for the additional period at the rate of three rupees per acre.

20. With reference to the questions specifically put by Mr. Bonham, in respect to lands stated to be well adapted for gardens or for building, and for which a rent of five rupees may, he conceives, be obtained, with, perhaps, a fine, under the condition of lease for 99 years, the Governor-general in Council is clearly of opinion that the limited lease principle is not adapted and was not intended by the Honourable Court of Directors to be applied to lands required for buildings, gardens, or valuable works, and speculations of any kind. His Lordship in Council is therefore prepared to sanction the local governor's being vested with a wide discretion in the extension of the rule established for lands within the town of Singapore to any sites required and applied for with a view to such speculations and undertakings, and for which a maximum rent of five rupees may be offered. This officer may likewise be vested with a discretionary power to fix the terms of any temporary leases applied for under the general rule established for clearance tenures, at rates not less than those above referred to, so as to realise to government the profit that may be obtainable from advantages of soil and position.

21. The Governor-general in Council is convinced that the safest and most advantageous method of realising for the government the value of such advantages is, by an auction sale of the land selected, assessed with the moderate rent prescribed generally for all land, according to the system of Her Majesty's Australian colonies; but such a system being based on a more permanent alienation than is now permitted, must be suspended until the result of the proposed reference to the Honourable Court; and in the interim the attempt may be made to obtain the equivalent for such advantages in an enhanced rent for the period of the lease, as proposed by Mr. Bonham.

22. With respect to the question whether, in case of the renewal of expired leases of 20 years for the further period of 30, the rent for the extended time is to be freshly assessed, at a maximum rate, according to the value and productiveness of the land, the Governor-general is of opinion that this would not be consistent with the intention of the government in the grant of the renewal, for the renewed lease.

lease would be no boon unless upon assurance of a rate of rent that would leave to proprietors the benefit of any extra expenditure made under the expectation of so reaping its return. The rent for the further period must be settled, in the case of clearance leases taken for 20 years, under previous instructions, without the privilege of renewal specially conditioned, as now authorised, at a small advance upon the rent of the last period of the expired lease, viz. at three rupees per acre, the same rate as fixed for future leases. The Governor-general in Council understands that this point having been raised while the Commissioner was in the Straits; was so settled by Mr. Young, and notified to the parties interested.

23. The rate above specified, viz. three rupees, is thus to be regarded as the maximum rent to be demanded from those who have taken leases under the terms laid down in the instructions to Mr. Young, for 20 years, or who may take them prospectively upon the modified terms proposed by that gentlemen, and above sanctioned, for future leases. The local officers may, however, be vested with a discretion to extend leases on terms of rent less than this maximum rate, but not less than the rent of the last period of the expired lease, if, from local circumstances, there should be reason to believe that the land will not bear an increase to the maximum rate.

24. The provisions of Act XVI, for enforcing the assessment and for the levy of rent due upon tenures, are sufficiently full and specific to render it unnecessary to add any rules or instructions upon that part of the subject, but since, consequently upon the recall of Mr. Young, there is no Commissioner now in the Eastern settlements competent to decide upon the validity of claims to free or favoured tenures, the Governor-general in Council deems it indispensable to declare and appoint the governor for the time being of Singapore, Malacca, and Prince of Wales' Island, to be a Commissioner for that purpose, under the provisions of Act X. 1837, and to vest him with the powers in that Act specified, in addition to and separately from the powers and authorities attaching to and inherent in the situation of governor of the said settlements.

25. For the proper performance of the duties of the Commissioner, it will be necessary that means should be provided of executing surveys, as prescribed in the Act last cited, and for assessing the rent leviable on tenures that may be adjudged liable, or that may be discovered in unlicensed occupancy, a similar establishment will be required, besides that for the issue of new leases, it will be indispensable to procure that the locality shall be surveyed as far as may be found practicable, and the landmarks stated in the application should be examined and verified. For these duties the Governor-general in Council is prepared to sanction the entertainment of a surveyor, with a suitable establishment, at Singapore and Prince of Wales' Island, at a charge for each settlement not exceeding 300 rupees, the appointments to be made by the governor of the settlements from any competent persons that may be found at them respectively.

26. It must, however, be perfectly understood that the surveyor has in his own person no power of instituting measurements, and no inquisitorial authority in respect to titles, landmarks, or other incidents of the land tenures, he must be merely the executive officer of the Commissioner and land collector, and his functions must be confined to the measurement and mapping of localities specifically ordered, and to the marking and definition of boundaries specified under instructions issued to him for the purpose, when quantities of ground are to be measured off for separate grants.

27. The question is asked, what will be the proper fee to levy upon each survey? but it does not appear to the Governor-general in Council that any power is reserved of levying the charges of measurement upon the tenants in possession, or upon applicants for fresh grants; indeed, as the survey is for the security of government, and to answer its purposes rather than those of the tenant, it seems to be the natural and proper arrangement, that being made by a government officer, the government should bear the whole expense.

28. With respect to the preparation of forms of lease for future assignments of land to applicants, the Governor-general in Council does not consider that a perfect form, providing for everything, could be prepared at a distance from the settlements; the purposes in view will, he thinks, be best answered by preparing and causing to be printed the terms at present authorised for the grant of leases of 20 years, and by requiring the applications submitted to be in a form corresponding, with words binding the applicant as well to those conditions as to the observance of the forms and provisions of Act XVI. 1839, and engaging to abide the decision of

the Commissioner appointed under Act X. 1837, in case at any time there should be any doubt or dispute as to the nature or extent of the tenure.

29. The preparation of these forms must be left to the local authorities, subject to the approval and confirmation of the Governor of Bengal.

30. The rules for registration of tenures contained in Act XVI. 1839, are avowedly imperfect, and were passed by the government of India, under a strong representation from the late Commissioner as to the inexpediency of leaving the settlements with an entire intermission of the obligation to register transfers imposed by the laws repealed by Act X. 1837, for the purpose of continuing the former defective rules, pending the consideration of a plan for general registration, if a more perfect system could be devised.

31. The Governor-general in Council concurring entirely in the desire to establish such a system, if practicable, is disposed to view favourably the draft of Act for the purpose which has been framed by Mr. Kerr, the registrar of the Court of Judicature in the Straits. His Lordship in Council thinks that a scheme framed on the principles developed in that draft may be found susceptible of introduction, wholly or in part, and the experience and intimate acquaintance with the state of things existing, and with the frauds requiring to be provided against which that gentleman is known to possess, afford assurance of the adaptation of the scheme to the state of property and circumstances of the settlements.

32. The Governor-general in Council not looking on the existing rules for registration, as contained in the Act passed in 1839, as a complete or final measure, resolves that the Law Commission be consulted upon the subject, and that the draft of Act prepared by Mr. Kerr, together with the reports and letters of the Commissioner bearing on the same subject, be referred to the Law Commission, with a request that the subject may be considered by that body in conjunction with the reform of the judicatories of the Straits, and that the government may be advised as to the expediency of attempting the introduction of a scheme of compulsory registration based upon the principles developed in Mr. Kerr's draft, or on any other more approved principles.

Ordered, that copy of the above resolution be transmitted to the government of Bengal, in reply to the several references above recorded, and that the appointment of the governor of Singapore, Malacca, and Prince of Wales' Island for the time being to be Commissioner, under the provisions of Act X. 1837, be announced in the Gazette.

Ordered, that a copy of the above resolution be also recorded in the Legislative Department.

(True extract.)

(signed) G. A. Bushby,
Secretary to the Government of India.

(No. 61.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the General Department, under date the 8th April 1840.

Legis. Cons.
4 May 1840.
No. 21.

READ again the resolution, dated the 18th ultimo, on the subject of the land in the Straits settlements.

Ordered, that the papers referred to in the 32d paragraph of the foregoing resolution be returned to the Legislative Department, from whence the communication directed in that paragraph will be made to the Law Commission.

(True extract.)

(signed) G. A. Bushby,
Secretary to the Government of India.

(No. 267.)

From Secretary to the Government of India to *J. C. C. Sutherland, Esq.*
Secretary to the Indian Law Commission.

No. 2.
Abolishing the
Recorder's Court
in the Straits.

Legis. Cons.
4 May 1840
No. 22.

Sir,

I HAVE the honour to transmit to you, to be laid before the Law Commission, the accompanying papers per list, and to express the wish of the Right honourable the Governor-general in Council that the subject of the registry of tenures in the Straits, as suggested by Mr. Kerr, may receive the consideration of the Law Commission, in conjunction with the reform of the judicatures of those settlements, and that they will favour the government with their advice as to the expediency of attempting the introduction of a scheme of compulsory registration, based upon the principles developed in Mr. Kerr's draft, or on any other more approved principles.

Legislative Dept.

2. With the report of the Commissioners you are requested to return the original papers.

I have, &c.

Council Chamber,
29 April 1840.

(signed) *T. H. Maddock,*
Secretary to the Government of India.

(No. 17.)

From *J. C. C. Sutherland, Esq.* Secretary to the Indian Law Commission, to
F. J. Halliday, Esq. Junior Secretary to Government of India, Legislative
Department.

Legis. Cons
3 August 1840.
No. 2.

Sir,

THE Law Commission having now so far completed their report upon slavery in India as to be released from constant attention to it, think that it may be satisfactory to government to know upon what other subjects they are at present occupied. They therefore direct me to state, for the information of government, that they are preparing reports, viz,

1. Two reports arising out of the petition of the East Indians. The first, upon the substantive law to be applied in the mofussil to that class of persons and other classes, whose legal condition may be considered doubtful. The second, a report upon the judicatures, by which the causes, civil and criminal, of those classes are to be decided, involving the question of the introduction of juries, or some modification of them, into the mofussil.

2. A report upon judicature and procedure in the places subject to the jurisdiction of Her Majesty's courts. This will comprise the report (which has been already announced) upon the courts of requests, that upon the introduction of *voir dire* examinations in equity, and that upon the Recorder's Court in the Straits. These three subjects appear to us to form properly so many chapters of a report bearing the title above stated, and we propose, therefore, to treat them in that manner, although in the references which called our attention to them, they were either prescribed separately, or in combinations different from that which seems to us the most methodical and the most convenient.

3. The Law Commissioners have again had under consideration the question of abolishing the provincial courts of appeal and circuit under the presidency of Madras, with reference to the letter from Mr. Officiating Secretary Grant, dated 3d June 1839, and are about to submit a report on the subject.

(No. 224)

4. As connected with the last-mentioned subject, they have resumed the consideration of the question referred to them by Mr. Secretary Macnaghten's letter, dated the 4th July 1836, "of the powers to be confided to single judges of the sudder courts," and will submit their sentiments upon it at an early period. In the meantime they request that the Right honourable the Governor-general in Council will be pleased to communicate to them any reports that may be before government bearing upon the question with reference to the state of business in the Sudder Dewanny and Nizamut Adawlut at Calcutta or Bombay, or elsewhere.

300.

S

His

vide letter of the
Law Commission,
dated 4 July
1837, No. 41

His Lordship in Council is aware that the Law Commission had consulted the principal judicial authorities, with a view to ascertain what objections might exist to a law legalizing the re-marriage of Hindu widows. Such law, it was hoped, would tend to diminish the crime of child-murder. The inquiry has produced a discussion on the legality of such re-marriages under the Hindu law and usage in some places.

The Law Commissioners are preparing a short report, showing the result of their inquiries.

I have, &c.

(signed) *J. C. C. Sutherland,*
Secretary.

Indian Law Commission,
11 July 1840.

(No. 339.)

Legis. Cons.
3 August 1840
No. 3

From Junior Secretary to the Government of India to *J. C. C. Sutherland, Esq.*
Secretary to the Indian Law Commission.

Sir,

Legislative Dept.

I AM directed by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter (No. 17), dated the 11th ultimo, and in reply, to state that his Lordship in Council will look with interest for reports from the Commission upon the subjects now before them.

2. It is very desirable that the Commission should speedily place the government in possession of their views upon those amendments in the law of procedure, which must take a prominent part in all extensive legal reforms; and it is obvious that much of what is noticed in your first section, and the whole of the subjects of the third and fourth, are but portions of the code of procedure, and therefore belong to that class of questions which, in his Lordship's opinion, require your earliest attention.

3. Upon the understanding that the report alluded to under your second head will be furnished at no distant date, his Lordship in Council approves the combination of subjects proposed by the Commission. But I am desired to observe, that the subjects which it is intended to combine in one report, are each, in his Lordship's estimation, of sufficient urgency and importance to require separate and distinct consideration, while the time which has already elapsed since they were first proposed to the Commission, especially in the case of the Court of Requests, and the great necessity which has long been felt for the improvement and extension of that court, render it very desirable that the propositions of the Commissioners should be matured, and laid before government with as little further delay as may be possible. Should it then be found that the plan of combining these or any other portions of the code of procedure in one general report, or in one or more comprehensive chapters of a general report, is likely to occasion such delay as to prevent the receipt of the report by government before the termination of the present year (1840), his Lordship would decidedly prefer to receive reports on each subject separately; and, in that case, would suggest to the Commission the state of the Court of Requests as the first subject for their consideration.

4. Reference has been made, as recommended by the Commission, for information as to the state of business in the Sudder Dewanny and Nizamut Adawlut at the presidency, and the result of the reference will be made known to the Commission without loss of time. In the meantime, the half-yearly report, from the 1st January to the 30th June 1839, received from the presidency of Bombay is forwarded herewith.

I have, &c.

(signed) *F. J. Halliday,*
Junior Secretary to the Government of India.

Council Chamber,
3 August 1840.

(No 151.)

From Secretary to the Government of India to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

No. 2.
Abolishing the Recorder's Court in the Straits.

Legis Cons
22 Nov. 1841
No 8

Legislative Dept

Sir,

I AM directed by the Right honourable the Governor-general in Council to call attention to my letter, No. 207, of the 29th April 1840, and to request that the report on the reform of the judicatories in the Straits' settlements therein required, may be furnished at the earliest convenience of the Commissioners.

2. I am also directed to remind the Commission, that their report containing reasons for the provisions of the draft Act for establishing a court of subordinate civil jurisdiction at the presidency, promised in your letter of the 31st July last, has not been as yet received, and to request that its transmission be expedited.

I have, &c.

Council Chamber,
22 Nov. 1841

(signed) *T. H. Maddock*,
Secretary to the Government of India.

To the Right honourable the Earl of *Auckland*, G.C.B. Governor-General of India in Council

Legis Cons
22 April 1842.
No 18

1. WE have the honour to submit a report upon the question of abolishing the Recorder's Court in the Straits, which was referred to the Law Commission by the government of India, under date the 16th September 1837, in conformity to instructions from the Honourable the Court of Directors, dated 19th February 1837.

Report on the Judicial Establishment in the Straits

2. Of the voluminous papers forwarded to us for the purpose of forming an opinion upon the subject, a very large proportion is occupied with questions connected with the general administration of the Straits settlements, which, as not having reference to the judicial establishment, we do not feel ourselves called upon to discuss particularly.

3. The question of a reform of the system of judicature in the Straits, which has been especially referred to us for report, has been treated in the papers before us in connexion with that of an alteration of the law prevailing at these settlements.

Reform two-fold

4. It has been judicially decided that the law of England is the *lex loci*, to which the inhabitants of all classes are subject; that is to say, so much of it as is applicable to their various circumstances.

Law of England the *lex loci*

5. We concur with the late Sir Benjamin Malkin and the Governor-general in thinking that it ought not to be changed substantially, but modified by express enactment, in the spirit in which Sir Benjamin Malkin thought it should be administered, under a large and liberal regard to the different manners, usages, and religions of the various nations of which the population is composed

6. Without some modification it would be unsuitable to the condition and circumstances even of the English settler, and one extensive and very beneficial change on a most material point as regards them, has already been effected by the new law enacted by Act XX. of 1837, whereby all landed property in the Straits settlements is declared to be, for certain purposes, of the nature of chattels real; therein adopting the principles of Act IX. of the same year, framed, on the recommendation of the Law Commission, for relieving the parsees from the difficulties they suffered from a similar cause*. As regards the rest of the population of these settlements, considering that they are, and long have been, under English law, and looking to the character of the population, we are of opinion that the principles stated in our report upon the *lex loci* of British India may with propriety be applied to them, and that no greater modification in the law of England than would

With certain modifications

* The scope of this Act, we may observe, has been somewhat misapprehended, since it applies only to the transmission of immoveable property upon death and intestacy of the possessor or person having a beneficial interest in the same.

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would be effected by giving operation to the rules laid down in the draft Act founded upon that report need be contemplated at present.

7. We proceed to the investigation of the main subject, viz. the machinery by which the law is now administered, and to state the nature of the alterations we are inclined to recommend in the constitution of the courts; and it is gratifying to us to be able to show, that in framing these changes we have also provided for the very large reduction of 95,000 rupees per annum in the judicial expenditure of the Straits settlement.

Present system

8. The present system is that of a chartered court, partly ambulatory and partly stationary in its functions; composed of a recorder, being an English barrister of not less than five years' standing, and appointed from home under a commission from the Crown, assisted by the governor of the three settlements of Singapore, Penang, and Malacca, and the resident councillor of that one of the three settlements at which the court may for the time be sitting.

9. The court, it appears, may be held by one of them sitting alone, it being provided, however, that no court shall be held without the recorder, if resident within the settlement, unless under the express authority of the governor, or the councillor acting as such.

10. Doubts were at one time raised as to the legality of holding a court at any one of the settlements without the presence of the recorder, but it seems that they were overruled by Sir Benjamin Malkin, the recorder, as we find from his letter of the 16th September 1837, paragraphs 44 and 45.

Expense its chief
defect

11. The most weighty objection that we find urged against a court constituted on this plan is, that it is maintained at an expense quite incommensurate with the population and resources of the settlements over which it is placed.

12. It has further been urged, that the enforcement of the strict letter of the English law, which a court with an English barrister in it feels itself obliged to uphold, is entirely unsuited to the habits of the people for whose benefit it is intended.

13. This latter objection, however, is, by those who offer it, restricted to the civil branch of the court's functions, and has been successfully refuted by the observations of Sir Benjamin Malkin, with which the Governor-general fully concurred; at any rate it is an objection to the law rather than to the constitution of the court, and we shall waive its consideration in this place.

Plans for reform.

14. Various plans have been suggested by the local authorities and the government of India, for reducing the expense of the judicial establishment within limits more suited to the state of the finances. The chief feature in all is, the dispensing with the professional judge as a permanent member of the Straits courts; and the great difficulty with all has been, the means of supplying his presence in a court where causes involving points of English and international law frequently arise.

Mr Governor Fullerton's plan.

15. The first, in point of date, was framed in 1829 by Mr. Fullerton, then governor of those settlements, who proposed making the resident councillor at each settlement the judge and magistrate within it, for the trial of all civil suits above 500 rupees in amount, and all criminal cases not involving more than two years' imprisonment with hard labour, 30 stripes, or fine of 200 rupees, with power to commit all higher cases to the court of circuit and appeal; to the latter tribunal, appeals to lie in civil decisions above 2,000 rupees, and an appeal, in cases of 3,000 rupees and upwards, to the Privy Council; the assistant resident to try all suits up to 500 rupees, and to take up all magisterial cases referred to him. The governor of the settlements to perform each circuit, to hold a court of circuit and appeal for the settlement of all cases, civil and criminal, referred under the above rules. British-born subjects were to be amenable to these local courts, but with leave to appeal to the Supreme Court at Calcutta, instead of to the Governor on circuit. Parties deeming themselves aggrieved by government were to apply to the government of India, or appeal to the Supreme Court at Calcutta. The process of these courts to be very simple in all its stages; and in cases of importance, particularly in commercial cases, a jury of four or seven to be assembled.

16. Anticipating that objection might be raised to a plan which provided courts composed only of civil servants, Mr. Fullerton proposed another, whereby

five merchants should act as assessors, or as aldermen in a mayor's court, the resident being mayor, the governor and council holding sessions of oyer and terminer, with a petit jury, on informations to be drawn up from the magistrate's proceedings by the registrar, but divested, as well as the proceedings, of all technicalities.

17. The Governor-general, Lord Auckland, in the very full Minute which he recorded on this important question, suggested the following plan: Lord Auckland's plan.

(441.) "To have one paid magistrate, and an assistant magistrate, at each settlement, who shall also have charge of their revenues; both to be justices of the peace, and both to have, consequently, the power of commitment, but the assistant to be generally under the orders of the magistrate, who should have power to review the assistant's orders; to empower them both to punish for slight misdemeanors, petty thefts, &c., and to empower the magistrate to try small felonies by a jury of five, and to sentence persons thereby convicted to one year's imprisonment with hard labour; to make all the orders of the magistrate and his assistant appealable to the resident of the three settlements, who should be able to remit sentences, but not to interfere with verdicts.

(442.) "To direct the governor of Bengal to make natives, or others, justices of the peace in the interior, where necessary.

(443.) "To make the magistrate and his assistant commissioners of a court of requests, to sit one at a time, as may be convenient; and to increase largely the jurisdiction of the court of requests, which now does not go beyond debts to the amount of 32 dollars.*

(444.) "To have one resident for the three settlements, who, besides hearing appeals from the magistrate, shall be a civil and criminal judge, holding his court at each settlement alternately, with power to summon juries to try appeals from the court of requests, and to try all original civil cases, with or without a jury of five, according to the desire of the parties, giving either party a right to require a jury, and with power to try all criminal cases with a jury of five, except only in cases wherein a British-born subject shall be accused of a crime for which, if found guilty, he would be liable to suffer death, to empower the resident, as judge, to postpone or adjourn the trial of any case, civil or criminal, for the arrival of His Majesty's judge in circuit

(445.) "To empower the resident, as judge, to pass judgment in civil cases, and if not appealed from, at his discretion either to execute it or to grant a new trial, and either to postpone sentence in criminal cases for the arrival of His Majesty's judge, or to pass it according to law, and to authorise or postpone execution thereof at his discretion, excepting only in capital cases, in which judgment shall not be executed until a report of the trial shall have been submitted to His Majesty's judge on circuit, or to one of the judges of His Majesty's court in Calcutta, and the sentence approved and confirmed by him.

(446.) "To obtain the gracious pleasure of His Majesty to the proceeding of one of His Majesty's judges of the Supreme Court in Calcutta to the settlements in the Straits, once a year, or oftener if need be, for the trial, with or without a jury, of all original cases, civil or criminal, that may have been referred to him; for the trial of all appeals, civil and criminal, from the decision of the Commissioner; and for the hearing and passing orders on all petitions. To empower him to call for any proceedings of any local judicial officers, with any statements or explanations he may require, and generally to vest him with the powers of the Court of King's Bench and the Court of Chancery, together with all necessary ecclesiastical and admiralty powers within the settlements. It would apparently be necessary in order to the exercise, in the first instance, of the powers of an admiralty court always on the spot, to solicit that the resident's court be invested with admiralty jurisdiction by His Majesty, if such should be his royal pleasure."

18. Mr. Murchison, late governor of these settlements, for whose opinion (when that gentleman was in Calcutta, on his way to England) the above plan was submitted by the Governor-general, thought that the present charter of justice, in respect

Mr. Governor Murchison's opinion thereon.

* The terms of the charter are somewhat more comprehensive than these words import. They include small debts, and "all suits and causes whatsoever," against any of the inhabitants of the settlements and places subordinate, "wherein the debt, duty, or matter in dispute shall not exceed the value of 32 dollars."

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respect to the law, was well adapted to localities if due regard were had in practice to the clauses, which expressly sanction such a modification of English law as may be required by the manners and customs of our native subjects; and that the chief alteration required was, the substitution of the Malayan language for English in the pleading, the utter exclusion of advocates (at least from the courts where lay judges preside,) and a real observance of the very simple process already enjoined by the charter. In respect to the constitution of the court, he concurred in the opinion that there should be a court of appeal held by a judge entirely independent of the local government, which should be not only a court of appeal generally, but an original court in respect to all matters in which the East India Company have a direct interest. Instead, however, of having recourse to the plan suggested, which, in his opinion, was liable to much risk of failure, (alluding to the state of the Calcutta bench two years before his Minute was written,) he recommended the appointment of an English barrister, to be permanently fixed at Singapore, not to be knighted, or led to expect promotion to other benches. "In this court," he observed, "the process would still be carried on in English, an imperfection certainly, but hardly to be avoided; while the other plan was liable to the same objection, would be more expensive, and much less efficient."

Sir Benjamin Malkin's proposal.

19 A modification of the Governor-general's scheme, as regards the proposed circuit, was offered by Sir Benjamin Malkin after his removal to the Calcutta bench, and not long prior to his lamented decease. His proposal was to attach a fourth judge to the Supreme Court at Calcutta, for the purpose of performing the circuit to the Straits, and likewise of supplying vacancies in the Supreme Courts of Madras and Bombay, which he suggested should be reduced to a single judge at each of those presidencies. The effect of this would be to save to the state the entire expense of one judge of a Supreme Court, and thereby to accomplish the desired saving at the least possible detriment to the administration of justice in the Straits. This plan, as regards the constitution of the Supreme Court, is similar to that proposed by the Finance Committee which sat at Calcutta in 1829 and 1830

Governor-general's opinion thereon, and modification of former plan.

20. Upon the scheme proposed by Sir Benjamin Malkin, the Governor-general observed, that it had much to recommend it, and was well worthy of the attention of the home authorities; but that it went far beyond the purpose immediately in view, being a scheme for all India, and involving an organic change, the time for the consideration of which had not yet arrived. Upon reflection, it appeared to him that the civil judicial business of the Straits "might be almost entirely provided for by local tribunals, with a power of appeal on points of law to the courts of Calcutta." "The same appeal, or a reference for confirmation, might exist in criminal cases of magnitude." On the whole, he was led "to prefer, even to the annual circuit of a judge from Calcutta or Madras, the best magistracy and the best courts, which, at a moderate expense, could locally administer justice, with regulations for appeal or reference, as above described." His Lordship appears to have had in view an arrangement suggested in Council by Mr. Henry Shakespear, "of allowing an appeal on the record to the Supreme Court at Calcutta from the local courts in all civil cases of magnitude, similar to the appeal from the Supreme Court itself to the Privy Council, while a reference for confirmation of sentence, either to that court or to the government, as in cases of courts-martial, might be made in criminal cases in which the sentence exceeded 14 years' imprisonment; all other cases, beyond the competency of the magistrates to decide, to be disposed of by a quarter sessions and a jury."

Mr. Shakespear's plan

Law Commissioner's views.

21. There is much in each of the above plans that is deserving of mature consideration, and something in all, which we feel inclined to recommend for adoption in any scheme that may be finally resolved upon. Each has emanated from, or been modelled in unison with the opinions of persons of high authority, it will however, be scarcely necessary for us to enter very fully into our reasons for concurring in such of the views of these authorities as we have followed in our scheme; and it may suffice to state, generally, the points on which we do agree and the principal grounds of our recommendations.

Think professional judge indispensable.

22. We cannot agree with those who would deprive these settlements, remote as they are from the other English settlements in India, of the constant presence of an English professional judge; and we fully concur in the strong reasons urged by Sir Benjamin Malkin, in the following paragraphs of his letter of the 16th of September 1837, for having one permanently resident there.

(18.) "T

(18.) "The peculiar importance of having a professional judge in the Straits arises, in my judgment, out of the commercial character of the settlements there, and the resort thither of foreigners of all nations. An erroneous decision on the regularity or irregularity of the presentment of a bill of exchange, or the sufficiency of the notice of its dishonour, would compel a merchant to make payments at Singapore which he ought to be able to recover from the next party to the bill in London, but would not, because there they would require real regularity. This is a case not unlikely to arise. A Company's servant, unconnected with mercantile business, would probably draw his notions of it very much from the practice of the place where he lived. At Singapore this practice is very lax, so much so, that an attempt was once made before me to establish a 'custom' of Singapore to transact ordinary mercantile business in an irregular manner; of course I did not recognise any such custom, or treat men who had received their mercantile education in Great Britain or India as entitled to relieve themselves from the ordinary restraints of the regular conduct of business, by setting up any lax usage of so recent an introduction. Nor (though some of the passages referred to by the Governor-general, in the 407th paragraph, seem to show that judges appointed under more favourable circumstances than they would be, on the projected plan, might be ready enough to dispense with the rules of law in any case where they thought it inexpedient to apply them,) do I suppose that any non-professional judge would have allowed of such a custom claimed expressly as an exception from the ordinary rules of law, but he might very easily fancy that the practice of the place where he lived was the real 'usage and custom' of merchants all over the world, and the consequence might be such as I have already adverted to.

(19) "This is only an instance, and negotiable instruments are more likely than anything else to furnish such instances, and occasion such inconvenience. But similar difficulties might arise on a variety of other mercantile contracts and securities. The law of insurance, for example, is one of considerable intricacy; and there are agents in the Straits for several insurance companies, and no insurances probably are effected except by them. But, in these cases, the parties really interested will generally be resident at a distance, and will construe their contracts, and estimate their liabilities, according to the ordinary and legal understanding on such subjects.

(20.) "There remains another class of cases of less frequent occurrence, but in which the consequences of an erroneous decision might be yet more important. I refer to those in which international rights might come in question or national interests might be involved. A case occurred just before I left the Straits, and was adjudicated on by my successor, Sir Edward Gambier, in which the salvage of the cargo of an American ship, or rather a claim in the nature of salvage, was the matter of dispute. The circumstances were very peculiar, and it is not necessary to enter into any details of them, but it was a case full of difficulty, and one which, in the event of any erroneous decision decidedly illegal, might, not improbably, have become the subject of controversy on the part, not of any private individual only, but of the American government. The court in the Straits is now about to receive Admiralty jurisdiction—a change most desirable in itself, but which is likely to lead to the more frequent occurrence of questions involving similar considerations, and open to similar consequences."

23. Mr. W. R. Young, the Commissioner lately employed by government to make inquiries into the condition of these settlements, having been examined by us on this point (*vide* Appendix (C.)), has also expressed his opinion that, so long as English law obtains, it would not be advisable to entrust the administration of it to unprofessional judges, without some professional check, and has given a strong instance in support of his opinion.

Mr. W. R. Young's opinion on it.

24. On the above grounds, we would advocate the continuance of a professional judge as the principal member of the judicial establishment for the settlements in the Straits, as necessary for the satisfactory administration of the laws applicable to civil cases; and we think it advisable, also, with respect to the administration of the criminal law.

Law Commission propose a professional judge.

25. We are averse, at settlements where capital cases are but too rare, to allowing so long an interval between sentence and execution as would most frequently be necessary under either of the plans for dispensing with the residence of a professional judge, even in cases where there was no room to doubt the correctness of the judgment; and, with respect both to capital and other cases, we think

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But on a lower
salary.

think many circumstances may occur to interrupt the regularity of the circuit from this presidency, and thereby to impede the administration of criminal justice at these settlements.

Personal Salary :	
Present - -	40,416
Proposed - -	17,500
	<hr/>
Saving - -	22,916
	<hr/> <hr/>

26. Although, for the above reasons, we advocate the continuance of a professional judge in the Straits, we by no means think it necessary to maintain a court constituted like the Recorder's Court under the present charter; and we doubt not that a sufficiently qualified judge may be obtained for a salary less than half of what it was thought proper to

assign to one holding the rank of the recorder.

Law Commis-
sioner's plan for a
system of courts.

27. We proceed to submit a plan for a system of judicature, to be substituted for that established by the charter, which we think is calculated to work more efficiently for the ends of justice, while it will be greatly more economical, and in which we have endeavoured to uphold the important principle of judicial independence by placing at the head of the establishment a judge unconnected with the executive administration of government; although, from the necessity arising from the poverty of the settlements, we are obliged to give subordinate judicial functions to the local executive officers.

Courts of non-pro-
fessional judges

28. The employments of tribunals, superintended by non-professional judges in settlements where the English law is the *lex loci*, may appear inconsistent with the views we have expressed; but having provided a professional judge for the higher class of cases, involving points of international and commercial law, we think the sufficiency and propriety of the other part of the proposed system may be rested on the observations of Sir Benjamin Malkin, who, in the 16th and 17th paragraphs of his letter of the 16th September 1837, states, that "in much the largest proportion of the cases arising in the Straits, it is not a question of the law of England, or any other law, it is the law of all countries alike, that a man who receives goods which he has bought shall pay for their price, and that the seller, who has received the price, shall deliver the goods; that a borrower shall repay the loan; and that a person who injures another's property shall make good the damage. The bulk of the business of the court in the Straits consists in enforcing these rights; and this may be sufficiently done by any person of sound sense, and discriminating understanding." He adds, that "though the habits of a particular profession may give some degree of peculiar facility or unfitness (for both are occasionally imputed) for judging of evidence, the mere local transactions of the Straits are generally of the character above mentioned, and this, just as much with respect to Europeans as to others."

29. The land cases in Penang, which Sir Benjamin Malkin notices as involving difficulties, have probably been in some measure simplified by the provisions of Act XX. of 1837.

Population.

30. The population of these settlements generally is of a very mixed character; consisting, for the most part, of Malays, Chinese, and natives of the Archipelago, whose litigation will be commonly about matters to be governed by their own usages. This population, except at the chief town of each settlement, is thinly scattered over the face of the country, particularly in "Province Wellesley," subordinate to Penang, and in Nanning, under Malacca. The Statement (B.) appended to this Report, will show the nature and distribution of the people, as far as our information extends, and will, we hope, satisfy government, that, for such a population, very simple tribunals will suffice.

Singapore to be
the station of the
chief court.

31. Viewing Singapore as the settlement best adapted, from its commercial character, and large European population, for the Straits presidency, we propose to establish at it a court constituted, as nearly as circumstances will admit, upon the same plan as the subordinate civil court which we have recommended to be established at this presidency, to be composed of a lawyer of the English, Irish, or Scotch bar, of not less than five years' standing, the resident councillor, and his assistant, and at Penang and Malacca respectively a similar court, composed ordinarily of the resident councillor and his assistant, aided by the professional judge during the periods of his visitation on his circuit.

Circuit by profes-
sional judge.
Vide Governor-
general's Minute,
para. 453.

32. We think that this circuit should be made three times in the year to each of the subordinate settlements, Penang and Malacca; but the presence of a steam will admit of this being done without any loss of time to the public; and perhaps

without much additional charge to the State, as the vessel will be only performing the ordinary duty for which it is kept up.

Distribution of
civil business.

33. Following the plan laid down for the subordinate civil courts at the presidencies, we intend that all cases obviously involving points of English or international law should be reserved for the professional judge, and the rest distributed between the lay judges (the resident councillor and his assistant), excepting cases in which government is concerned, which we would advise to be reserved also for the professional judge, as well as all cases of 10,000 rupees and upwards, for reasons hereafter given in paragraph 43.

34. At Singapore, where the professional judge will be stationed, except during the periods of his visits to Penang and Malacca, we think that the distribution of cases should ordinarily be performed by himself, the lay judge next to him being authorised to perform it in his absence.

At Singapore.

35. At Penang and Malacca, this duty must ordinarily be performed by the superior lay judge, and it does not appear advisable to interrupt this course of proceeding during the short visits of the professional judge.

At Penang and
Malacca.

36. While at Singapore, the professional judge should take up the civil suits reserved for him, as they are instituted, and proceed with the trial of them in due course. Those reserved for him at the other settlements he should take up, and dispose of, during his visits, but the superior local judge should have authority to take the evidence of witnesses who are about to leave the jurisdiction immediately, and generally to take all steps which cannot be delayed without risk of injustice.

Professional
judge's court

37. For "Province Wellesley," on the mainland, separated as it is from the settlement of Penang by an arm of the sea, it will be necessary to make a special provision, authorising the assistant in charge to receive, and try on the spot, all such suits as are usually referred to the assistant on the island, and to remit all others to the superior lay judge, to be disposed of by him, or reserved for the professional judge.*

Local court in pro-
vince Wellesley.

38. From the decisions of the assistant a regular appeal should lie to the superior lay judge of each settlement, to be determined by himself, or reserved for the professional judge when the appeal is made upon points of law. From the decisions of the superior lay judge, in original cases, a regular appeal should lie to the professional judge; and from the decisions of the professional judge, in original cases, there should lie a regular appeal to the College of Justice at Calcutta.

Appeals.

39. Special appeals from the decisions of the professional judge in cases tried and decided originally by the superior and subordinate lay judges, and from the decisions of the superior lay judge in cases tried and decided originally by the subordinate, should lie to the college of justice, upon the grounds specified in the draft regarding special appeals, which we had the honour to submit under date the 4th December 1841.

Special appeals

40. Upon the principle advocated in our report of that date, that all special appeals, being confined to the questions therein described, should be determined only by the highest court, we propose, as above, that there shall be a special appeal to the College of Justice, at Calcutta from the decisions of the superior lay judges, as well as from the decisions of the professional judge in appeal cases: but, under the rule that appeals from the decisions of the subordinate lay judges which turn upon points of law shall be reserved for the professional judge, we apprehend that there will be few decisions passed by the superior lay judges in which there will be admissible grounds for a special appeal, and such as there are will be cases involving questions touching usage, and the practice of the courts.

41. In the draft Act referred to we provided that petitions of special appeals should be preferred directly to the College of Justice; but, considering the local circumstances of these settlements, we think that the petition of appeal might, at the option

* We gather from Captain Low's Dissertation on the Soil and Agriculture of the British Settlement of Penang, including "Province Wellesley," 1836, p. 237, that the inhabitants of the latter are frequently deterred from seeking justice by the inconvenience and risk attending a resort to the court on that island.

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option of the appellant, be presented to the court whose decision is objected to, to be forwarded by that court to the College of Justice, and that if the special appeal be admitted, the respondent might be allowed also to deliver his answer thereto to the lower court.

Special powers of
professional judge.

42. We think that the professional judge should have power to call up to his court any cases, original or appealed, which, from representations made to him, he considers to be proper subjects for adjudication by himself, as involving questions of law.

Appeals to Privy
Council.

43. With reference to the jurisdiction of Her Majesty's Privy Council, we would provide that all cases where the sum litigated amounts to 10,000 rupees and upwards, should be decided by the professional judge; that a regular appeal should lie from his decision thereon to the College of Justice, and from thence, in due course of law, to the Privy Council.

Criminal courts.

44. With respect to criminal judicature, we propose that justice shall be administered according to the existing penal law, by three courts at each settlement, of which two (one held by the resident councillor, or superior lay judge of the settlement, and the other by the assistant) shall be open continually; and the highest, under the professional judge, shall be held at intervals.

Jurisdiction of
professional judge

45. We propose that the jurisdiction of the highest court, under the professional judge, shall embrace all cases in which the crime charged is punishable by death, or imprisonment for life or for 14 years, or by transportation for any term, that the court under the superior lay judge shall take cognizance of all cases below the jurisdiction of the professional judge, in which the crime or offence may be of a nature to warrant a sentence exceeding six months' ordinary imprisonment and a fine of 200 rupees, and that the court of the assistant shall take cognizance of all cases of less magnitude. We propose that the assistant shall also be the local magistrate and superintendent of police, and that in the capacity of magistrate he shall make a preliminary investigation into cases beyond his own jurisdiction, and shall commit offenders, or hold them to bail for trial before the superior lay judge, and the professional judge respectively, according to their jurisdiction.

And local judges.

Criminal proce-
dure

46. We propose that the professional judge, in all cases not capital, and the superior lay judge in all cases, shall proceed in the manner laid down in sections 2 to 4 of the draft Act submitted to government with the report of the Law Commission, under date the 31st August 1838; to which we beg leave to refer for the reasons upon which we recommend that they shall be assisted by assessors instead of by a jury, and that the intervention of a grand jury shall be dispensed with. In the trial of capital cases we do not think it advisable at present to dispense with a jury; but if there is a difficulty in obtaining the attendance of 12 sufficient jurors, we would suggest that the number be reduced; and we would not insist upon their verdict being unanimous.

47. We further propose, that if it shall appear to the superior lay judge, after he has completed a trial and found the prisoner guilty, that the sentence he is empowered to pass is inadequate to the crime proved, or that a doubtful point of law is involved, it shall be competent to him to refer the case for the sentence of the professional judge.

Appeals in cri-
minal cases.

48. We propose that, according to the principle of the late Act, No. XXXI. of 1841, there shall be permitted one appeal from every sentence or order passed in a criminal trial by the assistant, to the superior lay judge; to be decided by himself, or reserved for the decision of the professional judge if it involve a doubtful point of law. As we intend that the trials before the superior lay judge and the professional judge respectively, shall be conducted with the aid of assessors, except in capital cases, in which the decision will rest with a jury, we do not think it necessary to allow an appeal except as proposed in the draft Act (31st August 1838, section 2) for the subordinate criminal court in Calcutta, when a conviction is challenged as wrong in point of law, or when it is contrary to the opinion of one or more of the assessors. In such cases, we think an appeal should be permitted from the superior lay judge to the professional judge, and from the professional judge to the College of Justice in Calcutta, and that the appeal court should have authority to pass orders thereon, agreeably to the provisions of section 11 of the said draft, affirming or annulling the decision, or granting

granting or refusing a new trial of the whole or any part of the case, or granting or refusing an order to the lower court to reconsider the finding and sentence. In capital cases, tried by a jury, we do not think it necessary to make any provision for an appeal, otherwise than at the discretion of the judge, according to the provisions of the existing charter: we would allow an appeal upon the principles of those provisions to the College of Justice.

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49. We further propose, that the professional judge shall have power to call for the record of any criminal trial in any subordinate court, and to pass such orders upon it as may seem fit, and that the College of Justice shall have power likewise to call for the record of any trial held by the professional judge, and to pass orders upon it, provided that in no case shall the sentence passed by the lower court be enhanced, or sentence passed on any person acquitted by the lower court.

Special powers of professional judge and of the College of Justice See Sect 6 of Act No. XXXI. of 1841.

50. We beg to refer again to the report of the Law Commission, under date the 31st August 1838, (paragraphs 18 to 25,) for the reasons which have induced us, in our scheme for the administration of criminal justice, to dispense with a tribunal constituted on the plan of an English court of quarter sessions, and to vest the jurisdiction which it has been proposed to commit to such a tribunal, in single judges, in the manner here proposed.

Reasons for abolishing quarter sessions

51. The powers we assign to the superior lay judge, it will be observed, exceed what was intended to be given to the judge of the Calcutta subordinate criminal court, but are rather less than are exercised by session judges under this presidency. We think it necessary that the judge should have the jurisdiction we recommend, because of the periodical adjournments of the court of the professional judge, which would render it inconvenient to reserve for his cognizance any cases but those which we have indicated. The power we assign to the assistant, it will be observed, is the same as is specially exercised by assistants to the magistrates in this presidency, under Clause 3, Section 4, Regulation III. 1821

Powers of the local judges.

52. We consider that the general power of supervision proposed to be given to the professional judge, and the provisions for appeal we have suggested, will be a sufficient check upon the subordinate judges, while the facilities which our plan will afford for consultation and reference between the inferior and superior functionaries, will tend greatly to prevent errors.

53. The civil procedure should generally be that of the proposed subordinate court at this presidency, to our report on which we have already drawn attention; and the procedure which was described by the late Sir Benjamin Malkin, as adopted by him under the charter established for Her Majesty's courts in the Straits, as stated in paragraph 11 of his letter of the 16th September 1837, must have prepared the suitors for rules of pleading and evidence, having no other object than the discovery of truth and the decision of every case on its merits

Civil procedure.

"With respect," says Sir Benjamin Malkin, "to the statements made as to the civil procedure of the court, I need only refer to the 423d paragraph of the Governor-general's Minute, to show that the fault, if it exist, arises, not from the provisions of the charter, but from the manner in which the charter has been administered by the judges. How this has been done by others than myself, whether they be lay or professional judges, I cannot say; but my own recollection of the practice of the court, in a very large proportion of the cases brought before it, is very different from the accounts given of it. I refer especially to those cases, a very large proportion of the whole, in which no professional assistance was employed, but the complainant came immediately to the court with his statement of alleged grievances. In many of these cases, where he had no claim to redress, even on his own showing, this was explained to him at the instant, and his claim was quieted without the actual institution of any suit, or the incurring of any expense. In many others, where he appeared to have a claim of such a nature as to admit of an easy adjustment with the opposite party, the defendant was desired, without the issuing of any regular process or institution of any regular suit, to attend with the plaintiff on an early day, and the case was very frequently arranged without difficulty or expense, on hearing the statements and admissions of each party. It was only where it was clear, in the first instance, that there must be a disputed question, to be settled by evidence, or where these attempts at a preliminary and amicable adjustment failed, or where the nature of the arrangement was such that it required some act of the court to authenticate

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and secure it, that any formal proceedings were adopted in these cases; and even then they were of the simplest description; the parties going to the registrar's office, and having their own statement of facts on each side taken down, with the rejection of all the immaterial circumstances with which the party's own petition never failed to abound, and receiving information what were the points really asserted and denied, and the matters which it was necessary to support by evidence."

Criminal procedure.

54. With regard to criminal procedure, we have no further suggestions to offer. The mode of trial now followed in the recorder's court, and generally in the English criminal courts, ought to be the model of the new court.

Coroner's juries.

55. When treating of juries and assessors, in a former paragraph, we did not notice the question of coroner's juries. Without proposing any departure from the existing practice, or any change in the functions of that officer himself, we are inclined to recommend that the number of members required to form a coroner's jury should be everywhere reduced; and in Province Wellesley, in particular, we conceive that this alteration is essentially requisite.

Periodical statements

56. We deem it very advisable that not only the professional judge, but the College of Justice, should have the means of scrutinizing and commenting upon the nature and quantity of civil and judicial business done by the local courts, independently of the opportunities afforded by appeals regularly preferred; and for this purpose each of the above-named tribunals should be furnished with periodical statements, similar to those submitted to the Sudder Dewanny Adawlut, and Sudder Nizamut Adawlut of Bengal. These statements should be laid before the professional judge, monthly by the local judge of Singapore, and by the judges of the other two settlements on his arrival on circuit, and should be transmitted by the professional judge, with any remarks elicited by his inspection of these documents, to the College of Justice every quarter, with a quarterly statement of the civil and criminal business, transacted by himself at each settlement on circuit, as well as in his own court at Singapore.

Establishments, civil and criminal

57. The list of establishments we have prepared has been calculated as equal to the civil and criminal business of the courts at each settlement; but is not meant to interfere with, or cover the establishment now kept up at each, for police purposes, for which, from all the information before us, it does not appear to be more than sufficient.

Financial results of Law Commissioners' plan.

58. We proceed to show that the above scheme, in a financial point of view, is quite compatible with a very considerable annual reduction in the present charge. Statement "A." shows the establishment and charges which, it appears to us, might suffice upon our plan, compared with the present establishment and charges, and with the scheme proposed by the Governor-general.

59. It will be observed that we contemplate an annual charge to the amount of 1,06,640 rupees, which is less than the present cost by 95,294 rupees. The estimated charge by our plan is more than that which the scheme of the Governor-general included; but in the calculation of the expense of that scheme some heads of charge have been altogether omitted, besides a few subordinate items, which must have been provided for, such as the pay of clerks, &c., at the settlements of Penang and Malacca, and the salaries of the deputy sheriff and coroner. Allowing for these items, the expense would exceed the charge stated in our estimate.

Proposed by Law Commission	-	-	-	-	-	1,06,640
Governor-general's Sketch	-	-	-	-	88,200	
Add for Penang	-	-	-	13,620		
Malacca	-	-	-	11,220		
				<u>24,840</u>		
Deduct allowed for in Gross	-	-	-	3,940		
				<u>20,900</u>		1,09,100
Excess of Charge over that of the Law Commission	-	-	-	-		<u>2,460</u>

60. Of course the great reduction arises from the abolition of the recorder's court, and its costly establishment. We propose that the barrister to be substituted for the recorder, shall receive a salary of 17,500 rupees, or 1,750*l.* per annum, being the same, within 56 rupees, that was allotted to the late registrar of the court.

61. When we look at the salaries allowed to professional judges in other dependencies of the empire, we are satisfied that the allowance we propose will be sufficient to procure the services of one duly qualified for the judicial office in the Straits settlements. The sum of 1,500*l.* has been suggested as sufficient; but considering the position of the professional judge relatively to the executive officers who are to take a part in the judicial business, we do not think it could properly be made lower than we propose.

	New South Wales	Salary allotted to professional judge.
Chief Justice	2,000	
Puisne Judges	1,500	
Van Diemen's Land.		
Chief Justice	1,500	
Puisne Judges	1,200	
Cape of Good Hope.		
Chief Justice	2,000	
Puisne	1,200	
Sierra Leone:		
Recorder	1,500	

In Ceylon a barrister has lately been appointed to the office of district judge, upon a salary of 1,000*l.*, and it appears that an address to Her Majesty has been sent from the colony, praying for the appointment of professional judges to the other districts; it being assumed that competent professional persons could readily be procured to fill the office, at salaries varying from 600*l.* to 1,200*l.* a year

62. We propose an extra allowance of 2,500 rupees, or 250*l.* a year, to cover the expenses to which the professional judge will be liable on his circuits. Assuming that his passage will be provided for in the steamer kept up for the service of the Straits, as stated in the note to paragraph 1453 of the Governor-general's Minute, and that he will have accommodation in public buildings while residing at each of the subordinate settlements, we suppose that he will be able to perform his functions at those settlements without other aid than can be afforded by the establishments attached to the local courts; and that it will not be necessary, therefore, to make any allowance for batta to clerks, &c. attending him on circuit; but we have allowed for a third clerk at Singapore, to transact the business of the professional judge, when at the head establishment.

63. We have not, under the head of Penang, allotted an extra establishment for the court of the assistant at "Province Wellesley," because that now kept up for the court of requests and police will suffice; and for that reason we have not proposed any reduction of that establishment.

Establishment at
Province Wellesley.

64. For the same reason we have not interfered with the allowances to the deputy sheriffs and coroners, as the duties of those officers must be performed as usual; and we have allotted a small salary for the deputy sheriff at Malacca, on that account.

Deputy sheriffs and
coroner.

65. We have charged to the judicial establishment a moiety of the salaries of the resident councillors, at the rates to which the Governor-general proposed to reduce them, as intimated in his Minute, but have not charged any portion of the salary of the Governor, because it does not enter into our scheme to employ that officer in any judicial function.

Salaries of civil
servants.

66. The following is a Summary of the results:—

The existing Establishment and Charges are	-	-	-	2,01,934
Those proposed by the Law Commission	-	-	-	1,06,640
Actual Reduction				95,294
Proposed by Law Commission				1,06,640
Average receipts from fees, as per Governor-general's Minute				44,427
Net charge of New Judicial Establishment				Rupees 62,213

67. We do not, however, pretend to offer the statement as more than an approximation to a complete scale. We think it probable the Straits authorities may show grounds for requiring a larger sum for establishments than we have given.

Rupees 43,440 46,644	given. Even assuming for this branch, rupees 45,000, which is more than we allow, though less than the existing charge, we should still have shown a positive clear reduction of rupees 94,000 per annum. Mr. Murchison allows that reduction is practicable to a considerable extent.
Propositions of the Law Commission. To abolish the recorder's court, quarter and petty sessions, and grand jury To establish local courts.	68. Our several propositions may be thus briefly summed up.— First. To surrender the charter of the recorder's court to the Crown; to abolish that court, both as a court of civil justice and of oyer and terminer, together with the courts of quarter and petty sessions, and the institution of the grand jury. Secondly. To substitute for it a system of courts, to be superintended by a professional judge of not less than five years' standing at the Bar, aided by the resident and assistant resident at each island.
Modelled like subordinate courts at the presidency	Thirdly. The courts held by them to be modelled according to the drafts for subordinate civil and criminal courts already submitted to government by the Law Commissioners in their reports, and subject to such alteration as the local position of those settlements calls for.
English law to be the <i>lex loci</i>	Fourthly. To leave the English law as the <i>lex loci</i> of the Straits, as modified by the late enactments of the Indian legislature for them, and further modified according to the principles stated by the Indian Law Commissioners in their Report upon the <i>lex loci</i> of British India.
To remodel the judicial establishments Minor points connected with judicial administration. Petty and quarter sessions	Fifthly. To remodel the judicial establishment for these settlements according to the schedule annexed to this report. 69 We proceed to notice the minor alterations that have been suggested for improving the administration of justice in the Straits. First. To appoint a court of petty sessions to relieve the quarter sessions by trying minor felonies, misdemeanors, and other offences specified, composing a great part of the duty now devolving on the latter court.
Grand jury	Secondly. To abolish the grand jury, and recast the petty jury list.
Language of court.	Thirdly. To make the Malayan language the language of the courts, with exception of the barrister's court, which Mr. Murchison agreed might carry on its proceedings in English.
Independence of settlements as to process	Fourthly. To consider each settlement as a separate county for all the purposes of process of the local courts, and therefore to have a separate sheriff, coroner, and registrar for each, and to make the process serve for each without the necessity of having it returnable for all three, (this particularly for sequestrations) and to allow certain "process which is now required to be under seal, and to be executed by the sheriff, to be exempt from such formalities."
Arrangement for salaries	Fifthly. To render permanent and irrevocable the arrangement between the Honourable Company's government and the officers of court, for payment of fixed salaries in lieu of the fees, which are carried to account of government.
Military cases.	Sixthly. To render officers and soldiers amenable to the local courts for actions of debt, and personal actions under rupees 400.
Pauper establishment.	Seventhly. To make a pauper establishment.
Bankrupt law	Eighthly. To erect a bankrupt court.
Admiralty jurisdiction	Ninthly. To obtain Admiralty jurisdiction.
Evidence of convicts	Tenthly. To render the testimony of convicts available.
Opinion of Law Commission on quarter session	70. Of the above ten propositions the two first were entirely approved by the late Sir Benjamin Malkin, who was indeed the first to suggest a change on both points, and had intended to propose some modification of the court of quarter sessions itself, but withdrew this in favour of the proposal of the Governor-general for erecting a new court of petty sessions. The difficulty of adequately scrutinizing the decisions of the quarter sessions appears to lie in its being a peculiar sitting of the court of judicature itself.

71. We think that when efficient local tribunals have been established for the prompt disposal of all cases as they arise within the respective jurisdictions, no necessity will exist for maintaining the cumbrous machinery of the quarter sessions; and we have recommended a discontinuance of the court of quarter sessions, and of the grand jury, for we are satisfied that with a professional judge to try the higher cases, assisted by a petit jury and assessors, and an efficient magistracy for disposal of minor cases as fast as they occur, there is no occasion for maintaining or re-organizing such establishments.

72. The opinion of the Law Commissioners on the grand-jury question has been already recorded in their report of the 31st August 1838, and we will only here add, that we think the measure advisable, not only for the Straits, but for all the presidencies of India. Grand jury.

73. We may here properly advert to the proposition for investing the present court of quarter sessions in the Straits with increased power to try, without a jury, all minor felonies; that is, simple larcenies unattended with aggravating circumstances, made by the governor, Mr. Bonham, in July 1839, which was referred to the Law Commission.

74. We agree with Mr. Bonham that the delay consequent on the present system must be fatal to the ends of justice in settlements where the population is of an itinerant unsettled character, particularly that portion connected with shipping, as parties, being seafaring persons or sojourners, prefer forfeiting their recognizances to waiting for the sessions, and put up with being robbed and plundered in preference to the risk of being bound over to prosecute.

75. But we think that the whole of the difficulties above enumerated would be met and obviated by our plan for establishing a subordinate criminal court at each of these settlements; and for this further reason we would urge its being carried into effect, instead of investing with increased powers the court of petty sessions.

76. On the third point, the introduction of the Malayan language, it was suggested by Mr. Murchison, that it should be substituted for English in pleadings. It would seem, however, that he meant this only for courts held by lay judges; for, in reference to the court which he proposed to be held by a barrister, he supposed that "the process in it would still be carried on in English."

The Governor-general "objected strongly to a court conducting its business in a language unknown to the people concerned in it, who can therefore follow no part of the process, no part of the arguments on either side, and no part of the judgment," and was of opinion "that the business of the courts must be conducted in the Malayan language, that being the one most generally understood in those places;" he admitted, however, that whatever language might be employed commonly, interpretation must often be necessary. Sir Benjamin Malkin thought that by introducing the Malayan language into the proceedings of the court, the necessity of interpretation would not be nearly so completely done away, and the proceedings adopted would not be made so generally intelligible as the Governor-general imagined. He observed that, at Singapore especially, a large portion of the Chinese inhabitants do not understand Malay at all; and that the Chuleahs, a large and very litigious portion of the people, speak little except their own language; and although it is true that most foreign residents find it necessary to acquire the Malay language more or less, the acquirements of a very large portion of them are very small, not enough to enable them to give evidence or understand proceedings in that language, except very imperfectly, and yet perhaps in many instances sufficient to enable them to do in some degree, and thus to allow the proceedings to be conducted in a language ill understood, and inaccurately spoken.

Sir Benjamin Malkin further questioned whether judges, not professional, could be found having that full and intimate knowledge of the Malay language which a judge ought to have of the language in which he is to receive evidence, to deliver his judgments, and record his proceedings.

We have been informed that all public proceedings whatever, revenue, judicial, and police, are recorded in English, and we should feel great reluctance in recommending any change in this system. This is not like the question whether Latin, which in the reign of George II. was not the vernacular language of any nation, should continue to be the language of the English courts of justice; nor is it like the question whether Persian, which is not the vernacular language either of the governors or the governed, should continue to be the language of the East India

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Company's courts; neither is it exactly the same as the question whether the English or the language of the country should be that of those courts. This last seems to us a question not free from difficulty, and we are not now called upon to express an opinion upon it. One point, important to the consideration of that question, seems to be clear, viz. that the languages now spoken by the people of India will continue to be spoken by them, if not for ever, for a period too long for us to contemplate its end. But we conceive that the case is very different with such settlements as Ceylon and the Straits. In those settlements the proportion of English and foreigners to the natives is comparatively very great, and the territory is very small; it is therefore probable that the progress of the English language will be much more rapid than in India.

We look upon this change as so desirable for all parties, that we think some temporary inconvenience in the administration of justice might properly be submitted to for the purpose of accelerating it; but we believe that the inconvenience which this use of English may now occasion must be less than would be occasioned by the introduction of the Malay, either wholly or partially as a substitute.

We have been speaking only of the language of record. The parties, we think, should be entitled, at their option, either to an office copy or an office translation of the record. Witnesses must of course be admitted to testify in their own language, whatever it may be. Parties, when they address the court (a proceeding which under our system will be frequently occurring), must be admitted to do so in their own language in all courts. With regard to persons claiming to be heard in the character of legal advisers to others, we think that in the court of the professional judge it may properly be required of them that they should know and use the English language, being that of the judge and of the law he administers, while in the other courts we would, for the present at least, allow them to address the court in English or Malay. At a future period we should hope that the facilities for the acquisition of English will be much increased, and when that is the case, we think that a knowledge of it may be made a necessary condition of admittance as a practitioner in any court.

Process

The fourth point requires little remark from us, if, as we hope, we have satisfied government of the suitability of our system of courts to these settlements, wherein each court has an appropriate establishment allotted to it.

Military cases.

The fifth is one on which government alone are competent to form an opinion. The sixth, we think, may be at once provided for by a short law enacting the proper remedy for a manifest omission in the existing law.

Pauper establishment.

On the seventh point, that of a pauper establishment, we have not sufficient information in the papers before us to admit of our forming an opinion. The necessity for one seems to be admitted; but from the cursory notice of it in Sir Benjamin Malkin's third letter, we suppose that the practicability of creating one is doubtful. He alludes to it as "forming part of the machinery of a King's Court in India," saying that "there may be difficulties attending it, especially at Singapore and Malacca." We therefore recommend that this subject be left open for further inquiry.

Bankrupt law.

82. Eighth.—On this point, the enactment of a bankrupt law, we trust to be able to submit a report treating of that question, not only for the Straits settlements, but for all India, which we have in hand, and in which we have made some progress.

Admiralty jurisdiction

Evidence of convicts

83. The ninth and tenth have been already, to a certain extent, carried into effect by the transmission from England of the letters patent for erecting a Court of Admiralty in the Straits, and by Act XIX. of 1837. But provision is still required to be made for giving Vice-admiralty jurisdiction to the court in that quarter as well as in India, and we beg on this point to refer to our remarks on this question at pages 300 and 303 of our Slavery Report, in explaining the inconveniences resulting from the want of a competent tribunal of this kind when seizures are made of vessels containing slaves. We beg to suggest that the recommendation for remedying this defect given in our Slavery Report, pages 368 and 369, should be adopted without delay.

We submit this our report for the consideration of your Lordship in Council.

A. Amos. D. Elliott.
C. H. Cameron. H. Borradaile.
F. Millett.

Indian Law Commission,
the 8th February 1842.

Appendix (A.)

	PRESENT CHARGES.								PROPOSED BY THE GOVERNOR-GENERAL.								PROPOSED BY THE LAW COMMISSIONERS.								REMARKS.				
	SINGAPORE.		PENANG.		MALACCA.		TOTAL.		SINGAPORE.		PENANG.		MALACCA.		TOTAL.		SINGAPORE.		PENANG.		MALACCA.		TOTAL.						
	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.					
Recorder—Salary							3,368	40,416																1,458	5	4	17,500	(a) The duties of this office to be performed by head clerk of each Court; vide Governor-general's Minute, paragraph 453. (b) To cover the expense of table money on the circuit, and to give a few personal attendants, peons, &c. (c) Transferred to local establishment, below.	
Clerk							300																						
Subordinaries							24																						
Under							22																						
							20																						
Total							Sa. 366	Company's 4,589 13																					
Governor's Clerk							20	240	(a)																				
Recorder and Register							Average of 3 years, 13,105	9,856 4																					
Do's Clerk								1,845 12																					
Clerks, &c.								1,326 14																					
Principal General Registrar's Establishment								76 5	(c)																				
's Salary							Average, 1,463 1	1,072																					
								17,536																					
TOTAL								76,979																					
LAY JUDGES:																													
not								1,500	18,000																				
Councillor		15,000		12,000		12,000		29,000	750	9,000	750	9,000	500	6,000	2,000	24,000	750	9,000	750	9,000	500	6,000	2,000	24,000					
ditto		5,000	(2)	9,831		6,480		21,311	400	4,800	800	9,600	400	4,800	1,600	19,200	400	4,800	800	9,600	400	4,800	1,600	19,200					
Clerk	522	8		522	8				400								400				400								
Clerk	209			313	8				200								200				100								
Clerk				104	8												100	(d)			80								
Writer				80					100								80				60								
Writer	40								80								80				40								
Writer	40								60								60				40								
Peons	150			200			100		150								150			100									
Interpreter	20	10,434				10,526	20	10,284	30	12,912							20	18,600	20	13,520	20	11,220							
							3,887	46,644																					
Interpreter	50																												
Interpreter	(2)24			(9)16																									
Interpreter				50																									
Interpreter				20																									
Interpreter	30			30					50								50			30									
Interpreter																													
Interpreter	200			200																									
Interpreter	104	8		104	8																								
Interpreter	10	9		10	8																								
TOTAL	1,360	8		1,060	8		847		1,076							75,052	1,550			1,335			935						
GRAND TOTAL		36,434		41,757		28,704		5,01,934								88,200		32,400		32,220		22,020					1,06,640		

(a) The duties of this office to be performed by head clerk of each Court; vide Governor-general's Minute, paragraph 453.

(b) To cover the expense of table money on the circuit, and to give a few personal attendants, peons, &c.

(c) Transferred to local establishment, below.

(d) A third clerk has been added for the duties of the professional judge's court at Singapore.

(e) Contingencies.

(f) This sum has been added to provide against the future want of an officer in Penang.

(B.)

POPULATION OF THE STRAITS SETTLEMENTS.

	Penang, 1835.	Province Wellesley, 1835	Malacca, 1835.	Naning, 1835.	Singapore, 1834.	TOTAL of each Class.
Europeans and their — descendants, Eng- lish, Dutch, Por- tuguese, East In- dians.	790	-	-	-	251	1,041
Armenians - - -	21	-	-	-	44	65
Native Christians -	708	-	-	-	326	1,034
Malays - - - - -	16,435	42,500	-	-	9,452	68,387
Achinese - - - -	350	-	-	-	-	350
Javanese - - - -	-	-	-	-	669	669
Chulahs - - - -	7,886	549	-	-	1,728	10,163
Natives of Bengal -	1,322	579	-	-	594	2,495
Arabs - - - - -	142	-	-	-	66	208
Siamese - - - -	-	500	-	-	-	500
Burmese - - - -	648	-	-	-	-	648
Balanes and Bug- geese.	-	-	-	-	2,364	2,364
Battas - - - - -	561	-	-	-	-	561
Chinese - - - -	8,751	2,252	-	-	10,777	21,780
Caffrees - - - -	180	-	-	-	62	242
Parsees - - - -	50	-	-	-	-	50
Jews - - - - -	-	-	-	-	6	6
Fluctuating - - -	400	500	-	-	-	900
Process Grand Total - -	38,244	46,880	30,000	5,329	26,339	146,792

The statement of the population of Penang and Province Wellesley is taken from Captain James Low's "Dissertation on the Soil and Agriculture of the British Settlement of Penang," pp. 125-6. Besides the - - - - - 38,244
Population of Penang, there were also on the island in 1835 native military
and followers, averaged at - - - - - 700
Convicts - - - - - 1,263
Making in all - - - - - 40,207

The population of Malacca and Naning is taken from the same work, page 219. The
population is not classified; but that of Naning is stated to be almost all Malays.
The population of Singapore is taken from Appendix, No. 12, to Governor general's
Minute, and is exclusive of military and convicts.

(C.)

EVIDENCE of Mr. Wm. Young, "Commissioner to inquire into the Condition of the Settlements in the Straits."

"I AM aware that the question of abolishing the Court of Judicature in the Straits has
been under discussion. My opinion is, that so long as the law of England obtains in these
settlements it would not be advisable to entrust the administration of it to unprofessional
judges, without some professional check

"The Court of Judicature is not only a court of first instance, but is also a court exer-
cising a superintending jurisdiction over the justices of the peace and the court of requests;
and I think it very necessary that some such jurisdiction should exist on the spot, to prevent
the inconvenience which suitors must suffer from the delay in correcting the mistakes of
those subordinate functionaries.

"A circuit made by a judge of the Supreme Court from Calcutta would not adequately
perform these functions, unless it took place several times in the course of the year. I should
say, not less than three times.

"I will give, as an illustration of the necessity of a professional judge, a case which
occurred while I was in the Straits.

"The indorsee of a bill of lading, in which freight was expressed to have been paid in
London,

b. 2
Abolishing the
Recorder's Court
in the Straits

Military c
in of Na-
Pauper estab- and
ment.

Bankrupt l.

Admiralty j
duction.
Evidence of
victs.

London, brought an action against the captain to recover the goods, he having refused to deliver them, on the ground that the freight had not in fact been paid. After the merits of the case had been investigated, the defendant objected that the plaintiff had no sufficient interest in the goods to maintain the action. No recorder was present, and the unprofessional judge decided that the objection was fatal, though the merits of the case were clearly with the plaintiff. It is generally understood that this decision is wrong in point of law.

Abolishing the Recorder's Court in the Straits. *

"I think that, admitting the expediency of having a professional judge on the spot, for the decision of such cases as I have specified, it is nevertheless true that such a court ought not to be paid entirely out of the revenues of India. But some part of the expenses of such a court may reasonably be paid out of those revenues in respect of the benefit which India derives from the settlements in the Straits in a commercial way, and as receptacles for convicts.

"I see no mode in which the revenue of the Straits can be increased, except by customs.

"I do not hear that the decision of the Recorder's Court, by which it was held that the Dutch Roman law was abolished in Malacca, had created any dissatisfaction among the Dutch inhabitants.

"All conveyances of real property between Englishmen are according to the English forms; but the court would receive evidence of the native customs in a conveyance between natives.

"I wish to observe, that not only the European inhabitants, but also the natives, are very much attached to the present administration of justice, and that they would not like any such change as would leave the settlements without a professional judge.

"Supposing that the Recorder's Court is not abolished, the principal reform which appears to me to be necessary is, the simplification of the pleadings and procedure. Sir Benjamin Malkin did a great deal towards the accomplishment of this end. But now the business of preparing the pleadings has fallen into the hands of law agents, and they have become long and technical. The proper remedy for this, I conceive to be, that the parties should be obliged to state their case *viva voce*, in court, except in cases of sickness or other reasonable excuse.

"I do not think there would be any difficulty in finding persons competent, from their general respectability, to sit as jurors or assessors in the courts, but, inasmuch as it would be very difficult to find persons wholly disinterested, I think it would not be safe to make their verdict binding on the court. I do not think the people would at all complain of this burden if the number of jurors or assessors were limited to two or three.

"I was sent by the government of Bengal as a commissioner to inquire into the condition of the settlements in the Straits.

"I was about 18 months in the different settlements."

(D)

Referred to in Para. 50 of the Law Commissioners' Report, dated 8th February 1842.

(No. 150.)

TO the Honourable the President of the Council of India in Council.

WE have the honour to report on the subject referred to us in Mr Secretary Macnaghten's letter, dated the 30th of May 1836, No 149. This letter enclosed copies of two petitions to the government of India on the part of certain inhabitants of Calcutta, and of the reply thereto. The petitioners (amongst other matters) prayed revival of the court of quarter sessions in Calcutta, and we were directed to give the attention due to the petition, and in particular "to make such suggestions for improvements in the magistracy and in the local administration of justice in petty cases in Calcutta as might appear to us advisable."

2. We beg leave to refer your Honor in Council to the correspondence and papers noted in the margin. In our secretary's letter of the 19th of January 1838, we proposed, in the Act we were preparing, to render punishable by a magistrate the cheating in Calcutta by false weights and measures, and to this proposition the government assented by the Resolutions of the 7th February. Moreover, by the same Resolutions, we learn the opinion of Government, that, supposing any power now exists by law "to remove dangerous buildings, and to punish owners of public necessaries who neglect to keep them in proper condition, and for furious driving," provisions should be made for the exercise of such power by the magistrates.
3. As we have now framed the proposed Act, we think these provisions could hardly be introduced into it consistently with a due regard to arrangement. We therefore propose to report separately upon those subjects, if your Honor in Council wish that we should now give our attention to them.
4. Before we enter upon the subject of this report, it is proper that we should state the causes of the delay which has occurred in presenting it.
5. In the division of labour which we have generally found it convenient to make in the Commission, the consideration of this subject devolved upon Mr. Cameron. A report was

Mr Macnaghten's letter, dated 18th of August 1836, enclosing, amongst other papers, proposition of the Chief Magistrate of Calcutta, for enactment of certain municipal laws.

Our Secretary's reply on this subject, dated the 19th of January 1838

Mr. Officiating Secretary Mangles's answer, dated 7th February 1838, with Orders and Resolutions of Government.

nearly ready when he became incapable of business from illness, and he was ultimately obliged to make a voyage to the Cape of Good Hope, after which the attention of the Commission was wholly occupied with the preparation of the penal code. Mr Cameron did not return till the beginning of this year, and it was not until the arrival of Mr. Amos, on the 18th of March, that he was able to resume the subject.

6. In the meantime all the other original members of the Commission had ceased to belong to it, and the present members were of course under the necessity of making themselves masters of the subject, and in consequence of their suggestions several changes have been recommended.

7. On the 4th May 1838 the intended recommendations, with the reasons for them, were submitted to the judges of the Supreme Court, and Sir E. Ryan's answer was received on the 23d of August 1838. Sir J. P. Grant's answer has not yet been received; he has promised to favour the Commissioners with some criticisms on the recommendations which we are about to notice. It seems, however, very uncertain when his judicial occupations, which we believe to have been lately peculiarly onerous, will permit him to fulfil his promise, and though we are sensible how much benefit we are likely to derive from a knowledge of his opinions, and of the grounds of them, yet we have thought it better, for two reasons, to forego that advantage for the present, rather than delay any longer the transmission of this report to Government.

8. These reasons are, first, because we learn, from personal communication with Sir E. Ryan, that since the illegality in the proceedings of the magistrates has been brought officially to his notice, he has thought it right to direct that no person committed for crimes which can only be lawfully tried by the Supreme Court, should be tried summarily by a magistrate, a practice to which the great inconvenience of the legal course seems to have given rise.

Secondly, because we are informed by our president that the attention of government has been for some time directed towards the important object of rendering the criminal courts of the mofussil more fit than they are now supposed to be for the trial of European delinquents; and we are decidedly of opinion that, assuming the institution of assessors (which we are now recommending) to be good and practicable, the necessity for such an institution is much greater in the mofussil courts than in one which is to sit in the midst of the metropolis. We will not fail, as soon as we are favoured with Sir J. Grant's observations, to forward them to government.

9. We now proceed to make a few remarks upon the papers which will be found in the Appendix.*

10. The draft Act, and the reasons for it, were sent at an early period for the consideration of the magistrates of Calcutta.

11. Mr. M'Farlan is the only one who has combated these reasons; and as in his paper on the subject he has animadverted upon the President's report on the judicial establishment of Ceylon, the President has drawn up a reply in his own name; but the other Commissioners desire to express their assent to this reply, so far as it relates to the general questions.

12. Mr Gordon approves of the plan of assessors, which, as will be seen, is the principal novelty of our recommendations. The other magistrates have stated objections, which, for the most part, have been removed by alteration in the draft; they think, however, that the system of assessors will be very unpopular.

13. Sir E. Ryan has been good enough to give much attention to the subject, and has favoured us with three suggestions.

1st Sir E. Ryan thinks, if the court of quarter sessions is not to be revived for the purpose of trying offences, it would be better at once to abolish it. We see no objection to this measure; but as it is not necessary to the purposes of our proposed Act, and as it involves considerations not connected with the administration of criminal justice, we have not introduced it into our draft, and we think it would more properly form the subject of a separate Act.

2d. We had framed the Act so as to authorize the appointment of any magistrate of Calcutta to hold the subordinate criminal court. Sir E. Ryan recommends that it would be the exclusive duty of one judge. We think this a decided improvement; and the draft, as it now stands, merely authorizes one judge to be appointed by the governor of Bengal to hold this court.

3d. Sir E. Ryan thinks that the writ of certiorari, by which proceedings could, as a matter of course, be removable from the subordinate criminal court into the Supreme Court, should not be taken away. We had ourselves intended to call the attention of government to a doubt we entertain as to the competency of the legislature of India to interfere with this high prerogative writ; but however that may be, we are satisfied, for the

reason

* 1. Minute of Mr. Millett.

2. Letter of Sir E. Ryan, dated 13th August, containing his views and suggestions in regard to the proposed court.

3. Letter from the Magistrates of Calcutta on the subject, with its enclosures, viz. Minutes of Mr. M'Farlan and Mr Gordon.

4. Letter from Mr. Blaquiere, dated 15th September 1836.

5. Minute of Mr. Cameron, in reply to Mr. M'Farlan's Minute.

6. Mr. Shakespear's Note.

reason assigned by Sir E. Ryan, that it would be inexpedient to take away the certiorari, and we have therefore expunged the provision to that effect which we had introduced into the Act.

14. The last Appendix is a note given to the President by the late lamented Mr. Shakespear, after he had considered the reasons upon which our draft Act is founded. We wish particularly to call the attention of government to this note, with reference to the important question of improving the administration of criminal justice in the mofussil. It will be seen that Mr. Shakespear thought the institution of assessors applicable to that purpose.

15. We deem it convenient in this place to recite the following passage from one of the petitions enclosed in Mr. Secretary Macnaghten's letter abovementioned.

"Your petitioners also beg leave to draw attention to an object of great local interest, and which has often been agitated, that is to say, the revival of the old court of quarter sessions of the peace, for the trial of minor offences and misdemeanors committed within the limits of Calcutta. The discontinuance of that court has long been felt as a local grievance. The time of the Superior Court has been occupied with matters greatly beneath its dignity, and the partial remedy attempted, by vesting increased power in the magistracy, without the aid of either jury or professional skill, has not only been unsatisfactory in the result, but is, moreover, a dangerous encroachment on that principle of English jurisprudence which awards to every one the right of trial by his equals."

16. We do not doubt that the time of the Supreme Court may be occupied more advantageously to the public than in the trial of minor offences; and we at the same time thank it of importance to the morality of the lower orders that the charges commonly brought against persons of their class should receive, and be generally known to receive, the careful attention of a competent tribunal. We find with satisfaction that our opinions are thus essentially in unison with those of the petitioners, as regards the grievance of which they complain; but we believe that a better remedy may be found than the one which they suggest.

17. The court of quarter sessions naturally presented itself to their minds as an English institution, and as one which has already a sort of existence at Calcutta.

18. We hope, however, that an arrangement, which shall at once be more efficacious for its purpose, and impose less trouble upon the unofficial members of society, may be made by erecting a subordinate criminal court, to be presided over by a single judge, aided by three assessors, such court to have original jurisdiction over those minor felonies and other offences which are of most frequent occurrence. We would at the same time commit to each judge of the Supreme Court the power of correcting, in such manner as the case may require, any errors of the inferior court, the jurisdiction of the Supreme Court over the graver crimes remaining untouched.

19. As our plan innovates considerably upon the system of English judicature, though its most important ingredient is borrowed from that system, we shall be obliged to occupy the time of government by a discussion of some length.

20. It appears to us that, wherever circumstances admit, of such an arrangement, the best constitution of a criminal tribunal is one salaried and professional judge, with a convenient number of unpaid and unofficial persons, who may be called jurors or assessors.*

21. If the judge is unpaid, and not a professional man, the requisite amount of knowledge and skill cannot be expected in him. By a professional man, we do not here mean a man who has practised at the bar, but a man who devotes his whole time to the duties of his office, and the acquisition of the knowledge, without which they cannot be efficiently discharged.

22. In a court of quarter sessions the judges may by law be unprofessional men; and if they all were so, in fact, such a court might more properly be said to consist of two juries than of judges and jurors.

23. In England the justices of the quorum were originally persons selected for their knowledge of law, and by the commission of the peace, the presence of one of the quorum was, and still is required in the trial of offences. But although, as Lambard quaintly remarks, "to say the truth, all statutes that require the presence of the quorum do tacitly signify such a learned man," yet at the present day no such qualification as learning is expected in the quorum: the defect is now supplied by appointing to the chair some man who has been at the bar, or who by assiduous attention to the discharge of his magisterial duties has become familiar with the criminal law; or else by letting the clerk of the peace, who ought to be the servant of the court, become the efficient judge of it.

24. Practically, then, an English court of quarter sessions, sitting for the trial of felonies, may be said to consist of one judge and a jury: the other ingredients which may enter into the composition are either inoperative, or productive of inconvenience as far as they do operate.

25. Instead

* For the sake of conciseness we shall use the word "jurors" or "jury" only in this discussion to express such unpaid and unprofessional persons. We wish also to observe, that what we have said respecting the constitution of a court has reference only to the object of judicature as such. For the purpose of training those who may aspire to become judges, it may be very desirable to have in each court a paid and permanent functionary, taking part in all the business of judicature except the decision.

25. Instead therefore of a tribunal copied from an English court of quarter sessions, of which the best that could be hoped would be that, after some commotion among its elements, it would practically leave as a residuum a single judge and a jury, we propose the attainment of that end by direct legislation. We have already said that we consider this to be the best constitution of a criminal court; but if this is admitted, there remains a question, which we believe not to have hitherto received all the attention it merits, viz. what share of the business of judicature should be allotted respectively to these two essential parts of the tribunal.

26. We have nothing to propose as an improvement upon the mode in which the judge and jury at an English session of oyer and terminer co-operate in the investigation of the case before them.

27. The way in which such a judge first makes himself master of the case, and afterwards makes the jury masters of it, seems to us as perfect as is consistent with the infirmities of human nature. The English practice, by requiring the judge to sum up the evidence on both sides, to call the attention of the jury to all the circumstances which affect the weight of each article of proof, not confining himself to such as lead to the conclusion, which has established itself, or is establishing itself in his own mind, ensures a scrutiny more rigorous and impartial than could be obtained by any other method.

28. But when this process is completed, the question arises, who is to pronounce the decision?

29. Three answers to this question present themselves:

1st. Unanimity might be required, and the judge made to partake of the restraint and privation which are now the portion of discordant jurors; or,

2d. The opinion of the judge must go for nothing, except in so far as it may influence the mind of the jury, which is the English system; or,

3d. The opinion of the jury must go for nothing, except in so far as it may influence the mind of the judge, which is the system that appears to us most consonant to the dictates of reason.

30. For the correct solution of this question, a comparison must not be instituted between trial by jury and trial by a judge sitting alone. This, however, is the comparison most apt to suggest itself to the mind, because abundant examples have been exhibited in practice of judges sitting alone, while none (if we except one very recent experiment) has ever been seen of a judge sitting to try criminals with the assistance of a jury, but with a power to decide against their opinion. But it is manifestly this last arrangement of the judicial functions which ought to be compared with the English system for the purpose of deciding the question above proposed.

31. We admit without hesitation that wherever a jury can be conveniently assembled, the decision of a jury in criminal cases is much to be preferred to the decision of a judge sitting alone. But the difference is immense between judges habitually sitting alone and judges habitually sitting under the inspection and under the moral control of a jury.*

32. A judge may be presumed to bring to the work knowledge of the law and practical skill, but, in certain cases, there is danger of his being affected by an undue bias, and in general there is danger of his falling into a hasty and slovenly mode of transacting business, which has become to him matter of mere routine, and of his becoming irritable and impatient of contradiction. The tendency towards these faults is capable of being in a great degree counteracted by the mere admission of the public to the courts of justice. But the mere admission of the public does not ensure effectual publicity to all that takes place in court. A passive audience frequently loses the thread which connects the different incidents of the trial with each other. If anything escapes them, it commonly escapes them for ever, and whatever they do not comprehend at the moment it is done, or uttered, remains always a mystery to them. Now there is much in every trial which does not reach the ear of a passive audience, and much more which does not reach their understanding, and, consequently, something more than such an audience is required to prevent completely the evils which secrecy engenders. But it would be impossible, with any regard to order and regularity, to allow the public to ask questions of the judge and the witnesses, or to require the judge to sum up the evidence and to explain the law until the case was brought within the comprehension of every individual in court.

33. Here, as it seems to us, is the great use of the jury. They are a small, select, organized body, placed in a position where they can hear and see everything which passes in court. The duty of declaring their opinion is imposed upon them, by which their attention to the evidence and to the judge's remarks is ensured, and they have the most ample right to receive every explanation which they may think necessary to help them to a correct conclusion. The jury are the constitutional representatives of the community in legal affairs, and the responsibility which the judge feels to public opinion, is increased

a hundred-

* It may be worth while to make a remark here which conduces to the clear understanding of the whole subject, though it is not necessary to the argument in the text.

The influence of juries where the institution obtains is not confined to the time of trial, nor to the judges who sit with juries, nor to the class of judges generally, but extends to the whole profession of the law, and to the public. Where that institution obtains, the bar and the public expect, and do not expect in vain, that a judge, though he may be sitting without the constitutional safeguard, will not disgrace the school in which he has been trained.

hundred-fold, when he is thus bound, in the very act of judicature, to explain and justify his proceedings, and to set forth the grounds of a correct decision to the deputies of the people. A judge who at the present day, under a British Government, and in the midst of a British public, should decide against the opinion of the jury, would take upon himself such a load of responsibility as few men would choose to sustain unsupported by the consciousness of right intentions.

34. There have no doubt been periods in English history when the judges being thoroughly subservient to the Crown, and the Crown hostile to the people, the decision of the jury, notwithstanding its defects, was incomparably better in political causes than that of the judge, and perhaps, even under the most paternal government, it would not be prudent to leave the decision of such causes to the judges. But it is sufficient, on the present occasion, to remark that no political offence will be triable by the proposed court.

35. The jury, then, is an instrument, the best, we believe, that has ever been devised, for counteracting the temptations most likely to beset men in the position of a judge. But having used it for this purpose, having secured good judges by means of this instrument, we would not take the judicial function from those judges, and transfer it to the jury. The jury, though an admirable means of ensuring that the judicial function shall be performed in the best manner by those whom study and practice have qualified for the task, may be a very imperfect organ for the actual performance of that function. The following considerations satisfy us that they really are so.

36. The deputies of the people, as we have ventured to call the jury, though they generally come to the business of judicature with honest intentions and the zeal which novelty inspires, are ignorant of the law, and unpractised in applying its principles to particular cases, and in appreciating the weight of conflicting evidence. They are, besides, prone to be influenced by facts, and arguments, which do not touch the real merits of the case.

37. If they adopt the opinion of the judge, as they commonly do, that indeed is a proof that the consequences of these defects have been obviated on the particular occasion, but if they persist in differing from the judge, the presumption, apart from what may be known of the merits of the case, always is that they are wrong. For the defects which are almost sure to be found in them, are not such as can be cured at the trial by the presence of a judge, as the defects to be apprehended in the judicial order are cured by the habitual presence of a jury. It is impossible that a man who goes into the jury-box ignorant and unpractised should imbibe learning and skill in the course of a single day, though it is highly probable that a judge who might have leaned to the side of power, or given way to a culpable love of ease, or to an arrogant and impatient temper (if he had sat uncontrolled by a jury), should be set upright, and stimulated to exertion, and restrained from brow-beating the suitors and witnesses, by the moral force of those motives which the presence of a jury brings to bear upon him.

38. Even with respect to unfair bias, the very circumstance which makes a jury exempt from that particular bias towards the side of power with which a judge is sometimes affected, makes them at the same time more apt to yield to any casual motive which the case before them may present, independently of its real merits. The circumstance we mean is the transitory, unofficial, and occasional existence of each particular jury. A juror has no hope or fear of the unjust favour or displeasure of men in power, but neither has he any hope or fear of their just favour or displeasure. He cares little what the public may think of his verdict, for besides that the credit or disrepute of it is shared among many, his name is commonly unknown to anybody but the officer of the court, and when his work is over, he is lost in the crowd and never heard of again.

39. In England, where juries have acted so conspicuous a part, and where the nation is so justly proud of their performances, no individual ever acquired celebrity by a verdict; the institution indeed is the constant theme of applause, but the jurymen get no greater share of it than the bricks do of the praises which are bestowed upon a convenient house. Even where particular juries have returned verdicts which have been hailed with general delight, and which form epochs in English history, as in the case of Lilburn, of the seven bishops, or of Hardy, no person remembers the name of a single jurymen.

40. There is another reason which we must not omit, because it applies to the question we are discussing where the jury is composed of natives, though happily it need not be taken into the account as regards Europeans.

41. We fear that the standard of morals is as yet so low among natives that bribery and intimidation would be employed to obtain a verdict from them, if their verdict, by reason of its binding force, were worth the risk and expense incident to the employment of such means. Even if no reward were promised or threat held out, we are afraid that, where the defendant is rich and powerful, the jury would be swayed by the hope of his favour in case of acquittal, or the fear of his anger if they gave a verdict consigning him to punishment. But a jury who can only affect the decision of the cause by watching the proceedings, by taking care that every part of the case is investigated and explained by the judge, so as to be brought within the comprehension of ordinary men, and by urging the arguments that may occur to them in favour of their own view, or by giving their sanction to a requisition for further investigation of the case by a superior court; such a jury, though powerful for good, is quite inefficient for evil. It will hardly be worth any man's while to bribe or threaten such a jury, and with regard to the hopes and fears they may entertain independently of bribes

and threats, even should they yield to the influence of such motives, they can do no more than neglect their useful duty. Positive mischief is beyond their power.

42. We think, then, that whenever a judge and jury differ, political cases excepted, the presumption is strongly in favour of the opinion delivered by the learned and practised member of the tribunal, and we have accordingly proposed that the judge, and not the assessors, shall pronounce the decision both on law and fact.

43. We prefer a smaller number to the English number 12, because the benefit may thus (without increased inconvenience) be extended to a greater number of cases. It is obvious that 12 assessors, according to our plan, would perform four times the work of an equal number of jurymen.

44. The offences which we propose to submit to the new tribunal created by this Act are, in general terms, felonies, when they are of such a mitigated kind that the magistrate who takes the examinations thinks they would be sufficiently punished with a year's imprisonment; and misdemeanors, when the magistrate thinks they would be sufficiently punished by a fine of 1,000 rupees. This arrangement is by no means free from objection, but it is the best we have been able to devise without making much greater changes in the criminal law than would be at all convenient while a new penal code is under consideration. The designation of burglary conveys indeed to English ears the idea of very grave offences. But the houses of the lower order of natives are so constructed, and of such materials, that offences falling within the English definition of those crimes may be, and are constantly committed here, which do not evince the deliberate purpose and hardihood in crime implied in a similar attack upon a European house.

45. We have not thought it desirable to send the cases for which this Act is meant to provide before a grand jury.

46. If cases in which the state or public functionaries are concerned be excepted, we are unable to perceive the advantage of interposing anything between the magistrate who commits or bails a person accused of a crime, and the court which tries him. It seems clearly for the interests of justice that responsibility should be as much as possible concentrated upon the magistrate who is to decide whether those brought before him shall or shall not be subjected to the inconvenience and the provisional discredit (if we may so express ourselves) of imprisonment or bailment upon a criminal charge, especially as it would be hardly safe to deny to the magistrate the power of carrying on his investigation with closed doors. But when the magistrate's decision against the accused is backed by the finding of a true bill, his responsibility is absolutely at an end, and when his decision is reversed by the throwing out of the bill, the public, unless accidentally, knows nothing of the matter.

47. The tendency therefore of an institution interposed between the committing magistrate and the court which is to try, is to make the former negligent in the most important part of his duty; and this serious evil is not outweighed by any attendant advantage.

48. If this be so, it is scarcely worth while to remark that, even if it were expedient to keep up an institution between the magistrate and the court, a numerous assembly of unprofessional and unpaid gentlemen, who know no more of the law than they can collect from the judge's charge in ordinary cases, would be a very ill-constructed body for deciding whether there is sufficient ground for putting an accused person on his trial; especially as the preliminary investigation always is, and perhaps sometimes ought to be, a secret investigation.

49. The immense superiority of the judicial institutions of England, considered as a whole, to those of the continental nations, has excited in their favour sentiments of indiscriminate admiration. The grand jury has received its share of this admiration in the supposed character of a safeguard to innocence. We think it due to the celebrity of the English institutions, a celebrity, in many respects, well deserved, not to pass over in silence what may have been alleged in favour of this particular part of them.

50. But it does really require an effort of imagination to suppose a case in which a person against whom a grand jury would not have found a bill, should be convicted by a well-constituted tribunal. The grand jury hear only evidence for the prosecution; the tribunal hears also the evidence for the defence. The grand jury sits in secret; the proceedings of the tribunal are exposed to public scrutiny.

51. The case, however, though difficult to conceive, is not impossible. It has happened that an accused person has himself adduced evidence which has satisfied those who tried him of his guilt, and in this way a criminal who might perhaps have escaped trial if a preliminary investigation of nothing but the evidence against him had taken place, may nevertheless not escape conviction when his own witnesses have been heard. The conviction of a criminal, however, is not an evil but a good, and the moral possibility of such a misadventure as this occurring to an innocent man, if it be a moral possibility at all, is certainly among those which no legislature can undertake to guard against without doing much more mischief than it attempts to prevent.

52. We have now only to indicate very briefly the corrective jurisdiction which we propose to give to the judges of the Supreme Court.

53. We have provided a power to correct errors of law at once upon appeal, to order a new trial where the superior court thinks the case has not been properly investigated, and to order the magistrate to reconsider his finding where it thinks he has drawn a wrong conclusion of fact from the evidence adduced.

54. We have thought it expedient to limit the right of applying to the superior court on

on matters of fact, to those cases in which at least one assessor is dissatisfied with the judge's decision

55. We have purposely abstained from making any other changes in existing institutions (however desirable they might be if we were remodelling the whole law) than such as appear to us conducive to the object to which our immediate attention has been directed.

56. It will be observed that in this Act no mention is made of Madras and Bombay. As far as we are informed, we believe our recommendations to be equally applicable to those capitals. But we have thought it better to place our plan at once before government without waiting for the opinions which it would be proper to request from those presidencies before we could proceed to carry into effect the intentions of government as conveyed in Mr Mangles' letter of the 7th of February 1838. We propose to address the proper authorities at Madras and Bombay on the subject without delay.

57. The following is the draft of an Act in which we have embodied our recommendations.

DRAFT ACT

1. It is hereby enacted, that for the trial of such offences as are specified in sections 4th and 6th of this Act, a court shall be created and called the Subordinate Criminal Court for Calcutta, which shall be held by one judge, to be appointed for that purpose by the Governor of Bengal

2. And it is hereby enacted, that such judge while holding a subordinate criminal court, shall be assisted by three assessors, to be selected on account of character and respectability, to whom he shall sum up the evidence on both sides, and who shall thereupon state their opinions *seriatim*, and the said judge having heard and considered the said opinions, shall pronounce the accused guilty or not guilty according to his own opinion, but shall nevertheless state in the finding the opinions of the assessors

3. And it is hereby enacted, that such judge may for the purpose of such trial examine witnesses upon oath or solemn affirmation, which oath or affirmation such judge is hereby authorised to administer, and may try and convict any person for any of the offences specified in sections 4th and 6th of this Act upon the same evidence as would be sufficient for the trial and conviction of such defendant by a jury.

4. And it is hereby enacted, that the said subordinate criminal court shall be competent to try, without presentment or indictment by a grand jury, any of the following offences if they have been committed within the local criminal jurisdiction of Her Majesty's Supreme Court of Judicature at Fort William in Bengal.

Burglary.

Simple larceny.

The offence of breaking and entering any building and stealing therein any chattel, money or valuable security, such building being within the curtilage of a dwelling-house and occupied therewith, but not being part thereof, according to the provision in the 86th section of the Act of Parliament 9 Geo. 4, c. 74.

The offence of breaking and entering any shop, warehouse, or counting-house, and stealing therein any chattel, money, or valuable security.

The offence of stealing any goods or merchandise in any vessel, barge, or boat, of any description whatsoever, upon any river or canal, or in any creek communicating with such river or canal, and the offence of stealing any goods or merchandise from any dock, wharf, or quay adjacent to such river, canal, or creek.

The offence of stealing any security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether established by authority of Parliament or of the East India Company, or of any foreign state, or in any stock or fund of any body corporate, company, or society, or to any deposit in any savings bank, and the offence of stealing any indenture, deed, bond, will, note, warrant, order, or any other security whatsoever for money, or for payment of money, whether of the territories under the government of the said Company, or of any other of Her Majesty's dominions, or of any foreign country or state, and the offence of stealing any warrant, or order for the delivery or transfer of any goods or valuable thing.

The offence of stealing, or ripping, cutting, or breaking with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material respectively, fixed in or to any building whatsoever, or anything made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place dedicated to public use or ornament.

The offence of corruptly taking any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, or converted as aforesaid.

And the several offences of being accessory, either before or after the fact, to any of the above-mentioned offences.

5. Provided, that the said subordinate criminal court shall not try any of the above-mentioned offences, if in the commission thereof any person shall appear to have been armed with any deadly weapon, or to have used actual violence or threats, or show of violence, to any person.

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6. And it is enacted, that the said subordinate criminal court shall be competent to try, without presentment or indictment by a grand jury, any offence of the degree of a misdemeanor, except the offences of perjury, subornation of perjury, libel, conspiracy, and embezzlement.

7. Provided, that no justice of the peace shall commit any person for trial before the said subordinate criminal court on any charge of felony, unless he shall be of opinion that the offence which such person appears to have committed would be sufficiently punished with imprisonment for a term not exceeding 12 calendar months, or with some smaller punishment; and provided also, that the said subordinate criminal court shall not sentence any person found guilty of felony to any other punishment than imprisonment for a term not exceeding 12 calendar months.

8. And provided also, that no justice of the peace shall commit any person for trial before the said subordinate criminal court on any charge of misdemeanor, unless he shall be of opinion that the offence which such person appears to have committed would be sufficiently punished with fine not exceeding 1,000 rupees, and imprisonment not exceeding 12 calendar months, or with some smaller punishment; provided also, that the said subordinate criminal court shall not sentence any person found guilty of a misdemeanor to any other punishment than fine not exceeding 1,000 rupees, and imprisonment not exceeding 12 calendar months, or either of them.

9. And it is enacted, that from the day of any justice who shall have admitted to bail or committed to prison any person arrested for any offence triable by the said subordinate criminal court, or on suspicion thereof, and shall have taken the examination of such person and the information upon oath of those who know the facts and circumstances of the case, and shall have put the same or as much thereof as was material into writing, and shall have certified such bailment in writing, shall have authority to bind by recognizance all such persons as know or declare anything material touching any such offence or suspicion thereof to appear at any convenient time before the said subordinate criminal court, and there to prosecute or give evidence against the party accused, and such justice shall subscribe all such examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the clerk of the said subordinate criminal court before the trial.

10. And it is enacted, that in all cases in which the said subordinate criminal court shall have convicted any person, such person may, if he think that the conviction is wrong in point of law, appeal to Her Majesty's Supreme Court of Judicature, and that in all cases in which the said subordinate criminal court shall have convicted any person against the opinion of any one or more of the assessors, such person may move the said Supreme Court for a new trial, or for an order that the said subordinate criminal court do reconsider the finding and sentence.

11. Provided, that any person so appealing or moving shall give the prosecutor a notice in writing of such appeal or motion, and of the cause or matter thereof, within three days after such conviction, and the said Supreme Court shall hear and determine the matter of the appeal or motion, and shall make such order thereon, with or without costs to either party, as to the court shall seem meet, either by affirming or annulling the conviction, or by granting or refusing a new trial of the whole or any part of the case, or by granting or refusing an order to the said subordinate criminal court to reconsider the finding and sentence; and in case of the dismissal of the appeal, or refusal of the motion, or affirmance of the conviction, shall order the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and in case of non-payment of the same, may order such offender to undergo, in addition to such punishment, simple imprisonment not exceeding two months, and shall, if necessary, issue process for enforcing such judgment.

12. And it is enacted, that the chief justice and each of the puisne justices of the said Supreme Court may exercise severally and simultaneously all the powers and jurisdiction conferred upon the said Supreme Court by this Act, except the powers conferred by the 13th and 14th sections of this Act.

13. And it is enacted, that the judge of the said subordinate criminal court shall from time to time frame rules, declaring from among what class of persons, and in what manner, the assessors to the said subordinate criminal court shall be selected, and by what officers the lists shall be made out and the assessors summoned; which rules shall, after they have been approved by the said Supreme Court, have the same force as if they had been part of this Act, until revoked by the said judge, with the approbation of the said Supreme Court, or by the said Supreme Court.

14. And it is enacted, that the said Supreme Court shall from time to time make such rules and orders as to it shall seem meet for the regulation of the times at which the said subordinate criminal court shall be held, and of the manner of pleading therein, and of the manner in which the trials before the said court and the assessors shall be conducted, and shall direct in such rules what fines shall be imposed upon such persons as, being duly summoned as assessors, neglect or refuse to attend, and upon such assessors as misconduct themselves in the discharge of their duty, and what fines shall be imposed upon the officer by whom the lists of assessors are to be prepared and the officer by whom the assessors are to be summoned for any misconduct in the discharge of their duty, and also rules for the regulation of appeals from the said subordinate criminal court, and of motions for a new trial, or for an order to reconsider finding and sentence, all which rules shall, until revoked by the said Supreme Court, have the same force as if they had been part of this Act.

15. And

15. And it is enacted, that the 22d section of the said Act of Parliament shall apply to the punishment of any offences punishable under this Act.

16. And it is enacted, that the 26th section of the said Act of Parliament shall apply to this Act.

17. And it is enacted, that all the provisions contained in the 51st section of the said Act of Parliament shall apply to all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act.

18. And it is enacted, that all the provisions respecting restitution of property contained in the 110th section of the said Act of Parliament shall apply to a prosecution under this Act before the said subordinate criminal court.

19. And it is enacted, that the said subordinate criminal court may apply towards the reasonable costs of prosecuting offences, or of compensating prosecutors, any part of the whole sum arising out of fines levied by the said court.

20. And it is enacted, that whenever in this Act reference is made to any Act of Parliament, or to any portion of any Act of Parliament, by the words chapter and section, and by a number prefixed thereto, reference shall be taken to be thereby made to the chapter and section distinguished by the same number in the copies of such Act printed by Her Majesty's printer.

21. And it is enacted, that in case of the absence or temporary disability of the said judge of the subordinate criminal court, the Governor of Bengal may appoint a substitute judge to hold the said Court, and that such substitute judge shall exercise all the powers conferred by this Act on the said judge.

We submit this our Report for the consideration of your Honor in Council.

(signed) C. H. Cameron,
F. Millett,
J. Young.

Indian Law Commission,
31 August 1833.

MINUTE of the Honourable A. Amos, dated the 18th March 1842.

I FIND that we have power to abolish the recorder's court without a reference home.

The course proposed is, that instead of all process issuing from the recorder's court (which magnified the office of registrar and was attended with the inconvenience of a large establishment moving from place to place), there are to be distinct courts at Singapore, Malacca, Penang, and Province Wellesley. The recorder's business will be confined to appeals, general superintendence, and the trial of civil and criminal cases of moment. The chief clerk of each court will do for that court what was done generally for all the courts by the registrar. If this scheme is approved of, the subordinate points of-procedure may be most conveniently adjusted after a publication of the draft and obtaining the observations and suggestions of the Straits authorities with reference to it.

An immediate saving may be made in the salary of the registrar. When the recorder vacates, there will be no obligation to pay his successor more than the market value of his services, which, judging from the Ceylon and other appointments, is considerably less than what the recorder at present receives.

For the purposes of this scheme it will no longer be necessary to have both a governor and resident councillor at Singapore, should there be no other reasons for continuing this double expense.

Besides the economy of the measure, it will considerably expedite civil and criminal justice.

I have shown my draft to the Law Commission. It differs slightly, but not substantially, from the report. Some members of the Commission wished to be charged with the preparation of the draft themselves, in order that they might more elaborately provide for what is contained in the seventh and ninth sections, as they are anxious about introducing the practice of assessors in criminal trials, and the examination of parties, and the settlement of issues by the judge in civil cases. These matters, however, do not affect the general scheme for abolishing the recorder's court; they may lead to much discussion and difference of opinion, and they may be appended to the Act in its progress or be made the subject of a distinct law.

(signed) A. Amos.

No. 2.
Abolishing the
Recorder's Court
in the Straits.

Legis. Cons.
22 April 1842.
No. 20.
Enclosure.

An ACT for Amending the Judicature of the *Straits Settlements*.

1. It is hereby enacted, that instead of the present courts of judicature within the Straits settlements, the following shall be established from the _____ day of _____

Courts of Original Civil Jurisdiction.

At Singapore a court of original civil jurisdiction in all matters at present within the cognizance of the recorder's court shall be constituted, consisting of a judge (who shall be a barrister of five years' standing), the resident councillor, and the assistant to the resident councillor; and if there be no resident councillor at Singapore, the governor shall be a member of the court. The members of the court shall try causes separately or jointly, and distribute the business among themselves at their discretion.

At Penang and Malacca like courts of original civil jurisdiction shall be established, consisting of the resident councillor and his assistant.

At Province Wellesley the assistant in charge shall hold a court for the trial of original civil causes.

2. And it is hereby enacted, that the courts at Penang, Malacca, and Province Wellesley shall, at their discretion, subject to such orders as they shall receive from Her Majesty's Supreme Court at Calcutta, reserve cases of extraordinary difficulty or importance to be tried originally by the judge, when he shall visit Penang and Malacca upon his circuit.

3. And it is hereby enacted, that the chief clerk of the courts aforesaid shall perform, in respect of the court to which he belongs, all the duties heretofore performed by the registrar of the recorder's court.

4. And it is hereby enacted, that the judge shall, three times in every year, visit the settlements of Penang and Malacca, for the purpose of trying original causes specially reserved for him as aforesaid, and for hearing appeals.

Courts of Appellate Jurisdiction.

5. And it is hereby enacted, that an appeal shall lie from the courts of Penang, Malacca, and Province Wellesley, to the judge, to be heard by him upon his circuit; and afterwards, should cause arise, but upon matters of law only, from the judge to Her Majesty's Supreme Court at Calcutta. The like rule shall prevail in regard to suits determined by a single member of the Singapore court other than the judge. The judge may, at his discretion, call for the proceedings in any suit not tried before himself, and set them aside, if contrary to law; but in every such case he shall forward the proceedings, together with his reasons for vacating the same, to Her Majesty's Supreme Court at Calcutta.

An appeal, both upon matters of law and fact, shall lie, in all suits determined originally by the judge, to Her Majesty's Supreme Court at Calcutta.

Courts of Criminal Jurisdiction.

6. And it is hereby enacted, that criminal offences shall be triable before each of the aforesaid courts, or the respective members thereof, except that all offences punishable by death or transportation for life shall be triable only before the judge. Any court or member thereof trying a criminal case may reserve any point of law for the decision of the judge, and the judge may reserve any point of law arising in a criminal case for the decision of Her Majesty's court at Calcutta. The judge may revise the proceedings in criminal cases not tried before himself, in like manner as is provided with regard to civil cases.

Procedure.

7. And it is hereby enacted, that in criminal cases which are not punished by transportation or imprisonment for more than six months, the trial may be before any member of the courts aforesaid respectively; in other cases a jury, consisting of five persons, shall be summoned. No grand jury shall be required.

8. And it is hereby enacted, that it shall be lawful for the Governor-general of India in Council to appoint all necessary officers for carrying the process of the aforesaid courts into execution, or to authorise their appointment by the court aforesaid

aforesaid, and to determine the salaries of the judge and all other members and officers of the said courts.

9. And it is hereby enacted, that all proceedings in the courts aforesaid shall be as near those at present used in the recorder's court as is practicable, but so that each of the aforesaid courts shall issue and execute its own process. And it shall be lawful for the Governor-general in Council to issue rules for the amendment of the procedure of the aforesaid courts in all matters in which the judges of Her Majesty's Supreme Courts are allowed to frame rules of court with the sanction of the Governor-general in Council.

No. 2.
Abolishing the
Recorder's Court
in the Straits.

(No. 33.)

From Officiating Secretary to the Government of India to *J. C. C. Sutherland, Esq.*
Secretary to the Indian Law Commission, dated Council Chamber, the 22d
April 1842.

Legis. Cons.
22 April 1842.
No. 21

Sir,

I AM directed by the Honourable the President in Council to request that the Law Commissioners will submit, for the consideration of the Supreme Government, the draft of an Act amending the judicature of the Straits settlements, with reference to their Report, dated the 8th February last, connected with the question of abolishing the recorder's court in the Straits. A draft Act on the same subject accompanies this communication; but it will not be necessary for the Commission to report upon that draft specially

Legislative Dept.

I have, &c.

(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

No. 3.
Recorder's Court :
Registration of
Conveyances.

No. 3.

RECORDER'S COURT IN THE STRAITS:

On the Registration of Conveyances of Real Property.

Legis. Cons.
17 June 1842.
No. 2.

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to
F. J. Halliday, Esq. Junior Secretary to the Government of India, Legislative
Department.

Sir,

THE Report of the Law Commissioners on the question of abolishing the recorder's court has been this day submitted.

2. I am directed therefore to return to you the original papers connected with that subject, which have been received from your office, and are specified in a list annexed.

3. I am directed at the same time to refer to my letter of the 11th July 1840. It communicates the intention of the Law Commissioners to include their suggestions in regard to the above subject in a general report on the judicatures and procedure at the places subject to the jurisdiction of Her Majesty's courts.

4. The Supreme Government, in its Resolutions of the 3d August 1840, communicated in your letter of that date, approved of this intention, with some qualifications; with reference to which, and the letter of Mr. Secretary Maddock, dated 22d November last, the Law Commissioners have deviated from their intention mentioned in my above-quoted letter, and submitted the report first noticed.

5. Mr. Secretary Maddock's letter calls the attention of the Law Commissioners to his previous letter of the 29th April 1840, with which were received certain papers connected with the Straits settlements, specified in a list annexed.

6. When Mr. W. R. Young was at the Straits as Commissioner under Act X. of 1837, Mr. Kerr submitted to him the draft of a law by which it was proposed that conveyances of real property, and their registration, should be regulated. The instructions to the Law Commissioners contained in Mr. Maddock's letter dated 29th April are, that they should consider the registration of tenures, as suggested by Mr. Kerr, in conjunction with the reform of the judicatures of those settlements, and should advise the government as to the expediency of a scheme of compulsory registration, based on the principles developed by Mr. Kerr's draft, or on other principles more approved.

7. The Law Commissioners direct me to state that they have devoted their attention to the draft law in question, and its relevant papers, and will in a separate report submit their views on the subject. They have deemed it more convenient, to report on the reform of the Straits judicatures, with which the objects proposed by Mr. Kerr have no intimate connexion.

I have, &c.
(signed) *J. C. C. Sutherland*,
Secretary.

Indian Law Commission,
22 February 1842.

LIST of PAPERS relative to the Abolition of the Recorder's Court at *Penang*, *Singapore*,
and *Malacca*.

Extract Despatch from Honourable Court of Directors, dated the 19th February last, paragraphs 2 and 3, with its Enclosure.
Public Letter from ditto (No. 66 of 1831), dated - - - 27 July.
From Secretary to Governor-general - - - - - 21 December 1831.
To the Advocate-general - - - - - 10 January 1832.
From ditto - - - - - 9 February 1832.
To the Resident at Singapore - - - - - 14 February 1832.
Public Letter from Honourable Court (61 of 1832) - - - - 8 August.
To Governor of the Straits Settlements - - - - - 15 January 1833.
From ditto - - - ditto - - - - - 23 July 1834.
To ditto - - - ditto - - - - - 9 September 1834.

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From Governor of the Straits Settlements	(1 Enclosure)	21 October 1834.
To ditto - ditto	-	22 December 1834.
From ditto - ditto	(6 Enclosures)	22 December 1834.
From ditto - ditto	-	4 February 1835.
From ditto - ditto	(2 Enclosures)	28 July 1835.
From Secretary Government of Bengal, to Secretary Government of India	-	2 September 1835.
From Governor of Straits Settlements	(1 Enclosure)	14 December 1835.
To ditto - ditto	-	10 February 1836.
From ditto - ditto	(1 Enclosure)	5 November 1836.
To Commissioner of ditto	-	25 October 1837.
Note by Governor of ditto	-	No date.
Minute by the Right Hon. Governor-general (several Enclosures)	-	9 February 1837.
Ditto by Honourable Ross	-	22 March 1837.
Ditto by Honourable Shakespear	-	28 March 1837.
Minute by Honourable Ross	-	6 May 1837.
Draft Act.	-	24 May 1837.
Resolution	-	24 May 1837.
Letter to Commissioner of Eastern Settlements	-	24 May 1837.
To Governor of ditto	-	24 May 1837.
To the Honourable the Recorder of ditto	-	5 July 1837.
To the Honourable Sir B. Malkin	-	17 July 1837.
From ditto - Commissioner of Eastern Settlements	-	9 August 1837.
Resolution	-	18 October 1837.
Letter from Governor of Eastern Settlements	-	4 October 1837.
To ditto - ditto	-	8 November 1837.
From ditto - ditto	-	1 November 1837.
From Recorder of ditto	(1 Enclosure)	12 January 1838.
To ditto	-	14 March 1838.
From Honourable Sir B. Malkin	-	16 September 1837.
Minute by Honourable H. Shakespear	-	27 September 1837.
Ditto by the Right honourable Governor-general	-	16 October 1837.
Extract, Legislative Department	-	22 January 1838.
From Governor of Eastern Settlements	(1 Enclosure)	27 January 1838.
To ditto - ditto	-	25 April 1838.
From ditto - ditto	(1 Enclosure)	13 September 1838.
To ditto - ditto	-	24 October 1838.
Resolution, Legislative Department	-	22 January 1838.

From Officiating Secretary to the Government of India, to Secretaries Governments of Bengal (No. 41), North Western Provinces (No. 121), Madras (No. 122), and Bombay (No. 123).

Legis Cons.
17 June 1842.
No. 3.

Sir,

I AM directed by the Honourable the President in Council to transmit to you, for submission to the the accompanying printed report, dated the 8th February last, on the judicial establishment in the Straits, submitted by the Law Commissioners.

Legis. Dep.

2. With the view of distributing the report to such officers within the presidency of as may be competent to advise on the subject discussed, copies of the report are forwarded.

I have, &c.
(signed) F. J. Halliday,
Officiating Secretary to the Government
of India.

Fort William, 17 June 1842.

(No. 124.)

From Officiating Secretary to the Government of India, to the Governor of Straits Settlements.

Legis. Cons.
17 June 1842.
No. 4.

Sir,

I AM directed by the Honourable the President in Council to transmit to you the accompanying printed report, dated the 8th February last, submitted by the Law Commissioners, on the judicial establishment in the Straits, and to request that your

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your opinion, and that of any other officer competent to advise on the subject, may be submitted for the consideration of the Supreme Government.

2. With the view of distributing the report, six copies are forwarded.

I have, &c.

(signed) *F. J. Halliday,*
Officiating Secretary to the Government
of India.

Fort William, 17 June 1842.

Legis. Cons.
17 June 1842.
No. 5.

From Government of India to the Honourable the Judges of the Supreme Courts, Calcutta, Madras, and Bombay.

Legis. Dep.

Honourable Sirs,

WE have the honour to forward to you the accompanying printed report, dated the 8th February last, submitted by the Law Commissioners, on the judicial establishment in the Straits, and shall feel obliged by any observations or suggestions you may offer on the subject.

We have, &c.

(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.
A. Amos.

Fort William, 17 June 1842.

Legis. Cons.
17 June 1842.
No. 6.

(No. 125.)

From Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general.

Legis. Dep.

Sir,

I AM directed by the Honourable the President in Council to transmit to you, for submission to the Right honourable the Governor-general, the accompanying printed report, dated the 8th February last, submitted by the Law Commissioners, on the judicial establishment in the Straits.

I have, &c.

(signed) *F. J. Halliday,*
Officiating Secretary to the Government
of India.

Fort William, 17 June 1842.

Legis. Cons.
17 June 1842.
No. 7

(No. 42.)

From Officiating Secretary to the Government of India, to *C. R. Prinsep*, Esq. Officiating Advocate-general.

Legis. Dep.

Sir,

I AM directed by the Honourable the President in Council to transmit to you the accompanying printed report, dated the 8th February last, submitted by the Law Commissioners, on the judicial establishment in the Straits, and to request that your opinion on the subject may be submitted for the consideration of the Supreme Government.

I have, &c.

(signed) *F. J. Halliday,*
Officiating Secretary to the Government
of India.

Council Chamber, 17 June 1842.

Legis. Cons.
17 June 1842.
No. 8.

(No. 43.)

From Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Dep.

Sir,

WITH reference to your letter dated the 22d February last, returning original papers connected with the judicial establishment in the Straits, I am directed by

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the Honourable the President in Council to transmit to you, for the use of the Law Commissioners, eight printed copies of their report on the subject.

No. 3.
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I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government
of India.

Council Chamber, 17 June 1842.

(No. 12 of 1842.)

From the Junior Secretary to the Government of India, with the Governor-general, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department, Fort William.

Legis. Cons
22 July 1842
No. 13.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 125, dated 17 June, and to acquaint you that the printed report by the Law Commissioners on the judicial establishment in the Straits which accompanied it, has been submitted to the Governor-general.

Legis Dep

Allahabad,
9 July 1842.

I have, &c.
(signed) *C. G. Mansel*,
Junior Secretary to the Government of India,
with the Governor-general.

(No. 493.)

From Acting Secretary to the Government of Fort St. George, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India; dated Fort St. George, 16 August 1842.

Legis Cons
2 September 1842.
No. 66.

Sir,

I HAVE the honour, by desire of the Right honourable the Governor in Council, to acknowledge the receipt of your letter of the 17th of June last, accompanied by copies of the report of the Law Commission on the judicial establishment in the Straits, and to state, for the information of the Honourable the President in Council, that none of the public servants under this government appear to be acquainted with the subject of the enactment therein proposed.

Judicial Dep

I have, &c.
(signed) *W. Elliot*,
Acting Secretary to Government.

From the Indian Law Commission, to the Honourable the President of the Council of India in Council; dated 6 August 1842.

Legis Cons
30 Dec 1842
No. 3

Honourable Sir,

AGREEABLY to the instructions conveyed to us in Mr. Secretary Halliday's letter, dated the 22d April last, we have the honour to submit the draft of an Act for abolishing the Court of Judicature in the Straits, and erecting other courts for the administration of civil and criminal justice in the settlements of Singapore, Prince of Wales' Island, and Malacca respectively, vested with all the powers of the existing court, except such as can be conferred only by charter or letters patent from the Crown, or by commission from the Admiralty.

In framing this draft we have taken from the charter, almost verbatim, such of the provisions relating to the jurisdiction, functions, and powers of the present court, and of the officers thereof, as, according to the plan indicated in our report under date the 8th February last, we have thought proper to be continued and made applicable to the new Courts, combining therewith the new rules proposed for the institution and distribution of original civil suits, and for pleading, and for the admission and hearing of appeals, regular and special, and the new provisions requisite for the administration of criminal justice under the altered constitution of the courts to be established.

As in this process we have not changed the language of the charter, some want of congruity, as regards style, will appear between those parts of the Act which have

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been adopted from it, and those which have been prepared for this occasion; but we thought it right not to deviate from the phraseology to which the people were accustomed.

The first section declares the abolition of the Court of Judicature established by the charter, and of the courts of requests instituted under authority thereof.

The following sections, 2 to 11, declare the constitution of the new courts, and provide for the appointment and payment of the judges. It will be observed that we have not expressly provided that the resident counsellor and his assistant shall be the subordinate judges of the court at each settlement, but that it shall be competent to the Governor of Bengal to appoint persons, being executive officers of government, to be such judges; thus leaving it open to government to appoint persons who can devote their whole time to the business of judicature, if the finances of the settlements should ever admit of such an arrangement.

Section 12 provides for the appointment of a permanent sheriff to each settlement, to be made by the court, with the express consent always of the chief judge; and the following sections, to the 15th, are subsidiary, adopted from the charter, except the 14th, which provides for a deputy-sheriff in province Wellesley to execute the process of the judge who, according to section 25, is to be delegated from the general court of Prince of Wales' Island to sit there.

Sections 16 to 19, adopted from the charter, declare the jurisdiction and authority of the new courts.

Sections 20 to 22 provide for the intervention of assessors, when the Governor of Bengal in his discretion shall authorise their employment.

Section 23 indicates the manner of commencing suits, and the first steps to be taken by the judges receiving complaints. Sections 24 and 25 provide for the distribution of the suits for trial. Sections 26 to 32 describe the proceedings until the time when the pleadings are to be taken. Sections 33 and 34 provide for defaults by plaintiff and defendant.

The following sections, 35 and 36, prescribe the manner of pleading, and what is to be done thereupon. In framing those sections we have followed the draft we had the honour to submit, under date the 31st July 1841, relating to the subordinate civil court for Calcutta.

Section 37, relating to the administration of oaths, is taken from the charter, modified with reference to the Act of the government of India, No. V. of 1840, and the Statutes 3 & 4 Will. 4, c. 39 & 82, and 1 & 2 Vict. c. 77. By these statutes, Quakers, Moravians, and Separatists, and persons who were formerly Quakers or Moravians, but have seceded from those religious classes, nevertheless retaining conscientious objections to oaths, are privileged to take affirmations instead of oaths. It appears by the public papers, that in the present Session of Parliament a Bill had been introduced in the House of Lords to extend this privilege to members of other sects entertaining similar scruples, but had been withdrawn, in order that it might be altered so as to comprehend all persons conscientiously objecting to be sworn, on religious grounds. With reference to this proceeding in England, we beg to recall the attention of your Honour in Council to our report under date the 3d February 1840, and the draft Act submitted therewith, and would suggest that the section be further modified as therein recommended. We have omitted corporal punishment from among the punishments allowed to be inflicted on witnesses for contempt.

In section 38 we have ventured to suggest an alteration in the law of evidence, by a provision, that no person shall be excluded from giving evidence in any suit by reason of his being interested in the subject of litigation, or in the event of the suit. We believe that the principle of this suggestion is now generally approved, and that it is about to be introduced into the law of England.

Section 39 authorises the judge to award a reasonable payment to witnesses for their expenses, and to enforce the same.

Section 40 directs how the decrees of the courts shall be made; viz. that they shall be agreeable to equity and good conscience, following the laws enacted specially for the Straits settlements by Parliament, or by the government of India, and the law of England, so far as it has been held by the "Court of Judicature" to be applicable, or may be held to be applicable, upon the principles laid down by that court in its decisions.

In the 6th paragraph of our address to the Governor-general in Council, of the 8th February last, we declared our opinion that the principle, stated in our report upon the *lex loci* of British India, and the rules laid down in the draft founded upon

upon it, might with propriety be applied to the settlements in the Straits; but it does not appear to us that the proposed modifications of the law would fitly find a place in this Act.

Section 41 provides that the judge shall determine what shall be considered costs in the suit, and which party shall pay them, and to what amount, and whether the fees of attorneys and barristers shall be allowed as costs between party and party.

Section 42 provides for a fee to be paid by the losing party in a suit, the rate of, the fee is left blank for the determination of government. We formerly made a recommendation to this effect for the courts of Mysore, which was adopted by government.

Section 43 provides for the punishment of a party or agent prevaricating, by fine within a limited amount, to be adjudged in the decree.

Sections 45 and 46 contain general provisions for execution, according to the charter, and in section 47 are provisions for the sequestration of the property of a defendant who is not to be found, and for eventual judgment *ex parte*, and execution of the same, also according to the charter.

Sections 48 and 49 provide for the custody of monies, &c. belonging to suitors, and constitute the Company's treasurer accountant of the court at each settlement.

Section 50 indicates the manner of proceeding in suits in which the Company is a party.

Section 51 directs that in ecclesiastical suits the proceedings shall be as near as possible the same as in other suits.

Sections 52 to 62 provide for the granting of probates of wills and letters of administration by the chief judge, and in his absence the first resident judge; and for the guardianship of the persons and property of infants and other incapacitated persons. The rules are adopted from the charter, *mutatis mutandis*, with reference to the altered constitution and jurisdiction of the courts.

Sections 63 and 64 contain rules for appeals, regular and special, according to the recommendations in paragraphs 38 to 42 of our Report of the 8th February last.

The rules we have framed for the administration of criminal justice, according to the recommendations in paragraphs 44 to 52 of our Report, will be found in sections 65 to 69, in which we have introduced also some of the provisions of the charter, with modifications to adapt them to the general scheme.

In clause 17 of section 65 is a provision exempting the chief judge from the jurisdiction of the courts in respect of all charges whatsoever, and exempting the governor and resident counsellors from their jurisdiction, according to the charter, in respect of all charges except charges of treason or felony. The reason of the distinction is, that treason and the more heinous felonies are under this Act beyond the jurisdiction of every judge but the chief judge himself. Being exempted from the jurisdiction of the courts in the Straits, the chief judge, we apprehend, will be amenable to the jurisdiction of the Supreme Court at Calcutta, as residing within the presidency of Bengal, of which these settlements form a part or appendage.

We have thought it expedient to provide (clause 18, section 65,) that charges against the subordinate judges of the local courts shall be heard and determined by the chief judge.

The provisions in sections 66 to 69 regarding the suspension, and respite, and mitigation of sentences, and for the pardon of criminals under sentence, and for compensation to prosecutors, are partly new, and partly adopted from the charter, with modifications.

In sections 70 to 72 we have provided for the mutual execution of the process of the courts in the several settlements, following substantially, as far as applicable, the rules contained in Act No. XX. of 1840, of the Government of India.

By section 73 it is left to the Governor of Bengal (in conformity with Act XXI. of 1837) to determine whether any and what oaths or affirmations shall be taken by the sheriffs, coroners, and other officers who shall be appointed under the Act.

And by section 74 the government of Bengal is authorised to settle the fees to be taken in the new courts, subject to the approbation and correction of the Governor-general of India in Council.

76 & 77.

By section 75 provision is made for the business pending in the existing court, according to the precedent furnished by the charter.

And lastly, the courts are authorised to establish general rules of process, subject to the orders of the Governor-general of India in Council.

We noticed in our Report the suggestion of Sir Benjamin Malkin, that a provision should be made to render officers and soldiers amenable to the local courts in the Straits for actions of debt and personal actions, under 400 rupees. Sir Benjamin Malkin observed that "the existing difficulty would never have arisen, unless from the circumstance of these settlements having been forgotten by the framers of the Mutiny Act when they were providing for the cases of Calcutta, Madras, and Bombay." The provision referred to is, that where troops are serving beyond the jurisdiction of the courts of requests at Calcutta, Madras, and Bombay, actions of debt and personal actions, not exceeding 400 sicca rupees, shall be cognizable before a military court of requests, and not elsewhere. As the Mutiny Act cannot be altered by the Indian legislature, the defect can only be supplied by an Act of Parliament.

4 G. 4, c. 81, s. 57.
3 & 4 Vict. c. 37,
s. 54.

3 & 4 W. 4, c. 85,
s. 42.

Rules passed by
Her Majesty in
Council, 10 April
1838.

We have not made any special provisions regarding appeals to the Privy Council, considering that the existing rules will be applicable without any declaration to that effect.

To render the proposed courts completely efficient it will be necessary to obtain from the Crown a charter vesting them with admiralty jurisdiction, and also to procure vice-admiralty commissions for them.

We have, &c.

(signed) A. Amos.
C. H. Cameron.
F. Millett.
D. Ehatt.
H. Borradaile.

Legis. Cons.
30 Dec. 1842.
No. 4.
Enclosure.

I. Whereas it is expedient that the court of judicature of Prince of Wales' Island, Singapore, and Malacca, established by charter or letters patent of his Majesty King George 4, under date the 27th November, A. D. 1826, and the courts for the recovery of small debts, established in the said settlements under authority of the said charter, should be abolished, and that other provision should be made for the administration of justice in the said settlements: And whereas the Governor-general of India in Council has obtained the sanction of the Court of Directors of the East India Company to the abolition of the said court of judicature;

It is hereby enacted, that the jurisdiction of the court of judicature of Prince of Wales' Island, Singapore, and Malacca established by the said charter, and all powers and authorities thereby granted to or vested in the said court, and the jurisdiction of the courts for the recovery of small debts established in the said settlements, under authority of the said charter, shall cease and determine on the 31st day of

II. And it is hereby enacted, that after 31st of A. D. the entire administration of justice, civil and criminal, within the said settlements, except in respect of causes and matters, and crimes and offences, falling within the jurisdiction of courts of admiralty and vice-admiralty and military courts, shall be vested exclusively in the courts constituted by this Act.

III. And it is hereby enacted, that on the 1st day of A. D. a court of record for the administration of civil and criminal justice shall be established in the settlement of Singapore, which shall consist of a chief judge and two or more subordinate judges, and a court of record, similarly constituted, in each of the settlements of Prince of Wales' Island and Malacca; and the said courts shall be called respectively "The General Court of Singapore," "The General Court of Prince of Wales' Island," and "The General Court of Malacca."

IV. And it is hereby enacted, that whenever in this Act any of the said settlements shall be mentioned all places subordinate or annexed thereto shall be understood to be included.

V. And it is hereby enacted, that the chief judge of the General Court of Singapore shall be also chief judge of the General Courts of Prince of Wales' Island and Malacca, and shall be called chief judge of Singapore, Prince of Wales' Island, and Malacca; and that such chief judge shall reside principally at Singapore.

gapore, but shall visit each of the settlements of Prince of Wales' Island and Malacca three times in every year, and shall sit in court from time to time at each place in succession until he has disposed of the business that may be waiting for him, or may come before him during his visit.

VI. And it is hereby enacted, that such chief judge shall be a barrister of the English or Irish bar of not less than five years' standing, or an advocate of the Scottish bar of not less than five years' standing; that he shall be appointed by the Governor-general of India in Council; that he shall receive a salary of 17,500 Company's rupees by the year; and that he shall not hold any other office, place, or employment, or be engaged in or carry on any trade, traffic, or business whatsoever, on pain that the acceptance of any such other office, place, or employment, or the engaging in or carrying on any such trade, traffic, or business, shall be in law an avoidance of the office of chief judge.

VII. And it is hereby enacted, that the number of subordinate judges to be appointed to the General Court in each of the said settlements, who shall be called resident judges of such settlement, and shall be distinguished as first, second, and so on, shall be determined by the Governor-general of India in Council, and may be reduced or increased from time to time as to the said Governor-general in Council may seem meet.

VIII. And it is hereby enacted, that such resident judges shall be appointed by the Governor of Bengal; and that it shall be competent to him to appoint persons being executive officers of government to be such judges.

IX. And it is hereby enacted, that the salary to be assigned to every such judge shall be determined by the Governor-general of India in Council, regard being had to his qualifications, and, if he holds any other office under government, to the salary of that office.

X. And it is hereby enacted, that every chief judge and other judge appointed as aforesaid, before he shall be capable of exercising the office of judge, or magistrate, under this Act, shall take in open court, in such manner as shall be directed by the Governor of Bengal, an oath, or shall make a solemn declaration, as shall be ordered by the said Governor of Bengal, that he will, to the best of his knowledge, skill, and judgment, duly execute the office of judge, or magistrate, and impartially administer justice in every cause, matter, or thing which shall come before him; of which oath or declaration a record shall forthwith be made.

XI. And it is hereby enacted, that the said chief judge, and every other judge of the said courts, shall have and use a seal with his official designation inscribed upon it; and that all notices, writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by such chief or other judge shall be sealed with such seal, and shall be signed by such chief or other judge.

XII. And it is hereby enacted, that a fit and proper person shall be appointed by each of the said general courts to be sheriff of the settlement subject to the jurisdiction of such court, who shall continue in such office until another person shall be appointed by the same authority to succeed him therein: provided that no person shall be appointed sheriff of any of the said settlements, and that no person having been duly appointed sheriff shall be removed from office, without the express consent of the chief judge.

XIII. And it is hereby enacted, that the sheriff of every settlement appointed as aforesaid shall execute all the writs, summonses, rules, orders, warrants, commands, and process of the several judges of the General Court of the settlement, and make returns of the same, together with the manner of the execution thereof, to the judge who shall have issued the same, and shall receive and detain in prison all such persons as shall be committed to his custody by any of the said judges, or any other person having competent authority so to do; and to do all such acts, matters, and things, and perform all such duties, as nearly as circumstances shall admit or require, as are or ought to be done and performed by the sheriff of any shire or county in England.

XIV. Provided that the sheriff of Prince of Wales' Island shall appoint a deputy, for whom he shall be responsible, to execute the process issued by the resident judge in province Wellesley.

XV. And it is hereby enacted, that whenever any of the judges of any of the said courts shall direct and award any process against the said sheriff, or award any process in any cause, matter, or thing, wherein the said sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot, or ought not

not by law to execute the same, in every such case such judge shall name and appoint some other fit person to execute and return the same, and the said process shall be directed to the said person so named for that purpose, and the cause of such special proceedings shall be suggested and entered on the records of the said court.

XVI. And it is hereby enacted, that the chief and other several judges of the said courts shall have such jurisdiction and authority as the Court of Queen's Bench and the justices thereof, and also as the High Court of Chancery and the Courts of Common Pleas and Exchequer respectively, and the several judges, justices, and barons thereof respectively, have and may lawfully exercise within that part of the United Kingdom called England, in all civil and criminal actions and suits, and in matters concerning the revenue; and that the said judges severally shall have and exercise the jurisdiction exercised by the ecclesiastical courts in England, so far as the several religions, manners, and customs of the inhabitants of the said settlements will admit.

XVII. And it is hereby enacted, that each of the said courts, within the settlement for which it is constituted, shall have full power to hear, examine, try, and determine, in manner hereinafter mentioned, all actions and suits which shall or may arise or happen, or be brought or promoted, upon or concerning any trespasses or injuries, of what nature or kind soever; or any debts, duties, demands, interests, or concerns, of what nature or kind soever; or any rights, titles, claims, or demands of, in, or to any houses, lands, or other things, real or personal, within such settlements, or touching the possession, or any interest or lien in or upon the same; and all pleas, real, personal, or mixed, the causes of which shall or may hereafter arise, accrue, and grow, or shall have heretofore arisen, accrued, and grown, against the East India Company, and against any persons who shall be resident within such settlement, or who shall have resided there, or who shall have any debts, effects, or estate, real or personal, within the same, and against the executors and administrators of such persons.

XVIII. Provided always, that it shall not be competent to such court to try or determine any suit or action against any person who shall never have been resident in the said settlement, or against any person then resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland shall be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than 12,000 dollars.

XIX. Provided always, that nothing in this Act shall extend, or be construed to extend, to subject the person of the governor or resident, or any of the counselors of the said settlements, or the person of the chief judge of Singapore, Prince of Wales' Island, and Malacca, to be arrested or imprisoned in any civil suit, action, or proceeding in any of the said courts.

XX. And whereas it is conducive to the good administration of justice that the respectable part of the public should be associated therein, it is hereby enacted, that the Governor of Bengal may, by proclamation, order or authorise every or any judge of the said courts, in all civil suits as aforesaid, or in any particular class of suits, and in all proceedings therein, or in any particular suit or in any particular proceeding therein, to sit with one or more assessors; and such assessor or assessors shall take an oath, or make a solemn affirmation, in the manner hereinafter prescribed for witnesses, to examine carefully, and to deliver a faithful and impartial opinion, jointly or severally, upon the matters or points at issue; and the opinion so delivered shall be recorded.

XXI. Provided always, that the opinion of such assessor or assessors shall be only for the information of the conscience of the judge.

XXII. And it is hereby enacted, that the same process shall be used for summoning assessors in civil suits as is hereinafter directed to be used in criminal cases, and persons refusing or neglecting to attend accordingly, or be sworn or make affirmation, shall be subject to the like punishment as is authorised for such contempt in criminal cases.

XXIII. Clause 1. And it is hereby enacted, that the manner of commencing suits, other than ecclesiastical suits, in the said courts, shall be as follows:—

Clause 2. In each court the resident judges, and at Singapore the chief judge also, when he is at the settlement, shall each sit at stated hours daily, or on stated days, for the purpose of hearing plaints.

Clause 3. Every plaintiff bringing a suit in any of the said courts, shall, except as hereinafter excepted, appear in person before one of the sitting judges, and shall, orally or in writing, lay before such judge the facts which constitute his claim.

Clause 4. The excepted cases in which the plaintiff shall be excused from appearing in person, for the purpose of making the statement of facts mentioned in the last clause, are the same as the excepted cases specified in Section XXX, but the plaintiff shall in all cases be permitted to make the statement of facts by agent, provided he deposit in court the sum of rupees

Clause 5. The sum so deposited shall be held as a security for anything which may be, or which may become, due to the defendant or to the government, in respect of the matter of the suit, or in respect of the mode of conducting it; and so much of the said sum as shall not be so due, or become so due, shall be repaid to the plaintiff.

Clause 6. If the plaintiff lays the facts before the judge orally, the facts, whether stated of his own accord or elicited by examination, shall be reduced into form and written down by the judge, or by an officer of the court under his direction, and shall constitute the plaint.

Clause 7. If the plaintiff lays the facts before the judge in writing, the written statement shall be corrected in form by the judge, or by an officer of the court under his direction, if it requires such correction, and in substance if it in any respect disagrees with the statement of facts elicited by the examination of the plaintiff: subject to such correction, the written statement shall constitute the plaint.

Clause 8. When the statement of facts constituting the plaint has been made, the judge, if he is of opinion that the plaint does not contain any cause of suit against the defendant, or that the defendant or the matter of the suit is not within the jurisdiction of the court, shall make a decree accordingly.

XXIV. Clause 1. And it is hereby enacted, that the plaints received in the said courts shall be disposed of as follows:—

Clause 2. In the court of Singapore, when the chief judge is at the settlement, on every day on which any of the judges shall sit for the purpose of receiving plaints, all the plaints received, except such as are determined under clause 8 of the last section, shall be laid before the chief judge, who shall distribute them, for trial and decision among all the judges, including himself.

Clause 3. In distributing the plaints, the chief judge shall endeavour to give to each judge a share of them proportioned to the time which he is able to devote to judicial business and those kinds of suits which he thinks him best qualified to decide.

Clause 4. Provided, that the chief judge shall reserve to himself all cases involving difficult or doubtful points of law, and questions of importance which have not previously been determined; all suits in which the 1st resident judge is a party, or is related to or connected with a party, or is anywise interested; all suits in which government is a party; and all suits in which the amount involves a dispute exceeding 10,000 rupees, wherein an appeal may be preferred to the Privy Council, under the Rules passed by Her Majesty in Council, of date the 10th April 1838; and that all suits in which he is himself a party, or related to or connected with a party, or is anywise interested, shall be assigned to the 1st resident judge.

Clause 5. In the court of Singapore, in the absence of the chief judge, and at all times in the courts of Prince of Wales Island and Malacca, all the plaints received shall be laid before the 1st resident judge, who shall distribute them in the manner directed in the 3d and 4th clauses of this section.

Clause 6. Provided, that the chief judge shall have power to call up and place on his own file any causes assigned to other judges which he shall deem it proper to hear and decide himself, and to transfer to other judges any causes assigned to himself which he shall think not to be of a nature to require his attention.

XXV. And it is hereby enacted, that one of the resident judges of the court of Prince of Wales Island shall sit separately in province Wellesley, and shall receive all plaints that may be preferred to him against persons residing in the said province, of which he shall reserve to himself all such as, according to the arrangement for the distribution of causes which shall be observed in the said court, would fall to him if he was sitting in it, and shall remit all others to the 1st resident judge, to be disposed of as if they had been preferred in the said court.

XXVI. Clause 1. And it is hereby enacted, that the following shall be the manner of proceeding after the plaints are distributed:

Clause 2. Every judge to whom a plaint is assigned for trial shall immediately place it on his file, and shall direct a writ of summons to be issued to the defendant.

Clause 3. The writ of summons shall contain a copy of the plaint and an order to the defendant to appear before the court on a specified day, and to bring with him

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him any documents which he may have in his possession, of which the plaintiff, with the consent of the judge, demands inspection, or which the defendant may think conducive to his defence, and a list of such witnesses as he supposes may be necessary for his defence.

Clause 4. If the plaintiff satisfies the judge that the defendant is likely to withdraw himself from the jurisdiction of the court, the judge may direct a warrant of arrest against the defendant, to be issued together with the writ of summons.

Clause 5. If the defendant is arrested on the warrant, he shall be brought with all convenient speed before the judge, who may discharge him from custody, if he gives sufficient security for his appearance, or if he deposits a sum which the judge considers, under all the circumstances of the case, sufficient, or if he satisfies the judge that he does not intend to withdraw himself from the jurisdiction; if the defendant does not fulfil any of these conditions, the judge shall commit him to prison until he shall give the security, or make the deposit required, or failing thereof, until judgment shall be passed.

XXVII. Provided, and it is hereby enacted, that in suits assigned to the chief judge in any of the courts in his absence, it shall be competent to the first resident judge, when the plaintiff satisfies the said judge that the defendant is likely to withdraw himself from the jurisdiction of the court, to issue a writ of summons to the defendant instantly, together with a warrant for his arrest; and if the defendant is arrested, it shall be competent to the said judge to proceed according to clause 5 of the last Section.

XXVIII. And it is hereby enacted, that in the absence of the chief judge, it shall be competent to the first resident judge of any of the courts, in any suit on the file of the chief judge in such court, when it shall be certified to him by or on behalf of one of the parties that a material witness is about to depart from the jurisdiction of the court, and is not likely to be present when the cause is heard by the chief judge, to issue a summons to such witness, and to take his examination, but not without notice to the opposite party to attend at such examination; and any deposition so taken, and duly certified, shall be read in evidence at the hearing of the cause by the chief judge, if the witness shall then be absent from the jurisdiction, or unable from sickness or infirmity to attend, or if the chief judge, in his discretion, shall think fit to dispense with his attendance.

XXIX. And it is hereby enacted, that in the absence of the chief judge, it shall be competent to the first resident judge of any of the courts, in any suit on the file of the chief judge in such court, to take all other steps which cannot be delayed without risk of injustice.

XXX. Clause 1. And it is hereby enacted, that every plaintiff and defendant, in any suit in any of the said courts, shall appear, except as hereinafter excepted, in person, on the day specified in the writ of summons, and on every other day fixed for their appearance by the judge hearing the cause.

Clause 2. A plaintiff or defendant may be excused from appearing in person, if ill, if absent from the settlement, if engaged in the public service, if exempted on account of rank by any rule or regulation, or by a special privilege heretofore judicially recognised, from appearing in a court of justice, if of advanced age, if of the female sex, if there is a co-plaintiff who appears in person, if there is a co-defendant defending jointly, who appears in person.

Clause 3. But in all these cases the judge may refuse to hold the party excused from appearing in person, if he is not satisfied that the excuse is made in good faith, and that the matter of the excuse exists in a sufficient degree to justify him in admitting it.

XXXI. And it is hereby enacted, that whenever an agent has been admitted in place of a party, such agent shall be permitted to do all the party might have done had he appeared, and shall be liable to be examined and cross-examined in the same manner.

XXXII. And it is hereby enacted, that the judge may, if he thinks fit, order that the party excused shall be examined in any way in which an absent witness may be examined.

XXXIII. And it is hereby enacted, that when a plaintiff shall not appear, in person or by agent, on the day appointed in the writ of summons to the defendant, the judge may provisionally make a decree against him, which the judge may rescind, if the plaintiff appears, in person or by agent, within a reasonable time after the said day, and shows sufficient cause; and if the plaintiff shall not appear in person on the said day, but shall appear by agent, and the judge shall not admit

admit the excuse offered by the agent for the non-appearance of the plaintiff in person, the judge may nevertheless examine the agent upon the merits of the suit, and may make a decree against the plaintiff; or he may order the agent to summon the plaintiff to appear on a specified day, and adjourn the proceedings to that day, and if the plaintiff shall not then appear, shall make a decree against him.

XXXIV. Clause 1. And it is hereby enacted, that if, after due service of the summons, the defendant shall not appear, in person or by agent, upon the day appointed, the judge may make a decree, after considering the allegations of the plaintiff alone, and the evidence adduced in support thereof; and if the defendant shall appear by agent on the said day, and the judge shall not admit the excuse offered by the agent for the non-appearance of the defendant in person, he may make a decree against the defendant, after examining the agent upon the merits of the suit

Clause 2 Provided, that when an agent shall appear for the defendant, the judge may order the agent to summon the defendant to appear in person on a specified day, and adjourn the proceedings to that day; and if he shall not then appear, shall make a decree as aforesaid.

Clause 3. And provided, that when a decree shall be made, as aforesaid, without the appearance of the defendant in person or by agent, and the defendant shall appear in person or by agent within a reasonable time afterwards, and shall show sufficient cause, the judge may rescind the same.

XXXV. And it is hereby enacted, that as soon as the plaintiff and defendant are together before the court, in person or by agent, the judge shall proceed to take the pleadings and settle the demurrers and issues of fact.

XXXVI. Clause 1 And it is hereby enacted, that the manner of pleading shall be as follows, whether the subject-matter of the suit be of a legal or equitable nature, or of both:

Clause 2. The defendant, in answer to questions put by the judge, shall confess or deny each of the material allegations contained in the plaint, and shall state any matter whereby he proposes to avoid the plaintiff's right to a decree arising out of such allegations contained in the plaint as he has confessed.

Clause 3 The defendant may demur, if he thinks the plaint states a case insufficient to entitle the plaintiff to a decree.

Clause 4. The defendant shall not be precluded from demurring to any matter in the plaint because he has pleaded to it, nor shall he be precluded from pleading to any matter in the plaint because he has demurred to it

Clause 5 The defendant shall not be precluded from denying as many of the allegations in the plaint as he disbelieves.

Clause 6. The defendant shall not be precluded from avoiding the plaintiff's right to a decree arising out of any allegations in the plaint which the defendant has confessed by the statement of as many matters as he believes to be true.

Clause 7 The judge shall take care that in reducing the pleadings to writing, pleas shall be kept distinct from demurrers, and that no plea shall be double; and also that pleas containing legal matter shall be kept distinct from pleas containing equitable matter

Clause 8. The judge shall also take care that the pleadings shall not be argumentative, and shall state matters of fact only, and not evidence of matters of fact, and shall in other respects be such as to lead directly to distinct issues of law or equity, or fact, and that each issue shall have as much particularity as conveniently may be.

Clause 9 All the above rules of pleading shall be applied, as far as they are capable of such application, to the subsequent stages of the pleadings.

Clause 10. If, after the demurrers and issues of fact have been settled, a decree can be properly made without further evidence than that of the parties, and without argument on the law or equity and good conscience of the case, the judge shall make his decree immediately.

Clause 11. The plaintiff and defendant may, through the medium of the judge, cross-examine each other as to any matter affirmed or denied on either side in pleading

Clause 12. If any demurrer results from the pleadings which the judge thinks fit for argument, he shall, after consultation with the parties, fix a day for the argument on it.

Clause 13. If any issue of fact results from the pleadings upon which it is necessary

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necessary to hear evidence, the judge shall make a note of the names of the witnesses on both sides, and of the facts which each of them is expected to prove, and the documents which each of them is expected to produce, and shall grant such subpoenas, and subpoenas duces tecum, as appear to him to be necessary for the purpose of justice, and shall, after consultation with the parties, fix a day for the taking of evidence.

Clause 14. Provided, that if it shall appear to the judge at this, or any other stage of the suit, that justice cannot be done without hearing some person, not a party to the suit, who may appear to be interested in it, the judge shall direct a summons to be issued to such person to defend his interest, and it shall be competent to the judge to hear any other person, appearing voluntarily, without a summons, and claiming an interest in the suit.

Clause 15. And provided, that if in any suit before a judge, not being the chief judge, it shall appear to such judge, while he is taking the pleadings, or in any subsequent stage, that the suit is one which ought to be heard and determined by the chief judge, he shall transfer the suit to the chief judge, and direct the parties to appear before him, and the chief judge shall proceed with the suit.

XXXVII. And it is hereby enacted, that every judge in each of the said courts shall be empowered to administer to witnesses and others whom he may see occasion to examine in any suit or proceeding before him, proper oaths and affirmations, that is to say, to such persons as profess the Christian religion, the oath upon the Holy Evangelists of God, and to Quakers, Moravians, and others who are exempted by law from taking oaths in the courts in England, the affirmation according to the form used in England for that purpose; and to Hindoos and Mahomedans, the affirmation prescribed by Act No. V. of 1840 of the Governor-general of India in Council; and to others such oath, in such manner and form as he shall deem most binding on their consciences respectively; and the depositions having been reduced into writing, and subscribed by the judge, shall be filed of record; and in case any person so cited shall refuse or wilfully neglect to appear and be sworn, or, being Quakers, Moravians, or others exempted as aforesaid, to affirm, and be examined, the judge shall be empowered to punish such persons so refusing or wilfully neglecting, as for a contempt, by fine and imprisonment.

XXXVIII. And it is hereby enacted, that no person shall be excluded from giving evidence in any suit or other proceeding in any of the said civil courts by reason of his being interested in the subject of litigation, or in the event of the suit.

XXXIX. And it is hereby enacted, that the judge shall order and decree to every witness appearing before him upon a subpoena, such reasonable sum of money for his expenses as he shall think fit, whether such witness shall be examined or not, to be paid by the party at whose request the said subpoena shall have issued; and if the said sum of money shall not be forthwith paid or secured to such witness to the satisfaction of the said judge, the said party shall be compelled to pay the same by such ways and process as are hereinafter provided for enforcing the payment and satisfaction of money recovered by judgment, sentence, or decree of the said judge.

XL. And it is hereby enacted, that the judges of the said courts shall in all cases make decrees which shall be agreeable to equity and good conscience, following the laws which have been, or shall be, enacted specially for the said settlements by the Imperial Parliament or by the government of India; and the law of England, so far as it has been held by the Court of Judicature heretofore existing to be applicable, or may be held to be applicable upon the principles laid down by that court in its decisions.

XLI. Clause 1. And it is hereby enacted, that in every decree the judge shall order how much of the amount of any fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, and what other expenses incurred by the parties in prosecuting or defending the suit shall be reckoned as costs in the suit; and shall order in his decree which party shall pay costs to the other, and to what amount.

Clause 2. Provided, that no fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, unless the judge shall be satisfied that the assistance of such attorney or barrister was reasonably required.

XLII. And whereas it is expedient that inconsiderate litigation should be discouraged,

couraged, and that those who sue or defend inconsiderately should contribute towards the expenses of the judicial establishments, it is hereby enacted, that in every suit in each and every of the said courts the party or parties against whom the decree is made shall, if plaintiff or plaintiffs, pay a fee equal to of the value claimed in the plaint, and if defendant or defendants, a fee equal to of the value decreed, provided, that the judge may remit such fee if he shall be satisfied that the party or parties against whom the decree is made had reasonable ground for suing or defending.

XLIII. And whereas it is expedient that parties to suits and their agents who prevaricate, or wilfully make false statements, should be punished, it is hereby enacted, that whenever the judge is satisfied that any party to a suit, or any agent, in one of the said courts has prevaricated or wilfully made a false statement, he may in his decrees impose upon such party or agent a fine not exceeding and in default of payment may order such party to be imprisoned for a period not exceeding

XLIV. And it is hereby enacted, that all fees and fines levied under this Act by each of the said courts shall be paid monthly into the treasury of the East India Company for the settlement at which such court is held.

XLV. And it is hereby enacted, that every judge of each of the said courts shall be empowered to award and issue a writ or writs, or other process of execution, directed to the sheriff, commanding him to seize and deliver the possession of the houses, lands, or other things recovered in and by judgments, sentences, or decrees, of himself or his predecessor, or to levy any sum of money which shall be so recovered, or any costs which shall be so awarded, as the case may require, by seizing and selling so much of the houses, lands, debts, or other effects, real and personal, of the party or parties against whom such writ or writs shall be awarded, as will be sufficient to answer and satisfy the said judgments, or to take and imprison the body or bodies of such party or parties until he, she, or they shall make such satisfaction, or to do both, as the case may require: And it is hereby enacted and appointed, that the several debts to be seized as aforesaid, shall from the time the same shall be extended and returned into the said court, be paid and payable in such manner and form as the judge in each case shall appoint, and no other, and such payment, and no other, shall from thenceforth be an absolute and effective discharge for the said debts and every of them respectively.

XLVI. And the several judges are hereby authorised and empowered to make such further and other interlocutory rules and orders as the justice of the proceeding may seem to require in each case.

XLVII. And it is hereby enacted, that when a judge of any of the said courts shall be satisfied by the return to the said writ of summons or warrant of arrest that the defendant in any suit before him is not to be found within the said settlements, such judge shall be empowered to award and issue a writ in the nature of a writ of sequestration, directed to the sheriff, commanding him to seize and sequester the houses, lands, goods, effects, and debts of such defendant, to such value as the judge shall think reasonable and adequate to the cause of action, and the same to detain till such defendant shall appear and abide the order of the court, as if he had appeared on the former process; and the judge shall be empowered, according to his discretion, either to cause the said houses, lands, goods, effects, and debts to be detained in specie, or to be sold, and to give a day to such defendant, by proclamation in open court from time to time, not exceeding two years in the whole; and if such defendant shall not appear on the last day which the judge in his discretion shall think proper to give, and the judge shall be satisfied that due diligence has been used on the part of the plaintiff to give notice of such action or actions to the defendant or defendants, it shall be lawful for the judge to proceed, *ex parte*, to hear, examine, and determine the said complaint and suit or cause of action, and to give such judgment thereon, and award and order such costs as aforesaid, and if judgment shall in such case pass for the plaintiff, the judge shall be empowered to award and issue a writ to the sheriff, commanding him to sell the said houses, lands, goods, effects, and debts so seized and sequestered, and to make satisfaction out of the produce thereof to the plaintiff for the debt or sum so recovered, and his costs, and to return the overplus, if any there be, after satisfying the said judgment and costs, and the expenses of the said sequestration, to such person in whose possession the said effects were seized, or otherwise to reserve the same for the use of the said defendant.

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defendant as occasion shall require; and if such effects shall not be sufficient to produce the sum so to be recovered, and the said costs, the judge shall have power further to award and issue such process of execution for the deficiency as is hereinbefore provided for levying money recovered by judgment and costs; and if judgment shall in such last-mentioned case pass for the defendant, the judge shall have power to award and order the costs of the said suit, and the expense of the said sequestration, and all the damages occasioned thereby, to be paid by the said complainant to the said defendant or his attorney, or the person in whose possession the said effects were seized, the same to be levied by such process as is hereinbefore provided for levying costs; and the said debts, from the time of their being so seized and extended, and returned into court, shall be payable in such manner as the judge shall direct, and no other.

XLVIII. And it is hereby enacted, that all money, jewels, precious stones, and securities of the suitors of each of the said courts which shall be ordered into court, or to be paid, delivered, or deposited for safe custody, shall be paid, delivered into, or deposited in the public treasury of the East India Company at the settlement at which the court shall be held, to be kept and deposited with the cash, precious stones, jewels, and effects of the said Company, subject to such orders and directions in every case as the judge to whose province it belongs shall from time to time think fit to make concerning the same, for the benefit of the suitors; and each judge shall from time to time order and direct any money belonging to suitors of the court, in cases within his province, to be invested, at interest or without interest, for the purpose of remittance to any place without the said settlement as there may be occasion, for the use and benefit of the parties respectively entitled thereto, on any bills, bonds, or securities of the said Company, or any other bills, bonds, or securities, as such court shall see fit to order and direct; and all executors, administrators, guardians, and trustees whatsoever, acting with respect to such investments at interest or for remittance, under the directions of judges of the courts, shall be indemnified against all risk or loss to be occasioned thereby.

XLIX. And it is hereby enacted, that the treasurer of the said Company at each of the said settlements shall be, and be called, the accountant of the General Court of such settlement, and shall act, perform, and do all matters and things necessary to carry into execution the orders of the several judges of the said court relating to the payment or delivery or depositing of the suitors' money, jewels, precious stones, and securities into or in the said treasury, and taking the same out again, and investing the money of the suitors at interest or for remittance, and keeping the accounts thereof, and for doing such other matters relating thereto, under such rules, methods, and directions as shall from time to time be made and passed by the several judges of the said court.

L. And it is hereby enacted, that in case any person shall have any action or suit against the said East India Company, such person shall be at liberty to proceed therein in like manner as hereinbefore mentioned; and it shall and may be lawful for the chief judge in any such suit or action duly brought in any of the said courts, to issue a summons for the appearance of the said Company, to be served upon the governor or president and the resident counsellor of the settlement in which the cause of action or suit shall have arisen; and thereupon the said governor or president, and such resident counsellor as aforesaid, shall appoint such person or persons to appear and act for the said Company as they shall see fit, and such person or persons shall be admitted to answer and defend such suit in the name and for and on the behalf of the said Company; and the said chief judge shall be at liberty to issue process of sequestration against the lands, tenements, chattels, estate, and effects of the said Company, to compel their appearance and answer; and on non-appearance, or for want of answer of the said Company, to proceed in the same way as the said court might proceed against an individual absent from the said settlement, and on whose behalf, after sequestration of his goods and chattels, no appearance should be entered or answer given; and the said chief judge shall be empowered to try, hear, and determine all such actions and suits in the said courts against the said Company, and to give judgment and costs, and award execution, and do and order all such other matters and things therein, as far as the case will admit, in such manner as herein is mentioned, as to any person or persons whomsoever, subject nevertheless to such right of appeal by either party as herein is mentioned; and in like manner, if the said Company shall have any action or suit against any person or persons, it shall and may

may be lawful to and for the said governor or president and council, or any two of them, the governor or president being always one, to authorise any person or persons for and on behalf of the said Company, and in their name, to make complaint thereof in writing to the court to whose jurisdiction the matter belongs, and the chief judge sitting in such court shall proceed therein, and shall hear and determine the same, as in other cases; and, in case judgment or sentence shall be given against the said Company, shall award costs, to be levied upon the goods and effects of the said Company as they shall see occasion, subject nevertheless to such appeal by either party as herein is mentioned.

LII. And it is hereby enacted, that all causes, suits, and business of ecclesiastical cognizance which shall be brought before the said courts, shall be distributed among the judges, in the manner directed in sections XXIV, and XXV. of this Act, and that the manner of proceeding therein shall be, as near as may be, in conformity with the rules hereinbefore prescribed for all other suits.

LIII. And it is hereby enacted, that the chief judge sitting in the General Court of any of the said settlements, and in his absence, the first resident judge, shall have full power to grant probates, under his official seal, of the last wills and testaments of all or of any of the inhabitants of the said settlements, and of all other persons who shall die and leave personal effects within the jurisdiction of such court, and to commit letters of administration, under his official seal, of the goods, chattels, credits, and all other effects whatsoever within the said jurisdiction, of the persons aforesaid, who shall die intestate, or who shall not have named an executor resident within the said settlement, or where the executor, being duly cited, shall not appear, and sue forth such probate, annexing the will to the said letters of administration, when such persons shall have left a will without naming any executor, or any person for executor, who shall then be alive and resident within the said settlements, and who being duly cited thereunto, will not appear and sue forth a probate thereof; and to sequester the goods and chattels, credits and other effects whatsoever, of such persons so dying, in cases allowed by law, as the same is, and may now be, used in the diocese of London, and to demand, require, take, hear, examine, and allow, and if occasion require, to disallow and reject the account of them, in such manner and form as is now used, or may be used, in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf.

LIII. Provided always, that the said chief or other judge in such cases as aforesaid, where letters of administration shall be committed, with the will annexed, for want of an executor appearing in due time to sue forth the probate, shall reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor or executor whenever he or they shall duly appear and sue forth the same; and the chief or other judge shall grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, and being then resident within any of the said settlements, and being of the age of 21 years; and in case no such person shall then be residing within any of the said settlements, or, being duly cited, shall not appear and pray the same, to any competent officer of the said court, or to such person or persons, whether creditor or creditors, or not, of the deceased person, as the chief or other judge shall see fit.

LIV. Provided, that probates of wills and letters of administration to be granted by the said chief or other judge shall be limited to such money, goods, chattels, and effects as the deceased person shall be entitled to within the jurisdiction of the said court, except in the cases specified in section XIX.

LV. And it is further enacted, that every person to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security by bond, to be entered into with the said Company, for the payment of a competent sum of money, with one, two, or more able securities, respect being had in the sum therein to be contained, and in the ability of the sureties, to the value of the estate, credits, and effects of the deceased; which bond, if administration shall be granted to an officer of the said court, shall be deposited in the public treasury of the said settlement; and if granted to any other person or persons, shall be deposited in the said court, among the records thereof, and there safely kept; and a copy thereof shall be also recorded among the proceedings of the said court.

LVI. And the condition of the said bond shall be to the following effect:—

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That if the above bounden administrator of the "goods, chattels, and effects of the deceased do make, or cause to be made, a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased, which have, or shall come to the hands, possession, or knowledge of him the said administrator, or the hands or possession of any other person or persons for him, and the same so made do exhibit, or cause to be exhibited, into the General Court (of Singapore, Prince of Wales' Island, or Malacca, as the case may be), at or before a day therein to be specified; and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death, or which at any time afterwards shall come to the hands or possession of such administrator, or to the hands or possession of any other person or persons for him; shall well and truly administer, according to law; and further shall make, or cause to be made, a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time as he, she, or they shall be lawfully required; and all the rest and residue of the said goods, chattels, credits, and effects which shall be found from time to time remaining upon the said administration accounts, the same being first examined and allowed of by the said chief or other judge, sitting in the said court, shall and do pay and dispose of, in a due course of administration, or in such manner as the said court shall direct, then this obligation to be void and of none effect, or else to remain in full force and virtue." And in case it shall be necessary to put such bond in suit for the sake of obtaining the effect thereof for the benefit of such person or persons as shall appear to the said chief or other judge to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said chief or other judge, be allowed to sue the same in the name of the said Company; and the said bond shall not be sued in any other manner; and the said chief or other judge shall be empowered to order that such bond, as aforesaid, shall be put in suit in the name of the said Company.

LVII. And it is hereby enacted, that when probates of wills and letters of administration shall be granted, as aforesaid, certain periods shall be fixed, within which the persons, to whom they shall be granted shall from time to time, until the effects of the deceased persons shall be fully administered, pass their accounts relating thereto before the chief or other judge in the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed, then or at any earlier time, if the said chief or other judge shall see fit so to direct, the person or persons to whom such probate or administration shall be granted, shall pay and deposit the balance of money belonging to the estate of the deceased then in his, her, or their hands, and all money which shall afterwards come into his, her, or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, into and in the treasury of the said Company, in the name of the treasurer, as accountant of the court, to abide the orders of the said chief or other judge, or shall otherwise dispose of such money, goods, chattels, and securities as the said chief or other judge shall direct; and the said chief or other judge shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof, or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said settlement, who may be entitled, thereto, or any part thereof, as creditors, legatees, or next of kin, or by any other right or title whatsoever; and it shall be lawful for the said chief or other judge to allow to any executor or administrator of the effects of any deceased person or persons (except as herein mentioned) such commission or percentage out of his, her, or their assets as shall be just and reasonable, for their pains and trouble therein.

LVIII. Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time, or to dispose of any money, goods, chattels, or securities with which he shall be chargeable, in such manner as, in pursuance of any general or special rule or order of the said court, shall be requisite; and moreover, every executor or administrator so neglecting to pass his accounts, or to dispose of any such money, goods, chattels, or securities with which he shall be charged, shall be charged with interest, at the rate to be then current within the said settlement,

for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof.

LIX. And it is hereby enacted, that in the cases of persons dying in any of the said settlements, and leaving personal effects in more than one of the settlements, applications for probate or letters of administration shall be made to the chief judge only, whenever he shall be holding a court at any of the settlements in which such property may be, and probates and letters of administration granted by the chief judge in such cases shall have force in respect of all money, goods, chattels, and effects which the deceased was entitled to in all or any of such settlements.

LX. Provided, that in the absence of the chief judge, the first resident judge of each of such settlements may take order for securing the property left therein by the deceased, until probate or letters of administration shall be issued by the chief judge.

LXI. And it is hereby enacted, that the chief judge, and in his absence the first resident judge of each of the said courts, shall have authority to appoint guardians and keepers for infants and their estates, within the jurisdiction of such court, according to the order and course observed in England, and also guardians and keepers of the persons and estates of natural fools; and of such as are, or shall be, deprived of their understanding or reason, so as to be unable to govern themselves and their estates, and in such cases to inquire, hear, and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered and known.

LXII. Provided, that when the estates of such incapacitated persons are situated in more than one of the said settlements, the appointment of keepers of such estates shall be made by the chief judge only; but the first resident judge in every such settlement shall take order intermediately for the security thereof.

LXIII. Clause 1. And it is hereby enacted, that appeals from the decrees made by the said courts in original suits shall be allowed, under the following rules and provisions:

Clause 2. In every suit which shall have been heard and determined by the second, or any inferior resident judge of any of the said courts, any party considering himself aggrieved by the decree may appeal to the first resident judge; and in every suit which shall have been heard and determined by the first resident judge, any party considering himself aggrieved by the decree may appeal to the chief judge; and in every suit which shall have been heard and determined by the chief judge, any party considering himself aggrieved by the decree may appeal to the College of Justice at Calcutta.

Clause 3. Provided, that when an appeal shall be made to the first resident judge of any of the said civil courts, raising questions of law, the appeal shall be referred to the chief judge.

Clause 4. Provided also, that it shall be competent to the chief judge to call up and place on his own file any appeal that may be before the first resident judge of any of the said courts involving points which he thinks ought to be determined by himself.

Clause 5. Any party desiring to appeal under this section shall present a petition to the judge, to whom the appeal lies, in person or by an agent, within one month from the date when the decision to which it relates was passed.

Clause 6. Provided, that an appeal shall be admissible, at the discretion of the appeal judge, at any time between one month and three months from such date, upon good and substantial cause being shown for such delay.

Clause 7. Provided also, that when the appeal lies to the chief judge, and he be not present, the petition shall be presented to the judge who passed the decision to which it relates, and that when the appeal lies to the College of Justice the petition shall be presented to the chief judge, or, in his absence, to the first resident judge.

Clause 8. In the petition of appeal, which shall always be accompanied with a copy of the decree, the grounds of appeal shall be distinctly specified; in particular, it shall be declared whether the decree is impugned as being contrary to law, or inconsistent with usage, having the force of law, or some practice of the courts, or as against evidence, or because of defects or irregularities in the proceedings before judgment; and if the petition of appeal is not sufficiently explicit, it shall be competent to the judge receiving the petition, to examine the party, or his

his agent, and to cause the petition to be amended according to the explanations given at such examination.

Clause 9. If the grounds of appeal set forth in the petition are obviously insufficient, it shall be competent to the appeal judge, upon the mere perusal thereof, to reject the appeal.

Clause 10. Otherwise the respondent shall be summoned to appear and answer, in person or by an agent.

Clause 11. Upon hearing the answer of the respondent, if the judge is satisfied by it that the grounds of appeal are insufficient, he may reject the appeal.

Clause 12. But a judgment reversing or altering the decree of the lower court shall not be passed without a full consideration of all the proceedings held in the case.

Clause 13. And no decree shall be reversed or altered on appeal if the decree be consistent with the justice, conscience, and equity of the case.

Clause 14. It shall be competent to any judge hearing an appeal under this Act, and not being satisfied that the case has been sufficiently examined, to order the judge who passed the decree to reconsider his judgment, or to order a new trial of the facts by the same, or by another judge.

LXIV. Clause 1. And it is hereby enacted, that a special appeal shall lie to the College of Justice at Calcutta from decisions passed by the chief judge, and by the first resident judges of the said courts respectively, upon appeals heard by them under this Act, which shall appear to be inconsistent with the law applicable to the case, or with some usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice upon which there may be reasonable doubts, under the following rules:

Clause 2. An application for a special appeal shall be presented to the court which passed the decree complained of, within the time limited for the presentation of regular appeals.

Clause 3. Every petition for a special appeal shall be accompanied with copies of the several decrees passed in the case, and the petition shall state precisely the point or points of law, usage, or practice, in regard to which the decree of the first appellate court is impugned.

Clause 4. The petition shall be heard in the first instance by a single judge of the College of Justice, and if it shall appear to him that an appeal is not admissible on the grounds stated therein, he shall immediately reject it; if it shall appear to him, on the contrary, that the appeal is admissible, he shall pass an order accordingly, and shall direct the respondent to be summoned, at the same time certifying the points to be determined.

Clause 5. In every case of special appeal admitted as aforesaid, the College of Justice shall determine the point or points certified as above directed, and no other point or part of the case whatever.

Clause 6. And it is hereby provided, with respect to both regular and special appeals to the College of Justice, that when the petition of appeal shall be presented after the term of one month from the date of the decree, but within the term of three months, the lower court shall receive the petition, and in forwarding it to the College of Justice shall express an opinion upon the causes assigned for the delay.

LXV. Clause 1. And it is hereby enacted, that criminal justice shall be administered by the courts hereby established, after the following manner:

Clause 2. The said chief judge shall from time to time hold a court of oyer and terminer and gaol delivery in and for each of the said settlements, and shall hear and determine, by the oaths or affirmations of a jury of good and sufficient men, or of the major part thereof, all treasons, murders, and other crimes done or committed within such settlement, subject by law to the punishment of death, without presentment or indictment by a grand jury.

Clause 3. And the said chief judge holding a court of oyer and terminer and gaol delivery as aforesaid is hereby empowered, without presentment or indictment by a grand jury, and without any inquest or jury, but with the aid of three assessors, to inquire of, hear, and determine all crimes and offences not subject by law to the punishment of death, but subject by law to imprisonment for life, or for 14 years, or for any longer term, or to transportation for any term.

Clause 4. And the first resident judge of each settlement shall hold a court as often as there may be occasion for the trial, with the aid of three assessors, of crimes,

crimes, offences, and misdemeanors subject to a less punishment than any of the punishments aforesaid, but beyond the jurisdiction hereinafter assigned to the magistrate

Clause 5. In every case tried by the chief judge, or any other judge, with the aid of assessors, the assessors shall be sworn, or shall make a solemn affirmation, to give a true opinion according to the evidence, and the judge shall sum up the evidence on both sides, and the assessors shall thereupon state their opinions *seriatim*; but the judge having heard and considered their opinions, shall pronounce the accused guilty or not guilty upon his own opinion, and shall pass sentence accordingly; the opinions of the assessors shall, however, be stated on the record

Clause 6. And when in any case under trial by the first resident judge of any settlement it shall appear by the evidence that the crime committed is liable to a sentence which can be passed by the chief judge only, the said judge shall quash the proceedings, and shall order the case to be reserved for trial by the chief judge.

Clause 7. Likewise in any case committed for trial before the first resident judge, if it shall appear on a perusal of the proceedings before the magistrate that the case is one which ought to be tried by the chief judge, he shall order the case to be reserved for trial by him.

Clause 8. And in any case tried by the first resident judge of any settlement in which he has found the accused guilty, if a doubtful point of law is involved in the case, it shall be competent to such judge to refer the point for the opinion of the chief judge, and he shall pass sentence according to the opinion delivered by the chief judge on such reference.

Clause 9. And the chief judge and other judges aforesaid respectively shall from time to time, as there may be occasion, issue their warrant or precept to the sheriff of the settlement, commanding him to summon a convenient number, to be therein specified, of the inhabitants or persons commorant at the settlement to serve as jurors on the trial of all persons charged with crimes to be tried by a jury, and other persons of the same description to serve as assessors in cases to be tried with the aid of assessors; and if any person or persons summoned to serve as jurors or assessors as aforesaid shall refuse or neglect to attend according to such summons, or to be sworn, or to make the affirmation required of them, or shall make other default, the said chief judge and other judges respectively shall be empowered to punish such contempt by fine and imprisonment for a reasonable time to be limited, or by both; and the said chief judge and other judges shall be empowered, in like manner and under the like penalties, to cause all such witnesses as justice shall require, to be summoned, and to administer to them, and each of them, the like oaths and affirmations as may be administered to witnesses in civil suits under this Act, and to proceed to hear, try, and determine the crimes and offences upon which persons are charged before them, and to give judgment thereupon, and to award execution thereof, and in all respects, except in so far as it is otherwise provided by this Act, to administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as the courts of oyer and terminer do or may in England, due attention being had to the several religions, manners, and usages of the native inhabitants.

Clause 10. And the second resident judge of each of the said settlements shall be magistrate and superintendent of police and coroner in and for the said settlement; and the resident judge in Province Wellesley shall be magistrate and superintendent of police and coroner in and for the said province.

Clause 11. And such magistrate shall be vested with all the powers of justices of the peace in England, for the purpose of keeping the peace, and for pursuing and arresting and bringing offenders to justice, and for doing all other acts which by virtue of any law or statute now in force in the said settlements may lawfully be done by a justice of the peace therein.

Clause 12. And such magistrate as coroner shall exercise the like powers, authorities, and jurisdictions as by law may be exercised by coroners elected for any county or place in England; provided, that he may hold an inquest with a jury consisting of any number of persons not less than three.

Clause 13. And such magistrate shall hold a preliminary investigation in cases of a nature to be tried by the chief judge, or by the first resident judge, and shall commit the persons accused, or hold them to bail to take their trial in due course,

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or shall discharge them; and shall hold a court from time to time as may be necessary for the trial and punishment, by himself, in such summary way as may be most consistent with the attainment of substantial justice, of crimes, offences, and misdemeanors, subject to a punishment not exceeding ordinary imprisonment for six months, or a fine of 200 rupees; and shall have power in like manner, and under the like penalties as aforesaid, to summon witnesses, and to administer oaths and affirmations to them, and to punish contempts.

Clause 14. And the Governor of Bengal is hereby empowered to grant commissions, or to authorise the governor or the resident counsellor in any of the said settlements to grant commissions, to any servants of the East India Company or other inhabitants of the settlement, to assist the said magistrate in his executive functions, and to be his deputies in the office of coroner, and therein to exercise the same powers as he is hereby authorised to exercise, in concurrence with him and under his direction.

Clause 15. And the Governor of Bengal shall give such orders as he shall deem meet for the appointment of constables and subordinate peace officers, to perform the duties usually performed by such officers in England, under the direction and control of the said magistrate.

Clause 16. And the said magistrates and assistants to magistrates, and all constables and peace officers shall be subordinate to, and all their acts and proceedings shall be liable to be inquired into, annulled, corrected, and dealt with by the chief judge of the said settlement, and by the like method and process, as near as may be, as justices, magistrates, and peace officers are subordinate to the Court of Queen's Bench in England.

Clause 17. And it is hereby provided and declared, that the courts hereby established shall not be competent to hear, try, and determine any charge against the chief judge, nor any charge not being for treason or felony against the governor or any of the councillors.

Clause 18. And it is hereby provided, that any charge which may be brought against any judge other than the chief judge, or against any magistrate, shall be heard, tried, and determined by the chief judge only.

Clause 19. And for every sentence or order passed in a criminal trial, or in any proceeding other than a trial in a criminal case by a magistrate, there shall be permitted an appeal to the first resident judge, within one (1) week from the date of such sentence or order, which shall be decided by the said judge, or, if it shall involve a doubtful point of law, shall be reserved by him for the decision of the chief judge.

Clause 20. And in all cases tried by the chief judge or first resident judge of any of the said settlements, with the aid of assessors, in which any person has been convicted by the judge against the opinion of the assessors, or of the majority of them, or in which the conviction is challenged by such person as wrong in point of law, the person convicted may appeal, if the trial was held by such first resident judge, to the chief judge, and if it was held by the chief judge, to the College of Justice at Calcutta.

Clause 21. Provided, that such appeal to the chief judge shall be made within one month, and shall be delivered to the chief judge in person, if he is sitting in the court of the settlement, or to the judge by whom the appellant was convicted, and that such appeal to the College of Justice shall be made within one month, and shall be delivered to the chief judge in person, if he is sitting in the court of the settlement, or to the first resident judge of the settlement.

Clause 22. And provided, that if such appeal be made upon a pretence which is obviously groundless, it shall be, at once rejected by the judge to whom it is delivered; but a record shall be made of the reasons for rejecting the appeal, for the inspection of the chief judge at his next visit.

Clause 23. And in all cases tried by a jury, the chief judge shall have full and absolute power and authority to allow or deny an appeal made by any party pretending to be aggrieved by the conviction of the jury, and to order and regulate the terms upon which such appeal shall be allowed when he shall think fit to allow an appeal; and when such an appeal is allowed, it shall be heard by the College of Justice at Calcutta.

Clause 24. And it shall be competent to any and every court hearing an appeal, under any of the provisions hereinbefore contained, from a sentence or order passed in a criminal trial, or in any other criminal proceeding, to affirm or annul the sentence or order, to order a new trial of the whole or any part of the case, or

to order the lower court to reconsider the finding and sentence; and in case of the dismissal of the appeal, or affirmance of the conviction, to order the appellant to pay such costs as may be deemed proper, and in case of non-payment of the same, to order, in addition to the first sentence, simple imprisonment, not exceeding two months.

Clause 25. And it shall be competent to the chief judge of the said settlement to call for the record of any criminal trial or proceeding held before any of the resident judges or magistrates, and to the College of Justice at Calcutta to call for the record of any trial or proceeding held before the said chief judge, and thereupon, respectively to pass such orders as may seem fit, provided, that the punishment ordered by the lower court shall in no case be enhanced, and that punishment shall not be inflicted upon any person acquitted by the court below.

LXVI. And it is hereby enacted, that no sentence of capital punishment, or of transportation, or of corporal punishment, shall be carried into execution pending an appeal; and that it shall be competent to every court to respite or relieve the sentence passed by such court upon any person convicted of any offence by or before it, and to substitute any lesser punishment than that to which such person shall have been sentenced, and during the respite or suspension of the execution of any sentence to cause the person convicted to be kept in strict custody, or to deliver him to bail, as the circumstances shall seem to require.

LXVII. And it is hereby enacted, that it shall be competent to the chief judge, on any occasion when he shall think fit, to refer any case to the consideration of the College of Justice, to relieve and suspend the execution of any sentence, capital or otherwise, until the orders of the said College of Justice shall be received; and the chief judge shall in such case transmit to the College of Justice a statement of the case, of the evidence, and of the reason of such respite or suspension, with an authentic copy of all the proceedings in such case, for their determination thereon; and it shall be competent to the chief judge in the meantime to cause the person sentenced to be kept in strict custody, or to deliver him out to bail, as the circumstances shall seem to require.

LXVIII. Provided always, that it shall be competent to the Governor of Bengal to extend mercy and to grant pardon to any person upon whom any sentence shall have been passed, and to allow of the return of any person who shall have undergone the sentence of transportation.

LXIX. And it is hereby enacted, that it shall be competent to each and every of the said judges and magistrates to order satisfaction to be made to any prosecutors for any crimes committed or contempts incurred, as to him shall seem reasonable, and fit, out of any fine or fines to be set, or imposed upon any person or persons who shall be convicted before, and fined by him; and that such fines shall be paid according to such order to be given by the said judge or magistrate.

LXX. And it is hereby enacted, that any writ, warrant, or other process issued by any judge or magistrate of any of the courts hereby established, may be executed within the jurisdiction of any other of the said courts, in manner following: A copy of such writ, warrant, or other process, authenticated by the attestation of the judge or magistrate issuing the same, shall be transmitted by such judge or magistrate to any judge of the General Court for the settlement in which the process is to be executed, who upon the receipt thereof shall endorse the process and direct it to be executed by the sheriff of the settlement, in the same manner and subject to the same rules as if it were a process issued by the said court; and all persons disobeying or obstructing the execution thereof shall be punishable by the said judge as for disobedience or obstruction of process so issued.

LXXI. Provided, that the judge to whom any such process shall be transmitted for execution as aforesaid may return the same for amendment, if it shall appear to be defective in form.

LXXII. And provided, that the judge to whom any writ, warrant, or other process for the seizure or detention of any person shall be transmitted for execution as aforesaid shall have authority, by his endorsement thereon, to direct that bail may be taken, specifying in such endorsement the amount and number of sureties, and

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and for this purpose to call for such documents and to make such inquiry as he shall think proper.

LXXIII. And it is hereby enacted, that the Governor of Bengal shall determine and order whether any and what oaths, or affirmations, shall be taken or made, and in what manner, by the sheriffs, coroners, and other officers who shall be appointed under this Act.

LXXIV. And it is hereby enacted, that a table of the fees to be taken in the said courts for any business to be done therein shall be settled by the Governor of Bengal, and shall be varied from time to time, at the discretion of the said Governor, subject always to the approbation and correction of the Governor-general of India in Council; and provided, that the table of fees which shall be in force in the court of judicature of Prince of Wales' Island, Singapore, and Malacca at the time when this Act shall come into operation, shall be observed in the courts established by this Act until a new table of fees shall be settled as aforesaid.

LXXV. And it is hereby enacted, that indictments, informations, actions, suits, causes, and proceedings, depending in the said court of judicature and courts of requests, which by this Act are abolished, whether originally instituted in such court, in any branch of its jurisdiction, or transferred from any other court or courts, shall not by such abolition, be abated, discontinued, or annulled, but the same shall be transferred in their then subsisting condition respectively to, and shall subsist and depend in, the said courts hereby established, according to the several jurisdictions hereby given to such courts severally and respectively, to all intents and purposes, as if they had been respectively commenced, brought, found, presented, or recorded in the said courts hereby established, and the said courts hereby established are authorised and empowered to proceed accordingly in all such indictments, informations, actions, suits, causes, and proceedings to judgment and execution, and to make such rules and orders respecting the same, and also respecting any sum or sums of money belonging to the suitors of the said court of judicature and courts of requests, as the said courts might have made, or as the said courts hereby established are empowered to make in causes, suits, or proceedings commenced or depending before the said courts hereby established; for which purpose it is enacted, that all the records, muniments, and proceedings whatsoever, of or belonging to the said court of judicature or courts of requests, or which ought to be deposited with such courts respectively, shall be delivered and deposited and preserved amongst the records of the general courts of Singapore, Prince of Wales' Island, and Malacca.

LXXVI. And it is hereby enacted, that the chief judge, with the resident judges of the General Courts of Singapore, Prince of Wales' Island, and Malacca, hereby established, shall frame such process, and make such rules and orders for the execution of the same in all suits to be commenced, sued, or prosecuted, and in all criminal proceedings within their jurisdiction, as shall be necessary for the due execution of all or any of the powers hereby committed thereto, and shall make such rules with respect to the qualification, appointment, form of summoning, challenging and service of jurors and assessors, as they may deem expedient and proper, with an especial attention to the different religions, manners, and usages of the persons who shall be resident or commorant within their jurisdiction, and accommodating the same to their several religions, manners, and usages, and to the circumstances of the country, so far as the same can consist with the due execution of law and the attainment of substantial justice.

LXXVII. Provided always, and it is further enacted, that all forms of processes, and rules and orders for the execution thereof, which shall be framed by the said courts, shall be transmitted to the College of Justice at Calcutta, to be by the said College of Justice communicated, with their observations, to the Governor-general of India in Council, for correction, approbation, or refusal; and such process shall be used, and such rules shall be observed, until the same shall be repealed or varied by the Governor-general of India in Council.

(signed) J. C. C. Sutherland, Secretary.

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From *C. R. Prinsep*, Esq. Officiating Advocate-general, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, dated the 11th August 1842.

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Legis. Cons.
30 Dec. 1842.
No. 5.

Legis. Dep.

Sir,
I HAVE now the honour to forward my reply to the reference made to me by yours of date 17th June last, of the Report on the Judicial Establishment in the Straits by the Law Commissioners, bearing date the 8th February last. An unusual pressure of public business must afford my excuse for the delay of my reply to the above reference.

I have, &c.
(signed) *C. R. Prinsep*,
Officiating Advocate-general.

(Legislative Department.)

Judicial Establishment in the Straits Settlements.

OPINION.

The plan suggested in the Report of the Law Commission for improving the administration of justice in the Straits settlements, and reducing the disproportionate expense of the existing establishment, appears to me to be in most respects calculated to effect the objects in view. But there are some points in which I think it erroneous or defective; and these I will point out with as much brevity as I can, in the order in which they are summed up in the Report.

1st. I think the grand jury may well be dispensed with as an indispensable preliminary to the trial of criminal cases by the petty jury. The number of residents of the different settlements qualified to act as grand jurors is much too small to admit the employment of so voluminous an instrument of investigation on every occasion of a criminal charge; and it seems to me that the previous inquiry may, in 99 cases out of 100, be safely entrusted to a paid and responsible magistrate, provided he be a person of some legal experience. But I think it would be most unwise to abolish the grand jury altogether.

First. Because it would leave an accusing party no redress whatever in the probable case of mistake or prejudice, and possible case of caprice or undue bias of the magistracy, which in each of the different settlements will be vested in a very limited number, if not in a single person; and that with little or no check from public opinion, and far removed from the eye of the controlling authority.

Second. Because there are other functions that a grand jury may perform with infinite advantage to the public, and for which there could be no other body to look to—the presentment of public nuisances or grievances, the suggestion of public works or improvements, and the like. Besides, a grand jury properly constituted would materially strengthen the hands of government in settlements so remote, and so ill policed and protected as those in question. It would, moreover, afford the means of the only practicable classification of the inhabitants, and hold out a distinction that would be eagerly grasped at by the Asiatic and demi-Asiatic portions of society. I would preserve the institution of the grand jury, if for no other reason than as being the only constitutional germ of political institutions that for a long time to come will be available in those settlements for any purposes of advancement; and I would give it, amongst others, the power of inquiry and presentment of such criminal charges as might have been rejected by the magistracy. I would, moreover, make the members of the grand jury liable to serve as special jurors (or assessors) only when such should be required; but I think a considerable reduction might well be made in the number requisite to hold an inquisition in England, and that the periodical meetings of the grand jury should be less frequent than those of the regular sessions of the Criminal Court.

I think, also, that in the present condition of the settlements the petty jury also may with advantage be curtailed of its number, but not to such an extent as a reduction to three jurors or assessors only: the number three would, in cases of difference of opinion, give a majority of one only. It seems to me that four would be the lowest number to which the jury, as I would still call it, could be reduced,

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reduced, with regard either to the safety of the individuals composing it, or to the general acquiescence in their verdict. The number four would ensure a majority of three to one; and as to the inconvenience of equal division of opinion, it would be obviated by discharging the jury so equally divided, and calling of another, which, if equally divided, should entitle the accused to acquittal.

But the most objectionable items in the present scheme, and indeed in that recommended by the prior Report of 30th August 1838, referred to and embodied in the Report now submitted to me, are, 1st, the limitation of the powers of the jury or assessors; and, 2d, the mode in which they are to exercise their functions.

First, By leaving to the judge, as proposed by the Law Commission, the decision of the fact as well as the law, it appears to me that they have wholly lost sight of the grand advantage of the jury system, — the separation of the cognizance of law from that of fact. Herein consists the very essence of jury trial. It renders the judges of both the one and the other more careful and more expert, it teaches them to respect each the other, and the division of their respective responsibility renders the public better able to estimate the manner in which the duty of each has been performed. Besides, it is not correct to assume that the opinion of a professional judge on questions of fact is generally preferable to that of practical men of the world. Experience leads invariably to the contrary conclusion. It is rare to find professional judges who are what may be called good jurymen. So long as I have practised at the Indian bar, I can hardly say that I remember more than one judge who, in matters of facts, was more than an average jurymen. Moreover, the plurality of the jury, even of the reduced number, gives it in this respect a great advantage over a single judge, as it necessarily combines more extensive and various knowledge of habits and character, the value of which is the more to be coveted when the professional judge is a new comér, as he usually will be in these settlements.

To give the power to the presiding judge of overruling the finding of the jury, is to destroy all consciousness of independence and responsibility in the jurymen — to render the office not only thankless, but degrading — to promote the arrogance of the judge, and ensure the listlessness or subserviency of the jurors — instead of dividing responsibility, and giving to the result the united weight of a double tribunal. The effect of this innovation would inevitably be to make the verdict, in the eyes of the accused and of the public, the act of a single man. I look upon it that it was this mistake that has all but nullified the attempt made in the time of Lord William Bentinck to introduce a sort of juries, or punchayets, in most fustil proceedings, by Reg. VI. of 1832, which has proved little more than a dead letter.

Second, The mode in which, according to the plan of the Law Commission, the juries (or assessors) are to exercise their functions, appears to me very faulty, and likely to impede the course of justice. Each is to give a separate opinion, which the professional judge is to note or impute. If this is to take place in public court, it will point out to the accused (and his partisans) those amongst his judges who favour and those who condemn; thus making the individual jurors a mark of dislike, or even revenge, which is no slight matter in a Malay or Chinese community. If the discussion is to take place apart, at will, in case of difference, degenerate into debate between judge and jurymen.

For these reasons it seems to me far better to abide by the English system, that has stood the test of ages, and is still pre-eminent in its practical result above the newfangled innovations which have presumed to improve upon it. The jurymen should be subject to challenge by the accused on the ground of favour or affection; and the jury should be sole and independent judges of the fact, with no other power in the judge than to award a retrial under certain circumstances; and their verdict should be delivered as the verdict of the whole, so that the odium or popularity of it should never rest on the individuals. This is what is called unanimity of the jury, which is usually more apparent than real. The decision even on the English plan is generally that of the majority, though delivered as the finding of the whole body; and when the minority has prevailed, it has always been on the side of mercy or indulgence.

The fifth proposition of the Law Commission, for giving fixed salaries in lieu of fees, may, I think, be modified with advantage. Judicial officers, and those whose duties are merely mechanical, may, and perhaps ought to be thus remunerated; though even such officers are found to grow inert in their duties in the absence of any stimulus for exertion or attention; but the zeal and diligence of executive duties

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duties can only be ensured by reward proportionate to the object. Sheriffs should be remunerated by poundage; official administrators and receivers by commission. The departure from this principle in the case of receivers, and some other court officers, in the late arrangement of the Supreme Court here, has been found to work so ill that it will probably before long be made a subject of representation.

I concur entirely in the propriety of adhering to the English language as the court language, and to the English law as the law of the Straits settlements. The Malays form scarcely half of the local population, and that not the most industrious or wealthy.

A very large proportion of the business of the courts, both civil and criminal, especially at Singapore, is with mere commercial and seafaring visitors; and the population, both of Singapore and Penang, are all mere settlers, who have voluntarily resorted to British settlements in the full expectation, perhaps the hope, of finding English law and English courts there established.

I cannot conclude these few remarks without expressing my disappointment at finding in the scheme of the Law Commission no provision for the introduction of the jury principle, in any form, into the civil court. Even in the Supreme Court of this presidency, with its plurality of judges, the presence of a jury has always been a desideratum, and has been felt and declared so to be by judges as well as by the legal profession and the public. The want of it must be the more sensible where the bench will consist of a single judge with very little check of public opinion. Its introduction with the requisite modifications would be hailed by the residents of the Straits as a gift of infinite price; and no occasion can be more appropriate for it than the moment of an entire revision and remodelling of the judicial establishment. The reduced scale of remuneration will of course diminish the chances of efficiency on the bench, and render the presence of an effective check and support, like that of a jury, more requisite and important.

(signed) C. R. Prinsep,
 Officiating Advocate-general

Old Post-Office-street, 11 August 1842.

MINUTE by the Honourable A. Amos, dated the 15th August 1842.

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I vent much regret, in consequence of circumstances unforeseen at the time, that the draft Act which I prepared, and which passed Lord Ellenborough and the Council in the beginning of last April, had not been published. It might at this time have become law, and a great saving to the pecuniary resources of the Company have been effected. The draft Act of April contained all the material changes in the constitution of the courts, and in the functions of judges and magistrates, about these matters but little difference of opinion may be expected. The April draft omitted the procedure, which might have been added at any subsequent time, the courts in the meantime going on with the forms of procedure to which they were accustomed. About the procedure much difference of opinion may be expected. It will be collected from the Advocate-general's Report, that the differences of opinion on the subject of procedure are various and important. I fear that the settling of the procedure will still delay the passing of the Act for a long time.

The reason why the April draft was not published, was, in consequence of my representation that it would give offence to some members of the Commission, who attached great value and importance to particular rules of procedure, especially as regards assessors; and I certainly understood in the Commission that those who felt an interest in the procedure being included in the draft Act would be able to draft an Act containing the whole procedure in a week or two. Four months have elapsed since that time, but it is very necessary to observe that during the greater part of this period the Commission has been occupied in answering a private reference from Lord Ellenborough on some important matters connected with the administration of justice in India. The Report sent to Lord Ellenborough is now before the Council, as it embraces some matters on which the Supreme Government had previously consulted the Commission. It is to be observed also, that during the same period Lord Ellenborough has imposed on one of the Commissioners (the gentleman who felt particular interest in various parts of the procedure) a very onerous and difficult task, the investigation of the political and military transactions of Afghanistan.

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Having given this explanation of a delay which I conceive might be complained of by the home authorities, I proceed to notice the Advocate-general's remarks. It should be premised that the Advocate-general has some local knowledge of the Straits settlements, which may add weight to his opinions when they refer to local considerations.

1. *Grand Juries*.—If it be settled that the petty jury may proceed to try in a commitment without obliging prosecutors to tell their story three times, and to give three attendances, the main reform will be accomplished. I see no objection, but rather an advantage, in a grand jury sitting two or three times a year for the purposes mentioned by Mr. Prinsep; their duties will be comparatively very light, and the call on their time will be much diminished. The grand jury might properly be curtailed in number.

2. *Petty Jury*.—Whether it consist of three or four, I do not think of much importance.

3. *Assessors*.—I agree in all that the Advocate-general says about assessors. I have not raised any controversy about assessors in the Commission, being willing that the authorities in the Straits should have the assessor system laid before them. About its success in Ceylon, I think the answers we received were discordant; but it is extremely important to observe that in Ceylon some of the assessors are paid. Upon general principles, and with regard to the common feelings of mankind, I should be decidedly opposed to the assessor system, unless the Straits' authorities were much in favour of it. The Advocate-general, with his experience of the Straits, sees only local considerations against it, independently of general views.

4. *Salaries and Fees*.—I believe it has been found in England that the payment of Masters in Chancery and other officers by salaries is a failure; the subject is under consideration of the Council for all the Supreme Courts.

5. *Juries in Civil Suits*.—I incline to think that it would not be advisable to introduce juries in civil suits immediately. If they should be introduced into the Supreme Courts of India, it may be proper to introduce them in the Straits.

6. I would erase from the draft to be published, the words "equity and good conscience." There are various other matters of procedure which I have acquiesced in, only for the purpose of offering them to public discussion, but which I do not entirely approve.

(signed) A. Amos.

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No 7.

MINUTE by the Honourable H. T. Prinsep, dated the 17th September 1842.

I FIND it by no means an easy matter to give in small compass an opinion upon the Report and draft of Act submitted by the Law Commission for remodeling the courts of the Eastern settlements. Each point of the Report ought in fact to be separately stated and discussed; and then, according to the opinion given, the particular sections of the draft of Act, based on the principle so discussed, should be cited, with the specific modifications and amendments requisite to carry out the view preferred. But this would lead to very great length, and must prove a waste of time, until the decision of the government and of the home authorities should be passed on the broad features of the scheme to be substituted for that in force. I shall at present, therefore, treat the subject as if we were merely deciding on the general plan, leaving the details of the draft of Act recently submitted to be dealt with hereafter.

We are all agreed, as well in India as in England, as to the cumbrous inaptitude of the present institutions and forms of administration to the state of things in the Straits. We are agreed that something should be substituted for them, subordinate to the courts and government of Calcutta, but with sufficient authority to quell local disorders and keep down crime, and to decide promptly all the disputes which arise concerning property, as well as all offences against either property or person, saving only those punishable with death.

Now the devising of a new scheme of judicial administration not based upon, or merely in amendment of the existing, but to be substituted entirely for it, opens all the great as well as small questions which surround the much-argued subject. How best to provide substantial justice to a mixed community? What forms of administration are at once the cheapest and best, combining efficiency with due security against abuse and partiality?

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The Law Commission have been called upon, and have submitted a scheme complete in all its parts. The discussion with us is therefore limited to the consideration of this scheme, but when determining whether to accept it wholly or in part, and what parts to approve and what to modify, there is still wide enough ground to include all the great questions of judicial policy. I shall endeavour to avoid argument upon them, however, as much as possible, and shall confine myself to simply stating the main features of the scheme, with my opinion upon each in succession.

First, The existing court being abolished, it is proposed to have for the three settlements of Penang, Malacca, and Singapore, one chief judge, salaried at 17,500 rupees per annum, who shall be a barrister appointed by the Governor-general in Council.

I approve of this proposition, but think it will be inconvenient to fix the salary in the Act. It will be better to leave the salary to be fixed with the sanction of Her Majesty in Council, as communicated through the Board of Commissioners for the Affairs of India, and not to be altered after being so fixed without like sanction.

Second, Besides the chief judge, there are to be local subordinate judges for each station or settlement, the number to be fixed by the Governor-general of India in Council, who also is to settle all their salaries. The executive officers of the settlements may be of the number of these, and each judge is to have a separate seal.

Upon this I would merely remark, that no place is assigned by this arrangement to the governor or head civil officer of the three settlements, unless he be made a subordinate or assistant to the barrister judge, salaried at 17,500 per annum. Now the head officer of the Straits settlements must ordinarily be a trustworthy, confidential officer, capable of rendering good service in the administration of justice, and salaried at 2,000 or 3,000 per mensem. Such an officer cannot well be reduced to the position of assistant to the barrister judge, receiving causes from him, and with his decisions liable to be reversed on appeal.

The executive, therefore, must be a separate authority from the judicial, which will be expensive unless the barrister be also made governor, which does not seem to be contemplated. The existing charter of justice for the Straits settlements makes the governor a fellow-judge and the first on the bench, and so enables him to sit with the barrister judge, acting as something more than an assessor, and, in the absence of the barrister judge, entitled to hold the court separately, with nearly the same authority and effect.

I see no harm, but rather good, in the working of this part of the existing scheme, and I would suggest that a power be given to the Governor-general in Council to associate one or more of the public officers with the barrister chief judge, not as subordinates but as equals, so as to leave a place in the administration of justice to a high civil officer, if such should hereafter be appointed.

Section XII. leaves the appointment of sheriff at each settlement to the barrister chief judge. It is an important office that ought not, perhaps, to be so directly made matter of personal patronage.

Third. The jurisdiction of the court of each one of the judges and subordinate judges is to include in civil matters all the powers of the Court of Queen's Bench and of ecclesiastical and equity courts in England; that is, every court is to have power of cognizance over suits of all kinds. I do not object to this; but in Section XIX. there is a reference to a governor and councillors, as if those designations were to be retained, which, under the new constitution, will be quite unnecessary.

Fourth. Sections XX. to XXII. regard the appointment of assessors in civil cases. The power is given to the Governor of Bengal to prescribe or authorise the appointment of assessors for all suits, or for any class of suits, and the assessors are to sit and assist the judge in the trial, recording an opinion.

But their opinions and votes are to have no weight if opposed to that of the judge, though all should be unanimous on an issue of fact, of which they are as good, and perhaps better judges than he, and he singly rules otherwise. I much dislike this provision;

First, Because I think the Governor of Bengal not the proper authority to decide on the introduction of such a scheme.

Secondly, because assessors being *in loco* of a jury, ought never to be called or expected to sit except upon issues of fact, and then should be conceded as matter of right to parties applying.

Thirdly, Because if they sit upon an issue of fact, their view or vote ought at least

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least to be of equal weight to that of the judge. As assessors will be few, and retrials for error troublesome, if not impossible, I would let the decision upon an issue of fact in civil suits when there may be assessors, go by the majority of votes, the casting vote being with the chief judge. The alteration required in the draft of Act to give effect to this modification is entered in pencil on the margin of the draft.

Clause III.

Fifth. Section XXIII. provides for the admission and first proceedings upon civil actions. The new circumstance of the form of proceeding thus prescribed is, that the plaintiff is to be required to attend in person to be orally examined as the condition of his suit being filed and proceeded in. The onus is on him to make out a case for exemption before he can be heard by agent, unless he lodge a sum of money, the principle of which reservation I cannot at all see.

I object strongly to this change in the usual course of allowing suit to be filed by plaintiffs in person or by vakeel. It is quite sufficient to allow the judge to call for the plaintiff in person if he desires or thinks it necessary; the antecedent motion for leave to employ an agent, or the lodging of a sum of money, are clogs upon resort to courts for the aid they are bound to give, and which, in nine cases out of ten, is sought merely to compel payment from an unwilling debtor, not for settlement of an intricate dispute of law or equity; that I cannot think wise, or likely to be palatable to those concerned.

The same principle is applied in Section XXVI. to defendants from whom personal appearance is required, unless a case for exemption is made out; and in Section XXX. to XXXIV. are the rules for exemption, and for proceeding in cases where the order for appearance is contravened or disobeyed. The incongruities apparent in these rules prove the impracticability of the principle. If a plaintiff being able to attend does not attend, and the case for exemption is not made out, then of course, if the principle were good for anything, the suit ought to be dismissed and not proceeded with; but the draft of Act does not venture to prescribe this; on the contrary, it permits and requires the case to be gone into with the agent; so in case a defendant being able does not attend when summoned, and no case of exemption is made out, the case should be decided *ex parte*, as if defendant were in default; but it is not so: the judge may "make decree against the defendant after examining the agent upon the merits of the suit;" that is, he is to hear of course from the agent and allow him to plead; and doing so, is not surely to decree against him for default if he makes out his case for a dismissal.

These incongruities are conclusive to my mind against allowing the change proposed, which would prevent ordinary bond enforcement cases from being carried through courts by agents as well as principals. There is another part of this process which strikes one as open to objection, and that is, that the making out of both plaintiff's and defendant's pleadings is thrown upon the judge or the court officers. This may be well when cases are few and litigations simple; but if suits are reckoned by thousands, as in the court of requests of Calcutta, and in some of our Zillas, the trouble of this will require a great multiplication of judges or court officers, and consequent increase of charge.

Sec. 24 & 25.

Sixth. The rules for distributing causes after their admission to the file seem to me unobjectionable; and I have nothing to urge against the rules for pleading contained in Sections XXXV. and XXXVI., or those in regard to oaths in Section XXXVII., and the admissibility of evidence in Section XXXVIII., nor against the principles prescribed for decision of the cases and for the adjudication of costs.

Seventh. But in Section XLII. the judge is left at his discretion on decreeing a cause to adjudge against the losing party a fee, to be realised in part relief of the cost of the judicial establishment. I have heretofore pointed out that this method of reimbursing government will never answer; for whose business will it be to pursue the debtor and exact the amount so adjudged? The order will, so far as the treasury benefits, be mere waste paper, or at any rate will be realised so irregularly as to make the law tax unfair as it will be unpopular.

The principle, as it seems to me, on which government is entitled to demand fees is, that courts and judicial officers are only resorted to for the compulsory enforcement of debts when the creditor cannot realise by his own means; for the aid he asks he expects, and is of course willing to pay, looking to recovery from the unwilling debtor if his means shall suffice. The government is in this respect like an arbitrator or referee, who always is paid before he lets the award out of his hands, leaving the after recovery to be adjusted as part of the subject of arbitration. If any fee at all is taken to reimburse the charges of judicial establishment,

it should be taken as the condition of affording the aid of court by the issue of the first process. The government never was, nor can be a successful enforcer of decrees; and I am opposed to the principle of this section on that account. The result would probably be to fill the civil gaols with government debtors, entailing further charges on government and yielding nothing.

Sections XLIII. to XLVIII. refer to execution of decrees, and to deposits, which latter are required by Section XLIX. to be placed in the government treasury; the officer in charge of which treasury is to be accountant-general of the court. I have nothing at present to observe on these rules.

Section L, copied from the present charter, gives to the courts the power of sequestrating government houses and property, to enforce appearance and payment when suits are brought against the government or public officers of the settlements. This is a remnant of the hostile spirit towards the Company in which royal courts were originally established in India. It is time all this should be changed, and no further powers for compelling appearances, nor other forms of pleading should be used towards the Company's government than are established for colonial governments, in respect to royal courts established in colonies.

Eighth Sections LI. LII. LIII and LIV. provide for the ecclesiastical jurisdiction of courts, and the grant of probates, &c. It might have been as well to have referred to the Act passed last year for giving power in respect to the administration of the estates of deceased persons to our mofussil courts, and the authority of the Calcutta Supreme Court in respect to Europeans being given to the chief judge; the other judges might have been allowed to grant certificates and appoint curators, on the footing established for the zilla courts.

These rules, however, as far as Section LXII., are stated to be derived from the present charter; and if they have been found sufficient, and are susceptible of application to the mixed community of the settlements, and are known and in use, it may not be worth while to change them.

Ninth Sections LXIII. and LXIV. provide for appeals. These lie from a second subordinate judge to a first subordinate judge, from this first to the chief judge, and from the chief judge to the College of Justice proposed to be established at Calcutta. On law points, the appeal from the lowest is to lie at once to the chief judge. I see no objection to these appeal rules, but, on the contrary, think them clear and simple, and deserving of adoption; but the College of Justice has not yet been established, so that the Act could not be passed as it stands without alteration, or a coincident legislation for the purpose of creating that court.

Tenth Section LXV. contains the rules for criminal trials.

The grand jury inquest is proposed to be entirely dispensed with, and it is too cumbersome an instrument for the Straits settlements. A petty jury is made requisite in capital cases. Crimes punishable with 14 years' imprisonment, or transportation for life, are to be tried by the chief judge, with three assessors; and no jury. Inferior crimes beyond the magistrate's jurisdiction may be tried by the first resident or subordinate judges, with three assessors. The assessors are to record their opinion, but the judge is not to be bound by it, but may sentence upon his own conviction, against the unanimous declaration of the assessors. I agree with the Advocate-general in thinking, that if there are to be assessors in criminal trials, they should act as a jury, and decide the question of guilt or innocence, otherwise you give them the trouble of hearing and trying the cause for nothing. The rest of the rules of this long section seem to me unobjectionable, except that in consequence of the authority given to decide against the recorded opinion of assessors, it is deemed necessary to give a right of appeal, when there is a difference between the judge and them. If the assessors be made a jury, this appeal will of course be taken away, and the power of ordering a new trial substituted, in case the superior judge is satisfied that there has been a failure of justice in any conviction and sentence. The general power of revision for correction of errors, proposed to be given to the chief judge, is necessary; but it must not extend to the setting aside of jury verdicts, without a fresh verdict.

Section LXVII. contains rules for referring points to the College of Justice, which must be held over, of course, till that court is established. The remainder of the draft regulates the criminal jurisdiction and forms of procedure, the power of pardon, and other points, in respect to which I have nothing to remark, except that I do not find who is vested with the power of receiving approvers' evidence. The power of pardon is given to the Governor of Bengal by Section LXXVIII.;

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but that is after sentence; the admission of accomplices' evidence has to be decided antecedently, and it is a nice matter of discretion, that, if not given to the chief judge, should be vested in the local government, or other chief authority, under whatsoever name he may be appointed.

I have thus completed the revision of the draft of Act laid before us by the Law Commission for providing local courts and forms of procedure in substitution for those established by the Royal patent, under which the present court exists.

I confess I think it highly desirable, that when the Royal court is abolished, and the patent surrendered, we should not have to look and refer to it to settle points of jurisdiction and of form; and that the Act to be passed by us for providing substitute courts should contain at least as much as the patent, if it be not possible to remedy it, the *corpus juris* by which our new courts are to be guided in all matters of procedure. I should not have been satisfied with the short draft laid before us by Mr. Amos, which went only to create courts, and left them to carry on business as it has heretofore been carried on by the Royal courts. I therefore was well pleased when the Governor-general, in revocation of the assent he had given to the shorter draft, proposed to call on the Law Commission for this more formal and full one.

Undoubtedly the substitution of a full draft has led to some delay, but we shall be no losers thereby if the discussion upon the present draft shall enable the authorities in England, by whose instructions we must of necessity be guided in a matter which concerns the abolition of a Royal court, to declare in detail the principles on which they desire the administration of justice in the Straits settlements to be conducted in future.

The question is of wider importance than in its mere bearing on the communities of these Eastern settlements; for the law established for the mixed races which inhabit or frequent those ports will be a model for many other localities which possess features in common, and for which the courts and forms which have grown out of our Dewanee and Nizamut acquisitions on the continent of India are not quite suitable.

(signed) H. T. Prinsep.

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30 Dec. 1842.
No. 8.

Straits Settlement.
Second Minute.

MINUTE by the Honourable A. Amos, dated the 26 September 1842.

IN my first Minute I confined myself to observing on the Report of the Advocate-general. I collect that the opinion of Council is against the system of assessors.

It remains to dispose of this complicated subject in the most expeditious way, consistently with the importance of the questions involved.

I do not concur with Mr. Prinsep in thinking that a reference to England is at all necessary; we have already all the sanction that can be required.

I think that all the important features of the altered system might be adopted immediately, and might have been adopted long ago had we not been waiting for the details of procedure.

One need but advert to Mr. Prinsep's Minute to see the lengthened discussions to which those details are likely to give rise, if they are to be settled in Council. If referred to England, the time which must elapse before they can be settled there will be very long, and I think the home authorities would very properly decline the task. I doubt whether the rules of procedure can be settled in a satisfactory manner in Council; and I should be disposed to refer them to the judges of the Supreme Court, whom we are about to request to frame a set of rules of procedure for a new civil court in Calcutta, and who have professed the greatest willingness to frame such rules.

The subject on which we have been so often pressed to legislate by the home authorities is that of a new and more economical constitution of courts; and regret very much that this most desirable object has been so long delayed for subordinate and technical objects, especially as opinions are strongly opposed on some matters of procedure, and a considerable time must elapse before we can come to a conclusion upon them.

I think, on the whole, it would still be best to publish the draft Act which was before Council in April last, and of which Lord Ellenborough approved, as appeared on the back. Mr. Prinsep I think is under a mistake about Lord Ellenborough having withdrawn his assent. The draft of April was postponed on my suggestion that some members of the Commission wished to take the opportunity of bringing forward

forward that kind of procedure, especially with regard to assessors which they thought most suitable to all courts of India, and I stated my impression that I did not see why this could not be done in a couple of weeks, as in fact it was, only transferring to the Act what they had previously recommended, in two former reports for the civil and criminal judicature of Calcutta.

I am aware that my draft Act of April may very probably be improved in form by a careful comparison with the draft of the Commissioners, although we stop short of adopting the various rules of procedure contained in the draft of the Commissioners; but this can very well be done after publication, and might only be lost labour and occasion, loss of time if done now, and before we hear what they have to say in the Straits to the system. I believe the draft Act of April contains all the leading features of the system, upon which the Commissioners are agreed that there will be a great saving of money, combined with greater efficiency of justice.

(signed) A. Amos.

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MINUTE by the Honourable H. T. Prinsep, dated the 30th September 1842.

I confess myself to be not a little surprised at the resolution proposed, and acceded to by the majority of the Legislative Council present this day in regard to the judicial establishments of the Straits settlements.

In the early part of this year we had before us the Report of the Law Commission, to whom the subject had been referred, and the propositions and suggestions of that body, so far as concerned the kind of judicatories to be substituted for those now in existence met our general concurrence. When that Report was before us I stated that there were some propositions in respect to forms of procedure and the functions of assessors, &c. that I did not accede to, and that as the Report when forwarded to the Court of Directors, must be so with our opinions, I should be compelled to record a Minute if it was then to be sent home. A change occurred in the head of the government while this Report was under consideration, and it was Lord Ellenborough's wish to expedite as much as possible the proceedings necessary to effect the desired reform. It was, I think, by his particular desire that Mr. Amos undertook to prepare a draft of Act to be considered and sent home along with the Report.

Mr. Amos produced his Minute and draft on the 18th March, but stated at the time of bringing it forward that he had thought it right to lay it before his colleagues of the Law Commission, and found their sentiments to be opposed to the brief legislation in the spirit of which the draft was framed, adding that they would prefer to be called upon to frame a draft to carry out at large their own propositions.

This draft of Mr. Amos having been sent to Lord Ellenborough, was marked by his initials, as approved before it was circulated to the other members of the Council, or read at any meeting.

It is to be remarked that Lord Ellenborough was then on the eve of departure to the North West Provinces, and was therefore much occupied with business of all kinds and of very engrossing importance.

After returning this draft so marked, Lord Ellenborough was waited upon by Mr. Cameron of the Law Commission, and at a subsequent meeting of the Council (the last I think that was held before his Lordship's departure, but whether Mr. Amos was present at it or no I cannot decidedly say) his Lordship told us of this audience, and that in it Mr. Cameron had made two requests, one that the Law Commissioners should be called upon to prepare the draft of Act for Straits judicatories, the other that the Report sent in, together with a preceding one on the subject of a subordinate court for Calcutta, should be printed. To both these requests his Lordship stated that he was disposed to give his assent, and if we agreed he would leave it to us to carry them into execution. Our acquiescence being given, the printing of the Reports was ordered, and the letter was written, calling on the Law Commissioners for a draft of Act after the Governor-general had left the presidency, viz., 22d April last.

We have now the draft of Act prepared by the Law Commissioners. Undoubtedly it has occupied longer in the preparation than either the Governor-general or any of ourselves could have anticipated, but this we may presume is evidence of the care with which it is framed. The draft carries out the propositions

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tions of the Report, which I have all along objected to; for that, of course, I was fully prepared. Upon its circulation, therefore, I felt compelled to record a Minute stating my opinion on these objectionable provisions, and suggesting that the draft should be altered for the correction of what I deemed to be defects. My objections, it is to be observed, are objections of principle, which hold as well against the Report as the draft. Mr. Amos concurs in several of these, but his signature is to the printed Report, and therefore I was not prepared for his disapproving so much as he has done; and certainly I did not expect to find him strenuously opposing any attempt to frame a law that should contain limitations of jurisdiction and forms of procedure of the kind recommended in the printed Report. At our meeting to-day, after considering this draft in circulation, it has been proposed, and is carried by the votes of the president and of Mr. Amos, (Sir William Cassment being absent from indisposition) not that the Report and draft shall be forwarded to the Governor-general, at whose suggestion the latter was called for; not that the Report and drafts should be submitted with our opinions to the Court of Directors, which is all we are called upon, or at present competent to do, but that, in entire rejection of the draft of the Law Commission, we shall now publish, as adopted by the government of India, the short draft proposed in March last by Mr. Amos, which draft, as above stated, was held over by the Governor-general and Council at that time, in order that the government might also have before it the draft of the Law Commission, fully carrying out their views, before finally determining upon the course to be recommended to the authorities in England.

I protest against this hasty adoption of the March draft; because, first, I think we ought to publish no draft until it has been submitted for the previous sanction of the authorities in England. We are dealing, recollect, with a Royal court, the patent of which has to be surrendered or revoked, and with a Royal judge, who sits and acts by appointment of the Crown. The 46th section of the Charter Act specifically declares and provides, "that it shall not be lawful for the Governor-general in Council, without the previous sanction of the Court of Directors, to make any law or regulation whereby power shall be given to any court of justice other than the courts of justice established by his Majesty's charters, to sentence to the punishment of death any of his Majesty's natural-born subjects born in Europe, or the children of such subjects, or which shall abolish any of the courts of justice established by his Majesty's charters." Now the draft of Act prepared by Mr. Amos, short as it is, equally with the draft of the Law Commission, gives power of life and death over natural-born British subjects to courts other than those established by his Majesty's charter, and abolishes a court which sits under such a charter. It may be said that the despatch of the Court of Directors, directing a revision of the judicial establishments of the Straits, contains the previous sanction required by this section of the Charter Act, and Mr. Amos has stated this opinion in his place in Council; but that is not my reading of the section. I maintain that we must have the previous sanction of the court to the particular law or regulation that we propose to pass, and this obviously is the convenient and deferential course when we are dealing with Crown courts and Crown officers. Suppose we were to hury this Act through without any reference to England, what would be the recorder's position? He would be *functus officio*, as a Crown judge holding Her Majesty's commission, and obliged to remain on the island until ordered away, drawing of course his salary, and unable to take office from the government of India under the new constitution we propose to give to the courts, because still commissioned by the Crown; and all this because we have chosen to act with so much haste as to prevent the home authorities from issuing the requisite instructions and making arrangements to carry out our proposed changes. The obligation to refer our law for previous sanction whenever we meddled with Crown courts, had obviously this amongst other motives, for its being so provided by law, viz. that the home authorities, seeing precisely what was intended, and the time when it would come into operation, might take all proper steps if they sanctioned the law to prevent confusion or clashing of authority in carrying out its provisions. I maintain against Mr. Amos, but with all respect for his professional opinion, that we cannot pass this, or any other law for abolishing the Straits courts, and establishing others, until our law has been specifically approved and sanctioned by the Court of Directors; and if we cannot pass such a law, I think it must be obvious that we ought not to publish it, so as to pledge ourselves before the world to a course which may not be approved.

approved. The Court of Directors have themselves prohibited such anticipatory publications and remarked strongly on the false position in which they are placed by such a course, that is, by publishing in India without previous approval a law, the passing of which is conditional upon their sanction. The despatch I refer to is that of 1836, regarding the Act for permitting British subjects generally to hold lands; which was published in draft while the government was under prohibition to pass it without their previous sanction and approval.

But this, though perhaps the strongest, is only one of many grounds upon which my protest against the resolution to publish Mr. Amos's draft of Act is founded.

A second ground is, because the resolution of April to call for a draft from the Law Commission was participated in, and indeed proposed, by the Governor-general; now that we have got this draft, how can we with propriety throw it aside and adopt the other before it has been seen and considered by Lord Ellenborough? When Lord Auckland was in the North West Provinces he made a particular request that no draft of Act should be published as a draft until he had first seen and expressed an opinion in favour of the publication; Lord Ellenborough has not specifically renewed this request, but he naturally will expect, that if not on all occasions, at least when there is a difference of opinion at our meetings, he too should be consulted, before any such decided measure is adopted, as the pledging of the government before the world to a specific course of legislation, by the publication of a draft of Act as read and approved. If this is a requisite with ordinary Acts, none of which can be passed without the Governor-general's written sanction, much more so is it requisite with such an Act as this, which is one that cannot be passed without the sanction of the home authorities, besides that of the Governor-general.

I pass over the slight it would be putting on the Law Commission to throw overboard without consideration a draft on which they have bestowed so much time and care, and shall proceed to the merits of the draft proposed to be adopted and published instead of theirs. I object to this draft as defective in primary essentials, and only that account not proper to be published as our deliberate act.

First, The court at Singapore is to be composed of a barrister of five years' standing, the resident councillor, and his assistant, and if there be no resident councillor, the governor is to be a member; and all these are to try causes of all kinds, separately or jointly, and to distribute the business amongst themselves. Now it is not stated if these heterogeneous judges of the same court are to have equal power in all matters or if not, whose authority or vote is to override the others? Who is to keep the seal, issue the processes and warrants, appoint sheriffs and officers? If it be said all these things are to be managed as at present, the answer is, that is impossible; for the governor is the first judge in all cases of the present court, and keeps the seal of the court. He is only made a conditional judge of the new court, and his position is not at all defined.

Secondly, Jurisdiction in all matters is given to every judge and to every court, subordinate as well as principal. Are they all to have ecclesiastical and admiralty jurisdiction like the present recorder's court? This is not at all provided for.

Thirdly, The barrister and governor are or may be members of the same court of general jurisdiction. An appeal, however, is to lie from decisions by the governor to the barrister, and from him to the Supreme Court of Calcutta. This is a very anomalous position in which to place a governor towards a fellow-judge. The appeal should surely be from his decisions alone to a full bench; and some provisions in respect to procedure are surely requisite to give a new jurisdiction to the Supreme Court of Calcutta, in respect to the final appeal, both civil and criminal.

Fourthly, With respect to criminal offences and their trial, the provisions are singularly meagre. Are magistrates to act as justices of the peace, and with only the powers given to such officers by British law? What is to issue the commission of the peace and appoint these justices? On all this the draft is silent, though it is provided for in the present charter. Is the jury of five to be unanimous in the verdict? I suppose so, but it is not stated. I see it is proposed to have such a jury wherever the punishment exceeds six months' imprisonment, and only

* The appointment of officers is, I see by another section, left to the Governor-general and Council, but that I understand to mean only the ordering what officers are to be employed, and on what salaries. The patronage of the clerks and hum-bailiffs cannot be intended to be reserved to the government of India.

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only such a jury when it is a case of life and death against a British subject, but there is not a word anywhere about commitments for trial.

The rules for criminal procedure and for the jurisdiction of criminal judges seem to be particularly defective, and I should be sorry to see them published in such a shape or sent to the Court of Directors, as those we have deliberately adopted.

For the above reasons I protest against publishing at present any draft of Act as read and adopted by the Council of India, and I especially protest against the publication of this draft of Mr. Amos. I propose instead that the two drafts, with our Minutes, be sent to the Governor-general for his opinion to be expressed upon the course to be presently adopted, and that we refer both drafts, with the printed Report of the Law Commission, to the Court of Directors, together with our several opinions as thus recorded, in order that their previous sanction may be given to the particular law by which new courts are to be established having power of life and death over British-born subjects, and the existing Royal charter court of the Straits to be abolished. This I maintain to be indispensable under the Act 3 & 4 Will. 4, c. 85, s. 46.

(signed) H. T. Prinsep.

MINUTE by the Honourable A. Amos, dated the 5th October 1842.

Legis. Cons
30 Dec. 1842
No. 10
Straits Settlements.
Mr. Prinsep's
Minute.

WITHOUT imitating the example of Mr. Prinsep in expressing surprise at the opinions of other members of Council; thinking these, and other observations of a similar tendency in his Minute, if followed by similar observations according to the opinions and feelings of other members, might tend to the interruption of business, I shall proceed, with the greatest deference to his sentiments, to state shortly my view of the circumstances.

I apprehend that the powers already received from the home authorities are sufficient to enable us to make the modifications which we propose. But it is less material to argue this question, because a considerable period must elapse before the present draft, or any modification of it, can pass into a law. We well know that the home authorities are anxious for essential modifications in the recorder's court; and the proposed reform has, from a variety of causes, been postponed for a most inconvenient length of time.

It appears to me most desirable to publish immediately the general principles of the new constitution of courts, and which are expected to improve as well as greatly economize public expenditure in the settlements. Supposing, in Lord Ellenborough's opinion, a reference home be essential, it will be most desirable to send home as early as possible the communications which we may receive touching the general principles of the new system. This will enable the home authorities to take a statesmanlike view of the measure.

Besides what I call the statesmanlike view of the subject, there is another important view of it, of a lawyer-like and more technical character, and which regards the procedure of the courts after their broad outlines have been fixed. To this subordinate but important view of the subject most of Mr. Prinsep's remarks apply. It is plain that this part of the subject cannot be finally arranged for a considerable time, nor can we reasonably expect assistance or direction from home with regard to it. I think that probably it may be deemed expedient to refer the matter for the consideration of the judges. However, it is sufficient to say, that we are far from being in a condition to lay down a new procedure for the Straits courts.

But we are in a condition to lay down the broad outlines of a new constitution of courts. Upon this subject there is scarcely any difference of opinion. It was to this, and this only, that the April draft was intended to apply. It was founded mainly on the Report of the Law Commissioners; and I believe it incorporates, substantially, the general principles of their measure of reform. I should have preferred taking those general principles from the draft sent by the Commissioners in their own form and language, leaving out what they provide about details of procedure. I endeavoured to do so, but found much difficulty in the task: it is, I think, unnecessary. If Mr. Prinsep will propose any modifications of my draft, making it more like, or identical with, that of the Commissioners upon the points to which it adverts, I would very much rather adopt those modifications than retain any thing of my own. My object is solely to steer clear of technicalities and disputed points.

points, which are fortunately almost confined to a part of the subject which is the least pressing in point of time. With regard to the recorder, the government would most probably allow (under the clause for the purpose) the present occupant the salary he now receives, though the nature of his functions is changed; especially as his duties will not be diminished.

It appears to me, on the whole, extremely desirable to give to this long dormant matter the impulse arising from the publication of a draft containing the general principles on which we have substantially agreed. The draft is no hasty measure; it is all substantially contained in the long considered and elaborate Report of the Commissioners, and, in substance, has been discussed several times in Council. A practical shape to the opinions of Council and the Commissioners is all it aims at.

(signed) A. Amos.

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MINUTE by the Honourable the President in Council, dated the
18th October 1842.

Legis Cons.
30 Dec. 1842.
No. 11.

I CONCURRED with Mr. Amos in thinking that the draft Act prepared by himself, and approved of by the Governor-general in the beginning of April last, should be published for the first time, and the proceedings which have since taken place submitted for his Lordship's consideration.

2. My reasons for so concurring are as follows:—Under circumstances of which there is no trace on the record, and regarding which members of Council differ, the draft was on the 22d of April, that is, to say, about ten days after his Lordship's departure, referred to the Law Commissioners, for the purpose, apparently, of adding the details of procedure, which it was then supposed would not take much time. Had I known what now appears to have been the object for which that reference was solicited, viz., to enable a certain member of the Commission to introduce into the draft his own peculiar views, especially as regards assessors, I should never have concurred in it; for to those views I have been always opposed, and I consider the introduction of them into the judicial procedure of any part of India as most objectionable.

3. The Commission, however, having at length sent us up an entirely new draft, the provisions of which none of us approve, I considered it most desirable, in order to avoid still further delay, which is so imperatively to be deprecated, in consequence of the orders from home, the cumbrous inaptitude, as Mr. Prinsep observes, of the present institution and forms of administration to the state of things in the Straits, and the enormous expense with which it is needlessly attended, that the draft should be immediately published, if only to afford the inhabitants of the Straits, who are the most deeply interested in the change, as well as all other parties concerned, the opportunity of stating what they may have to say upon the subject. In the meanwhile we might consult the Supreme Court as to the rules of procedure, and we should have abundant time to hear from the Governor-general before anything conclusive could be agreed upon.

4. We are now called upon to come to a stand-still, until a reference shall have been made to the Governor-general at Simla, and even to the authorities in England, neither of which causes, for the mere publication for the first time of a draft of law, which the authorities in question have urgently pressed upon us to take into consideration, and which the Governor-general has already approved, appear to me to be requisite. The Governor-general, engaged as he at present is with the most important military and political affairs, will of course expect that all such details should be managed by ourselves, and we know that his Lordship is most desirous that the measure should be carried into effect with as little delay as possible.

(signed) W. W. Bidd.

NOTE by the Honourable A. Amos, dated 18th October 1842.

I HAVE only to add, or rather repeat, that what has been called my draft, was intended only to express in substance what was recommended by the Commissioners in regard to the change in the constitution of the courts, leaving the details of procedure, most of which are not more applicable to the Straits

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courts than the courts of India, to be disposed of separately from these fundamental changes, upon which the economy of the reform depends. I wish further to observe that I consider myself perfectly free to disapprove, in Council, of matters contained in reports, which I may have signed as Commissioner. And where my objections relate to subordinate matters of detail, and the report is pressed for, and much delay has occurred, the writing of a Minute in the Commission would often be attended with inconvenience, and not be of any practical benefit. In the present case I agree, substantially, with the report in its leading principles, and in much of the detail, but am not prepared to agree to the entire details, and therefore would only publish the changes in the constitution of the courts, in the shortest practical form.

(signed) A. Amos.

(No. 123 of 1842.)

Legis Cons.
30 Dec. 1842.
No. 12.

From the Governor of Prince of Wales' Island, Singapore, and Malacca, to J. F. Halliday, Esq. Secretary to Government of India, Fort William.

Sir,

Legis. Dep.

I HAVE the honour to acknowledge the receipt of your letter of the 17th June, giving cover to a copy of one from the Law Commissioners, under date the 8th February last, to the address of the Right honourable the Governor-general, and desiring my opinion, as well as that of any of the local officers competent to form one, on the subject therein discussed. In obedience to these orders, I sent a copy of the letter to Messrs. Garling, Church, and Salmond respectively, as also to Sir William Norris, the recorder; and I now enclose their several replies, with the exception of Mr. Salmond's, which I have not yet received.

2. Before I proceed to offer any opinion on the subject generally, it may be as well for me to say that, after an experience of ten years on the bench in the court of judicature of the Straits, I have completely altered the opinion I once entertained, that a professional lawyer is unnecessary; for I am now satisfied, that independently of the security his presence affords to the public, that if the lay judges misadminister the law, the case can be renewed and the defect rectified; it further imparts to the lay judges a degree of confidence, which they would not possess if they felt their decisions on points of law were not open to local and professional review.

3. The Honourable the Vice-president in Council will observe, from the learned recorder's letter, that I have had considerable conversation with him on this matter, and as Sir William Norris's letter was not written until the question had been often and fully discussed between us, I may at once remark that I generally concur in the opinions he has expressed, with two or three exceptions, which I proceed to notice.

4. The learned recorder is of opinion that the court, if possible, should be altogether independent of the executive authorities, in which case there must be two recorders, or that the court should only consist of a recorder and the chief civil local authority at each station, dispensing with the governor altogether; but as neither from the papers before me, nor from any other quarter, have I any reason to believe or to know to the contrary, I shall consider that the appointment of Governor is still to remain untouched, notwithstanding the Law Commissioners propose that that officer should not be employed in judicial business.

5. If then the appointment of governor is to remain on its present footing, I am of opinion that by far the easiest and simplest plan of ensuring the object in view, viz. "efficiency and economy," will be to continue the court of judicature on its present footing, and for the government of India to obtain the sanction of the Crown to make such alterations in the letters patent as are necessary to enable the amendments proposed by the Law Commissioners being carried into effect, with power to reduce the salary of the recorder to the same scale as that of the resident councillor, and to abolish the appointment of registrar and sheriff, as at present constituted, altogether.

6. This plan would in substance be that proposed by the present recorder, with the exception of the court being composed of three instead of two judges; and it has the sanction to a certain extent of two former recorders, viz. Sir Ralph Rice and

and the late Sir Benjamin Malkin, the former says, in his evidence given in March 1830 before the House of Lords, when speaking of his lay colleagues, in reply to question 1413, "Sometimes one of them would attend during the session, and was of great assistance to the recorder, particularly in regard to some of the customs that had prevailed." And again, in reply to question 1394, wherein he is asked if any amelioration could be effected in the constitution of the court in the system of the law, he says, "I think it would be very difficult; there must necessarily be in that jurisdiction a considerable degree left to the discretion of the person who is to administer the law." Sir Ralph Rice was recorder of Penang for seven years. Sir B. Malkin, in a letter dated 27 May 1833, to the address of the then governor, Mr. Ibbetson, on the subject, expresses himself as follows — "Whether the existence of a King's Court at all in the Straits is desirable, whether its expense does not outweigh its advantages, is, I am aware, a question on which opinions differ. My own opinion may not be an unbiassed judgment; but I have little doubt, I confess, of the expediency of continuing, with certain modifications, if a new charter can be obtained for the purpose, the present system."

7. Should this sanction be obtained from the Crown, and presuming the salaries of the resident councillors to remain on their present footing, viz. 2,000 rupees per month, a saving to the extent of 38,853 rupees might be effected, which, after all, would be the only real saving as regards the court, for if the salaries of the few civil servants are to be curtailed, there is certainly no reason whatever for attributing the reduction of the expenses to the reform in the judicial administration.

See Statement.

8. While on this subject, I may as well say that any change that may be made is not likely to affect myself materially; but I still consider it a duty I owe to the servants of the executive government, to the future recorder, and to the State generally, to record my opinion, founded on an experience of 23 years, that with a less salary than 2,000 rupees per month, residents at Singapore and Penang, and the recorder, will be unable to live in the same style as the merchants and others of the settlement, and be entirely unable to display that certain show of hospitality to which all public officers are exposed, and in no place more so than at Singapore; and that a reduction will further work an injury to the settlement, as, under such circumstances, none but the most indifferent of the public servants from the presidencies will take the appointments; and they, from the smallness of the allowances and the expensive nature of the place, will always be looking forward to a return to their own presidencies. Whether or not servants of this description will be able to manage a settlement composed of the materials that Singapore is, and supply the judicial wants of a port at which more ships annually touch than arrive at Calcutta, time will show.

9. I have already observed that our present recorder considers an entire separation of the judicial and executive branches of the service desirable; and I of course am not unaware that, on general principles, his position is undeniable, and that its adoption at the presidencies has perhaps proved useful; but I confess I doubt if its extension to the Straits would be so. It must be remembered in Calcutta, for instance, there are three judges; and when a new one arrives he has the experience of his two other brethren to refer to, and with whom he may consult on matters that may be new to him; he has also an honourable and enlightened bar to refer to. In these settlements a judge under any circumstances must be entirely differently situated; for even if he had a professional colleague at Penang with him, he could only correspond by writing, so that they could be of but little assistance to each other, and of none in those cases touching the habits and usages of the people, respecting which the learned gentleman would most require it.

10. I again repeat, therefore, that I think the present plan of the constitution of the court, the most eligible that can be adopted; and in which opinion I think I may say Sir Ralph Rice and Sir Benjamin Malkin concurred; it affords a tolerable security for the decisions not being altogether at variance with the principles of law, as any one objecting to the decision of a lay judge on points of law, can have it reviewed by the professional judge, on showing sufficient cause; while the occasional presence of a gentleman who has spent perhaps 20 years among the people, and is conversant with their language, habits, and modes of thinking, certainly adds very considerably to the chances of the court coming to a right and correct decision on facts.

11. I would here remark, moreover, that the governor may be considered to be nearly unbiassed in all revenue matters, as he does not interfere in its collection in any way; it is only in political cases in which he could by any means have an undue inclination;

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inclination; these cases are very few, and with the governor at one station and the recorder at another, the present system I think presents fewer objections on the score of entrusting to the same individuals executive and judicial powers than any other that I am aware of.

12. The government will be pleased to remember that all convictions against the revenue regulations of these settlements take place before two magistrates; if the present system is abolished, it will be necessary to constitute some other tribunal to settle questions of this nature, and I should be sorry to see them adjudicated by any single government servant at all interested in the collection of the revenue; at present they are disposed of by the assistant resident, and generally an honorary magistrate who is a merchant of the settlement.

13. I have perused with great attention the Report of the learned Law Commission, and on the whole I consider the power it intends to entrust to the several judges sufficiently comprehensive to ensure despatch and efficiency, but I think their proposed system more cumbersome, and by no means so efficient as that at present in force would prove with the proposed amendments. The one and principal objection I have to the scheme is the power that it intends to confer on the professional judge over his lay brother—a power which, if not very discreetly used, will tend to create jealousies between them, which cannot but prove extremely detrimental to the public service, and be by no means likely to afford the facilities for “consultation and reference” contemplated in paragraph 52 of the Report. In the opinion expressed by Sir William Norris under this head I fully concur.

14. If the present charter is surrendered, I would recommend that there should be two courts at each settlement, one to be composed of the barrister and the resident as colleagues, the other by the assistant: in the former the barrister should preside, usually at the settlement at which he may be, on the civil side as also in all criminal courts where capital or other offences, involving a penalty of 14 years' imprisonment, are tried. In the absence of the barrister, or with his concurrence, at the station where he may be, the lay judge should, in civil causes, have exactly the same power as the barrister judge. The assistant resident should have a jurisdiction to the amount of 200 rupees, on the civil side, and on the criminal, he should be allowed to dispose of minor misdemeanors of any description, and petty thefts, when the value of the article stolen does not exceed 10 rupees, and which would be sufficiently punished with six months' imprisonment, and 200 rupees fine.

15. In all cases in which the losing party may be dissatisfied with the construction of the law by the lay judge, he should be allowed to move for a new trial, on grounds distinctly shown and sworn to, as at present, before the professional member of the court. But I must maintain no such power should be vested in the professional judge to interfere with decision of the lay judge, in respect to facts of which I think, of the two, perhaps the lay member may be the best judge; for I feel tolerably satisfied, that from the nature of the cases usually coming before the Straits courts, there is more chance of injustice being done by the professional judge, from coming to false conclusions on facts, than there is from the misdirection and misapplication of the law, by the non-professional judge.

16. I may generally here state that I think the system of assessors will be by no means popular in the Straits; and notwithstanding the opinion come to by the learned Commissioners, I cannot help thinking that the subordinate criminal court, if the system recommended by the Law Commissioners is carried into effect, or the court of quarter sessions, if the present system continues, should be held before a jury, say of six or 12, according to the nature and description of the trials, of which the presiding judge will be able to judge from the perusal of the depositions on which the prisoners have been committed; in the former case four, and in the latter nine voices to constitute the verdict. To this I can see no objection, as the professional judge could take his seat there when he saw fit, and the objection taken to that court by the late Sir Benjamin Malkin might be obviated by declaring that the professional and lay judges should be the only judges of this court; it might be further ordained that the lay judge presiding at such session should have power, at any time of the proceedings, to postpone the case until the arrival of the professional judge.

17. By this arrangement the proposed system of appeal will at once be got rid of, which I consider the most objectionable feature of the whole proposal. For instance, suppose a criminal tried before the lay judge is convicted by the voice of that judge and two assessors, one assessor, being dissentient, appeals to the professional

professional judge's court, when again one assessor may be dissentient, the appeal must, I suppose, be sent on to Calcutta. Assuredly it would be infinitely preferable to try all cases not capital before either of the judges, professional or lay, as might suit their convenience, when both were at the same settlement, with a jury whose verdict should, as at present, be conclusive, and, if necessary, unanimous.

18. I must here remark that the bickerings, disagreements, and arguments that would of necessity constantly occur between the judges of either court, and the assessors, would neither add to the dignity of the bench nor lead the inhabitants to respect the tribunals.

19. I would allow law agents to practise in the superior court, wherein either the professional or lay judge presided, but not in that of the assistant resident, which may be termed the court of requests; and as a general rule, I would make the party employing an agent pay the expenses of that agent, unless there was something in the case which might induce the court to consider it proper the losing party should pay them, which might be the case when the cause was intricate, and required the aid of a person having some little pretension to professional skill, or when the proceedings of the losing party had clearly been groundless, and instituted for the purposes of vexation, &c. &c. At Penang, until lately, it was the custom for the losing party to be made to pay the agent's costs, however simple the case. At Singapore the lay judges have always acted on the principle here advocated. Enclosure No. 1 will show precisely how the different systems work as regards expense; it contains the costs of three different suits. The first was instituted to recover 150 dollars; the judgment was for 150 dollars, and the costs amounted to 138 dollars, including the agents on both sides, which alone amounted to dollars 100. 70. The second was to recover 75 dollars; the judgment of the court was for 30 in favour of plaintiff, with full costs: these amounted to dollars 72. 05, of which 48 dollars were on account of the agent employed by plaintiff, who, though he did not recover one half the amount he sued for, was considered entitled to the costs of his own agent. The third shows the agent's costs in a suit to recover 100 dollars, to amount to dollars 46 45, and the original bill of costs attached thereto will show the items composing the agent's bill. Of course the admittance or refusal of agents to practise in court would remain, as at present, at the discretion of the judges. This power of exclusion is absolutely necessary to prevent persons of improper character appearing as agents.

20. I think the abolition of the grand jury quite unobjectionable - those heretofore composing it can be made petty jurors with advantage, or assessors, if the plan of appointing them be persisted in.

21. The Law Commissioners appear to consider that the proceedings before the court should be carried on in the English language, in which I fully concur, for reasons expressed very fully in the letters of Messrs. Garling and Church.

22. The Law Commissioners have entirely omitted to notice how they propose the ecclesiastical duties of the court are to be performed, but I presume as at present.

23. I append a memorial of what may be considered our present exclusively judicial establishment, with another showing the nature of one that I consider will be efficient, either for the present court, or for any other that may be hereafter constituted. These are all the remarks that it strikes me at present are called for from me, but there are two others, more of a personal nature, which I venture to refer to.

24. In letters written by me some years ago I stated that the process of the court at that time was dilatory and too technical. This was denied by the late Sir Benjamin Malkin, and is so still by our present recorder at Penang. All I have to say is, that at Singapore, where four-fifths of the cases instituted in the court are conducted by the registrar's department, the pleadings are simple, and drawn out agreeably to the provision of the charter; while at Penang, where the recorder presides and law agents are allowed more latitude, the forms of pleading in use at Westminster Hall are attempted; and the agents, having been instructed by their clients, draw out the declarations and pleas in assumpsit, detinue, trover, or in any other technical form that they may conceive will suit the particular case. Some years ago I remember a case wherein it was alleged, on a petition, that one party had accidentally lost some hundred bags of sugar, and another had casually found the same wholesale quantity. Whether or not this is a fictitious style of pleading, and consistent with the direction of the charter, which in substance says, "That a person requiring the aid of the court, is to prefer his complaint

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verbally or in writing, whereon the substance of the complaint is to be reduced into writing; and if it be preferred in writing, it shall be divested of all extraneous matter, and be put into the form of a petition, stating shortly the substance of the matter complained of; the pleas and answers to be treated in the same simple manner."—I leave the Law Commissioners to judge.

25. Mr. Young has, I observe, alluded to a judgment passed by a lay judge, and which he asserts to have been considered as erroneous; and the Law Commissioners cite that instance as one strongly pointing out the necessity for professional aid. That professional aid is necessary, I have already admitted; and happy should I be could I conceive that during 18 months, the period of Mr. Young's residence in the Straits, that this was the sole instance wherein the law had been misapplied by a lay judge; but as I was the judge who pronounced the judgment, which is very materially confirmed by a judgment passed in Bombay in September 1840, *In re Robagores Gowajee v. Captain Lowe*, of the *Berenice*, I venture still to doubt if it was not legal. But that the Learned Law Commissioners may see the real state of that case, I venture to append a copy of the judgment passed on the occasion.

I have &c.
Singapore, 28 September 1842. (signed) P. S. G. Bonham,
Governor of Prince of Wales Island,
Singapore, and Malacca.

P. S. Having consulted the two chief ministerial officers of the court at Singapore and Prince of Wales Island, and who may be termed the local registrars, and are both gentlemen of high respectability, of considerable talent, and of much experience, I also forward two separate papers with which they have separately favoured me. These papers will show the description of persons at present employed in the court as registrars, and they will, I am satisfied, leave if their salaries are reduced lower than the sum I have proposed, viz., 600 rupees per month.

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30 Dec 1842.
No. 13.
Enclosure.

(No. 302 of 1842)
From the Resident Councillor, Prince of Wales Island, to the Honourable the Governor of Singapore, Prince of Wales Island, and Malacca.

Sir,

I HAVE the honour of acknowledging the receipt of your letter, No. 164, of the 20th ult., forwarding copy of a printed Report by the Law Commissioners, dated 8 February last, presenting their propositions touching the future judicial administration in these settlements. Upon this Report you have been pleased to invite my remarks.

2. The Report expresses the opinion of the Law Commissioners to the following purport: "It does not enter into our scheme to employ the governor in any judicial function."

3. Unless the supreme government be prepared to correspond direct with the civil authority at each of the settlements, an officer superintending the three settlements will be employed. As regards the question in hand, it matters little whether this appointment exist as at present, or on a revised principle. Any how, he will be the chief civil authority in the Straits; and as such I cannot, in the absence of any known expression of the intentions or wishes of the supreme government, suppose that he will be excluded from some participation in the judicial administration.

4. Should the office of governor be retained, and the governor become a member of the bench of justice, the system laid down by the Commissioners needs to be, in my humble opinion, modified. Such an officer would probably maintain but a repulsive intercourse with the recorder, who might at pleasure so conduct himself as to wound his feelings, or, in plain words, his pride. This is not a necessary consequence of the proposed system; yet it is very possible, and the experience of one period may render it not improbable.

5. But I shall leave this question, and suppose that government have resolved upon the system generally as proposed by the Law Commissioners. I shall refer to the different topics in the order they are presented to me.

6. The

6. The law of England, as made applicable to the various circumstances of the mingled classes of the Straits' communities, should be the *lex loci*.

7. Mr. Murchison would utterly exclude court agents where the lay judges preside, and would substitute the Malayan language for English.

8. Law agents, if diligent, may become useful by collecting and arranging information, and by occasionally eliciting latent and reluctant truths from the witnesses of the opposing party, but they do also, at times, mystify what is clear, cavil at trifles, and sacrifice simplicity to the display of a fictitious acuteness. By protracting the proceedings of the court, the ignorant are persuaded that its business is intricate and its practice expensive, oppressive, and odious. On the late circuit the recorder had but little to do at Malacca. The reason is obvious: there were no agents. The most crafty and litigious had removed; a second was otherwise employed; a third, recently only engaged, was dead. Should these agents, however, not be excluded, they ought not to be allowed in cases of and under 100 rupees.

9. It is proposed to continue the use of the English language in pleadings in the court of the professional judge, but to substitute the Malay language in the lay courts. As all parties are, under the existing establishment, at liberty to use what language they find most convenient when addressing the court, I conclude that the object is to have the preliminary papers, as petitions, pleas, answers, &c. drafted in Malay. Against this measure there are, I venture to submit, weighty objections.

10. The ordinary Malay idiom is so deficient in precision and perspicuity, that in cases involving several names or dates, or sums of money, or transactions, or intricacy, a translation of such papers must be made, and the party be examined with the view of ascertaining whether the translation be correct in point of fact. This would consume time and stationery; and I venture to believe it would not afford greater confidence and facilities throughout the inquiry, nor prove more satisfactory in the issue, than may be obtained under the present system. Depositions taken down in Malay are liable to similar objections, but depositions in civil cases would seldom be required. The judge's notes of evidence must necessarily be in English. The only part of the proceedings which remain to be noticed is the *viva voce* evidence of witnesses, from which the judge's notes are drafted. I have already observed to the purport that a witness may use any language with which he be most familiar. This, however, is under certain limitations. If a Kling or a Chinese enters the box, I would rather he should speak and be spoken to in the Malay language, even if his knowledge of it be somewhat defective. I feel assured that the judge can, by his knowledge of the Malay tongue, keep an effectual check over the proceedings. In cases where the Tamil and Chinese languages are used as a medium, the court labours under difficulty.

11. I am also inclined to think that a lay judge can secure the truth much more effectually and speedily by speaking English, and watching the interpretation, than by a direct address in Malay. The Malay of different places has the peculiar idiom of those places, and is more or less tinged with words utterly unknown beyond their respective boundaries. For instance, the Malay of Quedah, of Manangcabow, of Passumah, or Sumatra, of the Celebes or Batavia, these differ in words, phrases, and enunciation. An ignorant witness is more likely to comprehend the familiar utterance of an interpreter who has learned the language by ear only, and from the bazas; than the more formal phraseology of one who has studied the language. In respect of my own experience, I may speak with certainty on this point.

12. On the whole, then, I would suggest that touching the language to be used, matters be left precisely as they now are.

13. As regards the proposed option of a party to a suit having translations of the record, I see no objection against the measure; always, however, provided that such copies and translations be subject to fees as at present. Should the fees be removed, I apprehend frequent and unceasing applications would greatly and most needlessly increase the business in the registrar's office. It will be borne in mind that the minute-book contains little beyond the headings of, and judgment in cases, and the names of the parties and their respective witnesses. A more formal and detailed record might be necessary, and a close copy thereof, reasonable, and salutary, were our proceedings conducted as in some courts they are, and in Malacca, as I understand, were, under the Dutch, conducted with closed doors. I am of opinion that 19 persons out of 20 would not be one iota the wiser for such translations.

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14. The permanent presence of a professional judge is desirable; occasions of reference, and for appeal, may arise, on which the delay consequent upon the absence of a judge beyond seas would entail serious inconvenience. The reasons assigned in the Law Commissioners' Report are cogent; questions immediately before a subordinate court, the right construction of a recent Act of the Indian Legislature, or a Parliamentary statute, may render prompt and easy communication with a professional man most desirable. The opinions of the courts of Sudder Dewanny and Nizamut Adawlut are constantly applied for by the provincial judges in Bengal, as I gather from the published volumes of the "Constructions," by these courts, of the laws and regulations of Bengal.

15. To preserve the simplicity of civil proceedings, as contemplated by the Law Commissioners, it may be necessary, in addition to the exclusion of law agents, to declare a discretionary power to reside in the judge in respect of certain documentary preliminaries, dilatory pleas and technicalities, in which some of the agents are fond of dabbling, and the use of which they might still attempt to urge upon those who may seek their advice. Take, for instance, the 4 & 5 Ann, c 16. This statute is intended for "the easier, speedier, and better advancement of justice." I have known this Act to be quoted by way of proving that not the mere usage or practice of a court, but an express command by statute, rendered the proffert of letters of administration indispensable, and that the non-proffert must be fatal to the party failing to proffert.

16. I approve of the provisions made for the adjudication of cases "obviously involving points of English or international law," and "cases of 10,000 rupees and upwards," being reserved for the professional judge.* The reasons for the former are manifest; those for the latter respect the preparation of the documents necessary to be forwarded on appeal. The case referred to by Sir Benjamin Malkin, para. 22 (p. 20) occasioned, if I remember correctly, some hard discussions at the time upon this very point.

17. I may not correctly comprehend the precise meaning of the terms "We think that the distribution of cases should ordinarily be performed by the professional judge."

18. In a community, an important portion of which is fluctuating, it is essential to provide for the receiving of the evidence of witnesses who may be about to leave the jurisdiction. The examination of witnesses on interrogatories *de bene esse* is, however, a matter of course.

19. Province Wellesley needs a court of its own, for the reason assigned. It is advancing in population and importance. The assistant's time is fully occupied.

20. Full liberty of appeal is proper. The judge should, however, be required to make himself satisfied that there is solid ground for the measure in every admitted appeal. Our early recorders were soon sensible of this. I know of a case, a few years back, in which matters had gone so far that a recorder had recommended my withdrawing a judgment; meanwhile he removed to one of the presidencies and my judgment was confirmed by his successor. The case had not originally been judicially considered by the first of these professional gentlemen. Not having the means of consulting the draft regarding special appeals, submitted by the Law Commissioners on 4 December 1841, I shall not particularly refer to it. The provisions for the appellant's petition being presented to the court against whose decision the objection is raised, and the permission proposed to be given to the respondent for handing in his answer, are salutary measures.

21. I am of opinion that the professional judge should not have the power of calling up at his pleasure "any cases, original or appealed, which from representations made to him, he considers to be proper subjects for adjudication by himself, as involving questions of law." This appears to me as vesting him with a power which may (according to humour, for the professional no less than the lay judge, is but man,) be exercised after an invidious, vexatious and inquisitorial manner. The Law Commission wish to surround justice with every safeguard, and they desire to preserve the professional functionary free from executive influence, and as a check over a lay administration of justice. These objects may surely be obtained without raising occasions of unpleasant feelings between the professional and lay judges. I have seen one in the Straits who would not have been back-ward

* I would say a court presided by or enjoying the presence of a "a practised and learned" gentleman.—J. G.

ard of encouraging representations inviting the full display of the stretch of power thus brought within his reach.

22. In criminal procedure some provisions will be necessary for compelling the presence of assessors or for empowering the lay judge to proceed in their absence after due warning given to them.

23. It is not stated what shall be the details of the "periodical statements," and I have no means of ascertaining the particulars of "those submitted to the Sudder Dewanny Adawlut and Sudder Nizamut Adawlut of Bengal." But if not only the professional judge but the college of justice, is each, "to be furnished with periodical statements," these ought to be very brief.

24. I take this occasion of adverting to a topic upon which much is often spoken,—the actual work performed by the resident councillors. This work is not to be measured by off-hand declamation. As far as I am personally concerned, I am free to declare that what with recorded work, work unrecorded, and meeting those demands of courtesy which, from their indispensable obligation upon the functionary, claim a right to be considered, my time is occupied to the extent of my health and strength.

25. The petty sessions, as proposed, may prove a valuable portion of the system. It is worthy of consideration whether this court should not have some defined powers expressly enacted in respect of masters and servants, whether in-door domestics or field labourers, and for enabling the court to carry out an early suggestion of Sir John Claridge, to give the utmost latitude of construction to the words in the charter, see page 47, "quarrels and controversies." The purpose of surrendering this charter will be borne in mind.

26. The proposed change in the jury system is important, and I am of opinion desirable, for the reasons assigned in the Law Report of 31 August 1838.

27. "To render officers and soldiers amenable to the local courts for actions of debt and personal actions under 400 rupees," is an improvement most desirable. The court can, however, at present compel an officer to make appearance, and should he waive privilege either in so many words or by his silence, he could not after judgment pronounced deny the authority of the court. If, on the other hand, an officer should plead his privilege, and there should exist an insuperable barrier to the functions of a military court of requests, it has to be decided whether the plea of privilege could hold.

28. Before closing this letter, I am induced to submit for your reflection the intense desire of the Indian Law Commissioners, as manifested throughout their Report, of exalting the professional judge in array against the lay judges. Those are as much as possible laid under his single control, and exposed to the action of those littlenesses of human nature from which the noblest are not altogether free, and of the painful influence of which we have been witness in these Straits.

29. The rate of salary proposed for the professional judge does not hold out the assurance that we are to enjoy the presence of a barrister of the highest order; yet to his single uncontrolled will and mandate the lay judges are to be as subordinate as the proposed court of the Draft Act is to the Supreme Court, or the provincial judges are to the court of Nizamut Adawlut.

30. The lay judges are very differently circumstanced, and appointed from the "one judge to be appointed by the Governor of Bengal," Draft Act, section 1. This judge may be taken from a copious list, of which at the utmost he can be only one of several leading members. In the Straits the lay judges comprise the only and the entire executive authority. The native community is hereby encouraged to look to the professional judge as the principal authority in the Straits, and the executive as holding a very subordinate place. Is the professional judge less subject than the lay judges to the influence of human emotions?

31. It is worth while to carry the consideration of this subject a step further.

32. I would refer to the 42d and 54th sections of the Report of the Indian Law Commissioners, dated the 31st August 1838.

Section 42. "We think that whenever a (professional) judge and jury (composed of 12 persons) differ, political cases excepted, the presumption is strongly in favour of the opinion delivered by the learned and practised member of the tribunal."

Section 54. "We have thought it expedient to limit the right of applying to the Supreme Court," that is, to the aforesaid "learned and practised member of the tribunal," "on matters of fact, to those cases in which at least one assessor is dissatisfied with the judge's decision." Thus the single opinion of the "practised

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and learned member," shall outweigh, on matters of fact, "the unanimous opinion of any other 12 persons; but the opinion of the lay judge, no matter how well "practised," if opposed by only one voice, shall, because the judge is not a "learned member," be viewed as so unsafe that his judgment shall come under the review and final decision of the "learned member," whose opinion is preferable to the unanimous opinion of 12 of the most honest and intelligent inhabitants of these Straits.

33. The climax of this remarkable preference of the Indian Law Commissioners consists in this, that the assessor, whose single opinion shall shake the judgment of the Court, has ample means of explaining the grounds of his dissent, and therefore of correcting any, should there exist any, misunderstanding or want of information on the part of the Court, three-fourths of whom entertain a different opinion; but the professional judge may be and may remain, ignorant of "the arguments that may occur to them," that is, to 12 persons of unanimous opinion "in favour of their own view."

Prince of Wales' Island,
9 September 1842.

I have, &c.
(signed) J. Garling,
Resident Councillor

ABSTRACT of the Resident Councillor's Letter to the Honourable S. G. Bonham, Governor, &c. &c. No. 302, dated Prince of Wales' Island, 9 September 1842

1. Acknowledging receipt of Law Commissioners' Report, 8 February 1842.
2. Proposed exclusion of the Governor from the court.
3. Probability that some such officer will be retained, and if retained, of his participating in the judicial administration.
4. If so to participate, the proposed system needs to be correspondingly modified.
5. This question will not be further considered.
6. The *lex loci*.
7. Mr. Murchison's proposal respecting court agents, and the use of the Malay language.
8. Concurring that court agents should be excluded from the lay courts, or limited to a certain extent.
9. Of the use of the Malay language.
10. Objections against the measure.
11. Benefits of the existing system.
12. Suggesting the continuance of the present system.
13. Of granting translations of the record.
14. Permanent presence of a professional judge desirable.
15. Certain formalities to be rendered unnecessary.
16. Of the cases to be reserved for the professional judge
17. The professional judge's distribution of cases.
18. Of interrogatories *de bene esse*.
19. Province Wellesley Court.
20. Of appeals.
21. Limitation of professional judge's power of calling for records, &c
22. Of securing the presence of assessors.
23. Of the periodical statements.
24. Writing and business should not be accumulated if to be avoided.
25. Of the petty sessions.
26. Of juries.
27. Military officers to be amenable to the local courts in cases under 400 rupees
- 28-33. Observations respecting the extreme degree of preference given by the Law Commissioners for the professional judge.

(signed) J. Garling.

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30 Dec 1842
No. 14
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REMARKS by Mr. Rodyk, Acting Registrar in the Court of Judicature at Penang, on the Suggestions offered by the Law Commissioners for a new System of Judicature in the Straits; dated Penang.

1. THE Law Commissioners in their Report to the Governor-general of India, have recommended, in substance, a fundamental change in the entire system of judicature in operation at the Straits settlements. The necessity of some alterations cannot be denied when the circumstances of these settlements are taken into consideration and compared with what they were in 1836, the date of the present charter, independent of the many inconveniences and difficulties arising from the separation and distances of the three stations from one another, which the framers

of that document were ignorant of, or overlooked, but it may be questioned whether the necessity exists to the extent the Law Commissioners suppose it.

2. The "most weighty objection" they found urged against the present court is, that "it is maintained at an expense quite incommensurate with the population and resources of these settlements," while they admit the objection as to its unsuitableness to "have been successfully refuted." Acting upon the objection thus urged, and with the manifest object of introducing a more economical system, they recommend the surrender of the charter, and consequent abolition of the present Queen's Court, and to substitute a system of courts to be superintended by a professional judge, aided by the resident and assistant resident at each station; and to be modelled after the subordinate civil and criminal courts proposed for the presidency of Calcutta, subject to such alteration as the local position of these settlements call for.

3. In developing their plan, they recommend many things worthy of consideration, even in modifying or remodelling the present Queen's Court, but their system is extremely complicated; and instead of removing it, adds greatly to the evils of the existing one. This is apparent with reference to the connexion of the judicial with executive functions, the circuits and the appeals.

First. The connexion of the judicial with the executive is, in the avowed opinion of the Law Commissioners, an evil; and in this opinion the Straits community universally concur. On the plea of "necessity," the Law Commissioners not only continue, but increase the evil, by proposing an additional executive lay judge, for each station. If there be any necessity for introducing a new system, or of effecting alterations in the present one, the separation of the judicial from the executive claims primary attention, and if the connexion be allowed to exist, it should only be under such provisions as will restrain it from operation except on peculiar and extraordinary occasions, though an entire separation, if possible, would be preferable, as conducive to simplicity in plan, and to the efficient and impartial administration of justice. Such a separation does not appear incompatible even with the economical views of the Law Commissioners. For, if these settlements be so poor as the Law Commissioners have been led to believe, why should they not be provided with professional judges on the same scale of salaries as are paid to professional judges in other dependencies of the empire? The large amount allotted to the executive officers for their participation in judicial business, viz. 3,700 rupees monthly, or 44,400 annually, would be more than doubly ample for this purpose. If, again, the circuit expenses and a due proportion of the steamer's expenses on account of the Judicial Department be added to the above amount, the annual sum may be, at the lowest estimate, taken at 50,000 rupees. The whole judicial business at each station, exclusive of the police, and the local magistrate's duties, might by a judicious arrangement and a properly regulated system be performed by a professional judge. (*Vide Appendix (A)*) Until this is proved to be impossible, (for Penang at least) the plea of poverty ought not to avail to the prejudice of this station, which has been the continued residence of the professional judge for upwards of 34 years.

There is, however, a wide difference of opinion as to the reality of the poverty of these settlements. The Law Commissioners would do well to reconsider theirs, and view the subject, not only in the light Mr Young has placed it before them in his evidence, but in comparison with the resources of other dependencies of the empire, if put upon the same footing as the Straits settlements.

Secondly. The circuits, which form an unavoidable appendage of the Law Commissioners' plan, are in themselves the source of expense, and more or less productive of uncertainty, delays, disappointments, and many other inconveniences. What, for instance, is to prevent the recurrence of the order for the steamer to proceed to another quarter of India for state purposes, or for the release of captives, or of its absence when required while in pursuit of pirates, or undergoing repairs? The consequence of any of these recurrences would be a total derangement of judicial business. The nearest approximation to regularity and despatch would be to have a vessel entirely devoted to the purposes of the system. If Malacca be made a dependency of Singapore, from which it is only half the distance it is from Penang, the plan of having two professional judges would be the simplest, the least expensive and inconvenient, and would do away with what is truly complicated and intricate in the Law Commissioners' plan.

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Thirdly. Appeals form a prominent feature in the Law Commissioners' plan; a system, in which, so large a proportion of the judicial business is allotted to the lay judges in two of the three stations cannot be complete without them. A tribunal immediately superintended, and conducted by a professional judge, with liberty to parties, on showing sufficient grounds, by affidavit or affirmation, to appeal from his decisions to the proposed college of justice in every case, and in some cases from the college to the Queen in Council, would suffice for all the purposes of these settlements. In most cases before such a tribunal parties would be satisfied with a rehearing, and it may be presumed that if there be grounds for appealing, a professional judge would not be backward in granting rehearings. According to the proposed plan, reasoning from experience, the time of the resident and professional judge on circuit would be occupied as much with appeals as with original causes. In 1827 when Sir J. Claridge occupied the bench, appeals from the court of requests were so numerous as to average from five to ten every week, owing to the facility with which they were granted; a dissatisfied party had only to express his wish, and pay down his three dollars, which was the fee, and he obtained his appeal in less than half an hour, with which he ran over to the Court of Judicature to get it filed, and a day fixed for hearing. Sir J. Claridge, finding that he had to affirm almost every decision of the Commissioner, passed an order requiring an affidavit of the grounds for appealing, and the transmission of the Commissioner's record of the proceedings before him for consideration previous to granting any appeal. The practice thus introduced obtains, at Penang at least, to the present day, and it may be supposed works no injustice, for appeals continue to be made in the mode prescribed, averaging perhaps from one to three a month; while it is reasonable to infer that, in this small number the appellants act conscientiously, though often from mistaken views, and misconceived rights, seldom from a litigious spirit or desire to cause delay or vexation.

4. The jurisdiction and procedure of the proposed substituted court next come under consideration; and first, as to the jurisdiction of the civil courts.

The division and subdivision of labour, and the assortment and distribution of cases for three separate tribunals, are necessarily part and parcel of a complicated system. All this would very properly form the details of a court under the conduct of a professional judge, to whom, on the supposition that he is to undertake all the judicial business, the distinction and separation of cases involving law points or not would be immaterial, but whose arrangement would be governed by classification in accordance with amount only. The view taken by Sir B. Malkin, and adopted by the Law Commissioners, as to the bulk of the business of the Straits court, is no less applicable to all the courts in England and all her colonies and dependencies; the bulk of business there, as in the Straits, consists in enforcing certain description of rights; and yet, except in the Straits, this duty is nowhere entrusted to men of sound sense and discrimination as such only. If by "sound sense" is meant "common sense," there are no two men, in the opinion of our present recorder, "who are agreed on the point." This qualification in the lay judges presupposes a guarantee on the part of those who appoint the executive officers, that they will always select for the Straits government men "of sound sense" and "discriminating understanding," but such a provision is obviously in repugnance with the system of patronage pervading the East India Company's service. A professional judge simplifies the whole system and obviates every difficulty.

Secondly, As to the procedure of the civil court.

The absence of the Report on the procedure of the proposed subordinate civil court for Calcutta renders it premature to discuss its applicability here. The practice described by Sir B. Malkin as having been pursued by him was and still is the preliminary step in most cases, in the registrar's office at Penang; a notice to the party complained against is the first process to bring the parties together. There is, however, in many cases now a previous direct application to the recorder himself by petitions, drawn up by a class of men apparently little versed in English, which cost, according to their length and the circumstances of the parties, from one to five dollars each. In some of these cases the parties are brought together on a fixed day, their disputes heard and settled; in others they are referred to the registrar, and desired to bring their actions. These petitions were much discounted by Sir B. Malkin, as in most of them he found the complaints to be misstated or misrepresented, and facts concealed to bias his mind. He, however, did not remain long enough to enforce the practice of complainants appearing and stating their story without the medium of these petitions. Sir E. Gambier discounted

nanced the practice altogether, by referring these petitioners to the registrar's office, where he said every one had a right to have his complaint reduced to writing, and brought forward in the regular way. On the first establishment of the Queen's Court at Penang in 1808, the English pleadings in law and equity were adopted and strictly followed, as it would appear by the records. In the time of Sir Ralph Rice there was a wide departure from that practice; the pleadings assumed so simple a form that they certainly would not be tolerated at the present time. The practice which obtained under the rules of practice drawn up by Sir John Claridge for the existing Queen's Court was neither strictly technical, nor so totally devoid of technicality as prevailed in the time of Sir R. Rice. The practice continues much the same at the present date; if anything, it tends rather to uphold the technicalities of the English pleadings. There have been causes in which the pleadings have been altered at different stages for informality or defectiveness in respect to pleadings, and, on the other hand, there have been instances where objections have been taken to informalities, &c., and overruled, especially under such circumstances as it was apparent to the court that the ends of justice would have been defeated by any compliance. It is, therefore, very desirable, both with the view of facilitating the duties of the court officers and of establishing a consistent and uniform practice, that the civil procedure be distinctly and precisely settled.

Thirdly, As to the jurisdiction of the proposed criminal courts.

The same objection exists in the division and distribution of labour for three separate tribunals. The suggestion for a sub-criminal court to be kept continually open for certain classes of offence is excellent and worthy of adoption, and in itself a humane provision, inasmuch as it will save many an innocent man from incarceration for an indefinite period, as heretofore, before his trial. The system in this respect would be much simplified by giving jurisdiction to the local magistrate to try and dispose of all petty offences short of larceny and felony; and to the professional judge to entertain in his sub-criminal court all larcenies and felonies, reserving such as may appear to be peculiarly aggravated or difficult, as well as all capital offences, for a higher tribunal, in which he may be aided by a jury.

Fourthly, As to the criminal procedure.

This, too, if in strict accordance with the mode of proceeding in English criminal courts, would be inconvenient as applied to the tribunals of the lay judges, and would occupy too much of their time as executive functionaries. It is, however, well suited for the system, which, by giving jurisdiction to the local magistrate over a certain description of offences, to be disposed of in the most simple and easy form, would reserve all other crimes and offences for trial before a professional judge in the mode prescribed. The extinction of the grand jury and the substitution of assessors in lieu of a jury, and the reduction in the number of the jury, and the dispensing with their unanimity, are subjects for serious consideration. In the absence of the Law Commissioners' Report, and the draft Act referred to as to the criminal procedure recommended for their proposed court, any further remarks here would be premature.

Fifthly. As to ecclesiastical jurisdiction, the Law Commissioners have made no provision or the slightest allusion to the subject. This is an important omission, and remains unexplained. In Penang the duties of the court, in its ecclesiastical jurisdiction, are extensive, and in some respects intricate, watching over the faithful administration of numerous estates, and the interests and rights of absent as well as resident parties. The charter confers large and discretionary powers on the court, yet there have always been a variety of opinions as to the mode and extent of their exercise. The system, as it exists, is defective, and requires to be defined; and in respect of the native population it ought to be totally remodelled. Under Sir B. Malkin's judicial administration the ecclesiastical fees, which before that time were chargeable alike, whether estates be rich or poor, were revised, and a graduated scale substituted. This alteration made the court accessible to every estate, however poor, and brought on a large addition of labour without adequate remuneration. The annexed table exhibits the proportion of estates brought in under the original charges, and since the substitution of the graduated scale. In considering and providing for this branch of the court's duty, or even in modifying and remodelling the present charter, the object to be kept in view, with reference at least to the natives, is the ignorance of the people and their oft misconceived notions as to the power conferred by the court on executors and administrators, and consequent abuse of it. There is no plan, however, except what must be selected from a choice of evils. Perhaps the most feasible would

be to appoint a general administrator for all native estates where no will exists, with suitable rules for his guidance and conduct, who shall be under the immediate control of the court, and be remunerated partly by a small per-centage on the value of the estates he administers, which, by his accounts, shall exceed a certain amount, and partly by salary. This would tend to introduce regularity and confidence, and put a stop to a prolific source of litigation, in which lands and other property, interests, and rights are involved.

5. The subject of law agents, or legal advisers, as they are designated by the Law Commissioners, is only indirectly alluded to. From what is suggested, it would appear that the admission of native pleaders before the tribunals of the Law Commissioners' system is contemplated, though it does not appear that English pleaders are to be excluded. The objections to native pleaders, or "vakeels," as they are styled in the Indian courts, are numerous and self-evident in the present condition of the natives, looking even to the most respectable, and best educated among them. Circumstanced as these settlements are, there can be no question as to the utility of legal or professional advisers or law agents. They may be said to be just tolerated in the existing court; and parties who employ them, whether from inclination or necessity, with but rare exceptions, must pay for the "luxury." But whether the Law Commissioners' plan be adopted, or the present court continue to exist as now constituted, or otherwise modified, the subject of "law agents," embracing a view of their acquirements and qualifications, and the rules for their admission, guidance, and control, &c., is worthy of serious consideration. If, under any system of court, the working establishment be so reduced as to drive suitors to the law agents exclusively for the preparation of pleadings, the urgency for such a control and superintendence is still more imperative. An adequate provision, requiring all suitors to come with their pleadings prepared by an admitted practitioner of the court, would greatly relieve a small establishment; the proportion of consequent loss in the fees would not average the salary of an extra respectable clerk, while the office duties would be simplified, and, what is everything with the Law Commissioners, the work would be as effectually performed as if they had provided a full and efficient establishment for it. Under any circumstances, however, save these places from the vakeels or native pleaders which infest the Indian courts.

6. The results of the Law Commissioners' plan are, an expenditure for purely judicial administration of 106,640 rupees, and a consequent reduction of present charges to the extent of 95,294 rupees. There are considerations in providing for the machinery of a court which are naturally enough disregarded in scheming for economy. At any rate these considerations, in a greater or less degree, have been overlooked by both the Governor-general and the Law Commissioners in the preparation of their lists of establishment. The scale of allowances to many of the officers could not well have been lower than what they have proposed. The question, however, is not whether these allowances can procure hands to undertake the work, but will they suffice to secure the services, even on an emergency, of trustworthy as well as competent men, who claim respect, and have a name and character to maintain. There surely was some motive, some object, which induced so imperative a call from the court on the government for the existing contract and heavy expenditure; in fact the temptations to and opportunities for corruption and bribery, in every degree and shape, are so great and so numerous, to which the machinery for dispensing justice is exposed, that there can be little doubt as to the leading motive and main object by which the functionaries, both of government and court, were influenced. It is true that there was much opposition on the part of government in acceding to the court's requisition, because the responsibility of providing against the evil rested with the court. On the removal of the recorder it was not deemed safe to interfere beyond a small reduction in the registrar's pay, though it was at the same time insisted that the senior clerkships of two stations, which had been left vacant, should be filled. There are not instances wanting in the history of India when the East India Company, acting upon the maxim that "prevention is better than cure," placed their servants and the Queen's judges on a footing to be above all temptations. The same maxim, claims attention here. Another consideration is, the numerical strength of the establishment, which, for Penang at least, is too limited in some respects for the efficient performance of even the ordinary duties in the registrar's office, independent of other casualties, as sickness, &c.

7. Appended is a list of establishment for either a barrister's or recorder's Court; it is not presumed that it will be sufficient for all purposes under a change of system, but it is intended to be contrasted with the lists appended to the Report; and allowing the plea of poverty to be available, it is prepared upon the following suppositions:—

1st. That the charter shall remain and be modified to suit the views suggested here, and consequently, that there be a Queen's remodelled Court.

2d. That Singapore and Penang shall be separately governed and be immediately under the Supreme Government, the former having Malacca as a dependency, with a resident and three assistants, the latter having Province Wellesley as a dependency, with a resident and two assistants.

3d. That Singapore and Penang shall each have a professional judge and the judicial establishment enumerated in the list appended.

4th. That the residents of Singapore and Penang shall be lay judges of the Queen's Court, at their respective stations, under a provision in the charter defining on what occasions and for what purposes their functions as such shall be exercised.

5th. That there be a provision in the charter authorising the residents and professional judges, or any other competent authority in India, to appoint commissioners for the judicial duties at Malacca and Province Wellesley respectively, and to define the extent of their jurisdiction in both civil and criminal matters, the mode of appeal, &c.

This sketch does not preclude the employ of as many functionaries for government purposes as may be deemed requisite. It only includes the number employed under the Law Commissioners' plan for the purpose of comparison in the expenditure.

The list of establishment is prepared with a twofold object, namely, the applicability of reduction to the Queen's Court, whether the professional judge be designated as "recorder," or "barrister," or "judge," and the desirableness, if not necessity, of preserving the fountain and administration of justice pure and above all temptations. The following particulars also may be deserving of attention in reference to some of the individual officers.

The registrar, if not professionally educated, should at least be an individual who has bestowed some attention on the subject of law and its administration, and not merely a practical man in the routine of an office.

The second clerk should be at least proficient in English, to whom the prospect of succeeding to the senior clerkship may be held out.

The writers or copying clerks may be selected from some of the educated natives in the place.

The interpreters should be proficient in English; the responsibility of this office is much underrated, but some estimate may be made of it, if it be only considered how much involving both life and property depends upon correct interpretation or translation; the labour of interpreting too is very great, often without intermission or relief, and continuous from day to day; the remuneration proposed by the Law Commissioners is inadequate to the responsibility, duty, and labour of this office, or to secure integrity as well as efficiency, and at the least should be doubled.

The sheriff should be a paid officer, and the fees of his office should be carried to the general account of fees paid into the treasury.

The Commissioner for Malacca, whose jurisdiction will be more extensive than that which need be assigned to the Commissioner for Province Wellesley, ought of course to be paid in the same proportion.

The division of labour as shown in Appendix (A.) is intended simply as an illustration. The actual quantum of judicial business in this station, by a judicious arrangement and a diligent use of time, will not be found to be more than a professional judge can get through.

The Commissioner for Province Wellesley, with a view to the convenience of the people there, ought to be empowered to try all civil causes arising there not exceeding 50 dollars in amount, with liberty to suitors either to select the professional judge's tribunal or to appeal from the Commissioner's decisions on grounds shown

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shown. He ought also to be the coroner there, and the assessment officer for Penang.

The superintendent of police and local magistrate are officers in the Straits differing in name only, so that the government functionaries in Penang and Province Wellesley who fill the former should perform the duties of the latter, and would be able without inconvenience to perform the duties of the accountant-general to the court and the superintendent of convicts.

Appendix (A.)

The Apportionment of Labour for the Professional Judge.

- Monday*.—To hold court for trial of all civil causes exceeding 50 dollars in amount.
 - Tuesday*.—To hold court for ecclesiastical matters, primarily, but not to exclude civil matters if time permit.
 - Wednesday*.—To hold the sub-criminal court for trial of all offences not capital or peculiarly aggravated.
 - Thursday*.—To hold a court of conscience for trial of all civil cases not exceeding 50 dollars in amount.
 - Saturday*.—To hold court for hearing of appeals from Province Wellesley, and disposing such matters and business as might remain over during the week.
- The criminal court for capital offences to be held regularly once every quarter; and as cases for its cognizance will be comparatively reduced, this is not likely to occupy beyond a week.

Appendix (B.)

TABLE showing the Number of LETTERS OF ADMINISTRATION and PROBATES granted in the Court of Judicature at Penang, from August 1827 to 31 August 1842.

	LETTERS OF ADMINISTRATION.	PROBATES.	
In 1827, from August	6		
1828 - - - - -	19		
1829 - - - - -	11		
*1830 - - - - -	11	52	-- under the original table of fees.
*1831 - - - - -			
*1832, from June -	8		
1833, - - - - -	16		
1834, to March -	1		
1834, from March -	46		
1835 - - - - -	68		
1836 - - - - -	48		
1837 - - - - -	18		
1838 - - - - -	23	96	-- under the substituted table of fees.
1839 - - - - -	23		
1840 - - - - -	54		
1841 - - - - -	71		
1842, to August -	56		

* In 1830, from 1 July, and 1832, to 1 June, the court was closed.

Appendix (C.)

LIST of ESTABLISHMENT for a Queen's Court and a Modified Charter, with Allowances.

	As limited to the Amount proposed by the Law Commissioners				As desirable, to insure Integrity, Efficiency, and Respectability				
	Singapore	Malacca	Penang	P Wel-lesley	Singapore	Malacca	Penang	P Wel-lesley	
Professional Judge -	1,600	-	1,500	-	2,000	-	1,800	-	-- this officer, if separate from the assessment list, might be the assessment officer, and be provided with additional establishment and allowances from the assessment funds.
Commissioner -	-	750	-	300	-	750	-	300	-- 2 for Singapore, 2 for Penang, and 1 for the dependencies respectively
Registrar -	-	-	-	-	800	-	800	-	Ditto - - ditto - - ditto.
Head Clerk -	400	300	400	150	300	300	300	150	-- to perform the Shroff's duty at the dependencies.
Second Clerk -	200	-	200	-	150	-	150	-	-- this allowance might be given to one of the Interpreters to perform this duty
Assistant Clerk -	100	50	100	50	100	50	100	50	-- this office might be abolished at the dependencies
Chief Interpreters -	200	100	200	50	400	100	400	50	
Chinese Interpreter and Writer	50	25	50	25	50	25	50	25	
Chula and Malay Writer.	20	25	20	10	20	25	20	20	
Crier - - -	20	-	20	-	20	-	20	-	
Shroff - - -	20	-	20	-	20	-	20	-	
Sheriff - - -	200	-	200	-	200	-	200	-	
Bailiffs - - -	50	40	50	40	50	40	50	40	
Under Bailiffs -	20	20	20	20	20	20	20	20	
Coroner - - -	100	100	100	100	100	100	100	100	
Peons for Judge -	30	-	30	-	30	-	30	-	
Peons for Commissioner	-	10	-	10	-	10	-	10	
Peons for Registrar's Office	30	10	30	10	30	10	30	10	
Peons for Coroner -	10	10	10	10	10	10	10	10	-- this duty at Malacca might be performed by the Head Clerk for this extra allowance
General Administrator for Native In-estate Estates.	250	60	250	-	300	60	300	-	-- at Singapore and Penang this officer will be allowed a certain percentage on every estate.
Clerk or Writer -	40	-	40	-	-	-	-	-	
Peon - - -	10	-	10	-	-	-	-	-	
Monthly Total, C Rs	3,350	1,500	3,250	785	4,600	1,500	4,400	785	
Annual Total "	58,200	-	48,420	-	73,200	-	62,200	-	
Grand Total "	1,06,620	-	-	-	1,35,420	-	-	-	
Result - "	20 under.	-	-	-	28,780 in excess of the Law Commissioners' proposal	-	-	-	

REMARKS by Mr. Church, Resident Councillor at Singapore, on the proposed Alteration in the Court of Judicature in the Straits.

Legis. Cons.
30 Dec. 1842.
No 15
Enclosure.

Singapore, 24 September 1842.

I HAVE perused with attention commensurate with the importance of the subject the printed Report, dated the 8th February last, of the Indian Law Commission, upon the question of, abolishing the existing Court of Judicature of the Straits, and substituting in lieu thereof an entire new system for the administration of civil and criminal justice.

2. It has been my earnest and anxious endeavour in considering this grave question to divest my mind of local prejudices and predilections, which it must be acknowledged are too often engendered by having been long familiar with one unvaried system. Whatever scheme may eventually be adopted it is not likely to affect me materially; I have therefore less hesitation in recording my opinion with the utmost freedom. My sentiments, such as they are, are the offspring of much reflection and experience; and my chief desire is, that the inhabitants of the Straits settlements should be in possession of as large a portion of the privileges of British subjects, consistent with their varied condition and the public welfare.

3. As the Hon. the Governor (Mr. Bonham) has for a protracted period bestowed more than ordinary attention to judicial business, and who doubtless will deem

deem it expedient to communicate to higher authority the result of his practical knowledge and experience, it is scarcely necessary for me to enter into any lengthy detail. I shall therefore confine my opinion to a few prominent points which appear to me to be peculiarly objectionable in the proposed scheme.

4. I however deem it an incumbent duty to premise, that it is my deliberate opinion that the present system, with all its defects and incongruities, is unspeakably preferable to the complex machinery propounded by the Law Commissioners in their Report now under consideration. The condition of the inhabitants of these settlements is quite dissimilar to the continent of India; they have peculiar wants of which a remote legislature can imperfectly judge.

5. I am not one of those who would venture to recommend that the entire judicial business be transacted without the presence of an English professional judge; indeed I consider one indispensable to settle intricate points of law, which will and must arise as commerce extends. No lay judge, however acute his intellect, can be competent to decide such questions with satisfaction to himself or to the mercantile community. "It is the duty of a judge to pronounce his decision not simply according to his own opinion of justice and right, but according to prescribed rules; it is the judgment of the law, not his own which he delivers." We know to become conversant with the "prescribed rules," deep research, assiduity, and experience are indispensable.

6. Candour necessitates me to record, that even at present I preside on the judicial bench, hear, and determine causes with very different feelings to what I should do were there no professional judge in the Straits. During a trial, should any complicated question arise (which certainly seldom occurs), judgment can be postponed without any very serious inconvenience to the parties concerned until the lay judge has an opportunity of consulting the recorder.

7. Singapore, from its position and extensive commerce, is clearly the most eligible station for the residence of the professional judge.

8. The most objectionable feature in the scheme recommended by the Law Commission is by far the system of indiscriminate appeals in all civil cases. Should this be persevered in, a greater calamity could scarcely befall the Straits settlements: the incontrovertible consequence would be to encourage extensive litigation, prove dilatory, and of necessity be attended with considerable expense to parties, evils which scarcely exist under the present system.

9. If every case, however simple, which is heard and decided by the superior lay judge is open to appeal to the professional judge, and that learned person is allowed to exercise the special powers accorded to him in the 42d para. of the Report, there will be no end to litigation; it will, moreover, be exceedingly harassing to the lay judge, and tend to bring the executive officers holding judicial appointments into contempt, instead of being, what they ought to be, the immediate objects of esteem and confidence.

10. I have no hesitation in saying that I conceive a lay judge, who from a long residence in the country, intimate knowledge of the language and manners of all classes of natives, will be found generally more competent to judge correctly in matters of fact than a professional judge who has spent the best years of his life among Europeans, and prone to believe everything because it is sworn to. It has been said by one who well knew and had sketched the native character, "It is not in causes where Hindoos or Mahomedans give evidence that a fact is proved because it is sworn to; we are compelled to take a greater latitude in judging by probabilities than a strictness of English judicature in general allows."

11. No one, I apprehend, will affirm that the minds of our mixed inhabitants are of a superior texture to those of the Hindoos and Mahomedans of India. My own experience enables me to say the Chinese and others are in a state of moral degradation almost beyond conception. I witness daily, nay hourly, instances of natives uttering the most deliberate falsehoods on the most trifling occasions; and what will they not fabricate when their personal interest is concerned?

12. In the 30th paragraph of the Report, it states, "The population of these settlements generally is of a very mixed character; consisting for the most part of Malays, Chinese, and natives of the Archipelago, whose litigation will be commonly

monly about matters to be governed by their own usages." Now I submit to any dispassionate authority, whether Mr. Garling for instance, who has been in the country for 30 years, is not more competent to judge correctly in such matters than a recently arrived barrister, who knows nothing of the native language or the manners and habits of the different classes.

13. If appeals from the decision of the senior lay judge are allowed, there should be some limitation as to amount, say 2,000 rupees and upwards.

14. If I accurately understand the bearing of the special powers delegated to the professional judge, as set forth in the 49th paragraph of the Report, every sentence passed by any subordinate court is liable to be altered and quashed by the professional judge, or, in the words recorded, "to pass such orders upon it as may seem fit." If such a system becomes law, it will place the chief civil authority of the station in a most unenvied position, and be a prolific source of pecuniary advantage to law agents, without any public benefit whatever. Under such a system what individual, however guilty, will rest satisfied with the decision of the lay judge? If possessed of friends or a few rupees, there will be no difficulty in getting a petition drawn, backed probably by affidavits totally destitute of truth; these documents, from their apparent speciousness, may induce the professional judge, who may be perfectly ignorant of the character of the people, to call for the records and at once abrogate the sentence passed by the lay judge. If it is thought inexpedient to confide to the resident the extensive judicial powers laid down in the Report, without the check suggested, let them either be abridged, or deprive the chief local functionary of all judicial authority, rather than allow the extraordinary interference on the part of the professional judge, as proposed in paragraph 49.

15. If the court of the superior lay judge is to be open continually, I apprehend there will be some difficulty in securing the attendance daily of three assessors of character and respectability; such duties would I conceive fall exclusively on the Europeans: there are insuperable objections to natives being assessors; in fact, there would be some difficulty in finding half a dozen coming under the denomination "of character and respectability."

16. As to the financial part of the plan, I have only to observe, that the sum of 400 rupees a month as salary for the head clerk or rather registrar at Singapore, is altogether inadequate to enable him to live in a manner becoming his situation, much less to make a provision for a family. A suitable salary is considered a necessary guard of every judicial system; it is also necessary to secure the exclusive employment of the time and talents of the local registrar; it is moreover of importance to make such an office the object of able and respectable men, without which the arduous and responsible duties will never be efficiently discharged.

17. There appears to me a serious mistake in the average receipt from fees, in the 44,427 rupees, I am disposed to think the fees of Court of Requests have been included. At Singapore the fees received from the Court of Judicature during the year 1841-42, aggregated rupees 14,207. 4. 3. which I estimate is equal to the amount of the two other settlements.

18. I have endeavoured to point out the most objectionable features in the posed scheme; its inaptitude to the Straits' settlements must I think be manifest to every one who possesses any local knowledge and experience, and if passed into a law without extensive alterations, will I fear be productive of evil instead of benefit; I therefore in conclusion most humbly but most earnestly solicit the supreme authority, in its wisdom, not to countenance such a system of judicature for Prince of Wales' Island, Singapore and Malacca.

(signed) T. Church.

No. 3.
Recorder's Court.
Registration of
Conveyances

REMARKS by Mr. *Caldwell*, senior. Sworn Clerk in the Court of Judicature at Singapore, on the Suggestions offered by the Law Commissioners for a new System of Judicature in the Straits.

To the Honourable *S. G. Bonham*, Esq. &c. &c. &c.

Dear Sir,

Legis. Cons.
30 Dec. 1842.
No 16.
Enclosure.

I DO myself the honour, in compliance with your request, to state a few observations that have occurred to me on perusing the Report of the learned Commissioners on the subject of a new Court of Judicature for the Straits, although probably their only title to merit notice would be that which an experience of 14 years' servitude in the present court might give them.

In reference to the constitution of the intended court, the Commissioners propose, in

Para. 31. That Singapore shall be the station of the chief court, which is to be composed of the barrister, the resident councillor, and the assistant resident.

Para. 32. Cases involving points of law, cases concerning government, and cases amounting to 10,000 Company's rupees, shall be reserved for the professional judge; all other cases to be disposed of by the resident and his assistant.

Para. 34. At Singapore the professional judge shall perform the distribution of cases, in his absence to be done by the superior lay judge; and

Para. 35. At Penang and Malacca this distribution to be performed by the lay judge ordinarily.

It would appear, from the foregoing sections of the Report, that there is to be at each station but one civil court, which is to be composed of three judges, whose duties and powers are wholly distinct from each other, each to sit alone in the performance of his particular duties, and each, in reality, holding a distinct court; but, although the duties of the professional judge appear to me to be pretty clearly defined, the Report seems wholly silent as to the distribution of cases between the lay judge and the subordinate judge. It cannot, I presume, be contemplated to give the subordinate judge the power to try the same class of cases as the superior lay judge; for if their powers, in that respect, are to be equal, whence arises the distinction in terms, or the subsequent provisions for appeal from one to the other? What portion, then, of the judicature is to be assigned to the superior lay judge, and what to the subordinate judge, the Report does not declare. It may be intended that all cases, of what nature soever, from one dollar up to a million, shall in the first instance be laid before the professional judge, when present, who, after having supplied himself, will parcel out to the lay judge and the subordinate judge such cases as the professional judge shall think fit shall be tried by them respectively; but it occurs to me that, if even this be intended (and it is the only true interpretation I can give to paragraphs 33 and 34 of the Report), the necessity for the very extensive provisions for appeals from the subordinate judges to the professional judge, who himself makes the "distribution" of cases, is, in a great measure, done away with.

But, although the intentions of the Commissioners in this respect do not appear to me to be so clearly and fully expressed as they might have been, and although it may be somewhat difficult, in consequence, to say what the effect of their system of judicature may be, or how the three judges are to divide their time for their respective sittings in one court; I am, nevertheless, for the reasons hereinafter mentioned, strongly inclined to consider the plan as objectionable, and likely to prove a far less efficient system of judicature than the one at present in force. This leads me to the consideration of

Para. 38, which says, that from the decision of the assistant an appeal shall lie to the superior lay judge, to be determined by him, or to be reserved for the professional judge, if upon points of law. From the decision of the superior lay judge, in original cases, an appeal shall lie to the professional judge; and from the decision of the professional judge, in original cases, an appeal shall lie to the College of Justice in Calcutta; and also

Paras. 39, 40, 41, allowing special appeals from the decision of the professional judge in cases decided originally by the superior lay judge and subordinate judge, and from the decision of the superior lay judge in cases decided originally by the subordinate

subordinate to the college in Calcutta; and the transmission of such appeals and answers thereto through the courts in the Straits to Calcutta.

The provisions for appeals contained in these sections are some of the most important, and perhaps most objectionable, in the whole Report;—important, because they afford to the injured suitor the opportunity of acquiring from one judge a right which the arbitrary or unjust decision of another judge may have withheld from him;—objectionable, because of the too great facilities of appeals which they allow, thereby creating an opening for and an encouragement to litigation, which, it appears to me, it ought rather to be the endeavour of every court to prevent. In a mixed population like ours in the Straits, consisting of men of various countries and creeds, widely differing from each other in their habits and modes of thinking, it is scarcely possible to expect that, in a case where both parties maintain that they are in the right, the decision of one judge, however correct in itself, will satisfy both. The dissatisfied party will be but too ready to avail himself of the great facilities allowed, and the chance of having that decision reversed by appeal to a superior judge; and, considering the great propensity to litigation which characterises the great majority of our native population, instances of this nature must become of frequent, nay daily occurrence.

The facilities of appeals allowed by these sections, besides other evils with which they are fraught, have that of subjecting an innocent party to be summoned from one court to another, at the caprice, or worse feeling of an obstinate suitor, at a great sacrifice of time, which in some instances may be attended with pecuniary loss, and upon a question that may have already had a full investigation and an impartial decision. Indeed, since the “distribution” of cases is to be made by the professional judge, when present, who will try all cases involving points of law, the appeal from the decision of a subordinate judge must in general only be upon a point of fact, regarding which different opinions may be entertained by different persons.

Para. 42. “The professional judge shall have the power to call up to his court any cases, original or appealed, which from representations made to him he considers to be proper subjects for adjudication by himself, as involving points of law.”

I consider the special powers herein conferred on the professional judge over the courts and proceedings of the lay judge extremely objectionable, from the serious consequences which are likely to result from an undue exercise of those powers by the judge himself, and from their liability to abuse on the part of the suitor, by misrepresentations, in which, unfortunately, the native inhabitants of these parts are but too prone to indulge. A case in which questions of facts only may be in dispute may have been tried and investigated with diligence and patience by the lay judge, and postponed by him, either for further hearing or judgment, to a future day; the defendant foreseeing, from the nature of the evidence already adduced, that he is likely to lose, may in the meantime lay before the professional judge such an exaggerated statement of the circumstances as may induce the professional judge to believe that the case is not a proper one for the decision of the lay judge. The professional judge may therefore order the case to be laid before him; and though it may not involve an abstract question of law, he may nevertheless think proper (for he has the power) to try it himself; but what will be the consequence? I scarcely need tell one who possesses such an extensive knowledge of the character and morals of the natives as yourself, that the defendant, knowing better than he did before the weak points of his case, will have his witnesses in better training, if I may use the word, nay, he will supply himself with other witnesses to make up any deficiency in his evidence, and he may, after all, succeed in obtaining a judgment in his favour; whilst the lay judge who first tried the case, and had a better opportunity of judging of the correctness of the evidence, from the demeanor of the witnesses, his knowledge of their habits, &c., would have come to a very different, and probably more just conclusion. I have no hesitation in saying that this is a case extremely likely to arise under the system recommended by the learned Commissioners; and the effect of it would be such as to cast into insignificance the court and proceedings of the lay judge in the eyes of the natives.

Para. 52. “We consider that the general power of supervision proposed to be given to the professional judge, and the provisions for appeal we have suggested, will

will be a sufficient check upon the subordinate judges, while the facilities which our plan will afford for consultation and reference between the inferior and superior judges will tend greatly to prevent errors."

With great respect for the opinion of the learned Commissioners, I trust you will pardon my taking it upon myself to remark that I believe there is much reason to doubt the soundness of the inferences here drawn. Indeed I would rather consider the facilities of appeals, and the too great power of supervision of the professional judge over the proceedings of the lay judge, as likely to produce quite the contrary result. It would be far preferable, in my opinion, if the practice in cases where a party feels himself aggrieved by the decision of a lay judge, were allowed to stand as has generally been adopted here. The aggrieved party should be instructed to set forth in an affidavit his grounds for a new trial as fully as the circumstances of the case will admit of; and upon such affidavit being laid before the professional judge, and strong grounds shown that the decision of the lay judge has been wrong in point of law, the lay judge should be consulted; and upon a new trial being granted, the lay judge should take his seat upon the bench with the professional judge at such new trial; and upon coming to a decision upon such rehearing, the lay judge should be permitted to give and record his opinion, should it differ from that of the professional judge, but the opinion of the professional judge should on the other hand overrule that of the lay judge, and it should also be final and absolute. There would be far greater probability of strict justice being done to all parties by this course of procedure (which is also far more dignified) than could possibly be expected from the proposed system of indiscriminate appeals; for if every decision of the lay judges shall be open to appeal, and liable to be reversed by the professional judge, what respect will be paid to such decision by the suitor? Indeed the lay judge himself would be disposed to give but a superficial examination of a difficult and intricate question, but rather leave to his superior the more arduous duty of a fuller investigation.

Before I proceed to offer any remarks upon the alterations in the criminal procedure, I would say a few words on the subject of Mr. Murchison's suggestion (see page 17 of the Report), viz.

That the Malayan language shall be the language of the courts, with the exception of the barrister's court, which should carry on its proceedings in English.

Which it is satisfactory to observe the Commissioners do not recommend the adoption of; for the only persons who would benefit (if any benefit could at all arise) by the introduction of the Malayan language in the pleadings, evidence, &c. would be the Malays themselves, and yet this class of people form the least important portion of any class of suitors who have ever resorted to the court at Singapore for redress. The principal litigants of these parts, as you are well aware, are the natives of the Malabar coast, and Chinese; and of these, the great majority understand and speak but very imperfectly the Malayan language, and no benefit could possibly accrue to them by having their pleadings drawn up in that language, which would have to be explained to them in their own language, in the same manner that the pleadings in English are at present, before they could be made to understand them.

As the professional judge is empowered to order up for investigation before him, from the court of the lay judge, any case he may think fit, if the suggestion of Mr. Murchison be adopted, he would find the pleadings, judgment, and record in such a cause written in a language which he is not expected to understand, and which from its poverty in words it would require great skill and knowledge to express intelligibly the various details of judicial proceedings. And in reference to the native suitors, this recommendation supposes them to be qualified, with the aid of interpreters, to conduct the trial of their causes in English, in the court of the professional judge, but to be incompetent to do so in the same language, with the same aid, in the court of the lay judge.

No inconvenience has ever attended the practice that has hitherto been adopted in regard to the use of the English language in pleadings, evidence, &c., except that which must always arise from the want of good and intelligent interpreters; and these we may never hope to obtain until the salary is made adequate to the responsible and arduous nature of the duties they are expected to perform.

Upon the subject of the proposed reductions in the registrar's establishment, I offer no remarks: first, because it would probably ill become me to do so; secondly, because I know no one more capable than yourself of judging of the total inadequacy

quacy of the small allowances proposed, to the increased duties which the proposed system will entail on the department of the registrar.

Paras. 44, 45, 46, 47, and 48, recommending extensive alterations in criminal procedure, do not appear to me to be materially objectionable, save in one or two instances. The abolition of the grand jury is an improvement.

The permission to appeal against criminal decisions seems wholly unwarranted where the judges have the assistance of assessors, the non-concurrence of one of whom in a verdict being a ground of appeal from the court of the lay judge to that of the barrister, and upon like grounds from the court of the barrister to the College of Justice in Calcutta. I have no hesitation in saying that this would give rise to much delay and dissatisfaction in the administration of criminal justice, and in reference to the class of persons who form the generality of criminals in these parts, would be attended with highly mischievous results. For the same reasons do I consider as equally objectionable,

Para. 49, Giving the professional judge power to call for the record of any criminal trial in the court of the lay judge, and to pass any orders upon it he may think fit, and the like power to the College of Justice in Calcutta:

Which power the professional judge or the college may think proper to exercise on every occasion that a dissatisfied criminal (and what criminal is ever satisfied with his punishment) may make application to them, upon real or fancied grounds, for a remission of his sentence.

With respect to the proposition of substituting a limited number of assessors instead of the present petit jury, I am of opinion that as the abolition of the grand jury will render a greater number of gentlemen available to serve as petit jurors, the present number ought not to be lessened; but of these twelve, I think the unanimous opinion of eight should be held sufficient either to convict or acquit, whilst the power of interference on the part of the judge over the verdict of such jury should be neither greater nor less than that which he at present exercises.

In reference to para. 44 of the Report, recommending that the criminal court of the lay judge shall be kept continually open, I think it would be found preferable in practice if it were to sit at short intervals, say once in a month; for if it is to be kept continually open, cases may be sent in to it every day for disposal, and often at a time when the lay judge's civil court may be sitting, which, as well as the lay judge's petty sessions, is to be kept continually open also. This mixture of cases conducted by one judge, and by one set of officers under him (who have also to conduct the business of the professional judge's court,) will be the means of creating confusion and irregularity from its complexity, and indeed if the lay judge is to keep continually open his civil and criminal courts, nearly the whole of his time must necessarily be occupied with judicial business alone, and he will have but little left to devote to the ordinary affairs of his government.

Upon the whole, the description of judicature recommended by the Law Commission does appear to me to be complex and unwieldy, and wholly unsuited to the circumstances and wants of these places; and I do certainly think, that had the learned Commissioners taken the present charter of the court into their hands, and expunged some inconsistencies which it undoubtedly contains, together with such of its provisions as have been found, upon the trial it has already had, to be unsuited to the circumstances of these settlements, and have allowed those that have been found to work well to remain; giving, with some modification, the same powers to the barrister of the new court as have been exercised by the recorders under the present charter, and to the lay judges in like manner, the result would have produced a far more efficient system of judicature for the Straits settlements than the one they have recommended. It would have produced one more in accordance with the system that has hitherto prevailed here, to which the inhabitants have been so long accustomed, to which they have become attached, and in the working of which (where simplicity in the pleadings, suited to the capacity of all classes of the inhabitants, has been attended to), I have every reason to believe general satisfaction has been given and felt.

I have, &c.

(signed) H. C. Caldwell,

In charge of the Registrar's Department
at Singapore.

Singapore,
30 September 1842.

No. 3.
Recorder's Court :
Registration of
Conveyances

From the Honourable Sir *Wm. Norris*, Knight, Recorder, Prince of Wales' Island,
to the Honourable *S. G. Bonham*, Esq., Governor, &c. &c.

My dear Mr. Bonham,

Legis Cons.
30 Dec. 1842.
No. 17.

ALTHOUGH the Supreme Government (perhaps from a feeling of delicacy in a matter so nearly concerning myself) has neither transmitted me a copy, nor requested my opinion upon the Report of the Law Commission on the judicial establishment of the Straits; and although, from the terms of the communication made to you upon the subject, the requisition would seem to be limited to yourself and the other officers of the local executive Government; yet as you appear to think that the omission of any express or implied reference to myself for the same purpose was unintentional, and that the Supreme Government would be disappointed were I entirely to withhold my sentiments regarding the proposed changes; I proceed very briefly to recapitulate the substance of what I have already expressed in personal communication with yourself on the most material parts of the Report.

I concur most fully in the opinion with the Law Commission :

First, That the law of England, civil and criminal, with the modifications suggested in the 5th and 6th paragraphs of the Report, should continue to be the *lex loci* of the Straits, and that provision should be made for a bankrupt law, vice-admiralty jurisdiction, and jurisdiction over officers and soldiers in actions of debt and personal actions under 400 rupees.

Secondly, That "the continuance of a professional judge as the principal member of the judicial establishment for these settlements, is necessary for the satisfactory administration of the law applicable to civil cases, and advisable also with respect to the administration of the criminal law."

Thirdly, That the English language should continue as hitherto to be the language of record in all the courts; that parties addressing the court should, as hitherto in all the courts, be admitted to do so in their own language, but that legal practitioners in the professional judge's court should be required to address the court in English. I may remark here, as the Law Commission does not seem to be aware of the fact, that natives have never yet been admitted to practise as general law agents in the recorder's court; and that the instances have been very rare in which a native has been allowed to appear even as a special or occasional agent, and then only, I believe, on the ground of his principal's absence from the settlement, or absolute inability to appear. The Law Commission contemplates the extension, "at a future period," of a similar rule with regard to such agents as may practise in the subordinate courts. For my part, I see no good reason for postponing the adoption of the rule simultaneously in all the courts.

Fourthly, That with regard to criminal procedure, "the mode of trial now followed in the recorder's court, and generally in the English criminal courts, ought," as recommended in the 54th paragraph of the Report, "to be the model of the new court;" and, as recommended in the 53d paragraph, "that the civil procedure should generally be that of the proposed subordinate court at Calcutta;" that is, if I am not mistaken in supposing, from the tenor of the 54th paragraph, that the intended procedure in this last-mentioned court is analogous to that "which was described by the late Sir Benjamin Malkin as adopted by him under the charter established for Her Majesty's Court in the Straits." And here I may observe, that the practice so correctly described by Sir B. Malkin in the extract from his letter quoted by the Law Commission, has been substantially followed by myself and, I believe, by his immediate successor, Sir Edward Gambier. I may remark also, with reference to Mr. Commissioner Young's observations on the subject (quoted in the Appendix to the Report now under consideration, (C.) p. 24), that this gentleman was certainly misinformed; I cannot by any means acquiesce in his opinion, that "the principal reform necessary is the simplification of the pleadings and procedure," nor do I believe that Sir B. Malkin, able and indefatigable as he was, did a great deal towards the accomplishment of this end; and I am sure that it cannot be said with greater truth at present than during his time, that "now the business of preparing the pleadings has fallen into the hands of law agents, and that they have become long and technical." Sir R. Rice, I believe, is justly entitled to the credit of having done much towards "the simplification of the pleadings and
the

the procedure;" but it should be remembered that he had only Penang to attend to; and I am not sure but that he may, with the best intentions, have gone a little too far in his neglect of technicalities; for Sir John Claridge, if I am not mistaken, conceived it necessary to introduce greater strictness and attention to forms; and this, with other causes of disagreement, drove Mr. Fullarton, who abhorred professional trammels, if not to the contrary extreme, at least further in the opposite direction than a man of his strong sense would perhaps on more lengthened experience have considered it prudent for any judge to go, who professed to administer justice according to the English law. The result of these shiftings and conflicts, with the recal of Sir J. Claridge, and the absence of a professional judge from the Straits for some years, seems to have been a degree of laxity in the pleadings and procedure which must have appeared very strange to a sound lawyer like Sir B. Malkin, fresh from England; accordingly in the paragraph immediately following the one above quoted by the Law Commission, he says (with reference to an observation that the proceedings were too complicated), "I occasionally anticipated that my successor might complain of me as not having done enough towards confining the practitioners in the court to a technical and regular conduct of business; I certainly did not expect to hear that the proceedings were too artificial." Strange that he should both have been censured for over technicality, and praised for his love of simplicity! I believe the truth to be, that without doing much either way, he followed about the same course as would have been followed by any lawyer of judgment and discretion under similar circumstances, that is to say, he held the reins with a closer hand, and checked irregularities with greater promptitude and decision than his unprofessional predecessor had done, yet without any material alteration of system. To the system thus left by Sir B. Malkin (for Sir E. Gambier remained too short a time to effect, even had he wished for, any decided change), I have, from the first, substantially adhered, and have quite as much reason as he had to say, that "I certainly did not expect to hear that the proceedings were too artificial." The existing system is, beyond a doubt, substantially the same as obtained during Sir B. Malkin's time; and with equal truth may, it be said now, as then (again to quote his own words in the same paragraph), that if, "in cases where professional agents were employed, there has of course been more of expense, more of complication occasionally, and somewhat more of delay; yet even in these cases the general outline of the proceeding has been the same as in contested cases of the nature already explained;" (viz. in the 11th paragraph already quoted). On the whole, then, I believe that the present system, with respect to pleading and procedure, ~~is about as simple as prudence and the nature of the laws to be administered will admit, and that in this respect consequently scarcely any, and certainly not "the principal reform," is necessary.~~

Fifthly. I quite concur in opinion with the Law Commission, that the courts of quarter and petty sessions, and the institution of the grand jury, should be abolished, the latter measure, in particular, I have always advocated.

Sixthly. "That the number of members required to form a coroner's jury should be everywhere reduced." I would propose to the number of six; and that in the trial of those criminal cases in which a jury is still recommended to be retained, the verdict should not be required to be unanimous; but as there would be no difficulty in obtaining at any time the attendance of 12 sufficient jurors, I would not recommend that the number should be reduced, and I would suggest that a verdict from two-thirds of the number at least should be required instead of a simple majority. Nor would I limit the intervention of juries as recommended to the trial of capital cases, but retain them also in all cases which are proposed to be reserved for trial before the professional judge; that is to say, "all cases in which the crime charged is punishable by death, or imprisonment for life, or for 14 years, or by transportation for any term;" leaving it, nevertheless, to the discretion of the professional judge to dispense with the jury, if he thought fit, in all cases of larceny and burglary, without violence.

Thus far, and with the above qualifications, I concur generally in the recommendations of the Law Commission.

With regard to the system of judicature proposed to be substituted for that established by the charter, I consider it well adapted as a whole to secure the administration of substantial justice, but with due deference to the learned and able framers of the plan, I conceive that it might, in some respects which I will mention, be altered with advantage; and with regard to the financial part of the scheme, I can scarcely be expected, especially as to the principal item, the salary

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of the professional judge, to offer an opinion, unless in the most general terms. I will only observe, therefore, on this point, that the salaries allowed to the judges in Ceylon, do not, in my opinion, afford a fair criterion of what ought to be allowed to similar functionaries in the Straits, the average cost of living in the latter dependencies being, as far as my experience has gone, nearly double that in Ceylon. Of the comparative expenses of living in the other dependencies which are referred to, New South Wales, Van Diemen's Land, the Cape of Good Hope, and Sierra Leone, I know nothing.

Not having yet been fortunate enough to see the Law Commissioners' plan for a subordinate court at Calcutta, I am not sure that I quite understand the plan of that for the Straits, which is proposed to be formed on the same model, as nearly as circumstances will admit. But, if I apprehend rightly, the Straits' court is to consist of three judges, exercising separate jurisdictions over different classes of cases, and consequently sitting at different times, so that trials of the lower and of the higher classes could not be going on at one and the same time unless the judges sat in different rooms, and were provided with different sets of interpreters and other officers. But if, on the one hand, such simultaneous operation be, as it certainly would, an advantage which ought, if possible, to be secured; and if, on the other, an habitually intermittent suspension of the functions of two judges out of the three, would be an evil, if possible, to be avoided, then the simpler, and, as it seems to me, every way better mode of ensuring the benefit and preventing the mischief referred to would be, the establishment, or rather the continuance of, at least two distinct courts, instead of only one court, composed of three judges of graduated powers, whose separate and simultaneous operations in close proximity would probably,—unless all were men of extraordinary temper and discretion, a coincidence not to be permanently looked for on any bench or in any society,—be carried on, if not with mutual jealousy and suspicion, at best with a kind of discordant concord, little creditable to the seat of justice. I humbly think, therefore, that a less decided departure from the existing system would be at once more dignified, easy, and agreeable to the judicial functionaries themselves, less opposed to the feelings and prejudices of the inhabitants, and better calculated for permanent efficiency than the new system proposed. I would accordingly recommend that there be, as at present, two courts for the administration of justice in civil cases; the higher consisting of the professional judge and the resident councillor at each station, to possess substantially the same jurisdiction as that exercised by the existing court, with the additions proposed; the lower under the assistant resident, to hear and decide all such cases as have hitherto usually been disposed of by the court of requests, but with some increase of jurisdiction—say to the extent of 100 dollars.

As regards the superior court, the greatest improvement on the present system, and that which would be at once the most efficient and the most acceptable to all classes, including, I believe, the executive government itself, would be a complete separation of the judicial and executive branches by the establishment of two separate superior courts, one for Singapore and Malacca, the other for Penang and Province Wellesley, each consisting of a single professional judge, the one being empowered to act occasionally for the other, in the cases of sudden death or absolute incapacity from illness, unavoidable absence or other cause. A special provision would indeed, on this plan, be still necessary for Malacca, where the civil and criminal business might, for the most part, be disposed of by the resident councillor and his assistant, reserving the more important cases for the periodical visits of the professional judge from Singapore, or even remitting such cases to Singapore direct. This I should imagine would be especially desirable to the inhabitants of Penang and Province Wellesley, by whom the loss of a resident professional judge, after 35 years' experience of the advantage of his presence, would, I believe, be very generally felt. But if this plan should still be thought too expensive, notwithstanding the material reductions proposed in the salaries of the professional judges, and of the registrar, and the saving which would be effected by striking off circuit and other expenses inseparable from an ambulatory court, the next best arrangement, I think, would be that just above recommended, viz., a court consisting of a professional judge and the three resident councillors; and, supposing this arrangement to be approved, I do not see any sufficient reason for curtailing the present powers of the lay judges to the extent proposed. If "all cases involving points of English law" were, as proposed in the 33d paragraph of the Report, to be reserved for the professional judge, it is certain that a very large proportion

proportion indeed of all the cases tried at Penang and Malacca would have to be postponed until the periods of the circuits; for the terms of the reservation include all supposable cases of the kind, from the simplest to the most complex. I think, therefore, that, supposing Singapore to become the fixed residence of the professional judge, parties at Penang and Malacca might safely be left, as those at Singapore and Malacca have hitherto been, to their remedy by moving for a new trial before the professional judge; and even in cases in which the government is concerned, as also cases of 10,000 rupees and upwards, wherein the question to be determined may frequently be a simple matter of fact, and delay a hardship to one or both parties, it would be sufficient, I think, to provide, in addition to the remedy of a new trial, that the defendant might, if he thought fit, insist that the trial in the first instance should be reserved for the professional judge. In all other cases which might occur at Penang or Malacca, involving intricate questions of English or international law, I have very little doubt that one or other, if not both of the parties, or their agents, would generally apply for a postponement of the trial until the arrival of the professional judge, and that the lay judge would, for his own sake, very readily accede to the request, or even be himself the first, as he always might, to direct the necessary postponement, whether the parties wished it or not: and as this general adherence to the present system would be sufficient, in my opinion, to ensure the attainment of substantial justice to the parties, so, I think, it would be advantageous on the one hand that the chief executive authority next to the Governor at each station, should not be deprived of the consideration which he enjoys from his present position as the professional judge's colleague; whilst, on the other, it is desirable that the latter, especially a barrister fresh from England, and having necessarily much to learn respecting the habits, characters, dispositions and usages of the various classes of native inhabitants, should feel that he has a well-informed colleague, rather than a jealous subordinate functionary, with whom to consult on such occasions.

At Singapore, or wherever the fixed residence of the professional judge may be, experience sufficiently proves that the lay judge will scarcely ever be likely to thwart or interfere with the general business of the court. The unhappy disputes between Mr. Fullarton and Sir John Claridge furnish, it is true, an instance to the contrary; but the proposed withdrawal of the Governor's judicial functions for the future, is a sufficient guarantee, with the casting vote, which should still be reserved to the professional judge, against the recurrence of similar difficulties.

The alteration which I have thus ventured to propose in the Law Commissioners' plan necessarily implies a corresponding alteration in the proposed system of appeals from the decisions of the superior lay judges. I have no alteration to suggest with regard to the proposed right of appeal from the decision of the subordinate lay judges, or assistant residents, except that the decision of the professional judge on such appeals should, in my opinion, be final. I say this, however, in ignorance of the grounds for special appeal to the College of Justice in Calcutta, referred to in the 39th paragraph, not having seen the draft therein referred to, which might possibly work a change in my opinion.

With regard to appeals, as proposed, from the decision of the professional judge in original cases to the College of Justice in Calcutta, and thence to the Privy Council, I think there should be some limitation, and that of 10,000 rupees and upwards I would submit is not unreasonable.

To the provision in the 42d paragraph of the Report I see no particular objection, though, with the right of appeal in full force, I should suppose that the power referred to would not often require to be exercised.

With respect to criminal jurisdiction, the alteration I should propose in the Law Commissioners' plan would, in the main, correspond with that which I have ventured to suggest on the civil side, viz that there be but two courts instead of three, the higher, constituted of the same members as the civil court, to be open continually for the disposal of all cases punishable by a sentence exceeding six months' ordinary imprisonment and a fine of 200 rupees; reserving, however, for the professional judge at Penang and Malacca, not merely capital cases, but all in which the crime charged shall be punishable by imprisonment for life, or 14 years, or by transportation for any term. In the jurisdiction proposed to be conferred on the assistant resident I have no alteration to suggest, and I concur that he should also be local magistrate and superintendent of police, and inquire into, commit, or bail in cases beyond his own jurisdiction.

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As to appeals, in criminal cases, from the decision of the assistant resident, I think that the assistants at Penang and Malacca should be at liberty (as are the district judges in Ceylon), to enforce their sentence if they saw fit, notwithstanding such appeals.

I would empower the resident councillors at Malacca and Penang to try, with the aid of assessors as proposed, all cases of petty larceny and burglary without violence, but such as they should see fit, for any reason to reserve for the professional judge; and I would not object to an appeal from such decisions when contrary to the opinion of one or more of the assessors. But I do not see any good reason for allowing appeals to the College of Justice in Calcutta from the decision of the professional judge (proposing, as I have done, that in all serious cases he should be assisted by a jury), otherwise than at his discretion, as provided in the existing charter; and for the same reason the provision in the latter part of the 49th paragraph of the Report appears to me unnecessary; though I would not object to the provision in the former part of that paragraph.

I regret that, from the shortness of the time allowed me, I have not been enabled to express my views so fully and clearly as I could have wished, but I believe that I have not left any material part of the Law Commissioners' Report unnoticed.

Penang,
12 September 1842.

I am, &c.
(signed) W. Norris.

Legis. Cons
30 Dec 1842.
No 18.

Mawry Mootoo v. Ramaputtra — To recover \$ 150.

	Sp dollars.	Sp. dollars.
Plaintiff's Costs :		
Amount of Judgment - - - - -	150 -	
— of Court Fees - - - - -	21 -	
— of Sheriff's Costs - - - - -	5 -	
* — of Plaintiff's Agent's Costs - - - - -	59 -	
		235 -
Defendant's Costs :		
* Defendant's Agent's Costs - - - - -	41 70	
Court Costs - - - - -	7 50	
Sheriff's Costs - - - - -	4 -	
		53 20
TOTAL - - - - \$.		288 20

In the Cause of *Arnashalleno Palley*, Plaintiff, v. *James Scott Clarke*, Defendant.—
To recover \$.75.

	Sp. dollars.	Sp. dollars.
Judgment for Plaintiff (with costs) for - - - - -		30 -
Plaintiff's Costs, as follows :		
Registrar's Fees - - - - -	15 -	
Sealer's Fees - - - - -	2 -	
Sheriff's Fees - - - - -	5 -	
Agent's Costs - - - - -	48 -	
		70 5
Defendant's Costs, as follows :		
Court Fees - - - - -		2 -
TOTAL - - - - \$.		102 5

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In the Cause of *James William Salmond*, Plaintiff, v. *Soley Palter*, Defendant.—
To recover \$ 100.

Amount of Judgment		\$ 100.	
		Sp. dollars.	Sp. dollars.
Plaintiff's Costs, as follows		12 50	
Court Costs (including ca sa.)		1 -	
Sheriff's Costs		2 -	
Sealer's Fees		48 85	64 35
Agent's Costs			
Defendant's Costs, as follows.		5 -	
Court Costs		3 -	
Sheriff's Costs		- 75	8 75
Sealer's Fee			
TOTAL		\$.	173 10

Reduced on taxation to \$ 69. 45. costs.—See Original bill.

(signed) S. G. B.

The COURT of JUDICATURE of *Prince of Wales' Island, Singapore, and Malacca.*

Ramasawmy, Plaintiff, v. *James William Salmond*, Defendant.

	Sp dollars
Attendance on Client in conference on this Cause	2 -
Instructions and warrant to sue	2 -
Drawing Petition, five folios	4 50
Engrossing the same, ditto	2 -
Copy of same for use, ditto	1 25
Attending Registrar to file Petition	- 50
Attending for Summons	- 50
Attending Coroner therewith	- 50
Attending Court on return of Summons, when Defendant took four days to plead	2 -
Attending Registrar's Office to search Plea	- 50
Copy of Plea, two folios	- 50
Paid for search	- 50
Attending Court when notice was given to parties that cause would remain over for hearing by the Recorder	2 -
Attending Client hereon <i>Agent and Client</i>	1 -
Attending Court on motion to set down Cause for hearing on Tuesday	2 -
Attending Client and friends in long consultation on his case, and minuting facts, one hour	2 -
Drawing notice of Cause being set down for trial	- 50
Serving the same on Defendant's Agent	1 -
Instructions to subpoena Witnesses— <i>disallowed</i>	1 -
Attending Registrar's Office to procure Subpcna	- 50
Attending Sheriff therewith	- 50
Attending Court when Cause was set down for trial, but hearing postponed	2 -
Attending Client hereon <i>Agent and Client</i>	1 -
Attending Court when Cause was heard, and Judgment pronounced for Plaintiff for 100 Spanish dollars, damages and costs	10 -
Attending Client hereon	1 -
Drawing Bill of Costs, three folios	3 -
Engrossing the same, ditto	1 20
Copies, two, for use of parties	1 50
Attending to tax Costs	- 50
Paid for taxing	1 -
Registrar's Fees	\$ 46 45
Sealer's Fees	16 -
Sheriff's Fees	2 -
	5 -
TOTAL	69 45

Taxed at Spanish dollars - - - \$ 69. 45.

Registrar's Office at Singapore,
3 February 1834.

By me,
(signed) *A. J. Kerr*,
Registrar.

DETAILS of Court Establishment at present existing at *Prince of Wales' Island, Singapore, and Malacca*, alluded to in Paragraph 23 of Mr. *Bonham's* Letter.

DETAILS of Court Establishment proposed by Mr. *Bonham*.

	PENANG		SINGAPORE.		MALACCA.		PENANG.		SINGAPORE.		MALACCA.		REMARKS.	
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.		
Recorder's salary	3,368	- -												
Ditto - Clerk	300	- -												
Ditto - Peons	82	7 4												
		3,750	7 4											
Registrar's salary	1,403	- -												
		1,403	- -											
First Clerk	522	8 -	522	8 -	522	8 -	600	- -	600	- -	400	- -		
Second Clerk	313	8 -	209	- -			200	- -	200	- -				
Third Clerk			100	- -					100	- -				
Head Interpreter (two)	200	- -	150	- -	100	- -	200	- -	200	- -	100	- -		
Chinese ditto	60	- -	50	- -	50	- -	50	- -	50	- -	50	- -		
Chuliah ditto	20	- -	30	- -	20	- -	20	- -	30	- -	20	- -		
Crier	50	- -	30	- -	20	- -			30	- -	20	- -		
Shroff	20	- -			20	- -	30	- -	30	- -	20	- -		
Peons	30	- -	30	- -	20	- -					20	- -		
		1,216		1,121	8 -		732	8 -	1,100	- -	1,240	- -	610	
Deputy Sheriff	200	- -	200	- -	104	8 -	200	- -	200	- -	100	- -		
Gaoler	60	- -	60	- -	62	11 2	60	- -	60	- -	60	- -		
Bailiff	52	4 -	50	- -	52	4 -	50	- -	50	- -	30	- -		
Assistant Bailiff			30	- -					30	- -				
Turnkey	20	7 2	20	- -	20	14 5	20	- -	20	- -	20	- -		
Peons	20	7 2	20	- -	20	14 5	20	- -	20	- -	20	- -		
		353	2 4		380	- -		350	- -	380	- -	220	- -	
Coroner	104	8 -	104	8 -			100	- -	100	- -				
Peon	10	7 2	10	7 2			10	- -	10	- -	10	- -		
		114	15 2		114	15 2		110	- -	110	- -	10	- -	
		6,927	8 10		1,616	7 2		1,660	- -	1,730	- -	840	- -	
		1,616	7 2					1,730	- -					
		1,003	12 -					840	- -					
Present		9,547	12 -	expenses.				4,130	- -					
Proposed		6,310	- -					2,000	- -					
Savings		3,237	12 -	per month.				150	- -					
		or		per annum.				30	- -					
		88,853	- -					6,810	- -					

(signed) S. C. Bonham, Governor.

300.

	PRESENT ANNUAL ALLOWANCE TO ESTABLISHMENT			PROPOSED ANNUAL ALLOWANCE BY LAW COMMISSIONERS			PROPOSED ANNUAL ALLOWANCE BY MR. BONHAM.		
	Rs	a	p.	Rs	a	p.	Rs	a	p.
Recorder's salary -	40,416	-	-	17,500	-	-	24,000	-	-
Travelling expenses	3,600	-	-	2,500	-	-	1,800	-	-
Clerk -	989	8	-				860		
Peons -	45,005	8	-	20,000	-	-	26,160	+	-
									Reduction - (†) 18,845 8 -
									Reduction - (†) 20,007 8 -

Subordinate establishment	Singapore			Penang			Malacca		
	Rs	a	p.	Rs	a	p.	Rs	a	p.
	19,397	6	-	38,125	2	-	12,045	-	-
				19,397	6	-			
				12,045	-	-			
				69,567	8	-			
Recorder's establishment -				45,005	8	-			
Present cost of court -				114,573	-	-			

Subordinate establishment	Singapore			Penang			Malacca		
	Rs	a	p.	Rs	a	p.	Rs	a	p.
	18,600	-	-	13,620	-	-	11,220	-	-
				18,600	-	-			
				11,220	-	-			
				43,440	-	-			
Recorder's establishment -				20,000	-	-			
Proposed by Law Commissioners -				63,440	-	-			
							Reduction, (*) 24,127 8 -		

Subordinate establishment	Singapore			Penang			Malacca		
	Rs	a	p.	Rs	a	p.	Rs	a	p.
	20,760	-	-	18,720	-	-	10,080	-	-
				20,760	-	-			
				10,080	-	-			
				49,560	-	-			
Recorder's establishment -				26,160	-	-			
Proposed by Mr Bonham -				75,720	-	-			
							Reduction, (†) 20,007 8 -		

In Mr Bonham's statement are not included any portions of the salaries of the resident councillors or their assistants, as the executive offices must be upheld, whether they be judges or not, and be paid in a respectable manner. In the printed statement the Law Commissioners propose to debit the judicial department as follows, on account of the resident councillors and their assistants -

	Rs.	R.
At Singapore.—Resident Councillor	9,000	
Assistant	4,800	
At Penang.—Resident Councillor		13,800
Assistant	9,000	
	9,600	
At Malacca.—Resident Councillor		18,600
Assistant	6,000	
	4,800	
		10,800
		43,200

	Rs.	a.	p.		Rs.	a.	p.
Recorder's salary and establishment	(*)	25,005	8	-	(†)	18,845	8
Subordinate ditto	(*)	26,127	8	-	(†)	20,007	8
TOTAL Reduction in the Judicial Department		51,133	-	-		38,853	-

	Rs.	a.	p.
Recorder's salary and establishment		20,000	-
Subordinate ditto		43,440	-
Lay judge		43,200	-
		106,640	-

(signed) S. G. Bonham, Governor.

INDIAN LAW COMMISSIONERS.

LOCAL COURT OF JUDICATURE.

Before the Honourable *S. G. Bonham*, Esq. Governor, &c.

Robert Jack v. James Pasley.

Judgment.

Legis. Cons.
30 Dec 1842.
No 20.

THIS is an action to recover from the defendant, who is commander of the ship *Molson*, damages for the non-delivery of certain casks of wine, according to the tenor of a bill of lading. The wine was shipped in London on board the *Molson* in August last, by Mr. Peter Tulloch, and a bill of lading, containing an acknowledgment of the freight having been paid in London, was signed by the defendant, making the wine deliverable in Singapore to Mr. Tulloch or his assigns. The bill of lading bears an indorsement by the shipper, making the wine deliverable to the plaintiff. The ship has arrived safe at Singapore, and the plaintiff, as indorsee of the bill of lading, has presented it, and demanded the wine, which the defendant has refused to deliver, alleging that, owing to some misunderstanding between the shipowner and the shipper, the freight of the wine, notwithstanding the acknowledgment in the bill of lading has, in point of fact, never been paid. On the merits of this case I do not, for reasons which will presently appear, consider it necessary to enlarge. At the trial an objection was taken by Mr. Napier, for the defendant, to the legal right of the plaintiff to maintain this action, upon the ground of his being merely the consignee or indorsee of the bill of lading, without valuable consideration. Letters were produced in which the plaintiff alludes to himself as being simply the holder of the bill of lading, and some further evidence was adduced to the same effect; and, as the plaintiff failed to give any proof that he was the owner of the wine, it was contended by Mr. Napier that the plaintiff was not the party whom the law recognizes as entitled to maintain an action, in the present case, in his own name. It has, indeed, been a much disputed point, whether a person armed only with a naked indorsement on the bill of lading, without showing any ownership in the goods, is, upon the non-delivery of them, entitled to maintain an action in his own name; and I certainly wish that it had not been left to this court, in the absence of a professional judge, to give an opinion on a question which appears to have been considered one of so much doubt in England. Unfortunately we have not, in this settlement, the means of referring to the reports of the several cases in which the question has become matter of discussion in the courts in England; all that we can do, therefore, is to avail ourselves of such light as the few law treatises which are within our reach are calculated to throw upon the subject. The passage in those books principally referred to and relied on by Mr. Napier, in support of the defendant's side of the question, is to be found in Mr. Lawes's *Treatise on Charter Parties*, published in 1813, and is in the following words:

"It seems that the mere indorsement of a bill of lading to an agent, to enable him to receive the goods on account of his principal without any consideration, will not enable such agent to maintain an action of trover, in his own name, for the value of the goods; for no decision of a court of law, upon the subject of bills of lading, has gone further than to say, that the assignment of a bill of lading by the consignees, for a valuable consideration, and without notice to the party taking it of a better title, passes the property in the goods consigned. The analogy between bills of lading and bills of exchange has not been carried further than it was in the case of *Leckbarrow and Mason*, viz. that an indorsement of a bill of lading to the agent was no more than the shipper's authority to the captain to deliver the goods to such agent. The object in making it was only to enable the agent to take possession of them on account of the shipper, as a matter of precaution, in case of insolvency. In a subsequent case a similar question occurred before Lord *Ellenborough* at *Nisi Prius*, in an action of assumpsit brought by the plaintiff, as indorsee of a bill of lading, for a quantity of butter shipped at *Sligo* by one *Everard*, on board a ship whereof the defendant was master, to be delivered to the shipper's order or assigns. It appeared that the plaintiff was merely *Everard's* agent, employed to stop the goods *in transitu*, on account of the insolvency of *Baggott & Co*, the consignees. It was contended, by the defendant's counsel, that the action could not be maintained by the plaintiff, who, being an indorsee without value, had no property in the goods; and the case of *Coxe and Harden* was

was cited as an authority. The counsel for the plaintiff contended that his client, as indorsee of the bill of lading, must be taken to have the legal property of the goods; and they distinguished this case from *Coxe and Harden*, on the ground that that was an action of trover, wherein the property came into question; but the plaintiff in the present case had declared for a breach of the defendant's contract, according to which he was to deliver the goods to the assignee of the shipper. But Lord Ellenborough was decidedly of opinion that the plaintiff, as indorsee of the bill of lading without value, had not the legal property in the goods. He observed, "No case has gone so far as to decide that a bill of lading is transferable, like a bill of exchange, and that the mere signature of the person entitled to the delivery of the goods *prima facie* passes the property in them to the indorsee. Much confusion has arisen from similitudinary reasoning upon this subject. There must be value upon the indorsement of a bill of lading, or no property in the goods is thereby transferred. The right to stop the goods *in transitu* is a personal right of the seller, and cannot be thus assigned to another. The action, if maintainable at all, should have been brought, not in the name of the agent, but of the consignor himself (*Vide Waring v. Coxe*, 1 Campbell, p. 370.) His Lordship said it made no difference whether the form of action was trover or assumpsit. If no property passed to the indorsee, he could have no right to complain of the non-delivery or of the conversion of the goods as an injury to himself. The plaintiff was accordingly nonsuited."

I have thought it right to read this passage to you at full length, and it clearly appears from it that Lord Ellenborough, one of the ablest judges that has ever sat in the Court of King's Bench, was decidedly of opinion, that where no property passes to the indorsee of a bill of lading, he cannot sue in his own name for the non-delivery of the goods; and although the law, as thus strongly declared by Lord Ellenborough, appears by a subsequent decision to have been modified in favour of agents appointed to stop goods *in transitu*, yet the general law upon this subject remains, so far as I am aware, unaltered. At the trial the plaintiff made no reference to books, but he has since submitted to me, through the clerk of the court, two passages as favourable to his side of the question, one of them in Paley's *Law of Principal and Agent*, and the other in Woolrych's *Commercial Law*. These passages I shall, in justice to the plaintiff, quote at large. The first is from an edition of Paley's *Principal and Agent*, published in 1819, and is in the following words:

"The possession which a factor or other agent has of his principal's property, entitles him to bring actions of trespass or trover for injuries affecting the possession, and it has been said that a factor to whom goods have been consigned, and who has ~~never received them~~, may maintain trover. A doubt has been expressed, whether a mere agent to whom a bill of lading is indorsed, without consideration by the consignor, to enable him to receive the goods, can maintain trover before the receipt of them. But it seems at present settled that he may, provided the consignment be not countermanded."

Now, if this passage had not been in any manner qualified, it would have been greatly in favour of the plaintiff's side of the present question. "It seems," says Mr. Paley, "to be settled, that a consignee, without valuable consideration, may maintain trover for the goods before he has received them." But then, appended to this text, there is a note referring the reader to the case of *Waring v. Coxe*, "from which," says Mr. Paley, "it seems to be the contrary." Now the case of *Waring v. Coxe*, here mentioned, is one of those cases which are referred to in *Lawes on Charter Parties*, as most strongly supporting the law as laid down by Lord Ellenborough, in the passage already quoted from Mr. Lawes's work. The passage, therefore, from Paley, is little to the purpose. But, as I have already said, there is also a passage in Woolrych's *Commercial Law* to which my attention has been directed by the plaintiff. Mr. Woolrych's work was published in 1829, and the passage referred to by the plaintiff is in the following words:

"It is observable, that unless a party have a property in the goods in question, he may not, except as agent to stop *in transitu*, maintain an action in his own name. So that a mere indorsement to an agent, without valuable consideration, for the purpose of enabling him to stop *in transitu*, the *transitus*, in fact, being at an end, gave such agent no title to sue the master in trover; and the case is the same although the plaintiff be named in the bill of lading, and he effect an insurance on the cargo which he seeks to recover. But these are distinguishable from cases

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where the goods are *in transitu* when the agent makes his demand, for then he has a special property, and may have a right of action accordingly."

This is the passage from Mr. Woolrych, who, in support of the law contained in the last sentence of the quotation, refers the reader to the case of *Morison v. Gray*, in Bingham's Reports. Now, in what Mr. Woolrych says, I must confess I see nothing that can support the plaintiff's side of the question. All that appears in it of a tendency favourable to the plaintiff, is, that the law as laid down by Lord Ellenborough, has since been relaxed in favour of agents employed to stop goods *in transitu*. But as the plaintiff in this action does not act as an agent for that purpose, I must consider his case as falling within the general rule, which is, in the words of Mr. Selwyn in his *Law of Nisi Prius*, that "the action against a carrier for non-delivery of goods must be brought by the person in whom the legal right of property in the goods in question is vested at the time, for he is the person who has sustained the loss, if any; and whoever has sustained the loss is the proper party to call for compensation from the person by whom he has been injured." This being the general rule in relation to carriers both by land and by water, it is incumbent on me to say that the plaintiff must be nonsuited.

In coming to this conclusion, I may add, that I have done so contrary to the original leaning of my own opinion, and that if I could have considered the plaintiff as the party entitled to sue, I should, on the merits of the case as they are in evidence before me, have decided in his favour.

(No. 124 of 1842.)

Legis Cons.
30 Dec 1842.
No 21.

From the Governor of Prince of Wales' Island, Singapore and Malacca, to
F. J. Halliday, Esq Secretary to the Government of India.

Sir,

Judicial Dept.

In continuation of my letter of the 28th ultimo, touching the judicial establishment in these settlements, I have now the honour to forward a further communication from the learned recorder of the court, on the same subject.

The principal object of this second letter appears to be an acquiescence on the part of the recorder that the lay judges should have power to try all offences, with the aid of assessors, enumerated in section 4 of the Draft Act appended to the Law Commissioners' Report; but that the punishment to be awarded should not exceed a fine of 1,000 rupees, or imprisonment at hard labour for a period of two years, such convictions to be subject to an appeal to the professional judge, when it be challenged as wrong in point of law, or when it is contrary to the opinion of one or more of the assessors; but that no such appeal is to be permitted from the professional judge to the College of Justice in Calcutta under similar circumstances. To this proposition I must beg leave strongly to dissent; for, as already observed, I cannot admit, on a point of fact, that the learned judge's opinion is entitled to more weight than that of his lay colleague, and certainly not so much when that opinion is supported by the voice of the three assessors out of four.

If the learned recorder intends that the cases he tries should not be liable to be questioned on points of law, I concur with him; but I see no reasons why, when his assessors dissent from him on facts, his proceedings should not be liable to be inquired into by the College of Justice at Calcutta, in the same manner that he himself proposes to inquire into cases that have been settled by the lay judge. On points of law the prisoner should be permitted to petition the court generally, when the lay judge having made such remarks on the petition as may appear necessary and proper, the conviction can be quashed if sufficient grounds be shown that it is illegal; but should the barrister judge be absent, then it should be at the discretion of the lay judge to carry into effect the sentence, notwithstanding.

If, however, the system of assessors is given up, and that of juries continues, there can and will be no necessity for appeals on facts. If it be considered that appeals should be allowed because it is proposed that the jury need not be unanimous in the verdict, and their number are to be less than usual, then I would say, in preference to these multiplied appeals, let the jury system remain as at present, and the conviction be by the voice of the whole panel.

If

If the assistant resident is not to be assisted by assessors or a jury, I would allow an appeal to the lay or professional judge, either of whom might reject or receive the appeal as he sees fit; but should a new trial be granted, it should not be held simply before either of the superior judges sitting alone, but before either of them with the assistance of a jury or assessors, according to the system that may be eventually adopted. In civil matters there would be, of course, an appeal to the court of judicature as at present by writ of certiorari.

From the learned Commissioner's letter, I infer that it is intended to permit the lay judges to incarcerate culprits for any period under 14 years. I presume, therefore, it is intended to abolish the punishment of transportation, except it be for life; otherwise I see no reason why the power of transporting a criminal for seven years should be withheld from a court which it is intended to entrust with the power of imprisonment and hard labour for 10 years.

I think if the lay judges are tolerably efficient officers, (and whether they be so or not will of course materially depend on the emoluments attached to the office,) two circuits during the year are as much as the barrister-judge should be called on to perform, in the event of emergency he could, of course, make an extra circuit.

I have not dissented from the introduction of the bankrupt laws into these settlements, for I really do not at present understand how they are likely to work; but at first view they would seem intended to effect humane purposes. When, however, the draft Act is published the inhabitants of the Straits settlements will be enabled to judge of the effect they are likely to have on their interests.

The last paragraph of the learned recorder's letter is to me particularly satisfactory, as it shows that, when a good understanding exists between the parties, mere difference of opinion on official duties need not estrange them. This feeling has been engendered on the part of the lay officers towards their professional and learned colleague, no doubt from that honourable gentleman's kind courtesy and considerate attention towards them, but I have doubts if the same feelings of cordiality and confidence would or could have existed if the parties had stood to each other in the position the Law Commissioners propose to place them.

I have, &c.
(signed) S. G. Bonham, Governor.

Singapore, 4 October 1842.

From the Honourable the Recorder of Penang to the Honourable S. G. Bonham,
Esq. Governor, &c. &c. &c.

Legis Cons.
30 Dec 1842.
No 22
Enclosure.

My dear Mr. Bonham,

On re-perusing the draft of my letter to you of yesterday, (which, as you are aware, was, in order to save time, written with unavoidable haste, within a few days of my return from circuit, and on the very eve of your own departure from hence to Singapore,) I think it necessary to add a few observations in further explanation of my views with regard to the respective jurisdictions of the professional and superior lay judges, and on the subject of the proposed system of appeals; as also with reference to a few other points in the Law Commissioners' Report, to which I have not yet adverted.

Supposing Singapore to become the professional judge's place of residence, I have recommended, that not merely capital cases, but all serious criminal cases occurring at Penang and Malacca, (and of course at Singapore also, where in fact the lay judge, as hitherto in Penang, will have neither cause nor inclination, except during the circuits or the illness of his colleague, or in particular cases, to take more than a nominal part in the business of the court,) should be reserved for trial before the professional judge and a jury; giving him, nevertheless, a discretionary power to dispense with a jury if he should see fit, in all cases of simple larceny and burglary without violence. I have thus, you will perceive, in part followed the proposal of the Law Commission in their 45th paragraph, that the jurisdiction of the professional judge "should embrace all cases in which the crime charged is punishable by death, or imprisonment for life or 14 years, or by transportation for any term." I have added, however, the material improvement, as I consider it—the intervention of a jury, not in capital cases only (as proposed by the Law Commission), but in all cases of the above description, with the discre-

tionary exception above mentioned. This extension of the Commissioners' proposal, or rather this adherence to the present system, I have recommended, first, because, in my opinion, men charged with crimes subjecting them to the mildest even of the above punishments ought not, any more than those liable to capital punishment, to be deprived of the great benefit of a trial by jury, without a very urgent necessity, which necessity does not exist, considering the proposed three annual circuits, and the ease with which a sufficient panel of jurors will always be procurable at each of the three stations, especially if the grand and petty jury lists be amalgamated as proposed; secondly, because even should the delay of trial and the difficulty of procuring jurors prove to be much greater than can be anticipated, the inconvenience and delay would be infinitely counterbalanced by the benefits of such a mode of trial, and the avoidance of the mischiefs inseparable, as it appears to me, from the proposed system of trials before assessors, subject to appeals to Calcutta. The proposed deprivation, moreover, of trial by jury, except in capital cases, it will be observed, is unrestricted as to persons, and would therefore include British subjects, who would not be easily convinced of the justice or necessity of withholding from them a privilege which they have always been accustomed to regard as their birthright. There are, however, cases coming within the above category, in which, it seems to me, that the intervention of a jury may in general be very well dispensed with, especially when, as at Penang and Malacca, a delay of some months must generally intervene between the periods of commitment and of trial before the professional judge; I mean the ordinary cases of simple larceny and burglary without violence, which on an average constitute three-fourths of the number of cases in the Straits calendars, and which, though legally punishable with transportation, are in fact rarely, but in cases of notorious offenders, visited with a heavier penalty than from six months to two years' imprisonment at hard labour. With respect to such cases accordingly, I have proposed two modes of proceeding; the first is, that all cases of this description (except such as the local judge should see fit to reserve with the graver cases for his professional colleague) should be triable by the superior lay judges at Penang and Malacca respectively, with the aid of assessors, and subject to an appeal to the professional judge, as proposed by the Law Commission; but that his decision should be final, and not subject, as proposed, to a second appeal to the College of Justice at Calcutta. The other recommendation which I have made with regard to these minor cases is, that whether they come before the professional judge in due course at Singapore or as reserved cases at Penang or Malacca, he should, nevertheless, have a discretionary power to dispense with a jury, and try them, with the aid of assessors, in the same way as the lay judges would proceed; but that his decision should in like manner be final, and not, as proposed by the Law Commission, subject to an appeal to Calcutta, "when a conviction is challenged as wrong in point of law, or when it is contrary to the opinion of one or more of the assessors." But in all such cases of challenge or dissent, I would propose, as a far less dilatory and objectionable, yet I think sufficient security against hasty or intemperate decisions, that judgment be arrested for three or more days (as might be convenient) in order that the judge might review the evidence and consider whatever might be urged to prove the conviction erroneous in point of law or fact.

In Calcutta, where immediate resort may be had to the superior tribunal, the right of appeal to it in such cases may be wise and proper, especially as it is not intended, I presume, as indispensable that the judge of the subordinate criminal court there should be a lawyer. But as the effect of such a provision in the Straits would probably be a frivolous appeal in every case (and those not a few) which either the prisoner himself or a casual friend or acquaintance among the assessors might think another chance of acquittal, or at least a postponement for some months of a sentence of hard labour, desirable, I think the inconveniences and evils to be expected from an abuse of the privilege would far outweigh the advantage to be anticipated from the occasional correction of a wrong decision in a case wherein the sentence would not, at the utmost, probably have exceeded two years' imprisonment at hard labour, and would very likely have been but half as much, or less; for in all serious cases the necessity for a right of appeal, otherwise than at the discretion of the professional judge, would, as admitted by the Law Commission in their 48th paragraph, be obviated by the trial by jury such as I have recommended.

The trial of all cases of simple larceny and burglary without violence as they arose,

arose, at Penang and Malacca, by the lay judges and assessors, and the disposal of all cases of petty assault and trifling misdemeanor by the assistant residents, would, in the main, sufficiently ensure one of the principal desiderata of the present system, the speedy decision of the lighter and most numerous cases of crime. But as this benefit might be extended to other cases than those which I have mentioned, I would, on consideration, further recommend that the local judges of the Superior Court at Penang and Malacca be empowered to try, with assessors, all the offences enumerated in the fourth section of the Draft Act appended to the Law Commissioners' Report, with the provisions in the 5th and 6th sections of that Act, and an additional proviso, that the punishment should in no case exceed a fine of 1,000 rupees, or imprisonment at hard labour for two years.

Another advantage resulting from this system of speedy trial would be, the less apparent necessity for such frequent circuits by the professional judge; for independently of the public inconvenience, if not injustice, arising from the broken and disjointed practice, the frequent interruptions, the occasional haste, and unavoidable delays necessarily incidental to the business of an ambulatory court, where there is but one professional judge, I cannot but think that three annual circuits (which though light and pleasant, perhaps, to a young, single, and active man, might be very much the reverse to a family man of domestic habits, advanced life, or infirm health,) are more than should be imposed as a matter of express command on any judge in this climate, unless there be an adequate necessity in the case, which under the system proposed, I do not, after an experience of six years in the Straits, think will be found to exist. I would therefore, instead of making three circuits imperative, leave a discretion in the judge; and propose, as at present, two circuits, or more if necessary.

With regard to the jurisdiction of the assistant residents, which the Law Commissioners propose should embrace all cases in which the crime or offence may be of a nature to warrant a sentence not exceeding six months' ordinary imprisonment, and a fine of 200 rupees, subject to the defendant's right of appeal in all cases to the superior lay judge, and from him (should his decision be challenged as wrong in point of law, or be contrary to the opinion of one or more of the assessors) to the professional judge, I have expressed my general concurrence in the proposal, but I have recommended that the assistants at Penang and Malacca should be at liberty (as are the district judges in Ceylon, under the 39th clause of the Ceylon Charter) to carry their sentences into execution, should they see fit, notwithstanding such appeals. I recommended this for the same reason which doubtless led the framers of that charter to introduce the clause in question, viz. to prevent the ends of public justice from being defeated in many cases by needless delay in the execution of a just sentence. On reflection, however, as the proposed system of appeals is not exactly parallel to that in Ceylon, I would wish in some degree to qualify my recommendation in this respect. In Ceylon a frivolous appeal from a conviction had in a distant district court to the Supreme Court in Colombo might, but for the above proviso, delay the execution of a just sentence for some weeks, and such would be the case in these settlements were the appeal proposed to be direct from Penang to the professional judge at Singapore. The intermediate appeal, however, to the local superior lay judge would, in general, operate as a sufficient security against frivolous appeals for mere delay, if, as I would now recommend, a secondary appeal to the professional judge against a conviction affirmed by the superior lay judge should not operate as a stay of execution unless one or other of the two local judges should see fit to stay the execution pending such appeal.

In my former letter I omitted to notice the recommendation of the Law Commission in the 56th paragraph of their Report, with regard to periodical statements. I concur in thinking such returns very desirable, provided the establishment of clerks shall be found sufficient for this and the additional work which is likely to be created by the increase of the court business in appeals and bankrupt cases. But this is a question rather belonging to the financial part of the scheme, on which I do not offer any opinion.

I am not sure that I understand the arrangement proposed by the Law Commission regarding the fourth of those "minor alterations," which they notice in page 17 of their Report, as "having been suggested for improving the administration of justice in the Straits," and will therefore, to prevent misapprehension, content myself with observing that I consider the alterations in question for

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effecting a practical separation of the three settlements for the purposes of process of the local courts, and for the exemption of process from needless formalities, as highly desirable.

With regard to a pauper establishment, a subject which the Law Commission "recommend to be left open for further inquiry," I do not conceive that such an establishment is much required, although it would be a relief to the court.

There may possibly be some other points in the Report on which I have not expressed any opinion, and some remarks and recommendations of my own may perhaps stand in need of qualification or further explanation; should either be desired, I shall be happy to meet your wishes.

With reference, by the way, to my remark on the declaration of the Law Commissioners, in their 65th paragraph, "that it does not enter into their scheme to employ the governor in any judicial function," I gladly avail myself of the opportunity of adding a few words, to prevent the possibility of misconception in other quarters, having no apprehension that my meaning could be mistaken by yourself. Whilst, then, I consider this recognition of a sound principle by the Law Commissioners to be matter for joint congratulation to the chief executive and judicial authorities, as the best guarantee for their mutual independence, harmony, and good understanding, I have much pleasure in stating, after an experience of six years, that the friendly feeling which has always subsisted between you, and indeed all my unprofessional colleagues, and myself, has left me individually but little cause for desiring a change of system.

Of course you and they are at liberty to comment with the utmost freedom on my suggestions, and indeed it is desirable, for the information of the supreme government, that you should do so; meanwhile,

Penang, 13 September 1842. I remain, &c.
(signed) W. Norris.

P. S.—I had almost omitted to mention a material error in the wording of my first letter. The paragraph commencing, "With regard to appeals, as proposed; from the decisions of the professional judge in original cases to the College of Justice in Calcutta; and thence to the Privy Council," &c, should run as follows, viz.: "With regard to appeals, as proposed (in paragraph 38 of the Report), from the decisions of the professional judge in original cases to the College of Justice in Calcutta, I think there should be some limitation; and I submit, that of cases involving 5,000 rupees and upwards would not be unreasonable, as that of 10,000 rupees and upwards is the limitation proposed (in paragraph 43) with respect to appeals from the College of Justice to the Privy Council."

MINUTE by the Honourable A. Amos, dated 9th November 1842.

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Straits Judicature.

I HAVE not detained these papers long enough to form a judgment on the various points discussed in them, as I wished them to pass in circulation before the papers on the subject, upon which orders have been recently given, were sent up to Simlah; or, if they were sent up, that his Lordship should be apprised, without delay, that important communications from the Straits upon the same subject were about to be sent to him.

From a cursory perusal of the papers, I collect that some of the most material reforms meet the concurrence of the Straits authorities, including the economical saving with regard to the registrar. Under these circumstances I should be disposed to concede many things to the local experience of the recorder and chief justice; and as the recorder appears satisfied generally with the existing forms of procedure, I would not for the present think of imposing a new procedure, about which we are not likely to agree ourselves, upon them, especially with regard to assessors, against which institution the Governor appears to have strong objections.

Perhaps we might send the papers to the Law Commission, desiring them to draft an Act which should adopt the provisions advocated by the Straits authorities, as to the constitution of the courts, which might not appear to them liable to material objections, and which should not interfere with the practice or procedure further than as the Straits authorities were desirous of its being amended; and,

where the Straits authorities were at variance; that they should adopt what appeared to them a more eligible course, assigning reasons for the preference.

(signed) A. Amos.

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MINUTE by the Honourable A. Amos, dated 20th November 1842.

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30 Dec. 1842.
No. 24.

Straits Settlements
Judicature

THE full communications from all the Straits authorities, which have been just received, appear to invite us to a consideration of our previous Minutes and Resolutions, with a view to the suggestions of local experience, and the dispositions and feelings of the parties to whom the working of the Act must be entrusted, as well as the community whose interests it affects.

The subject having become rather complicated, I propose to take a brief review of its leading features.

Mr. Fullerton appears to have first started the idea of a material reform in the Straits judicature, which he proposed to effect by dispensing with a professional judge, making a resident at each of the settlements a judge, the governor to go circuits for hearing appeals, with an appeal in certain cases to Calcutta.

Lord Auckland proposed to get rid of the professional judge; to have one resident for the three settlements, who should try causes and prisoners on his circuits; and that a judge from the Calcutta court should be sent to the Straits occasionally to hear appeals.

The Law Commissioners, in their Report and Draft Act, propose to have a separate court at the three settlements, thus to obviate the necessity of process emanating from a distant place, and to dispense with a register and sheriff for the three settlements, who were highly paid officers. The head clerk at each settlement to do the duties of register; and a sheriff to be appointed by the court of each settlement to act for that settlement only.

I collect that the Straits authorities, in their recent communication, do not object to this arrangement, though a modification is proposed of having two courts at each settlement, the inferior court to be administered by the assistant resident.

Upon this matter, therefore, the division of courts, the way for legislation appears to me very clear; and this I conceive to be the point upon which the whole reform turns. Mr. Bonham, it will be observed, retracts, in the most unhesitating manner, his former opinion that a professional resident judge was not necessary. In this all the Straits authorities agree; and the Law Commissioners, I conceive, have placed the matter out of reasonable doubt. I am not sure, however, that many of the expectations which have been entertained of a large saving to the revenue from a reform of the Straits judicature, were not built on the supposition of the recordership being abolished.

The economy of the Commissioners' scheme turns on diminishing the expense which followed from having a single court, out of which all process issued, and which was obliged occasionally to move from one settlement to another, attended by a cumbrous establishment. From this reform we are enabled to save much which is paid to the registrar, sheriff, and some other officers of the court. With regard to the proposed diminution of the professional judge's salary, that has nothing to do with the reform of system, for the judge's duties will be equally or more onerous under the new system. Mr. Bonham thinks the Commissioners have gone somewhat too far in curtailing the judge's salary, and that something more must be allowed to the head clerks, who, under the new system, will have to act as registrars.

Independently of economy, great advantage will arise from the speedy dispatch of justice, and a diminution of its expenses by the establishment of tribunals in which all process may begin and end in the immediate settlement where the parties reside.

Whether there shall be two courts or one court in each settlement, I think does not much matter; perhaps it will be more simple and convenient to have one court, and afterwards, by allotting particular cases for the adjudication of the assistant, all the advantages proposed by having two courts will be obtained.

I do not dwell on some projects and observations contained in the Straits papers concerning a division of the judicial and executive authorities. The Commissioners

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propose to leave this to the discretion of government, to be adopted when it may be more practicable than it appears to be at present.

These outlines, then, of the new system being agreed on, I proceed to matters, of importance certainly, but still of secondary consideration.

The principal part of the voluminous papers just received from the Straits turns upon one point: they do not like the appeal, except upon matters of law, to the professional judge in any case, and especially in the case of the governor being the lay judge. I should be inclined to concede this point, especially as their present practice, which they all approve of, appears not unreasonable. According to the present practice, the professional judge may grant a new trial upon any point of law. On such new trial the lay judge sits with him, and may record his opinion; but the professional judge decides. It may be observed that the appeal will be less necessary, as in the distribution of cases, those involving matters which the professional judge would be more competent to decide than the lay judge will be reserved for him.

Upon a variety of matters of detail, as the abolition of the grand jury and the courts of quarter and petty sessions and of requests, the Straits authorities concur generally with the recommendations of the Commissioners. I collect that they prefer a jury, or modification of a jury, to assessors, and that they think the present practice before the civil courts had better be continued, instead of the new practice recommended by the Commissioners; they think there should be greater restrictions on appeal to Calcutta. They expatiate on the increase of litigation, by appeals to the professional from the lay judge in matters of fact; but this objection will be removed, if such appellate power is modified as above proposed; it would seem that it would not work well upon other grounds. They suggest that a provision should be made for the trial of revenue matters, which are now tried before the assistant and an honorary magistrate. They think that ordinarily two circuits will be enough for the judge to make, and that it is not necessary that all causes involving points of English law should be reserved for him. They offer suggestions on the distribution of civil and criminal business, and they have a great deal to say about law agents. I think the subject of the exclusion of professional assistance, or assistance by an agent, from courts, is one requiring much consideration, and that it is not necessary to determine it at present.

Mr. Prinsep, officiating advocate-general, who has personal experience of the Straits settlements, is very much averse to assessors. He would retain the grand jury, but not make their presentments a necessary preliminary to a criminal trial.

Having thus stated the general effect, as it appears to me, of the whole papers and correspondence, I have prepared a draft, in which I have leaned towards the recommendations of the Straits authorities, wherever no material objection to them occurred to me. I have also incorporated various sections from the draft of the Commissioners, which supply the chief details in which Mr. Prinsep thought my former draft deficient, though I fear that they may prevent readers from apprehending so distinctly the principal provisions of the contemplated reform, as they would if the subordinate parts were disposed of by way of general reference.

(signed) A. Amos.

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30 Dec 1842.
No 25.
Enclosure

AN ACT for the Administration of Justice within the Straits Settlements.

I. WHEREAS it is expedient that "the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca," established by charter or letters patent of His Majesty King George the 4th, under date the 27th November A.D. 1826, and "the courts for the recovery of small debts" established in the said settlements under authority of the said charter, should be abolished, and that other provision should be made for the administration of justice in the said settlements: and whereas the Governor-general of India in Council has obtained the sanction of the Court of Directors of the East India Company to the abolition of the said Court of Judicature;

It is hereby enacted, that the jurisdiction of "the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca," established by the said charter, and all powers and authorities thereby granted to or vested in the said court, and the jurisdiction

jurisdiction of the courts for the recovery of small debts established in the said settlements under authority of the said charter, shall cease and determine on the 31st day of

II. And it is hereby enacted, that after the 31st of A. D. , the entire administration of justice, civil and criminal, within the said settlements, except in respect of causes and matters, and crimes and offences falling within the jurisdiction of courts of admiralty and vice-admiralty, and military courts, shall be vested exclusively in the courts constituted by this Act.

III. And it is hereby enacted, that on the 1st day of A. D. , a court of record for the administration of civil and criminal justice shall be established in the settlement of Singapore, which shall consist of three or more judges, and a court of record similarly constituted in each of the settlements of Prince of Wales' Island and Malacca; and the said courts shall be called respectively "The General Court of Singapore," "The General Court of Prince of Wales' Island," and "The General Court of Malacca."

IV. And it is hereby enacted, that whenever in this Act any of the said settlements shall be mentioned, all places subordinate or annexed thereto shall be understood to be included.

V. And it is hereby enacted, that one of the judges of the General Court of Singapore shall be also appointed a judge of the General Courts of Prince of Wales' Island and Malacca, and shall be called the circuit judge, and that such judge shall reside principally at Singapore, but shall visit each of the settlements of Prince of Wales' Island and Malacca three times in every year, and shall sit in court from time to time at each place in succession until he has disposed of the business that may be waiting for him, or may come before him during his visit.

VI. And it is hereby enacted, that such circuit judge shall be a barrister of the English or Irish bar, of not less than five years' standing, or an advocate of the Scottish bar, of not less than five years' standing; that he shall be appointed by the Governor-general of India in Council; that he shall receive such salary as the Governor-general of India in Council shall deem fitting; and that he shall not hold any other office, place, or employment, or be engaged in or carry on any trade, traffic, or business whatsoever, on pain that the acceptance of any such other office, place, or employment, or the engaging in or carrying on any such trade, traffic, or business, shall be in law an avoidance of his office.

VII. And it is hereby enacted, that the number of other judges to be appointed to the General Court in each of the said settlements, who shall be called resident judges of such settlement, and shall be distinguished as first, second, and so on, shall be determined by the Governor-general of India in Council, and may be reduced or increased from time to time as to the said Governor-general in Council may seem meet.

VIII. And it is hereby enacted, that such resident judges shall be appointed by the Governor of Bengal; and that it shall be competent to him to appoint either such professional persons as aforesaid, or persons being executive officers of government to be such judges.

IX. And it is hereby enacted, that the salary to be assigned to every such judge shall be determined by the Governor-general of India in Council, regard being had to his qualifications, and if he holds any other office under government, to the salary of that office.

X. And it is hereby enacted, that every judge appointed as aforesaid, before he shall be capable of exercising the office of judge, or magistrate, under this Act, shall take in open court, in such manner as shall be directed by the Governor of Bengal, an oath, or shall make a solemn declaration, as shall be ordered by the said Governor of Bengal, that he will, to the best of his knowledge, skill, and judgment, duly execute the office of judge or magistrate, and impartially administer justice in every cause, matter, or thing which shall come before him; of which oath or declaration a record shall forthwith be made.

XI. And it is hereby enacted, that every judge of the said courts shall have and use a seal with his official designation inscribed upon it, and that all notices, writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by such judge shall be sealed with such seal, and shall be signed by such judge.

XII. And it is hereby enacted, that a fit and proper person shall be appointed by each of the said general courts to be sheriff of the settlement, subject to the jurisdiction

jurisdiction of such court, who shall continue in such office until another person shall be appointed by the same authority to succeed him therein, provided, that no person shall be appointed sheriff of any of the said settlements, and that no person having been duly appointed sheriff shall be removed from office, without the express consent of all the judges of such settlement.

XIII. And it is hereby enacted, that the sheriff of every settlement appointed as aforesaid shall execute all the writs, summonses, rules, orders, warrants, commands, and process of the several judges of the General Court of the settlement, and make returns of the same, together with the manner of the execution thereof, to the judge who shall have issued the same, and shall receive and detain in prison all such persons as shall be committed to his custody by any of the said judges, or any other person having competent authority so to do; and to do all such acts, matters, and things, and perform all such duties, as nearly as circumstances shall admit or require, as are or ought to be done and performed by the sheriff of any shire or county in England.

XIV. Provided, that the sheriff of Prince of Wales' Island shall appoint a deputy, for whom he shall be responsible, to execute the process issued by the resident judge in Province Wellesley.

XV. And it is hereby enacted, that whenever any of the judges of any of the said courts shall direct and award any process against the said sheriff, or award any process in any cause, matter, or thing, wherein the said sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot, or ought not by law, to execute the same, in every such case such judge shall name and appoint some other fit person to execute and return the same; and the said process shall be directed to the said person so named for that purpose, and the cause of such special proceedings shall be suggested and entered on the records of the said court.

XVI. And it is hereby enacted, that the several judges of the said courts shall have such jurisdiction and authority as the Court of Queen's Bench and the justices thereof, and also as the high Court of Chancery, and the Courts of Common Pleas and Exchequer respectively, and the several judges, justices, and barons thereof respectively, have and may lawfully exercise within that part of the United Kingdom called England, in all civil and criminal actions and suits, and in matters concerning the revenue; and that the said judges severally shall have and exercise the jurisdiction exercised by the ecclesiastical courts in England so far as the several religions, manners, and customs of the inhabitants of the said settlements will admit.

XVII. And it is hereby enacted, that each of the said courts within the settlement for which it is constituted shall have full power to hear, examine, try, and determine, in manner hereinafter mentioned, all actions and suits which shall or may arise or happen, or be brought or promoted, upon or concerning any trespasses or injuries, of what nature or kind soever; or any debts, duties, demands, interests, or concerns, of what nature or kind soever; or any rights, titles, claims, or demands of, in, or to any houses, lands, or other things, real or personal, within such settlements, or touching the possession, or any interest or lien in or upon the same; and all pleas, real, personal, or mixed, the causes of which shall or may hereafter arise, accrue, and grow, or shall have heretofore arisen, accrued, and grown, against the East India Company, and against any persons who shall be resident within such settlement, or who shall have resided there, or who shall have any debts, effects, or estate, real or personal, within the same, and against the executors and administrators of such persons.

XVIII. Provided always, that it shall not be competent to such court to try or determine any suit or action against any person who shall never have been resident in the said settlement, nor against any person then resident in Great Britain or Ireland, unless such suit or action against such person, so then resident in Great Britain or Ireland shall be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than 12,000 dollars.

XIX. Provided always, that nothing in this Act shall extend, or be construed to extend, to subject the person of the governor or resident, or any of the counsellors of the said settlements, or the person of any judge of Singapore, Prince of Wales' Island, and Malacca, to be arrested or imprisoned in any civil suit, action, or proceeding in any of the said courts.

XX. And

XX. And it is hereby enacted, that the process and the practice of the said courts shall be regulated according to such forms and rules as may be established by the judges of the said courts, subject to the approval and confirmation of the Governor-general in Council, as are now used in the aforesaid court of judicature established by charter, or as near thereto as circumstances will permit; and that all laws now in force, and all provisions of the said charter for regulating and for the better execution of the process and practice of the aforesaid court of judicature shall be applicable to the process and practice of the courts established by this Act.

XXI. Clause 1. And it is hereby enacted, that the plaints received in the said courts shall be disposed of as follows:

Clause 2. In the court of Singapore, when the circuit judge is at the settlement, on every day on which any of the judges shall sit for the purpose of receiving plaints, all the plaints received shall be laid before the circuit judge, who shall distribute them for trial and decision among all the judges, including himself.

Clause 3. In distributing the plaints the circuit judge shall endeavour to give to each judge a share of them proportioned to the time which he is able to devote to judicial business, and those kinds of suits which he thinks him best qualified to decide, and in which he shall have no personal interest and have no connexion with or relation to the parties.

Clause 4. Provided, that the circuit judge shall reserve to himself all cases involving difficult or doubtful points of law, and questions of importance which have not previously been determined; all suits in which government is a party, and all suits in which the amount involves a dispute exceeding 10,000 rupees, wherein an appeal may be preferred to the Privy Council under the Rules passed by Her Majesty in Council of date the 10th April 1838; and that all suits in which he is himself a party or related to or connected with a party, or in any wise interested, shall be assigned to a resident judge.

Clause 5. In the court of Singapore, in the absence of the circuit judge; and at all times in the courts of Prince of Wales' Island and Malacca, all the plaints received shall be laid before the first resident judge, who shall distribute them in the manner directed in the 3d and 4th clauses of this section.

Clause 6. Provided, that the circuit judge shall have power to call up and place on his own file any causes assigned to other judges which he shall deem it proper to hear and decide himself; and to transfer to other judges any causes assigned to himself which he shall think not to be of a nature to require his attention.

XXII. And it is hereby enacted that one of the resident judges of the court of Prince of Wales' Island shall sit separately in Province Wellesley, and shall receive all plaints that may be preferred to him against persons residing in the said province, of which he shall reserve to himself all such as according to the arrangement for the distribution of causes which shall be observed in the said court would fall to him if he was sitting in it, and shall remit all others to the first resident judge; to be disposed of as if they had been preferred in the said court.

XXIII. And it is hereby enacted, that every judge to whom a plaint is assigned for trial shall immediately place it on his file, and shall direct process to be issued, and proceed with the cause in such manner and according to such rules and forms of practice as may be established by the judges of the said court, under the approval and confirmation of the Governor-general in Council.

XXIV. And it is hereby enacted, that in the absence of the circuit judge it shall be competent to the first resident judge of any of the courts, in any suit on the file of the chief judge in such court, to take all steps which cannot be delayed without risk of injustice.

XXV. And it is hereby enacted, that every judge in each of the said courts shall be empowered to administer to witnesses and others, whom he may see occasion to examine in any suit or proceeding before him, proper oaths and affirmations, that is to say, to such persons as profess the Christian religion, the oath upon the Holy Evangelists of God; and to Quakers, Moravians, and others, who are exempted by law from taking oaths in the courts in England, the affirmation according to the form used in England for that purpose; and to Hindoos and Mahomedans, the affirmation prescribed by Act No. V. of 1840 of the Governor-general of India in Council; and to others, such oath in such manner and form as he shall deem most binding on their consciences respectively; and the depositions having been reduced into writing, and subscribed by the judge, shall be filed of record; and in case any person so cited shall refuse or wilfully neglect to

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appear and be sworn, or, being Quakers, Moravians, or others exempted as aforesaid, to affirm, and be examined, the judge shall be empowered to punish such persons so refusing or wilfully neglecting, as for a contempt, by fine and imprisonment.

XXVI. And it is hereby enacted, that no person shall be excluded from giving evidence in any suit or other proceeding in any of the said civil courts by reason of his being interested in the subject of litigation, or in the merit of the suit.

XXVII. And it is hereby enacted, that all fees and fines levied under this Act by each of the said courts shall be paid monthly into the treasury of the East India Company for the settlement at which such court is held.

XXVIII. And it is hereby enacted, that every judge of each of the said courts shall be empowered to award and issue a writ or writs or other process of execution, directed to the sheriff, commanding him to seize and deliver the possession of the houses, lands, or other things recovered in and by judgments, sentences, or decrees of himself or his predecessor, or to levy any sum of money which shall be so recovered, or any costs which shall be so awarded, as the case may require, by seizing and selling so much of the houses, lands, debts, or other effects, real and personal, of the party or parties against whom such writ or writs shall be awarded, as will be sufficient to answer and satisfy the said judgments, or to take and imprison the body or bodies of such party or parties until he, she, or they shall make such satisfaction, or to do both, as the case may require; And it is hereby enacted and appointed, that the several debts to be seized as aforesaid shall from the time the same shall be extended and returned into the said court be paid and payable in such manner and form as the judge in each case shall appoint, and no other, and such payment and no other shall from thenceforth be an absolute and effective discharge for the said debts and every of them respectively.

XXIX. And it is hereby enacted, that all money, jewels, precious stones, and securities of the suitors of each of the said courts which shall be ordered into court, or to be paid, delivered, or deposited for safe custody, shall be paid, delivered into, or deposited in, the public treasury of the East India Company at the settlement at which the court shall be held, to be kept and deposited with the cash, precious stones, jewels, and effects of the said Company, subject to such orders and directions in every case as the judge to whose province it belongs shall from time to time think fit to make concerning the same, for the benefit of the suitors; and each judge shall from time to time order and direct any money belonging to suitors of the court in cases within his province to be invested, at interest or without interest, for the purpose of remittance to any place without the said settlement as there may be occasion, for the use and benefit of the parties respectively entitled thereto, on any bills, bonds, or securities of the said Company, or any other bills, bonds, or securities as such court shall see fit to order and direct; and all executors, administrators, guardians, and trustees whatsoever, acting with respect to such investments at interest or for remittance, under the directions of judges of the courts, shall be indemnified against all risk or loss to be occasioned thereby.

XXX. And it is hereby enacted, that the treasurer of the said Company at each of the said settlements shall be, and be called, the accountant of the General Court of such settlement, and shall act, perform, and do all matters and things necessary to carry into execution the orders of the several judges of the said court, relating to the payment or delivery, or depositing of the suitors' money, jewels, precious stones, and securities, into or in the said treasury, and taking the same out again, and investing the money of the suitors at interest or for remittance, and keeping the accounts thereof, and for doing such other matters relating thereto, under such rules, methods, and directions as shall from time to time be made and passed by the several judges of the said court.

XXXI. And it is hereby enacted, that in case any person shall have any action or suit against the said East India Company, such person shall be at liberty to proceed therein in like manner as hereinbefore mentioned; and it shall and may be lawful for the chief judge in any such suit or action duly brought in any of the said courts to issue a summons for the appearance of the said Company, to be served upon the governor or president and the resident councillor of the settlement in which the cause of action or suit shall have arisen, and thereupon the said governor or president and such resident councillor as aforesaid shall appoint such person or persons to appear and act for the said Company as they shall see fit; and such person or persons shall be admitted to an answer and defend such suit in the name and for and on the behalf of the said Company; and the said chief judge shall

shall be empowered to try, hear, and determine all such actions and suits in the said courts against the said Company, and to give judgment and costs, and award execution, and do and order all such other matters and things therein, as far as the case will admit, in such manner as herein is mentioned, as to any person or persons whomsoever, subject, nevertheless, to such right of appeal by either party as herein is mentioned; and in like manner, if the said Company shall have any action or suit against any person or persons, it shall and may be lawful to and for the said governor or president and councillor, or any two of them, the governor or president being always one, to authorise any person or persons, for and on behalf of the said Company, and in their name, to make complaint thereof in writing to the court to whose jurisdiction the matter belongs and the chief judge sitting in such court shall proceed therein, and shall hear and determine the same as in other cases; and in case judgment or sentence shall be given against the said Company, shall award costs, to be levied upon the goods and effects of the said Company as they shall see occasion, subject, nevertheless to such appeal by either party as herein is mentioned.

XXXII. And it is hereby enacted, that all causes, suits, and business of ecclesiastical cognizance which shall be brought before the said courts shall be distributed, among the judges in the manner directed in this Act, and that the manner of proceeding therein shall be as near as may be in conformity with the rules hereinbefore prescribed for all other suits

XXXIII. And it hereby enacted, that the circuit judge sitting on the general court of any of the said settlements, and in his absence the first resident judge, shall have full power to grant probates under his official seal of the last wills, and testaments of all or any of the inhabitants of the said settlements, and of all other persons who shall die and leave personal effects within the jurisdiction of such court, and to commit letters of administration, under his official seal, of the goods, chattels, credits, and all other effects whatsoever, within the said jurisdiction, of the persons aforesaid, who shall die intestate, or who shall not have named an executor resident within the said settlement, or where the executor, being duly cited, shall not appear and sue forth such probate; annexing the will to the said letters of administration, when such person shall have left a will without naming any executor, or any person for executor, who shall then be alive and resident within the said settlements, and who being duly cited thereunto, will not appear and sue forth a probate thereof; and to sequester the goods and chattels, credits, and other effects whatsoever, of such persons so dying, in cases allowed by law, as the same is, and may now be, used in the diocese of London, and to demand, require, take, hear, examine, and allow, and if occasion require, to disallow and reject, the account of them, in such manner and form as is now used or may be used in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf.

XXXIV. Provided always, that the said chief or other judge in such cases as aforesaid, where letters of administration shall be committed with the will annexed for want of an executor appearing in due time to sue forth the probate, shall reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor or executors whenever he or they shall duly appear and sue forth the same; and the chief or other judge shall grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, and being then resident within any of the said settlements, and being of the age of 21 years; and in case no such person shall then be residing within any of the said settlements, or being duly cited, shall not appear and pray the same to any competent officer of the said court, or to such person or persons, whether creditor or creditors or not of the deceased person, as the chief or other judge shall see fit.

XXXV. Provided, that probates of wills and letters of administration to be granted by the said chief or other judge shall be limited to such money, goods, chattels, and effects as the deceased person shall be entitled to within the jurisdiction of the said court, except in the cases specified in Section XIX.

XXXVI. And it is hereby further enacted, that every person to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security by bond, to be entered into to the said Company, for the payment of a competent sum of money, with one, two, or more able securities, respect being had in the sum therein to be contained, and in the ability of the sureties, to the value of the estate, credits, and effects of the deceased, which bond, if administration shall be granted to an officer of the said court, shall be deposited in the

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public treasury of the said settlement; and if granted to any other person or persons, shall be deposited in the said court among the records thereof, and there safely kept, and a copy thereof shall be also recorded among the proceedings of the said court.

XXXVII. And the condition of the said bond shall be to the following effect: that if the above bounden administrator of the goods, chattels, and effects of the deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased, which have or shall come to the hands; possession; or knowledge of him, the said administrator, or the hands or possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited into the General Court (of Singapore, Prince of Wales' Island, or Malacca, as the case may be) at or before a day therein to be specified; and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death, or which at any time afterwards shall come to the hands or possession of such administrator, or to the hands or possession of any other person or persons for him, shall well and truly administer according to law, and further shall make, or cause to be made, a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time as he, she, or they shall be lawfully required; and all the rest and residue of the said goods, chattels, credits, and effects, which shall be found from time to time remaining upon the said administration accounts, the same being first examined and allowed of by the said chief or other judge sitting in the said court, shall and do pay and dispose of in a due course of administration, or in such manner as the said court shall direct;—then this obligation to be void and of non-effect, or else to remain in full force and virtue." And in case it shall be necessary to put such bond in suit for the sake of obtaining the effect thereof for the benefit of such person or persons as shall appear to the said chief or other judge to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said chief or other judge, be allowed to sue the same in the name of the said Company; and the said bond shall not be sued in any other manner; and the said chief or other judge shall be empowered to order that such bond, as aforesaid, shall be put in suit in the name of the said Company.

XXXVIII. And it is hereby enacted, that when probates of wills and letters of administration shall be granted as aforesaid, certain periods shall be fixed within which the persons to whom they shall be granted shall from time to time, until the effects of the deceased persons shall be fully administered, pass their accounts relating thereto before the circuit or other judge in the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed, then or at any earlier time, if the said chief or other judge shall see fit so to direct, the person or persons to whom such probate or administration shall be granted shall pay and deposit the balance of money belonging to the estate of the deceased then in his, her, or their hands, and all money which shall afterwards come into his, her, or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, into and in the treasury of the said Company, in the name of the treasurer, or accountant of the court, to abide the orders of the said circuit or other judge, or shall otherwise dispose of such money, goods, chattels, and securities as the said chief or other judge shall direct; and the said circuit or other judge shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof, or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said settlement, who may be entitled thereto, or any part thereof, as creditors, legatees, or next of kin, or by any other right or title whatsoever; and it shall be lawful for the said chief or other judge to allow to any executor or administrator of the effects of any deceased person or persons (except as herein mentioned) such commission or percentage out of his, her, or their assets as shall be just and reasonable, for their pains and trouble therein.

XXXIX. Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time, or to dispose of any money, goods, chattels, or securities with which he shall be chargeable, in such manner as in pursuance of any general or special rule or order of the said court shall be requisite, and moreover, every executor or administrator so neglecting to pass his accounts, or to dispose of any such money,

money, goods, chattels, or securities with which he shall be charged, shall be charged with interest, at the rate to be then current within the said settlement, for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof.

XI. And it is hereby enacted, that in the cases of persons dying in any of the said settlements, and leaving personal effects in more than one of the settlements, applications for probate or letters of administration shall be made to the chief judge only, whenever he shall be holding a court at any of the settlements in which such property may be, and probates and letters of administration granted by the chief judge in such cases shall have force in respect of all money, goods, chattels, and effects which the deceased was entitled to in all or any of such settlements.

XII. Provided, that in the absence of the circuit judge, the first resident judge of each of such settlements may take order for securing the property left therein by the deceased, until probate or letters of administration shall be issued by the circuit judge.

XIII. And it is hereby enacted, that the chief judge, and in his absence the first resident judge of each of the said courts, shall have authority to appoint guardians and keepers for infants and their estates, within the jurisdiction of such court, according to the order and course observed in England; and also guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason, so as to be unable to govern themselves and their estates, and in such cases to require, hear, and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered and known.

XIV. Provided, that when the estates of such incapacitated persons are situated in more than one of the said settlements, the appointment of keepers of such estates shall be made by the chief judge only; but the first resident judge in every such settlement shall take order intermediately for the security thereof.

XV. Clause 1. And it is hereby enacted, that appeals from the decrees made by the said courts in original suits shall be allowed under the following rules and provisions:

Clause 2. In every suit determined by any resident judge, an application may be made for a new trial to the circuit judge upon points of law. If a new trial be granted, it shall take place before the circuit judge, and the judge who originally tried the case, and if any difference of opinion shall arise between the judges upon such new trial, the case shall be decided according to the opinion of the circuit judge; provided, that the judge who originally tried the case shall be at liberty to record his opinion and reasons among the proceedings.

Clause 3. Any party desiring to apply for a new trial under this section, shall present a petition to the judge to whom the appeal lies, in person or by an agent, within one month from the date when the decision to which it relates was passed.

Clause 4. Provided, that such appeal shall be admissible, at the discretion of the appeal judge, at any time between one month and three months from such date, upon good and substantial cause being shown for such delay.

XVI. Clause 1. And it is hereby enacted, that a special appeal shall lie to Her Majesty's Supreme Court at Calcutta from decisions for the recovery of property or money exceeding in value or amount 5,000 rupees, passed by the circuit judge, and by the first resident judges of the said courts respectively, upon appeals heard by them under this Act, which shall appear to be inconsistent with the law applicable to the case, or with some usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice, upon which there may be reasonable doubts, under the following rules:

Clause 2. An application for a special appeal shall be presented to the court which passed the decree complained of, within the time limited for the presentation of regular appeals.

Clause 3. Every petition for a special appeal shall be accompanied with copies of the several decrees passed in the case, and the petition shall state precisely the point or points of law, usage, or practice in regard to which the decree of the first appellate court is impugned.

Clause 4. In every case of special appeal admitted as aforesaid, Her Majesty's Supreme Court at Calcutta shall determine the point or points certified as above directed, and no other point or part of the case, whatever.

Clause 5. And it is hereby provided, with respect to both regular and special appeals to Her Majesty's Supreme Court at Calcutta, that when the petition of

appeal shall be presented after the term of one month from the date of the decree, but within the term of three months, the lower court shall receive the petition, and in forwarding it, shall express an opinion upon the causes assigned for the delay.

XLVI. Clause 1. And it is hereby enacted, that criminal justice shall be administered by the courts hereby established after the following manner:

Clause 2. The said circuit judge shall from time to time hold a court of oyer and terminer and gaol delivery, in and for each of the said settlements, and shall hear and determine, by the oaths or affirmations of a jury of good and sufficient men, or of the major part thereof, all treasons, murders, and other crimes done or committed within such settlement, subject by law to the punishment of death, transportation, or imprisonment for life, or 14 years, or any longer term, without presentment or indictment by a grand jury; provided, that a grand jury shall be summoned to attend every such court of oyer and terminer, and shall have power to make such presentments as have hitherto been made in the court of judicature established by charter in the said settlements, and as they may deem it expedient to make; provided also, that the persons who may be summoned on grand juries shall be eligible to serve also upon the petit juries to be held before such court of oyer and terminer.

Clause 3. And the first resident judge of each settlement shall hold a court so often as there may be occasion for the trial of offences subject to a punishment less than any of the punishments aforesaid, and shall proceed without any presentment or indictment by a grand jury, but with a petit jury consisting of six persons.

Clause 4. And when in any case under trial by the first resident judge of any settlement it shall appear by the evidence that the crime committed is liable to a sentence which can be passed by the circuit judge only, the said judge shall quash the proceedings and shall order the case to be reserved for trial by the circuit judge.

Clause 5. Likewise in any case committed for trial before the first resident judge, if it shall appear on a perusal of the proceedings before the magistrate that the case is one which ought to be tried by the circuit judge, he shall order the case to be reserved for trial by him.

Clause 6. And in any case tried by the first resident judge of any settlement in which he has found the accused guilty, if a doubtful point of law is involved in the case, it shall be competent to such judge to refer the point for the opinion of the circuit judge, and he shall pass sentence according to the opinion delivered by the chief judge on such reference.

Clause 7. And the circuit judge and other judges aforesaid respectively shall from time to time, as there may be occasion, issue their warrant or precept to the sheriff of the settlement, commanding him to summon a convenient number, to be therein specified, of the inhabitants or persons commorant at the settlement, to serve as jurors on the trial of all persons charged with crimes to be tried by a jury; and if any person or persons summoned to serve as jurors aforesaid shall refuse or neglect to attend according to such summons, or to be sworn, or to make the affirmation required of them, or shall make other default, the said circuit judge, and other judges respectively, shall be empowered to punish such contempt by fine and imprisonment for a reasonable time to be limited, or by both; and the said circuit judge and other judges shall be empowered, in like manner and under the like penalties, to cause all such witnesses as justice shall require to be summoned, and to administer to them and each of them the like oaths and affirmations as may be administered to witnesses in civil suits under this Act, and to proceed to hear, try, and determine the crimes and offences upon which persons are charged before them and to give judgment thereupon, and to award execution thereof; and in all respects, except in so far as it is otherwise provided by this Act, to administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as the courts of oyer and terminer do or may in England, due attention being had to the several religions, manners, and usages of the native inhabitants.

Clause 8. And the second resident judge of each of the said settlements shall be magistrate and superintendent of police and coroner in and for the said settlement; and the resident judge in Province Wellesley shall be magistrate and superintendent of police and coroner in and for the said province.

Clause 9. And such magistrate shall be vested with all the powers of justices

of the peace in England, for the purpose of keeping the peace and for pursuing and arresting and bringing offenders to justice, and for doing all other acts which by virtue of any law or statute now in force in the said settlements may lawfully be done by a justice of a peace therein.

Clause 10. And such magistrate, as coroner, shall exercise the like powers, authorities, and jurisdictions as by law may be exercised by coroners elected for any county or place in England, provided, that he may hold an inquest with a jury consisting of any number of persons not less than three.

Clause 11. And such magistrate shall hold a preliminary investigation in cases of a nature to be tried by the circuit judge, or by the first resident judge, and shall commit the persons accused, or hold them to bail to take their trial in due course, or shall discharge them; and shall hold a court from time to time as may be necessary for the trial and punishment by himself, in such summary way as may be most consistent with the attainment of substantial justice, of crimes, offences, and misdemeanors subject to a punishment not exceeding ordinary imprisonment for six months or a fine of 200 rupees; and shall have power, in like manner and under the like penalties as aforesaid, to summon witnesses and to administer oaths and affirmations to them, and to punish contempts.

Clause 12. And the Governor of Bengal is hereby empowered to grant commissions, or to authorise the governor or the resident councillor in any of the said settlements to grant commissions, to any servants of the East India Company, or other inhabitants of the settlement, to assist the said magistrate in his executive functions, and to be his deputies in the office of coroner, and therein to exercise the same powers as he is hereby authorised to exercise, in concurrence with him and under his direction.

Clause 13. And the Governor of Bengal shall give such orders as he shall deem meet for the appointment of constables and subordinate peace officers to perform the duties usually performed by such officers in England, under the direction and control of the said magistrate.

Clause 14. And the said magistrates and assistants to magistrates, and all constables and peace officers, shall be subordinate to, and all their acts and proceedings shall be liable to be inquired into, annulled, corrected, and dealt with by the circuit judge of the said settlement, and by the like method and process, as near as may be, as justices, magistrates, and peace officers are subordinate to the Court of Queen's Bench in England.

Clause 15. And it is hereby provided and declared, that the courts hereby established shall not be competent to hear, try, and determine any charge against any of the judges thereof, nor any charge not being for treason or felony against the governor or any of the councillors.

Clause 16. And it is hereby enacted, that a copy of the proceedings in all cases determined by a resident judge, either with a jury or summarily, shall be furnished to the circuit judge at the earliest opportunity after his arrival at the settlements where the proceedings have taken place, and it shall be lawful for him to direct a new trial upon points of law, in like manner as in civil cases, without any special application being made to him for that purpose; and it shall be lawful for the circuit judge, at his discretion, to reserve any points of law occurring in criminal trials before himself, or before any resident judge, for the opinion of Her Majesty's Supreme Court at Calcutta.

XLVII. And it is hereby enacted, that any writ, warrant, or other process, issued by any judge or magistrate of any of the courts hereby established, may be executed within the jurisdiction of any other of the said courts in manner following: A copy of such writ, warrant, or other process, authenticated by the attestation of the judge or magistrate issuing the same, shall be transmitted by such judge or magistrate to any judge of the General Court for the settlement in which the process is to be executed, who upon the receipt thereof shall endorse the process, and direct it to be executed by the sheriff of the settlement, in the same manner and subject to the same rules as if it were a process issued by the said court; and all persons disobeying or obstructing the execution thereof, shall be punishable by the said judge as for disobedience or obstruction of process so issued.

XLVIII. Provided, that the judge to whom any such process shall be transmitted for execution as aforesaid may return the same for amendment if it shall appear to be defective in form.

XLIX. And provided, that the judge to whom any writ, warrant, or other process for the seizure or detention of any person shall be transmitted for execution

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as aforesaid, shall have authority, by his endorsement thereon, to direct that bail may be taken, specifying in such endorsement the amount and number of sureties, and for this purpose to call for such documents and to make such inquiry as he shall think proper.

L. And it is hereby enacted, that the Governor of Bengal shall determine and order whether any and what oaths or affirmations shall be taken or made, and in what manner, by the sheriffs, coroners, and other officers who shall be appointed under this Act.

LI. And it is hereby enacted, that a table of the fees to be taken in the said courts for any business to be done therein shall be settled by the Governor of Bengal, and shall be varied from time to time at the discretion of the said governor, subject always to the approbation and correction of the Governor-general of India in Council; and provided, that the table of fees which shall be in force in the court of judicature of Prince of Wales' Island, Singapore, and Malacca at the time when this Act shall come into operation shall be observed in the courts established by this Act, until a new table of fees shall be settled as aforesaid.

LII. And it is hereby enacted, that indictments, informations, actions, suits, causes, and proceedings, depending in the said court of judicature and courts of request which by this Act are abolished, whether originally instituted in such court in any branch of its jurisdiction, or transferred from any other court or courts, shall not by such abolition be abated, discontinued, or annulled, but the same shall be transferred in their then subsisting condition respectively, to, and shall subsist and depend in the said courts hereby established, according to the several jurisdictions hereby given to such courts, severally and respectively, to all intents and purposes as if they had been respectively commenced, brought, found, presented, or recorded in the said courts hereby established; and the said courts hereby established are authorised and empowered to proceed accordingly in all such indictments, informations, actions, suits, causes, and proceedings, to judgment and execution, and to make such rules and orders respecting the same, and also respecting any sum or sums of money belonging to the suitors of the said court of judicature and courts of requests as the said courts might have made, or as the said courts hereby established are empowered to make in causes, suits, or proceedings commenced or depending before the said courts hereby established; for which purpose it is enacted, that all the records, muniments, and proceedings whatsoever, of or belonging to the said court of judicature or courts of requests, or which ought to be deposited with such courts respectively, shall be delivered and deposited and preserved amongst the records of the General Courts of Singapore, Prince of Wales' Island, and Malacca.

LIII. And it is hereby enacted, that the session judge, with the resident judges of the General Courts of Singapore, Prince of Wales' Island, and Malacca, hereby established, shall frame such process and make such rules and orders for the execution of the same in all suits to be commenced, sued, or prosecuted, and in all criminal proceedings within their jurisdiction, as shall be necessary for the due execution of all or any of the powers hereby committed thereto, and shall make such rules with respect to the qualification, appointment, term of summoning, challenging, and service of jurors and assessors as they may deem expedient and proper, with an especial attention to the different religions, manners, and usages of the persons who shall be resident or commorant within their jurisdiction, and accommodating the same to their several religions, manners, and usages, and to the circumstances of the country, so far as the same can consist with the due execution of law and the attainment of substantial justice.

LIV. Provided always, and it is further enacted, that all forms of processes, and rules and orders for the execution thereof, which shall be framed by the said courts, shall be transmitted to Her Majesty's Supreme Court at Calcutta, to be by the said court communicated, with their observations, to the Governor-general of India in Council, for correction, approbation, or refusal; and such process shall be used, and such rules shall be observed, until the same shall be repealed or varied by the Governor-general of India in Council.

MINUTE by the Honourable *H. T. Prinsep*.

Legis. Cons.
30 Dec. 1842
No. 26.

Draft of Act for
Straits Settlements.

I AM prepared to concur in the draft now submitted by Mr. Amos, as amended from that of the Law Commission, with one or two very immaterial alterations that do not affect the principle of the reforms contemplated.

The alterations I have to suggest are in sections 20 and 23. Mr. Amos, under the differences of opinion which exist, is for striking out of the draft of the Law Commissioners the rules prescribing forms of proceeding and of pleading, and I entirely concur in the propriety of this. But instead of providing that these forms shall continue as now prescribed in the charter, and practised or established under rules of court which would compel reference for argument to an abrogated instrument, and the practice of a court no longer existing, I should much prefer that the rules of practice shall be left to be established for the new courts by the judges, subject to approval and confirmation by the Governor-general in Council. We may then executively prescribe that it is not intended to make alterations, and require the existing rules to be made out and embodied into a code of rules, to be submitted for formal approval. This plan will have the same effect as the draft, as it stands amended by Mr. Amos, with the advantage of allowing, *mutatis mutandis*, a set of rules to be prepared and amended from time to time, specifically to suit the circumstances of the new courts.

Another amendment I would propose is to omit from section 31 the provision allowing the court to sequester government property to compel appearance to defend a suit. This is part of the old leaven of the East India Company's commercial character, and is introduced into the Royal charters which established courts hostile to the Company's governments; but there can be no necessity for our adopting the same course with courts to be established under our legislative Acts. The provision does not seem to be necessary for any purpose contemplated, as the Act prescribes that the executive shall nominate a person to defend a suit; there will therefore be culpability if the duty be omitted, and the responsibility for this ought to suffice.

Calcutta, 24 Nov. 1842.

(signed) *H. T. Prinsep*.

(No. 977.)

EXTRACT from the Proceedings of the Honourable the President of the Council of India in Council in the Financial Department, under date the 30th November 1842.

Legis. Cons.
30 Dec. 1842.
No. 27.

(No. 130 of 1842.)

From the Governor of Prince of Wales' Island, Singapore, and Malacca, to *G. A. Bushby*, Esq. Secretary to Government, Fort William.

SIR, I do myself the honour to forward, for the information of the Honourable the President in Council, a statement of the receipts and disbursements of Prince of Wales' Island, Singapore, and Malacca, during the past official year. The total expenditure of 1841-42 exceeds that of 1840-41 by 20,307 rupees; still the increasing revenue derivable from Singapore has diminished the general expenses of the three places to the state by 1,29,147 rupees, during the same period. The total expenditure of every description, including military and convicts, being during the past official year 13,90,692, the receipts 7,25,681 rupees, shows the expenditure to exceed the receipts by 6,64,831 rupees.

2. Taking the expenses of these settlements together, exclusive of military and convicts, the receipts exceed the disbursements by 56,691 rupees. This, in my opinion, may be fairly placed against the expenses of the convicts, which amounted during the same period to 88,684 rupees; for the difference of 31,993 rupees can scarcely be considered too large a sum for the benefit that the several presidencies derive from being able to get rid of their most atrocious criminals, amounting at present to the number of 2,250 at the three places.

3. From the above remarks, it will be seen that the expenses of the Straits settlements

Financial Dep.

88,684

56,691

31,993

Singapore - 1,265

Penang - 778

Malacca - 207

2,250

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settlements beyond their receipts principally arise from the military force employed for their protection. This force has heretofore consisted of two regiments of Madras native infantry, a company of Golundauze, and half a company of Europeans; and during the past official year, as nearly as can be ascertained, the expenses thereof amounted to 6,32,838 rupees. In my letter of the 9th August last, I ventured to suggest that a strong regiment of 1,000 privates and 200 Golundauze would answer all useful purposes; and should this be approved of, these settlements will then cost the state about 3 ½ lacs of rupees.

4. On various occasions I have pointed out how the revenues of these stations might be made to meet their expenditure by the imposition of custom-house duties, the home authorities, however, appear to be determined they shall remain "free ports." It is not quite just, therefore, to say our receipts do not pay the expenses, seeing if they were managed as are Calcutta, Madras, and Bombay, and all other places maintained entirely for the convenience and extension of commerce, a different result would immediately appear.

5. To enable the Honourable the President in Council to judge of the truth or otherwise of this position, I subjoin a statement of the value of the imports and exports into and from Singapore alone, during the past 10 years. This will show the extent and nature of the trade, which, from Mr. Phipp's "Practical Treatise on the China and Eastern Trade," published in Calcutta in 1835, page 270, I find amounted at that time to something more than one-half of the trade of that city.

	IMPORTS.	EXPORTS.
1832-33 - - - -	1,82,85,558	1,59,12,740
1833-34 - - - -	1,81,56,385	1,94,71,297
1834-35 - - - -	1,45,03,362	1,51,24,230
1835-36 - - - -	1,48,61,122	1,40,25,850
1836-37 - - - -	1,69,05,093	1,56,58,066
1837-38 - - - -	1,83,14,849	1,59,31,669
1838-39 - - - -	1,66,09,411	1,52,42,898
1839-40 - - - -	2,17,90,194	1,86,35,189
1840-41 - - - -	2,97,44,135	2,43,10,686
1841-42.		

6. The number of square-rigged vessels entering the port during the past 10 years is as follows.

	Number.	Total Tonnage.
1832-33 - - - -	420	120,443
1833-34 - - - -	475	137,298
1834-35 - - - -	517	156,513
1835-36 - - - -	539	166,053
1836-37 - - - -	541	170,635
1837-38 - - - -	520	150,532
1838-39 - - - -	574	178,796
1839-40 - - - -	552	148,803
1840-41 - - - -	762	220,217
1841-42.		

7. The population of the three places during the same period has ranged thus:

	Penang and Province Wellesley.	Singapore.	Malacca.
1832	80,615	19,715	—
1833	86,275	20,978	31,916
1834	—	26,339	29,260
1835	—	—	31,908
1836	86,009	29,984	31,825
1841	101,573	39,681	46,096

8. At this station the disbursements of every description, including the military and convicts, exceeded its receipts, during 1841-42, by 77,252 rupees, but I am in hopes that during the present year, in consequence of the reduction of the military force, this station will pay its own expenses; and this it will certainly do if one-half of the expenses of the convicts are debited, as it appears to me they should be, to the general government of India, and not to Singapore, where they are sent solely for the convenience of the governments of India. Exclusively of military and convicts, the revenue exceeded the local charges by a little more than two lacs of rupees.

Singapore.

9. At this station the total expenses exceeded the receipts by 3,49,055 rupees; they will, however, be materially reduced this year by the reduction of the military force; still, however, it will be seen by the statement that, exclusively of the military and convicts, the local charges exceeded the revenue by 55,709 rupees. Little or no improvement can, I fear, be expected in the revenues at Penang, though something may be obtained at Province Wellesley by the sale of lands.

Penang.

10. The only means that I can perceive of ever making the receipts and disbursements of this station more nearly approximate, is the imposition of custom duties. It may, perhaps, be considered objectionable to subject one of the stations to this tax, and not the others; but it must be remembered that the inhabitants of Penang themselves have applied to be put on the same footing as Bengal with respect to the import and export of sugar, which if acceded to by government, will necessitate the formation of a preventive service, which will cost 6,000 rupees annually, for double this sum, an efficient custom-house establishment might be maintained; and as the port, if it be declared a non-importing sugar colony, can no longer be considered free, there appears less objection to the imposition of duties than there might be under other circumstances; at all events, something should be done to prevent its continuing a dead weight on the finances of India; and I am altogether unprepared, though I have deeply considered the matter, to propose any other plan.

1840-41.

Rs.
Imports, 53,48,757
Exports, 55,00,091

11. The local expenses of this place exceed its receipts by 91,178 rupees; inclusive of military and convicts, by 2,38,523 rupees. At this station there is no chance whatever of raising the revenue; the people are all wretchedly poor and miserable, and the place has no trade whatever; the lands are all alienated, except in Nanning, the population of which does not exceed 6,700* souls. It will be entirely useless to expect from any present outlay any future returns; I would therefore recommend that as the present incumbents are absorbed, their places should not be filled up. One principal assistant, on 1,000 rupees per month, with three or four clerks, is all that can be required. This officer should, as at present, continue to be a member of the court of judicature, and have in civil cases jurisdiction to any extent, his proceedings to be liable to revision by the governor, as the president of the court, or by the recorder. In criminal cases he should have the power, without a jury, of incarceration for six months, and with a jury, for a period not exceeding two years, and be allowed to entertain offences of the same description as it is proposed that the judge of the contemplated subordinate criminal court in Calcutta should be entrusted with. Cases of a deeper and more aggravated nature must be sent for trial to Singapore. During the year 1841, only 29 suits were filed in the court, the amount in dispute being 15,500 dollars.

Malacca
1840-41.

Rs.
Imports, 2,81,855
Exports, 2,46,124
* Males - 3,092
Females - 3,557
6,649

12. I am induced to bring these matters thus minutely to the immediate consideration of the Honourable the President in Council, in consequence of a plan

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Conveyances.

that I am aware has been proposed of reducing the emoluments of the principal officers of those establishments very considerably. Whatever reductions are ordered can have but little effect on my position, for I am not likely to remain much longer. I may therefore be considered as having little personal interest in the matter; but the few remarks I have to make may also be considered in consequence to be entitled to more consideration than if otherwise situated.

13. The foregoing data will at once exhibit the importance of the trade of Singapore, the number of ships that annually visit it, and that it carries on a trade with all countries in Europe, as well as with all the neighbouring native states, and that by far more foreign flags are seen in its harbour than in any other in India, and, I trust, convince the government that a gentleman at the head of an establishment of this description is on a perfectly different footing, as regards calls on his hospitality, to a judge and magistrate on the continent of India; and considering that he has to perform a great portion of the judicial duties of the place, as well as those of the executive, I am disposed to think that his time is nearly as fully employed.

14. The government is aware, moreover, that in these stations every article of provision is exorbitantly dear: a Bengal sheep, for instance, costs 10 dollars; common poultry, 3 dollars per dozen; and all other necessaries are on the same scale. Whether, therefore, it will be proper to reduce the salaries of the resident councillors at Singapore and Penang, and the recorder to a salary below what the former at present enjoy, I must leave to the liberal consideration of the government, but I am prepared to add, that if their salaries are reduced below these rates, the incumbents will be entirely unable to live in a manner their positions call on them to do, or even on a par with the principal merchants of the place.

15. The government will be aware that I have been at Singapore from its very infancy, and have seen it rise in 22 years from a desert to a place carrying on an import and export trade to the extent of 5,40,54,823 rupees, and affording during the past year a revenue of 4,67,629 rupees. It is impossible, therefore, that I can be indifferent to its welfare, even when I have ceased to have any official connexion with it; and I therefore venture respectfully, but urgently, to solicit the full consideration of the government to the facts set forth in this paper, in the full hope that no reductions may be made in the salaries of the governor, the resident councillors at Singapore and Penang, or of the recorder, on the occurrence of vacancies.

16. I would also beg to be allowed to remark, that if the salaries of the resident councillors are reduced, the appointments will, on vacancies occurring, be anything but desirable for gentlemen of the Bengal civil service, as it can scarcely be expected under such circumstances that they will be desirous to leave their own presidencies to take office in strange and much more expensive places; and the result will be, that the thriving settlement of Singapore, which is now rapidly rising into importance, and to which the Honourable Court of Directors, and mercantile community of Great Britain and India, attach considerable importance, will fall under the immediate control of the most indifferent of the government servants, or of those who from various causes may be desirous of being as far from the seat of government and the control of their superiors as possible.

I have, &c.

(signed) *S. G. Bonham,*
Governor of Prince of Wales' Island,
Singapore and Malacca.

Singapore,
21 October 1842.

Ordered, that a copy of the foregoing letter, and of the statement therein mentioned, be sent to the Legislative Department for information.

(A true extract.)

(signed) *H. V. Bayley,*
Deputy Secretary to the Government of India

(A)

Legis. Cons., 30th December 1842.—No 28. Enclosure.

STATEMENT of the Proper Receipts and Disbursements of *Prince of Wales' Island, Singapore, and Malacca* for 1841-42, exclusive of Military and Convicts.

	No. 1. 'Prince of Wales' Island, including Province Wellesley.	No. 2. Singapore.	No. 3. Malacca.	TOTAL.
Receipts:	Co.'s Rs. a. p.	Co.'s Rs. a. p.	Co.'s Rs. a. p.	Co.'s Rs. a. p.
Amount of excise farms received in 1841-42	1,24,481 4 -	3,19,879 3 1	42,813 15 3	4,87,174 6 4
Amount of quit and ground-rent	35,469 4 8	20,551 14 9	321 4 5	56,342 7 10
Amount of transfer fees in Land-office	574 2 7	530 10 3	314 6 5	1,419 3 3
Amount of land sold on building leases	- - -	74,073 8 8	- - -	74,073 8 8
Amount of fees received from court of judicature	9,982 12 2	14,207 4 3	3,362 8 10	27,552 9 3
Amount of fees received from court of requests	11,624 11 4	8,897 9 7	3,809 11 9	24,337 - 8
Amount of fines and fees received from sheriff, sitting magistrate, and quarter sessions.	832 10 11	583 12 6	126 15 7	1,543 7 -
Amount received for postage	4,336 7 7	10,285 12 5	133 2 -	14,755 6 -
Amount received for local passes, &c. granted to vessels.	1,121 14 3	849 12 11	29 - -	1,991 10 2
Amount received for water supplied from government aqueduct.	713 1 2	- - -	- - -	713 1 2
Amount of rent of government buildings	213 4 11	- - -	- - -	213 4 11
Amount of sale of presents, and old stores sold	3,931 11 7	948 5 7	51 3 9	4,931 4 11
Amount of premium on bills of exchange	3,518 7 1	16,821 7 11	560 12 4	20,900 11 4
Amount of hire of local convicts	- - -	- - -	194 3 6	194 3 6
Amount of agricultural rents	- - -	- - -	3,669 10 -	3,669 10 -
Amount of one-tenth on lands and tin mines	- - -	- - -	5,011 13 4	5,011 13 4
Amount collected on brick-kilns	- - -	- - -	173 7 11	173 7 11
Amount refunded by parties	100 - -	- - -	13 7 6	113 7 6
Amount of duty on timber	751 - 5	- - -	- - -	751 - 5
	1,97,655 12 8	4,67,629 4 11	60,576 10 7	7,25,861 12 2
Excess of disbursements	55,709 1 5	- - -	91,178 14 8	1,46,888 - 1
Co.'s Rs.	2,53,364 14 1	4,67,629 4 11	1,51,755 9 3	8,72,749 12 3

	No 4 Prince of Wales' Island, including Province Wellesley.	No. 5. Singapore.	No. 6 Malacca.	TOTAL.
Disbursements:	Co.'s Rs. a. p.	Co.'s Rs. a. p.	Co.'s Rs. a. p.	Co.'s Rs. a. p.
Salary of resident councillor for 1841-42	24,000 - -	24,000 - -	24,000 - -	72,000 - -
Salary of assistant, inclusive of military pay, for 1841-42	19,429 - -	7,663 8 -	7,200 - -	34,292 8 -
Salary of Mr G. T. Gottlieb for general duties, for three months.	719 - -	- - -	- - -	719 - -
Salary of resident commissioners' establishment for 1841-42	3,910 12 -	3,744 - -	3,636 - -	11,290 12 -
Court of judicature establishment for 1841-42	14,714 - -	12,258 - -	8,550 - -	35,520 - -
Sheriff's establishment for 1841-42	4,202 11 -	5,010 - -	3,032 6 -	12,245 1 -
Coroner's establishment for 1841-42	1,379 6 -	1,379 6 -	120 - -	2,878 12 -
Court of request establishment for 1841-42	3,600 - -	2,400 - -	1,800 - -	7,800 - -
Police establishment at Province Wellesley for 1841-42.	10,224 - -	- - -	- - -	10,224 - -

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(cont.nued)

SPECIAL REPORTS OF THE

	No. 4. Prince of Wales' Island, including Province Wellesley	No. 5. Singapore.	No. 6. Malacca,	TOTAL.
	Co.'s Rs. a. p.	Co.'s Rs. a. p.	Co.'s Rs. a. p.	Co.'s Rs. a. p.
<i>Disbursements—continued.</i>				
Chaplain's salary and establishment for 1841-42	10,757 - -	9,240 - -	1,906 7 2	21,903 7 2
Assistant chaplain's salary for 9 ½ months - -	556 7 3	4,750 - -	- - -	5,306 7 3
Surgeon's salary and establishment for 1841-42 -	4,441 4 8	12,090 - -	= = =	16,531 4 8
Assistant surgeon's salary and establishment for two months.	- - -	800 - -	5,554 3 -	6,354 3 -
Post-office establishment for 1841-42 - -	896 10 8	1,200 - -	456 - -	2,552 10 8
Import and export establishment for 1841-42 -	2,074 2 8	3,960 = =	1,278 - -	7,312 2 8
Land department for 1841-42 - - -	10,448 5 6	4,857 6 -	2,160 - -	17,465 11 6
Harbour-master's department and establishment for 1841-42	3,619 5 4	6,097 8 -	1,056 - -	10,772 13 4
Rented houses, and persons in charge of ditto, for 1841-42.	1,837 15 2	3,007 14 -	- - -	4,845 13 2
Chinese poor-house and pauper hospital for 1841-42.	- - -	5,620 1 6	- - -	5,620 1 6
Magazine department, exclusive of conductor's salary, for 1841-42.	4,035 8 9	1,854 - -	1,014 - -	6,903 8 9
Executive officer's department for 1841-42 -	1,200 - -	600 - -	1,200 - -	3,000 - -
Signal department for 1841-42 - - -	752 7 -	540 - -	240 - -	1,532 7 -
Political pensions and stipends for 1841-42 -	23,676 15 5	18,860 12 -	- - -	42,537 11 5
Local pensions for 1841-42 - - -	6,955 9 -	2,229 15 -	3,738 12 -	12,924 4 -
Schools for 1841-42 - - -	4,740 5 -	5,214 6 -	3,894 - -	13,848 11 -
Annuities to former landed proprietors for 1841-42	- - -	- - -	17,354 10 8	17,354 10 8
Tide-gauge establishment for 1841-42 - -	720 - -	- - -	- - -	720 - -
Loss on disbursing salaries at 220 per $\frac{1}{100}$ -	8,630 11 8	5,333 15 11	2,803 5 3	17,768 - 10
Contingencies in the several departments, including repairs and erection of buildings, &c., from 1st May to 30th April 1842.	36,031 9 9	70,524 14 2	10,948 1 11	1,17,504 9 10
	2,03,551 2 10	2,14,235 10 7	1,01,941 14 -	5,19,728 11 5
Add,				
One-third of the net salary of the governor establishment for 12 months, including passage in the Helen, and batta to clerk and peons.	13,824 13 7	13,824 13 7	13,824 13 7	41,474 8 9
One-third of the net salary of the recorder and establishment for 12 months.	15,001 13 4	15,001 13 4	15,001 13 4	45,005 8 -
One-third of the net salary of the registrar of the court of judicature for 12 months.	5,973 5 4	5,973 5 4	5,973 5 4	17,920 - -
One-third of the expenses incurred on account of the steamer Diana, three gun-boats, superintendent, and contingencies, for 12 months.	15,013 11 -	15,013 11 -	15,013 11 -	45,041 1 -
	2,53,364 14 1	2,64,049 5 10	1,51,755 9 3	6,69,169 13 2
Excess of receipts at - - -	- - -	2,03,579 15 1	- - -	2,03,579 15 1
	Co.'s Rs. 2,53,364 14 1	4,67,629 4 11	1,51,755 9 3	8,72,749 12 3

<i>Memorandum.</i> —Receipts of the incorporated settlements	Co.'s Rs. a. p.
Disbursements - ditto - ditto	7,25,861 12 2
Excess of Receipts - - -	6,69,169 13 2
	Co.'s Rs. 56,691 15 -

(B.)

STATEMENT of EXPENSES incurred for the Military serving at *Prince of Wales' Island, Singapore, and Malacca,* from 1st May 1841 to 30th April 1842.

	No. 7 Prince of Wales' Island, including Province Wellesley	No. 8. Singapore.	No. 9 Malacca	TOTAL.
	Co.'s Rs. a p.	Co.'s Rs. a p.	Co.'s Rs. a p.	Co.'s Rs. a p.
Amount advanced to Madras troops - - -	1,44,118 4 6	1,07,693 10 -	59,735 3 -	3,11,547 1 6
*Paid at Madras on account of ditto - - -	76,257 8 -	93,318 8 -	*52,572 - -	2,22,148 - -
*Provisions issued to troops (estimated value)	32,333 6 11	25,910 13 7	*17,566 6 8	75,810 11 2
Military stores issued to ditto (unknown)				
Periodical relief of troops to and from Madras (unknown)				
Paid sundry contingencies - - - -	2,633 10 7	2,444 12 -	3,502 6 4	8,580 12 11
Salary of deputy commissaries and conductors -	5,901 - -	2,338 8 -	2,698 8 -	10,938 - -
Military pay as assistant - - - -	730 8 -	2,508 15 -	- - -	3,239 7 -
Salary to the Rev. Mr. Bucks for the spiritual care of the European professors of the Roman-catholic faith.	300 - -	- - -	- - -	300 - -
Invalid sepoy pensioners - - - -	- - -	- - -	274 1 -	274 1 -
	Co.'s Rs. 2,62,274 6 -	2,34,215 2 7	1,36,348 9 -	6,32,838 1 7

* Estimated as in the year 1840-41, the 39th Regiment having proceeded to China before this statement was completed.

(C.)

STATEMENT of EXPENSES incurred for Continental Convicts at *Prince of Wales' Island, Singapore, and Malacca,* from 1st May to 30th April 1842

	No. 10. Prince of Wales' Island, including Province Wellesley.	No. 11. Singapore.	No. 12. Malacca.	TOTAL
	Co.'s Rs. a p.	Co.'s Rs. a p.	Co.'s Rs. a p.	Co.'s Rs. a p.
Establishment - - - -	5,760 - -	7,392 - -	2,009 - -	15,161 - -
Rations, including money allowance - - -	25,075 6 -	35,754 2 6	8,200 12 9	69,030 5 3
Clothing - - - -	1,921 10 6	3,541 15 2	89 1 -	5,552 10 8
Contingencies - - - -	2,659 4 1	3,622 11 7	696 13 1	6,978 12 9
Passage from Bombay - - - -	- - -	880 - -	- - -	880 - -
Deduct .	35,416 4 7	51,190 13 3	10,995 10 10	97,602 12 8
Received hire of continental convicts - -	4,344 11 2	4,573 8 2	- - -	8,918 3 4
	Co.'s Rs. 31,071 9 5	46,617 5 1	10,995 10 10	88,684 9 4

SPECIAL REPORTS OF THE

ABSTRACT STATEMENT of the REVENUE and CHARGES of Prince of Wales' Island, Singapore, and Malacca, for the Official Year 1841-42.

		Co.'s Rs. a. p.	Co.'s Rs. a. p.
Prince of Wales' Island.			
Local charges, as per statement - - (A.) No. 4		2,53,364 14 1	
Expenses of troops - ditto - - - (B) - 7		2,62,274 6 -	
Expenses of continental convicts, ditto (C.) - 10		31,071 9 5	
Deduct,			
Revenue at Prince of Wales' Island (A.) - 1		5,46,710 13 6	
Deficit at Prince of Wales' Island		1,97,655-12 8	3,49,055 - 10
Singapore:			
Local charges, as per statement - - (A.) No. 5		2,64,049 5 10	
Expenses of troops - ditto - - - (B) - 8		2,34,215 2 7	
Expenses of continental convicts, ditto (C) - 11		46,617 5 1	
Deduct,			
Revenue at Singapore - - - - - (A.) - 2		5,44,881 13 6	
Deficit at Singapore -		4,67,629 4 11	77,252 8 7
Malacca.			
Local charges, as per statement - - (A.) No. 6		1,51,755 9 3	
Expenses of troops - ditto - - - (B) - 9		1,36,348 9 -	
Expenses of continental convicts, ditto (C.) - 12		10,995 10 10	
Deduct,			
Revenue at Malacca - - - - - (A.) - 3		2,99,099 13 1	
Deficit at Malacca -		60,576 10 7	2,38,523 2 6
TOTAL Deficit at the Settlements of Prince of Wales' Island, Singapore, and Malacca, in the year 1841-42		Co.'s Rs.	6,64,830 11 11

COMPARATIVE STATEMENT of the REVENUE and CHARGE of Prince of Wales' Island, Singapore, and Malacca, between the Official Years 1840-41, 1841-42.

	1840-41.	1841-42.	INCREASE.	DECREASE.
Local charges of the three stations	5,97,857 9 7	6,69,169 13 2	71,312 3 7	-
Charges on account of troops	6,79,364 14 11	6,32,838 1 7	-	46,526 11 4
Charges on account of continental convicts	93,162 12 3	188,684 9 4	-	4,478 2 11
	13,70,385 2 9	13,90,692 8 1	71,312 3 7	51,004 14 3
		13,70,385 2 9	51,004 14 3	-
Deduct,				
Revenue at the three stations	5,76,407 6 10	20,307 5 4 7,25,861 12 2	20,307 5 4 1,49,454 5 4	-
	5,76,407 6 10	7,05,554 6 10	1,29,147 - -	-
		5,76,407 6 10	-	-
Decrease of Charges in 1841-42, after deducting the Revenue -		1,29,147 - -	1,29,147 - -	-

(signed) S. G. Bonham,
Governor of Prince of Wales' Island, Singapore, and Malacca

(A true copy.)

(signed) H. V. Bayley,
Deputy Secretary to the Government of India.

AN ACT for the Administration of Justice within the Straits Settlements.

I. WHEREAS it is expedient that "the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca," established by charter or letters patent of his Majesty King George the Fourth, under date the 27th November, A. D. 1826, and "the courts for the recovery of small debts," established in the said settlements under authority of the said charter, should be abolished, and that other provision should be made for the administration of justice in the said settlements, and whereas the Governor-general of India in Council has obtained the sanction of the Court of Directors of the East India Company to the abolition of the said Court of Judicature;—

It is hereby enacted, that the jurisdiction of "the Court of Judicature of Prince of Wales' Island, Singapore and Malacca," established by the said charter, and all powers and authorities thereby granted to or vested in the said court, and the jurisdiction of the courts for the recovery of small debts, established in the said settlements under authority of the said charter, shall cease and determine on the 31st day of —

II. And it is hereby enacted, that after the 31st of — A. D. — the entire administration of justice, civil and criminal, within the said settlements, except in respect of causes and matters and crimes and offences falling within the jurisdiction of courts of admiralty and vice-admiralty, and military courts, shall be vested exclusively in the courts constituted by this Act.

III. And it is hereby enacted, that on the 1st day of — A. D. — a court of record for the administration of civil and criminal justice shall be established in the settlement of Singapore, which shall consist of three or more judges, and a court of record similarly constituted in each of the settlements of Prince of Wales' Island, and Malacca; and the said courts shall be called respectively, "The General Court of Singapore," "The General Court of Prince of Wales' Island," and "The General Court of Malacca."

IV. And it is hereby enacted, that whenever in this Act any of the said settlements shall be mentioned, all places subordinate or annexed thereto shall be understood to be included.

V. And it is hereby enacted, that one of the judges of the General Court of Singapore shall be also appointed a judge of the general courts of Prince of Wales' Island and Malacca, and shall be called the circuit judge, and that such judge shall reside principally at Singapore, but shall visit each of the settlements of Prince of Wales' Island and Malacca three times in every year, and shall sit in court from time to time at each place in succession, until he has disposed of the business that may be waiting for him, or may come before him during his visit.

VI. And it is hereby enacted, that such circuit judge shall be a barrister of the English or Irish bar of not less than five years standing, or an advocate of the Scottish bar of not less than five years standing; that he shall be appointed by the Governor-general of India in Council; that he shall receive such salary as the Governor-general of India in Council shall deem fitting; and that he shall not hold any other office, place, or employment, or be engaged in or carry on any trade, traffic, or business whatsoever, or that the acceptance of any such other office, place, or employment, or the engaging in or carrying on any such trade, traffic, or business, shall be in law an avoidance of his office.

VII. And it is hereby enacted, that the number of other judges to be appointed, to the general court in each of the said settlements, who shall be called resident judges of such settlement, and shall be distinguished as first, second, and so on, shall be determined by the Governor-general of India in Council, and may be reduced or increased from time to time as to the said Governor-general in Council may seem meet.

VIII. And it is hereby enacted, that such resident judges shall be appointed by the Governor of Bengal; and that it shall be competent to him to appoint either such professional persons as aforesaid, or persons being executive officers of government, to be such judges.

IX. And it is hereby enacted, that the salary to be assigned to every such judge shall be determined by the Governor-general of India in Council, regard being had to his qualifications, and if he holds any other office under government, to the salary of that office.

X. And it is hereby enacted, that every judge appointed as aforesaid, before he shall be capable of exercising the office of judge or magistrate under this Act, shall take in open court, in such manner as shall be directed by the Governor of Bengal, an oath, or shall make a solemn declaration as shall be ordered by the said Governor of Bengal, that he will, to the best of his knowledge, skill, and judgment, duly execute the office of judge or magistrate, and impartially administer justice in every cause, matter, or thing, which shall come before him; of which oath or declaration a record shall forthwith be made.

XI. And it is hereby enacted, that every judge of the said courts shall have and use a seal, with his official designation inscribed upon it, and that all notices, writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by such judge, shall be sealed with such seal, and shall be signed by such judge.

XII. And it is hereby enacted, that a fit and proper person shall be appointed by each of the said general courts to be sheriff of the settlement, subject to the jurisdiction of such court, who shall continue in such office until another person shall be appointed by the same authority to succeed him therein: Provided, that no person shall be appointed sheriff of any of the said settlements, and that no person having been duly appointed sheriff shall be removed from office, without the express consent of all the judges of such settlement.

XIII. And it is hereby enacted, that the sheriff of every settlement appointed as aforesaid shall execute all the writs, summonses, rules, orders, warrants, commands, and process of the several judges of the general court of the settlement, and make returns of the same, together with the manner of the execution thereof, to the judge who shall have issued the same, and shall receive and detain in prison all such persons as shall be committed to his custody by any of the said judges, or any other person having competent authority so to do; and to do all such acts, matters, and things, and perform all such duties, as nearly as circumstances shall admit or require, as are or ought to be done and performed by the sheriff of any shire or county in England.

XIV. Provided, that the sheriff of Prince of Wales' Island shall appoint a deputy, for whom he shall be responsible, to execute the process issued by the resident judge in Province Wellesley.

XV. And it is hereby enacted, that whenever any of the judges of any of the said courts shall direct and award any process against the said sheriff, or award any process in any cause, matter or thing, wherein the said sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot, or ought not by law to execute the same, in every such case such judge shall name and appoint some other fit person to execute and return the same; and the said process shall be directed to the said person so named for that purpose, and the cause of such special proceedings shall be suggested and entered on the records of the said court.

XVI. And it is hereby enacted, that the several judges of the said courts shall have such jurisdiction and authority as the Court of Queen's Bench and the justices thereof, and also as the High Court of Chancery, and the Courts of Common Pleas and Exchequer respectively, and the several judges, justices, and barons thereof, respectively have and may lawfully exercise, within that part of the United Kingdom called England, in all civil and criminal actions and suits, and in matters concerning the revenue; and that the said judges severally shall have and exercise the jurisdiction exercised by the ecclesiastical courts in England so far as the several religions, manners, and customs of the inhabitants of the said settlements will admit.

XVII. And it is hereby enacted, that each of the said courts within the settlement for which it is constituted, shall have full power to hear, examine, try, and determine, in manner hereinafter mentioned, all actions and suits which shall or may arise, or happen or be brought or promoted upon or concerning any trespasses or injuries, of what nature or kind soever, or any debts, duties, demands, interests, or concerns, of what nature or kind soever, or any rights, titles, claims, or demands of, in, or to any houses, lands, or other things, real or personal, within such settlements, or touching the possession or any interest or lien in or upon the same, and all pleas, real, personal, or mixed, the causes of which shall or may hereafter arise, accrue, and grow, or shall have heretofore arisen, accrued, and grown, against the East India Company, and against any persons who shall

be resident within such settlement, or who shall have resided there, or who shall have any debts, effects, or estate, real or personal, within the same, and against the executors and administrators of such persons.

XVIII. Provided always, that it shall not be competent to such court to try or determine any suit or action against any person who shall never have been resident in the said settlement, nor against any person then resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland shall be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than 12,000 dollars.

XIX. Provided always, that nothing in this Act shall extend or be construed to extend to subject the person of the governor or resident, or any of the councillors of the said settlements, or the person of any judge of Singapore, Prince of Wales' Island, and Malacca, to be arrested or imprisoned in any civil suit, action, or proceeding in any of the said courts.

XX. And it is hereby enacted, that the process and the practice of the said courts shall be regulated according to such forms and rules as may be established by the judges of the said courts, subject to the approval and confirmation of the Governor-general in Council, as are now used in the aforesaid Court of Judicature established by charter, or as near thereto as circumstances will permit; and that all laws now in force, and all provisions of the said charter for regulating and for the better execution of the process and practice of the aforesaid Court of Judicature, shall be applicable to the process and practice of the courts established by this Act.

XXI. Clause 1. And it is hereby enacted, that the plaints received in the said courts shall be disposed of as follows .

Clause 2. In the court of Singapore, when the circuit judge is at the settlement, on every day on which any of the judges shall sit for the purpose of receiving plaints, all the plaints received shall be laid before the circuit judge, who shall distribute them for trial and decision among all the judges, including himself

Clause 3. In distributing the plaints the circuit judge shall endeavour to give to each judge a share of them proportioned to the time which he is able to devote to judicial business, and those kinds of suits which he thinks him best qualified to decide, and in which he shall have no personal interest, and have no connection with or relation to the parties.

Clause 4. Provided that the circuit judge shall reserve to himself all cases involving difficult or doubtful points of law, and questions of importance which have not previously been determined; all suits in which government is a party; and all suits in which the amount involves a dispute exceeding 10,000 rupees, wherein an appeal may be preferred to the Privy Council under the rules passed by Her Majesty in Council of date the 10th April 1838. And that all suits in which he is himself a party, or related to or connected with a party, or is anywise interested, shall be assigned to a resident judge.

Clause 5. In the Court of Singapore, in the absence of the circuit judge, and at all times in the Courts of Prince of Wales' Island and Malacca, all the plaints received shall be laid before the first resident judge, who shall distribute them in the manner directed in the 3d and 4th clauses of this section.

Clause 6. Provided that the circuit judge shall have power to call up and place on his own file any causes assigned to other judges which he shall deem it proper to hear and decide himself, and to transfer to other judges any causes assigned to himself which he shall think not to be of a nature to require his attention.

XXII. And it is hereby enacted, that one of the resident judges of the Court of Prince of Wales' Island shall sit separately in Province Wellesley, and shall receive all plaints that may be preferred to him against persons residing in the said province, of which he shall reserve to himself all such as, according to the arrangement for the distribution of causes which shall be observed in the said court, would fall to him if he was sitting in it, and shall remit all others to the first resident judge, to be disposed of as if they had been preferred in the said court.

XXIII. And it is hereby enacted, that every judge to whom a plaint is assigned for trial, shall immediately place it on his file, and shall direct process to be issued, and proceed with the cause in such manner and according to such rules and forms of practice as may be established by the judges of the said court, under the approval and confirmation of the Governor-general in Council.

XXIV. And it is hereby enacted, that in the absence of the circuit judge it shall be competent to the first resident judge of any of the courts, in any suit on the file of the chief judge in such court, to take all steps which cannot be delayed without risk of injustice.

XXV. And it is hereby enacted, that every judge in each of the said courts shall be empowered to administer to witnesses and others whom he may see occasion to examine in any suit or proceeding before him, proper oaths and affirmations, that is to say, to such persons as profess the Christian religion, the oath upon the Holy Evangelists of God; and to Quakers, Moravians, and others, who are exempted by law from taking oaths in the courts in England, the affirmation according to the form used in England for that purpose; and to Hindoos and Mahomedans the affirmation prescribed by Act No. V. of 1840, of the Governor-general of India in Council, and to others such oath in such manner and form as he shall deem most binding on their consciences respectively. And the depositions having been reduced into writing, and subscribed by the judge, shall be filed of record; and in case any person so cited shall refuse or wilfully neglect to appear and be sworn, or, being Quakers, Moravians, or others exempted as aforesaid, to affirm and be examined, the judge shall be empowered to punish such persons so refusing or wilfully neglecting, as for a contempt, by fine and imprisonment.

XXVI. And it is hereby enacted, that no person shall be excluded from giving evidence in any suit or other proceeding in any of the said civil courts by reason of his being interested in the subject of litigation, or in the merits of the suit.

XXVII. And it is hereby enacted, that all fees and fines levied under this Act by each of the said courts, shall be paid monthly into the treasury of the East India Company for the settlement at which such court is held.

XXVIII. And it is hereby enacted, that every judge of each of the said courts shall be empowered to award and issue a writ or writs or other process of execution directed to the sheriff, commanding him to seize, and deliver the possession of the houses, lands, or other things recovered, in and by judgments, sentences or decrees, of himself or his predecessor, or to levy any sum of money which shall be so recovered, or any costs which shall be so awarded, as the case may require, by seizing and selling so much of the houses, lands, debts, or other effects, real and personal, of the party or parties against whom such writ or writs shall be awarded, as will be sufficient to answer and satisfy the said judgments, or to take and imprison the body or bodies of such party or parties until he, she, or they, shall make such satisfaction; or to do both, as the case may require. And it is hereby enacted and appointed, that the several debts to be seized as aforesaid shall from the time the same shall be extended and returned into the said court, be paid and payable in such manner and form as the judge in each case shall appoint, and no other, and such payment, and no other, shall from thenceforth be an absolute and effective discharge for the said debts and every of them respectively.

XXIX. And it is hereby enacted, that all money, jewels, precious stones and securities of the suitors of each of the said courts, which shall be ordered into court, or to be paid, delivered, or deposited for safe custody, shall be paid, delivered into, or deposited in the public treasury of the East India Company at the settlement at which the court shall be held, to be kept and deposited with the cash, precious stones, jewels, and effects of the said company, subject to such orders and directions in every case as the judge to whose province it belongs shall from time to time think fit to make concerning the same, for the benefit of the suitors. And each judge shall from time to time order and direct any money belonging to suitors of the court in cases within his province, to be invested at interest, or without interest, for the purpose of remittance to any place without the said settlement as there may be occasion, for the use and benefit of the parties respectively entitled thereto, on any bills, bonds, or securities of the said Company, or any other bills, bonds, or securities as such court shall see fit to order and direct. And all executors, administrators, guardians, and trustees whatsoever acting with respect to such investments at interest or for remittance, under the directions of judges of the courts, shall be indemnified against all risk or loss to be occasioned thereby.

XXX. And it is hereby enacted, that the treasurer of the said company at each of the said settlements shall be and be called the accountant of the general court of such settlement, and shall act, perform, and do, all matters and things necessary to carry into execution the orders of the several judges of the said court, relating to the payment or delivery, or depositing of the suitors' money, jewels, precious stones and securities, into or in the said treasury, and taking the same out again, and

and investing the money of the suitors at interest or for remittance, and keeping the accounts thereof, and for doing such other matters relating thereto under such rules, methods, and directions, as shall from time to time be made and passed by the several judges of the said court.

XXXI. And it is hereby enacted, that in case any person shall have any action or suit against the said East India Company, such person shall be at liberty to proceed therein in like manner as hereinbefore mentioned; and it shall and may be lawful for the chief judge in any such suit or action duly brought in any of the said courts to issue a summons for the appearance of the said Company, to be served upon the governor or president, and the resident councillor of the settlement in which the cause of action or suit shall have arisen, and thereupon the said governor or president, and such resident councillor as aforesaid, shall appoint such person or persons to appear and act for the said Company as they shall see fit, and such person or persons shall be admitted to an answer and defend such suit in the name and for and on the behalf of the said Company. And the said chief judge shall be empowered to try, hear, and determine all such actions and suits in the said courts against the said Company, and to give judgment and costs, and award execution, and do and order all such other matters and things therein, as far as the case will admit, in such manner as herein is mentioned, as to any person or persons whomsoever, subject, nevertheless, to such right of appeal by either party as herein is mentioned. And in like manner, if the said Company shall have any action or suit against any person or persons, it shall and may be lawful to and for the said governor, or president and council, or any two of them, the governor or president being always one, to authorize any person or persons for and on behalf of the said Company, and in their name, to make complaint thereof in writing to the court to whose jurisdiction the matter belongs, and the chief judge sitting in such court shall proceed therein, and shall hear and determine the same as in other cases; and in case judgment or sentence shall be given against the said Company, shall award costs, to be levied upon the goods and effects of the said Company as they shall see occasion, subject, nevertheless, to such appeal by either party as herein is mentioned.

XXXII. And it is hereby enacted, that all causes, suits and business of ecclesiastical cognizance which shall be brought before the said courts shall be distributed among the judges in the manner directed in this Act; and that the manner of proceeding therein shall be as near as may be in conformity with the rules hereinbefore prescribed for all other suits.

XXXIII. And it is hereby enacted, that the circuit judge sitting in the general court of any of the said settlements, and in his absence the first resident judge, shall have full power to grant probates under his official seal of the last wills and testaments of all or any of the inhabitants of the said settlements, and of all other persons who shall die, and leave personal effects within the jurisdiction of such court, and to commit letters of administration under his official seal of the goods, chattels, credits, and all other effects whatsoever within the said jurisdiction of the persons aforesaid who shall die intestate, or who shall not have named an executor resident within the said settlement, or where the executor being duly cited, shall not appear and sue forth such probate; annexing the will to the said letters of administration, when such persons shall have left a will without naming any executor, or any person for executor, who shall then be alive and resident within the said settlements, and who being duly cited thereunto, will not appear and sue forth a probate thereof; and to sequester the goods and chattels, credits, and other effects whatsoever, of such persons so dying, in cases allowed by law, as the same is and may now be used in the diocese of London; and to demand, require, take, hear, examine and allow, and if occasion require, to disallow and reject, the account of them in such manner and form as is now used or may be used in the said diocese of London; and to do all other things whatsoever needful and necessary in that behalf.

XXXIV. Provided always, that the said chief or other judge in such cases as aforesaid, where letters of administrations shall be committed with the will annexed for want of an executor appearing, in due time to sue forth the probate, shall reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor or executors whenever he or they shall duly appear and sue forth the same, and the chief or other judge shall grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, and being then

resident within any of the said settlements, and being of the age of 21 years, and in case no such person shall then be residing within any of the said settlements, or being duly cited, shall not appear and pray the same, to any competent officer of the said court, or to such person or persons, whether creditor or creditors or not of the deceased person, as the chief or other judge shall see fit.

XXXV. Provided that probates of wills and letters of administration to be granted by the said chief or other judge shall be limited to such money, goods, chattels and effects, as the deceased person shall be entitled to within the jurisdiction of the said court, except in the cases specified in Section XIX.

XXXVI. And it is hereby further enacted, that every person to whom such letters of administration shall be committed shall, before the granting thereof, give sufficient security by bond, to be entered into to the said Company for the payment of a competent sum of money, with one, two, or more able securities, respect being had, in the sum therein to be contained, and in the ability of the sureties, to the value of the estate, credits, and effects of the deceased, which bond, if administration shall be granted to an officer of the said court, shall be deposited in the public treasury of the said settlement; and if granted to any other person or persons, shall be deposited in the said court among the records thereof, and there safely kept, and a copy thereof shall be also recorded among the proceedings of the said court.

XXXVII. And the condition of the said bond shall be to the following effect: that if the above bounden administrator of the "goods, chattels, and effects of the deceased do make, or cause to be made, a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased which have or shall come to the hands, possession, or knowledge of him, the said administrator, or the hands or possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited, into the general court (of Singapore, Prince of Wales' Island or Malacca, as the case may be), at or before a day therein to be specified; and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death, or which at any time afterwards shall come to the hands or possession of such administrator, or to the hands or possession of any other person or persons for him, shall well and truly administer according to law, and further shall make, or cause to be made, a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time, as he, she, or they shall be lawfully required; and all the rest and residue of the said goods, chattels, credits, and effects which shall be found from time to time remaining upon the said administration accounts, the same being first examined and allowed of by the said chief or other judge sitting in the said court, shall and do pay and dispose of in a due course of administration, or in such manner as the said court shall direct, then this obligation to be void and of non-effect, or else to remain in full force and virtue." And in case it shall be necessary to put such bond in suit, for the sake of obtaining the effect thereof, for the benefit of such person or persons as shall appear to the said chief or other judge to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said chief or other judge, be allowed to sue the same in the name of the said Company; and the said bond shall not be sued in any other manner; and the said chief or other judge shall be empowered to order that such bond as aforesaid shall be put in suit in the name of the said Company.

XXXVIII. And it is hereby enacted, that when probates of wills and letters of administration shall be granted as aforesaid, certain periods shall be fixed within which the persons to whom they shall be granted shall from time to time, until the effects of the deceased persons shall be fully administered, pass their accounts relating thereto before the circuit or other judge in the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed, then or at any earlier time, if the said chief or other judge shall see fit so to direct, the person or persons to whom such probate or administration shall be granted shall pay and deposit the balance of money belonging to the estate of the deceased then in his, her, or their hands, and all money which shall afterwards come into his, her, or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, into and in the treasury of the said Company, in the name of the treasurer,

surer, as accountant of the court, to abide the orders of the said circuit or other judge, or shall otherwise dispose of such money, goods, chattels, and securities, as the said chief or other judge shall direct: And the said circuit or other judge shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof, or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said settlement, who may be entitled thereto, or any part thereof, as creditors, legatees, or next of kin, or by any other right or title whatsoever. And it shall be lawful for the said chief or other judge to allow to any executor or administrator of the effects of any deceased person or persons (except as herein mentioned) such commission or per-centage out of his, her, or their assets as shall be just and reasonable, for their pains and trouble therein.

XXXIX Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time, or to dispose of any money, goods, chattels, or securities with which he shall be chargeable, in such manner as, in pursuance of any general or special rule or order of the said court, shall be requisite: And, moreover, every executor or administrator so neglecting to pass his accounts, or to dispose of any such money, goods, chattels, or securities with which he shall be charged, shall be charged with interest at the rate to be then current within the said settlement, for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof.

XL. And it is hereby enacted, that in the cases of persons dying in any of the said settlements, and leaving personal effects in more than one of the settlements, applications for probate or letters of administration shall be made to the chief judge only whenever he shall be holding a court at any of the settlements in which such property may be; and probates and letters of administration granted by the chief judge in such cases shall have force in respect of all money, goods, chattels, and effects which the deceased was entitled to in all or any of such settlements.

XLI. Provided, that in the absence of the circuit judge, the first resident judge of each of such settlements may take order for securing the property left therein by the deceased, until probate or letters of administration shall be issued by the circuit judge.

XLII. And it is hereby enacted, that the chief judge, and, in his absence, the first resident judge of each of the said courts, shall have authority to appoint guardians and keepers for infants and their estates within the jurisdiction of such court, according to the order and course observed in England, and also guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason, so as to be unable to govern themselves and their estates, and in such cases to inquire, hear, and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered and known.

XLIII. Provided, that when the estates of such incapacitated persons are situated in more than one of the said settlements, the appointment of keepers of such estates shall be made by the chief judge only; but the first resident judge in every such settlement shall take order intermediately for the security thereof.

XLIV. Clause 1. And it is hereby enacted, that appeals from the decrees made by the said courts in original suits shall be allowed under the following rules and provisions

Clause 2. In every suit determined by any resident judge, an application may be made for a new trial to the circuit judge upon points of law. If a new trial be granted, it shall take place before the circuit judge and the judge who originally tried the case; and if any difference of opinion shall arise between the judges upon such new trial, the case shall be decided according to the opinion of the circuit judge, provided that the judge who originally tried the case shall be at liberty to record his opinion and reasons among the proceedings.

Clause 3. Any party desiring to apply for a new trial under this section, shall present a petition to the judge to whom the appeal lies, in person or by an agent, within one month from the date when the decision to which it relates was passed.

Clause 4. Provided that such appeal shall be admissible, at the discretion of the appeal judge, at any time between one month and three months from such date, upon good and substantial cause being shown for such delay.

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XLV. Clause 1. And it is hereby enacted, that a special appeal shall lie to Her Majesty's Supreme Court at Calcutta from decisions for the recovery of property or money exceeding in value or amount 5,000 rupees, passed by the circuit judge and by the first resident judges of the said courts respectively, upon appeals heard by them under this Act, which shall appear to be inconsistent with the law applicable to the case, or with some usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice, upon which there may be reasonable doubts, under the following rules.

Clause 2. An application for a special appeal shall be presented to the court which passed the decree complained of, within the time limited for the presentation of regular appeals.

Clause 3. Every petition for a special appeal shall be accompanied with copies of the several decrees passed in the case; and the petition shall state precisely the point or points of law, usage, or practice in regard to which the decree of the first appellate court is impugned.

Clause 4. In every case of special appeal admitted as aforesaid, Her Majesty's Supreme Court at Calcutta shall determine the point or points certified as above directed, and no other point or part of the case whatever.

Clause 5. And it is hereby provided, with respect to both regular and special appeals to Her Majesty's Supreme Court at Calcutta, that when the petition of appeal shall be presented after the term of one month from the date of the decree, but within the term of three months, the lower court shall receive the petition, and, in forwarding it, shall express an opinion upon the causes assigned for the delay.

XLVI. Clause 1. And it is hereby enacted, that criminal justice shall be administered by the courts hereby established after the following manner.

Clause 2. The said circuit judge shall from time to time hold a court of oyer and terminer and gaol delivery in and for each of the said settlements, and shall hear and determine, by the oaths or affirmations of a jury of good and sufficient men, or of the major part thereof, all treasons, murders, and other crimes done or committed within such settlement, subject by law to the punishment of death, transportation, or imprisonment for life or 14 years, or any longer term, without presentment or indictment by a grand jury; provided that a grand jury shall be summoned to attend every such court of oyer and terminer, and shall have power to make such presentments as have hitherto been made in the Court of Judicature established by charter in the said settlements, and as they may deem it expedient to make; provided also, that the persons who may be summoned on grand juries shall be eligible to serve also upon the petit juries to be held before such court of oyer and terminer.

Clause 3. And the first resident judge of each settlement shall hold a court so often as there may be occasion for the trial of offences subject to a punishment less than any of the punishments aforesaid, and shall proceed without any presentment or indictment by a grand jury, but with a petit jury consisting of six persons.

Clause 4. And when, in any case under trial by the first resident judge of any settlement, it shall appear by the evidence that the crime committed is liable to a sentence which can be passed by the circuit judge only, the said judge shall quash the proceedings, and shall order the case to be reserved for trial by the circuit judge.

Clause 5. Likewise in any case committed for trial before the first resident judge, if it shall appear on a perusal of the proceedings before the magistrate that the case is one which ought to be tried by the circuit judge, he shall order the case to be reserved for trial by him.

Clause 6. And in any case tried by the first resident judge of any settlement, in which he has found the accused guilty, if a doubtful point of law is involved in the case, it shall be competent to such judge to refer the point for the opinion of the circuit judge, and he shall pass sentence according to the opinion delivered by the chief judge on such reference.

Clause 7. And the circuit judge, and other judges aforesaid, respectively, shall from time to time, as there may be occasion, issue their warrant or precept to the sheriff of the settlement, commanding him to summon a convenient number, to be therein specified, of the inhabitants or persons commorant at the settlement, to serve as jurors on the trial of all persons charged with crimes to be tried by a jury.

and

and if any person or persons summoned to serve as jurors aforesaid shall refuse or neglect to attend according to such summons, or to be sworn, or to make the affirmation required of them, or shall make other default, the said circuit judge, and other judges respectively, shall be empowered to punish such contempt by fine and imprisonment for a reasonable time, to be limited, or by both. And the said circuit judge and other judges shall be empowered, in like manner and under the like penalties, to cause all such witnesses as justice shall require to be summoned, and to administer to them, and each of them, the like oaths and affirmations as may be administered to witnesses in civil suits under this Act; and to proceed to hear, try, and determine the crimes and offences upon which persons are charged before them, and to give judgment thereupon, and to award execution thereof, and in all respects, except in so far as it is otherwise provided by this Act, to administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as the courts of oyer and terminer do or may in England, due attention being had to the several religions, manners, and usages of the native inhabitants.

Clause 8. And the second resident judge of each of the said settlements shall be magistrate and superintendent of police and coroner, in and for the said settlement; and the resident judge in Province Wellesley shall be magistrate and superintendent of police and coroner in and for the said province.

Clause 9. And such magistrate shall be vested with all the powers of justices of the peace in England, for the purpose of keeping the peace, and for pursuing and arresting and bringing offenders to justice, and for doing all other acts which, by virtue of any law or statute now in force in the said settlements, may lawfully be done by a justice of the peace therein.

Clause 10. And such magistrate as coroner shall exercise the like powers, authorities, and jurisdictions, as by law may be exercised by coroners elected for any county or place in England, provided, that he may hold an inquest with a jury consisting of any number of persons not less than three.

Clause 11. And such magistrate shall hold a preliminary investigation in cases of a nature to be tried by the circuit judge, or by the first resident judge, and shall commit the persons accused, or hold them to bail to take their trial in due course, or shall discharge them; and shall hold a court from time to time as may be necessary for the trial and punishment by himself, in such summary way as may be most consistent with the attainment of substantial justice, of crimes, offences and misdemeanors subject to a punishment not exceeding ordinary imprisonment for six months, or a fine of 200 rupees, and shall have power, in like manner and under the like penalties as aforesaid, to summon witnesses and to administer oaths and affirmations to them, and to punish contempts.

Clause 12. And the Governor of Bengal is hereby empowered to grant commissions or to authorize the governor or the resident councillor in any of the said settlements to grant commissions to any servants of the East India Company or other inhabitants of the settlement, to assist the said magistrate in his executive functions, and to be his deputies in the office of coroner, and therein to exercise the same powers as he is hereby authorized to exercise, in concurrence with him and under his direction.

Clause 13. And the Governor of Bengal shall give such orders as he shall deem meet for the appointment of constables and subordinate peace officers to perform the duties usually performed by such officers in England, under the direction and control of the said magistrate.

Clause 14. And the said magistrates and assistants to magistrates, and all constables and peace officers, shall be subordinate to, and all their acts and proceedings shall be liable to be inquired into, annulled, corrected, and dealt with by the circuit judge of the said settlement, and by the like method and process, as near as may be, as justices, magistrates, and peace officers are subordinate to the Court of Queen's Bench in England.

Clause 15. And it is hereby provided and declared, that the courts hereby established shall not be competent to hear, try, and determine any charge against any of the judges thereof, nor any charge, not being for treason or felony, against the governor or any of the councillors.

Clause 16. And it is hereby enacted, that the original record or a copy of the proceedings in all cases determined by a resident judge, either with a jury or summarily, shall be furnished to the circuit judge at the earliest opportunity after his arrival at the settlements where the proceedings have taken place; and it shall be

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lawful for him to direct a new trial upon points of law in like manner as in civil cases; without any special application being made to him for that purpose. And it shall be lawful for the circuit judge at his discretion to reserve any points of law occurring in criminal trials before himself, or before any resident judge, for the opinion of Her Majesty's Supreme Court at Calcutta.

XLVII. And it is hereby enacted, that any writ, warrant, or other process, issued by any judge or magistrate of any of the courts hereby established, may be executed within the jurisdiction of any other of the said courts in manner following: A copy of such writ, warrant, or other process, authenticated by the attestation of the judge or magistrate issuing the same, shall be transmitted by such judge or magistrate to any judge of the general court for the settlement in which the process is to be executed, who, upon the receipt thereof, shall endorse the process and direct it to be executed by the sheriff of the settlement, in the same manner and subject to the same rules as if it were a process issued by the said court; and all persons disobeying or obstructing the execution thereof shall be punishable by the said judge as for disobedience or obstruction of process so issued.

XLVIII. Provided, and it is hereby enacted, that the judge to whom any such process shall be transmitted for execution as aforesaid, may return the same for amendment if it shall appear to be defective in form.

XLIX. And provided, that the judge to whom any writ, warrant, or other process for the seizure or detention of any person shall be transmitted for execution as aforesaid, shall have authority by his endorsement thereon to direct that bail may be taken, specifying in such endorsement the amount and number of sureties, and for this purpose to call for such documents and to make such inquiry as he shall think proper.

L. And it is hereby enacted, that the Governor of Bengal shall determine and order whether any and what oaths or affirmations shall be taken or made, and in what manner, by the sheriffs, coroners, and other officers who shall be appointed under this Act.

LI. And it is hereby enacted, that a table of the fees to be taken in the said courts, for any business to be done therein, shall be settled by the Governor of Bengal, and shall be varied from time to time at the discretion of the said governor, subject always to the approbation and correction of the Governor-general of India in Council; and provided that the table of fees which shall be in force in the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, at the time when this Act shall come into operation, shall be observed in the courts established by this Act until a new table of fees shall be settled as aforesaid.

LII. And it is hereby enacted, that indictments, informations, actions, suits, causes, and proceedings, depending in the said Court of Judicature and courts of request which by this Act are abolished, whether originally instituted in such court, in any branch of its jurisdiction, or transferred from any other court or courts, shall not by such abolition be abated, discontinued, or annulled, but the same shall be transferred, in their then subsisting condition respectively, to, and shall subsist and depend in, the said courts hereby established, according to the several jurisdictions hereby given to such courts severally and respectively, to all intents and purposes as if they had been respectively commenced, brought, found, presented, or recorded, in the said courts hereby established; and the said courts hereby established are authorized and empowered to proceed accordingly in all such indictments, informations, actions, suits, causes, and proceedings, to judgment and execution, and to make such rules and orders respecting the same, and also respecting any sum or sums of money belonging to the suitors of the said Court of Judicature and courts of requests as the said courts might have made, or as the said courts hereby established are empowered to make in causes, suits, or proceedings commenced or depending before the said courts hereby established; for which purpose it is enacted, that all the records, muniments, and proceedings whatsoever, of or belonging to the said Court of Judicature or courts of requests, or which ought to be deposited with such courts respectively, shall be delivered and deposited and preserved amongst the records of the general courts of Singapore, Prince of Wales' Island, and Malacca.

LIII. And it is hereby enacted, that the session judge, with the resident judges of the general courts of Singapore, Prince of Wales' Island, and Malacca, hereby established, shall frame such process and make such rules and orders for the execution of the same in all suits to be commenced, sued, or prosecuted, and in all criminal proceedings within their jurisdiction, as shall be necessary for the due execution

execution of all or any of the powers hereby committed thereto, and shall make such rules with respect to the qualification, appointment, form of summoning, challenging, and service of jurors and assessors, as they may deem expedient and proper, with an especial attention to the different religions, manners, and usages, of the persons who shall be resident or commorant within their jurisdiction, and accommodating the same to their several religions, manners, and usages, and to the circumstances of the country, so far as the same can consist with the due execution of law and the attainment of substantial justice.

LIV. Provided always, and it is further enacted, that all forms of processes, and rules and orders for the execution thereof, which shall be framed by the said courts, shall be transmitted to Her Majesty's Supreme Court at Calcutta, to be by the said court communicated, with their observations, to the Governor-general of India in Council, for correction, approbation, or refusal; and such process shall be used, and such rules shall be observed, until the same shall be repealed or varied by the Governor-general of India in Council.

(No. 333.)

From Officiating Secretary to the Government of India to C. G. Mansel, Esq.,
Junior Secretary to the Government of India with the Governor-General.

Legis. Cons.
30 Dec. 1842.
No. 30.

Sir,

I AM desired by the Honourable the President in Council to request that you will lay before the Right honourable the Governor-general the papers as per margin, on the question of abolishing the recorder's court in the Straits' settlements, and of passing an Act for this purpose, and for the future administration of justice in those settlements.

2. In the early part of this year the Report of the Law Commissioners on this long-pending subject was received, and the suggestions offered therein, so far as concerned the kind of judicatures to be substituted for those now in existence, met the general concurrence of the government. The Honourable Mr. Amos prepared the draft of an Act, containing all the material changes in the constitution of the courts, and in the functions of the judges and magistrates; and this draft was approved by his Lordship before he left the presidency. Shortly, however, after his Lordship's departure, but with his previous cognizance and assent given in Council, it was determined that the Law Commissioners should have an opportunity of considering the provisions of the draft prepared by Mr. Amos. Accordingly this draft was transmitted to them, but they were left at liberty to submit another draft, if they saw fit, for carrying out the views expressed in their Report.

3. The Law Commissioners did not reply to this reference until the 6th of August last. The delay can be accounted for, and it is an evidence of the care bestowed in the preparing of the draft; but the provisions of this draft, chiefly as regards the forms of procedure and the functions of assessors, were not in accordance with the sentiments of the President in Council, and were considered in some respects objectionable. Much difference of opinion was also expected to follow when their provisions should be made public; and considering the anxiety of the Honourable Court for the early determination of the question, and the advantages both to the community and the government which will result from the removal of the present cumbrous institutions and forms of administration, it became a question upon which the majority in Council leant to the affirmative, whether it would not be preferable to adopt, and eventually to publish, the draft originally prepared by Mr. Amos, dealing as it does only with the changes in the constitution of the courts, and leaving the details of procedure to be disposed of separately.

4. While this question was yet in some degree in suspense, a reply was received from the governor of Prince of Wales' Island, dated 28th September, to the call made upon him on the 17th June, for his opinion, as well as that of the local

- Legislative Dep.
- Despatch from Court, dated 19 Feb. 1839, No. 2.
 - Despatch from Court, dated 1 March 1842, No. 3.
 - Printed copy Law Commissioners' Report, dated 8 Feb. 1842.
 - Legis. Cons. 22 April 1842, Nos. 19 to 21.
 - Legis. Cons. 17 June 1842, Nos. 2 to 8.
 - Letter from Law Commissioners, dated 6 August 1842, with Draft of Act.
 - Letter from Officiating Advocate-General, dated 11 August 1842.
 - Minute by Mr. Amos, dated 15 August 1842.
 - Minute by Mr. Prinsep, dated 17 September 1842.
 - Minute by Mr. Amos, dated 26 September 1842.
 - Minute by Mr. Prinsep, dated 30 September 1842.
 - Minute by Mr. Amos, dated 5 October 1842.
 - Minute by the President and Mr. Amos, dated 18 October 1842.
 - Minute by Mr. Amos, dated 9 & 20 November 1842, the latter with One Enclosure.
 - Minute by Mr. Prinsep, dated 24 November 1842.
 - Letter from Gov. P. W. Island, dated 28 Sept. 1842, with Enclosures.
 - Letter from Gov. P. W. Island, dated 4 October 1842, with Enclosures.
 - Extract Financial Department, dated 30 Nov. 1842, with One Enclosure.

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officers of the Straits' settlements, upon the propositions of the Law Commissioners; and as these papers, which will be found as Appendixes Nos. 17 and 18 to this despatch, contained full information and many valuable observations upon the subject under discussion, they led to an entire reconsideration of the previous proceedings.

5. The subject having thus become in some degree complicated, Mr. Amos now recorded a Minute, dated 20th November, in which he took a brief review of its leading features. He remarked that Mr. Fullerton first started the idea of a material reform in the Straits' judicature, which he proposed to effect by dispensing with a professional judge, and making a resident at each of the settlements a judge; the governor to go circuits for hearing appeals, with an appeal in certain cases to Calcutta.

6. Lord Auckland proposed to get rid of the professional judge; to have one resident for the three settlements, who should try causes and prisoners on his circuits; and that a judge from the Calcutta court should be sent to the Straits occasionally to hear appeals.

7. The Law Commissioners, in their Report and draft Act, proposed to have a separate court at each of the three settlements; thus to obviate the necessity of process emanating from a distant place; and to dispense with the register and sheriff for the three settlements, who were highly-paid officers. The head clerk at each settlement to do the duties of register, and a sheriff to be appointed by the court of each settlement, to act for that settlement only.

8. The Straits' authorities, in their recent communication, do not, Mr. Amos continued, object to this arrangement, though a modification is proposed of having two courts at each settlement, the inferior court to be administered by the assistant resident.

9. Respecting, therefore, the division of the courts, the way for legislation appeared clear; and this Mr. Amos conceived was the point upon which the whole reform turned. Mr. Bonham, he observed, had now retracted, in the most unhesitating manner, his former opinion, that a professional resident judge was not necessary. In this all the Straits' authorities agreed; and the Law Commissioners had, indeed, placed the matter out of reasonable doubt. Many of the expectations which had been entertained of a large saving to the revenue from a reform of the Straits' judicature, had, however, been built on the supposition of the recordership being abolished.

10. The economy of the scheme of the Law Commissioners turned on diminishing the expense which followed from having a single court out of which all process issued, and which was obliged occasionally to move from one settlement to another, attended by a cumbrous establishment. This reform would enable the government to save much which is paid to the registrar, sheriff, and some other officers of the court. The proposed diminution of the professional judge's salary had nothing, Mr. Amos remarked, to do with the reform of system, for the judge's duties would be equally or more onerous under the new system. Mr. Bonham, he added, thinks the Commissioners have gone somewhat too far in curtailing the judge's salary, and that something more must be allowed to the head clerks, who, under the new system, would have to act as registrars.

11. Independently of economy, great advantage will arise from the speedy dispatch of justice, and a diminution of its expenses by the establishment of tribunals in which all process may begin and end in the immediate settlement where the parties reside.

12. Whether there should be two courts or one court at each settlement was not, Mr. Amos considered, of any great consequence; perhaps it would be more simple and convenient to have one court; and afterwards, by allotting particular cases for the adjudication of the assistant, all the advantages proposed by having two courts would be obtained.

13. The projects and observations contained in the Straits' papers concerning a division of the judicial and executive authorities, were not necessary to be dwelt upon. The Law Commissioners proposed to leave this to the discretion of government, to be adopted when it might be more practicable than it appeared to be at present.

14. From these outlines of the system to be introduced, Mr. Amos proceeded to matters of importance certainly, but still of secondary consideration.

15. The principal part of the voluminous papers just received from the Straits turned upon one point. They did not approve of the appeal, except upon matters of

of law, to the professional judge in any case, and especially in the case of the governor being the lay judge. Mr. Amos was willing, and the Council generally agreed with him, to concede this point, especially as the present practice of the Straits authorities, which they all approved of, appeared not unreasonable. According to the present practice, the professional judge may grant a new trial upon any point of law. On such new trial the lay judge sits with him, and may record his opinion, but the professional judge decides. It was to be observed that the appeal would be less necessary under the new system, as in the distribution of cases, those involving matters which the professional judge would be more competent to decide than the lay judge, would be reserved for him.

16. Upon a variety of matters of detail, as the abolition of the grand jury and the courts of quarter and petty sessions and of requests, the Straits authorities, Mr. Amos remarked, concurred generally with the recommendations of the Commissioners. They preferred, however, a jury, or modification of a jury, to assessors, and they thought the present practice before the civil courts had better be continued, instead of the new practice recommended by the Commissioners. They thought there should be greater restrictions on appeals to Calcutta, and they expatiated on the increase of litigation by appeals to the professional from the lay judge in matters of fact. But this objection, Mr. Amos observed, would be removed if such appellate power were modified as above proposed.

17. The Straits authorities suggested that a provision should be made for the trial of revenue matters now tried before the assistant and an honorary magistrate. They thought that ordinarily two circuits would be enough for the judge to make, and that it was not necessary that all causes involving points of English law should be reserved for him. They offered suggestions on the distribution of civil and criminal business, and they made many observations upon the subject of law agents. The subject of the exclusion from the courts of professional assistance, or assistance by an agent, was one, Mr. Amos remarked, requiring much consideration, and it was not necessary to determine it at present.

18. Mr. Amos adverted to the opinion on the Law Commissioners' draft Act given by Mr. Prinsep, officiating advocate-general, who has personal experience of the Straits settlements. Mr. Prinsep was very much averse to assessors, he would retain the grand jury, but not make their presentments a necessary preliminary to a criminal trial.

19. Having thus stated the general effect of the whole papers and correspondence, Mr. Amos laid before the Council a new draft Act, in which he had incorporated the recommendations of the Straits authorities into the draft of the Commissioners, with alterations to suit the views of the government, and to supply the chief details in which Mr. Prinsep had thought the former draft deficient.

20. The draft thus prepared by Mr. Amos, received at Mr. Prinsep's suggestion two slight alterations, and is that now submitted for his Lordship's consideration. It was the opinion of the president and of Mr. Amos, that under the instructions received from the Honourable Court, the draft might be at once published, as having been read a first time. Sir W. Casement and Mr. Prinsep think rather that the draft ought to be submitted to his Lordship, in this instance, before publication, since it goes to alter a draft Act which, with his Lordship's concurrence, was called for from the Law Commission.

21. Mr. Prinsep goes even further, and doubts the propriety of publishing the draft without another reference to the Home Government; he thinks that dealing, as the proposed law does, with a Royal court, the patent of which must be surrendered, and with a Royal judge who sits and acts by appointment of the Crown, it would be neither deferential nor legal, with reference to the 46th section of the Charter Act, to abolish the existing courts, and to substitute others without the specific sanction of the Court of Directors, and that to do so would leave the judge appointed by the Crown in a false position, which might be avoided by the reference for previous sanction to the entire arrangement. Mr. Prinsep contends, that if the government cannot of itself pass a law of this nature, it ought not, by the publication of the draft, to pledge itself to a course which may not be approved. Mr. Prinsep does not look upon the late despatches from the Honourable Court as a sanction to the measures contemplated in the draft Act. He cites the sentiments expressed by the Honourable Court in 1836, with reference to the Act for permitting British subjects generally to hold lands in India, as condemnatory

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tory of the practice of publishing in India without their previous sanction, drafts of law, the passing of which is conditional upon their sanction.

22. In this particular opinion, however, the majority of the Council do not agree.

23. I am therefore desired to submit the draft Act as agreed upon by the members of Council, and to request the favour of your communicating at an early opportunity, his Lordship's sentiments upon it. The proceedings up to the present date, will be forwarded to the Honourable Court by the earliest possible opportunity.

I have, &c.

(signed) *F. J. Halliday,*

Officiating Secretary to the Government
of India.

Fort William, 30 December 1842.

(Legislative Department.—No. 3 of 1838.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

THE affairs of the settlements in the Straits of Malacca, have recently engaged much of our attention in the general department, from which the principal results of our deliberations will be reported, in due course, to your Honourable Court. Other points connected with the administration of those settlements, which it has been necessary to provide for by legislative enactment, or by executive measures, have been, or will be, treated on in our ordinary despatches.

Legis Cons 22 Jan
1838, Nos 1 & 2.
Legis Cons. 11 Sept
1837, Nos 2 & 3
Legis Cons 22 Jan.
1838, Nos. 3 to 5.

2. But we desire to bring the subject of the papers now submitted, as far as they relate to the question of the maintenance of the recorder's court, to the especial notice of your Honourable Court, because, with reference to the great cost of that establishment, and the small numbers and general poverty of those who are subject to its jurisdiction, and for whom it is kept up at the expense of the people of continental India, we think it extremely desirable that we should be furnished with authority, under section 46 of the Charter Act, to abolish the recorder's court as soon as we are prepared to make efficient provision for the more economical administration of justice in the settlements of Prince of Wales' Island, Singapore, and Malacca.

3. We need not repeat here the objections to the maintenance of the court upon its present footing, which have been expressed in the Minutes of the Governor-general, and of Mr. Shakespear, cited below*, and which we entirely espouse. We have of course given the arguments of the late Sir Benjamin Malkin (whose early death we feel to have been a serious public misfortune), in favour of the existing system, all the attention which the ability and eminent moderation with which they were urged, demanded at our hands; but we fully concur with Mr. Shakespear in considering those arguments insufficient to affect our opinions, "as to the inexpediency and injustice of incurring the present inordinate expense for the administration of civil justice to a population not exceeding one-sixth of that of one of our ordinary zillah jurisdictions."

"Nor do the difficulties of allowing an appeal on the record to the Supreme Court at Calcutta, from the local courts, in all civil cases of magnitude, similar to the appeal from the Supreme Court itself to the Privy Council, present themselves to my mind as at all insuperable; indeed I can see no more simple arrangement, none more consonant to existing institutions. While a reference for confirmation of sentence, either to the court or to the Government, as in cases of court martial, might be made in criminal cases in which the sentence exceeded 14 years' imprisonment, all other cases beyond the competency of the magistrate to decide, to be disposed of by a quarter sessions and a jury"

4. We solicit, therefore, authority to abolish the recorder's court in the Straits, and to provide for the administration of justice in the settlements in that quarter, in the manner recommended by Mr. Shakespear, in the passage quoted on the margin, from his Minute of the 27th September last, and supported by the Governor-general in his Minute of the 16th of the following month.

We have, &c.

(signed) *A. Ross.*
W. Morison.

H. Shakespear
C. H. Cameron.

Fort William, 22 January 1838.

* Minute of Governor-general, dated 9 February 1837.
Extract paragraphs 404 to 421, 423 to 427, and 429 to 456.
Minute by Mr. Shakespear, dated 27 September 1837.
Minute by the Governor-general, dated 16 October 1837.

(Legislative Department.—No. 15 of 1839.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WE have the honour to reply to your Honourable Court's despatch, dated the 19th of February 1839 (Legislative Department, No. 2.)

2. With reference to those parts of the despatch, and of the papers which accompanied it, that relate to the transportation of European convicts, we have the honour to solicit that your Honourable Court will take measures for procuring an Order in Council, under the 6 Geo. 4, c. 69, s. 4, authorizing each of the local governments of this country to appoint the places to which persons sentenced to transportation by the Indian courts may be sent. This provision will of course apply only in the case of European convicts. The statute in question appears to have been overlooked, for no Order in Council under it has ever been received, as we believe, by any Indian government.

3. We have, in obedience to the orders contained in this despatch, referred the question of the abolition of the recorder's court in the Straits to the Indian Law Commission.

4. A copy of a Minute by our colleague, Mr. Amos, on the points noticed in the opinions of counsel, which accompanied your despatch, is forwarded herewith. Legis Cons 24 June 1839, Nos. 56 & 57.

We have, &c.

(signed) *T. C. Robertson.*
W. W. Bird.
W. Casement.
A. Amos.

Fort William, 24 June 1839.

(Legislative Department.—No. 32 of 1842.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WITH reference to our despatch, No. 10, dated the 6th May last, we have the honour to forward to you printed copies of the Law Commissioners' Report, dated the 8th February last, on the subject of abolishing the recorder's court in the Straits settlements, and the draft Act prepared by them for amending the judicature of those settlements.

2. We also beg to enclose copies of the Minutes recorded by the members of this Board on the receipt of the Law Commissioners' draft of Act, of papers since received from the authorities in the Straits, and of Minutes recorded in consequence by Messrs. Amos and Prinsep. Legis Cons 22 Apr. 1842, Nos. 18 to 21.
Legis Cons. 17 June 1842, Nos. 2 to 8.
Legis. Cons. 22 July 1842, No. 13
Legis. Cons. 2 Sept. 1842, No. 66.
Legis. Cons. 30 Dec. 1842, Nos. 3 to 30.

3. The paper marked No. 34 in the packet is the draft Act, as settled by us after full discussion of the recommendations of the Law Commissioners and of the Straits authorities, and of such alterations in them as it appeared to us individually to require.

4. Aware of your Honourable Court's wishes for the early completion of the measure, our president and Mr. Amos were of opinion that the draft should be at once published, as having been read for the first time. Sir William Casement and Mr. Prinsep thought rather that the draft should be submitted to the Governor-general before publication, as it goes to alter a draft Act, which, with his Lordship's concurrence, was at first called for from the Law Commissioners.

5. We have adopted this latter course, and the papers are now under transmission to the Governor-general, to whom we have also submitted the question raised by our colleague, Mr. Prinsep, whether it would be proper to publish the draft without previously submitting it for the sanction of your Honourable Court.

300.

M M 4

We

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We do not consider that any further expression of your Honourable Court's sentiments than what your Honourable Court has already communicated is necessary.

Fort William, 30 December 1842.

We have, &c.

(signed) *W. W. Burd.*
Wm. Casement.
A. Amos.
H. T. Prinsep.

EXTRACT from a DESPATCH from the Honourable the Court of Directors, in the Legislative Department, No. 2 (19 February) of 1839.

Para. 2. THE first of these questions is thus stated: "Whether the Legislative Council of India has the power of enacting a law or regulation for the abolition of the recorder's court of Prince of Wales' Island, Singapore, and Malacca, as it now exists under the charter of justice before alluded to, and to make other regulations for the administration of justice in those settlements in lieu thereof?"

3. You will perceive that counsel are of opinion, that the Legislative Council of India have the power of abolishing the recorder's court of Prince of Wales' Island, Singapore, and Malacca, and of making other regulations for the administration of ordinary justice in lieu thereof, the sanction of the Court of Directors and Board of Commissioners for the Affairs of India having been previously obtained for the exercise of that authority. We desire, that you will immediately refer the question for the consideration of the Law Commissioners; and if after receiving their report, and giving due notice, so that the community of those settlements may offer any objections to the plan, you shall still be of opinion that it is advisable to abolish the recorder's court, we hereby convey to you the necessary sanction. You will give us the earliest practicable notice of the tribunal to be substituted for the recorder's court, so that, if necessary, application may be made to the Crown for vesting it with Admiralty jurisdiction.

EXTRACT from CASE, and OPINION, enclosed in Court's Despatch, No. 2, of 1839, Legislative Department.

1st. WHETHER the Legislative Council of India has the power of enacting a law or regulation for the abolition of the recorder's court of Prince of Wales' Island, Singapore, and Malacca, as it now exists under the charter of justice before alluded to, and to make other regulations for the administration of justice in those settlements in lieu thereof?

We are of opinion, that with the previous sanction of the Court of Directors, and of course that of the India Board, the Legislative Council of India has the power of enacting a law or regulation for the abolition of the recorder's court of Prince of Wales' Island, Singapore, and Malacca, as it now exists under the charter of justice referred to, and to make other regulations for the administration of ordinary justice in lieu thereof. It will deserve consideration, however, whether such abolition might not involve the abrogation of the late Admiralty jurisdiction in cases of piracy, conferred by the Crown upon the court of Prince of Wales' Island, &c.; and it is not clear that the Legislative Council of India has the power to re-enact and annex to a new court the same powers and authorities given by the Crown to an existing and specified court.

(signed) *J. Campbell.*
R. M. Rolfe.
R. Spankie.
James Wigram.

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No. 3.
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(Legislative Department.—No. 3 of 1842.)

Our Governor-General of India in Council.

1. In our despatch in this department, under date the 19th February (No. 2) 1839, we granted to you our sanction for abolishing the recorder's court at Prince of Wales' Island, without which, under section 46 of 3 & 4 Will. 4, c. 85, it is not lawful for you to adopt that measure. We also desired that the question as to the propriety of abolishing that court might immediately be referred for the consideration of the Law Commissioners, and that due notice of any law for the purpose might be given to the community of the three settlements over which the court exercises jurisdiction.

2. We are not apprized what steps have been taken in pursuance of these instructions; but our attention has since been forcibly drawn to the representations regarding the recorder's court contained in Lord Auckland's Minute, under date the 9th of February 1837.

3. In that Minute the charge "necessarily dependent on the present form" of the recorder's court is stated to amount to - - - - - Rs. 1,23,620
And other judicial charges, exclusive of police, to - - - - - Rs. 91,731

Making a Total of - - - - - Rs. 2,15,351

While the population of the settlements amounts only to 184,912 souls, of whom there are not 500 Europeans; and the revenue to Rs. 5,23,266. This charge seems as disproportionate to the wants of the community as to the resources of the government. If it were otherwise we conceive that it should be met by the imposition of a duty on the trade of the settlements for whose benefit it is incurred, rather than by throwing the burden on the revenues of India.

4. The scheme which had been submitted for Lord Auckland's consideration, and which he observes "might be explained to the Honourable Court as one that might possibly with advantage be substituted for the present inefficient and costly system," is in substance as follows: that there should be one magistrate and assistant at each of the three settlements, exercising both civil and criminal jurisdiction; that there should be one resident for the three settlements, with appellate jurisdiction from the magistrates' courts, and holding his court at each settlement alternately, and that the resident should be authorised to reserve such civil or criminal cases as he might think proper for trial before one of the judges of the Supreme Court of Calcutta or Madras, who should once a year, or oftener, make a circuit of the three settlements.

5. The suggestion with regard to the magistrates and residents' courts (if on consideration deemed advisable) appears to us calculated to effect the requisite reduction of expense, and to be easy of execution. But the proposed deputation of a judge of one of the supreme courts seems liable to some objections, which we should wish you to weigh beforehand. To depute a judge once a year or oftener from one of the Indian presidencies to the Straits would occupy the chief part of his time, and would make his salary, and eventually his pension properly chargeable, at least in the same proportion, to the Eastern settlements. with the additional charges for the circuits, the arrangement, therefore, would not be economical. The expense attending it would also be disproportionate to the small number of cases, either civil or criminal, likely to be reserved for trial by the judge on circuit; and considering that the law as well as the system of judicature would differ from those with which the judge was usually conversant, it may be doubted whether the operation of the arrangement would prove satisfactory, either to the mind of the judge or the public interests. Moreover, unless the services of the judge admit of being altogether dispensed with in the court to which he belongs, it seems unquestionable that his absence for protracted periods could hardly fail to lead to much inconvenience and embarrassment.

6. We wish you to take into consideration, whether after the abolition of the recorder's court, and the completion of the new arrangements consequent thereupon, the

the advantages of the proposed circuit might not in a great measure be attained without being liable to the objections which we have adverted to, if an appeal or reference were authorised from the resident to the Supreme Court, or to one of the judges, in any case in which ulterior jurisdiction might be deemed advisable.

7. We are the more disposed to believe that an appeal or reference of this nature would prove an adequate and satisfactory arrangement from what is stated in Lord Auckland's Minute. "Mr. Bonham," he observes, "shows that from October 1824 to February 1833, a period of eight years and four months, the settlements have had the benefit of a recorder's presence for only two years. During four years and six months of that time the court was open without a recorder, and the lay judges performed the whole judicial business, without the assistance in any way of a professional judge, or any appeal to one. During the remainder of the above period, viz. 1 year and 10 months, the court was shut altogether, under what appears to have been a misconception of the effect of the abolition of the late government; but had no such misconception occurred, the lay judges would have done the whole business for these 22 months also, for there was no recorder present. Thus the certain presence of a professional judge once a year will really be more than any one settlement has had under the present system. If a power of reference to Calcutta on special cases be given upon the consent of both parties, to which I can see no objection, still greater facilities to the dispatch of business will exist."

8. With reference, therefore, to the recorder's court, the various considerations set out in the Minute of Lord Auckland render it desirable that you should take into your consideration the propriety of its immediate abolition; and on the reconstruction of the judicial system, by which it is to be replaced, the chief points which appear to us to be necessary to hold in view are to provide for the ordinary administration of justice, in the language best understood by the great majority of the inhabitants, the diminution of the excessive charge at which justice is now administered, and to some extent a modification in practice, evidently contemplated by the charter of the English law when applied to Asiatics. But we do not think it necessary that the abolition of the court should be postponed until you have been able to form a new code of laws for the varied population inhabiting the three settlements.

We are, &c

(signed)

George Lyall.
J. L. Lushington.
P. Vans Agnew.
C. Mills.
J. Petty Muspratt.
H. Shank.
W. H. C. Plowden.

W. Young.
John Colton.
Henry Alexander.
M. T. Smith.
F. Warden.
Archibald Robertson.

London, 2 March 1842.

— No. 4. —

ESTABLISHING A COURT OF SUBORDINATE CIVIL JURISDICTION IN CALCUTTA.

No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

(No. 54)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to
W. H. Macnaghten, Esq. Secretary to the Government of India, Judicial
Department.

Legis. Cons.
1 February 1836.
No. 3

Sir,

With reference to the annexed paragraph of a despatch from the Honourable the Court of Directors, dated the 27th December 1833, No. 13, I am directed by the Honourable the Governor of Bengal to forward to you, for the purpose of being laid before the Governor-general of India in Council, for consideration and orders, the undermentioned documents; viz.

Judicial Dep.
Para. 46. "We observe that the receipts of the Court of Commissioners fell short of the disbursements in the year 1828-29 to the extent of Rs. 25,287. 9, and in the year 1829-30 to the extent of Rs. 27,955. 14. 1. As there is a considerable annual surplus in the court of requests, at Madras, we think it desirable that the systems of the two courts should be compared together, and that the cause of such a difference in their results should be ascertained, and, if practicable, removed.

Copy of a Letter addressed to the Officiating Secretary to the Government of Fort St. George, dated the 10th November 1834.

Letter from the Chief Secretary to Government of Fort St. George, dated the 3d April 1835, with its Enclosures

Letter to the Commissioners of the Court of Requests at this Presidency, dated the 28th April 1835

Letter from the Commissioners of the Court of Requests, dated the 15th May 1835.

Letter to the Chief Secretary to the Government of Fort St. George, dated the 19th May 1835.

Letter from the Chief Secretary to the Government of Fort St. George in reply, dated the 11th June 1835, with an Enclosure

Letter to the Commissioners of the Court of Requests, dated the 30th June 1835.

Letter from the Secretary to the Government of Fort St. George, dated the 21st August 1835, with its Enclosures.

Letter to the Commissioners of the Court of Requests, dated the 22d September 1835.

Letter from the Commissioners of the Court of Requests, dated the 25th September 1835, with its Enclosures.

Letter from the Commissioners of the Court of Requests, dated the 6th October 1835.

Letter to the Commissioners of the Court of Requests, dated the 27th October 1835.

Letter from the Commissioners of the Court of Requests, dated the 14th instant, with its Enclosure.

2. You are requested to return the original enclosures when no longer required.

Fort William,
29 December 1835.

I have, &c.
(signed) *R. D. Mangles*,
Secretary to the Gov^t of Bengal.

(No. 7.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to
R. D. Mangles, Esq. Secretary to the Government of Bengal

Legis Cons.
1 February 1836.
No 4

Sir,

With reference to your letter, No. 54, of the 29th ult. with enclosures, on the subject of the revision of the present system of the court of requests, I am desired to suggest that the Honourable the Governor may be pleased to refer to the Commissioners for their opinion whether the scale of fees as specified in the subjoined Memorandum (corresponding more nearly with that prescribed in Regulation X. of 1829) would not be preferable to the scale submitted by them in the enclosure of their communication to your address, dated the 14th ult., and if not, to state their objections, for the information of the Supreme Government

Legislative Dep.

Council Chamber,
18 January 1836.
300.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Gov^t of India.

No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

MEMORANDUM.

SUM SUED FOR	Summons.	Attachment	For every Subpoena.	For every Attachment against Witness.	For every Postponement	Mookter- arnamah.
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
Company's Rupees - 5	- 8 -	- 4 -	- 2 -	- 2 -	- 4 -	- 4 -
- - - 10	1 - -	- 8 -	- 4 -	- 4 -	- 8 -	- 4 -
- - - 25	2 - -	1 - -	- 8 -	- 8 -	1 - -	- 6 -
- - - 50	4 - -	2 - -	1 - -	1 - -	2 - -	1 - -
- - - 100	8 - -	4 - -	1 - -	1 - -	2 - -	1 - -
- - - 200	16 - -	8 - -	2 - -	2 - -	4 - -	2 - -
- - - 300	32 - -	16 - -	2 - -	2 - -	4 - -	2 - -
- - - 435	32 - -	16 - -	2 - -	2 - -	4 - -	2 - -

Legis. Cons.
1 February 1836.
No 5.

MINUTE by the Honourable *T. B. Macaulay*, Esq., dated the 1st February 1836.

IN looking through the papers relating to the court of requests at Calcutta, it has occurred to me that it would be desirable to refer these papers to the Law Commission without delay. The Commissioners should be requested to take into their immediate consideration the whole system of the court of requests, its composition, the extent of its jurisdiction, as respects both the amount and the nature of claims, its mode of procedure, its charges, and the way in which those charges are met.

It is my firm conviction that we may, without laying any additional burden on the State, provide Calcutta with a most efficient tribunal, competent to dispose of all the less important and intricate civil cases.

This, however, is only a small part of the benefit which I anticipate from a revision of the system of the court of requests. We may with great advantage make trial in this court of several important reforms, before we introduce them in the mofussil. An apprehension is often expressed by persons whose opinion is entitled to great weight, that principles of jurisprudence which theoretically are unobjectionable, may in practice be found to produce pernicious results; we can never bring this important question to the test with so much care and so little risk as by trying the experiment in a court for the recovery of small debts at the seat of government. A bad system may go on long in a remote zillah without attracting much attention; but evils which are daily felt by every shopkeeper in Calcutta must very soon be brought to our knowledge. The court will sit almost under our own eyes; we shall read its proceedings in the newspapers; we shall very soon be pried hard with petitions if its machinery does not give satisfaction; we shall be able to correct our errors here, and we shall avoid falling into the same errors elsewhere. If, on the other hand, we find, as I have little doubt that we shall, that the theory now generally held by the most enlightened European jurists is confirmed by experience, we shall proceed with greater confidence, and with the approbation of the public, to introduce throughout our empire a rational, cheap, and speedy system of procedure.

(signed) *T. B. Macaulay.*

Legis Cons
1 February 1836.
No. 6.

MINUTE of the Governor General and Members.

I CONCUR in the proposition for sending the papers connected with the court of requests to the Law Commission for the purpose stated in the first paragraph of Mr. Macaulay's Minute, the other points adverted to in the Minute being of course open to future discussion when the draft of the law shall be received from the Law Commission.

Fort William,
1 February 1836,

(signed)

C. T. Metcalfe.
H. Fane.
W. Morison.

H. Shakespear.
C. T. Robertson.

INDIAN LAW COMMISSIONERS.

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No. 4.
Establishing a
of Subordinate
Civil Jurisdiction
in Calcutta.

(No. 26.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to
F. Millett, Esq. Secretary to the Indian Law Commission.

Sir,

I AM directed by the Honourable the Governor-general of India in Council, to transmit to you, for submission to the Indian Law Commissioners, the several papers specified on the margin,* in original, connected with the court of requests, and to request that the Commission will take into their immediate consideration the whole system of the court of requests, its composition, the extent of its jurisdiction, as respects both the amount and the nature of claims, its mode of procedure, its charges, and the way in which those charges are met.

You are requested to return the original papers when they are no longer required.

Council Chamber,
1 February 1836

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Legis. Cont.
1 February 1836.
No. 7.
Legislative Dep.

(No. 376.)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to
W. H. Macnaghten, Esq. Secretary to the Government of India.

Sir,

WITH reference to your letter, No. 7, of the 18th ultimo, and its enclosure, I am directed by the Honourable the Governor of Bengal to forward to you, for the purpose of being laid before the Governor-general of India in Council, the accompanying copy of a letter from the Commissioners of the court of requests, dated the 17th instant.

Fort William,
23 February 1836.

I have, &c.
(signed) *R. D. Mangles*,
Secretary to the Government of Bengal.

Legis. Cons.
7 March 1836.
No. 5.

Judicial Dep

From the Commissioners of the Court of Requests, Calcutta, to *R. D. Mangles*, Esq.
Secretary to the Government of Bengal, Judicial Department.

Sir,

1. IN reply to your letter of the 20th ultimo, we beg to state, that the scale of fees in the memorandum subjoined to Mr. Macnaghten's letter is preferable to that submitted by us, inasmuch as it is more simple; but that, on the other hand, it is open to the objection, that the costs under it would bear a much less even proportion to the sums sued for. Thus, for example, when the sum in dispute amounts to a fraction more than 100 rupees, the suitors would have to pay as much as if it amounted to 300 rupees.

2. The total amount of costs levied under it would, as nearly as we can ascertain,

Legis. Cons.
7 March 1842.
No. 6.
Enclosure.

* Copy of Letter from the Secretary the Government of Bengal, Judicial Department, No. 54,
dated the 29th December 1835.
Ditto ditto to the Secretary to the Government of Fort St. George,
dated 10th November 1834.
Original ditto from the Chief Secretary to Government of Fort St. George, dated 3d April 1835,
with Enclosures
Ditto to the Commissioners of the Court of Requests of Fort William, dated 28th April 1835.
Ditto ditto dated 15th May 1835
Ditto to the Chief Secretary to Government of Fort St. George, dated 19th May 1835.
Ditto from ditto in reply, dated 11th June 1835, with Enclosure.
Ditto to the Commissioners of the Court of Requests, dated 30th June 1835.
Ditto from Secretary to Government of Fort St. George, dated 21st August 1835, with
Enclosures.
Ditto to Commissioners of the Court of Requests, dated 22d September 1835.
Ditto from ditto ditto dated 25th September 1835, with Enclosures.
Ditto from ditto ditto dated 6th October 1835.
Ditto to ditto ditto dated 27th October 1835.
Ditto from ditto ditto dated 14th December 1835, with Enclosure.

300.

No. 4.
Sishanga Court
subordinate
Jurisdiction
of Calcutta.

tain, be about equal to that realised under the present table of fees, and would be about one-sixth less than what would be levied under the scale proposed by us.

Court of Requests,
17 February 1836.

We have, &c.
(signed) *C. W. Brictzike,*
J. W. M'Leod,
W. Dobbs,
Commissioners.

(A true copy.)

Judicial Department,
23 Feb. 1836.

(signed) *R. D. Mangles,*
Secretary to the Government of Bengal.

(No. 46.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Mullett*, Esq. Secretary to the Indian Law Commissioners.

Sir,

Legislative Dep.

Copy of a Letter
to the Secretary to
the Government of
Bengal, Judicial
Department, No. 7,
dated 18 Jan 1836
Copy of a Letter
from the Secretary
to the Government
of Bengal, Judicial
Department, dated
23 February 1836,
No 376, with
Enclosure

IN continuation of my letter, No. 26, dated the 1st ultimo, I am directed by the Right honourable the Governor-general of India in Council, to transmit to you, for the consideration of the Indian Law Commissioners, the accompanying copy of a correspondence, noted on the margin, on the subject of the scale of fees suggested to be levied in future on suits coming before the court of requests for the recovery of small debts.

Council Chamber,
7 March 1836.

I have, &c.
(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

(No. 13.)

From *F. Mullett*, Esq. Secretary to the Indian Law Commissioners, to *W. H. Macnaghten*, Esq. Secretary to the Government of India.

Sir,

Legis Cons
13 June 1836
No 6

THE revision of the whole system of the court of requests having been referred to the Indian Law Commissioners, by your letter, No. 26, of the 1st February last, the Commissioners have, in pursuance of those instructions, been engaged in preparing the draft of an Act for remodelling the constitution, jurisdiction, and practice of that Court.

2. In the performance of this duty important reforms have occurred to the Commissioners, affecting to a considerable extent the jurisdiction of his Majesty's Supreme Court of Judicature, and imposing at the same time new duties on its judges. The Commissioners are now desirous to communicate with the judges for the purpose of maturing those reforms, and think that, under the circumstances, it would be more advantageous that they should do so by the special direction of government, of which direction an intimation might be given by government to the judges, than by addressing themselves directly to those authorities. I have therefore been directed to request that you will submit this suggestion to the consideration of the Right honourable the Governor-general of India in Council.

Indian Law Commission,
3 June 1836.

I have, &c.
(signed) *F. Mullett,*
Secretary.

(No. 162.)

From the Government of India, to the Honourable the Judges of the Supreme Court of Fort William.

Legis Cons.
13 June 1836.
No. 7.

Honourable Sirs,

WE have received a communication from the Indian Law Commissioners, to the effect, that they are exceedingly desirous to obtain the benefit of your aid in maturing

INDIAN LAW COMMISSIONERS.

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No 4.
Establishing a Court
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maturing a plan for remodelling the constitution, jurisdiction, and practice of the court of requests.

2. Sensible as we are of the advantage of your valuable advice in all matters connected with legislation, we have not hesitated to direct the Law Commissioners to apply to you, not only on the present occasion, but whenever they may stand in need of your assistance, feeling assured that it must be gratifying to you to make your knowledge and experience conducive to the success of the important labours in which the Commissioners are engaged. Should there be any particular channel through which you would prefer that the Law Commissioners should address you, we request that you will do us the favour to let us know, in order that, as regards this point, the Commissioners may be duly apprized of your wishes.

Council Chamber,
13 June 1836.

We have, &c
(signed) *Auckland.* *W. Morison.*
H^y Fane *H^y Shakespear.*
A Ross. *T. B. Macaulay.*

(No. 165.)

From *W H Macnaghten*, Esq. Secretary to the Government of India, to *F. Millett*,
Esq. Secretary to the Indian Law Commission.

Sir,
I AM directed by the Right honourable the Governor-general of India in Legislative Dep. Council, to acknowledge the receipt of your letter, dated the 3d instant, and in reply to forward to you, to be laid before the Indian Law Commissioners for their information and guidance, copy of a communication this day addressed by his Lordship in Council to the judges of the Supreme Court of Fort William.

Council Chamber,
13 June 1836.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

From the Honourable Judges of the Supreme Court of Fort William, to the Right Honourable the Governor-general of India in Council.

Legis Cons.
4 July 1836.
No. 1.

Right Hon. Lord and Hon. Sirs,

WE have the honour to acknowledge the receipt of your letter, dated the 13th of June, communicating to us the wish of the Indian Law Commissioners that we should aid in maturing a plan for remodelling the constitution, jurisdiction, and practice of the court of requests, and stating that the Right honourable the Governor-general in Council has directed the Law Commissioners to apply to us, not only on this occasion, but whenever they might stand in need of our assistance.

In reply to this communication, we have only to express our willingness to give every assistance in our power to the Law Commissioners in their maturing a plan for remodelling the court of requests, and our readiness on all other occasions on which the Law Commissioners may desire to consult us, to give, as far as we are able, our aid in furtherance of the important labours on which the Commissioners are engaged.

There is no particular channel through which we should prefer to be addressed by the Indian Law Commissioners; we are ready to put ourselves in communication with the Commissioners in the way that may be best suited to the free communication of our opinions on the important subjects to which our attention may be called.

Court House, 21 June 1836.

We have, &c.
(signed) *E^d Ryan.*
J. P. Grant.
B. H. Malkin.

No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

(No. 187.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Millet*,
Esq. Secretary to the Indian Law Commissioners.

Sir,

IN continuation of my letter, No. 165, dated the 13th ultimo, I am directed by the Right honourable the Governor-general of India in Council, to forward to you, to be laid before the Indian Law Commissioners for their information, copy of a communication, dated the 21st of the same month, received from the judges of the Supreme Court of the presidency of Fort William, in Bengal.

Council Chamber,
4 July 1836.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

(No. 975 of 1836.)

From *H. Townsend*, Esq. Acting Secretary to Government of Bombay, to the
Secretary to the Government of India, in the Legislative Department, Fort
William.

Legis. Cons.
18 July 1836.
No. 4.

Sir,

Judicial Dep.

I AM directed by the Right honourable the Governor in Council, to transmit to you, for the consideration of the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the senior magistrate of police, dated 8th April last, suggesting the passing of an Act, giving effect under this presidency to the Act of Parliament passed on the 30th July 1835, entitled, "An Act to amend and consolidate the Laws relative to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service," with the opinion of the acting advocate-general, and to state, for the information of his Lordship in Council, that although this government consider the measures of the kind suggested by Mr. Warden advisable, this government have not deemed it necessary to submit the draft of an Act, because the subject applying to the whole of India, it will no doubt engage the attention of the Governor-general, as a general question, should his Lordship be pleased to concur in the views taken by this government regarding it.

Bombay Castle,
3 June 1836.

I have, &c.
(signed) *H. S. Townsend*,
Acting Secretary to Government.

(No. 137 of 1836.)

From *John Warden*, Esq. Senior Magistrate of Police, Bombay, to the Secretary to
Government, Judicial Department.

Legis. Cons.
18 July 1836.
No. 5
Enclosure.

Sir,

THE Act of Parliament of which the accompanying is copy, entitled "An Act to amend and consolidate the Laws relative to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service," was lately brought to my notice by Captain Hopkins, commander of the Buckinghamshire. It has had effect from the 31st day of July last, and if, as I believe, it be in force not only in India, but in every part of the world where a British merchant ship may be found to be subjected to its provisions, and there are two respectable British merchants to enforce them, I beg leave to suggest to the Right honourable the Governor in Council that 50 copies be forthwith printed for the use of this, the collectors and master attendants' departments, and of others whom it may concern.

2. But if it should be said not to have effect here, I think the government of India should be solicited to pass an Act giving it the sanction of law at this presidency.

3. In the 47th paragraph of my Report to the Law Commission, I stated my belief "that there is no class of people who require more protection from tyranny and injustice than sailors," and I am gratified to find that opinion so soon justified by
the

the passing of an Act of Parliament "to give seamen all due encouragement and protection."

4. In the same Report, I stated that I was left to perform my "duty towards seamen without the guidance of a single Regulation, and that the general complaints were that they were disrespectful, broke their liberty, refused to return to their ships, &c. &c.;" and the government will observe that this Act of Parliament gives me authority to act efficiently in all these matters, and at the same time to protect seamen from wrong, and to recover their wages for them in a summary mode without their having recourse to the Supreme Court, the slow and formal proceedings of which render it quite useless to sailors whose ships are about to sail, and which is just the time when disputes arise between commanders and seamen.

Bombay Police Office,
18 April 1836.

I have, &c.
(signed) John Warden,
Senior Magistrate of Police.

(No. 19 of 1836.)

From H. Roper, Esq. Acting Advocate-general, to J. P. Willoughby, Esq.
Secretary to Government.

Sir,

I HAVE had the honour to receive your letter of the 28th ult., requesting my opinion as to the applicability to British India of the 5 & 6 Will. 4, c. 19, entitled, "An Act to amend and consolidate the Laws relating to the Merchant Seamen of the United Kingdom, and for forming, and maintaining a Register of all Men engaged in that Service"

The statute appears to me to have been drawn up in a very loose manner, and I am unable to give a decided or satisfactory opinion with respect to it. Indeed, your inquiry is so general, that in order to give an adequate answer, it might, perhaps, become necessary to comment at great length upon each of the 55 sections in the Act.

The powers given by several clauses in the statute to one or more justice or justices of the peace in any part of his Majesty's dominions, and the powers given by the 51st section to collectors or other chief officers of the customs at the several ports of the United Kingdom, and of the British possessions abroad, unquestionably are conferred on justices of the peace, collectors, and chief officers of custom respectively in British India.

I incline to think that vessels belonging to Bombay, or registered there, and the crews of such vessels, are not within the second section of the statute, which provides that written agreements shall be entered into with his seamen by the master of any vessel belonging to any subject of his Majesty, of the United Kingdom, trading to parts beyond the seas, or of any British registered ship of the burthen of 80 tons or upwards employed in any of the fisheries of the United Kingdom, or in trading coastwise, or otherwise.

The 54th section provides that the Act shall not extend to any ship registered in or belonging to any British colony having a legislative assembly, or to the crew of such ship, while such ship shall be within the precinct of such colony. India, strictly speaking, is not a British colony and has not a legislative assembly; but the Supreme Government of India can now make laws, and therefore, and as the 2 Geo. 2, c. 36, the 2 Geo. 3, c. 31, and the 31 Geo. 3, c. 39, did not apply to vessels belonging to or registered in any port in India, or to the crews of such vessels, I conclude the late Act was not intended to affect such vessels or crews. Besides, though heavy penalties are imposed by the Act, it would seem that no means of recovering in India any greater penalty than 20*l.* is provided by the 53d section.

The register-office for seamen is clearly to be established at the port of London only, and it is unnecessary to establish any such register-office in India.

Bombay, 4 May 1836.

I have, &c.

(signed) H. Roper,
Acting Advocate-general.

(True copies.)

(signed) H. S. Townsend,
Acting Secretary to Government.

No. 4.

Legis. Cons.
18 July 1836.
No. 6.

(No. 192.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to
F. Millett, Esq. Secretary to the Indian Law Commissioners.

Legislative Dep.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you, to be laid before the Indian Law Commissioners, for their consideration, the accompanying copies of a letter from the acting secretary to the government of Bombay, dated the 3d ultimo, and of its enclosures, on the subject of passing an Act for giving effect under the presidency of Bombay to the Act of Parliament of the 30th July 1835, relative to merchant seamen.

2. It has occurred to his Lordship in Council that it would be expedient to confer upon the commissioners of the petty court so much of the power as is given to justices of the peace in England as relates to the recovery of wages due to seamen while in the port of Calcutta, and the Law Commissioners are requested to insert provisions to this effect in any new enactment that may be forthcoming having reference to the petty court. The other branches of river jurisdiction referred to would seem to belong to the bench of magistrates, but it is requested that the whole subject may engage the early attention of the Law Commissioners.

Council Chamber,
18 July 1836.I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to Government of India.

(No. 3074 of 1839.—General Department.)

From *W. S. Boyd*, Esq. Acting Secretary to the Government of Bombay, to
H. T. Prinsep, Esq. Secretary to the Government of India.Jud. Cons.
2 Dec 1839.
No. 10.

Sir,

From the Prothonotary and Registrar to the Supreme Court, dated 29 August 1839.

From the Clerk to the Court for conducting the Small Causes, 17 Aug. 1839.

To the Committee for the Appropriation of Buildings for Public Offices, dated 7 Sept. 1839.

From the Committee for the Appropriation of Buildings for Public Offices, dated 20 Sept. 1839.

To the Civil Auditor, dated 16th October 1839.

From the Acting Deputy Auditor, dated 22d October 1839.

I am directed by the Honourable the Governor in Council to transmit to you, for the purpose of being laid before the Honourable the President in Council, copies of the documents noted in the margin, relative to an application for an office or office rent, preferred by the clerk to the court for the trial of small causes.

2. Hitherto this appointment has been held in conjunction with that of master in equity, to which latter officer apartments were assigned in the building denominated the "old secretariate," which appear to have been sufficient for the establishments of both; but the appointments having been recently divided between two different individuals, their apartments have been retained by the master in equity, and the clerk to the small causes court thus left without any office or office rent, the latter item of charge having been discontinued in consequence of arrangements made in the year 1829, when both offices were transferred to the public building above alluded to.

3. There are now no public apartments or building available; the Governor in Council has therefore deemed it proper to grant the sum of rupees (75) seventy-five per mensem, as office rent, to enable the clerk to the court for conducting small causes to provide himself with an office. Previous to the transfer of the offices in question to a government building, the gentleman who then held them in conjunction was allowed (100) one hundred rupees a month; but as the present allowance is for one office only, the Governor in Council deems the sum granted sufficient, and trusts that his Honor in Council will be pleased to approve and confirm the measure.

Bombay Castle,
1 November 1839.I have, &c.
(signed) *W. S. Boyd*,
Acting Secretary to Government.Jud. Cons.
2 Dec. 1839.
No 11.
Enclosure.From *J. W. Philpotts*, Esq. Prothonotary and Registrar, Bombay, to *W. S. Boyd*, Esq. Secretary to Government.

Sir,

ON forwarding the accompanying letter from Mr. C. A. West to your address, I have the honour to inform you that it has been submitted to the Honourable the Chief Justice, and I am directed by his Lordship to state that he recommends it to the favourable consideration of government, and the more so, as since the year

1823

1823 the duties of the clerk of the court for conducting small causes, which had formerly been held by a practising attorney, have very considerably increased, requiring a large establishment of purvoes. No office appears to have been originally or at any time assigned to the clerk of the small causes, and for many years past the appointment has been held in conjunction with that of master in equity; but however efficiently the different qualifications for each were combined in Mr. Fenwick, the court deems it expedient, in ordinary instances, that the office of master in equity should be held by a barrister, and that of clerk of the small causes by an attorney.

I have &c.

Bombay Supreme Court,
Registrar and Prothonotary's Office,
29 August 1839.

(signed) *J. W. Philipps*,
Prothonotary and Registrar.

From *C. A. West*, Esq. Clerk to the Court for conducting Small Causes, to *W. S. Boyd*, Esq. Secretary to Government.

Sir,

I HAVE the honour to request you will submit to the Honourable the Governor in Council my application for an office for the clerk to the court for the trial of small causes, to which I was appointed by the Honourable the Chief Justice of the Supreme Court on the 15th of last month, or that the Honourable the Governor in Council will be pleased to sanction an allowance of 175 rupees per mensem, in addition to my present salary of 100 rupees per mensem.

The ground upon which I make the application is, that ever since the 16th of June 1821, the two situations of master in equity and clerk of the small causes court have been held by one and the same person, and the duties of both situations have since that period been conducted in one and the same office.

As the appointments have now been severed, it is quite impossible that this can continue to be the case, and the office occupied by Mr. Fenwick, and subsequently by Mr. Davies, when holding both situations, is now claimed by the latter gentleman, who, as a temporary measure, until the arrival of Sir Henry Roper, is permitted to conduct the duties of his office in the chambers of the puisne judge of the Supreme Court, in the court-house, on whose arrival I shall be without an office for myself and establishment, or a depository for the records of the Small Cause Court.

I have, &c.

Bombay,
17 August 1839.

(signed) *C. A. West*,
Clerk to the Court for conducting Small Causes.

(No. 2514 of 1839.—General Department.)

From *W. S. Boyd*, Esq. Acting Secretary to Government, General Department, Bombay, to the Committee for the Appropriation of Buildings for Public Offices.

Gentlemen,

I AM directed by the Honourable the Governor in Council to refer to you, for your opinion and report, the accompanying copies of a letter from the prothonotary and registrar to the Supreme Court of Bombay, dated 29th ultimo, and of its enclosure from Mr. C. A. West, applying for an office for the clerk to the court for conducting small causes, to which situation he has been appointed.

I have, &c.

Bombay Castle,
7 September 1839,

(signed) *W. S. Boyd*,
Acting Secretary to Government.

SPECIAL REPORTS OF THE

(General Department.)

From Messrs. *L. R. Reid* and *T. Dickinson*, Bombay, to *W. S. Boyd*, Esq.,
Acting Secretary to Government.

Sir,

WE have the honour to state, in reply to your letter, No. 2514, of the 7th instant, and its enclosure, that there is no unoccupied public building which could be made available as an office for the clerk to the court for conducting small causes.

Bombay,
20 September 1839.

We have, &c.
(signed) *L. R. Reid.*
T. Dickinson.

(No. 2886 of 1839.—General Department.)

From *W. S. Boyd*, Esq. Acting Secretary to Government, to the Civil Auditor.

Sir,

I AM directed by the Honourable the Governor in Council to transmit to you the enclosed copy of an application from the clerk to the court for conducting small causes for an office, and as the committee for the appropriation of buildings to public offices report that there is no building available for the purpose, to request that you will report what amount should, in your opinion, be granted as office allowance to Mr. West, to enable him to provide one for himself.

Bombay Castle,
16 October 1839.

I have, &c.
(signed) *W. S. Boyd*,
Acting Secretary to Government.

(General Department.)

From *E. Montgomerie*, Esq. Acting Deputy Civil Auditor, Bombay, to *W. S. Boyd*, Esq. Acting Secretary to Government.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 16th instant to the address of the civil auditor, transmitting copy of an application from the clerk to the court for conducting small causes for an office, and as the committee for the appropriation of buildings to public offices report that there is no building available for the purpose, requesting to report what amount should be granted as office allowance to Mr. West, to enable him to provide one for himself.

2. In reply, I request you will inform the Honourable the Governor in Council that prior to the transfer of the offices of master in equity and clerk of the small causes to a public building, Mr. Fehwick held those situations, and was allowed 100 rupees per mensem as office rent. I beg, therefore, to recommend that a like sum may be granted to Mr. West, under the same denomination, so long as he may be unprovided with public building for his office.

Rs. 100.

Bombay Castle,
Civil Auditor's Office,
22 October 1839.

I have, &c.
(signed) *E. Montgomerie*,
Acting Deputy Civil Auditor.

(True copies.)

(signed) *W. S. Boyd*,
Acting Secretary to Government.

(No. 289.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to
W. S. Boyd, Esq. Acting Secretary to the Government of Bombay.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 3074, to the address of Mr. Secretary H. T. Prinsep, under date the 1st ultimo, with its enclosure; and in reply, to intimate that under the circumstances represented, the
Honourable

Honourable the President in Council has been pleased to sanction the grant of 75 rupees per mensem for office rent, required by the clerk of the Supreme Court at Bombay for the trial of small causes,

2. His Honour in Council directs me to request you will furnish him with information as to the nature of the court in question, in order that it may be laid before the Indian Law Commissioners, who have now before them a reference concerning the court of requests at Calcutta.

Fort William, 2 Dec. 1839.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secy to the Govt of India.

(No. 1,335 of 1840.—Judicial Department.)

From *W. R. Morris*, Esq. Secretary to the Government of Bombay, to *T. H. Maddock*, Esq. Secretary to the Government of India, in the Judicial Department.

Jud. Cons.
22 June 1840.
No. 11.

Sir,

I am directed by the Honourable the Governor in Council to transmit to you, to be laid before the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the Honourable Company's acting solicitor, dated the 7th instant, with its enclosures, furnishing the information called for in the second paragraph of Mr. Officiating Secretary Grant's letter in the Revenue Department, dated the 2d of December last, No. 289, in regard to the court of small causes at Bombay.

Bombay Castle, 26 May 1840.

I have, &c.
(signed) *W. R. Morris,*
Secretary to Government.

From *A. S. Ayrton*, Esq. Acting Solicitor to the Honourable Company at Bombay, to *W. R. Morris*, Esq. Secretary to Government, Judicial Department.

Jud Cons.
22 June 1840.
No. 12.
Enclosure.

Sir,

I HAVE the honour to forward a Minute on the subject of the Small Cause Court, as desired in your letter of the 11th ultimo; and observing the object for which the information is required, I awaited the return of the clerk of the small causes, who was absent from Bombay, in the hope of obtaining some statistics to show the practical operation of the court; but that officer has declined to afford me any information without the permission of the judges of the court.

As I conceive it would be expected by the judges that any communication on the subject should come direct from yourself, I beg to submit for your consideration whether any further information is required by the Bengal government.

Bombay, 7 May 1840.

I have, &c.
(signed) *A. S. Ayrton,*
Acting Company's Solicitor.

A NOTE on the subject of the Small Cause Court at Bombay.

THE Small Cause Court is the common appellation of that branch or side of the Supreme Court which has cognizance of small causes, or those instituted for the recovery of debts not exceeding Rs. 350.

On the first establishment of the Mayor's Court, rules were made by the judges to facilitate the adjudication of small causes, which, with some modifications, were adopted by the Supreme Court; a copy of these, now forming the basis of the Small Cause Court, are annexed.

The chief peculiarity in the mode of adjudicating the small causes arises from the functions of the single officer of the court, called the clerk of the small causes, who not only performs the duties of the prothonotary or clerk of the court in respect of the small causes, but is at liberty to act as the attorney for one or both of the parties to the suit.

The process and mode of procedure are the same as in causes of larger amount; but the conduct of the suit differs considerably when the clerk acts as the attorney of the parties, in which cases a cause usually proceeds in the following manner;

The party desirous of bringing an action attends the clerk of the small causes and states his case, upon which the clerk prepares and files a suitable plaint in his own office, and issues a writ to the sheriff either to summon, or if the amount be sufficient, to arrest, the defendant, as the plaintiff may desire.

The defendant on being served with a summons, attends at the clerk's office and enters his appearance, or if arrested puts in bail before the clerk, and either then or after being served with a rule to plead, states his case to the clerk, who files an appropriate plea, and adds any further pleading that he may think necessary to complete an issue between the parties.

The forms of pleading established in the Supreme Court are not very strictly adhered to, and have been nearly freed from all the technicality; not, however, by any rule of the court, but by the practice of the clerk, who must be anxious to render the pleading as simple and easy as possible.

The cause being at issue, the plaintiff attends the clerk at his desire, and instructs him more particularly in his case, and in the evidence to be adduced in support of it, of which the clerk takes a note for his own use in court, then issues a notice of trial to the defendant, who in like manner attends and instructs the clerk in the nature of his case and evidence; and he subpoenas the witnesses for both parties, and enters the cause in his own book for trial on the earliest court-day.

In the event of the defendant not appearing, the cause is set down *ex parte*, and the plaintiff is compelled to prove his case as if it were defended, which is conducted in like manner by the clerk. This, I believe, is felt by the suitors to be somewhat inconvenient, and it is difficult to understand why no distinction is made between a suit instituted for the trial of a disputed right and one for the recovery of a debt, which the debtor is either too dishonest or too poor to discharge.

It may be doubted whether a debtor, knowing that considerable expense and trouble will be incurred by his creditor, and that some time will elapse in prosecuting a suit, is not encouraged to refuse payment of his debt in the hope of extorting a concession from the creditor.

One of the judges sits every Thursday in court for the trial of the small causes, which are conducted by the clerk, who states the case, and examines the witnesses for the plaintiff, whilst the defendant cross-examines them, or makes suggestions to the clerk for that purpose, and the defence is managed in a similar manner; the judge also takes an active part to facilitate the proceedings, and examines the witnesses, when desired, for the purpose of eliciting the truth.

The attorneys of the Supreme Court decline to practise as attorneys in the small causes, with the exception of some who, it is believed, occasionally prepare briefs for the barristers, they alone being entitled to appear in court, and the sutor therefore only avails himself of professional assistance at the trial of his cause, in which case he obtains a copy of the pleadings from the clerk, and either employs an attorney or the clerk of the court to deliver the brief to counsel, or prepares it himself and communicates personally with his advocate, the number of cases, however, in which barristers are employed is very inconsiderable.

The costs of each party in an action amount to about 40 rupees, with an additional fee of 15 or 30 rupees when counsel is employed, and are always taxed by the master of the Supreme Court; but the expense of each proceeding will be seen from the accompanying schedule of fees.

The clerk enters up the judgment of the court, and enforces it as the successful party may desire.

The judge entertains all interlocutory applications at the weekly sitting of the court, sometimes in a summary manner, and at others upon affidavit, which are brought to his notice by the clerk at the trial; the cause is postponed in the absence of a material witness, or any interlocutory order is made which may be deemed necessary to satisfy the justice of the case, to which end the strict routine of practice is occasionally modified by the judge.

The efficacy of the rules regarding the small causes seem to depend upon character and qualification of the clerk, whose capacity considerably influences extent of the business, but being remunerated by fees, he is strongly incited to gain the confidence of the suitors; and it is believed that the mode in which small causes

are adjudicated is highly satisfactory to the community; indeed, it is not unusual for suitors to forego a part of their demands to avail themselves of such cheap and speedy justice, and to avoid the expense and delay of proceeding in the Supreme Court.

A few natives, who are commonly called native lawyers, find occupation in assisting suitors, who are unable or unwilling to attend the clerk; the native lawyers are for the most part accounted disreputable people, whose practices are of the worst description, in which they are the more secure as they are unrecognised by the court; it would, perhaps, mitigate this evil, and meet the wants and convenience of the suitors, if several respectable and intelligent natives were employed as clerks to the clerk of the small causes, and permitted to receive a fee for affording more active assistance to the suitors than can be obtained from the clerk, who must always remain in his own office.

The foregoing statement is in a great measure founded on information derived from others, but I believe it is substantially correct.

(signed) A. S. Ayrton,
Acting Solicitor to the Hon. Company
at Bombay.

RULES for conducting Small Causes.

THE process shall be confined to actions for debt and liquidated damages, in which the cause of action shall not be less than 80 rupees, or more than 350 rupees. When the plaintiff's demand does not exceed 200 rupees, the first process shall be a writ of summons, unless when the plaintiff's demand shall exceed 150 rupees, and shall not exceed 200 rupees, some special causes shall be shown, by affidavit or affirmation, which shall satisfy the court or the chief justice, or any of the justices, of the same, that the case is such as to require security; and if the defendant, having been summoned, does not appear at the return of the writ, or if before any summons has issued, it shall be sworn by the oaths of the plaintiff or his agent, and that of one other credible witness, that the defendant is about to depart from the jurisdiction of the court; or if there be a certain debt sworn to in behalf of the plaintiff, exceeding the value of 200 rupees, or damages exceeding that amount, which may be reduced to a certainty; or if, when the plaintiff's demand shall exceed 150 rupees, some special cause shall be shown as aforesaid, or if the cause of action shall be in the nature of an enormous personal wrong, a writ of *capias* may be awarded against the defendant; but no such writ shall in any case be issued unless the court, or one of the judges, being satisfied by affidavit of the truth of the respective facts, shall order the same, in which order shall be specified the sum for which the sheriff shall be authorised to take bail, and the *capias* shall be marked with the sum sworn to, and with the sum for which the sheriff is authorised to take bail.

The clerk of small causes shall make out, sign, and issue all process, rules, and orders, and his office shall be open every day from ten o'clock till four.

The clerk shall appoint such ministerial officers as he shall think necessary to assist him in the duties of his office, who, as well as himself, shall be amenable to the court for misbehaviour and neglect of duty.

The clerk, upon the application of any person, shall prepare his pleadings, and shall cause to be served all process, rules, and orders; but the party, if he think fit, may employ an attorney for those purposes. Every summons shall be tested on the day it is issued, and shall have four days between the test and return, unless a larger time shall be ordered by the court, or a judge.

The defendant, when summoned, shall within four days after the return day of the writ file an appearance, and enter his name and place of abode, particularly described, in the clerk's office, in default of which the plaintiff, on affidavit of the personal service of such summons, may enter an appearance for the defendant.

The plaintiff may, after appearance, give a rule to plead, and the defendant shall file his plea within four days from the service of such rule.

The court will hear small causes every Thursday.

All the causes shall be set down for trial in the order in which they stand in the clerk's books, of which four days' notice shall be given to the parties or their attorney. If the defendant neglects to file his plea within four days after service of a rule for that purpose, the plaintiff, on affidavit of the due service of such rule, shall be entitled to an order to have his cause set down to be heard *ex parte*

If the debt proved shall be less than 80 rupees, and the court be of opinion that the plaintiff had not probable ground for bringing his action for that sum, then he shall be nonsuited. Before issuing any writ of execution the clerk shall make out a bill of costs, to be taxed by the master; but during such time as the two offices of master in equity and clerk of small causes shall be held by one and the same person, such bills of costs shall be taxed by the prothonotary.

The clerk shall at the end of every month produce to the court or a judge all books kept by him relative to his office, and an account of all the fees received by him, and shall at all times when required account upon oath for the same; and that he has not, directly or indirectly, received any greater or other fees than those allowed to be taken and received.

A TABLE of FEES for conducting Causes, from Rupees 80 to Rupees 350.

<i>Clerk's Fees.</i>		<i>Rs. a. p.</i>
Drawing, entering, and recording plaint - - - - -		2 - -
Entering appearance for defendant, and entering plea, or in confession of action - - - - -		2 - -
Account of particulars - - - - -		1 - -
Each summons, capias, subpoena, attachment, writ of execution, petition, order, bail-piece, affidavit, except affidavits to hold to bail, and replication		1 - -
Investigating each bailable case previous to applying for the writ of capias		5 - -
Affidavit to hold to bail, certificate of plaint filed, and order of capias -		3 - -
Attending swearing and judge signing - - - - -		1 - -
Paid swearing and judge's clerk for fiat - - - - -		2 - -
Notice of trial, and every other necessary notice - - - - -		- 2 -
Examining and taking down depositions of witnesses preparatory to trial, if not more than two witnesses, each - - - - -		1 - -
If more than two witnesses, for the first witness - - - - -		1 - -
For every other witness - - - - -		- 2 -
The same for administering oath to and examining witnesses of parties at the trial - - - - -		- - -
Administering oath to and examining officers, where necessary to prove service of any notice or process, each - - - - -		- 2 -
Minuting and entering judgment of record, discontinuance, &c. - - - -		1 - -
Copy of judgment or any process to be served - - - - -		- 2 -
Service of process and notices within the limits of Bombay, each - - -		- 1 -
The like beyond the limits - - - - -		- 2 -
Office copy of proceedings, per folio - - - - -		- 1 -
Each necessary attendance on the judge and officers of the court - - -		- 2 -
Certificate of proceedings - - - - -		- 2 -
Receiving money into court, and giving receipt and paying same over, and entering satisfaction - - - - -		1 - -
Filing every exhibit - - - - -		- 2 -
Every bill of costs and copy - - - - -		1 - -
<i>Sealer's Fees.</i>		
Affixing seal to every process or other paper requiring it, from 80 to 175 rupees - - - - -		- 2 -
If more than 175, and for affixing seal to every writ of capias and order -		1 - -
<i>Translator's Fees.</i>		
For translations, per folio of 90 words, and seven figures to a word - -		- 1 -
<i>Interpreter's Fees.</i>		
Examining witnesses, each party in each cause - - - - -		- 2 -
<i>Sheriff's Fees.</i>		
For executing every writ of execution - - - - -		1 - -
Poundage on every debt levied by execution, 2½ per cent. - - - - -		
<i>Sheriff's Marshal.</i>		
For every writ executed by the sheriff, and for every commitment and discharge - - - - -		- 1 -
<i>Master.</i>		
For taxing each bill of costs - - - - -		2 - -

INDIAN LAW COMMISSIONERS.

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No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

<i>Fees to be allowed as Advocate's Fees</i>		Rs.	a.	p.
For attendances in each cause at the trial, if the cause of action should not extend 175 rupees	- - - - -	15	-	-
Refresher fee	- - - - -	7	2	-
If more than that sum	- - - - -	30	-	-
Refresher fee	- - - - -	15	-	-
<i>Attorney's Fees.</i>				
Warrant to sue or defend	- - - - -	1	-	-
Drawing and engrossing plaint	- - - - -	5	-	-
Drawing bill of particulars for plaintiff or defendant	- - - - -	3	-	-
Drawing plea	- - - - -	3	-	-
Notice, copy, and service	- - - - -	1	-	-
Drawing and engrossing affidavit or petition	- - - - -	2	-	-
Drawing brief and examining witnesses	- - - - -	12	-	-
Attending court	- - - - -	5	-	-
Every necessary attendance on the judge, counsel, or any of the officers of court	- - - - -	-	2	-

(True copy.) (signed) A. S. Ayrton.

(True copies.) (signed) W. R. Morris,
Secy to Govt

(No. 92.)

From T. H. Maddock, Esq. Secretary to the Government of India, to J. C. C. Sutherland, Esq. Secretary to the Indian Law Commissioners.

Jud. Cons.
22 June 1840.
No. 13.

Sir,

I AM directed by the Right hon. the Governor-general in Council to transmit to you, for the information and consideration of the Law Commissioners, in connexion with the reference now before them concerning the court of requests, the accompanying copies of a letter, No. 1335, dated the 26th ultimo, and of its enclosures, from the secretary to the government of Bombay regarding the nature of the Court of Small Causes at Bombay.

Judicial

Council Chamber,
22 June 1840.

I have, &c.
(signed) T. H. Maddock,
Secretary to the Government of India.

(No. 1402.)

From F. J. Halliday, Esq. Secretary to the Government of Bengal, to F. J. Halliday, Esq. Jun. Secretary to the Government of India, Judicial Department.

Jud. Cons.
7 Sept. 1840.
No. 4

Sir,

I AM directed by the Right hon. the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying correspondence * with the commissioners of the court of requests relative to the very anomalous position in which the court has been placed by a recent decision of the Supreme Court in the case of W. Anderson, on a plea of trespass.

Judicial Dep

Fort William,
25 August 1840.

I have, &c.
(signed) F. J. Halliday,
Secretary to the Government of Bengal.

P. S.—Please to return the enclosures.

* Letter from the Commissioners of the Court of Requests, dated 4th November 1839, No. to ditto - - - ditto - - - dated 5th November 1839, No. 1776. from ditto - - - ditto - - - dated 8th November 1839, No. to ditto - - - ditto - - - dated 19th November 1839, No. 1806 from ditto - - - ditto - - - dated 3d August 1840, No.

No 4.
 Jud Cons.
 7 Sept. 1840
 No 5
 Enclosure.

From the Commissioners of the Court of Requests, to *F. J. Halliday*, Esq.
 Secretary to Government, Judicial Department.

Sir,

THE 3d commissioner, and Mr. Ford, bailiff of this court, having been summoned to defend a case of trespass instituted in the Supreme Court by a Mr. W. Anderson, we beg to request that you will obtain the orders of government for their law officers to defend the case.

Court of Requests,
 4 November 1839.

We have, &c
 (signed) *J. W. Macleod.*
Russomoy Dutt.
George Lay.

(No. 1776.)

From *J. H. Young*, Esq. Deputy-Secretary to the Government of Bengal, to the Commissioners of the Court of Requests.

Gentlemen,

Judicial

PREVIOUS to issuing instructions to the law officers of government, as requested in your letter of yesterday's date, I am directed by his Honor the Deputy-Governor of Bengal to inquire the particulars of the case of trespass to which your communication refers.

Fort William,
 5 November 1839.

I am, &c.
 (signed) *J. H. Young,*
 Deputy-Secretary to Government of Bengal.

From the Commissioners of the Court of Requests, to *J. H. Young*, Esq Deputy-Secretary to the Government of Bengal.

Sir,

WE have the honour to acknowledge the receipt of your letter, dated 5th inst., and in reply beg leave to state, that in a case brought before this court by one J. Weaver against W. Anderson, the court decreed against the said W. Anderson, and he not paying the amount decreed, a seal warrant was granted and signed by R. Dutt, esq. 3d commissioner, to recover the amount. The writ was directed to Mr. Ford, bailiff of this court, and in consequence of his having executed the same, the present action of trespass has been instituted in the Supreme Court by Mr. Anderson.

Court of Requests,
 8 November 1839.

We have, &c.
 (signed) *J. W. Macleod,*
Russomoy Dutt,
George Lay,
 Commissioners.

(No. 1806.)

From *J. H. Young*, Esq. Deputy-Secretary to Government of Bengal, to the Commissioners of the Court of Requests.

Gentlemen,

Judicial

I AM directed by the Hon. the Deputy-Governor of Bengal to acknowledge the receipt of your letter, No. , of 8th instant, on the subject of an action for trespass brought against one of the commissioners.

In reply, I am directed to state, that it appears to his Honor inexpedient to allow on such an occasion the assistance of the government law officers. The parties sued must defend themselves, and if eventually the case should turn out favourably for them, it will be for consideration whether, on due application, the defendants may not be relieved by government of the actual expenses of the proceedings.

Fort William,
 12 November 1839.

I am, &c.
 (signed) *J. H. Young,*
 Deputy-Secretary to Government of Bengal.

From the Commissioners of the Court of Requests, to *F. J. Halliday, Esq.*
Secretary to the Government of Bengal, Judicial Department.

Sir,

WITH reference to the correspondence noted below,* we beg to forward, for the consideration and orders of the Right hon. the Governor of Bengal, the accompanying original report from Mr. T. B. Swinhoe, solicitor to the Honourable Company.

2. On mature deliberation, our attention is obviously, and we think imperatively, directed to the three following heads, as connected with the proceedings in the Supreme Court:—

(1.) A statement of the case noted in the margin, which was decided by this court in July 1839;

(2.) The grounds of such decision; and

(3.) The very anomalous position in which this court is now placed by reason of the recent decision of the Supreme Court, which will naturally lead us to offer a few suggestions for future adoption, in order that the public as well as ourselves may know precisely the jurisdiction of the Court of Requests.

*J Weaver v W
Anderson, executor
to the estate of R.
Parker, deceased.*

On each of these heads we propose now to enter somewhat in detail.

(1.) This case was instituted by the plaintiff, an undertaker, to recover Company's rupees 100. 8, the amount of his bill for funeral expenses. Defendant admitted his executorship, but said he had no assets of the estate in hand, and demurred to the jurisdiction of the court to try the case.

15 July 1839
*Weaver v Anderson,
executor Before
Commissioner
Russomoy Dutt*

On this the parties joined issue, and the plaintiff was required to prove assets.

One J. Peters, witness for the plaintiff, deposed on oath that the deceased's horse and buggy were sold for 125 rupees, and wearing apparel for 100, by order of Anderson, the executor.

Defendant submitted an account showing no assets, but plaintiff prayed the court for time to substantiate the issue, assets or no assets, to which application the court agreed.

As to the jurisdiction, the presiding commissioner informed the defendant that this court had invariably taken cognizance of such suits, and that if defendant had any doubts, his best course would be to remove the case to the Supreme Court by a writ of certiorari. The commissioner also observed that he would consult his colleague, Mr. Macleod, whose experience was more extensive in regard to all such disputed questions.

On this day, by the particular desire of the department, two commissioners sat to hear this case, Messrs. J. W. Macleod and Russomoy Dutt.

22 July 1839.

Parties being present, defendant Anderson took the same objections as on the 15th July: first, as to the court's jurisdiction to try suits against executors; and secondly, that he had no assets.

The court, after deliberation, overruled the first objection, and suggested to Anderson again to remove the proceedings to the Supreme Court, and that reasonable time would be allowed to enable him to do so, if still dissatisfied with the opinion of the commissioners.

As to assets, the court would take further evidence.

J. Peters was again called, and deposed on oath, that Anderson sold the deceased's horse and buggy by auction, and bought them himself for 150 rupees; deceased's wearing apparel also was sold, by order of defendant, for 100 rupees, who received net proceeds thereof.

Plaintiff also produced copy of an account current filed by Anderson in the Supreme Court, exhibiting a balance of Company's rupees 154. 14. 8 in favour of the estate, which defendant admitted, after much hesitation, to be a correct copy, but alleged that he had made subsequent payments to Mr. W. D. Shaw, which had absorbed the balance, and would prove this by producing that gentleman.

The

* Letter from the Commissioners to your address, dated 4th November 1839.

Letter from Deputy-Secretary Young to the Commissioners, in reply, dated 5th November 1839.

Letter from the Commissioners to the address of Deputy-Secretary Young, dated 8th November 1839.

Letter from you to the Commissioners, dated 12th November 1839.

The court accordingly postponed the further hearing of the case. Messrs. J. W. Macleod and Russomoy Dutt this day sat to hear the case. Parties being present, the plaintiff produced the account current noticed in the last day's proceedings, which defendant again examined, and said that he had not brought his witness to prove certain payments made, nor had he taken out a subpoena to compel his attendance.

The court, after duly weighing all that had been elicited and proved as well as admitted on this as well as on former days of its sittings, ordered that a verdict should be entered in favour of the plaintiff for Company's rupees 100. 8, with costs.

Under the above judgment the plaintiff issued execution against the goods and chattels of the defendant, on the 5th August 1839, returnable on the 19th August. This writ was returned unserved, and a new writ obtained on the 23d August, returnable on the 6th September. The effects of the defendant were seized on the 29th August, and he satisfied the judgment of the court, with costs, viz. 121. 2. 9, on the 30th August, which sum was accordingly, in due course, paid over to the plaintiff on the 5th September 1839.

The defendant Anderson addressed the court, after judgment passed against him, in very intemperate language, stating that the proceedings and decree against him were all illegal; but of course the court took no notice of this.

(2.) We will now explain the second part of our subject, viz. the grounds of the court's decision.

The foregoing statement will, we think, furnish sufficient intrinsic evidence of one point, viz. that at the time of the court's verdict there were assets in the hands of the defendant to meet the claim of the plaintiff. Had this not been clearly proved, the case would have failed at once; we contend, therefore, that the decision was consistent with "equity and good conscience;" consistent with reference to the plaintiff's claim also, which, in our humble opinion, is a "simple debt," notwithstanding the technical objection taken by the Supreme Court, with much deference be it said. Moreover, the uniform practice of this court for the last 30 years has been to entertain and try suits against executors, either duly appointed or *de son tort*, and against the heirs and representatives of deceased parties, provided assets could be proved in the hands of such executors or representatives.

The late Mr. Archibald Dobbs, an eminent barrister of the Supreme Court, who for many years held the office of third commissioner of this court, never had any doubts on this subject, and was accustomed to adjudicate all such suits, subject to the limitation already stated.

Again, let us consider the reasonableness of the thing. Executors can at all times resort to the court for the recovery of their claims, and we submit that they should not be exempted from its control if they refuse to pay legatees and other claimants. As matters now stand, by the recent decision of the Supreme Court, every party who has 100 rupees to receive from an executor must apply to that tribunal by an expensive process, which is really a denial of justice altogether.

Again, the Proclamations of 1803, 1813, and 1819, give this court jurisdiction over all persons* indiscriminately, who are either residing within the limits of the city, or following some fixed profession in it, by which they obtain a livelihood.

Anderson, the defendant in the suit which we have detailed, both resided in Calcutta and held a situation at the office of Messrs. Cook & Co., livery stable keepers, when the decree was passed against him in July 1839.

(3.) The anomalous position of the court of requests will, we think, be very apparent, when the following circumstances are duly considered.

Though the learned chief justice, in pronouncing the judgment of the Supreme Court, has clearly stated the non-liability of executors, yet his Lordship has left untouched the meaning of the terms "simple debts." What these are in strict legal phraseology we cannot determine, but heretofore this court has invariably

* Sir F. Macnaghten once observed from the bench, when the question of the attorneys of the Supreme Court being exempted from the jurisdiction of the court of requests came on to be argued, "that all were subject to the court of requests, from the highest authority in the city to the lowest menial servant." His Lordship quite repudiated the idea of the attorneys of the Supreme Court seeking such an exemption.

variably tried and determined suits of the description stated below, (a) and no opposition has been made, except in very few instances. We apprehend, however, that now all those marked thus * must be considered as beyond our control, for, strictly speaking, they are not "simple debts."

The decision of the Supreme Court, then, has not only curtailed the powers of the court of requests, but it has given people a pretence to dispute and cavil at even plain, simple points, which otherwise would never have created any doubts whatever. Almost every European defendant who now appears, for the first time endeavours to discover something, if possible, against the jurisdiction of the court, he pleads it, perhaps, indistinctly, and boldly quotes the opinion of the Supreme Court as corroborative of his view being correct; not all the reasoning or arguments which the commissioners can adduce appear to alter his opinion.

When so much opposition is raised to answer purposes which at first are not quite apparent, it becomes a delicate and critical thing for the court to act with freedom.

Thus indecision and distrust are engendered, business postponed, lest serious consequences might ensue, and the community is perplexed, not knowing where to obtain redress, unless it resorts to the expensive and dilatory tribunal of the Supreme Court, where it would be necessary to incur an outlay of nearly double the amount (b) to recover a legacy, for instance, of 200 rupees from an executor, or to carry through all its stages an action of trover for property of a similar amount.

If the court happens to differ from a litigious opulent defendant, and is resolved to proceed notwithstanding the plea of non-jurisdiction, then we are told, "You are beyond your jurisdiction; the consequences will be serious, as I shall proceed against you for a trespass if you issue execution against my property." These are not imaginary fears. Since the decision of the Supreme Court, there is a very manifest opposition evinced to the court of requests by certain bold and reckless people. What their real intentions are it is impossible to conjecture; but we submit that such a state of things as we have endeavoured to portray should not be allowed to exist one hour longer than is necessary to allay the bad feeling which prevails, and to restore to the court that share of public confidence and public respect to which it is certainly entitled, as the only tribunal adapted to assist the community in general in recovering the hard-earned profits of their respective professions.

3. We cannot but express our fears lest another point might come on to be discussed, as it was some years ago, viz. whether one commissioner has power to do all acts as the court of requests? This was doubted in 1823, and one of the judges of the Supreme Court (Sir F. Macnaghten) said publicly from the bench, that "one commissioner was incompetent to do any act, and all consequences that might ensue, even murder, in the execution of his process, both before and after decree, would justly be charged on such commissioner. The matter was considered of so much importance that the then Advocate-general, Sir Herbert Campton, was directed to give his opinion on several points relating to the court of requests.

In a Report, dated the 27th December 1823, Sir Herbert uses the following words. After having stated that he had minutely perused voluminous correspondence,

(a) House-rent, servants' wages, bills of exchange, and promissory notes, brokerage, goods sold and delivered, balance of accounts.

* All actions against executors and administrators for legacies, funeral expenses, wages due by the testator to servants, house-rent, and other claims due by ditto

* Trover for value of goods, ornaments, &c. detained after voluntary deposit, or after satisfaction of loans accrued upon them.

* Damages, costs of repairing carriages, buggies, furniture, &c., broken or otherwise damaged after taking them on hire, or upon loan, or occasioned by furious and incautious driving, or for the value of horses killed by mal-treatment or over-driving

* Seamen's wages against captains or owners of vessels.

* Short delivery of goods during transit to and from shipping by boatmen, and short delivery of goods under bill of lading

* All actions arising out of a breach of contract.

* Diet money under an order of a justice of the peace

(b) We have stated that the probable amount of plaintiff's costs of a suit in the Supreme Court for 200 would "be nearly double;" we may say with great safety that the expense would be treble; and for a smaller sum, say 100 or less, the costs would be precisely the same in amount as upon one for 200 rupees.

No. 4.
Establishing a Court
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in Calcutta.

dence, various charters, and Acts of Parliament, Sir Herbert comes to this conclusion: "According to the best judgment that I can form, the commissioners cannot lawfully decide causes at the same time in separate chambers, or, in other words, cannot constitute themselves into two courts."

And again, a little further on, the Advocate-general observes: "Provision has been made by law for a single judge to decide causes in the Supreme Court, but the commissioners desire to sit in two chambers, and that one commissioner should have the power of deciding causes, as in the Supreme Court, meaning, as I understand it, a single commissioner in each chamber shall exercise the authority of a court. If this be meant, it will exceed the jurisdiction of the Supreme Court, for there is no instance of the judges administering justice in separate chambers at the same moment of time."

The Chief Secretary, Mr. W. B. Bayley, adverting to the opinion of the Advocate-general, as quoted above, communicates the orders of government to the commissioners, under date the 8th January 1824, in the following words: "The point adverted to in your letter has for some time past been under the consideration of the authorities in England, and until their decision be received, or until a formal opinion of the irregularity of the practice shall be pronounced by the Supreme Court, the Governor-general in Council is of opinion that the practice in question, which has been long established, and which seems essential to the public convenience, should be adhered to."

The commissioners have since 1802 sat in separate chambers. Of the benefits resulting from such a measure there can be but one opinion; but it is more than possible that something at present unforeseen may arise to awaken an inquiry into its legality, and we would respectfully suggest that such a contingency should be quickly provided against. The angry spirit of litigation is not wanting, nor are the means far distant to rouse it into being.

4. Having now taken a review of the whole of this most important subject, we would urgently recommend, in conclusion, that this court should be empowered, by a legislative enactment, to exercise jurisdiction over the whole description of suits enumerated in the margin of the foregoing 3d section, not even excepting executors of estates who have obtained probates as well as *executors de son tort*, if assets can be proved. Provision should also be made, we think, for the commissioners to sit and try causes in separate chambers.

5. Whatever may be the ulterior intentions of government regarding the extension of the court's jurisdiction, the altering of its forms of procedure, or constitution generally, we think that the subjects now under discussion should be settled immediately, that both the public and the commissioners may know how to act. At present all is uncertainty, and we doubt not that the disadvantages of such a state are keenly felt by the tradespeople of this city, and especially by the poorer class of native suitors, who are in the habit of resorting to the court of requests for the settlement of their claims.

6. We beg you will have the goodness to return the letter from Mr. T. B. Swinhoe, when no longer required by you.

Court of Requests,
3 August 1840.

We have, &c.
(signed) C. W. Brietzike,
Russomoy Dutt, *
David Hare,
Commissioners.

William Anderson v. Russomoy Dutt and Another.

From T. B. Swinhoe, Esq. Attorney of Law, to Baboo Russomoy Dutt.

Dear Sir,

THIS case came on to be argued on the 21st instant, on demurrer to your second plea, before the Supreme Court. This mode of bringing the case forward was adopted by your present counsel, Messrs. Turton & Clarke, directly to raise the point whether the court of requests had jurisdiction against executors.

The judges were unanimously of opinion that your court had no such jurisdiction. I cannot do better than subjoin, at the foot of this letter, the decision of the judges, delivered by the chief justice, as reported in the Bengal Hurkara of the 23d instant, which is correct.

Calcutta, 23 July 1840.

I am, &c.
(signed) T. B. Swinhoe.

Sir *E. Ryan, c. J.*—If we entertained any doubt whatever, we should take time to consider before deciding upon the jurisdiction of a court, but we entertain none. The jurisdiction of the court of requests is to be found in the Madras charter alone; the subsequent charters, statutes, and proclamations do not vary or extend it; the recital on that clause of the charter is very similar to the recital in the Middlesex Act, and sets forth that the enactment was for the mere simple recovery of small debts. We have no doubt that the object was to give jurisdiction only in cases of "simple debts," and not in the trial of questions of difficult law. Our decision does not proceed upon the case in Douglas, but upon general principles. Look at the consequences if an executor were allowed to be sued in a tribunal constituted like the court of requests: some of the most intricate questions of law may be raised by the defences available to an executor, such as, when a party has made himself executor *de son tort*, whether an executor or administrator has duly administered the assets, and so forth. We are of opinion, therefore, that the plea is insufficient, and that there must be a judgment for the plaintiff on demurrer, with costs.

(signed) *T. B. S.*

No. 4.
Establishing a Court
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Civil Jurisdiction
in Calcutta.

(No. 130)

From *F. J. Halliday*, Esq. Principal Secretary to the Government of India, to
F. J. Halliday, Esq. Secretary to the Government of Bengal.

Jud Cons
7 Sept 1840.
No. 6

Sir,

I AM directed by the Governor-general of India in Council to acknowledge the receipt of your letter, No. 1402, dated the 25th ultimo, with its enclosures, on the position of the court of requests, consequent upon a decision of the Supreme Court in the case of Anderson on a plea of trespass, and in reply to state, for the information of the Right hon. the Governor of Bengal, that the Law Commission is understood to be immediately about to lay before the Supreme Government a Report upon the court of requests, with suggestions upon its powers and constitution. This Report will be considered by the Supreme Government without delay, and will probably lead to a speedy and practical measure of amendment, by which the circumstances now objected to by the commissioners will be altered, and the court itself placed upon a new and more useful footing.

Judicial.

2. The original enclosures received with your letter are returned herewith.

I have, &c.

Council Chamber,
7 September 1840.

(signed) *F. J. Halliday*,
Principal Secretary to the Government of India.

(No. 1,517.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Judicial Department.

Jud. Cons.
12 Oct. 1840.
No. 3.

Sir,

I AM directed by the Right hon. the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter* from the commissioners of the court of requests, which has reference to the subject of your letter No. 130, of the 7th instant, and which may, should his Lordship think it advisable, be submitted to the Law Commissioners for their perusal.

Judicial Dep.

* Dated 10th inst.
and accompanying
statements.

I have, &c.

Fort William,
22 September 1840.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Please to return the enclosure.

No. 4.

Jud. Cons.
12 Oct. 1840.
No. 4.
Enclosure.

From the Commissioners of the Court of Requests, Calcutta, to *F. J. Halliday*, Esq
Secretary to the Government of Bengal, Judicial Department.

Sir,

WE beg to acknowledge the receipt of a letter from Mr. J. H. Young, deputy secretary to the government of Bengal, in the Judicial Department, dated the 14th July last, conveying to us the desire of the Right honourable the Governor of Bengal to be furnished with such suggestions as our experience might dictate to enable the court of requests better to discharge its important functions.

2. It has repeatedly been urged on the attention of the commissioners, that though government distinctly disclaims every intention to make the court an engine for increasing the revenues of the state, yet that its receipts ought to be rendered adequate to meet its disbursements. In strict conformity with this principle, we beg respectfully to record our deliberate conviction that the present system of requiring the deposit of costs by the plaintiff, with the discretionary power to the commissioners to admit pauper suits, and to remit costs entirely or in part, is the most calculated to meet the wishes of government, so often conveyed to us. Considering also the spirit of litigation prevalent in Calcutta, we think that it is the most salutary, the most wholesome, and the safest course for the court of requests; for we firmly believe that it does effectually, in a great measure, retard the institution of groundless suits, and deters the wicked from attempting to harass the honest. It imposes no great hardship upon a person in affluent, or even easy circumstances, if his claim be just and his debtor solvent, whilst it urges an unrelenting creditor to pause before hazarding his good money for the mere gratification of suing and bringing to trouble an unfortunate insolvent debtor. And finally, it in no way injures the poor honest claimant, who can readily obtain process free of costs, at the discretion of the commissioners.

3. In reply to the first paragraph of Mr. Young's letter above alluded to, we think that it cannot be fairly inferred from the commissioners' letter* of the 13th of February 1837, when recommending the appointment of collectors of costs, that they considered the system then in force had a direct tendency to deter suitors from applying to the court for justice, we have taken some pains to inquire into this subject, and we think that it is not the case. What we have already recorded in the 3d, 4th and 5th paragraphs of our letter of the 14th May last, is very much to our present purpose. When the collectors of costs formed a part of the court's establishment, we know that a vast majority of the poorer suitors preferred depositing costs to employing those officers; and we consider this fact of great importance in support of our present argument. If it be said that the payment of costs by plaintiffs operates as a denial of justice, we answer that the experience of many months proves the contrary, and that this objection is at once overcome by referring to the rules for the admission of pauper claimants.

4. We avail ourselves of this opportunity to bring to the notice of the Right honourable the Governor of Bengal the subject treated in the 7th paragraph of the commissioners' letter, dated 25th September 1835, to the address of Mr. J. P. Grant, officiating secretary to the government of Bengal in the Judicial Department, we mean that of costs on suits from one to ten rupees, pressing still heavily upon suitors, though a considerable reduction was made by the proclamation of 1819. In any new rules which the government may be pleased to enact for the court of requests, we think that a beneficial modification might be made by the substitution of a fixed rate of per-centage only upon the sum sued for, instead of levying any other fees on the different processes as at present. We are persuaded that such a modification would more justly equalize the payment of costs on all classes of suitors; that it would raise a sufficient fund for the payment of all charges connected with the court, and would materially simplify the accounts of this office. The accompanying tabular statement exhibits the costs now leviable, as well as those which would be charged if a per-centage were sanctioned.

We have, &c.

(signed) *C. W. Brietzike,*
Russomoy Dutt,
David Hare,
Commissioners.

Court of Requests,
10 Sept. 1840.

* It was the opinion of two of the commissioners in 1837, that the appointment of collectors would never succeed, and that the evils already reported in our letter of May last would inevitably grow out of it. Experience has taught us that this view was correct. Still the two dissentient members of the court joined in the recommendation, in order to try the experiment.

STATEMENT showing the AMOUNT of COSTS chargeable on different SUTS under the present System, and what they would Amount to at different Per-centage.

Amount of Suit.	Decree or Dismiss Costs.		Non-Suit Costs.	Com-promise Costs.	Per-centage			
	After an Attachment, Two Subpoenas, and a Writ of Execution.	Without these Processes.			25 per Cent. or 4 Annas per Rupee.	18½ per Cent. or 3 Annas per Rupee.	12½ per Cent. or 2 Annas per Rupee.	6½ per Cent. or 1 Anna per Rupee.
Rupees.								
1	1 12	1 4	3	2	4	3	2	1
5	2 12	1 4	15	10	4	15	10	5
8	3 8	2	8	1	8	1 8	1	8
10	4	2 8	1 14	1 4	2 8	1 14	1 4	10
18	5 4½	3 12½	3 4½	1 14	4 8	3 6	2 4	1 2
20	5 8	4 4	3 8	2	5	3 12	2 8	1 4
25	6	4 8	4	2 4	6 4	4 11	3 2	1 9
30	6 8	5 5	4 8	2 8	7 8	5 10	3 12	1 14
35	7	5 8	5	2 12	8 12	6 9	4 6	2 3
40	7 8	6	5 8	3	10	7 8	5	2 8
50	14	11	9	4 8	12 8	9 6	6 4	3 2
55	14 8	11 8	9 8	5 12	13 12	10 5	6 14	3 7
60	15	12	10	6	15	11 4	7 8	3 12
70	16	13	11	6 8	17 8	13 2	8 12	4 6
75	16 8	13 8	11 8	6 12	18 12	14 1	9 6	4 11
80	17	14	12	7	20	15	10	5
90	20	17	15	8 8	22 8	16 14	11 4	5 10
100	21	18	16	9	25	18 12	12 8	6 4
180	26	23	21	11 8	37 8	28 2	18 12	9 6
200	42	35	30	18	50	37 8	25	12 8
250	47	41	35	20 8	52 8	46 14	31 4	15 10
300	52	46	40	23	75	58 4	37 8	18 12
350	61	55	47	27 8	87 8	65 10	43 12	21 14
400	66	60	52	30	100	75	50	25

N.B.—The first column exhibits costs of decree and dismiss only; but all postponement costs, and additional attachments against defendants and attachments against witnesses, are not included

(signed) C. W. Bretzke, Commissioner

(No. 145.)

From F. J. Halliday, Esq. Junior Secretary to the Government of India, to F. J. Halliday, Esq. Secretary to the Government of Bengal.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1517, dated the 22d ult., with its enclosures, relating to the court of requests, and to return them herewith, copies having been communicated to the Law Commissioners.

Judicial.

I have, &c.

Council Chamber,
12 Oct. 1840.

(signed) F. J. Halliday,
Junior Secy to the Govt of India.

(No. 146)

From T. H. Maddock, Esq. Secretary to the Government of India, to J. C. C. Sutherland, Esq. Secretary to the Indian Law Commission.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you, for the information of the Law Commissioners, copy of correspondence noted in the margin, relating to the court of requests.

Letter from Secretary Government of Bengal, dated 25th August last, with Enclosures
Letter to ditto, dated 7th September last.
Letter from ditto, dated 22d Sep. last, with Enclosures.

Council Chamber,
12 Oct. 1840.
300.

I have, &c.
(signed) T. H. Maddock,
Secy to the Government of India.

Q q

No. 4.

(No. 324.)

Jud. Cons.
22 March 1841.
No. 1
Judicial Dep.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the commissioners of the court of requests, dated the 23d ult., being a continuation of the correspondence submitted along with my letter, No. 1402, of the 25th August last.

2. The Governor has instructed me to add, that he has acceded to the solicitation of the commissioners as respects the payment of the costs to which they refer.

Fort William,
2 March 1841.

I have, &c.
(signed) *F. J. Halliday*.
Sec^r to the Gov^r of Bengal.

P. S.—Please to return the enclosure.

Jud. Cons.
22 March 1841.
No. 2.
Enclosure

From the Commissioners of the Court of Requests, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

WITH reference to our letter of the 15th September last, and the orders of the Right honourable the Governor of Bengal, No. 1548, dated the 29th of the same month, we have the honour to report that the action of trespass instituted in the Supreme Court by Wm. Anderson has been compromised, in conformity with the advice of Mr. Advocate-general Turton, and the orders of Government above alluded to.

2 We beg to forward the accompanying taxed bills of costs, viz.:

	Co's Rs.	a.	p.
Mr. T. B. Swinhoe's bill for the costs of the defendant -	1,620	6	4
Mr. W. D. Shaw's bill for the costs of the plaintiff, including 200 rupees, the compromise money offered -	654	3	-
TOTAL - - - Co's Rs.	2,274	9	4

And to request that you will be pleased to submit them to the Right honourable the Governor of Bengal, for his Lordship's permission to charge the amount in the accounts of the court of requests

3. We respectfully hope that we shall not be considered presumptuous in adverting to our letter of the 3d August last, in which we endeavoured to point out to his Lordship the painful position in which the commissioners were placed by reason of the indefinite and unsettled jurisdiction of this court. The experience of the past seven months has convinced us that our views were by no means exaggerated. We feel daily considerable embarrassment in our official situation to act with confidence or with usefulness to the public, since the spirit of opposition to this court, by dishonest debtors, has now reached to that extent as almost to cripple us in the due discharge of our duties. It is not improbable, as we before hinted in our letter of 3d August, that objections may be urged against the competency of one commissioner to hold proceedings in this court; and should the question be formally decided by the Supreme Court in the negative, we are persuaded that the public interests will suffer very seriously, and ourselves become subjected to prosecution.

4. In the present instance (we mean the trespass case instituted by Anderson), to say nothing of the heavy pecuniary outlay incurred in adopting the proper legal steps in justification of our official conduct, let it be considered what has occurred since the decision of the Supreme Court in July last.

The court of requests has lost much of its public confidence. Hundreds of suitors are prevented from resorting to it. Dishonest debtors are at ease, because their

litigants cannot have recourse to the expensive tribunal of the Supreme Court for recovery of many claims of which this court formerly took cognizance, and in cases where our path of duty may appear to us very clear, legal objections are raised, and legal proceedings adopted, which may render it necessary to be on the defensive at the immense risk of incurring heavy law charges, unless Government should in every instance authorise the employment of its law officers to take up our cause on hand free of costs.

5. At such a crisis we consider it our duty to call on government to interpose in our behalf, and we earnestly entreat his Lordship to issue such orders on this important subject as shall relieve us from embarrassment, and render the court more efficient than it at present is

We have, &c.
(signed) C. W. Britzike,
Russomoy Dutt,
David Hare,
Commissioners

Court of Requests,
23 February 1841.

P. S.—The attorney of the plaintiff, Mr. Shaw, not having forwarded his taxed bill through the Honourable Company's solicitor, we do not think it necessary to wait any longer, as a considerable period has elapsed since the decision of the Supreme Court. When Mr. Shaw's bill reaches us, we shall immediately submit it for the orders of government.

In the Supreme Court of Judicature at Fort William, Bengal.

Plea Side.

William Anderson v. Russomoy Dutt and Thomas Ford.

Costs of the Defendants taxed as between Attorney and Client, under a Judge's Fiat of the 29th January 1841

S. Rs. a. p.	1839:	Sa. Rs. a. p.
	October 21st Attending receipt of a letter from Mr. Macleod, chief clerk of the court of requests, enclosing a letter addressed to Russomoy Dutt by Mr. Shaw, the plaintiff's attorney, and requesting me to receive the summons in this cause, (No. 1) - - - - -	2 8 -
	Writing a letter to Mr. Shaw, requesting him to direct the sheriff to serve the summons upon me - - - - -	2 - -
	November 2d. Attending sheriff's officer when he brought to me the summons in this case, and signing my understanding to appear for the defendants; (No. 2) - - - - -	2 8 -
	Warrant to defend - - - - -	2 - -
	Attending at the court of requests getting same signed by Russomoy Dutt and Mr. Ford - - - - -	2 8 -
	November 4th. Drawing instructions on the warrant to enter my appearance for the defendants - - - - -	1 - -
	Attending prothonotary's office filing same, and paid 15 annas - - - - -	1 15 -
	November 6th. Attending bespeaking and afterwards attending obtaining office copy plaint, and paid 3rs. 4 a. 6 p., (No. 3) - - - - -	5 4 6
	Attending clerk of the papers' office, searching, and found rule to plead, entered on the 1st instant, paid 15 annas; (No. 4) - - - - -	1 15 -
	November 7th. Attending client, going over the plaint with him, and conferring and advising thereon, when found there was an error therein, and receiving instructions to apply to Mr. Shaw to amend the same, and to give us further time to plead - - - - -	2 8 -
	Writing a letter to Mr. Shaw on the subject, and attending receipt of his reply agreeing to my having further time to plead, (No. 5) - - - - -	2 8 -
	November 8th. Attending client, Russomoy Dutt, when he brought to me all the original proceedings had before him in the suit against the plaintiff in the court of requests, going over same with him, conferring and advising thereon, and receiving instructions for pleas; two hours - - - - -	5 - -

No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

S.R.s.a.p.

1839 :		Sa.
	November 8th. Drawing and fair copying plea of the defendant Russomoy Dutt; fols. 16	17
	Attending Mr. Cochran therewith for settlement, and paid fee, 32 rs.; (No. 6)	34
	Drawing and fair copying plea of the defendant Thomas Ford; fols. 16	17
	Attending Mr. Cochran therewith for settlement, and paid him fee, 32 rs.; (No. 7)	34 8
	November 12th. Attending receipt of a copy order of the 8th instant from Mr. Shaw to amend the plaint in this cause, and perusing; (No. 8)	2 8 -
	November 13th. Attending receipt of the original order from Mr. Shaw, and signing my acknowledgment for costs on the back of the order	2 8 -
	November 14th. Attending Mr. Shaw getting my office copy plaint amended	2 8 -
	November 18th. Term fee	3 - -
	November 21st. Attending bespeaking and obtaining judge's summons that the defendant Russomoy Dutt do plead several matters, and paid 1 r. 14 a.; (No. 9)	4 6 -
	Copy and service thereof on Mr. Shaw; fols. 2	3 8 -
	Attending bespeaking and obtaining judge's summons, that the defendant Thomas Ford do plead several matters, and paid 1 r. 14 a.; (No. 10)	4 6 -
	Copy and service thereof on Mr. Shaw, fols. 2	3 8 -
	November 23d. Drawing and engrossing affidavit of service of summons that the defendant Russomoy Dutt do plead several matters; fols. 2; (No. 11)	3 8
	Attending before judge swearing same, and obtaining order to plead several matters, and paid 2 rs. 14 a. 10 p.	5 6 10
	Attending prothonotary's office filing same, and paid 2 rs. 13 a.	3 13 -
	Afterwards attending obtaining order, and paid 2 rs. 11 a. 1 p.	3 11 1
	Seal, and attendance thereon	1 15 -
	Copy and service thereof on Mr. Shaw; fols. 3	4 - -
	Drawing and engrossing affidavit of service of summons, that the defendant Thomas Ford do plead several matters; fols. 2; (No. 12)	3 8 -
	Attending before judge swearing same, and obtaining order to plead several matters, and paid 2 rs. 14 a. 10 p.	5 6 10
	Attending prothonotary's office filing same, and paid 2 rs. 13 a.	3 13 -
	Afterwards attending obtaining order, and paid 2 rs. 11 a. 1 p.	3 11 4
	Seal, and attendance thereon	1 15 -
	Copy and service thereof on Mr. Shaw; fols. 3	4 - -
2 8 -	November 24th. Attending receipt of the draft plea of Russomoy Dutt back from Mr. Cochran, settled by him; (No. 13)	2 8 -
	Attending Mr. Advocate-general therewith, and conferring, when he approved of the same	2 8 -
2 8 -	November 26th. Attending receipt of the draft plea of Thomas Ford back from Mr. Cochran, settled by him; (No. 16)	2 8 -
	Attending Mr. Advocate-general therewith, and conferring, when he approved of the same	2 8 -
	November 27th. Engrossing plea of the defendant Russomoy Dutt; fols. 16	8 - -
	Attending clerk of the papers' office filing plea and original order, and obtaining a rule to reply, and paid 4 rs. 11 a.; (No. 15)	5 11 -
	Seal, and attendance thereon	1 15 -
	Copy and service thereof on Mr. Shaw; fols. 2	3 8 -
	Engrossing plea of the defendant Thomas Ford; fols. 16	8 - -
	Attending clerk of the papers' office filing same and original order, and obtaining a rule to reply, and paid 4 rs. 11 a.; (No. 16)	5 11 -
	Seal, and attendance thereon	1 15 -
	Copy and service thereof on Mr. Shaw; fols. 2	3 8 -

	Sa. Rs. n. p.
1839 November 30th. Attending receipt of a letter from Mr. Shaw, requesting me to give him more time to reply to the plea, and answer, (No. 17)	2 8 -
1840: January 20th. Attending clerk of the papers' office searching, and found no replications filed to the pleas of the defendants, and paid 1 r. 14 a.	2 14 -
January 24th. Attending receipt of a letter from Mr. Shaw, stating that his client wished to take the opinion of the court, as to whether the court of commissioners had jurisdiction over executors, and requesting to know if my client would agree thereto, (No. 18)	2 8 -
Making a copy of Mr Shaw's letter; fols. 3	1 8 -
January 25th. Writing a letter to client therewith, requesting him to let me know his determination on the subject	2 - -
Attending clerk of the papers' office searching, and found no replications filed to the pleas of the defendants, and paid 1 r. 14 a., (No 19)	2 14 -
January 28th. Attending receipt of a letter from the chief clerk of the court of requests, in reply to mine of the 25th instant, requesting me to leave the case entirely in the hands of the Advocate-general, to be brought on before the Supreme Court in the manner he might consider advisable, and perusing, (No 20)	2 8 -
Making a copy thereof; fols. 6	3 - -
Attending the Advocate-general therewith, and conferring with him thereon at great length, when he advised the course suggested in Mr. Shaw's letter of the 24th instant, two hours	5 - -
January 29th. Writing a letter to client, informing him thereof	2 - -
May 5th Attending Mr. Shaw, when he gave me a replication to the plea of the defendant Russomoy Dutt for my perusal, and conferring	2 8 -
Drawing and engrossing instructions to Mr. Clarke to draw a rejoinder; fols 2	3 8 -
Attending Mr. Clarke therewith, and with the office copy plaint and plea, and paid him fee, 16 rs.; (No. 21)	18 8 -
Afterwards attending receipt of a letter from Mr. Clarke, wishing to have a consultation with the Advocate-general on the replication this day, and answering	2 8 -
Attending the Advocate-general fixing time for consultation, and paid 48 rs., (No. 21/4)	50 8 -
Attending Mr Clarke informing him thereof, and paid 48 rs.; (No 21/2)	50 8 -
Afterwards attending at the Advocate-general's on consultation, when he advised that the plea of Russomoy Dutt should be amended; four hours	10 - -
May 25th. Attending client informing him thereof, and receiving instructions to apply for an order to amend the plea	2 8 -
May 26th. Attending clerk of the papers' office, obtaining a certificate if no replication filed to the plea of Russomoy Dutt, and paid 15 annas	1 15 -
Drawing and engrossing petition for leave to amend the plea, amending the plaintiff's office copy thereof gratis; fols. 3, (No 22)	4 8 -
Attending before judge presenting petition and obtaining order, and paid 2 rs. 13 a.	5 5
Attending clerk of the papers' office filing same, and paid 2 rs 13 a.	3 13 -
Drawing instructions to the Advocate-general to amend the plea	1 - -
Attending him therewith, and paid him fee 16 rs, when he amended the plea; (No. 23)	18 8 -
Attending clerk of the papers' office amending the plea, and paid 3 rs. 12 a.	4 12 -
Attending bespeaking and obtaining rule to reply, and paid 1 r. 14 a. (No. 24)	2 14 -

No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

S. Rs. a. p.

1840:		Sa.
May 26th.	Seal and attendance thereon - - - - -	2
	Copy and service thereof on Mr. Shaw; fols. 2 - - - - -	2
May 27th	Attending Mr. Shaw obtaining his office copy plea to amend - - - - -	2
	Attending clerk of the papers' office amending same, and paid 3 rs. 14 a. 9 p. - - - - -	4 14
	Attending Mr. Shaw, returning his office copy plea amended - - - - -	2 8
June 25th.	Attending receipt of a letter from Mr. Brietzike, requesting me to bring this case for decision before the court as soon as possible, as many actions were pending in the court of requests against executors, and which could not be decided until the judgment of the court was passed in this case, and answering, (No. 25) - - - - -	2 8 -
June 29th.	Attending receipt of a notice from Mr. Shaw, demanding a joinder in demurrer on this case - - - - -	2 8 -
	Attending clerk of the papers' office, bespeaking and obtaining office copy similiter, and office copy demurrer, and paid 3 rs. 10 a 11 p. - - - - -	5 10 1
	Drawing and engrossing joinder in demurrer, fol. 1, (No. 26) - - - - -	2 8 -
July 2d.	Attending clerk of the papers' office filing same, and paid 1 r. 14 a. - - - - -	2 14 -
	Paid clerk of the papers for searching plea, and attending prothonotary therewith - - - - -	1 14 -
	Drawing and engrossing notice of joinder in demurrer filed; fol. 1, (No. 27) - - - - -	2 8 -
	Copy and service thereof on Mr. Shaw, fol. 1 - - - - -	3 - -
July 4th.	Attending receipt of a letter from Mr. Shaw, requesting me to consent to setting down the demurrer for Thursday next, and answering, (No. 28) - - - - -	2 8 -
July 7th.	Attending receipt of a long letter from Mr. Brietzike, requesting me to have this case brought to a close as soon as possible, and answering; (No. 29) - - - - -	2 8 -
July 9th.	Attending the Advocate-general, conferring with him on this case, when he wished to see the letter of the Court of Directors to the Government, dated in January 1753, containing instructions for the proceedings of the court of requests Writing a letter to cheat for the same, and attending receipt of his reply forwarding a copy thereof, and referring me to the government records for the original thereof - - - - -	2 8 -
July 10th.	Writing a letter to Mr. Bushby, secretary in the General Department, for the original letter - - - - -	2 - -
July 11th.	Attending at Mr Bushby's office conferring with him, when the letters could not be found - - - - -	2 8 -
	Perusing pleadings to prepare brief - - - - -	3 - -
	Making two copies of briefs for-counsel, fols. 88 each; (No. 30) - - - - -	88 - -
	Attending Mr Advocate-general with one copy, and paid him fee, 64 rs. - - - - -	66 8 -
	Attending Mr. Clarke with the other copy, and paid him fee, 48 rs.; (No. 31) - - - - -	50 8 -
	Making two copies of demurrer book for Sir John Grant and Sir H. Seton, fols. 88 each - - - - -	88 - -
	Attending Sir John Grant's clerk with copy, and paid 1 r. 14 a. - - - - -	2 14 -
	Attending Sir H. Seton's clerk with the other copy, and paid 1 r. 14 a. - - - - -	2 14 -
July 20th.	Attending Messrs. Turton and Clarke severally, fixing time for consultation - - - - -	5 - -
	Paid Mr. Turton consultation fee - - - - -	48 - -
	Ditto Mr Clarke - ditto - - - - -	48 - -
	Attending on cause, when the Advocate-general directed me to go personally to the court of commissioners and see if I could not get certain directions given them by government when the court was first established; four hours - - - - -	10 - -
	Attending the court of commissioners searching for such directions, and after some trouble discovered them, and attending counsel therewith, and conferring with them thereon; four hours - - - - -	10 - -

S. Rs. a. p.	1840.	Sa. Rs. a. p.	No. 4. Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.
	July 21st. Attending court, when the demurrer was argued at great length, and allowed, with costs; four hours - - -	10 - -	
	Paid prothonotary - - - - -	3 12 -	
	Ditto crier - - - - -	- - -	
4 -	Attending receipt of a letter from Mr. Shaw, requesting to know if my client would now make any reparation to his client for his illegal conduct, and if not, that he would set down the cause to assess damages, &c. - - -	2 8 -	
	Making a copy thereof, fols. 2 - - - - -	1 - -	
	Writing to client therewith - - - - -	2 - -	
	July 22d. Attending receipt of a letter from a client, requesting I would make a full and explanatory report of this case; (No. 33) - - - - -	2 8 -	
	July 24th. Writing a long letter to client, containing my report of this case, as requested - - - - -	2 - -	
	July 27th. Attending receipt of a long letter from Mr Shaw, requesting to know if my client would or would not make a reparation to his client; (No. 34) - - - - -	2 8 -	
	Making a copy thereof, fols. 2 - - - - -	1 - -	
	Writing to client therewith - - - - -	2 - -	
	August 26th. Attending client, conferring, and receiving instructions to submit the correspondence had with Mr. Shaw to the Advocate-general for his advice as to a compromise of this action, and receiving instructions for such case; 2 hours; (No. 6) - - - - -	5 - -	
	Drawing and engrossing such case; fols. 12; (No. 35) - - -	13 8 -	
	Attending Mr Turton therewith, and paid him fee, 48rs. - -	50 8 -	
	September 7th Attending receipt of the case back from Mr. Advocate-general, with his opinion thereon - - - - -	2 8 -	
8 -	September 28th. Making a copy of the opinion, fols. 3, at client's request - - - - -	1 8 -	
	Attending client therewith, and conferring with him thereon, when he promised to send the opinion, to government, for orders thereon - - - - -	2 8 -	
	October 15th Attending receipt of a letter from client, forwarding a copy of the resolution of government offering a compromise of his action on payment of 200 rupees to the plaintiff for damages, and requesting me to communicate with Mr. Shaw on the subject; (No. 36) - - - - -	2 8 -	
	Writing a letter to Mr. Shaw, offering 200 rupees for damages and the costs of this action - - - - -	2 - -	
	October 17th. Attending receipt of a letter from Mr. Shaw, in reply to mine of the 15th instant, declining to accede to our terms, and requiring 500 rupees for damages and the costs -	2 8 -	
	Making a copy thereof; fols. 2 - - - - -	1 - -	
	Writing a letter to client therewith, for instructions - - -	2 - -	
8	October 21st. Attending client, conferring, and receiving instructions to move for a rule Nisi to pay 200 rupees for damages, in court, together with the costs of this action -	2 8 -	
	Attending Moodoosoodun Bose and Bissessur Bonnergea, the seal siders of the court of requests, taking instructions for their joint affidavit, as grounds of the application, 2 hours -	5 - -	
	Drawing and fair copying such affidavit; fols. 13; (No. 37) -	14 8 -	
	Making a copy of my letter to Mr. Shaw of the 15th instant, and of his reply; fols. 3 - - - - -	1 8 -	
	Attending Mr Advocate-general therewith and with the affidavit, and paid him fee, 32 rs. - - - - -	34 8 -	
8 -	November 4th Attending receipt of the draft affidavit settled by that Advocate-general, with several alterations, and his opinion thereon - - - - -	2 8 -	
	Engrossing affidavit; fols. 13 - - - - -	6 8 -	
	November 6th. Attending prothonotary's office, bespeaking and obtaining office copy, minutes of judgment on demurrer, and paid 1 r. 8 a. 4 p. - - - - -	2 8 4	

No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

S.Rs. a.p.	1840 :	Sa. Rs. a. p.
	November 7th. Attending the deponents on their joint affidavit, explaining, and getting same signed by them - - -	2 8 -
1 8 -	Attending before judge, getting them sworn thereto, and paid 4rs. - - - - -	6 8 -
	November 10th. Drawing special motion paper for the application; fols. 2 - - - - -	2 8 -
	Attending the Advocate-general, and with the affidavit and minutes of judgment, and paid 16rs; (No. 38) - - -	18 8 -
	Attending court when motion made and rule Nisi granted - - -	2 8 -
	Paid prothonotary for minuting motion filing grounds - - -	4 11 -
	Paid reading clerk for reading grounds - - - - -	15 - -
	November 11th. Attending obtaining rule Nisi, and paid 3rs. 4a. 6p. - - - - -	4 4 6
	Seal, and attendance thereon - - - - -	1 15 -
- 2 -	Copy, and service thereof on Mr. Shaw; fols. 4 - - - - -	4 8 -
	Copy to keep; (No. 39) - - - - -	2 - -
	November 12th. Drawing and engrossing affidavit of service of rule Nisi; fols. 2; (No. 40) - - - - -	3 8 -
	Attending before judge, swearing same, and paid 2rs. - - -	4 8 -
	Making a brief of the rule Nisi, and grounds for the Advocate-general to make same absolute; fols. 19 - - - - -	9 8 -
	Attending the Advocate-general therewith, and paid him fee 32rs. (No. 41) - - - - -	34 8 -
	Attending receipt of notice of trial from Mr. Shaw for the sitting, (No. 42) - - - - -	2 8 -
	Writing a letter to client informing him thereof - - - - -	2 - -
4 - -	November 13th. Attending client, conferring and advising with him, and receiving instructions for case and proof; 4 hrs. - - -	10 - -
	Drawing case and proof. fols. 14; (No. 43) - - - - -	8 8 -
	Making two copies thereof for counsel; fols. 14 each - - -	14 - -
	Attending Mr. Advocate-general with his brief, and paid 96rs.; (No. 44) - - - - -	98 8 -
	Attending Mr. Clarke with his brief, and paid 80rs., (No. 45) - - -	82 8 -
	November 14th. Attending of a long letter from Mr. Shaw proposing certain terms for the settlement of this action, and perusing; (No. 46) - - - - -	2 8 -
	Making a copy thereof; fols. 4 - - - - -	2 - -
	Writing a letter to client therewith - - - - -	2 - -
	Making a copy of the letter for the Advocate-general; fols. 4 - - -	2 - -
	Attending him therewith and conferring thereon - - - - -	2 8 -
	November 18th. The usual charges for a subpoena ad teste to five witnesses, not sealed or served, (No. 47) - - - - -	5 7 -
	Attending court when the rule Nisi was argued at great length, and after much discussion it was discharged - - - - -	5 - -
	Attending informing client thereof, and advising - - - - -	2 8 -
	Paid prothonotary for minuting motion filing grounds - - -	5 10 -
	Paid clerk of the papers - - - - -	15 - -
	Ditto crier - - - - -	15 - -
	Attending receipt of a letter from Mr. Shaw, informing me that he had struck out the cause from the board, and agreeing to accede to the terms proposed by us, (No. 48) - - - - -	2 8 -
	Making a copy thereof, fols. 2, and attending writing to client therewith - - - - -	2 - -
	November 21st. Attending receipt of the draft order of the 18th instant from the prothonotary for my approval - - - - -	1 - -
	Making a copy thereof for the Advocate-general's approval; fols. 7 - - -	3 8 -
	Attending him therewith, and paid 16rs. - - - - -	18 8 -
2 8 -	November 22d. Attending receipt of the draft order back from Mr. Tinton, with alteration - - - - -	2 8 -
	Attending the prothonotary therewith - - - - -	1 - -
	November 25th. Attending receipt of a copy of the draft order from the prothonotary, as settled by Mr. Shaw; (No. 50) - - -	1 - -
	Making a copy thereof for the Advocate-general; fols. 7 - - -	3 8 -
	Attending Mr. Advocate-general therewith and with the copy order settled by him, when he made a few alterations thereon - - -	2 8 -
	Attending the prothonotary therewith, returning same - - - - -	1 - -

S.R.a.p	1840:	Sa. Rs. a. p.
	December 14th. Attending receipt of a copy summons from Mr. Shaw for Wednesday next to tax his costs, under the minutes of judgment of the 21st July last; (No. 51) - -	2 8 -
	December 15th. Attending at the taxing-officer on taxation of Mr. Shaw's bills - - - - -	2 8 -
	December 19th. Attending receipt of a copy allocatur from Mr. Shaw - - - - -	2 8 -
	Attending informing client the amount thereof, and requesting him to pay the same - - - - -	2 8 -
	December 20th. Attending client when he brought me the amount, and giving receipt for same - - - - -	2 8 -
	Attending Mr. Shaw with the amount and obtaining his allocatur receipted - - - - -	2 8 -
	Bill of costs - - - - -	5 - -
	Attending the taxing-officer therewith - - - - -	1 - -
	Paid him - - - - -	4 11 -
	Attending on taxation - - - - -	2 8 -
	Paid for taxation - - - - -	15 - -
	Summons and oath - - - - -	2 13 -
44 - 4		Sa. Rs. 1,563 6 -
a'		1,667 9 6
47 3 2		47 3 2
		Co.'s Rs. 1,620 6 4

I allow of this bill between attorney and client, the sum of Company's rupees 1,620, 6 annas and 4 pice.

8 February 1841.

(signed) *Rd. Vaughan,*
Taxing Officer.

(signed) *C. W. Britzike,*
Commissioner.

No advance,
(signed) *J. B. Sumhoo,*
Defendant's Attorney.

Registered, No. 789,
New Book

23 January 1841.

In the Supreme Court of Judicature at Fort William in Bengal.
Plea Side.

William Anderson v. Russomoy Dutt and Others.

(No. 1353—E.)

I HAVE taxed the costs of the plaintiff in the above cause, between party and party, under a Minute of Court, bearing date the 21st day of July 1840, and do allow the sum of Company's rupees 654 and 3 annas.

Dated this 16th day of December 1840.

W. D. Shaw,
Plaintiff's Attorney.

(signed) *R. Vaughan,*
Taxing Officer.

Received payment.

(signed) *W. D. Shaw.*

Pay.

(signed) *J. B. S.*
(signed) *C. W. Britzike,*
Commissioner.

R R

No. 4.

Jud Cons.
22 March 1841.
No. 3.

Judicial.

(No. 41.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 324, dated the 2d inst., with its enclosures, and in reply, to convey the approval of the Governor-general of India in Council to the sanction granted by the Right honourable the Governor of Bengal for the payment of costs in the action of trespass instituted by Mr. Anderson against the Commissioners of the court of requests in Co.'s R. 2274. 9. 4.

2. The original enclosures received with your letter are returned herewith.

Council Chamber,
22 March 1841.

I have, &c.
(signed) *T. H. Maddock*,
Secretary to the Government of India.

Legis. Cons.
26 July 1841.
No. 5.

Judicial Dep.

(No 978.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India in the Legislative Department.

Sir,

WITH reference to my letters of the 25th August 1840, and 2d March last, on the subject of the effect on the jurisdiction of the court of requests of the decision of the Supreme Court, in the case of *Anderson v. Russomoy Dutt* and others, I am directed by the Right honourable the Governor of Bengal to forward, in order that it may be considered by the Supreme Government, a memorial on the subject, which has been presented to his Lordship by Mr. N. Grant; and to add, that his Lordship is credibly informed that the present state of the court of requests, arising out of the decision in the case in question, is productive of serious inconvenience to the people of Calcutta, and deserves to be remedied as speedily as may be possible. His Lordship would earnestly recommend the Governor-general in Council to give an early attention to this matter, in which further delay does not appear to be just to a large population, or creditable to the Legislature.

Fort William,
24 June 1841.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Legis Cons.
26 July 1841.
No. 6.
Enclosure.From *N. Grant*, Esq to the Right honourable *Earl Auckland*, K.C.B.
Governor of Bengal.

My Lord,

THE present imperfect constitution and jurisdiction of the Calcutta court of requests, which it is the purport of this letter to bring to your notice, will, I trust, be deemed sufficiently important to merit your Lordship's attention.

I address your Lordship in the character of a private sufferer, but under a public grievance, and I therefore come forward as one of the many for the common benefit of all who are, or are likely to be, sufferers, if the evil under which I have suffered be not remedied. In that spirit I am encouraged to hope that the case which I shall describe will be considered, not with reference to the petty injury which it has done to me as an individual, but with reference to the evil which it involves to the injury of a large class of the inhabitants of this city and its environs.

The case to which I solicit your Lordship's attention is simply this:

I some time back placed with Mr. Lepage, a bookseller and commission-agent of this city, certain books on commission sale, to be sold by him at certain fixed prices. In direct contravention, however, of my instructions, and therefore in breach of his duty as agent, Mr. Lepage sold certain of these books at prices much under those so fixed by me; and I therefore objected to his account sale, and demanded payment of the difference between the prices at which he had taken upon himself to sell and those which it was his duty to have realized on

the books in question. My demand, however, was refused, and Mr. Lepage paid over the mere amount which he had received on the improper sale of the books, less his commission charges, thus leaving a disputed balance of about 37 rupees due in my favour; and viewing the transaction as it then stood as one of simple debt, I therefore brought my action for that amount in the court of requests.

That court, however, on hearing the nature of the case, and the objections of the defendant to the court's jurisdiction, on the plea that the case involved a question of damages, declined interference; and the suit was consequently non-suited, leaving me no alternative between an abandonment of my just claim and an expensive suit in the Supreme Court.

This admission of non-jurisdiction I have since been informed was, without doubt, founded on the authority of a recent case in the Supreme Court, *W. Anderson v. Russomoy Dutt*.

Thus denied the justice I had sought in the minor court, I naturally determined upon seeking the realisation of my claim through the higher court, in which alone my remedy remained. On reference, however, to a solicitor of high professional talent and long experience, I was informed that in such a case, involving as it did so trifling an amount as 37 rupees, it would be folly to incur the risk and expense to which a suit in the Supreme Court would subject me, as even under the most favourable circumstances, charges would be incurred, part of which, although successful in the suit, I could not recover; in short, that such charges would assuredly very far exceed the amount for which my suit would be instituted. Thus, my Lord, I am debarred of a just legal remedy in the case of a clear legal wrong. But, under the knowledge of your Lordship's character and government, I am well assured that such a state of the law needs but to be brought to your Lordship's notice to insure a speedy remedy of the evil now existing, and as one of the many sufferers, I deem it my duty thus to bring forward my own case, as an illustration in point; for, to quote the words of an eminent author, "the injustice done to an individual is sometimes of service to the public: facts are apt to alarm us more than the most dangerous principles."

True, my Lord, the sum for which I sued was trifling; but it is for the recovery of every less important demand that the majority of suitors seek the agency of the court of requests; and I therefore confidently trust that the principles of the law, and not the principal of the action, in the case now brought to notice, will form the subject of your Lordship's consideration.

There are thousands within and near this city to whom a single rupee is as much the matter of careful and anxious solicitude as a thousand rupees to the wealthy; and it is such men who, under the want of a cheap court of competent jurisdiction, composed of efficient judges to take cognizance of minor injuries, are too commonly debarred the means of obtaining their just rights whilst trampled on by the dishonest.

In conclusion, I beseech your Lordship to give to the subject of this letter that attention which its importance demands, and to remedy the public evil of which I have complained, by making such alterations and improvements in the present constitution of the court of requests as to your Lordship may seem necessary.

Though I address your Lordship thus singly, I am well assured that there are hundreds who, if called on, would unite in the entreaty conveyed in this letter.

Creek-row, Wellington-square,
Calcutta, 22 June 1841.

I have, &c.
(signed) *N. Grant*.

MINUTE by the Honourable *A. Amos*, dated 26 January 1841.

I THINK the Council are aware, that if a law is wanted for the court of requests, according to the most eligible of the two or three schemes which are most deserving of consideration, the whole matter might be disposed of in a fortnight, and might have been so disposed of in any fortnight during the last three years. But then a report from the Law Commission must have been dispensed with.

I am satisfied that the Commissioners devote a great deal of time and laborious attention to their duties, though it must necessarily happen that they are subject to many avocations, upon committees, examinations, &c., to which they are the more frequently invited, from their experience and standing, and from the circumstance that their duties do not call for executive acts not admitting of delay.

300.

R R 2

I believe

Legis. Cons.
26 July 1841.
No. 7.
Calcutta Court
of Requests.

No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

I believe that some of us, from an anxiety to become acquainted with all information bearing upon subjects, take up a great deal more time than is consistent with any early call for our opinions; perhaps also we are sometimes too solicitous about sending reports which may deserve great respect on their own account, rather than serving merely the purpose of practical suggestions, the ability of which cannot be generally appreciated.

If the Council want immediately a scheme for a court of requests, I have always said that I only require a day's notice to lay several before them, which may deserve their consideration.

If they wish to wait for a report from the Law Commission, and at the same time think that the subject is more pressing than the Madras Judicature Report (for the other matters before the Commission are decidedly of less moment), they had, perhaps, better write to this effect, viz. "that it has become necessary to modify the court of requests, and an Act for the purpose cannot be delayed beyond the next month. The Council is anxious for the opinions of the Law Commission; but in order that they may be of practical use, it is wished that they be forwarded to Council before the middle of the next month."

(signed) *A. Amos.*

Legis. Cons.
26 July 1841.
No. 8.
Court of Requests.

MINUTE by the Right honourable the Governor-general, dated the 28th June 1841.

I AM strongly of opinion that no further delay should be allowed in this matter, and I would ask Mr. Amos at once to lay before us a draft of Act for removing the disabilities under which the court of requests at present labours, and for extending its jurisdiction, an object to which I attach much importance, as far as can prudently and usefully be done. Such a scheme would include a provision for a single process and examination of parties, the appointment, if thought necessary, of a limited number of jurors, with a ready appeal to the Supreme Court.

(signed) *Auckland.*

Legis. Cons.
26 July 1841.
No. 9.
Calcutta Court
of Requests.

MINUTE by the Honourable *A. Amos*, dated 30th June 1841.

I HAVE prepared a draft Act, which, I think, raises all the important questions incident to the subject, so that I think the Act, after the maturest consideration, will chiefly consist of modifications of the clauses here given.

The points for consideration are:—

1. What limitation of jurisdiction is to be imposed with respect of the species of suits?
2. What in respect of the money amount recoverable?
3. Is the jurisdiction of the court to extend into the suburbs?
4. Is any and what legal assistance to be given to the court? a very important question as regards expense, and to be viewed in connexion with the circumstance, that any material extent of jurisdiction must be attended with an influx of barristers.
5. In what cases is an appeal to be allowed to the Supreme Court?
6. Is a jury, or any modification of a jury, to be admitted?
7. What is to be the procedure in the court below, and what in appeals?
8. What provisions are to be made for fees of court, and what for costs?

As far as I am aware these points include the most important features of the whole subject. I have cut the knot of every one of them; but I have been much more anxious in the present emergency to present rules which should embrace every question, and which may be modified or expunged in Council, after further consideration, than to create more delay by deliberating about what kind of rules I should present.

I incline to think that it is the intention of the Law Commissioners to recommend a subordinate court, of which the principal judge shall be a barrister, and which shall try every species of cause, and to any amount, subject to an appeal in all cases to the Supreme Court. The process to be more simple than that of the Supreme Court, and assessors, in the nature of jurymen, be summoned.

I first drew the present draft so as to extend to all cases under 10,000 rupees, the amount where appeals to the Privy Council commence; but on conference

I have

duced the amount, as will be found in the draft. If there should be other for goods sold, wages, or rent, which ordinarily are free from legal difficulty will be properly included with suits for those matters, provided it be expedient to draw a distinction as to appealable and non-appealable and to rest that distinction on the species of cases as well as the amount in

some more definite rules as to fees, costs, and procedure before, at, and after, and on appeal, will doubtless be suggested, on our application, by the judges of the Supreme Court, and by the Commissioners, it may be desirable to make the act somewhat more specific as to these details.

Having said thus much of the draft, I will add a few words on the general subject. The confusion which has arisen is owing to the common cause of legal confusion in India, viz. that authorities, from a desire to do abstract justice, have stepped beyond the clear line of their jurisdiction. After these illegal precedents have been followed for many years, their being suddenly arrested creates much more inconvenience than if they had never been made, for then a legal remedy would have been applied, without the public being deprived of any advantages it had enjoyed.

In extending the jurisdiction of the court of requests, it is necessary to guard ourselves against the current of public opinion, that we shall be at least administering cheaper justice. There are, I think, limits within which this opinion is correct, but I think they are more narrow than is generally supposed. A very slight extension of jurisdiction calls for an appeal, if not also an assessor, and perhaps a jury. These must increase the expenses of a petty court suit; but then it may be said the small pay of the judges and officers, the very simple form of pleading, the examination of parties, will still maintain a great disparity between the expenses of the supreme and petty court. On the other hand, I am not sure that in many causes the want of more specific pleadings, and the examination of parties, may not increase the ultimate expense. But there remains this important consideration, that the fees of the Supreme Court are a very small item in the expenses of a suit. The fees of barristers and attorneys are the main causes of expense. Now before a comparatively weak court, certainly before a jury, and especially in the cross-examining and re-examining of plaintiffs and defendants, the advantages of employing counsel will be increased beyond measure in every case where the stake considerably exceeds either in importance or pecuniary amount the limits of the present jurisdiction of the court of requests. The examination of parties, and the latitude of proof incident to simple forms of pleadings, though the former may now and then cut short a case, will probably, on the whole, both contribute to prolong trials to a most inconvenient extent.

(signed) A. Amos.

AN ACT for Modifying and Extending the Jurisdiction and Powers of the Calcutta Court of Commissioners for the Recovery of Small Debts.

Legis. Cons.
26 July 1841.
No. 10.
Enclosure.

1. It is hereby enacted, that, subject to the limitations hereinafter mentioned, the court of commissioners for the recovery of small debts within the town of Calcutta shall have jurisdiction of all suits for the recovery of debts or damages, where the demand is less in amount than 1,000 rupees.
2. And it is hereby enacted, that any one of the commissioners shall constitute a sufficient court for the trial of all cases where the demand does not exceed 500 rupees, and that where the demand exceeds such amount two commissioners at least shall be necessary for the decision of the case.
3. And it is hereby enacted, that where the amount recovered in any suit shall exceed 500 rupees, or shall be for any demand other than a debt by simple contract for goods sold, wages, or for rent, an appeal, if made within a week, shall lie to Her Majesty's Supreme Court at Calcutta, or to any judge of such court in vacation.
4. And it is hereby enacted, that Her Majesty's Supreme Court aforesaid, upon a case being appealed, may at its discretion decide the appeal in full court, or direct the same to be decided by any judge of the Supreme Court, and in either case the suit may be determined both according to the rules of courts of law and of courts of equity, and the court or judge may call for any further documents or witnesses

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witnesses to be produced before such court or judge, although the same have been produced before the commissioners, and shall make a final judgment accordingly, and shall remit the judgment to be executed by the inferior court.

5. And it is hereby enacted, that it shall be lawful, in all suits appealed to Her Majesty's Supreme Court aforesaid, for the parties to enter into an agreement in writing, to be signed by such parties, and by any one of the commissioners aforesaid before whom such agreement may be made, to the effect that the decision of the court of commissioners shall be final between the parties, and such agreement may be made at any period of the suit, and shall preclude an appeal being received by Her Majesty's Supreme Court.

6. And it is hereby enacted, that the jurisdiction of the court of commissioners aforesaid shall include as well the town of Calcutta as all places within the distance of five miles from any part of the same town.

7. And it is hereby enacted, that in proceedings in suits for any amount not exceeding 500 rupees, and being for goods sold, wages, or rent, the forms of proceedings shall be the same as now used before the said court of commissioners; but in suits for any amount exceeding 500 rupees, the plaintiff shall at the time of commencing his suit file in the court of the commissioners a particular statement in writing of his complaint, and the defendant shall file a like statement of the grounds of his defence, within a reasonable time, to be fixed by the commissioners; and after the filing of the above statements the court shall appoint a day for hearing the parties.

8. And it is hereby enacted, that the said commissioners shall from time to time frame rules for conducting all proceedings before them, which rules, after they shall have obtained the sanction of the Governor-general in Council, shall have the like force and effect as if inserted in this Act: provided always, that until such rules be framed and allowed, the proceedings of the said commissioners shall be the same as are now in force, or in cases appealable to the Supreme Court, as near thereto as in the judgment of the said commissioners may appear to be practicable and reasonable.

9. And it is hereby enacted, that it shall be lawful for Her Majesty's Supreme Court to issue such directions touching the transmission of appeals as may appear necessary, which directions shall be observed by the said commissioners and all persons concerned in the said appeals.

10. And it is hereby enacted, that it shall be lawful for the said court of commissioners in any suit before it to state a special case, upon matter of law only, for the determination of Her Majesty's Supreme Court, and Her Majesty's Supreme Court shall determine such case, upon hearing of the parties, and shall remit their decision thereon for the guidance of the said court of commissioners.

11. And it is hereby enacted, that it shall be lawful for the Governor of Bengal, from time to time, to appoint an assessor, who shall be a barrister of not less than five years' standing, who shall be an assistant to the said court of commissioners for the adjudication of such causes, and at such times, and according to such amount of salary as may be deemed expedient; provided, that such assessor be not appointed for any longer period than a month at one time, or at a salary exceeding for one month.

12. And it is hereby enacted, that at the request in writing of either party to a suit before the said commissioners, when the sum demanded exceeds 500 rupees, and is not for goods sold, wages, or rent, it shall be lawful for the said commissioners to summon a jury of six persons for the decision of such questions of fact as the court may submit for their consideration touching the matter in dispute; and for the purpose of procuring the attendance of such jury, the said court of commissioners is hereby vested with all the powers exercised for such purpose by Her Majesty's Supreme Court.*

13. And it is hereby enacted, that the said court of commissioners may allow to the successful party in any suit such costs as it may deem reasonable, and shall for such purpose, from time to time, frame tables of costs and of fees of court, to be allowed by the Governor-general in Council, in like manner as the rules for the conduct of proceedings aforesaid; and in the meantime the said court of commissioners shall adopt the same rules as to costs and fees of court as are now in force in such court, or as near the same as in their judgment is practicable and reasonable.

* I would omit this clause. (signed) A. Amos.

MINUTE by the Honourable A. Amos, dated 5 July 1841

Legis Cons.
26 July 1841
No. 11.

drawn this draft in consequence of my former draft having been super-
seded; and it was thought that the court should be placed in the same situa-
tion which it practically stood previously to the late decisions. It will be
observed that though in some respects the jurisdiction will thus be more limited,
in point of amount, yet in regard to the circumstance that an appeal is not
required in any species of suit (agreeably to the former practice), the jurisdiction will
be more extensive.

This measure might be accomplished by a proclamation; but the advantage of
an Act is, that it may be published for information, and the feeling of competent
authorities and of the community known, and that suggestions may be received
before the measure is finally settled.

My own impression still remains, that except in two or three species of actions,
an appeal, if not an assessor, is required; but that with this assistance the limit
may exceed 400 rupees.

The present views of the Council appear to rest on the impression, that pre-
viously to the late decisions, when the court tried every kind of case under 400
rupees without assessor or appeal (I am not sure that the court abstained even
from deciding rights of land), and that by a single judge, justice was satisfactorily
administered as far as the court went, and that an extended jurisdiction was not
required.

It may be feared that according to this scheme some of the most intricate
questions of law and fact, and some of the most important rights, may be deter-
mined before the commissioners. Then, I conceive, they are incompetent to
decide according to legal rules. They are, however, more likely to decide rightly
than wrongly. The commissioners also are more competent judges than various
grades of judicial officers, who decide much more important questions in the
mofussil. And it is very important to consider whether a defendant may remove
any case, during vacation or otherwise, into the Supreme Court by certiorari,
(Charter, clause 21, Smoult, p 25), so that it may be said that both parties
voluntarily permit their case to be decided by the commissioners.

(signed) A. Amos.

AN ACT for better defining the Jurisdiction of the Calcutta Court of Commis-
sioners for the Recovery of Small Debts.

1. WHEREAS great inconvenience has been sustained by reason of the Calcutta
court of commissioners for the recovery of small debts having recently abstained
from the decision of divers cases, in which they had ordinarily exercised jurisdic-
tion, but concerning the legality of their jurisdiction over which doubts have lately
arisen.

It is hereby enacted, that the court of commissioners for the recovery of small
debts within the town of Calcutta shall have legal and equitable jurisdiction in
suits of every kind, and by all parties, as well representatives as others, for the
recovery of debts or damages, where the sum claimed does not exceed 400 rupees:
provided always, that such court shall not determine any right to land or other
real property.

2. And it is hereby enacted, that any one of the commissioners aforesaid shall
constitute a sufficient court for the adjudication of all cases under this Act.

3. And it is hereby enacted, that all the powers with which the said court of com-
missioners is invested, or to which its jurisdiction is subject, under any statute,
Act, Royal charter, or proclamation heretofore made or passed, shall be extended
to suits under this Act.

4. And it is hereby enacted, that all the rules and forms, fees of court, and
other matters connected with the process of the said court, which have heretofore
been usual in the same, shall be extended to suits under this Act.

* This, I apprehend, lets in the certiorari. Now, I conceive, a certiorari may be applied for by
any defendant immediately after the suit is commenced, and that the Supreme Court would remove
the suit on its being shown to them, that though the amount was trifling, the suit involved difficult
questions of law, but on this point, and whether a certiorari can be obtained in vacation, it may be
proper to make inquiries.

No. 4.

Legis. Cons.
26 July 1841.
No. 12.

Judicial Dep.

25 Aug. 1840.
2 March 1841.
24th ultimo.

(No. 1079.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal,
Maddock, Esq. Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request you will lay before the Supreme Council the enclosed letter from the chief magistrate of Calcutta, (No. 253 of the 24th ultimo), together with its accompanying documents relating to the legal boundaries of Calcutta, which subject his Lordship's solicitude may be taken into consideration in connexion with the papers relative to the consideration of requests, submitted with my letters, as per margin.

I have, &c.

Fort William, 6 July 1841.

(signed)

F. J. Halliday,
Secretary to the Government of Bengal.

(No. 253.)

Legis. Cons.
26 July 1841.
No. 13.

Enclosure.

From *D. M'Farlan*, Esq. Chief Magistrate, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

I HAVE the honour to report that points regarding Abkarree licences have been under discussion at this office, and the present state of the legal boundaries of the town was considered. It was found that Captain Birch's police, passing the legal boundary, took post over the canal.

2. On referring to the proclamation of 1794, (see Act for improving the Administration, published by S. Smith & Co. in 1830) and comparing its directions with the actual condition of the boundary, it appears quite impossible to follow them. Almost the whole of the places mentioned for the northern boundary are now unknown. Robertson's Garden and Jackapore are, I suppose, now unknown. The brook called Chitpore Nullah* is very nearly destroyed; ports or metes, Nos. 1, 2, 3, 4, and 5, are all gone, and the old Powder-mill Bazaar can only be known by some one curious in antiquities.

3. These boundaries were promulgated before the Marquess of Wellesley made the Circular Road, but the promulgation has not been altered. The construction of a canal 10 years ago, has still further altered the physical form of the northern limit.

4. I am very much disposed to ask the government to proclaim anew the boundary thus:—

North.

The west side of the River Hooghly at the point where it is intersected by a line drawn from the south side of the canal at Chitpore Bridge, in the direction of the said canal, from Barrackpore Bridge to Chitpore Bridge, and the south or Calcutta side of the Circular Canal to Barrackpore Bridge over the said canal.

East.

Easternmost limit of the Circular Road, or western edge of Mahratta Ditch.

South.

This is quite indistinct in the present proclamation.

The Circular Road to the Pucka Bridge, west of the General Hospital, and the course of the drain passing under the said bridge to Tolly's Nullah, and thence by the south side of the said nullah to the River Hooghly, and thence across the river to a point met by the line of the said nullah between Kidderpore and Allypore bridges, protracted westward.

West.

On the south by the point cut by the line of the Tolly's Nullah between the Kidderpore and Chitpore bridges, along low-water mark to the point intersected by a line drawn from Chitpore Nullah on the line between the Barrackpore and Chitpore bridges.

5. These

* Application has recently been made for the occupation of the site of the ditch by the neighbours.

5. These alterations and definitions would not be of much consequence, were it not very desirable to define the present boundary; since the destruction of the Chitpore Nullah, offences might be committed on the boundary, the precise locality of which it would be very difficult to settle. When the Circular Canal was dug, much of the earth excavated from the Chitpore portion of it, went to fill up the old Mahratta ditch or Chitpore Nullah: a tunnel on its side was indeed made for a portion of the drainage that used to pass through it, the rest going into the canal; but that is now clearly closed and almost forgotten. A little to the east the tunnel ceases, and the same difficulty arises. The limit had better be extended at once to the canal; this would take in a very small tract only, the boundary might remain as at present from Barrackpore Bridge.

6. Halsye Bagaun is now in the town, though on the east side of the ditch. I would recommend its being made over to the Twenty-four Pergunnahs.

I have not, in the present paper, taken any notice of the general point, viz. the desirableness of any distinction at all, nor of the advantages of bringing the General Hospital or the European Lunatic Asylum within the town limits. I only say that so long as the law is as it now is, and different systems and different tribunals prevail on two sides of the boundary, it is very desirable that that boundary should be clear and defined. I referred this letter to the magistrate of the Twenty-four Pergunnahs; his answer is annexed.

Calcutta Police-office,
24 June 1841.

I have, &c.
(signed) *D. M'Farlan,*
Chief Magistrate.

P.S—A plan of the town also accompanies.

(No. 483.)

From *R. Torrens*, Esq. Magistrate, Zillah Twenty-four Pergunnahs, to *D. M'Farlan*, Esq. Chief Magistrate of Calcutta.

Sir,

I HAVE the honour to acknowledge your letter, dated the 9th instant, with a plan of Calcutta, and copy of the Government proclamation regarding the boundaries of Calcutta, which I return.

2. In reply, I beg to say that I can find no records here on the subject

Zillah Twenty-four Pergunnahs,
23 June 1841.

I am, &c.
(signed) *R. Torrens,*
Magistrate.

(True copy.)

(signed) *D. M'Farlan,*
Chief Magistrate.

(No. 46.)

LIMITS OF THE TOWN OF CALCUTTA.

READ again a Letter from *Mr. Addison*, Clerk to the Court of Requests, dated the 31st March 1794, and recorded on the 7th instant.

Legis. Cons.
26 July 1841
No. 14.
Enclosure.

A QUESTION, relative to the limits of the town of Calcutta, being now brought before the Governor-general in Council, he determines to avail himself of the power vested in him by the 159th section of the Act of 33d of his Majesty Geo. 3, c. 52, for defining, ascertaining, describing and establishing the boundaries of the said town.

The Mahratta ditch, as far as it can be ascertained, has hitherto been deemed the boundary of the town, and the questions which have arisen relating to the boundaries, have had a reference chiefly, if not entirely, to the space included between the point where the Mahratta ditch is discontinued into Tolley's Nullah. The continuation of this boundary, therefore, through this space requires to be particularly ascertained and defined.

The Governor-general in Council remarks, that frequent inquiries have been made to ascertain the true limits of the town, as will appear from the Proceedings of _____ and that this subject more particularly engaged the attention

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North Boundary.

Passing the old
Powder Mill Bazar
until it reaches the
foot of the bridge
leading to Dum
Dum.

East Boundary.

South Boundary.

West Boundary

* Agreeably to what
he understands to
be the ancient
boundaries of the
town.

With numbers upon
each, fixing No. 1
at the south corner
of Chitpore Nullah.

of Government in the year 1788, when the establishment of an effective police was under consideration.

Having referred to the above Proceedings to remove any doubt that may be entertained respecting the boundaries in future.

Resolved, that the town of Calcutta shall, to all legal intents and purposes, extend to and be bounded by the several lines, limits, and boundaries following; viz.

That the said city or town of Calcutta shall be bounded on the north side thereof by a line commencing at a point on the west side of the River Hooghly, commonly called and known by the name of Colonel Robinson's Garden, or Jackapore, exactly opposite to the mouth of the brook called Chitpore Nullah or Bang Bazar Nullah, which line being drawn across the river from the aforesaid point to the south corner of the mouth of the nullah, shall be continued to the eastward along the south side of the said nullah, by the south end of the bridge called Chitpore Bridge, and so on eastward along the south side of the said nullah and the Mahratta entrenchment until it turns at Nunderam Sem's Bun.

The eastern boundary shall be a line traced along the west side of the Mahratta ditch or entrenchment, and the east of the road adjoining to the same, including a garden called Hansee Bagaun, and from thence continuing towards the south as far as the remains of the said entrenchment are visible, by the side of the road to the southward along the eastern side of the Boytoconnah road, passing through Mirzapoor, leaving the Portuguese burying-ground to the east and the Boytoconnah bazar to the west side thereof, thereby including within the limits of Calcutta the Protestant burying-ground, Chowringhee, and the lands thereunto belonging called Dhee Birjee, and continuing to the southward until the point or turning of the road towards the west, leaving Dhee Sreerampore on the east and south-east.

From the above point the southern boundary of the town shall commence, and shall continue to the westward with a little inclination to the south, excluding Dhee Chuckerbeer, and including Bunia Poker, otherwise called Arreapoker and Birjea Talao, until the road or line meets the Govindpore Kall, otherwise called Tolly's Nullah at Allipore Bridge, which line shall be so drawn as to exclude the General Hospital for Insane, and the hospital burying-ground, passing on westerly until it meets Allipore Bridge as aforesaid.

From the south side of the bridge it shall be continued along the south side of the nullah at high-water mark, passing the foot or south end of Salmon's Bridge, and extending to the mouth of the said nullah, where it enters the River Hooghly, excluding Watson's Dock, and then from east to the west, across the river to the south-east point of Major Kyd's Garden, to the exclusion of the same, and adjoining to the village of Sheebpore.

From the above point the western boundary shall commence, and proceed to the north at low-water mark, along the west side of the River Hooghly, excluding the ghauts of Ramkissenpore, Howrah and Sulkea, until it reaches the northern point of Colonel Robinson's Garden, or Jackapore aforesaid, opposite Chitpore Bridge.

The boundaries above described are clearly and definitely laid down in the map of Calcutta and its environs, lately published by Mr. Upjohn, which survey, made by the chief engineer, is found to be accurate.

The Governor-general in Council having thus defined what is proposed shall be the limits of Calcutta in future,* thinks proper, previous to a final determination upon them, and publication thereof, to direct that a copy of the above resolutions be sent to Mr. Tiretta, the civil architect, with directions to place temporary landmarks at the different points therein described, until they can be made of stone and permanently fixed, marking the several positions in the map prepared by Mr. Upjohn, that the names of them may be ascertained and defined with all possible accuracy.

Ordered, that the collector of Calcutta, direct such of his officers as are well informed to attend Mr. Tiretta.

Legis. Cons.
26 July 1841.
No 15
Enclosure.

PROCLAMATION.

WHEREAS in and by the 159th sec. c. 52, of an Act passed in the 33d year of his Majesty's reign, intituled "An Act for continuing in the East India Company, for a limited time, the Possession of the British Territories in India, together with their exclusive Trade, under certain Limitations; for establishing further Regulations

lations for the government of the said Territories, and the better administration of Justice within the same; for appropriating to certain uses the Revenues and Profits of the said Company, and for making provision for the good order and government of the Towns of Calcutta, Madras, and Bombay," it is enacted that "If any question shall arise touching or concerning the true limits and extent of the said towns and factories, or any of them, the same shall be inquired into by the Governor-general in Council at Fort William, in respect to the limits and extent of Calcutta, and by the Governor in Council of Fort St. George, in respect to the limits and extent of Madras, and the Governor in Council at Bombay in respect to the town of Bombay; and that such limits as the said respective governments, by order in Council, shall declare and prescribe to be the limits of the said towns and factories respectively, shall be held, deemed, and taken in law as the true limits of the same, any custom or usage to the contrary notwithstanding."

And whereas such question as in and by the said clause of the said Act is meant and referred to, has arisen, and been made with respect to the limits of the said town of Calcutta; and the Governor-general in Council, in pursuance of the authority vested in him by the said Act, has inquired into the same, and by an order, duly made in Council, has declared and prescribed the limits of the said town, and has directed and commanded the same to be publicly, in order that the said limits, so declared and prescribed, may be known to the inhabitants of the said town, and to all persons, whom the same may in anywise concern, it is hereby publicly notified that the town of Calcutta, in respect to all legal intents and purposes, extends to and is bounded by the several lines, limits, and boundaries hereinafter mentioned and described, that is to say,

The Northern Boundary

is declared to commence and does accordingly commence on the west side of the River Hooghly, at the post or mete No. 22, situated on the north point of Colonel Robertson's Garden, called Jackapore, immediately opposite the mouth of the brook called Chitpore Nullah or Bang Bazar Nullah; and the said northern boundary is from thence declared to continue and is continued accordingly by a line drawn across the river from the aforesaid point to the south corner of the mouth of the said nullah, unto the post or mete No. 1, near the foot of the Chitpore Bridge, and from thence by a line drawn easterly, and passing the south end of the said bridge, to No. 2, and from thence along the south side of the said nullah or brook to the post or mete No. 3, and thence on to the post or mete No. 4, passing the Old Powder Mill Bazar, until it reaches the foot of the bridge leading to Dum Dum, where the post or mete No. 5 is.

The Eastern Boundary

is declared to commence and does accordingly commence at the said post or mete No. 5, and is declared to continue and does accordingly continue by a line traced along the west or inner side of the Mahratta ditch or entrenchment, and the east side of the road adjoining thereunto, until it reaches the post or mete No. 6, at the northern angle next to the road of an enclosure called Haulsee Bagaun, which said Haulsee Bagaun is included within the town of Calcutta, and from the said northern angle by a line drawn eastward along the northern side of the ditch or trench which encloses the said Haulsee Bagaun, to the post or mete marked No. 6, and from thence southward along the western side of the said ditch or trench to the post or mete also marked No. 6, and from the said last-mentioned post or mete westward, along the northern side of the said ditch or trench until the said line reaches the mark No. 7, where there is a tannah, and from the said last-mentioned post or mete by a line drawn southward, and on the western side of the Mahratta entrenchment and the east side of the Baitakonnah road as far as the remains of the said Mahratta entrenchment are visible to the post or mete No. 8, at the corner of Rajah Ramlochan Bazar, and of the road leading to Baulia Ghaut immediately opposite to Nanain Chatterjies road, and from the said last-mentioned post or mete No. 8, by a line continued in a southern direction passing through Mirzapore and drawn along the eastern side of the Bytakonnah road, and leaving the Portuguese burying-ground to the east until it reaches the Baitakonnah Tree, where the two posts or metes marked respectively Nos. 9 & 10, are fixed on each side of the road opposite to the Bow Bazar road and the Baitakonnah

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Bytaconnah Bazar, and from the last-mentioned post or mete marked No. 10; by a line drawn along the eastern side of the said Bytaconnah road to the post or mete No. 11, opposite to Gopee Baboo's Bazar, which bazar is situated between the Farm Bazar and Dhunumtollah road, and from thence in the same direction until the said line reaches the post or mete No. 12, at the point or turning of the said road towards the west, leaving Dhee Sreerampore on the east and south-east, and thereby including within the limits of Calcutta, the Protestant burying-ground, Chowringhee, and the lands thereunto belonging, called Dhee Birjee.

The Southern Boundary

is declared to commence and does accordingly commence from the last-mentioned post or mete No. 12, and is declared to continue and does accordingly continue by a line drawn from thence to the westward, with a little inclination to the southward, along the southern side of the public road, excluding Dhee Chuckerbeer, and including Bunneapokar otherwise called Areeapookah in Dhee Birja, until the said line reaches the beginning of the Russapuglah road immediately opposite to Chowringhee high road, where the post or mete No. 13 is fixed; from the said post or mete No. 13, by a line running to the westward along the southern side of the public road to the post or mete No. 14, fixed between the thannah and the General Hospital, and passing on westerly to the post or mete No. 15, at the foot of the Allipore Bridge, and excluding the General Hospital aforesaid, the Hospital for Insane, and the hospital burying-ground, situated in Dhee Boleanepore, and from thence and from the south side of the said Allipore Bridge by a line drawn and continued along the south side of the nullah, commonly called Tolly's Nullah, at high-water mark to the post or mete marked No. 16, and from thence passing the foot or south end of Surmone Bridge, commonly called Kidderpore Bridge, and extending to the mouth of the said nullah, where it enters the River Hooghly, excluding Watson's Dock, and to the post or mete marked No. 17, and then proceeding from east to west across the River Hooghly to the south-east point of Major Kyd's Garden, and excluding the said garden and villages of Sheebpore, at which point a post or mete, marked No. 18, is directed to be fixed. And

The Western Boundary

is declared to commence and does accordingly commence at the said point where the said post or mete marked No. 18 is fixed, and is declared to continue and does accordingly continue from thence by a line drawn at low-water mark along the western side of the said River Hooghly, but excluding the ghauts of Ramkissore, Hunah and Sulka, where posts or metes are fixed, marked respectively Nos. 19, 20, and 21, until the said line reaches the northern point of Colonel Robertson's Garden, or Jackapore, aforesaid, where a post or mete is fixed, marked No. 22, and immediately opposite to the post or mete No. 1, at Chitpore Bridge.

Declared and proclaimed by order of the Governor-general in Council of Fort William in Bengal, this 10th day of September 1794.

(signed) *E. Hay,*
Secy to the Govt.

(No. 100.)

Legis. Cons.
26 July 1841
No 16.

From *F. J. Halliday, Esq.,* Officiating Secretary to the Government of India, to
J. C. C. Sutherland, Esq., Secretary Indian Law Commission.

Sir,

I AM directed by the Right honourable the Governor-general in Council to transmit to you for submission to the Law Commission the papers noted in the margin * connected

* Judicial consultation, 7th September 1840, Nos. 4 to 6.

Ditto - - - - - 22d March 1841, Nos 1 to 3

Letter from Secretary Government of Bengal, dated 24th June 1841, No. 978, with Enclosure.

Ditto - - - - - ditto - - - - - dated 6th July 1841, No 1079, with Enclosure.

Minutes by the Honourable A. Amos, Esq., dated 26th and 30th June, and 5th July 1841.

Minute by the Governor-general, dated 28th June 1841.

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connected with the court of requests, for consideration with the subject already before the Commission

Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

Council Chamber,
26 July 1841.

I have, &c.
(signed) F. J. Halliday,
Officiating Secy to the Govt of India.

From J. C. C. Sutherland, Esq. Secretary to the Indian Law Commission, to
F. J. Halliday, Esq. Secretary to the Government of India, Legislative Department.

Legis. Cons.
10 June 1842.
No 9.

Sir,
I AM directed by the Indian Law Commissioners to forward, for submission to the Governor-general in Council, a draft Act for establishing a court of subordinate civil jurisdiction in Calcutta.

2. The report which contains the reasons on which the provisions of this Act are founded is in progress and will shortly be presented.

Indian Law Commission,
31 July 1841.

I have, &c.
(signed) J. C. C. Sutherland,
Secretary.

AN ACT for establishing a Court of Subordinate Civil Jurisdiction in the City of Calcutta.

Legis Cons.
10 June 1842.
No. 10.

WHEREAS it is expedient that as soon as the necessary arrangements can be made, a College of Justice, consisting of the Judges of the Supreme Court at Fort William, in Bengal, and of the judges of the Sudder Dewanny Adawlut, should be erected for the ultimate decision as regards India, of appeals from all courts, as well in the city of Calcutta as in the other parts of the presidency of Bengal, and it is expedient that some new provision should be made for the trial of original suits within the local jurisdiction of the said Supreme Court.

And whereas Her Majesty's Supreme Court of Judicature at Fort William in Bengal is not authorised in civil actions at law to examine the parties to such actions, by reason whereof the truth of the case must sometimes be concealed from the said court, or can only become known to it by means of a bill in equity for a discovery, which is a proceeding unnecessarily dilatory and expensive, and much less efficacious for the manifestation of the truth of the case than examination and cross-examination *videlicet* in open court:

And whereas the procedure in civil actions in the said court is more dilatory and expensive than is necessary for the ends of justice:

And whereas the jurisdiction of the court of requests for the recovery of small debts in and for the settlement of Fort William is limited to suits brought for the recovery of such debts;

And whereas it is inexpedient that the jurisdiction of the said court of requests should be extended:

It is hereby enacted, that from and after the day of the court of requests for the recovery of small debts in and for the settlement of Fort William in Bengal shall be abolished; and that on the said day a court for the exercise of original civil jurisdiction in the city of Calcutta shall be established, and shall be called the Subordinate Civil Court for the city of Calcutta.

II. And it is enacted, that the said subordinate civil court shall consist of as many commissioners as to the Governor of Bengal shall from time to time seem meet, and that each of the commissioners, sitting separately, shall exercise all the jurisdiction and powers herein conferred upon the said subordinate civil court;

Provided always, that at least one of the said commissioners shall be a barrister of not less than five years' standing.

III. And it is enacted, that one of the said commissioners, being a barrister of five years' standing, shall be the chief commissioner.

IV. And it is enacted, that each of the commissioners shall receive such salary as to the Governor-general in Council shall seem meet, respect being had to the qualifications of each.

V. And it is enacted, that the jurisdiction of the said subordinate civil court shall, both as regards the nature of the matter in dispute and the local situation thereof,

No. 4.
Establishing a Court
of Subordinate
Civil Jurisdiction
in Calcutta.

thereof, extend to all matters for which a civil action at law may be brought in Her Majesty's Supreme Court of Judicature, and shall, as regards the persons to be subject thereto, extend to all persons inhabiting or seeking a livelihood within the city of Calcutta; and it shall be lawful for the Governor-general in Council from time to time to extend the local limits of the said jurisdiction by proclamations to be issued for that purpose.

VI. And it is enacted, that the said subordinate civil court shall in every case make such decrees as may be agreeable to equity and good conscience, following such law as the said Supreme Court would have administered if the matter had been brought before it in an action at law.

VII. And whereas it is conducive to the good administration of justice that the respectable part of the public should be associated therein: It is hereby enacted, that the Governor-general in Council may, by proclamation, order that every or any commissioner of the said subordinate civil court, shall in all suits or in any particular class of suits, and in all proceedings therein, or in any particular proceeding therein, sit with one or more jurors.

VIII. Provided always, and it is hereby enacted, that the verdict of such juror or jurors shall be only for the information of the conscience of the court.

IX. And it is enacted, that the manner of commencing a suit in the said subordinate civil court shall be as follows:—

1. Each of the commissioners of the said subordinate civil court shall sit at stated hours for the purpose of receiving plaints.

2. Every plaintiff bringing a suit in the said subordinate civil court shall, except as hereinafter excepted, appear in person before one of the commissioners, and shall, orally or in writing, lay before such commissioner the facts which constitute his claim.

3. The excepted cases in which the plaintiff shall be excused from appearing in person for the purpose of making the statement of facts mentioned in the last clause, are the same as the excepted cases specified in clause 15 of this section; but the plaintiff shall in all cases be permitted to make the statement of facts by an agent, provided he deposits in sum of rupees ———.

4. The sum so deposited shall be held as a security for anything which may be or which may become due to the defendant or to the government in respect of the matter of the suit or in respect of the mode of conducting it; if nothing shall so be or become due, the sum shall be repaid to the plaintiff.

5. If the plaintiff lays the facts before the commissioner orally, the facts, whether stated of his own accord or elicited by examination, shall be reduced into form and written down by the commissioner or by an officer of the court under his direction, and shall constitute the plaint.

6. If the plaintiff lays the facts before the commissioner in writing, the written statement shall be corrected in form by the commissioner, or by an officer of the court under his direction, if it requires such correction; and in substance, if it in any respect disagrees with the statement of facts elicited by the examination of the plaintiff. subject to such correction the written statement shall constitute the plaint.

7. When the statement of facts constituting the plaint has been made, the commissioner, if he is of opinion that the plaint does not contain any cause of action against the defendant, or that the defendant, or the matter of the suit is not within the jurisdiction of the subordinate civil court, shall make a decree accordingly.

8. If the commissioner is of opinion that the plaint contains a cause of action against the defendant, and that the defendant and the matter of the suit are within the jurisdiction of the subordinate civil court, he shall direct a writ of summons to be issued to the defendant.

9. The writ of summons shall contain a copy of the plaint, and an order to the defendant to appear before the court on a specified day, and to bring with him any documents which he may have in his possession, and of which the plaintiff, with the consent of the commissioner, demands inspection, or which he the defendant may think conducive to his defence, and a list of such witnesses as he supposes may be necessary for his defence.

10. If the plaintiff satisfies the commissioner that the defendant is likely to withdraw himself from the jurisdiction of the subordinate civil court, the commissioner may direct a warrant of arrest against the defendant, to be issued together with the rest of summons.

11. If the defendant is arrested on the warrant, he shall be brought with all convenient speed before the commissioner, who may discharge him from custody if he gives sufficient security for his appearance, or if he deposits a sum which the commissioner considers, under all the circumstances of the case, sufficient, or if he satisfies the commissioner that he does not intend to withdraw himself from the jurisdiction.

12. On every day on which any of the commissioners shall sit for the purpose of receiving plaints, all the plaints received shall be laid before the chief commissioner, who will distribute them among all the commissioners, including himself.

13. In distributing the plaints, the chief commissioner will endeavour to give to all the commissioners a share of business which will occupy an equal portion of the time of each, and to give to each commissioner those kinds of suits which he thinks each best qualified to decide.

14. Every plaintiff and defendant in the said subordinate civil court shall appear, except as hereinafter excepted, in person on the day specified in the writ of summons, and on every other day fixed for their appearance by the commissioner.

15. A plaintiff or defendant may be excused from appearing in person if ill; if absent from Calcutta; if engaged in the public service; if exempted on account of rank by the regulations from appearing in the courts of the East India Company, if of advanced age; if of the female sex; if there is a co-plaintiff who appears in person; if there is a co-defendant defending jointly with him; if not personally cognizant of the matter in dispute.

16. But in all these cases the commissioner may refuse to hold the party from appearing in person if he is not satisfied that the excuse is made in good faith, and that the matter of the excuse exists in a sufficient degree to justify him in admitting it.

17. Whenever an agent has been admitted in place of a party, such agent shall be permitted to do all that the party might have done had he appeared, and shall be liable to be examined and cross-examined in the same manner.

18. And the commissioner may, if he thinks fit, order that the party excused shall be examined in any way in which a witness may be examined.

19. When the commissioner has refused to hold any party excused, he may order the agent who makes the excuse to summon the party on whose behalf it is made on a specified day, and adjourn the proceedings to that day, or he may make a decree against such party after examining his agent.

X. And it is hereby enacted, that as soon as the plaintiff and defendant are together before the commissioner to whom the suit has been assigned, he shall proceed to take the pleadings, and settle the demurrers and issues of fact.

XI. And it is hereby enacted, that the manner of pleading shall be as follows:

1. The defendant, in answer to questions put by the commissioner, shall confess or deny each of the material allegations contained in the plaint, and shall state any matter whereby he proposes to avoid the plaintiff's right to a decree arising out of such allegations contained in the plaint as he has confessed.

2. The defendant may demur if he thinks the plaint states a case insufficient to entitle the plaintiff to a decree.

3. The defendant shall not be precluded from demurring to any matter in the plaint because he has pleaded to it, nor shall be precluded from pleading to any matter in the plaint because he has demurred to it.

4. The defendant shall not be precluded from denying as many of the allegations in the plaint as he disbelieves.

5. The defendant shall not be precluded from avoiding the plaintiff's right to a decree arising out of any allegations in the plaint which the defendant has confessed, by the statement of as many matters as he disbelieves to be true.

6. The commissioner will take care that, in taking down the pleadings in writing, pleas shall be kept distinct from demurrers, and that no plea shall be double.

7. The commissioners will also take care that the pleadings shall not be argumentative, and shall state matters of fact only, and not evidence of matters of fact; and shall in all other respects be such as to lead directly to distinct issues of law or fact, and that each issue shall have as much particularity as conveniently may be.

8. All the above rules of pleading shall be applied, as far as they are capable of such application, to the subsequent stages of the pleadings.

9. If, after the demurrers and issues of fact have been settled, a decree can be properly made without further evidence than that of the parties, and without argument on the law or equity and good conscience of the case, the commissioner will make his decree immediately.

10. The plaintiff and defendant may, through the medium of the commissioner, cross-examine each other as to any matter affirmed or denied on either side in pleading.

11. If any demurrer results from the pleadings which the commissioner thinks fit for argument, he will, after consultation with the parties, fix a day for the argument on it.

12. If any issue of fact results from the pleadings upon which it is necessary to hear evidence, the commissioner will make a note of the names of the witnesses on both sides, and of the facts which each of them is expected to prove, and the documents which each of them is expected to produce, and will grant such subpoenas and subpoenas *duces tecum* as appear to him to be necessary for the purposes of justice, and will, after consultation with the parties, fix a day for the taking of evidence.

XII. And it is hereby enacted, that if any commissioner, not being a barrister, perceives, while he is receiving a plaint, or while he is taking the pleadings, or in any subsequent stage, that the suit is one which, in his opinion, ought not to proceed before a commissioner who is not a barrister, he may hand over the suit to the chief commissioner, and direct the parties to go immediately before the said chief commissioner, who shall proceed with the suit.

XIII. And it is hereby enacted, that if it shall appear to the commissioner at any stage of the suit that justice cannot be done without the presence and concurrence of some person not a party to the suit, the commissioner may summon such person to appear, and make a decree which shall be binding upon such person, making such order regarding the costs as shall be agreeable to justice.

XIV. And it is hereby enacted, that if in the course of a suit the parties shall disagree as to the balance of an account, the commissioner may direct that the account be referred to an arbitrator nominated by the parties, or in default of such nomination, to an officer of the court; and such arbitrator or officer will report the amount due on either side, subject to any exceptions, which the commissioner will hear and decide.

XV. And it is hereby enacted, that in all suits for the breach of a contract, if it shall be made to appear to the commissioner that the contract may be performed without prejudice to the plaintiff, and that the defendant is able to perform it, the commissioner may direct a specific performance of the contract, and enforce it by attachment.

XVI. And it is hereby enacted, that the commissioner in his decree shall order how much of the amount of any fees which may have been paid or be payable to any attorney or barrister, shall be reckoned as costs between party and party; and what other expenses incurred by the parties in prosecuting or defending the suit shall be reckoned as costs between party and party, and shall order in his decree which party shall pay costs to the other, and to what amount.

XVII. Provided that no fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, unless the commissioner shall be satisfied that the assistance of such attorney or barrister was reasonably required.

XVIII. And whereas it is expedient that inconsiderate litigation should be discouraged, and that those who sue or defend inconsiderately should contribute towards the expenses of the judicial establishment; It is hereby enacted, that in every suit in the said subordinate civil court the party or parties against whom the decree is made shall, if plaintiff or plaintiffs, pay a fee equal to of the value claimed in the plaint; and if defendant or defendants, a fee equal to of the value decreed.

XIX. Provided, that the commissioner may remit such fee, if he shall be satisfied that the party or parties against whom the decree is made had reasonable ground for suing or defending.

XX. And whereas it is expedient that parties to suits, who prevaricate or wilfully make false statements, should be punished; It is hereby enacted, that whenever the commissioner is satisfied that any party to a suit in the said subordinate civil

civil court has, by himself or his agent, prevaricated or wilfully made a false statement, he may in his decree impose upon such party a fine not exceeding and in default of payment may order such party to be imprisoned for a period not exceeding

XXI. And it is hereby enacted, that the amount of the fees and fines aforesaid shall be paid monthly into the treasury

XXII. And it is hereby enacted, that the members of the said College of Justice, or the majority of them, may from time to time make such rules for the regulation of the proceedings of the said subordinate civil court as to them may seem meet, and as are not inconsistent with anything in this Act contained, which rules shall be in force from their date, and shall continue in force unless they shall be disallowed by the Governor-general in Council within the space of from their date; provided, that such rules shall be laid before the Governor-general in Council within the space of from their date.

XXIII. And it is enacted, that the sheriff of Calcutta shall execute the process of the said subordinate civil court, and shall, in respect to the execution of such process, be subject to the authority of the said subordinate civil court, and shall for his trouble in executing such process receive from the public treasury such remuneration as to the Governor-general in Council shall seem meet.

XXIV. Provided, that such remuneration shall be proportioned to the quantity of labour imposed upon the said sheriff in each month in the execution of the said process.

XXV. And it is enacted, that any suitor in the said subordinate civil court who shall feel himself aggrieved by any decree thereof, except decrees in such suits as are otherwise provided for in section XXVII. of this Act, may appeal from such decree to the College of Justice for the presidency of Bengal and Agra established by the Act of the Council of India, No. of subject to such rules as are contained in that Act, or, subject to such rules, may move the said College of Justice for an order to the subordinate civil court to reconsider its decree, or for any order to the said subordinate civil court for a new trial of the facts on which its decree is founded.

XXVI. And it is hereby enacted, that the said College of Justice shall not alter or reverse any decree of the said subordinate civil court, nor grant an order to reconsider any decree of the said subordinate civil court, nor grant an order for a new trial of the facts on which any decree of the said subordinate civil court is founded, if the decree be consistent with the justice, conscience, and equity of the case.

XXVII. And it is hereby enacted, that any suitor in the said subordinate civil court who shall feel himself aggrieved by any decree thereof which has been made by a commissioner who is not a barrister, in a suit for wages, for goods sold and delivered, for money lent, for money due for the lien of any personal property, or for wages, in which the value in dispute shall not exceed the sum of rupees 400, may appeal from such decree to the chief commissioner of the said subordinate civil court, subject to the same rules, as nearly as may be, as the parties appealing to the College of Justice, under section XXV.; and that the said chief commissioner shall in such cases deal with the decree as the said college is directed to deal with decrees by section XXVI. of this Act.

XXVIII. And whereas, although the several provisions hereinbefore contained for the constitution of the subordinate civil court are all copied, more or less, exactly from the provisions for the constitution of the several sorts of courts used in the administration of English law and equity, yet the combination of the said several provisions in one court is new and experimental; and it may happen that a people accustomed to the administration of justice by civil action at law in Her Majesty's Supreme Court, may feel aggrieved if they are deprived thereof: It is hereby declared and enacted, that nothing in this Act contained shall be construed to affect the jurisdiction now exercised by the said Supreme Court in civil actions at law.

Indian Law Commission,
31 July 1841.

(signed) J. C. C. Sutherland,
Secretary.

Legis. Cons.
10 June 1842.
No. 11.
Court of Requests.

MINUTE by the Honourable A. Amos.

THE first subject which it occurs to me to consider is, whether the draft of the Commissioners could be adopted without sending it home? I think such a reference will be necessary; but the reasons, if they are entitled to any weight, are too obvious to require discussion in a written minute.

1. On the subject of expense.

I have recommended the Commission to furnish an estimate of the "fees of court" which may be payable on each step in a suit, including the fees on an appeal. This, however, cannot be satisfactorily accomplished until Government lays down the principle whether the court must pay itself, or whether Government will pay the judges, or, as recommended, the expense of executions. As the question must greatly depend on the average number of suits, and the stages to which they ordinarily proceed, any estimate which can be at present furnished can only be a loose approximation. I think, however, that notwithstanding the appeal, the "fees of court," in regard to quantity and amount jointly, will be less than those of the Supreme Court, even in the class of actions now ordinarily brought in the Supreme Court; but in actions of that description, the saving will not be great, and it must be considered that "the fees of court" constitute but a small part of the expenses of a suit.

A more important question as regards expense is, that of the fees of counsel and attornies. These are the main sources of expense, and here I must say that the Supreme Court has been sometimes misrepresented. The costs paid by the unsuccessful party are those which have been more commonly brought under the attention of Government, and they are, no doubt, of a frightful character. But in those cases the successful party, who it has been determined had right on his side, has got justice very cheaply. In England the courts do not compel the unsuccessful party to reimburse the successful party to the same extent, and consequently, in England it often happens that the successful party gains a loss; pays more to his legal advisers than he recovers from his adversary. The Mofussil practice is further removed from that of the Supreme Court than that of England. The successful party only recovers costs in a certain proportion to the sum disputed. There can be little doubt that the practice of the Supreme Court is the most just, provided the costs are necessary, it may, however, lead to an unnecessary accumulation of costs. If the practice of the Supreme Court be inexpedient, the alteration may be made in the court itself, without creating a new court for that purpose. But I do not collect that the Commissioners propose any change in the principles with regard to costs adopted by the Supreme Court.

But a very important question remains with regard to costs. It is to be inquired whether, adhering to the principles of the Supreme Court, fewer costs will be necessarily incurred by the successful party. The absence of written pleadings, it may be said, will cut off one great head of costs; and it may be thought that bringing the parties together will often curtail, or, perhaps, dispense with subsequent chargeable proceedings. Weight is due to both these considerations. But on the other hand, it must be borne in mind that instead of one, as at present in the Supreme Court, there may be four important proceedings in open court, the plaint, the issue, the trial, the appeal. Professional assistance in open court is much more expensive than what is conducted in the closet, both as to quality and time. When the issue is to be made up conversationally, when parties are to be personally cross-examined, and their appearance under examination, and answers commented on; when even in the plaint a person may prejudice his cause from want of presence of mind, or ignorance of law, and when, moreover, the appeal is taken into account, I think the successful party in all complicated cases, or where the matter is not one of mere pecuniary calculation, will necessarily incur more costs than in causes in the Supreme Court. If a different opinion is entertained upon this point, it will be important further to consider, that before a weak tribunal, especially in cases assigned to the native commissioners, if one party brings counsel it makes counsel on the other side virtually necessary. And unless a case be very simple, and free from inflammatory topics, such as occur in libels, crim. cons. and the like, professional assistance will generally be necessary on both sides; added to which, trials and examinations of parties, and conversational settlements of issues before

before judges of inferior authority, especially unprofessional judges, will, in all but simple cases, be almost interminable; indeed, if the rules of evidence are to be relaxed to a great extent, I do not see my way to the end of trials. All this prolixity of practice involves the successful party in necessary expenses.

2. On the principles of jurisprudence involved in the scheme of the Commissioners.

I think that the oral settlement of the plaint and issue, though well calculated for simple cases, will be found to fail where cases are numerous and important. Besides the expense, the consumption of time in verbal discussions, and the excitement, it will be constantly happening that what has been settled in the hurry of business and heat of argument, or under agitation in persons not used to public appearance, will have to be done over again, or will operate unjustly. The settlement of issues, in important cases often requires much reflection, not only on the facts, but on their various legal bearings. The new practice would expose the discretion and temper of the judge to a much stronger trial than might be deemed safe and expedient. I fear the proceedings on these occasions would often be derogatory to the dignity of public justice, and would be generally dissatisfactory to suitors. The experiment, except as to petty suits, has not been countenanced in England, though the procedure of the courts has there undergone a very searching reform.

With respect to the examination of parties, there can be no doubt that in small cases it is most desirable. In the cases at present cognizable by the court of requests, I am persuaded that it tends very much to curtail inquiries, and to discover truth. It may be thought that the principle is equally applicable to large cases, and that the procedure of English courts is in this respect subject to an obvious defect. I have, however, doubts as to the practical benefit of a change of system, at least in the more important or complicated cases. I have, perhaps, seen more of the examination of parties, which is part of the ordinary rule of courts or arbitrations, than any member of the English bar. I have conversed with Mr. Bell, who, in his day, had, perhaps, the largest experience of any individual in bills of discovery, and the conclusion I should draw would be, that in a very few instances out of a great many, truth would be developed which would otherwise be concealed; yet, that in most cases there would be danger of a person not gifted with nice discrimination being misled by perjuries and false colourings; that time consumed in the cross-examinations and re-examinations of parties, and the personal abuse and defence of them would be incalculable, and the excitement, extending to the professional persons concerned, extreme. The Commissioners do not visit the parties for false testimony with the punishment of perjury; on the other hand, they may be stigmatized and fined by a judge without a jury. Perhaps this is the best choice of alternatives, but it is far from being unobjectionable.

3. Conclusion as to the scheme proposed by the Commissioners.

The court proposed by the Commissioners, besides disposing in the most eligible way, as I think it will, of the cases now subject to the jurisdiction of the court of requests, would, I have little doubt, succeed extremely well in cases somewhat higher; and if, as I incline to think, notwithstanding exaggerations, owing to the cause I have before indicated, there be a considerable class of cases in which there is a failure of justice, owing to the expenses of the Supreme Court, they will be just that class in which the proposed scheme would work most favourably. I am inclined to think that the scheme of the Commissioners is a very fair experiment for deciding cases generally under 5,000 rupees, with the exception of suits for land, and perhaps some other species of suits.

It is to be observed that the scheme of the Commissioners is experimental, and that great inconvenience will arise from having two original courts in Calcutta with concurrent jurisdiction, an inconvenience not hitherto felt, because suits tried by the court of requests have not been of a nature to be brought before the Supreme Court. The average number of suits before the court of requests has been between 20,000 and 30,000 annually, of which about 13,000 have been under five rupees, and about 20,000 under 20 rupees; whereas half the judgments before the Supreme Court have exceeded 5,000 rupees, the number below that sum being from 200 to 300. Many of the judgments in the Supreme Court are, however, not upon contested suits, but securities for loans. The inconvenience from concurrent jurisdictions will be less if the subordinate court be of more limited

limited jurisdiction than the Supreme Court; its chance of failure will also be less, and be attended with less prejudicial consequences, whilst with a limit of 5,000 rupees the experiment of oral pleading and examining parties will be fully and favourably tried.

I incline to think that it would be a very desirable modification if the judge of the subordinate court were a member of the College of Justice. If he were not a fixed judge, but presiding by rota or other arrangement among the English judges of the College of Justice, we should lessen the risk of the failure of the plan from the failure of the judge. We should add to the convenience of appeals, for it will be frequently necessary for the College of Justice to confer with the judge presiding at a trial; we shall remove grounds of jealousy, and if the Supreme Court is to retain the general equitable jurisdiction, and the subordinate court is to exercise a mixed jurisdiction of law and equity, it will be very desirable to provide against conflicting determinations. I may here observe that the power which the Commissioners would give of deciding "according to equity and good conscience," instead of the principles of English courts of equity, modified only by their adaptation to local circumstances, is subversive of all certainty in the administration of justice. A late opinion of the Sudder Court of Bengal, respecting payments to an unlawful representative of a deceased creditor, has made a strong impression upon myself, at least of the extravagance to which notions of "equity and good conscience" may be carried, if not restrained by fixed principles.

I do not mean to say that I am averse to alterations in the practice of the Supreme Court; I would have all examinations on the equity side to be made *videlicet* *voce*. A great part of the equity business might be more conveniently done on the law side of the court; and I am not averse to a reconsideration of the principles in awarding costs, or to an inquiry whether any advantage would arise from taxing professional assistance at a lower rate; and if the subordinate court should succeed in the cases which now it is supposed cannot be tried at all, I should then feel much greater confidence than I can do at present in giving the subordinate court unlimited original jurisdiction; a very short trial might justify us in putting an end to all concurrency of original jurisdiction by taking the smaller class of cases entirely out of the jurisdiction of the Supreme Court, except by appeal.

If a College of Justice (or general appeal court) be constituted, then I would have civil causes, criminal trials, and equity suits, each decided originally by one judge; I would constitute the College of Justice, and direct that Her Majesty's judges sitting singly should try equity suits, criminal matters, actions for demands above 5,000 rupees, according to their present procedure; actions below that amount according to the new procedure, but in the latter case aided by two or three native commissioners, receiving not 1,500 and 1,200 rupees as at present, but a much less sum. To attain these objects, I would, if absolutely necessary (which may be inquired into), recommend an additional Queen's judge. It may be taken for granted that the business under the new form of procedure will require more ability, discretion, and knowledge than is at present required for judges of the Supreme Court, and the want of these qualifications will be more quickly and palpably perceived.

4. Considerations, if the matter cannot wait a reference home or be disapproved of generally.

I have requested that a comparison be made between the number of cases determined by the court of requests since the recent decision of the Supreme Court, and the number determined previously; I think that possibly as suits under five rupees averaged in number 13,500, and chiefly consisted of demands for goods sold, hirings, and wages, that it may be found that the complaints we have heard in a great measure arise merely from the soreness and groundless fears of the commissioners.

The last views of the Council were favourable to restoring the commissioners to the jurisdiction they actually exercised before the late decision. I apprehend, however, that by far the great number of cases they decided were strictly within their jurisdiction; and there would be a wide difference between their taking cases out of their jurisdiction where the parties consented or knew no better, as was frequently,

quently, no doubt, the case, or for other reasons did not resist, and giving them jurisdiction expressly by a legislative Act over classes of cases for the decision of which they are unfit. To this it may be replied, that the commissioners are as fit as the functionaries who administer justice in the Mofussil; that the proceedings may be removed by *certiorari* into the Supreme Court; and that before the recent decisions the commissioners exercised the jurisdiction now proposed to be expressly given them without creating apparent dissatisfaction. It would swell this minute to too great a length if I were to canvass these reasons with particularity, but I can say that they are not satisfactory to my mind. I think we should be going as far as was proper with the present constitution of the court, if we expressly authorised the commissioners to sit singly, and give them jurisdiction to their present extent of 400 rupees in suits for goods sold and delivered, wages, hirings of horses, or conveyances of any description, work and labour performed, money lent and not secured by bond or mortgage. These classes of cases may be subject to modification on reference to the Commissioners and inspection of the returns which will appear in the report to the draft Act.

If it is essential to go beyond this, or something like this, then I think it will be necessary to add an appeal to a single judge. Even then many may think an assessor would be desirable, but with the machinery of an assessor and an appeal, the jurisdiction might be very much enlarged. I have before presented two drafts, one for restoring the assumed jurisdiction of the court of requests, another introducing the assessor and appeal. The latter might be, perhaps, advantageously modified, by leaving out the assessor, who might be added, if afterwards found requisite. The amount (1,000 rupees) should, if there be no assessor, be reduced to 400, the jurisdiction to extend to all cases except real property. The fees of an appeal must be settled, and a deposit required sufficient to prevent vexatious appeals. I have only to add that I have fully discussed all the above matters at the meetings of the Commission.

(signed) *A. Amos.*

2 August 1841.

(No. 50)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to
J. C. C. Sutherland, Esq. Secretary to the Indian Law Commission:

Legis. Cons.
10 June 1842.
No. 12.

Sir,

I AM directed by the Honourable the President in Council to request that you will remind the Law Commissioners that the report of the "reasons" on which the provisions of the Act for establishing a court of subordinate civil jurisdiction in Calcutta, promised in your letter, dated the 31st July 1841, has not yet been submitted, and that with reference to practical objects of immediate urgency, the same is much required by government.

Legislative Dep.

I have, &c.

(signed) *F. J. Halliday,*

Officiating Secy to the Govt of India

Council Chamber,
10 June 1842.

— No. 5. —

No. 5.
Draft Act relating
to Court of Re-
quests.

DRAFT ACT

For temporarily remedying Inconvenience in the Proceedings of the
Court of Requests.

Legis. Cons.
10 June 1842.
No. 13.

From the Indian Law Commission to the Right honourable the Earl of Auckland,
G. C. B., Governor-General of India in Council.

As our Report, explaining and justifying the plan of judicature proposed in the Draft Act sent up to government by us on the 31st July last is, though far advanced, still unfinished; and as it is probable that the plan, involving as it does changes of great importance, and technical questions of considerable nicety, will be referred to the home authorities, we have thought that it may be expedient to adopt a temporary measure for the special purpose of remedying the inconvenience complained of as the result of the decision to which the Supreme Court came in the case of *Anderson v. Russomoy Dutt*.* We accordingly now submit for the consideration of your Lordship, a plan for this object, based upon the evidence of Sir E. H. East, before the Select Committee of the House of Lords, 1830†, and upon the practice of the judges of the Supreme Court at Bombay sitting in their small cause court‡. It is our opinion that a plan of this kind is very much to be preferred to any extension of the jurisdiction of the court of requests beyond the limits assigned to it by the decision to which we have alluded.

Vide letter from
the Commissioners
dated 3 Aug 1840,
enclosed in letter
from Jun Sec. to
Government, Leg.
Dept. 12 Oct. 1840.

We have thought it advisable that the practice of the commissioners of the court of requests, in hearing and deciding causes, and doing other acts singly, should be sanctioned by a legislative enactment, and in the draft of an Act herewith submitted, containing the provisions we propose as a temporary arrangement for the adjudication of matters excluded from their jurisdiction by the decision of the Supreme Court, we have introduced a section to that effect.

We submit this our Report for the consideration of your Lordship in Council.

We have, &c.
(signed) Andrew Amos.
C. H. Cameron.
F. Millett.
D. Elliott.
H. Borradaile.

Indian Law Commission,
26 Feb. 1842.

DRAFT OF ACT.

Legis. Cons.
10 June 1842.
No 14.
Enclosure.

WHEREAS the jurisdiction of the court of requests for the recovery of small debts in and for the settlement of Fort William, is limited to suits brought for the recovery of debts not exceeding 400 sicca rupees, or Company's rupees : and whereas it is not expedient that the jurisdiction of the said court of requests should be extended : and whereas, until a general scheme of judicature, adapted to the circumstances of British India, or such parts of such general scheme as may provide for judicature within the presidency towns, can be prepared, it is expedient that temporary provision should be made for the decision of matters which are not within the jurisdiction of the said court of requests, but which are of so little value that it is inconvenient to the parties to sue for them in Her Majesty's Supreme Court of Judicature :

It

* Enclosures in letter from Junior Secretary to Government, Legislative Department, dated 12th October 1840

† Minutes of Evidence taken by Select Committee, House of Lords, 1830, pp. 138 to 140.

‡ Enclosures in letter from Junior Secretary to Government, Judicial Department, 22d June 1840.

It is hereby enacted, that from and after it shall be lawful for any of the judges of Her Majesty's Supreme Court to hold a court for the hearing and decision of all matters for which a civil action at law will lie in the said Supreme Court, provided that the amount claimed by the plaintiff do not exceed 400 sicca rupees, or Company's rupees, and provided that the matter be not such as could form the subject of a suit in the said court of requests.

And it is enacted, that every judge of the Supreme Court, holding such court as is described in section I., shall proceed in a summary manner, by examination upon oath, or affirmation of parties and witnesses, subject to such rules as are hereinafter mentioned.

And it is enacted, that every judge of the Supreme Court, holding such court as is described in section I., shall in every case make such a decree as may be agreeable to equity and good conscience, following such law as the said Supreme Court would have administered if the matter had been brought before it in an action at law.

And it is enacted, that in every decree made as aforesaid, the judge shall order how much of the amount of any fees which may have been paid or be payable to any attorney or barrister, shall be reckoned as costs between party and party, and what other expenses incurred by the parties in prosecuting or defending the suit, shall be reckoned as costs between party and party, and shall order in his decree which party shall pay costs to the other, and to what amount.

Provided, that no fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, unless such judge shall be satisfied that the assistance of such attorney or barrister was reasonably required.

And it is enacted, that the said Supreme Court may make such rules for regulating the proceedings before a judge, holding such court as is described in section I. as shall appear to them most conducive to the discovery of truth, and the speedy and economical attainment of justice.

Provided always, that such rules shall not be inconsistent with anything contained in this Act.

And it is enacted, that all the power and authority vested in the said Supreme Court, in the trial of civil actions for the punishment and examination of witnesses, and the administering of oaths and affirmations, shall be vested in every judge holding such court as is described in section I.

And it is enacted, that the said Supreme Court shall from time to time appoint such of their officers, or if the officers of such Supreme Court shall be found insufficient, such additional persons as may be necessary to transact the business of, and generally to act as ministerial officers of such court, as is described in section I.

And it is enacted, that all powers vested by law in the commissioners of the court of requests aforesaid, shall be vested henceforth in every such commissioner sitting singly.

Indian Law Commission,
26 February 1842.

(signed) *J. C. C. Sutherland.*

(No. 21.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *L. Peel*, Esq. Advocate-General.

Legis Cons.
10 June 1842.
No. 15.

Sir,

I AM directed by the Right honourable the Governor-general in Council to transmit the accompanying despatch, dated the 26th ultimo, from the Law Commissioners, and to request that you will favour his Lordship in Council with your opinion on the provisions of the draft Act prepared by the Commissioners to remedy the inconvenience complained of in the proceedings of the court of requests.

Legislative Dept.

2. The papers referred to in the Report of the Law Commissioners are also forwarded, and you are requested to return all original papers when no longer required by you.

Judicial Cons 22 June 1840, No. 11 to 13.
Ditto - 7 Sept 1840, No 4 to 6.
Ditto - 12 Oct 1840, No 3 & 4.
Letter from Secretary Indian Law Commission, dated 31 July 1841, with one Enclosure.
Minute by the Hon. A. Amos, esq, dated 2 Aug. 1841.

Council Chamber,
21 March 1842.

I have, &c.
(signed) *T. H. Maddock*,
Secretary to the Government of India.

No. 5.
Draft Act relating
to Court of Re-
quests.

Legis. Cons.
10 June 1842.
No. 16.

From *Lawrence Peel*, Esq. Advocate-General, to *T. H. Maddock*, Esq. Secretary
to the Government of India.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st March, requesting my opinion upon the provisions of a draft Act for the formation of a court of a limited jurisdiction, to supply the deficiencies arising from the restriction of the powers of the present court of requests. From the terms of the reference to me, I consider that the necessity of the formation of some such tribunal is felt and acknowledged. I have not the means of forming an opinion upon this point, nor can I tell the probable amount of business which such a court will have to transact. Assuming, as I think it would be found to be, that the business to be despatched by the court would not be too onerous for the unemployed time of the judges of the Supreme Court, I think that the appointment of one of the judges of that court to hear the cases under the Act is the best arrangement that can be made, and I am of opinion that by a proper arrangement amongst the judges of the Supreme Court of the general business of the court, the additional business to devolve upon them might be disposed of without difficulty or delay. Although I think the benefits of an examination of the parties to the suit to be in general greatly overestimated, yet I entertain no objection to the provision. The more competent the judge who presides in such a tribunal, the less is the danger of introducing this species of evidence. It should also be coupled with a provision that no witness should be deemed incompetent by reason of interest or otherwise. The efficiency of this court, as it appears to me, will depend in a great measure upon the rules which the judges are empowered to make. These are not made subject to any revision; I think the Governor-general in Council should have the power of annulling such as appear objectionable. The provision constituting such a court a court of conscience, to proceed and to give such a decree as may be agreeable to equity and good conscience, I do not approve of. My objection to it is this, the court has almost a general jurisdiction, that is, over all subjects of complaint, except simple debts, to the extent of the jurisdiction of the court of requests. I think the consequence of such a provision, if acted on, would be to introduce a very general uncertainty concerning the law amongst the classes who would most frequently resort to the tribunal, and a very great increase of litigation; and I should much prefer a tribunal which had to decide according to the injunctions of some given law, applying the law of the Hindoos, of the Mahomedans, or the English law, according to the nature of the case, in a mode which may govern like cases for the future. The public would not know what special causes induced a departure, in particular instances, from the general law, and the decisions of the court would be considered capricious, and so far would inspire little confidence or respect. This objection, if valid, applies undoubtedly, to a certain extent, to all courts of conscience; it is, perhaps, one reason why, notwithstanding their cheapness and despatch, they are so little respected. No provision is made in this Act for defraying the expense of the court. The judges could not impose any fees, nor could they require of the officers of the Supreme Court to undertake duties in a newly-constituted court without emolument. Some provision should be made for this. I have no other objections to urge to the Act, which, if it be necessary to pass a provisional and temporary Act of the kind, may be productive of benefit, if the judges of the Supreme Court frame their rules in a wise and liberal spirit, adapting them to the necessities of the case, getting rid of all mere formalities and technicalities of proceeding, evolving in the shortest and most simple form the cause of complaint and the answer to it, facilitating the admission of all evidence pertinent to the matter of inquiry, and making the fruits of a judgment to follow at once upon its award, with a power to mitigate, in proper cases, the rigor of an instant execution.

I have, &c.

(signed) *L. Peel*.

30 March 1842.

INDIAN LAW COMMISSIONERS.

327

No. 5
Draft Act relating
to Court of Re-
quests.

Legis Cons.
10 June 1842.
No. 17.

(No. 639.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Judicial Dept.

Sir,
I AM directed by the Honourable the Deputy-governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying original letter from the commissioner of the court of requests, dated the 10th instant, with its enclosure, bringing again to the notice of Government the anomalous position of that court, and reporting the particulars of a case recently instituted, out of which has arisen questions of some importance.

2. The return of the original documents is requested with your reply.

I have, &c.
(signed) *F. J. Halliday*,

Fort William, 23 May 1842.

Secretary to the Government of Bengal.

From the Commissioners of the Court of Requests, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Legis Cons
10 June 1842
No. 18.
Enclosure

Sir,
IN our letters dated the 3d August 1840, and the 23d February 1841, we endeavoured to set forth in detail the peculiarly anomalous condition of this court, and how inefficient it would become unless the government interposed by a legislative enactment to render its jurisdiction clear and defined. We propose now to report, as succinctly as we can, the particulars of a case out of which has arisen questions of the deepest importance, and which, if not speedily settled, we venture to predict that this court will be treated with the greatest contempt, and its authority utterly derided.

2. In order to observe perspicuity, we shall, 1st, give the facts of the suit alluded to as they came out on each day of trial, and, 2dly, we shall then make such comments as the nature of the subject appears to call for.

1st. This case was instituted to recover 387 rupees, 13 annas, for balance of accounts. After hearing the statement of both parties it was postponed till Monday following, and fixed for 12 o'clock, attachments having been ordered against several witnesses on behalf of the plaintiff, who had been duly subpoenaed, and did not attend.

F. Pueba v. Tourneur.
23 April 1842.

The case by consent of plaintiff was postponed to Wednesday next.

25 April
27 April.

And on this day, at the request, and with the full concurrence of the plaintiff and defendant, the whole of the matters in dispute were referred to the arbitration of Captain G. Vint, for four weeks. Several witnesses were sworn by the sitting commissioner to give evidence before the arbitrator.

A material witness, *J. W. Agar*, was called, and refused to swear until his expense for conveyance and remuneration for loss of time in attending the court were paid to him by plaintiff. The court informed the witness that he could not demand remuneration for loss of time, but that it would take time to consider regarding his claim for conveyance charges, and postponed the further hearing of the case till next day.

On this day the plaintiff and the recusant witness appeared, but defendant was absent. The court observed that, after maturely considering the subject, it was of opinion that the witness could neither claim payments of remuneration nor conveyance charges, and that by his refusal to take the prescribed oath to give evidence, he commits a contempt of court, and incurs the consequent penalty of law. Some observations being made as to the mode of swearing, the court intimated its willingness to take any form of oath which the witness might consider most binding on his conscience; but he still persisted in his refusal, and declined to swear until his expenses were paid; accordingly the case was postponed. It was intimated to the witness that the court would adopt such measures in this business as may appear advisable, and that he was at perfect liberty to depart.

28 April.

300.

U v

The

No. 5.

5 May.

The arbitrator having prepared and sent in his award earlier than was expected, the case was appointed to be heard at 12 o'clock this day, by consent of parties. At the hour fixed the plaintiff and defendant appeared with their legal advisers,

The court published the award by reading it audibly in their presence. Some objections were taken by the defendant, through his attorney, W. D. Shaw, as to the jurisdiction of the court; but these were all overruled, and the award of the arbitrator was confirmed, and decree recorded by the court accordingly; the usual registration of the court having been made in the commissioner's book at the time, and intimation given to the plaintiff that he would be at liberty to take out execution against the defendant if the amount decreed against him was not paid in due course.

6 May.

On this day the accompanying original letter was received from the defendant's attorney, W. D. Shaw, which appears to contain strong legal objections to the competency of this court to adjudicate a suit which has been once referred to arbitration, as well as to confirm the arbitrator's award, and pass any decree grounded thereon, and to issue execution.

We consider the subject of such deep importance that we respectfully suggest an immediate reference should be made to the advocate-general, in order that we may be certified how to shape our future proceedings in such cases.

From the period of this court's institution in 1802, European and native suitors have desired, and cheerfully submitted their disputed claims to arbitration, when they considered it necessary; and, on confirmation of the award, have consented thereto, just as if the court had adjusted their cases. At present there are pending both on the English and native files several suits, all of which we propose to adjudicate in court by cancelling the order of reference, and discontinue sending any more cases to arbitration till this question shall have been officially determined.

2dly It were almost needless, we think, to offer any elaborate comments on the foregoing statement of facts, for it must be evident that the court is so shackled as to be positively unable to act with freedom. Here a witness subpoenaed refuses to take the prescribed oath to give evidence until compensation be tendered to him; the court pronounces it a contempt, but has not the power to punish him, according to the opinion of the advocate-general, dated February last, which was recently furnished to us through the Judicial Department. "The court of requests is established under the charter of Geo. 2; it is not a court of record, and no power is given to the commissioners to fine or imprison for contempts, at least I can find no legislative provision to that effect, and I think that contempts of that court can only be punished by indictments to be preferred before the judges of the Supreme Court."

What an indictment is we all know; the trouble, litigation, and expense which it involves are sufficient to deter any public office from seeking redress in this way; yet, if government will authorise it, we shall be prepared to submit, through the Honourable Company's solicitor, all contempts of this court for trial before the Supreme Court.

3. We shall conclude this report with only a few remarks. Here is a court holding its sittings daily in this vast city, administering justice to an immense population, without having its jurisdiction clearly defined, subject to all manner of contempts, and compelled to look on with indifference. Whilst its presiding officers are known to possess no penal authority whatever, it is no wonder that they are considered as so many nonentities, and their ministerial servants maltreated and scouted at, when in the discharge of their duties, publicly in the streets. On the present occasion we apprehend that the very essence of a court of justice has been invaded; namely, its inherent right to call witnesses before it, and compel them to give testimony on oath. But supposing the objections of the witness, Agar, to be valid, then must immediate provision be made by law for the court to award compensation to all who may claim it before giving their evidence, for assuredly all will demand it; some with an honest intention to save themselves and families from loss of time, others in league with designing, crafty suitors, in order that they may defeat, if possible, the ends of justice, and deprive creditors of their just dues.

The opinion expressed by the judges of the Supreme Court in the year 1840 regarding the jurisdiction of this court being limited only to "simple debts," has completely thrown out an immense body of suitors, who used to resort to it for

the adjustment of their claims, and who are now utterly deprived of any remedy whatever. On this subject we would state a very remarkable fact, which was brought to our notice officially by the pauper attorney, a few months ago. A petition was presented to the late chief justice, Sir Edward Ryan, in chambers, which his Lordship referred to that officer. The petitioner complained that he had instituted a case in the court of requests, to recover a comparatively trifling sum, the value of a shawl detained by another party, and that this court had declined to interfere, and nonsuited him, on the ground of jurisdiction. The chief justice, in handing this petition over to the pauper's attorney for his report, observed, that such a state of things ought not to exist, "for here is an evil without a remedy." If there is any truth in this remarkable observation, as applied to the past situation of this court, it is tenfold more appropriate to its present position; and we earnestly hope and trust that the momentous questions which we have now endeavoured to exhibit will meet with ready interference on the part of government. It cannot be possible that this court should be allowed to remain any longer in its present crippled state. If it be not protected, if it be not established on a legal foundation, if its powers are not clearly defined, we shall daily hear of and see a fearful tyranny wielded by the dishonest over the upright, and an obvious anomaly generated in the very heart of the metropolis of India.

We have, &c.
(signed) C Brietzeke,
Russomoy Dutt, } Commissioners.
David Hare, }
Court of Requests, 10 May 1842.

From *W. D. Shaw*, Esq. Attorney at Law, to *Charles Ware Brietzeke*, Esq. and *Baboo Russomoy Dutt*, Commissioners of the Court of Requests.

Gentlemen,
ON behalf of *C. Tourneur*, esq., I hereby give you notice, that if any warrant or process is issued by you, or either of you, or any commissioner of the said court, against the said *C. Tourneur*, or against his goods or chattels, in respect of a claim preferred against him by one *F. Puebla*, and if the said *C. Tourneur*, or his goods or chattels, is or are seized thereunder (as you, the said *Charles Ware Brietzeke*, esq., stated you would do), the said *C. Tourneur* will hold the party or parties issuing such writ and executing the same, liable to him for any such proceedings, the said *C. Tourneur* being advised that any such proceeding will be illegal. *Mr. Tourneur* has been advised, that by the reference of this case by the parties to *Mr. Vint*, the jurisdiction of the court of requests over him ceased.

Mr. Tourneur having received notice that you required his attendance, he, out of courtesy, waited upon you; but he in no manner admitted your right to act in the case referred to *Mr. Vint*. He, in truth, submitted to you, through me, that you had no authority in the case.

I believe that it is not for the commissioners of the court of requests to determine whether an award is good or bad. If no other ground existed, the insufficiency of *Mr. Vint's* award, as admitted by you, is a good ground for my client refusing to perform it, and the question of its sufficiency or insufficiency cannot be decided by you.

I have, &c.
(signed) *W. D. Shaw*,
Attorney at Law.
Esplanade Row, 6 May 1842.

MINUTE by the Honourable *A. Amos*, dated the 6th June 1842.

In addition to the papers sent by the commissioners of the court of requests, I send *Mr. Peel's* Report on the draft Act, for transferring part of the business of the court of requests to a single judge of the Supreme Court; also a short note from *Mr. Elliott*.

Legis. Cons.
10 June 1842
No. 19.
Court of Requests

No. 5.
Draft Act relating
to Court of Re-
quests.

The particular cause for the commissioners coming before us on the present occasion, is one for which they have no just ground of complaint. They know very well that their jurisdiction is confined to simple debts; and yet they allow or get the parties before them to agree upon an arbitration, and then seek to enforce the awards. Having had very large experience on the subject of awards, I know that it requires often considerable legal knowledge and great judicial discretion to determine whether an award be good or bad in point of law. It is a very unfit question for the commissioners; but fit or unfit, it is plainly out of their jurisdiction. Their jurisdiction is plainly defined; but if they have any doubts as to its extent, they will be at liberty to apply to the Company's law officers. But, on the present occasion, they come to government merely because they have undertaken to decide upon awards, and have found, though apparently without having any action brought against them, what they ought to have known, or at least ought to have inquired about, that they have been exceeding their jurisdiction.

Whether, in consequence of the commissioners being confined more strictly than formerly to the undoubted limits of their jurisdiction, there be a failure of justice in regard to various small demands, is a question the affirmation of which I believe to be true; but it is a question which does not concern the commissioners. If they had not gone on illegally decreeing upon demands of this nature, the grievance would most probably have been remedied long ago, in a legal way.

It may be observed, that a real grievance is indirectly indicated, viz. that the commissioners have not sufficient power for compelling the attendance of witnesses before them. I should conceive, however, that no great practical inconvenience was experienced on this ground, as the only case the commissioners bring forward is one in which the witness was to be sworn, in order to go before an arbitrator. The doubt as to the legality of the commissioners deciding cases when sitting singly, is of still greater importance; and were objections to be taken, we should, I think, have to legalize their proceedings, in this respect, retrospectively.

It is important that all these matters should be considered with reference to the actual vacancy in the court of requests.

(signed) A. Amos.

NOTE by D. Elliott, Esq.

MR. PEEL is of opinion that the appointment of one of the judges of the Supreme Court to hear cases within 400 rupees, not cognizable by the commissioners, is the best arrangement that can be made. He does not object to examination of parties. The provision for this, he thinks, should be coupled with one admitting the evidence of interested persons. He thinks the rules to be framed by the judges should be subject to the approval of the Governor-general in Council. Objects to decrees, according to equity and good conscience, does not notice, however, the qualifying words, "following such law as the Supreme Court would have administered;" and I understand from Mr. Cameron that he has had a conversation with Mr. Peel on this point, and that upon his explanation Mr. Peel is not inclined to insist upon his objection. He has no other objections to the Act; and he might be expected, as chief justice, to frame the rules in a wise and liberal spirit, with attention to the points which he notices as of most importance.

The draft Act submitted by the commissioners, besides providing for the hearing of the cases in question by a judge of the Supreme Court, also went to legalize the practice of the commissioners in separately exercising the power of the court. A further provision might be introduced to remedy the inconvenience pointed out in the letter from them now before government, from their having no power to punish contempts; the power might be given to them, or if there is any objection to the judge of the Supreme Court acting under the new law, upon their representation, after making any inquiry he may think proper.

I think that the operation of the proposed Act would tend to effect what is so urgently

Legis. Cons.
10 June 1842.
No. 20.
Enclosure.
Court of Requests.

urgently represented by the commissioners, to be necessary, viz. to define their jurisdiction; cases they doubted their power to try, they would direct to be carried before the judge, who would send back all which he thought within their cognizance; or a clause might be introduced, authorising them to consult him directly on this point.

I think the present vacancy a good opportunity for introducing the plan which has been talked of, viz. the appointment of one or more native judges, of the class of moonsiffs or sudder ameens, for the hearing of petty causes between natives. If two were appointed, they could take off the great mass of business, and leave the superior judges leisure to proceed more deliberately in hearing and disposing of the cases reserved to them, on which there would be much advantage. But the vacant salary would provide for at the highest rate allowed to sudder ameens. Perhaps it would be best at first to have two principal sudder ameens on 500 rupees each; the salary of principal sudder ameens varies from 400 rupees to 600 rupees.

The jurisdiction of a principal sudder ameen, in the mofussil is unlimited in respect of amount or value.

The jurisdiction of a sudder ameen extends to 1,000 rupees.

Of a moonsiff, to 300 rupees.

(No. 47.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government in India, to
F. J. Halliday, Esq. Secretary to the Government of Bengal.

Legis. Cons.
10 June 1842.
No. 21.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 639, dated the 23d ultimo, with its enclosures, relating to the anomalous position of the court of requests.

Legislative Dept.

2. The Supreme Government has under consideration a draft Act, submitted by the Law Commissioners for the formation of a court of limited jurisdiction, to supply the deficiencies arising from the restricted powers of the present court of requests. Of this draft I am directed to enclose a copy for his Honour's information. His Honour is requested to point out to the commissioners that they have brought themselves into embarrassment in this instance, entirely by permitting suitors coming before them to agree upon an arbitration, and then seeking to enforce the arbitrator's award. This is plainly out of the commissioners' jurisdiction, which is very clearly defined. If, however, they had any doubts as to its extent, they were at liberty to apply in the usual manner to the Company's law officers for information.

3. The commissioners should therefore be strongly recommended to adhere closely to their jurisdiction in future.

4. The original enclosures of your letter are returned herewith.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government
of India.

Council Chamber,
10 June 1842.

(No. 48.)

From the Supreme Government to the Honourable the Judges of the Supreme Court at Fort William.

Honourable Sirs,

WE have the honour to forward the accompanying copy of a draft of a proposed Act for the formation of a court of limited jurisdiction to supply the deficiencies arising from the restricted powers of the present court of requests, submitted for our consideration by the Law Commissioners, in a letter dated 23d February last, and to request your opinion as to the necessity for such a tribunal, and the expediency of creating it in the manner proposed by the draft.

Legis. Cons.
10 June 1842.
No. 22.

Legislative Dept.

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2. We

No. 5.
Draft Act relating
to Court of Re-
quests

2. We are disposed to agree in the propriety of a suggestion which has been made to us, that a provision should be added to the draft to the effect that no witness should be deemed incompetent by reason of interest or otherwise; and that the rules for the guidance of the court which the judges are empowered to make should be submitted for the approval of the Governor-general in Council.

3. It has also been intimated to us that doubts, to which we attach importance, may be entertained of the expediency of the provisions constituting the new court a court of conscience, the decrees of which are to be agreeable to "equity and good conscience;" and further, that a provision is required (of the necessity of which we have considerable doubts) for enabling the judges to impose fees, or otherwise to defray the expense of the court.

We have, &c.
(signed) *W. W. Bird*
W. Casement.
H. T. Prinsep.
A. Amos.

Council Chamber,
10 June 1842.

Legis. Cons.
30 Sept. 1842.
No. 9.

From the Honourable the Judges of the Supreme Court at Fort William, to the Honourable the President of the Council of India in Council.

Honourable Sirs,

We have the honour to reply to your letter of the 10th June 1842, requesting our opinion as to the necessity of the tribunal proposed to be formed to supply the deficiencies arising from the restricted powers of the present court of requests, and the expediency of creating it in the manner proposed by the draft Act prepared by the Law Commissioners.

We have not the means of forming a judgment concerning the amount of business which would come before the court in question, and are therefore unable to say with any degree of certainty whether a judge of the Supreme Court could, without neglecting more important duties, attend during term time and the sittings, that is, during one-half of the year, to the business of the court proposed to be established, for a sufficient period in each week to keep the business of it from falling into arrear. If this doubt be groundless, we have no other objection to the establishment of the court proposed to be created than this; viz. that if two distinct courts of summary jurisdiction existed, that is to say, the court proposed to be created by this Act, and the court of requests as now established, a class of cases would exist approaching nearest to the boundary line of division between the jurisdictions of the two courts, as to which there would frequently be in the minds of the suitors doubts concerning the proper tribunal for their adjudication. Questions of jurisdiction would arise sometimes from error and sometimes by design; the suit would be preferred before the wrong tribunal, and fruitless proceedings be had before it, which inconveniences would not exist if the extended jurisdiction were made a branch of the court of requests. The court of requests might, in our opinion, be rendered a very efficient tribunal for the decision of the cases proposed to be referred to the summary decision of a judge of the Supreme Court, if the place of the third commissioner, now vacant, were filled up by the appointment of a gentleman of competent legal attainments, whose services we have no doubt might be secured at the salary paid to the late commissioner, Mr. Hare. This would not be more expensive, if so expensive, an arrangement as the institution of a new court. The officers of the Supreme Court would not be able to give due attention to the transaction of the business of the new court, and would frequently be engaged elsewhere officially during its sittings. The appointment of a clerk of court, whose services would be in constant requisition, of a few writers, and other minor officers, would be absolutely necessary, at a cost of not less, in our judgment, than 20,000 Company's rupees per annum, which might be raised by the imposition of a charge on the institution of a suit, or by fees, so as constitute but a slight burthen on the suitor. The court could not of its own authority impose such charges; and if the court be erected in the manner proposed, it appears to us to be essential that this power should be conferred on the Supreme Court, subject to the approval of the Governor-general in Council. We trust that we shall not be thought to be desirous of avoiding any new labour in stating it to be our opinion that the court would

be best constituted in the mode suggested by us; we think that an extension of summary jurisdiction is desirable, and if it be thought right to constitute the court in the mode proposed by the draft Act, the judges of the Supreme Court will give their zealous assistance to carry the views of the legislature into effect, being desirous that the court to be established should be rendered as beneficial as possible to the public. Whether that court be constituted in the one mode or the other, we think that it is desirable to exclude from its jurisdiction actions of assault, and for verbal or written defamation, otherwise many trifling and vexatious suits would be prosecuted, which would be instituted for purposes merely vindictive; and we also recommend that the rules of court relating to its practice, process, and the reception of evidence, should be framed or revised by the judges of the Supreme Court, subject to the approval of the Governor-general in Council, whether the jurisdiction be conferred in the one mode or the other. The proceedings should be of the most simple kind. The claimant should attend before the clerk of court, and state his case, the latter should bring the party before the judge, who should direct the entry of the plaint in a plaint-book, in concise and plain language, stripped of all technical phrases, to its legal nature; then the defendant should be summoned to attend at a certain time and place, and the complainant ordered to attend at the same time and place. The defence should be entered in the same mode in the plaint-book, under the plaint; and by a process similar to the ancient oral pleadings, the points in dispute should be brought to certain issues, so as to diminish the amount of proofs. Thus the judge would be in a manner the legal adviser of both parties, who would rarely have occasion to resort to professional assistance. To give effect to this system, the judge should understand the elementary learning of pleading, but it would not be necessary that he should have practised as a pleader, or should be deeply learned. The process of the court should be served by its officers, and not entrusted to the parties; on failure of the defendant to appear, after proof that he had been summoned, the case should be heard *ex parte*, and the summons should notify that this would be the case in default of appearance. We think that the efficiency of the court would be greatly impaired if it were directed to proceed merely as a court of conscience, in the terms of the Act. The decisions of the court would not govern other cases, and the parties amenable to the tribunal would not, in the dealings out of which matter of litigation falling within the jurisdiction of the court might arise, be subject to any general and known rule of law. Litigation would increase with the increase of uncertainty, which the absence of a general law relating to the subject would occasion, and the inconvenience would be particularly great in a commercial place. Mr. Justice Grant objects to the admissibility of the evidence of the parties in their own favour, but this objection is not entertained by the chief justice and Mr. Justice Seton. Mr. Justice Grant thinks that if the evidence of the parties in their own favour be rendered admissible, no evidence should be rejected on the score of interest. The other judges think that, independently of this consideration, no witness should be deemed incompetent, either by reason of interest or any other cause.

Court House,
14 September 1842.

We have, &c. .
(signed) *Lawrence Peel.*
J. P. Grant.
H. W. Seton.

MINUTE by the Honourable A. Amos, dated 18th September 1842.

I AGREE entirely with the judges that the clause about proceeding according to equity and good conscience, should be struck out of the Act.

I would allow the parties to be examined, and would do away with all objections to witnesses on the ground of incompetency.

I am not averse to excluding actions for assaults and for defamation, leaving the redress for these, as at present, in the Supreme Court.

With regard to the question whether a judge of the Supreme Court should preside, or whether a barrister judge should be appointed in the place of Mr. Hare, and who shall conduct the new business in the new manner proposed by the draft, the judges say that they cannot tell whether the business which would fall within the new jurisdiction could be all disposed of by them, and that an expense of 300.

U U 4

20,000 rupees

Legis. Cons.
30 Sept. 1842.
No. 2.
Court of Requests.

No. 5.
Draft Act relating
to Court of Re-
quests.

20,000 rupees per annum must be incurred. There do not appear to be any means of ascertaining beforehand whether or not the extra business can all be disposed of by a judge; but if we made it only necessary for him to take cases involving points of law, or other matters of difficulty, and gave him a power, in case of an over-pressure of business, to transfer minor cases to the court of requests, I should think he would be able to lend all the assistance that was particularly required. It may be observed, that suits of the descriptions in question which are now brought, are very few indeed. It appears that the judges admit that they have considerable surplus time, which is at the command of government; and, by employing them in the manner proposed, the salary of a commissioner will be saved. Nor do I see very clearly why the 20,000 rupees extra expenses must be incurred; and I am not clear that the judges mean, that if a barrister were appointed to execute the powers of the Act, the same charge would not be incurred. The judges' clerks are at present much overpaid, and hold other offices. If any additional expense be incurred, a very slight fee would cover it, and the suitors still get their suits determined at vastly less cost than at present.

One argument in favour of a barrister being appointed to the court of requests, with Mr. Hare's salary, is, that a reference to England will not be necessary, which possibly might be thought necessary, before giving a new employment to one of the Queen's judges; but I am not clear that such necessity exists, particularly under present circumstances. I think that the new class of cases which it is proposed to take from the Supreme Court could be very satisfactorily disposed of by any barrister of five years' standing, competently versed in his profession. The Calcutta bar is already overstocked, and will be more so before the expiration of the year, so that there will be no great difficulty of procuring a competent person, and upon a moderate salary.

With regard to what the judges say about the mistakes of jurisdiction, I think their difficulty will be removed, if we leave it optional with suitors to bring actions of the descriptions proposed, either in the Supreme or petty court.

On the whole, I think it advisable to subject certain suits, of the nature and amount stated in the draft Act, to a new jurisdiction, with a procedure of the very simple kind as proposed by the draft, subject to the modifications suggested by the judges.

Whether this court shall be held by a judge, or a barrister appointed for the purpose, is, I think, not very material, except it may be thought so to a question of finance. If a judge conduct the business, his decisions will have greater authority, and be kept more regular, and expense will be saved, but he may not have enough time. If a barrister be appointed, his decisions will be sufficiently satisfactory, and he will have more time at command, but he will be more expensive. The arrangement of employing a barrister would probably be effected with greater facility.

(signed) A. Amos.

MINUTE by the Honourable A. Amos, dated 27th September 1842.

Legis. Cons.
30 Sept. 1842.
No. 3.

Small Cause Court.

I CIRCULATE a draft for the establishment of a court for the decision of small causes. I agree in the expediency of the modifications suggested by Sir L. Peel; their adoption will, at all events, facilitate the arrangement.

I see no objection to publishing the draft before it is sent to Lord Ellenborough; his Lordship, in fact, has had the matter before him in its early stages. It is much wanted, as there is no doubt at present a denial of justice in many cases; and the judges of the Insolvent Court feel themselves disagreeably situated, and in danger of actions being brought against them for exceeding their jurisdiction, the limits of which the judges, in their official letter upon the subject of this Act, admit is not always free from doubt and difficulty.

When the question of salaries come to be investigated, the salaries and labours of the judges' clerks will require scrutiny; their salary is, I think, 800 rupees a month. One of the judge's clerks at present is also prothonotary and clerk of the Crown; and I believe, like the judges' clerks in England, the clerks have not been always persons of education, or of the class of gentlemen.

(signed) A. Amos.

No. 5.
Draft Act relating
to Court of Re-
quests

From the Hon. Sir *Lawrence Peel*, Knight, to the Hon. *A. Amos*, Esq.

My dear Sir,

I HAVE looked over your draft Act which you have had the goodness to send us, and have added, in the margin, such alterations as suggest themselves to me, which I leave to your better judgment. I think it would be expensive to have written pleadings. It is so very uncertain what amount of business would grow up under this jurisdiction, that at present I can hardly guess whether we should or should not be able to work it in terms time and sittings; but I have every desire to do all for it, and will devote all the time I have to spare to it, if my health permit me. I think it not improbable, if the court works well, that plaintiffs will sue for less than their demand, to bring themselves within its jurisdiction. I did not think of a barrister relinquishing his practice, but retaining his practice, if any, and not abandoning his quest of it. All these courts, many of which have been recently introduced in England by Lord Cottenham under various local Acts, have practising barristers, their judges attending sessions and assizes close at hand, and no harm ensues. Here a negligent judge would be under immediate surveillance. I have no doubt that a competent man could be got for the money, but not if he gave up all hope of practice; but perhaps the objection to a barrister springs from other sources.

Nothing can be clearer than that, without an Act of the Legislature to establish this court, nothing could be done by the judges. They have no power whatever to impose any fee or charge, however trifling. They could not order any of their present officers, supposing them to have leisure for it, to do any duty in a wholly new station; and they would be without any of the sinews of courts, which can no more be carried on without money than can wars. Neither could they, of their own authority, legally establish in the proceedings all that it would be essential to establish

We cannot prohibit the attendance of counsel or attorneys; perhaps it would not be right to exclude the former, certainly not the latter. It would take away from the judges much practical difficulty if a clause were added, that no costs of employing counsel or attorney should be allowed on taxation of costs against the opposite party, unless the judge should certify, under his hand, that the case was one proper for the employment, &c.; nor against the client, unless at his own request counsel were employed, he being first informed that no fee to counsel would be allowed on the taxation of costs.

I wish to bring under your notice the Process Act, commonly termed the Reciprocal Process Act; I mean the one enabling the Queen's courts to cause the execution of the process of the courts of the Company in the mofussil, within the local limits of Calcutta, Madras, and Bombay. It was, I am informed, at the time when this Act was under consideration, the design to give like powers to the mofussil courts, so that they, if applied to by the parties, might execute a judgment or decree, &c. of the Supreme Court. This failed, by reason of some notion that it was *infi a dig.* of the Queen's courts. I do not entertain this opinion, and should very gladly see the law altered. Our courts are now in their most palmy state of dignity. The sheriff's officers get generally soundly drubbed when they enforce the process of the court at a distance. Soon we shall be so high in estate, that no attention will be paid to our writs, and there is no knowing how high we may hold our heads when a sheriff's officer suffers martyrdom in support of the court's dignity.

Three or four sections of the present Act may readily be made applicable, *mutatis mutandis*, and a short clause enabling the judges or magistrates of the Company's courts to act as masters extraordinary of this court, when sanctioned by government, for the purpose of taking affidavits, &c. in the mofussil, would diminish greatly the costs of delegation here. If you lend a favourable ear to this proposal, I will send you a sketch of an Act for the purpose for your consideration.

Calcutta,
26 Sept. 1842.

Yours, &c.
(signed) *Lawrence Peel*.

No. 5.
Draft Act relating
to Court of Re-
quests.

Legis. Coun.
Sept. 1842
No. 5

FORT WILLIAM, LEGISLATIVE DEPARTMENT, the 30th September 1842

THE following draft of a proposed Act was read in Council for the first time on the 30th of September 1842.

ACT No. — of 1842.

An Act for the better Administration of Justice within the Town of Calcutta, in small Causes not included within the jurisdiction of the Court of Requests.

1. It is hereby enacted, that from and after it shall be lawful for any one of the judges of Her Majesty's Supreme Court to hold a court for the hearing and decision of all matters for which a civil action at law will lie in the said Supreme Court except as hereinafter mentioned, according to the law there administered, subject to such modifications as are hereinafter authorized; provided, that the amount claimed by the plaintiff do not exceed 400 Company's rupees, and provided the suit be not founded on any demand of damages for an assault or battery, or for written or verbal defamation.

2. And it is hereby enacted, that suits at present cognizable by the court of requests shall be brought before that court as heretofore, and not before the judge holding the court indicated in the last section, provided that no judgment passed by the judge holding such court shall be impeached for error, or be held as extrajudicial on the ground that the suit ought to have been brought in the court of requests.

3. And it is hereby enacted, that the said Supreme Court shall make rules for the proceedings before a judge holding such court as is established by this Act; which rules shall regulate the manner of proceeding in the said court, viz. the institution of the suit, the entry of the plaint, the process, the entry of the defence, and other subsequent allegation by either party, and the practice of the said court, the fees to be taken, and the costs to be allowed: provided, that both plaintiffs and defendants be liable to be examined at the discretion of the judge, and that no witness be deemed incompetent to give testimony upon any ground whatever; provided further, that all such rules shall receive the confirmation of the Governor-general in Council before they are put in force.

4. And it is hereby enacted, that in order to reduce the costs of suit, and to render the same proportionate to the amount of the demand recoverable before the said court, the allegations of the parties be not entered in any written pleadings to be delivered between party and party, but be made orally before the officiating judge, and be by him directed to be entered in a book to be kept for that purpose, to be termed the book of pleadings of the said court, and be entered accordingly under his direction in untechnical and concise language, according to the legal effect thereof, to which books the parties shall have at all times access without the payment of any fee or reward.

5. And it is hereby enacted, that no costs of employing any counsel or attorney shall be allowed on the taxation of costs in any suit in the court hereby established, unless the judge who presided at the trial shall certify that the nature of the case was such as to render the employment of counsel or attorney expedient for the attainment of justice.

6. And it is hereby enacted, that the said Supreme Court shall, with the consent of the Governor-general in Council thereto previously obtained, and with the like consent previously obtained to the salaries hereinafter mentioned, appoint such officers as shall be necessary for transacting the business of the said court established by this Act, to be remunerated, as far as the same will extend, out of the fees of the said last-mentioned court; provided, that the fees hereby directed to be imposed shall be subject to the revision of the said Governor-general in Council from time to time, and that the same shall be reduced from time to time if the same shall be found to exceed the amount of the reasonable expenses of the maintenance of the said court, including all such salaries as aforesaid.

7. And it is hereby enacted, that all the power and authority vested in the Supreme Court in the case of civil actions shall be vested in every judge holding such court as is established by this Act.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 30th day of November next.

F. J. Halliday,

Officiating Secretary to the Government of India.

INDIAN LAW COMMISSIONERS.

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No. 5.
Draft Act relating
to Court of Re-
quests.

(No. 73.)

From the Supreme Government to the Honourable the Judges of the Supreme Court at Fort William.

Legis. Cons.
30 Sept. 1836.
No. 6.

Honourable Sirs,
We have the honour to forward to you the accompanying printed draft of a proposed Act for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests, and shall feel obliged by any observations or suggestions you may offer on the subject.

Legislative Dept.

We have, &c.
(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.
A. Amos.

Council Chamber
30 September 1842.

MINUTE by the Honourable *A. Amos*, dated 7th December 1842.

Legis Cons.
23 December 1842.
No. 26.
Court of Requests

WHAT the commissioners desire, viz. a ratification of the usage which has always prevailed of the commissioners sitting singly, unless they see occasion, from peculiar circumstances, that they should sit together, is reasonable and proper. Such a provision was contained in the draft of the Law Commissioners, but I omitted it in the published draft, lest in the interim between the publishing and passing of the Act, parties should avail themselves of the objection, and perhaps recover damages against the commissioners. When the Act passes, a provision should be introduced authorizing the commissioners to sit singly, and making all decrees heretofore passed by them singly free from impeachment.

(signed) *A. Amos.*

(No. 2556.) (No 36 of 1842)

From the Secretary to the Government of Bombay to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, in the Legislative Department.

Legis. Cons.
23 December 1842
No 27

Sir,
With reference to Mr. Secretary Maddock's letter, No. 33, dated the 5th of April 1841, I am directed by the Honourable the Governor in Council to transmit to you, for the consideration of the Honourable the President in Council, copies of the documents noted in the margin, relative to the expediency of extending to Bombay the proposed Act "for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests."

Judicial Dept.

Letter from the Advocate-general, of the 28th October 1842, with Enclosure.
Memorandum by the Judicial Secretary, dated 31st October 1842.
Minute by the Honourable Board (without date)
From the Chief Justice of the Supreme Court of Judicature (without date).
Minute by the Honourable the Puisne Judge, dated 17th November 1842.

Bombay Castle,
3 December 1842.

I have, &c.
(signed) *J. P. Willoughby,*
Secretary to Government.

From the Advocate-General to the Secretary to Government of Bombay.

Sir,
HAVING observed in the Government Gazette of Thursday, the 20th instant, a draft Act published "for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests," and it being very desirable that a similar law should exist in Bombay, I

Legis. Cons.
23 December 1842.
No. 28.
Enclosure.
Judicial Dept.

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have

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Draft Act relating
to Court of Re-
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have the honour of bringing the subject to the notice of the Honourable the Governor in Council, with a view to having the Act extended to this presidency.

2. Government are probably aware, that the jurisdiction of the court of requests at Calcutta extends to cases amounting in value to 400 rupees, while the jurisdiction of the court of requests at Bombay is limited to demands of 80 rupees. At this presidency a court is held weekly, by one of the judges of the Supreme Court, called the Small Cause Court, for the trial of cases of simple contract, between rupees 80 and not exceeding 350 rupees, in which the scale of fees is moderate, although higher than that of the court of requests.

3. The legality of this small cause court's jurisdiction has occasionally been doubted, and from its limited powers, as well as those of the court of requests, defects of justice are frequently experienced, for which the present Act would provide a remedy.

4. As to the defects, I would instance cases of torts and trespasses, where property has been wrongfully possessed, or wrongfully detained from the right owner, and involving questions of right and title to the property in dispute, and which can only be adjudicated upon in the Supreme Court, the courts of requests at Calcutta and Bombay having jurisdiction only over the contracts of the parties, and the expense of litigating in the Supreme Court cases of torts and trespasses, and questions of title, where the amount or value of the property is small, is a bar at once to litigating them.

5. I have therefore modified the Act, as proposed, for Calcutta, and with the alterations and additions, which I have marked in italics, I now beg to submit it for the consideration of the Honourable the Governor in Council, in order that it may, if approved of, be forwarded to the Legislative Council.

6. Though the Act will, I presume, before transmission to Bengal, be sent to the Honourable Judges of the Supreme Court here for their approval and remarks, I may observe that I have already communicated with one of them, Mr. Justice Perry, on the subject, and have his permission to state that he is in favour of the extension of the Act.

I have, &c.

(signed) *A. S. Le Messurier,*
Advocate-General.

Advocate-General's Office, Bombay,
28 Oct. 1842.

(True copy.)

(signed) *J. P. Willoughby,*
Secretary to Government.

DRAFT ACT referred to in the annexed Letter,

Legis Cons.
23 December 1842.
No 29.
Enclosure.

AN ACT for the better Administration of Justice within the Towns of Calcutta and Bombay, in small Causes not included within the Jurisdiction of the Courts of Requests *established at either of those Places.*

It is hereby enacted, that from and after it shall be lawful
for any one of the judges of Her Majesty's Supreme Courts at *Calcutta and Bombay* to hold a court for the hearing and decision of all matters for which a civil action at law will lie in the said Supreme Court, except as hereinafter mentioned, according to the law there administered, subject to such modifications as are hereinafter authorised, provided that the amount claimed by the plaintiff do not exceed 400 Company's rupees, and provided the suit be not founded on any demand of damages for an assault or battery, or for written or verbal defamation.

And it is hereby enacted, that suits at present cognizable by the courts of requests of *Calcutta and Bombay* shall be brought before ~~that~~ *those* courts as heretofore, and not before the judge holding the court indicated in the last section; provided, that no judgment passed by the judge holding such *last-mentioned* courts shall be impeached for error, or be held as extra-judicial, on the ground that the suit ought to have been brought in ~~the~~ *either of the said* courts of requests.

And it is hereby enacted, that the said Supreme Courts of *Calcutta and Bombay* respectively shall make rules for the proceedings before a judge holding such courts as ~~is~~ *are* established by this Act, which rule shall regulate the manner of proceeding

ing in the said court, ~~and~~ respectively including the institution of the suit, the entry of the plaint, the process, the entry of the defence, and other subsequent allegation by either party, and the practice of the said court, the fees to be taken, and the costs to be allowed. *Provided.*

Draft Act relating to Court of Requests.

This properly does not appear to be a proviso, but a fresh enactment.

(signed) A.S.L.M.

And it is further enacted, that both plaintiffs and defendants in any suits to be tried in such court shall be liable to be examined at the discretion of the judge, and that no witness be deemed incompetent to give testimony upon any ground whatever, and that it shall be lawful for the judge to adjourn the case, if he shall see fit, for the purpose of obtaining further evidence, and also to order and direct the amount of any judgment recovered by the plaintiff to be paid by instalments, in such manner as to him shall seem reasonable and just, and in any case of difficulty to direct the cause to be tried in the Supreme Court provided always, that the parties shall be at liberty to move for a new trial, or to appeal from the decision of the sitting judge to the Supreme Court, in such manner and under such restrictions and qualifications as shall be specified in the said rules provided further, that all such rules shall receive the confirmation of the Governor-general in Council before they are put in force

And it is hereby enacted, that in order to reduce the costs of suit, and to render the same proportionate to the amount of the demands recoverable before the said court, the allegations of the parties be not entered in any written pleadings to be delivered between party and party, but be made orally before the officiating judge, or some proper officer appointed by him for that purpose, and be by him directed to be entered in a book to be kept for that purpose, to be termed the book of pleadings of the said court, and be entered accordingly, under his direction, in untechnical and concise language, according to the legal effect thereof, to which books the parties shall, on due notice previously given for such purpose, have at all times reasonable hours access, without the payment of any fee or reward

And it is hereby enacted, that no costs of employing any counsel or attorney shall be allowed on the taxation of costs in any suit in the court hereby established, unless the judge who presided at the trial shall certify that the nature of the case was such as to render the employment of counsel or attorney expedient for the attainment of justice.

And it is hereby enacted, that the said Supreme Court shall, with the consent of the Governor-general in Council thereto previously obtained, and with the like consent previously obtained to the salaries hereinafter mentioned, appoint such officers as shall be necessary for transacting the business of the said court established by this Act, to be remunerated, as far as the same will extend, out of the fees of the said last-mentioned court; provided, that the fees hereby directed to be imposed shall be subject to the revision of the said Governor-general in Council from time to time, and that the same shall be reduced from time to time if the same shall be found to exceed the amount of the reasonable expenses of the maintenance of the said court, including all such salaries as aforesaid.

And it is hereby enacted, that all the power and authority vested in the Supreme Court in the case of civil actions shall be vested in every judge holding such court as is established by this Act.

And whereas the Supreme Court of Judicature at Bombay has for many years past held a court under the denomination of the Small Cause Court, for the decision of small causes in which the amount in dispute does not exceed 350 rupees in value, under certain rules framed specially for the purpose of administering justice therein: And whereas the jurisdiction so exercised, although it has been found very beneficial, is not sufficiently extensive, and doubts have occasionally been entertained as to the legality of such a jurisdiction, and it is expedient that such doubts should be removed and a sufficiently extensive jurisdiction in small causes created; Be it therefore enacted, that all proceedings and all acts heretofore done by or under the authority of such court so denominated the Small Cause Court as aforesaid shall be deemed and taken to be good and valid in law, to all intents and purposes, and the legality thereof shall not be disputed or questioned in any court of justice, and that henceforth the administration of justice in small causes within the town of Bombay shall, to the amount

No 5.
Draft Act relating
to Court of Re-
quests

amount of rupees 400, be carried on by the court established by this Act, under the rules to be framed as aforesaid.

Submitted for the approval of government.

(signed) *A. S. Le Messurier,*
Advocate-general.

(True copy)

(signed) *J. P. Willoughby,*
Secretary to Government.

Legis. Cons
23 December 1842
No. 30.
Enclosure.

MEMORANDUM by the Judicial Secretary.

A SUMMARY of the correspondence with the government of India, on the application of this government that an Act might be passed for assimilating the constitution of the Bombay court of requests to that of Madras, is contained in the despatch to the Honourable the Court of Directors, No. 4, dated the 1st of February 1841.

2. The reason assigned by the government of India for the delay which has occurred in passing the proposed Act, was "that the subject of the constitution and powers of the courts of request at the several presidencies was before the Law Commission, from whom a report was soon expected." See Mr. Secretary Maddock's letter, No 33, dated the 5th of April 1841.

3. If government approve of the suggestions submitted in Mr. Le Messurier's letter, that the provisions of the proposed Act published on the 30th of September last, "for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests," may be extended to Bombay, a copy of his letter and of the draft Act, as altered by that gentleman in italics, may be forwarded for the consideration of the government of India, with reference to Mr. Maddock's letter above quoted.

4. As the proposed Act is ordered to be considered after the 30th instant there will scarcely be time to consult the judges of the Supreme Court, as proposed in the last paragraph of Mr. Le Messurier's letter, before forwarding the draft Act to Calcutta.

31 October 1842.

(signed) *J. P. Willoughby.*

(True copy)

(signed) *J. P. Willoughby,*
Secretary to Government.

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23 December 1842.
No 31

MINUTE by the Honourable Board.

I THINK the best course would be, in the first instance to send this to the judges of the Supreme Court, to request any observations that may occur to them, in order that such observations may be laid before the government of India in forwarding the proposed Act. It seems to me that the Act renders more perfect the present small court now held by the judges of the Supreme Court sitting singly.

(signed) *G. W. Anderson.*
G. Arthur.

(True copy.)

(signed) *J. P. Willoughby,*
Secretary to Government.

Legis. Cons.
23 December 1842.
No. 32

From the Honourable *H. Roper*, Knight, Chief Justice of the Supreme Court of Judicature, Bombay, to the Hon. the Governor and the Council of Bombay.

Honourable Sirs,

UPON the 16th instant the judges had the honour to receive your letter requesting the proposed Act for the trial of small causes. Sir E. Perry has requested me to

to say, that as his absence from Bombay prevents him from joining with me in a letter to the government, he thought it best to embody his view in a Minute. That Minute I have the honour to enclose.

The jurisdiction of that branch of the Supreme Court at Bombay called the Small Cause Court is limited to actions for debts and liquidated damages, in which the cause of action shall not be less than 80, or more than 350 rupees. In order to bring a case within the jurisdiction, a party is allowed to relinquish a portion of his claim, or to sue for but one or more instalments of a large sum agreed to be paid by instalments; and for the like end, in many instances, the party waives a tort and sues in form *ex contractu*. Upon the whole, although in a court constituted under the proposed Act some cases might come forward in different forms from those usual in the present small cause court, I doubt whether the number of cases brought before the former would much exceed the number disposed of in the latter. That the constitution and rules of the small cause court at Bombay might be improved, it is not my purpose to discuss, and it seems most desirable to establish uniformity in the modes of administering justice by the several Supreme Courts in India; for the attainment of that object, great efforts should be made, though I should regret it were accomplished by extending to Madras or Bombay provisions so objectionable as, in my opinion, are some of those contained in the proposed Act for establishing a new court at Calcutta, and in the projected modification thereof brought to your notice by the Advocate-general.

The removal of all objections to the competency of witnesses, and the rendering parties to actions liable to be examined, at the discretion of the judge, are provisions I wish extended to all judicial investigations of facts; but I carry still further the principle, that the best mode of eliciting truth in small matters must be equally efficacious where more important interests are at stake. The amount in dispute is no criterion of the difficulty of deciding with respect to it, and if the proposed Act prescribe the best mode of administering justice, it should extend to matters of whatever value, but if the mind justly recoils from the idea of submitting important interests to the decision of a single judge, uncontrolled by jury, or public opinion, unadvised, or unchecked by counsel, and from whom there is no appeal, provisions for such a purpose must be faulty, and if not altogether rejected, their application should be very limited. I would at least except from the operations of the proposed Act, not merely actions for assault and defamation, but also actions in which the title to land is in dispute, and perhaps also actions upon policies of insurance. Usually there is much difficulty in cases of the last-mentioned class, and the parties interested are wealthy. Questions of title to land, other than as between landlord and tenant, generally involve much intricacy as to law or fact, and the marked value of the land is an imperfect criterion of its importance. A plan might be devised whereby either party to an action on a policy, or regarding the title to land, might cause such action to be instituted or tried in the Supreme Court, upon terms as to costs, pleadings, and proceedings, and where actual poverty presented an obstacle, the office of the attorney for papers should be a sufficient resource.

The fourth clause of the proposed Act for establishing a small cause court at Calcutta seems to me to be defective, and in some degree improved upon by Mr Le Messurier. It provides that the allegations of the parties be not entered in any written pleadings to be delivered between the parties, but be made orally before the officiating judge, and be by him directed to be entered in a book. The delivery of pleadings between the parties may well be dispensed with; but it can scarcely be intended, either that no pleading shall take place between the parties before trial, but that at the time of trial the parties shall plead orally, and their allegations be then entered in a book before the judge, or if the allegations of the parties are to be made orally and entered in a book before trial, that we are to revert to the exploded practice said to have prevailed up to the reign of Edw. 3, and that a judge is to attend in order to direct the making or entering such allegations, and should thus perform the duty of a professional clerk, and yet such interpretations are not inconsistent with a clause so framed. To ascertain the subject for decision and render it ripe for trial, it seems expedient that before trial the parties make statements of their respective cases, and that such statements, being in effect the pleadings, be reduced to writing. The entering them in a book to which easy access can be had, instead of having them filed and copies delivered between the parties, is no doubt a salutary measure so far as it tends to decrease expense. But the collecting the mutual allegations of the parties, the rendering them

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quests.

them to form, and the so directing them as to ascertain the issues, can be done by any professional man of ordinary ability as well as by a judge. Such duties are performed with tolerable efficiency by the clerk of the small cause court at Bombay. He prepares the pleadings of the parties, in which strictness is not required or permitted, and the court takes care that errors of the clerk shall not prejudice the parties.

The provision in the proposed Act that the allegations shall be entered in untechnical language, may be objectionable, because technical language, if generally understood, may be the best. Considering the late improvements in pleading, the provision will be unnecessary, and being a primary rule instead of a provision against excessive strictness, it might perhaps be relied upon as sanctioning what is illogical, or the result of ignorance or neglect. It might be better to provide to the effect that no pleading or proceeding shall be held invalid on account of verbal or technical error, and that errors or mistakes, which shall not have misled the opposite party, shall be deemed merely technical or verbal.

However moral and merciful it may be in a creditor to patience with his debtor, instead of casting him into prison, I doubt whether it be equitable in a judge to decree, with the creditor's consent, that a debt instantly due, and for which no pledge or mortgage has been given, shall be paid by instalments. I am not aware of any court, except the court of requests at Bombay, in which such a practice prevails, and the enactment authorizing such practice in the court of requests is spoken of by Lord Denman (1 Gale & Davidson, page 272) as an "enactment in which all analogy with the proceedings in the ordinary courts of law is departed from." Unless the practice existed in the court of requests at Bombay prior to the 37 Geo. 3, c. 142, s. 30, its legality may be questioned. In the small cause court it is frequently ordered, with consent of the creditor, that the debt be paid by instalments, and execution of issue accordingly. Without such consent, I fear a judge's decree for payment by instalments would often be given arbitrarily or at random, and by precluding the creditor from taking out speedy execution, the whole or part of the debt might eventually be lost, through the debtor's misfortune or misconduct. Such matters should, I think, be arranged between the parties. If a creditor have sense to perceive his own interest, he will often give time for payment, on the other hand, he may be obdurate or unreasonable, or he may fear that by delay on his part other creditors will carry off the debtor's property. Ill consequences in particular instances may thus arise; but how can a judge vary or relax the general rule so as to meet the exigencies of the particular case and go no further? To enable him to do justice in such matters, additional pleadings and evidence as to the property, prospects, industry, and character, &c. of the respective parties would be requisite. It might be less objectionable to provide that execution should not issue for a debt recovered in the projected court until some long but fixed period after judgment had been obtained, for such a provision would at least be a general rule.

In each of the Supreme Courts a single judge can try any action in the absence of the other judge or judges of the court, but it is certainly desirable that cases of any difficulty should be tried before a full court. Difficulties as to law or fact must thus be disposed of, in the first instance, without the delay or expense of further arguments, motives for new trials, and similar applications. A court composed of three judges is (*ceteris paribus*) better than a court with only two judges; but it appears to me that a court consisting of two judges is better than a court in which there is but one. Where there are two judges, and they concur, there is less room for believing the decision may be erroneous; should they differ, the judgment of one will, under ordinary circumstances, have great weight with the other, and should one have the casting voice, he will scarcely give effect to his opinion without due deliberation. For these reasons, the projected court, as consisting but of one judge, and without entering into further considerations, might in some degree be objectionable, but it will not be denied that cases free from intricacy may be committed to a single judge. The proposed Act, however, make the value in dispute, exclusive of the simplicity or intricacy of the subject, the criterion of jurisdiction; and though the removal of difficult cases into the Supreme Court, as proposed by the advocate-general, were sanctioned, as the permission for such removal would altogether depend upon the discretion of the judge, I fear the benefit derivable from such a provision would be variable and uncertain.

The giving a right of appeal is no doubt an improvement, as forming some slight check upon the single judge, but due provisions for the administration of justice

in the first instance would be more valuable; and such provisions do not, I think, exist where it is left to a single judge to determine whether a case is of such difficulty that he is incompetent to decide it, and where counsel are, in effect, to be excluded from the court.

There is no expression of sound public opinion in India, and I am convinced the presence and intervention of professional men are in this country the most efficient checks upon the errors and infirmities of a judge. In the small cause court of Bombay the fee to counsel (only one counsel on each side being allowed) is limited to two gold mohurs, and the number of cases in which counsel are employed is comparatively few; still the ready access had by counsel to that court, and their occasional presence therein operates, I believe, most beneficially upon the judge and officers of court, in restraining any tendency to use power in an arbitrary manner, or to indulge in carelessness or neglect. It should not, I think, be permitted to a judge to say that his judgment could not be influenced by the arguments of counsel, or his skilful conduct of the case. Where abuses arise from the employment of counsel, they can be adequately corrected by such discretionary power to grant or withhold costs as is exercised in the small cause court in Bombay, but a preliminary rule that no costs of employing counsel shall be allowed unless the judge who presided at the trial shall certify the case, was such as to render the employment of counsel expedient, would virtually close the court against counsel; and the power to grant or refuse the certificate, if called into action, might often be capriciously exercised.

I had understood the suspension of the Bombay bar arose from an attempt to render the judges parties to a combination for the purpose of fixing or increasing the fees of the profession, and that complaints as to the small cause court formed only a minor incident in the transaction: the exact particulars, if worth inquiring into, might be ascertained from the advocate-general, who was himself one of the barristers suspended.

As the small cause court has existed about 20 years, without having been resisted or successfully impugned, and as the rules regarding it were long ago approved of by the King in Council, a declaration that such court shall not be held to have been illegal would, in my opinion, be most injudicious and uncalled for.

The proposed Acts speak of the court or courts to be established as different from and not a branch or branches of the Supreme Courts respectively; each of the intended courts, if established, will in effect be a new court, and according to the extent of its jurisdiction, will be virtually an abolition of a Supreme Court. I therefore doubt whether the Legislative Council has power in itself to pass the proposed Act under the 3d & 4th Will. 4, c. 85, s. 43 & 46, especially as erecting a new court of justice affects a prerogative of the Crown.

I have, &c
(signed) *H. Roper.*

(True copy)

(signed) *J. P. Wolloughby,*
Secretary to Government

MINUTE by the Honourable Sir *E. Perry*, Knight.

1. I THINK the proposed Act will be highly beneficial to the inhabitants of Bombay, and that it affords a remedy for many classes of injury which at present are wholly unredressed; but as I understand the judges at Calcutta are anxious to have their Act passed immediately, I believe it will be found necessary to have a separate Act drawn for this presidency.

2. As this Act contains some provisions new to the law of England, and also differs in some respects from the Calcutta Act, I am desirous of making a few observations upon it.

3. The principle of allowing the parties to the suit to be examined (s. 4), though not quite new, for the Irish Civil Bill Court Act, 6 & 7 Will. 4, c. 75, s. 36, has a similar clause, is more broadly expressed than it has hitherto been, the removal of incompetency in any witness is, I believe, quite new in English legislation.

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quests

although an approximation towards the principle has been visible both in the legislature and in judicial decisions for some years past. I approve of the new enactments so highly, that I should wish to see them made applicable to all judicial proceedings whatever, as I conceive that what is found to be the best mode of eliciting the truth in small matters must also be equally efficacious in matters where larger sums or more important interests are at stake.

4. The Bombay Act contains a clause allowing execution to issue by instalments, as in the courts of request, and I think it will be found an improvement on the Calcutta draft. I believe that many of those who now go to gaol upon executions issuing against them from the small cause court, and who take the benefit of the Act, would pay their creditors in full if time were given them, with the process of the court hanging over their heads to enforce the obligation; the payment of debts by monthly instalments, besides, enters so much into the manners of the people, that it seems desirable to encourage it by legislation.

5. Section 4 of the Bombay draft enables the judge to remit any case of difficulty to the full court, and a new trial to be moved for, and appeal made by either of the parties.

This provision is not in the Calcutta draft, but I think it is, on the whole, an improvement; I think no judicial system good that does not allow of an appeal, and if the Bench here were full, the appeal from one judge to three would probably be attended with beneficial effects; but a judicial establishment of two judges is in my opinion so faulty in principle as to make an appeal nearly wholly useless; but the power of the judge to remit a cause, or to reserve a point of law for the full court, is wholly different, and I think it a most desirable power to be committed to him. When actions such as trespass, trover, and ejectment are brought in the small cause court, it will occasionally occur that a nice point of law will arise affecting the whole community, a question of jurisdiction, for instance, or some floating point that has been a *vexata questio* for years; the judge would be unwilling to decide such a matter off-hand, and it would not be desirable for the public that he should do so; I therefore think in such case he should have the power of reserving the point for full discussion in the court above, and possibly, as it would be hard upon the parties that a matter of general interest should be discussed at their expense, it might not be objectionable that the judge should have a discretionary power to order the paupers' attorney to give briefs to counsel to argue the point in question. I may also observe, that an objection which may be raised as to the expense and encouragement of litigation which will be caused by allowing new trials to be moved for, has never been found to occur in practice in the small cause court at Bombay, where such a power has always existed.

6. It appears to me desirable that the Act should contain a clause defining the value of the lands as to which actions may be brought in the small cause court; this will most probably be a fruitful subject of litigation, and the question seems at present left *in ambiguo*. By the Irish Act, 5 & 6 Will 4, c. 75, the subject-matter in lands is governed by the annual rent, and limited to 20*l.* a year.

7. The Calcutta Act enacts that the pleadings shall be taken orally before the officiating judge; but if the number of causes to be tried there shall bear any proportion to those tried at Bombay, the time of the officiating judge will be engrossed almost daily by listening to pleadings that contain no real matter of controversy; thus at Bombay the causes entered in the small cause court were as follows:

1839	-	-	-	-	-	737
1840	-	-	-	-	-	643
1841	-	-	-	-	-	653

But the causes tried were only

1839	-	-	-	-	-	122
1840	-	-	-	-	-	119
1841	-	-	-	-	-	93

the remainder being settled out of court, without any interposition of the judge; consequently, it appears to me that the Bombay mode of having the pleadings taken out of court, and which may be done with advantage orally, is an improvement.

8. Lastly. I wholly object to the declaratory enactment in sec. 9, as to the legality of the Bombay small cause court. The court in question was established by the first recorder, Sir William Syer, in 1799, to the extent of 175 rupees, although a somewhat

somewhat similar court for small causes seems to have long existed heretofore under the name of the Mayor's Private Court. The small cause court having proved beneficial, Sir Alexander Anstruther, in 1818, raised the jurisdiction to the amount at which it now stands, rupees 350. When Sir Edward West came upon the bench, in 1823, the practice seems to have existed in the court of examining the parties to the suit on oath, of allowing execution to issue bit by bit, and other practices, against the legality of which the bar memorialized, and they contended that the rules of court differing from those of the common law, and never having been confirmed by the King in Council, were altogether without authority. Sir Edward West suspended the bar from practice for six months in consequence of their memorial. But on the establishment of the Supreme Court some years afterwards, Sir Edward West and the other judges modified the rules of court, and the rules so revised were confirmed by his Majesty in Council. With this sanction, therefore, and at this length of time, it appears to me wholly useless and inexpedient to raise questions of jurisdiction which have been unmooted for nearly 20 years.

(signed) *E. Perry.*

Bombay, 17 Nov. 1842

(True copy.)

(signed) *J. P. Willoughby,*
Secretary to Government

(No. 106)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to the Honourable the Judges of the Supreme Court at Fort William, dated the 23d December 1842.

Legis. Cons.
23 December 1842.
No. 34

Honourable Sirs,

WITH reference to our letter, No. 73, dated the 30th September last, we have the honour to transmit to you copy of a draft Act for extending to Bombay the proposed Act for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests, submitted by the government of Bombay, and shall feel obliged by an opinion whether this draft Act and that for Calcutta should be kept separate, or might conveniently be consolidated; and whether it may be expedient to adopt any of the provisions of the proposed Act in amendment of that published for Calcutta.

Legislative Dept.

We have, &c.

(signed) *W. W. Bird.*
W. Casement,
H. T. Prunsep.
A. Amos.

— No. 6. —

No. 6.
Application with
respect to Native
Christians

APPLICATION OF MISSIONARIES TO REMEDY THE
DISABILITIES OF NATIVE CHRISTIANS.

Legis. Cons.
10 May 1841
No. 21.

To the Right honourable the Governor-General of India in Council.

The undersigned Memorialists beg permission to state—

1. THAT your memorialists are deeply interested in the welfare of their Indian fellow-subjects, and specially of one class of their already numerous, daily-increasing, and likely (as it is hoped and expected) to embrace eventually the great body of the people.

2. That the class of men referred to is that important and influential one which consists of those who, through the natural and inevitable operation of the educational and other measures now pursued by government, public societies, and private individuals, have been driven to repudiate the irrational rites and forms of idolatry and superstition, as also of those who, besides abandoning the hereditary creed of their fathers, have been led by the light of Divine knowledge, brought home to their understandings and hearts, openly to profess the Christian faith, and become members of the Christian church.

3. That this twofold class, in common with others, not of the Hindoo or Mahomedan persuasion, such as East Indians, Greeks, Jews, Parsees, and Armenians, at present labour under sundry legal disabilities of a specific character, and are also felt in reference to many other momentous civil concerns and relationships, without any laws to guide and direct them.

4. That among the grievances more immediately referred to, and loudly and very generally complained of, may be specified the following:

1st. The effects of the coercion, and it may be cruelties, to which the religious bigotry of parents and guardians may subject those under legal age, who, as the result of enlightened conviction, arising from improved education, and other means, are impelled to renounce their ancestral religious opinions, and adopt others instead.

2d. The loss or total forfeiture of lands, goods, and other property to which such conscientious remuneration may (in certain circumstances and particular localities) render them liable.

3d. The defects of the laws relative to marriages and rights of inheritance of all classes of persons who may not be of purely British, Hindoo, or Mahomedan descent.

5. That the classes of our Indian fellow-subjects now mentioned, are already much oppressed under the foregoing and other similar grievances, and are likely to be yet more oppressed, and that therefore speedy relief and adequate remedy is anxiously desired and earnestly prayed for.

6. That as a full enumeration of particulars would prove of too great length for insertion in the body of this memorial, a statement of the more prominent facts, natural principles, legal enactments, and remedial suggestions, will be found in the documents appended.

7. That should your Lordship in Council be too deeply occupied with other national affairs to allow the present subject to engage your personal attention, your Lordship is respectfully and humbly requested to refer this memorial, with the appended documents, to the Law Commissioners, with a recommendation that they take it into immediate and serious consideration, and prepare without delay the drafts of general and comprehensive laws, by which the grievances to which attention has now been directed may be removed, and appropriate remedies applied.

8. That as the names of some of your Lordship's predecessors are destined to go down to posterity enshrined in the heartfelt homage of tens of thousands of the native inhabitants of her Britannic Majesty's Indian empire, who, in consequence

of

of the peaceful and patriotic reform of abuses, have been delivered from the tyranny of many prescriptive usages, and the arbitrary enactment of many despotic laws, your memorialists earnestly hope that your Lordship will be privileged to bear away from these vast realms some similar civic trophies; and, not content with the crown of conquest, will be led by an overruling Providence, to seek a more true and lasting fame in the redress of oppressive grievances, the amelioration of barbarous legal codes, the purification of the fountains of equitable right and judicial power, and the grateful tribute of admiration and esteem spontaneously rendered by a relieved and benefited people, and re-echoed in hearty response from age to age.

- (signed)
- George Gogerly* - London Miss. Society.
 - Alexander Duff* - Church of Scotland Miss.
 - David Ewart* - Church of ditto ditto.
 - Carapet Chater Aratoon* Baptist Missionary.
 - A. F. Lacroix* - London Miss. Society.
 - J. Hæberlin* - Church of England Minister.
 - W. Sinclair Mackay* - Church of Scotland Miss.
 - James Bradbury* - London Miss. Society.
 - John Francis Osborne* - Church Miss. Society.
 - R. de Rodt* - London Miss. Society.
 - J. Macdonald* - Church of Scotland Miss.
 - James Innes* - Church of England Miss.
 - Thos. Smith* - Church of Scotland Miss.
 - W. W. Evans* - Baptist Missionary Society.
 - Timothy Sandys* - Church of England Miss.
 - George Small* - Baptist Missionary.
 - J. Wenger* - Ditto.
 - T. Morgan* - Ditto.
 - James Long* - Church Miss. Society.
 - James Thomas* - Baptist Miss. Society.
 - Thomas Boaz* - London Miss. Society.
 - J. Ch. Wendnagel* - Church of England Miss.
 - John D. Ellis* - Baptist Missionary.
 - W. Yates* - Ditto.

MINUTE on the Rise, Progress, and present State of Indo-British Law, the Rights of Parents over Children under legal Age; and the Hindû and Muhammadan Laws of Inheritance.

Legis. Cons.
10 May 1841.
No. 22.
Enclosure.

[N. B.—THE monthly conference of missionaries of all denominations, resident in Calcutta, appointed, several months ago, a standing committee of their number to investigate certain subjects connected with the evangelization of the natives, together with such other questions bearing on their general improvement as might from time to time arise; the committee to consist of the Rev. Drs. Hæberlin and Duff, the Rev. Messrs. Lacroix, Ellis, and Boaz, Dr. Duff to be chairman. Already have various matters of importance been investigated, and fully reported to the monthly conference, of these there are several that demand the adjustment of a legislative interference. To enable those concerned to determine what measures ought to be adopted in order to secure such adjustment, the chairman of the committee, in the case of two of the more urgent of these subjects, embodied the information and views of himself and coadjutors in the form of a minute, which he laid on the table at the last meeting of the conference. It was then unanimously resolved that, with a view to stir up the inquiries and elicit the co-operation of all who are interested in the amelioration of the natives, this minute should be published in the Calcutta Christian Observer. In accordance with this resolution, it is now printed in an extra number. It is proper, however, to add, that in all that follows, both as to subject-matter and language, the author holds himself alone as strictly responsible; and may we not hope, that those who long and labour for the temporal and eternal prosperity of the millions of a benighted and besotted people will be aroused to lend a helping hand for the removal of every barrier that tends to impede the dissemination of truth, whether human or divine?]

Minute on Indo-British Law, &c.

I.—The Rise, Progress, and present State of Indo-British Law.

Of the numerous external obstacles which so powerfully impede the progress of divine truth in this land, not a few are connected with the ancient laws and prescriptive usages of an idolatrous and demi-civilized people. If all of these were enforced with unmitigated severity, there could scarcely be any inquiry at all into any system of truth, the vital reception

reception of which must lead to an utter abnegation of the hereditary faith. Divine Providence, however, has often graciously interposed to save infatuated man from the pit which he has laboriously dug for himself. In the present instance, the lapse of time and the uncontrollable issues of conquest have been overruled for ushering in many a salutary change. Not a few of those barbarous laws and usages which offered violence to the dictates of common reason, and shocked the feelings of common humanity, have now fallen into practical desuetude, or have been partly abrogated and partly modified by Muhammadan emperors and British legislators. Still much, very much, remains which demands the touch of a reforming hand, more skilful far than any which magician ever wielded in story or in song.

In order to understand aright the nature of still existing evils, and the possible modes of amelioration, it is necessary to take a preliminary glance at the present state of law as modified or administered by British rulers. This we are enabled to do, from the mass of information supplied in Harington's Analysis, without much expense of time or of labour.

For many years subsequent to the battle of Plassey, when Eastern India virtually became subject to the Crown and sovereignty of Great Britain, nothing, beyond a few isolated regulations, chiefly of a fiscal or commercial character, was attempted towards the formation and establishment of an uniform and equitable code of jurisprudence. In the year 1772, however, the Court of Directors having resolved to take upon themselves the entire care and management of internal government, it was felt to be incumbent upon them to adopt corresponding measures for its efficient administration. For this purpose, accordingly, a plan was prepared by the then governor, Warren Hastings, on the express principle of adapting its provisions "to the manners and understanding of the people and exigencies of the country, adhering, as closely as possible, to their ancient usages and institutions."

In 1773 the business of Indian legislation was, for the first time, vigorously entered upon by the British Parliament. By an Act of that year, viz. statute 13 Geo 3, c 63, it was enacted, that for the "whole civil and military government of the presidency of Fort William in Bengal, and also the ordering, management, and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, there should be appointed a Governor-general and four councillors." By the same Act the King was empowered, for the due administration of justice, "to erect and establish a Supreme Court of Judicature at Fort William, to consist of a chief justice and three other judges."

By subsequent explanatory enactments of the same date, the respective jurisdiction of these two supreme and independent authorities was accurately defined.

By Act 21 Geo. 3, c. 70, it was declared that the power of the Supreme Court was to extend to "all persons residing within the town of Calcutta, as well as to British subjects (natives of Great Britain, or their descendants) resident in any part of the provinces of Bengal, Behar, and Orissa;" also to "certain descriptions of the natives of India, though not inhabitants of the town of Calcutta, on account of their being employed by the Company, or by any of his Majesty's British subjects." By a subsequent statute, the jurisdiction of the court was farther extended "over all his Majesty's British subjects in India, or elsewhere within the limits of the Company's extensive trade." While the extent of the court's jurisdiction was thus expressly defined, there was a like specific enactment relative to the laws which must be administered. In the case of all British-born subjects, the laws of England were to be applied as interpreted and enforced by British courts of justice. In the case of natives of this country it was especially enacted and provided, that "their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Muhammadans, by the laws and usages of Muhammadans; and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Muhammadan or Gento, by the laws and usages of the defendant." Still farther, "in order that regard should be had to the civil and religious usages of the said natives," it was enacted, "that the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gento or Muhammadan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the law and rule of caste, respecting the members of said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England." Last of all, while the court was empowered to frame forms of process which might be observed in all suits, civil or criminal, against the natives, it was expressly enacted that it should be "such forms of process, and such rules and orders for the execution thereof, as might accommodate the same to the religion and manners of such natives, so far as the same may consist with the due execution of the laws and the attainment of justice."

By these Acts of Parliament the juridical functions of the Supreme Court are peremptorily limited to British-born subjects in India, or their descendants, as also, with a few specific exceptions, to the native inhabitants of Calcutta alone; while it is rendered imperative to the former to administer British law, and to the latter, in all matters of inheritance and general property, parental and other domestic rights, Hindu and Muhammadan law, in its original unmodified form. The question then naturally arises, why any such limitation as to persons at all? Or why, within the limited circle of persons affected, such distribution of them into classes, as to restrict the privileges of British law to British-born subjects? Why not rather embrace the numberless petty epicycles of national or provincial individualities, in the one grand all-comprehending cycle of catholic humanity, and subject the whole simultaneously to the beneficial operation of the spirit of British law and British justice?

To these questions we may briefly reply, in the language of one of the most competent of judges, Mr Harrington. "The fixed habits," says he, "manners, and prejudices, and the long-established customs of the people of India, formed under the spirit and administration of an arbitrary government, totally opposite in principle and practice to that of England, would not admit of a more general application of British laws to the inhabitants of this country, who not only are ignorant of the language in which these laws are written, but could not possibly acquire a knowledge of our complex, though excellent, system of municipal law, composed in part of general and local English customs, partly of the civil and canon laws, adopted in particular jurisdictions, and partly of the voluminous statutes enacted by the King's Majesty, with the advice and consent of Parliament, during a period of more than 500 years." Again, "it is impracticable to extend to India, held as a foreign dependency, the laws and constitution of Great Britain, nor would such laws and constitution, the inestimable privilege and dearest right of men who have the happiness to be born and educated under them, be suitable or acceptable, if they could be so extended, to a people whose religion, laws, customs, and manners have fixed such insuperable barriers to all assimilation." In the same strain Mr. Verelst writes of the impossibility of introducing English laws, as the general standard of judicial decision in these provinces, without violating the fundamental principle of all civil law, that they ought to be "suitable to the genius of the people, and to all the circumstances in which they may be placed." Sir John Shore, afterwards Lord Teignmouth, gives it also as his deliberate suggestion, that "the grand object of our Government in this country should be to conciliate the minds of the natives, by allowing them the free enjoyment of all their prejudices, and by securing unto them their rights and property."

Actuated apparently by these and similar considerations, the British Legislature, "instead of extending the local and complicated laws of England to the remote and populous territories which had been gradually acquired by the East India Company, resolved to limit the administration of English law over persons who, from their distant situation and other circumstances, could not be admitted to the whole of the rights and privileges of British subjects." Were the millions of natives, then, beyond the narrow bounds of Calcutta to be abandoned to a chaotic state of lawless confusion? No, for them, too, the British Legislature made provision. Unable itself, from local inexperience, to pass suitable laws, it declared it to be lawful (13 Geo. 3, c. 63, s. 36, 37) "for the Governor-general and Council of the united Company's settlement, at Fort William, in Bengal, from time to time, to make and issue such rules, ordinances, and regulations for the good order and the civil government of the said United Company's settlement at Fort William aforesaid, and other factories and places subordinate or to be subordinate thereto, as shall be deemed just and reasonable, such rules, ordinances, and regulations not being repugnant to the laws of the realm." It was further enacted (21 Geo. 3, c. 70, s. 23) that "the Governor-general and Council shall have power and authority from time to time to frame regulations for the provincial courts and councils, and shall, within six months after the making of the said regulations, transmit or cause to be transmitted copies of the said regulations to the court of directors and to one of his Majesty's principal Secretaries of State, which regulations his Majesty in Council may disallow or amend, and the said regulations, if not disallowed within two years, shall be of force and authority to direct the said provincial courts, according to the tenor of the said amendments."

From this date many important regulations began to be framed by the Governor-general in Council, some of which greatly modified and others wholly superseded certain native laws and usages of a capricious, arbitrary, or ferocious character. Of these, several were printed, with translations in the country languages, others, however, "still remained in manuscript, and those printed were for the most part on detached papers, without any prescribed form or order, and consequently not easily referred to, even by the officers of government, much less by the people at large, who had no means of procuring them in a collective state, or of becoming acquainted with such of them as had not been promulgated in the current languages."

Such a state of things obviously demanded a remedy. Happily for India, in the hour and crisis of her legislative exigency, there was at the helm of affairs a statesman characterized not less by promptitude and energy than by sagacity and benevolence. In 1793 the Marquis Cornwallis passed his celebrated Ordinance, entitled, "A Regulation for forming into a regular Code all Regulations that may be enacted for the internal Government of the British Territories in Bengal." By that Ordinance it was also established and declared that all the regulations should not only be formed into a regular code, but printed, with translations in the country languages; that the grounds of every regulation be prefixed to it, that the courts of justice within the provinces be bound to regulate their decisions by the rules and ordinances which such regulations may contain, that thereby the native inhabitants may be made acquainted with the privileges and immunities granted to them by the British Government.

This momentous Regulation was subsequently, in 1797, ratified by Act of Parliament. It thus became incorporated with the laws of the British empire, and "supported," says Mr. Harrington, "on this firm basis, it may be deemed the corner of the system of regulation and polity for the internal government of these provinces. It may also be justly considered to have established a constitution for the native inhabitants of this dependant subordinate kingdom the most beneficial for them, and for the sovereign state, which, the situation and circumstances of both will admit."

The spirit of all these codes of Regulations and Acts of Parliament was to preserve to the natives, as far as equity and reason could allow, their respective laws in suits regarding succession.

succession, inheritance, domestic rights, caste, and all religious usages and institutions, with the provision, however, made for such further laws and regulations as circumstances and experience might from time to time show to be required. Hence, in the progress of time, has arisen a system compounded of old and new laws, and modifications of former laws and usages, designed to perpetuate, "as much as possibly can be done, their institutions and laws to the people of Hindustan, and attemper them with the mild spirit of the British Government."

From the whole of the preceding statements, it follows that hitherto three great and distinct systems of law have been cotemporaneously administered by British functionaries in India. To British-born subjects, whether resident in Calcutta or scattered throughout the provinces, the Supreme Court is bound to deal out British law. To the native inhabitants of Calcutta, whether Hindu or Muhammadan, the same court is ordained to administer their respective laws without any reference to the amendments of the local government. To the millions of natives in the interior the provincial judges and magistrates are equally restricted by Parliamentary statute to administer Hindu and Muhammadan law as altered, modified, and improved by successive Regulations of the Governor-general in Council. Hence much of the inextricable confusion, embarrassment, and uncertainty wherewith the administration of justice in India has hitherto been beset. Hence, also, the extreme desirableness, if practicable, of framing one universal code of law which could extend the uniform principles of an equitable and enlightened system of jurisprudence alike to all classes of British subjects in this widely-extended empire. At all events, it seems the demand of reason and common sense that the present monstrous anomalies should be instantly swept away. Why should British judges be at one time cushioned on the congenial couch of reason and high intelligence, propounding the noble principles of equitable and civilized law, and at another stretched on the rack of torture, when compelled to lend the venerable sanction of senatorial authority to the prescripts of a barbarous and despotic code? Why should the influential metropolitan class of natives be doomed to groan under a yoke that has been forged in remote ages of savage ignorance, while their more highly-favoured brethren in the provinces have to bear the original yoke greatly relaxed by the mildly attempering spirit of the British constitution? Why should any class of natives, whether metropolitan or provincial, be destined for ever to smart from the operation of laws and usages which, defeating the ends of substantial justice, can often be regarded only as lures to outrage, bribes to perjury, and bounties on unrighteousness? Keenly alive to the existence of such rampant evils, such raging inconsistencies, the British Legislature has at length resolved, at whatever cost, to attempt a remedy. For several years past a commission of learned and honourable men has been vigorously prosecuting the Herculean task of reducing the present chaos of lawless elements into something like order and stable form. Now, then, if ever, is the time to sue for the legal redress of wrongs, the legal rectification of evils. Encouraged, accordingly, by the well-known readiness of the Governor-general in Council and the Law Commissioners to receive any candid and reasonable representation, from whatever quarter, we now proceed to point out a few cases for the adjustment of which their beneficent interposition is earnestly solicited.

II—*The Legal Rights of Hindu and Muhammadan Parents over Children under Age.*

THERE are some rights which, in the language of jurists, have been termed both natural and absolute; natural, because they arise spontaneously from the very nature and constitutions of things as ordained by an all-wise Creator; absolute, because they exist in absolute force and efficacy, independent of the recognition of mere human laws at all. Of this description is the right which every man has to the enjoyment of his own life, and limbs, and personal liberty. Such rights it is not the province of human law to create; being inherent in man as the gifts of the Creator from the hour of birth, they are antecedent to the exercise of any human legislation. Of these, therefore, all human laws ought only to be declaratory, regulative, preservative, and enforceive. In the words of the great Grecian orator, "the design and object of law is to ascertain what is just, honourable, and expedient, and when that is discovered, to proclaim it as a general ordinance, equal and impartial to all;" for though human law is only the interpreter, definer, and publisher of such rights and obligations as are natural and absolute, it is its supreme function to see that these are exercised within the limits prescribed by the constitution of nature, and never beyond the allotted boundaries, or for the furtherance of ends and designs contrary to those for which they were originally bestowed, in free grant, as privileges and prerogatives, by the great Creator.

In regard to parents, it is held by universal consent that it is their imperative duty to maintain and protect their own children; to supply them during their minority or continued helplessness with necessary sustenance, and to defend them from the infliction of unprovoked injuries, a duty paramount to mere human law, imposed as it is upon them by the immutable ordinance of nature itself. From the absoluteness of this natural duty alone, the possession of a natural right to the general guardianship of their children would follow as an inevitable consequence, and the possession of the requisite power and authority for the maintenance of that right as another consequence alike inevitable; and if the power of parents be confessedly a natural right, the yielding of submission and obedience on the part of children in all things reasonable and just must be as clearly a natural duty.

It must, however, never be forgotten that all the rights and duties of human beings, however deep their foundation in the nature and constitution of things, are necessarily confined within certain prescribed bounds and limits. The rights are conferred and the duties

duties imposed for definite beneficial ends. To exercise the one or perform the other, for the attainment of such ends, is proper, just, and good; to exercise the one or perform the other, for the promotion of ends different from those for which they were designed, is improper, unrighteous, and evil. Such unintended modes of enforcing rights or discharging duties may, and often must, lead to a forfeiture of the former and an exemption from the obligations of the latter. There is, for example, no right more eminently entitled to the denomination of "natural and absolute," than the right to one's own life and limbs and liberty. Neither is there any duty more eminently entitled to the denomination of "natural and absolute," than that of non-interference with the uninterrupted enjoyment of such right. But suppose such right were employed in violating a Divine law, like that which enjoins the worship of the one living and true God, as His inalienable and eternal due, such employment of it were to traverse and counteract some of the ends for which it was bestowed. Of such perverse application of the right, human laws may or may not take cognizance; but assuredly it will not escape the coming retributions of Divine justice. Again, suppose such right were exercised in attempting to inflict injury on the life, limbs, or liberty of another fellow-creature, such exercise of it, too, would be an unwarranted contravention of the purposes for which it was designed. Here, human law has always interposed, not merely as the guardian but the regulator of the proper use of rights, and in cases of such heinous misapplication of them, has generally decreed a forfeiture of the personal liberty abused, or even of life itself, which has been employed, not for one's own benefit, but for the injury or destruction of others.

Granting, then, that the right of parents to the guardianship of their children during their minority, is an indefeasible natural right, it is clear beyond all debate, that, like every other natural and absolute right, it must have its bounds and limits. To define these bounds and limits—to point out the general modes in which the right is to be exercised—to specialize the restrictions to which, for the sake of the general interests of society, it must be subjected—this, this is the grand province of wise and equitable human law. Accordingly, in all civilized countries, the supreme legislature has ever felt it to be a sacred duty to extend the benefit of its salutary interposition. The legal limitations or extensions of the natural right have varied in different states, according to the varied views of expediency current at the time, or the varied municipal immunities enjoyed in other matters by the citizens. The laws of some of the ancient states left parents the power of life and death over their children. But such Draconic severity has always been softened in proportion as the states progressed in genuine civilization. The laws of England, in particular, while upholding in violation the general right of parents, have subjected it to many reasonable and righteous restrictions. In order to enforce obedience, the parent may legally correct his child, in a moderate degree, but he is prohibited from carrying chastisement to the extent of cruelty, or to any extent which might remotely endanger health, limbs, or life.

Yea more, proceeding on the well-grounded assumption, that the right has been conferred on parents for the real welfare of their children, the law of England has legislated, not only for the body which perisheth, but for the immortal soul. There is no special exclusive statute acknowledging in parents a right to force what moral and religious sentiments they please on the minds of their children. In a general way, it may be said that the law is neutral, neither formally recognizing a supposed natural right nor conferring an artificial legal one. If, at any time, the law has interfered at all, it has uniformly been, not to force the child to submit to the tyranny and caprice of the parent, but to compel the parent to abstain from coercing the conscience of the child in matters of faith and morals. A limitation has often been put to the general power and control which the father is permitted to exercise over the minds and education of his children. Judge Blackstone declares that such limitation is based on the express ground, that "nothing is so apt to stifle the calls of nature as religious bigotry." Hence, as the learned judge proceeds to show, hence the well-known fact in the constitutional history of England; that two statutes were passed by the Legislature at different times, to protect the children of Jews and Papists from the bigotry of their respective parents, upon their renouncing the Catholic or Jewish faith in order to embrace the truths of the Protestant system. The first of these was the statute of 11th and 12th Wm. 3, c. 4, which declares its object to be, that "the Protestant children of Popish parents may not, for want of fitting maintenance, be necessitated in compliance with their parents to embrace the Popish religion, contrary to their own inclinations." The other Statute is the 1st Anne, c. 30, which professes a similar object; viz. "That if Jewish parents refuse to allow their children, on their becoming Protestants, a fitting maintenance suitable to the fortune of the parent, the Lord Chancellor on complaint may make such order therein as he shall see fit." And still more recently, as appears from the 10th volume of Vesey's Reports, the Lord Chancellor Eldon, no mean authority on the subject, said, in the case there reported of *De Manneville v De Manneville*, that, "with reference to religion, this court, (viz the Court of Chancery) had interfered to prevent parents from preaching irreligious doctrines in the presence of their families." There is also the late celebrated case, in which Mr Wellesley was deprived of the custody and guardianship of his own children altogether, upon the express ground of his immorality, and the danger which existed that his fatherly authority might be exerted to vitiate and demoralize the minds of his children. That a power, therefore, does really exist under the sanction of the British Legislature to control and put effectual restrictions on the general rights of parents, with the view of promoting the moral and religious well-being of the child, cannot possibly be called in question. With respect, in particular, to the two aforesaid Acts of Parliament, it is worthy of special remark, that the British Legislature seriously did think that a child,

i. e., a person under legal age, might have an inclination of its own, wholly independent of its parents, towards one religion, in preference to another, though that might be his ancestral faith; and that this inclination should, on no account, be forcibly interfered with by the bigoted parents.

Having premised this much on the general rights of parents, and the spirit and enactments of the British Legislature relative thereto, we come now briefly to consider the rights of Hindu and Muhammadan parents, in reference to one or two particulars with which those who are interested in the improvement of the natives are most deeply concerned.

In order to ascertain the existing state of the law on the subject, the following queries were submitted to highly competent professional men; and the following answers were, in substance, received:

1. At what age does the authority of parents over their child, in this land, entirely cease?
—Ans. At 16 years of age.

2. Under the age of 16 years, or during the legal nonage of children, have parents the power to beat, confine, and punish to any extent without control?—No; not to any extent and without control, either by mufassal or Supreme Court law.

3. If a child is believed, on sufficient grounds, to be suffering under ill-treatment from its parent or guardian, is there any mode at law by which the matter may be investigated and a remedy applied; and if so, what remedy?—If actual cruelty be proved, the parent may be summoned and punished by the mufassal magistrate, and security taken for his future conduct.

4. If the child run away and take refuge with a friend, either to escape ill-treatment or for the sake of religion, has the parent a right to reclaim, and by what means will the law enforce his right?—By Regulation VII. of 1819, children in such circumstances, would, by the mufassal courts, be restored to the parents. The same would be done by the Supreme Court.

To a certain extent these answers are highly satisfactory. It is satisfactory to be assured by all the authorities consulted, that the legal age in this country, or that at which the controlling authority of the father ceases, is 16 years. It is satisfactory, also, to be assured that, under that age, the power of the father is not unlimited. Still, there is much that is unsatisfactory, and not at all commensurate to the exigencies of the present transition state of Hindu society. It were an absurd affectation, a purblind policy, a criminal indifference, to overlook the present changed and constantly changing state of things around us. To do so were a defeating of some of the very ends, for which a supreme legislative power exists. Not to embarrass ourselves with minor points, is it not notorious that, in this land, government colleges and schools, as also seminaries supported by public or private societies, have been established for the diffusion of European literature and science, with or without religion? Is it not alike notorious, that the natural effect of such dissemination of knowledge is to relax the sentiments of native youth in reference to their ancestral creeds? These youths may or may not embrace some new and definite form of faith. They may remain in a negative state of Deism or even Atheism. But, in any or all of the new states of mind into which a large and liberal course of instruction may conduct them, is it not notorious that they are apt to despise, and often wholly to repudiate the faith of their fathers?

Those who proceed on the high and holy principle of obeying God rather than man in communicating all needful knowledge, whether human or divine, to all, according to the free and unconstrained opportunities presented by providence, require no supplementary argument to fortify them in the prosecution of their noble task. But, for the sake of those who are actuated mainly by views of worldly expediency and dry legalism, it is most important to insist upon it, that, according to the letter, spirit, and express statutes of British law, Government and all others are legally entitled to communicate, without forcible coercion, to old and young alike, whatever sound instruction they please; be the result what it may, as to a false, superstitious, and idolatrous faith. From the statutes already quoted, it is clear beyond all doubt that the law of England permits a child to exercise the mental powers which God hath bestowed upon it, in forming its own judgment on the subject of its eternal interests, to renounce freely what it discovers to be false, and as freely and fearlessly to embrace what it has been led to consider the only true religion; yea, and coerces the parent, even after such renunciation, to continue the necessary support which by the immutable ordinance of nature he is bound to bestow. Of course it follows, and it is important to note the legitimate inference, that the law of England distinctly recognises the general principle, that it is not unlawful to communicate religious instruction to the mind of a child, even though that instruction should be wholly opposed to the religious system in which the parents conscientiously believe, and even, if the consequence of such instruction should be non-compliance, in matters of religion, with the wishes and commands of earthly parents.

The same conclusion may be formed negatively thus: Had the Legislature for a moment conceived that it was a violation of previously existing legal rights, i. e. a crime in the eye of law, to instruct a child in a religious system different from that in which the parents conscientiously believed, what ought to have been its regular procedure? Would it not have been necessary, on passing the above-mentioned statutes, to repeal the pre-existing law, to withdraw the pre-existing rights? Most undoubtedly. And its passing the said statutes without any reference to pre-existing laws and rights, proves incontrovertibly the non-existence of both. Again, had the Legislature supposed that it was a crime to teach a child a religion different from that of its parents, what ought we to expect its procedure to have been, especially towards Papists? At a time when the utmost anxiety was manifest

manifested by it to swell the ranks of the Protestant party, and to diminish those of the Popish; at a time, too, when Acts were crowded upon Acts to regulate and control the natural rights of all who adhered to the Popish interests; at such a time, might we not have reasonably expected that a special statute should be enacted, investing Protestant teachers with an express legal authority to instruct the children of Papists? The non-bestowment of such authority proves incontestably that the Legislature did not think it requisite, i. e. did not once entertain the idea that there were any legal rights that could be violated, by efforts to instruct children in a religious system different from that of their parents. And it cannot for a moment be supposed that those who prospectively provided for "the maintenance of the children who should become Protestant," would have forgotten to protect, if protection had been necessary, the human agents through whose instrumentality the change of religion might be effected. But no legal enactment was thought necessary for this purpose. In a civilized and Christian country, a doctrine so inimical to our laws and our religion as this, viz that we are not to inculcate in the minds of children, who without any improper influence come within our reach, pure notions of moral and religious obligation, because their parents may happen to be blinded by ignorance and superstition, could not, with any pretension to consistency, have been entertained. Nor is it possible that any question can arise as to the meaning of the expression "children," used in the preamble and body of the statutes now so often referred to. In the enacting part of the first of them it is ordered "that the maintenance shall be suitable to the degree and ability of such parent, and to the age and education of such child;" clearly showing that the term "child" was used as descriptive of the age of the son or daughter of the parent, and not merely as descriptive of his own issue. The maintenance also was intended to provide for "the education of the child," which would have been an unnecessary provision in the case of an adult.

Once more, it ought ever to be borne in remembrance that though, in reference to perfect freedom and independence as well as full investiture with rights and privileges, the law of England treats every individual as in a state of childhood or pupilarity, and therefore not wholly exempt from parental control till the age of 21, or till the period of legal minority has merged into that of legal majority, it yet does, in particular points, confer a certain amount of liberty and the exercise of certain important rights. The legal age, or that of the child's perfect deliverance from the empire and tutelage of the father, and perfect enfranchisement in all civil privileges, being wholly arbitrary, varies in different countries. In Naples, it is 18; in Holland, 25; in France, formerly 30. But in all civilized countries, infants or persons in a state of nonage have always been held entitled to enjoy at successive periods certain legal privileges, while they still continue to labour under various legal disabilities. "In England," says Judge Blackstone, "the ages of male and female are different for different purposes. A male, at 12 years old, may take the oath of allegiance; at 14, is at years of discretion, and therefore may consent or disagree to marriage; may choose his guardian; and if his discretion be actually proved, may make his testament of his personal estate; at 17, may be an executor; and at 21, is at his own disposal, and may alien his lands, goods, and chattels. A female, also, at seven years of age, may be betrothed; at nine, is entitled to dower; at 12, is at years of maturity, and therefore may consent or disagree to marriage, and if proved to have sufficient discretion, may bequeath her personal estate; at 14, is at years of legal discretion; and may choose a guardian; at 17, may be an executrix; and at 21, may dispose of herself and lands." According to the same high authority, persons in a state of nonage, on account of their being capable of exercising both reason and conscience, are held liable to various penalties or legal liabilities. In criminal cases, for example, "an infant" of the age of 14 years may be capital punished for any capital offence; but under the age of seven he cannot speak, be judged *primâ facie* innocent; yet, if he was *doli capax*, and could discern between good and evil at the time of the offence committed, he may be convicted and undergo judgment and execution of death, though he hath not attained to years of puberty or discretion. And Sir Matthew Hale gives us two instances, one of a girl of 13, who was burned for killing her mistress, another, of a boy still younger, that had killed his companion and hid himself, who was hanged; for it appeared by his hiding, that he knew he had done wrong, and could discern between good and evil, and, in such cases, the maxim of the law is, *malitia supplet aetatem*. So also, in much more modern times, a boy of 10 years old, who was guilty of a heinous murder, was held a proper subject for capital punishment, by the opinion of all the judges.

Now, can it be that the law of England which pronounces an infant at 14 to be "at years of discretion," and accordingly capable of consenting and disagreeing to marriage, choosing a guardian, or making a testament of personal property, can it be that the law which enfranchises such an infant, on the express ground of its having "sufficient discretion," in the right of entering into some of the most important steps in life, and consenting or disagreeing to the most momentous contract connected with social well-being; can it be that the same law holds such infant, though arrived "at years of discretion," wholly incompetent to take other analogous steps in reference to its spiritual guardianship, its eternal inheritance, and alliance or union with the heavenly Bridegroom, the Redeemer, the Divine Head of the church, all, all of which exercise so paramount an influence on its real happiness in time, its real welfare in eternity? Can it be that the law of England, which declares a male at 12 years old to be capacitated, and, therefore, entitled to take the oath of allegiance to an earthly king, will not hold such infant to be endowed with sufficient

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sufficient discretion to be allowed to determine whether he shall yield obedience to that, which, by Divine authority, has been pronounced to be "nothing" in the world, or be faithful and bear true allegiance to Him, who is King of kings and Lord of lords, and who hath proclaimed, that out of the mouths of babes and sucklings He can and will perfect praise? Can it be that the law of England which holds an infant, considerably under 12 or even 10 years, to be so capable of "discerning between good and evil," as to be held responsible for its conduct, to the extent of preserving or of wholly forfeiting its right to natural life; to the extent in criminal cases, of being liable to be convicted, and undergo judgment and execution of death can it be that the same law will hold such infant to be utterly incapable of "discerning between good and evil," in reference to the interests of the soul and its spiritual life; and, therefore, not legally entitled to judge for itself in discriminating between the good and evil ways which lead to endless perdition or endless bliss? No, no. The law of England, with all its faults, can never be chargeable with inconsistencies and contradictions so outrageous as these. Accordingly, have we not found it, by the most explicit statutes, announcing the competence of even "children" to decide for themselves in matters of religion, expressly providing for their maintenance and protection, in the event of their choosing a faith different from that of their parents, and thus extending the invulnerableegis of British law alike over the freedom of teachers and of taught?

Now, what we desiderate is, that the spirit and letter of British law, in their absolute integrity, be faithfully and consistently applied to the existing state of things in India. By the old statute law of England, the Indian government, public societies, or private individuals are permitted and justified in conveying sound knowledge of every description to the minds of such youth as come within their reach, however alien such knowledge may be to the creed of the parents. Yea more, by an express Act of the British Parliament, in 1813, it is enacted, that "whereas it is the duty of this country to promote the interests and happiness of the native inhabitants of the British dominions in India, such measures ought to be adopted as may tend to the introduction among them of useful knowledge and of religious and moral improvement and, in furtherance of the above objects, sufficient facilities ought to be afforded by law to persons desirous of going to and remaining in India, for the purpose of accomplishing those benevolent designs, &c." From the fact, that, in this clause, "religious and moral improvement" is as expressly contemplated and provided for as "the introduction of useful knowledge," it is clear, that our British legislators were prepared to anticipate any possible changes which might arise from the peaceable inculcation of true "religion and morals," and to regard these changes as the "accomplishment of benevolent designs."

Thus doubly guarded and fenced by the old statute law of England, as well as modern specific Acts of Parliament, the friends of native improvement may proceed fearlessly with the free communication of all truth, whether literary, scientific, or theological. Now, is it not self-evident that the cordial reception of such truth is wholly incompatible with the perpetuation of hereditary error? Does the government, then, or any public society, or private individual, really wish the sound knowledge imparted to be honestly embraced? If so, ought they not to be prepared for the change of sentiment which must inevitably ensue? Ought they not to provide for it? If not, there must either be generated a habit of systematic hypocrisy, in continuing the profession of that which the light of the true knowledge conveyed must expose in all its deformity, or cruel wrong be sustained at the hand of parents, for, is it not notorious that there is nothing more calculated to unhumanize, yea, to exasperate and exulcerate into something like venomous fury, a race so ignorant, bigoted, and prejudiced as the natives of this land, than the growing indifference, contempt, or threatened renunciation of ancestral faith on the part of their children? Now, since, according to the spirit and maxim of British law, "nothing is so apt to stifle the calls of nature as religious bigotry," and since, in consequence of this indisputable fact, that law has specially provided for the safety and protection of "children," who may be led to disavow or relinquish the creed of their fathers, is not the Legislature bound by every obligation, human and divine, to throw the shield of its protection over those whom it has been instrumental, directly by its own efforts, or indirectly by its sanction of the efforts of others, in bringing into the enlightened predicament of despising or denying a false, superstitious, and idolatrous faith?

For such a purpose, in any adequate sense, the present state of the law is altogether insufficient. There must be proof of actual cruelty before the judge or magistrate can act; but, from the constitution of native society, this, in the great majority of cases, is wholly unattainable. From the secrets and concealments so characteristic of the entire regime of native domestic economy, it is not possible, in ordinary circumstances, to obtain a shadow of positive evidence. The youth may be in confinement, removed from every eye save that of his persecutor, he may be manacled and beaten, or forcibly carried into a boat, and conveyed by the river to a distant city or province, he may have stupifying drugs, in the meanwhile, administered, which paralyze the mental as well as the bodily faculties, till a state of confirmed idiocy has been superinduced. Now, under a wise and paternal British Government, ought all this to be tolerated? Impossible. What, then, is to be done? As at least a partial and certainly a practicable remedy, we would recommend,

1st, That it be enacted, that in any case in which a child has absconded or disappeared from an educational seminary, whether belonging to government, to a society, or to a private individual, under circumstances leading to the reasonable belief that he is confined, beaten, or otherwise ill-treated by the parent, a power be invested in the judge or magistrate of the district,

district, summarily to call upon such parent to bring his child into open court, there to be interrogated concerning the reality of such supposed ill-treatment.

2dly, That it be enacted that in any case in which cruelty or ill-treatment on the part of the parent may be alleged by the child, and admitted upon reasonable evidence, especially when such ill-treatment is seen to result purely from "religious bigotry" on the one side, and an exercise of the sacred rights of conscience on the other, a power be invested in the judge or magistrate, similar to that exercised by the Lord Chancellor and Court of Chancery in England, of nominating and appointing, if he see fit, a proper guardian for the ill-treated or persecuted child.

3dly, That as many of the disputes and law suits between natives arise from ignorance of or dubiety relative to the age of one or other of the parties concerned, it be enacted that a public and official register of births be kept, somewhat after the manner of similar registers in Europe.

That these recommendations, if ever embodied into a law, could remove all the evils complained of, is what no one has a right to anticipate; but that they would tend greatly to mitigate these evils is what must be readily conceded by all who are competent to judge, from personal observation and experience, of the present very peculiar transition state of native society. Prevention is always better than remedy, and the very knowledge of the fact, that a parent was liable to be summoned to compare with his child at the bar of a public magistrate or judge, upon grounds of reasonable suspicion, or merely presumptive evidence of the ill-treatment of the latter, and more especially, that in the event of ill-treatment being satisfactorily proved he was liable to a deprivation of his right of guardianship altogether, the very knowledge of all this would inspire a wholesome dread of offending, and operate as a salutary preventive check to the perpetration of acts which must entail such penalties, it is, therefore, fondly to be hoped that the Law Commissioners now acting under appointment of the Imperial Legislature may be honoured, as instruments in the hands of Divine Providence, for ameliorating the existing state of the legal rights of parents, by tempering the whole with the mild spirit and genius of the British constitution. It is earnestly to be expected that they may render the reciprocal duties and obligations of the parental relationship commensurate with the peculiar exigencies which the policy or sanction of the British Government itself creates, exigencies inevitably attendant on the diffusion of true literature, science, and theology throughout the land. It is a consummation devoutly anticipated by all the wise and the good, that, by the relinquishment or mitigation of the legislative principles of a demi-barbarous age, as well as the successive removal of all external obstacles whatsoever, the march of native improvement may be free and unobstructed, and the blessed era greatly hastened, when the general evangelization of the people shall form the sure basis and guarantee of their highest, noblest, and most stable civilization.

III.—The Hindu and Muhammadan Laws of Inheritance.

THIS is a subject which has long and anxiously attracted the attention of the friends of Indian improvement. In the year 1830, while the agents of different societies were engaged in collecting the most minute and authentic information respecting it, the desirableness of obtaining the general co-operation of those who were most deeply concerned in the amelioration of the natives, in thoroughly investigating a matter in which all were alike interested, seemed to be felt and acknowledged by all, a general meeting was accordingly held, and, after the subject was freely and largely discussed, a committee was appointed, with instructions to render the investigation as complete and efficient as possible. The committee, having soon afterwards met, and taken into consideration various reports and opinions, nominated and appointed two of their number, the late Mr. Pearce and myself, as a sub-committee, to make any farther inquiries that might be necessary, and combine the result of the whole into one regular and continuous statement. When we had prepared our statement, it was presented to the committee, and met with their decided approbation. In order, however, to ensure all possible freedom from error, and enable them to forward the statement to Great Britain, in a form of incontestable accuracy, it was deemed advisable, by means of private circulation, to afford all who were well acquainted with the subject an opportunity of pointing out any mistakes in points of law, or any impropriety in the language. After a short experience, the inconvenience and loss of time incurred in circulating a large parcel of MS. were found to be such as to lead to the determination to print 50 copies, and thereby facilitate the rapidity and enlarge the extent of distribution.

Now, besides the very wide circulation which many of these obtained among friends and acquaintances, about 20 were forwarded to different gentlemen holding the highest official situations in His Majesty's service in Calcutta, and in the H. C.'s service throughout the Bengal presidency, accompanied respectively with the following note:

"Dear Sir,

Calcutta, December 1830.

"PERMIT us, for a short time, to intrude on your very limited leisure, with a case in which justice and humanity, as well as religion, seem to implore your kind assistance. You are well aware of the nature of the Hindu and Muhammadan laws of inheritance, as administered in the Honourable Company's courts, and may probably have been led to reflect, ere now, on the unhappy state of destitution and misery to which it inevitably conducts all those who, from among the more respectable Hindus or Mussalmáns, embrace Christianity. This subject (with one or two others connected with it) has for a long time engaged

engaged the attention of the missionaries of various denominations resident in Calcutta; and, at a late meeting, we were requested by them to draw up a statement on the subject, which might with propriety be used by our friends in England as the basis of an effort for attempting an amelioration of the laws in question.

"To meet the views of our associates we prepared the accompanying paper; but as we feel very desirous, ere we submit it finally for their adoption, that the statements it contains, and the language used in reference to them, should be rigidly examined by a few gentlemen familiar with the subject, permit us to request your kind perusal of and remarks on the paper.

"We are anxious that the statements of law should be perfectly accurate; having no desire to present an imaginary grievance, or to represent a real one in darker colours than it deserves; and we are also anxious that the comments on the evils of the law should be free from disrespect to the government, and not load it with undeserved reproach. Should you conceive, therefore, that any part of the law is misstated, or its evils so stated as may probably be offensive to the government here, or unjust to them if published at home, we shall feel truly obliged to you for pointing out the error, and thankfully avail ourselves of your suggestion, making no use of your name without your express sanction.

"If your leisure will allow it, we shall feel particularly obliged by the return of the paper, with your remarks, in the course of 10 days at the farthest.

"We remain, &c.

(signed)

"Alexander Duff

"W. H. Pearce."

To the printed statement was also prefixed the following explanatory "advertisement"

"In introducing the present subject to the notice of those connected with the administration of law in this country, we have no desire to suppress, nor, when acknowledged, to despise the fact, that it appears to be intimately connected with many others, involving similar principles, and requiring a similar adjustment. The reason of our studied silence in regard to the latter, arises simply from the circumstance, that, however interesting to the parties concerned, and however necessary for the statesman to include in a general measure of legislative justice, with these we, as Christian ministers, conceive we have nothing to do. And the sole reason of attempting to excite attention to the former is, that with it, we, as Christian ministers, are compelled to have much to do. From principle, we utterly disclaim the propriety, on our part, of any officious intermeddling with politics, in the ordinary sense of that term. And if, from the title prefixed to the following statement, any be inclined to think that the consistency of our profession is compromised, we only request a suspension of judgment till the whole has been carefully perused. Then may the whole, instead of being contradictory to profession, be found to furnish one continued exemplification of a steady adherence to our avowed principles; when it shall appear, that we have studiously avoided all reference to those subjects, with which, however closely connected with the present in the view of the politician, we, in the exercise of our ministerial duties, have no concern; and that we have only attempted to give exclusive prominence to that particular branch of a large and complicated system, which necessarily concerns us in our missionary capacity and usefulness, which closely concerns the large and influential Christian societies whose wishes we endeavour to promote, and which supremely concerns that vast portion of our fellow-subjects, for whose improvement, intellectual, moral, and religious, we desire unceasingly to labour.

"With the view also of preventing any misconstruction that might arise on the part of the reader as to the real bearing and import of much of the language that follows, it is proper to state, once for all, that when the evil nature and consequences of the law are attempted to be exposed, it is not intended to be implied, that the law was primarily enacted by the British Government, or sanctioned in the full knowledge of its evil tendencies; far less for the sake of producing the evils specified; or even sanctioned at all, without the pressure of some dire necessity. It is one thing to originate, and another to administer, a law already in existence; one thing to enforce a law in the full knowledge, and another to enforce it in comparative ignorance, of the extent of its evil nature and injurious effects; one thing, voluntarily to choose, and quite another, reluctantly to tolerate, a law imposed by some unperceived necessity. We can readily allow, that the latter branch of these alternatives may, with some degree of accuracy, describe the actual condition of Government, as far as respects the law in question. But this does not disprove the propriety of the present exposure, nor of the language employed. Since a law, evil in its nature, and pernicious in its effects, is found really to exist; and since it appears to be adopted, sanctioned and enforced by Government, or the official agents of Government, it is not improper to direct attention towards it; and it is not possible to make mention of it in any other light, than as an act, or at least, sanctioned enactment, of Government.

"We trust, however, that as, with the blessing of Providence, our Eastern empire is now firmly consolidated;—as no immediate danger is to be apprehended, either from internal dissension or external aggression; and as the present administration, both in India and the mother country, is characterized by no ordinary degree of liberality, and no ordinary desire to secure the just rights, privileges, and prosperity of all classes of that vast community that compose the British empire, we sincerely trust, that a faithful, uncompromising statement on the present subject, presented in due form to the proper authorities, will be quite sufficient to ensure its speedy and equitable adjustment."

Several

Several of the gentlemen addressed on this occasion, and resident in Calcutta, honoured the sub-committee with a personal interview. From others, both in Calcutta and the provinces, written answers were received. And, while different opinions were expressed respecting the time and the mode of remedying the evil, it was satisfactory to find, that, with the exception of a few slight inadvertencies in the language, which were immediately corrected, the general accuracy of the statement was universally and unequivocally admitted.

The statement, thus prepared and presented in a form which, from the searching scrutiny to which it was subjected, might fairly challenge freedom from objection on the ground of inaccuracy, was as follows:

"There appear several subjects more particularly demanding the attention of the friends of Christianity in India, in order, at this time, to secure some legislative provision regarding them. One of these is, the injurious effects of the Hindoo and Muhammadan laws of inheritance, on persons who may renounce those religions; and the second, the anomalous legal situation of both Musalmans and Hindus, after they have embraced Christianity.

"In reference to this subject, we beg to remark, that a Hindu or Musalman, on changing his religion, is, by the existing law, disqualified for holding or inheriting property. To proceed to particulars, we observe, in the first place, that by the Hindu law of inheritance, as administered by the British Government in Bengal, a Hindu, on becoming a Christian or Musalman, is considered as having lost caste, and hence he and his heirs, being Christians or Muhammadans, are declared to have forfeited all right to the ancestral* property he possessed, or had a claim to, at the time he changed his religion.

"That this is the law of inheritance as stated by the highest Hindu authority, is evident from the following extract from Manu: 'Eunuchs, and outcastes, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage.'—Sir W. Jones' Translation of the Institutes of Manu, chap: ix. sec. 201.

"That this law, as it regards persons who have lost caste by renouncing Hinduism, would yet be enforced, seems equally evident. Mr. Colebrooke, whose extensive acquaintance with Hindu law is universally acknowledged, says 'I do not think any of our courts would go into proof of one of the brethren (of a family) being addicted to vice or profusion, or of being guilty of neglect of obsequies and duty towards ancestors. But expulsion from caste, leprosy, and similar diseases, natural deformity from birth, neutral sex, unlawful births, resulting from an uncanonical marriage, would doubtlessly now exclude; and I apprehend it would be to be so adjusted in our Adalats'

"Mr. W. H. Macnaghten, whose comprehensive knowledge of both Hindu and Muhammadan law is generally admitted, seems to be of the same opinion. In his Principles and Precedents of Hindu Law, a work lately published at the expense of the Bengal government for the use of their courts, in the chapter on 'Exclusion from Inheritance,' (vol. ii. p. 131.) this gentleman, who appears not to have inserted any opinions which he deemed erroneous, mentions a case quite in point, which came for decision before the Patna Court of Appeal. In this case the following question being proposed to the native law officer: 'A person of the Hindu persuasion having become a convert to the Muhammadan faith, on whom will the property which descended to him from his forefathers, and that which he himself acquired, devolve?' the pandit delivered it as his opinion, and the opinion seems to have been admitted as correct by the court, that 'whatever property the individual, previously to his conversion, was possessed and seized of, will devolve on his nearest of kin who professes the Hindu religion'

"Several gentlemen, too, holding important judicial situations in the Honourable Company's service in Bengal, whom we have privately consulted on the question, as to whether conversion to Christianity would exclude a Hindu from inheritance, have been compelled, after reference to the best authorities on the subject, to declare it as their opinion, that were the Hindu law to be as usual regarded, such must be the consequence, the conversion necessarily creating incompetency to perform the funeral obsequies, the performance of which is the foundation of all claim to inheritance.

"This being the general interpretation of the law in Bengal, persons becoming Christians have never, to our knowledge, thought it worth while to apply to the courts of law with the view of recovering the property they formerly enjoyed. Being aware that a legal decision would be against them, they have submitted to the total loss of their property on embracing the Christian faith, in preference to incurring the great expense of attempting to regain it in a court of justice, with no hope of redress. The following, among other recent instances, we are acquainted with.

"Thakur Das, a Kayastha, the nephew of Guru Prusad Babu, on becoming a Christian, was entitled to 5,000 rupees, ancestral property, which was all relinquished.

"Jagamohan, a Rarhi brahman, was of a most respectable family. His relations were zamindars, and lived near Barrackpoor. The ancestral and acquired property which he would have enjoyed before his death, but of which he suffered the loss, through becoming a Christian,

* We have designedly not included acquired property; because there is such a collision of authorities, as to render it uncertain whether a convert from Hinduism to Christianity must forfeit property that is self-acquired; and, however undesirable that doubt should exist on such a subject, it is unnecessary to clog a clear and strong case, by associating it with one more or less involved in doubt; and because a remedy for the great and generally acknowledged evil, would necessarily rectify that which is intimately connected with it, and, in some measure, dependant upon it.

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a Christian, is estimated by several Hindus, well acquainted with him and his circumstances, to have been at least rupees 20,000.

"A man of the name of Narapot Singh, of the Brahmanical caste, is the son of the late Púran Singh, who was a wealthy zamindar, near Gayah, in the province of Behar. On his demise, his property (which consisted of six mouzas, realizing an annual rent of about 16,000 rupees) descended in the following manner; viz three mouzas, producing 8,000 rupees a year, to Narapot Singh; and the other three mouzas, producing a like sum, to the children of his brother. Soon after this event Narapot Singh came to Calcutta, and there embraced Christianity. This intelligence was no sooner communicated to his cousins, the other party included in his late father's will, than they seized upon his property, and have retained possession of it ever since, now upwards of 20 years. Rev Mr. Waid, one of the Serampore missionaries, advised with several magistrates on the subject, particularly with the judge of the court at Gayah; but being informed, that according to the Hindu law, as administered in the provincial courts, he (Narapot Singh) had forfeited all claim to his property, he advised him to submit to the loss rather than engage in a law suit, which must, according to the present Regulations, be decided against him. He has, therefore, now (1830) suffered the loss of his property for the last 20 years, the amount of which, after deducting government taxes, &c exceeds 100,000 rupees, which he has forfeited merely for becoming a convert to Christianity. At present, Narapot Singh is engaged as a native preacher in Calcutta, under the patronage of the London Missionary Society. Should it be considered necessary, the most indubitable evidence can be obtained to substantiate the above facts.

"Besides these, Káshi Mitre, deceased; Káshi Náth, a Brahman, and now employed at the Baptist Mission Press and many others, who lost considerable property, from 1,000 to 3,000 rupees each, might be mentioned as instances in which the injurious consequences of the law have been suffered by Hindus becoming Christians.

"That the same law is considered in force in the presidency of Madras, as well as Bengal, we judge from Sir Thomas Strange, who in his Elements of Hindu Law, chap. 9, thus refers to the law of inheritance, as there administered. 'It remains to consider one case, that may be said to be, with reference to personal delinquency, *instar omnium*, occurring in every enumeration on the subject, as a cause of exclusion, viz. degradation, or the case of the out-caste. Accompanied with certain ceremonies, its effect is, to exclude him from all social intercourse, to suspend in him every civil function; to disqualify him for all the offices, and all the charities of life. He is to be deserted by his connexions, who are, from the moment of the sentence attaching upon him, to "desist from speaking to him, from sitting in his company, from delivering to him any inherited or other property, and every civil or usual attention'" so that a man, under these circumstances, might as well be dead.

"Though the same law exists in the Bombay presidency, it appears to have almost entirely fallen into desuetude there. According to the summary of Hindu law and custom, made by the late Mr. Steel, under the authority of the government of Bombay, it seems however there are yet some enactments recognised, which open the way to most serious oppression. He says. 'A man entirely losing caste, by changing his religion, from motives of avarice, has no right to share in the partition of family property, unless he did so in return for a grant to the whole family of a wuttan, &c when he would be allowed a share. If the change of religion were operated by force, the relations might, at their option, reserve to the party a maintenance.' p. 225 Why may not the Hindu relations of any one who becomes a Christian make a successful attempt to prove that he did so from motives of avarice, and thus get him excluded from his share of the inheritance?

"The Muhammadan law on this subject is equally express, and quite as oppressive as the Hindu.

"It is laid down by Mr. W. H. Macnaghten, in his Principles and Precedents of Muhammadan Law, p 1, as a principle of inheritance, according to the Suni doctrine, that 'Slavery, homicide, difference of religion, and difference of allegiance, exclude from inheritance;' and by a precedent quoted at p 86 of that work, it is evident, that although apostacy from Muhammadanism would not invalidate the descendant's right to property devolving on him by the death of his ancestor before his conversion, he would be entitled to none whatever originally devolving on him after his change of religion. See also sect. vi. p. 21, of the same work, where it is assumed that 'entire exclusion' from inheritance is produced by becoming an infidel. That the Schia doctrine of inheritance on this point agrees with the Suni, is mentioned in the same work, p. 40, and of course the results, by this interpretation, would be equally oppressive.

"It is right to add, that by the most express enactments of the Koran, on which the code of civil law is founded, a Musalmán, on becoming an infidel, is liable to deprivation of the property he has himself acquired, as well as of that which descends to him by inheritance.

"From the preceding facts and statements, the legitimate conclusion deducible is, that in British India a renouncement of Muhammadanism necessarily deprives the convert of all right to property, ancestral or acquired, devolving on him, or possessed by him, at the time of this conversion, and that a renouncement of Hinduism necessarily excludes the convert from the present and disqualifies him for the future possession of any ancestral property, and also, according to many authorities, of any property that is self-acquired.

"In having thus directed the attention of the public to the present subject, we conceive that an important duty has been discharged, and we might leave it to the good sense of the community to judge of the propriety or impropriety, the justice or the injustice, of such a law as that now described. At the same time, a few observations, tending to illustrate the real nature of the grievance, and suggest an appropriate remedy, may not be thought misplaced.

"I. Proceeding

" I Proceeding on the supposition that the facts and statements already given are incontrovertible, we must briefly advert to the evil nature and consequences of the law

" And our first observation is, that the law, when viewed simply in reference to mere civil rights, must appear to every enlightened man grossly to violate the first principles of natural justice, and such a law therefore as no wise and enlightened government ought ever to sanction or enforce

" It is not necessary here to point out the advantages of the institution of property, or the source from which the right of property is derived. For our purpose it is sufficient to know that in every civilized society the advantages are acknowledged to be so manifold, as vastly to outweigh all conceivable disadvantages; and that there is attached to the right an inviolability almost approaching to sacredness. These facts are so indisputable, that one end, if not the chief end, of every wise government is, to protect and secure property by the interposition of legal sanctions and penalties. And in cases which concern the fulfilment of righteous contracts, or conspiracy against the government, and in these alone, is it deemed just to alienate property. The justice of the former is founded on the very principles that recognise the right of property. the justice of the latter is founded chiefly on the nature of that act which aims at the subversion of government, as the voluntary effort to overthrow that which alone protects, necessarily annihilates every claim or title to protection.

" What then must wise and enlightened men think of this new case, in which a government, instead of controlling the outward actions, or directing the visible efforts of men for the best interests of society, appears to overstep its proper limits, and in cases of a conscientious change of private opinion, sanctions the infliction of penalties which almost equal in magnitude those attached to that crime, which ranks the highest in the view of every government? As, in the case of high treason, where the penalty of death is inflicted, forfeiture of property affects all generations, so, in the present instance, a mere change of sentiment on a subject that may no more affect the stability of government or the general welfare of society than the change of opinion on a question respecting the relative motions of the earth and sun, but may eminently promote the best interests of both, not only subjects a man to exclusion from 'all the offices and charities of life,' and disqualification for holding or inheriting any species of property, but also involves his posterity in the miseries of the forfeiture, and renders them outcasts, not only from all society, but apparently from all law.

" 'Surely,' may every enlightened man, yea, every man who makes any pretence to the knowledge of what is just and righteous, indignantly exclaim, 'Surely this is a case purely fictitious, or it is a highly coloured statement of some of the darkest features of the Inquisition, or an exaggerated representation of some practice prevalent among the ferocious hordes of the desert, or an imaginary picture of what may be reckoned an instance of the most consummate injustice of which even the most ignorant and polluted creature can be guilty' 'No such thing,' will be the astounding reply; 'it appears to be none other than a barbarous enactment of Hindu law, sanctioned by the British Government.'

" We leave it to the heart of every wise and enlightened Briton to feel, in silence, the sudden surprise, and dreadful humiliation of such a statement.

" 2. We next observe that, viewing the subject in reference to religion in general, every sound Theist must pronounce the enactment impious.

" When he reflects that, from the defects of man's knowledge, and the limitations of man's power, he is utterly incapacitated for penetrating the recesses of the heart, and deciding upon its motives, and pronouncing upon its judgments, and estimating the soundness of its convictions, and denouncing penalties on its decisions, and that to the Omniscient God alone belongs the high prerogative of penetrating, without the possibility of concealment, and pronouncing sentence without the possibility of error. he can scarcely regard an act which, without the pretension, virtually implies an usurpation of this high function, of Omnipotence, in any other light than as involving real, though it may be unintended, impiety

" Or when, from the inquisitorial nature of the enactment, he directs his thoughts to its outward effects, and views these in connexion with the moral and physical constitution of the universe; when he reflects that for reasons to him unknown, and yet for reasons which appear to infinite wisdom and goodness to be sufficient, the Eternal God causes his sun to shine on the just and the unjust, sending down rain to fertilize the soil, and ensure a rich abundance of fruit for the sustenance of the inhabitants of every clime, and the professors of every religion, and when, in perfect contrast to all this, he considers a human ordinance that appears to condemn the constitution established by an all-wise and all-gracious God, by involving the principle that in one portion, at least, of the habitable globe, teeming with myriads of rational beings, a conscientious change from one system of religious belief to another, both of which are alike tolerated in the great system of Providence, necessarily disqualifies for the enjoyment of those bounties of nature so richly provided, and formerly, if may be, so amply possessed, he cannot possibly regard such an ordinance in any other light than as an impious contradiction to the divinely constituted order of things.

" 3. Once more, we observe that, viewed in reference to Christianity, and a Christian Government, the real Christian must feel such a law to be in palpable contradiction to all the feelings and principles by which he ever professes to be actuated, and which he believes to be enstamped with the signature of Divinity, as well as a glaring outrage to the revealed will and declared purposes of the Infinite Mind.

" As a man of enlightened understanding, he clearly perceives that the law is subversive of the first principles of justice. as one who is convinced of the existence of an Almighty superintending Power, he cannot divest it of the charge of impiety, but as a Christian, he

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sees it accompanied with other and peculiar aggravations; peculiar, we say, because in his mind it stands connected with new facts, combined with new principles, and associated with new manifestations of the Divine mind.

"His first thoughts might be, that deeds which involve injustice and impiety may be accounted equally unjust and impious, whether committed by a professing disciple of Christ or an abandoned reprobate; yet that, regarded as the acts of the latter, they maintain a character of perfect consistency; while, regarded as the acts of the former, they betray an inconsistency so monstrous, that no language can supply an adequate expression for it.

"And the inconsistency would appear greatly aggravated, when he reflected that the particular deed in question, which, even, when viewed apart from Christianity, involves injustice and impiety, also tended to counteract the revealed intentions of the Almighty, by opposing a powerful obstacle to the spread of that religion which its Divine Author designed to become universal, and, in furtherance of the design, commanded his disciples to promulgate, as the richest blessing, to all nations under heaven.*

"On further reflecting that, from the wretched constitution of society in India, the embracing of Christianity is, in other respects, attended with consequences the most injurious and distressing, such as loss of home, employment, reputation, &c., he might be inclined to exclaim, 'What! as if these dreadful results were not sufficient to excite commiseration, shall a Christian Government, by an apparent refinement of cruelty, proceed a step further in the progress of actual, though it may be unintended persecution, and deprive the individual who has been unfortunate enough to embrace the Christian faith of the very means of subsistence, and that too by sanctioning an enactment which implicates posterity in the same miserable fate, and which, if it continue to be enforced, however numerous may be the persons converted to Christianity who have been in respectable circumstances, must suddenly reduce all of them, and, as far as this law shall operate, their posterity also, to a state of total destitution and beggary, and thus a whole community be established, to become a burden instead of a blessing to society?' †

"II. We

* That this obstacle is not imaginary, but operates widely in practice, is a fact, the knowledge of which is co-extensive with the active exertions of any individual in disseminating Christian truth. The nature of the obstacle will best appear from the statement of one, whose well-known character must add weight to any testimony, and whose name will long be revered as associated with the rise and progress of Christianity in India. From a communication with which the venerable Archdeacon Corrie favoured the sub-committee, the following is an extract.—

"Caste is doubtless a great barrier against the diffusion of Christianity in this country, not solely, however, as depriving a person of the right of inheritance, but generally as involving a kind of outlawry, to which even the poorest are subject.

"I have known instances where Hindus possessing a share in undivided property, have been allowed by the other members of the family to retain it, after embracing Christianity; but this has arisen entirely out of the peculiar circumstances either of convenience or personal attachment. There can be no doubt, however, that the temporal loss attending loss of caste does prevent many from coming at all to the consideration of the grounds upon which Christianity rests. The journals of the late Rev. Abdool Museeh, published in the Missionary Register between 1813 and 1827; will supply many instances of this. I refer you to his journals rather than those of any European missionary, as he could more certainly ascertain the minds of his countrymen. One instance I may mention, which is strictly to the point in question, of a person named Bukhtawur Singh, who died at Chunar in October last. He was a person of very superior understanding, and became acquainted with the truths of Christianity several years since. He constantly attended Christian worship, generally accompanied the missionaries when they preached in the town, stood by them, defended their doctrine in a manner which for the most part silenced gainsayers, and bare all the reproach of being a Christian. Yet this man resisted all arguments used to induce him to submit to baptism, urging that should he lose caste by joining himself to the Christian church, he should never be able to recover any of the money owing to him, and should be reduced to beggary."

† We are glad that it is in our power to confirm many of the preceding facts and inferences, by an appeal to the written authority of Mr. Macan, of the Honourable Company's civil service, and late judge at Juanpore. This document establishes many important points; among others the following: that such a law exists, and is usually interpreted as we have already described, that it is unjust in its nature, and injurious in its effects; that it presents a powerful barrier, "not only to the spread of true religion, but to the improvement of the country, and the civilization of the people;" and that it places a British judge in a situation that offers violence to his principles as an enlightened man, and to his feelings as a Christian. The following is an extract from Mr. Macan's printed speech, delivered at the annual meeting of "The Bengal Auxiliary Missionary Society," on Wednesday, March 18, 1829.

"It may not, however, be considered out of place just to mention here, that there are some obstacles to the spread of the Gospel amongst the rich and respectable natives which are really very appalling in their nature. I allude to the Hindu and Muhammadan laws of inheritance, as recognised within the British dominions; by which persons of those persuasions, professing Christianity, may not only be prevented from succeeding to any share in hereditary property to which they might otherwise be entitled, but are actually liable to be deprived of any ancestral estates which they may be in possession of at the time of their embracing Christianity. Thus, to the loss of caste, and exclusion from kindred and friends, is added absolute beggary, and with such painful sacrifices in prospect, who can be surprised that the rich and respectable natives should feel some reluctance to pay that attention to our missionaries, and to subjects connected with religion and education, which, under other circumstances, they might be disposed to do?

"The faithful missionaries of all denominations have removed every impediment to the diffusion of religious knowledge which zeal and diligence could effect; they have mastered the languages of the

"II. We are not unprepared to expect that many may be disposed to regard the preceding facts and inferences in the light of magnifying a molehill into a mountain, and then making a foolish and clamorous parade in our attempt to demolish it, but is it really so?

"If there be meaning in language, and sincerity in the statements of honourable men, do not the probabilities in favour of the representation we have given of the existing state of the law vastly preponderate? And if so, we leave it to the good sense of our readers to determine whether, in its nature and consequences, it is not already a mountain of iniquity.

"For the sake, however, of truth and justice, as well as with the view of meeting the scruples of some, and the objections of others, we proceed to notice some of the grounds on which it may be pleaded that a degree of uncertainty still attaches to the subject.

"I. And first, let it be observed, that the law respecting the loss of caste, as it affects the right of inheritance, is not a separate or isolated law. The case of the outcaste is constantly associated with many others that operate as causes of disinheritance. And the nature of this connexion, together with the kind of ambiguity to which, in the estimation of many, it may lead, will best be understood from the following extracts:

"In Macnaghten's Precepts and Precedents of Hindu Law, vol. ii. p. 133, it is stated: "According to the Hindu law, an impotent person, one born blind, one born deaf or dumb, or an idiot, or mad or lame, one who has lost a sense or limb, a leper, one afflicted with obstinate or agonizing diseases, one afflicted with an incurable disease, an outcaste, the offspring of an outcaste, one who has been formerly degraded, one who has been expelled from society, a professed enemy to his father, an apostate, a person wearing the token of religious mendicity, a son of a woman married in irregular order, one who illegally acquires wealth, one incapable of transacting business, one who is addicted to vice, one destitute of virtue, a son who has no sacred knowledge, nor courage, nor industry, nor devotion, nor liberality, and who observes not immemorial good customs, one who neglects his duties, one who is immersed in vice, and the sons whose affiliation is prohibited in the present age, are incompetent to share the heritage; but these persons, excepting the outcaste and his offspring, are entitled to a suitable provision of food, raiment, and habitation' On which the author remarks: 'Were these disqualifying provisions indeed rigidly enforced, it may be apprehended that but very few individuals would be found competent to inherit property, as there is hardly an offence in jurisprudence, or a disease in nosology, that may not be comprehended in some one or other of the classes.'

"Again, the same gentleman, in his Principles and Precedents of Muhammadan Law, p. 89, says: "Both the causes here mentioned [mental derangement, or any description of insanity and blindness] operate to exclude from the inheritance, agreeably to the provisions of the Hindu law; "Eunuchs and outcastes, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share in the inheritance."—Sir W. Jones's Translation of the Institutes of Manu, chap. ix. sect. 201. But, adds Mr. Macnaghten, "these absurd provisions seem to be entirely obsolete in the present day." While Mr. Colebrooke, who wrote only a few years ago, expresses his opinion, as we have seen above, that "leprosy and similar diseases, natural deformity from birth; &c. would doubtlessly now exclude;" and says, "I apprehend it would be to be so adjusted in our Adawlut."

"Once more, there is recorded by Sir T. Strange, in his compilation on the subject of Hindu law, a case which came before the Sudder Dewany Adalat in Bengal, in 1814, well calculated to furnish additional illustration. In this case, says he, "the party had been guilty of a series of profligate and abandoned conduct, having been shamefully addicted to spirituous liquors; having been in the habit of associating and eating with persons of the lowest description and most infamous character; having wantonly attacked and wounded several people at different times, having openly cohabited with a woman of the Muhammadan persuasion, and having set fire to the dwelling-house of his adopted mother, whom he had more than once attempted to destroy by other means. The pandits declared, that of all the offences proved to have been committed by the individual, one only, viz. that of cohabiting with a Muhammadan woman, was of such a nature as to subject him to the penalty of expulsion from his tribe (to the exclusion, of course, from inheritance) irrevocably, and of this opinion was the court." Now, it scarcely admits of a doubt, but that in another court, influenced by other pandits, other offences among those mentioned would have been deemed sufficient to subject the party to the penalty of expulsion from caste, and consequent exclusion from inheritance.

"From these and similar statements, the fact is certain, that the case of the outcaste is associated with many others; that several of these other cases are, in practice, regarded as obsolete;

the country; they have translated the Scriptures into the various dialects of India, they have written tracts, and established schools, but the obstacle which has been alluded to, they cannot surmount. It is to be hoped, however, that under an enlightened Christian Government, such a barrier, not only to the spread of true religion, but to the improvement of the country, and the civilization of the people, will not long be allowed to exist. But until it is broken down, often must the missionary, while reasoning of righteousness and temperance, be pained to hear the language of Felix to the Apostle Paul, "Go thy way for this time; when I have a more convenient season, I will call for thee." Often, too, it is to be feared, will the proud breast of many a Briton be forced to swell indignant within him, at being obliged, while presiding as a judge, to dismiss from before his judgment seat, to penury and obscurity, the humble followers of his blessed Redeemer; and for no other reason, than because the name of Jesus shall prove dearer to the heart, than father or mother, houses or home, than wife or children."

obsolete; and that hence, in the view of some persons, there arises an uncertainty whether the case of the outcaste may not be included in the number of those that may be considered as obsolete.

"Now we must observe, that, although all the prohibitions and precepts should now be practically disregarded, the very circumstance that, among those who are accounted authorities on the subject of Hindu law, there exist opinions so widely different as to the extent to which the law should be allowed to operate, must render every decision fearfully uncertain, and thereby open up a perpetual source of angry and destructive litigation.

"Besides, while the law is unrepealed, it must be evident that, though by sufferance, none of the disqualifications mentioned would now be allowed to operate, yet that it is by sufferance only. It is not by any legal right that individuals themselves, or their ancestors, to whom might attach one or more disqualifications, have entered on the possession of property, or are permitted to retain it, and, therefore, any ill-disposed person has the power, legally, to annoy, and probably to disinherit them. This is a state of society far from being desirable, and is, to our knowledge, felt to be so by many respectable Hindus, who are aware, from their acquaintance with the law, of the jeopardy in which their continued possession of the property they enjoy is thus placed.

"But it is allowing far more than is sanctioned, either by practice, or the declared sentiments of qualified judges, when we suppose that all the disqualifications enumerated have become obsolete. However wide the difference of opinion may be as to some of the causes, there is no difference in the case of the outcaste. If specified at all, apart from the rest, it is only to show, that towards it there is no abatement whatever in the rigours of the law, no diminution of severity in practice. And, indeed, while the feelings and principles of the Hindus remain unchanged, it were unnatural to suppose it otherwise. For, although the loss of caste ought no more to operate as a disqualification than the other causes supposed to have now become obsolete, yet as the law is understood and recognised, and a convert to Christianity, as such, is the object of religious enmity, it will, in his case, no doubt, be always enforced, so that he must, as such converts have always hitherto done, submit to the entire deprivation of his property, without the hope of redress in the courts.

"After all, though we should allow, what appears to be contrary to fact, that the case of him who loses caste by embracing another religion, and Christianity in particular, is involved in uncertainty, how can this vindicate the propriety of allowing such a subject to continue in that condition for one year, one day, one instant? What! has a Christian nation come to such a state of lowered honour, suspicious piety, and glaring inconsistency, that it should declare it to be uncertain whether, as often as occasion arises, it may not commit what has been shown grossly to outrage all justice, and piety, and consistency? And will a great, and wise, and enlightened Christian Government brook such a defence? Rather, will it not utterly reject it as the insidious defence of an enemy, and, by its decisive conduct, proclaim, '*Timeo Danaos, et dona ferentes*'?"

"2 Many respectable men, Hindus as well as Europeans, feeling alive to the enormity of the law as generally understood and enforced, and desirous, from motives of justice and humanity, that it could be pronounced unfounded, and yet professing to feel dissatisfied with that mode of getting rid of the grievance just now described, have recourse to another method, which, at least, has the merit of plausibility and benevolent intention. And we know not a more satisfactory way of conveying an intelligible idea of this other and distinct mode of solving the difficulty, than by a quotation from a pamphlet, recently published by the learned and ingenious Rammohun Roy. The quotation refers to a subject entirely distinct from the present, and is adduced merely for the purpose of illustrating the nature of the principle on which the new solution is founded.

"The Dayabhaga, a work by Jimútvañan, treating of inheritance, has been regarded by the natives of Bengal as of authority paramount to the rest of the digests of the sacred authorities. The author of this work, after quoting two extraordinary texts of Vyasa, as prohibiting the disposal, by a single parcener, of his share in the immoveables, under the notion that each parcener has his property in the whole estate jointly possessed, and, in reply to the question, what might be the consequence of disregard to the prohibition conveyed by these texts of Vyasa? proceeds to say: "But the texts of Vyasa exhibiting a prohibition, are intended to show a moral offence, since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer." Ch. ii., sect. 23. A partner is as completely a legal owner of his own share (either divided or undivided), as a proprietor of an entire estate; and consequently a sale or gift executed by the former, of his own share, should, with reason, be considered equally valid as a contract, by the latter, for his sole estate. Hence, prohibition of such transfer being clearly opposed to common sense, and ordinary usage, should be understood as only forbidding a dereliction of moral duty, committed by those who infringe it, and not as invalidating the transfer.

"In adopting this mode of exposition of the law, the author of the Dayabhaga has pursued the course frequently inculcated by Manu and others, a few instances of which I beg to bring briefly to the consideration of the reader, for the full justification of this author. Manu, the first of all Hindu legislators, prohibits donation to an unworthy bráhmán in the following terms. "Let no man, apprized of this law, present even water to a priest who acts like a cat, nor to him who acts like a bittern, nor to him who is unlearned in the Veda." (Ch. iv., v. 192.) Let us suppose that, in disregard to this prohibition, a gift has been actually made to one of those priests; a question then naturally arises, whether this injunction of Manu's invalidates the gift, or whether such infringement of the law only renders

the donor guilty of a moral offence. The same legislator, in continuation, thus answers: "Since property, though legally gained, if it be given to either of those three, becomes pre-judicial in the next world, both to the giver and receiver" (v. 193) The same authority forbids marrying girls of certain descriptions, saying, "Let him not marry a girl with reddish hair, nor with any deformed limb, nor one troubled with habitual sickness, nor one either with no hair or with too much, nor one immoderately talkative, nor one with inflamed eyes." Ch. iii, v. 8. Although this law has been very frequently disregarded, yet no voidance of such a marriage, where the ceremony has been actually and regularly performed, has ever taken place, it being understood that the above prohibition, not being supported by sound reason, only involves the bridegroom in the religious offence of disregard to a sacred precept.

Application with respect to Native Christians.

"Precisely in the spirit of this mode of interpretation, are many disposed to regard the provisions of the law under consideration. They regard them in the number of those precepts and prohibitions that are received as morally, but not legally binding; disobedience implying a moral or religious offence, but no infringement of a legal right, so that in this way an outcaste might legally retain his property, and yet be regarded with abhorrence, as guilty of a sin of the deepest dye.

"We confess we admire the ingenuity rather than the soundness of the principle, as applicable to the present subject. It affords no practical relief from the pressure of the evil; it suggests no adequate remedy. Indeed, before it can possibly effect either, its advocates must convince the great mass of the Hindu population, as well as the executive authorities, of its propriety. But this is a task too Herculean ever to be attempted, and even though the belief in its soundness and propriety were extended far beyond the very narrow circle to which at present it is confined, it would then only resolve itself into that case of dreadful uncertainty, the mischievous nature of which has already been alluded to in such a way as to require no repetition.

"III. Having thus endeavoured to point out the nature of the evil, we must now very briefly advert to the subject of a remedy

"And here it is almost unnecessary for us to refute the objection, that the government being pledged to administer justice according to the Hindu and Muhammadan laws of inheritance, interference with these laws would infringe the toleration guaranteed to our fellow-subjects. It is evident, from the preamble to various Regulations issued by different administrations, that the duty of the government has always, in its own view, been bounded by the limits of justice; and that, by every principle of toleration, abstractedly considered, a Hindu or Muhammadan is no more justly subject to the loss of property on becoming a Christian, than a Christian would be on embracing (as some have done) the profession of the Muhammadan faith

"We are aware, however, that the difficulties attending an improvement of the system are alleged by some to be insuperable. To several most respectable members of the Honourable Company's civil service we have mentioned the subject, and all unite in deploring it as an evil of no ordinary magnitude, but express their regret that the way of obviating the difficulty does not appear so evident.

"We certainly make no pretensions to the discovery of a plan in all respects unexceptionable; and yet a few suggestions on the subject, as being well intended, may not be deemed presumptuous.

"1. Since, in accordance with the improved state of Hindu feeling, many of the various disqualifications, mentioned in the law that includes the case of the outcaste, have become obsolete, might it not be possible, as it certainly appears desirable, for the protection of persons already in the possession of property, and the prevention of future outrages against all that is just and excellent, to enact that none of them should be allowed to operate, but that property should descend in the proportions directed by the Hindu law, irrespective of those disqualifications? Thus the difficulty would be obviated, much to the satisfaction of the great body of Hindus, and, if thought expedient, without the appearance of even a reference to Christianity

"2. The practice of government in other cases might well sanction a more direct method. One instance directly to the purpose may be specified.

"For the information of some of our readers it may be necessary to state, that as the Dayabhaga is reckoned the standard work on the law of inheritance by the natives of Bengal, so is the Mitakshura, by Vignaneswari, regarded as the standard work on the same subject throughout the Upper Provinces and a great part of the Dakhan. Now, in the latter work is contained the following authoritative decision: Mitakshura, ch. 1, sec. 1, Art 27. "Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, (although) the father have independent power in the disposal of effects other than immovables, for indispensable acts of duty, and for purposes prescribed by texts of law; as gifts through affection, support of the family, relief from distress, and so forth; but he is subject to the control of his sons and the rest, in regard to the immovable estates; whether acquired by himself, or inherited from his father or other predecessor; since it is ordained, "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without conveying all the sons. They who are born, and they who are yet unborn, and they who are still in the womb, require the means of support: no gift or sale should, therefore, be made."

"Now we ought to observe, it is the fact that, under Regulation VII. 1825, and the Regulations to which it refers, Hindu ancestral landed estates in the Upper Provinces have been always considered saleable by public auction, in satisfaction of decrees of court, not only for revenue

revenue due to government, but even for private debts incurred by the occupants for the time being. Now, in exact accordance with the spirit and intention of such innovation, and apparent disregard for the sacred authority of the Hindu law, might not government, for the sake of suppressing the most grievous outrages against all that is just and consistent, at once enact, that henceforward a change of opinion on matters of religion shall in no wise affect the just and legal right to hold or inherit property?

"3. The following is another way of effecting the object, differing from the latter in the mode rather than the principle, and is completely in accordance with the former practice of the government of Bengal, and might be made applicable to both Hindus and Musalmans.

"Besides many other great improvements of the Muhammadan Code (on which criminal law as administered by the Honourable Company is founded), introduced by Regulation IV. 1822, one very important and salutary alteration, very much in point, has been introduced in the case of murder by Musalmans. By the Muhammadan Code it is enacted, that no Musalman should be liable to *kassas* (*i. e.* death by retaliation) for murder, unless one of the witnesses be a Musalman. This restriction being justly deemed contrary to impartial justice, a Regulation was passed, by which the *múftí* is directed to give his opinion whether the accused is guilty or not guilty by the evidence, had the witnesses been Muhammadans; and sentence is passed accordingly. Might not, with equal propriety, a Hindu or Muhammadan law officer be directed to give his opinion as to the share of property which would have belonged to any individual or his heirs becoming a Christian, had he remained a Hindu or Musalman; and might not that property be secured to him accordingly?

"We presume not, by the foregoing hints, to dictate in what way the injustice of which, on behalf of a number of converts to our common faith, already large and annually increasing, we have ventured to complain, should be removed; but it appeared highly proper for us to exhibit some feasible plan of obviating the supposed difficulty, with the hope of proving that it is by no means insuperable, and that its removal is in strict accordance with the former practice of government in similar cases of injustice, and would not, in all probability, excite the least dissatisfaction in the minds of our native fellow-subjects."

Such was the statement prepared and authenticated 10 years ago. Of it several copies were forwarded to leading individuals and committees of societies at home, who had embarked on the enterprise of Indian renovation. A partial agitation was in consequence commenced. The Court of Directors and other public bodies were memorialised on the subject. What share of influence, direct or indirect, may have been exerted by the Calcutta statement, it is impossible to ascertain. Nor is it a matter of any moment. The satisfactory result was, that early in 1832 the Court of Directors did send a despatch to the Governor-general in Council, to institute inquiry and speedily enact some adequate legislative remedy. In conformity with the declared sentiments and express request of the Honourable Court, the Indian government lost no time in giving the matter a full and deliberate consideration. The gratifying issue soon appeared. Among the Regulations of 1832, 16th October, was promulgated the following

"Clause 8. Such part of Clause 2, Section 3, Regulation VIII 1795, enacted for the province of Benares, which declares that, in causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter, excepting when Europeans or other persons, not being either Muhammadans or Hindus shall be defendants, in which case the law of the plaintiff is to be made the rule of decision in all plants or actions of a civil nature, is hereby rescinded; and the rule contained in Section 15, Regulation IV 1793, and the corresponding enactment contained in Clause 1, Section 16, Regulation III. 1803, shall be the rule of guidance in all suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions that may arise between persons professing the Hindu and Muhammadan persuasions respectively.

"Clause 9. It is hereby declared, however, that the above rules are intended, and shall be held to apply to such persons only as shall be *bonâ fide* professors of those religions at the time of the application of the law of the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suit may be of different persuasions; when one party shall be of the Hindu and the other of the Muhammadan persuasion, or when one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

The announcement of this new Regulation was hailed at the time as an invaluable boon, being an important modification of the ancient barbarous law. Still doubts and difficulties of a practical nature kept floating around the subject, casting their portentous shadows over the first timid motions of weak and irresolute minds. In order, therefore, to ascertain the present realities of the case, viewed as a question of law, certain queries have been propounded, and by competent judges answered, in substance, as follows:

1st. Does a Hindu or Muhammadan, by renouncing his ancestral faith, lose his right to ancestral property?—*Ans.* By Regulation VII. of 1832, sections 8 and 9 (quoted above),

he would lose no civil right, if not an inhabitant of Calcutta. In other words, if resident anywhere in the mufassal or provinces, a native, being amenable to the mufassal courts only, which are held bound by Act of Parliament to be regulated by the enactments of the Governor-general in Council, may avail himself of the Regulation which declares, that the laws and usages of particular religions "shall not be permitted to operate to deprive him of any property to which, but for the operation of such laws, they would have been entitled." On the contrary, any native resident in Calcutta, being subject to the Supreme Court, which in this respect is governed by Hindu and Muhammadan laws, would forfeit all right to property by loss of caste, which is essentially involved in a renunciation of, or apostacy from, his ancestral faith, but if the property be actually vested in the native at the time of his losing caste, by apostacy or otherwise, the case is declared to be doubtful.

2d. Does he lose his right to personal or chattel property?—By mufassal law, no; by Supreme Court law, yes.

3d. Does he lose his right to his share of family property, landed or chattel, acquired by himself (either in conjunction with the other family members or as manager of their joint affairs), previous to his repudiation of the Hindu or Muhammadan faith?—By mufassal law, no; by Supreme Court law, yes.

4th. Would ancestral or acquired property be still heritable or retainable by mufassal law, irrespective of all conditions?—No. If certain conditions were attached to the property which the inheritor or holder refuses to perform, he might thus forfeit it, even by mufassal law.

5th. What is the state of the law, with reference to those who are neither British-born subjects, Hindus, nor Muhammadans?—East Indians, Parsis, Armenians, Jews, Greeks, and others, make sad complaints of the discrepancy between Supreme Court and mufassal law, especially with regard to rights of inheritance. In Calcutta, the Supreme Court obliges them (not being Muhammadans nor Gentoos) to conform to the English law in this respect. In the mufassal, the judges acknowledge they have no law at all to guide them. In some districts, the case will be decided by Hindu, and in others by Muhammadan law; in some, by the inheritance laws of the parent nation to which the suing parties respectively belong, and in others, by the English or canon law (that of the Pandects), according to the varying sentiments or caprice of the acting judge.

From these replies it is evident that the state of the law relative to inheritance and acquired property, is still far from being satisfactory. In order, therefore, to approximate the ends of legislative wisdom, it is recommended or suggested,

First, that as it is a breach of all uniformity and a violation of all equity that any class of subjects should be without law at all, or that one law should be administered to the native inhabitants of the metropolis, and another, in many important respects entirely opposite, to the native residents throughout the mufassal—the mufassal and metropolitan law be assimilated in one consistent and harmonious code, which may extend to East Indians and Parsis, &c as well as Muhammadans and Hindus.

Secondly, that—as it is contrary to the first principles of natural reason and natural justice that a change of religious sentiments, more especially when that change involves an abjuration of error and superstition, should entail a forfeiture of that property which belongs to a man of natural right—it be enacted, that one general and all-comprehending law be framed in the spirit of the eighth and ninth clauses of Regulation VII. of 1832, or agreeably to the tenor of the admirable recommendation of one of the most learned and respected of our Indian judges, Sir Hyde East, who, in his examination before Parliament, previous to the last renewal of the charter, earnestly and powerfully "submitted to the consideration of Government that their protecting hand should be so far extended as to make provision that no native of India shall forfeit any rights of property or any personal benefit, on account of his profession of any particular faith or doctrine, which he would be entitled to and claimed by any law of title, grant, inheritance, or succession established in India, which was binding on the persons last seised or possessed, or on those from or through whom they claimed."

Thirdly, that in the event of conditions being attached to the property connected with superstitious or idolatrous usages, conditions the imposition of which may be pronounced unwarrantable, as being opposed to and therefore superseded by the higher obligations of natural justice and revealed law—conditions, the performance of which may be adjudged intolerable, as being subversive of the dictates of reason and the rights of conscience—the Judge or magistrate be empowered, in accordance with the spirit of British law and the practice of the High Court of Chancery, to review, over-rule, modify, or cancel such unreasonable conditions altogether, or otherwise adjudicate, for the relief of the party concerned, agreeably to the first principles of natural equity and the suggestions of a good conscience.

The passing of a legislative enactment embodying these or similar recommendations would do much towards remedying the present untoward state of the law of inheritance and succession in this land. Apart from the many reasons urged in the "Statement of 1810," there is another, arising out of the present movements of Government itself and the sanctioned operations of societies and individuals, which loudly challenges attention. What is the natural, the inevitable effect which must ensue, not merely from the directly evangelizing measures in progress, but from the success of the Government and other educational schemes for the enlightenment of this mighty people? From the nature of the component parts of Hinduism, contrasted with the range of European literature, science, and theology, is it not demonstrable that one grand effect, wherever a high English education is imparted, will

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will be the demolition of those errors which constitute at once its basis and superstructure? Is not such abstract or theoretic demonstration borne out by numberless facts? Listen to the testimony of one whose experience and position in native society must invest his assertions with authority. The Reformer, an English newspaper, conducted several years ago by a native editor of rank, learning, and wealth, and the organ of a large and influential body of educated Hindus, contrasting the visible fruits of ordinary missionary exertion with those realised by the Hindu College, thus proceeded emphatically to ask, "Has it (the Hindu College) not been the fountain of a new race of men amongst us? From that institution, as from the rock from whence the mighty Ganges takes its rise, a nation is flowing in upon this desert country, to replenish its withered fields with the living waters of knowledge. Have all the efforts of the missionaries given a tithe of that shock to the superstitions of the people which has been given by the Hindu College? This at once shows that the means they pursue to overturn the ancient reign of idolatry is not calculated to ensure success, and ought to be abandoned for another which promises better success."

Without being at all pledged to the accuracy of this comparative estimate, must we not hold such a genuine native testimony to be conclusive as to the operative power of a superior English education in overturning the superstitions and idolatries of India? If so, must not the government perceive into what a predicament of inconsistency it reduces itself, as well as all the friends of native education, if the law of inheritance and succession be not speedily ameliorated and made co-extensive with the wants and exigencies of the entire body of the people? An awakening and enlightening knowledge is communicated which sweeps away the gross absurdities of idolatry and superstition from the minds of those who acquire it. In this land almost all property is left burthened with conditions of an idolatrous and superstitious character. Mark, then, the dilemma into which, in consequence of the government and other educational measures, the educated Hindu is brought. If he performs the superstitious or idolatrous conditions in order to secure his property, he must, by such performance, do violence to his reason, his conscience, and his publicly avowed sentiments, in a word, he must act the part of a wicked and deceitful hypocrite. If, on the other hand, he has moral fortitude enough to resist any temptation and suffer any loss rather than submit to the sacrifice of reason, conscience, and character, he must, while the law remains unaltered, by his non-fulfilment of the superstitious and idolatrous conditions, forfeit all right to property, in a word, as if the acquired possession of superior intelligence were a crime of the first magnitude, he must, in consequence of his being the happy possessor of such intelligence, submit to the infliction of one of the highest penal severities.

But as there is in human nature an extreme repugnance to the loss of property, and as time will show that, however much power and wealth may be flattered by the interested and the needy, a course of systematic hypocrisy must eventually call forth the contempt and indignation of an enlightened community, what may we expect to be the operation of the present law as it affects the future spread of sound knowledge and intelligence among the natives? What can we expect, except that the spread of both will be vastly and indefinitely retarded? What a solemn mockery to be, on the one hand, holding out all manner of encouragements, in the shape of salaries to qualified teachers, and stipends and scholarships to promising students, to stimulate to the pursuit and cultivation of superior knowledge and intelligence, and on the other, by a continuance of the present law, holding out positive discouragements of a nature too appalling to fail of fatal success. And herein lies the strength of these discouragements. Superior intelligence, if accompanied by a good conscience, may become penal, by being attended with the deprivation of all one's possessions, and that too in such trying circumstances as to loss of caste and reputation, that the immediate punishment of death might often be more tolerable. Surely that man knows little of human nature who does not perceive in this the surest check to all inquiry, and the most powerful restraint on every desire to acquire or cultivate any knowledge which must, without a violation of conscience, issue in such disastrous results. The good things of this life take far too firm a hold of the heart of man to admit of a different inference being drawn, yea, such is the strength of that hold which the perishable treasures of this world take of all the powers and faculties of his soul, that man is not only apt to become insensible to the glories of an eternal inheritance, but apt to listen to any account of them with positive dissatisfaction, and is too often willing to forego the anticipated enjoyment of God's favour, and brave the terrors of God's wrath, rather than be induced on any account to withdraw the strength of his affections from his present possessions.

If such be the power of opposition which the enjoyment of the good things of this life ever presents to the ready reception of all truth, as opposed to error, prejudice, self-seeking, or sinful compromise, even in circumstances the most favourable, when no demand is made but the reasonable and salutary demand, not exclusively to direct towards them the affections of the heart, but transfer these to a far more glorious and enduring inheritance, who can estimate the force of resistance which a mind, pervaded in all its powers by an almost superhuman avarice, must present to the very first proposal, as well as to the incipient desire, practically to embrace any improved system of knowledge, any scheme of unbending principle, whether human or divine, the embracement and tenure of which may involve irrecoverably the total forfeiture of all that the soul naturally most values? Accurately to estimate the power of such resistance, till the lapse of time and experience have sufficiently illustrated the awful nature of the dilemma, is altogether impossible; but it is very possible, yea, very easy, to perceive how inevitable is the certainty of its existence, since the slightest consideration will suffice to show that the supposition of its non-existence would imply that the usual processes of nature are reversed and the constitution of man unaltered, that,

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actions the most prejudicial to every worldly interest are conducted without a motive, and extraordinary effects produced, either entirely without or directly contrary to the ordinary operation of natural causes.

Application with respect to Native Christians.

Let then the Government of this great empire speedily emancipate itself from the meshes and the remnants of a barbarous jurisprudence; let it, by a wholesome infusion of the spirit and principles of British justice, speedily divest itself of the anomalous and degrading attitude of appearing to sanction or offer, on the one hand, the largest bounties upon vivifying and illumining knowledge, and, on the other, to expose its fairest fruit to the consuming blight of legal pains and penalties; let it no longer, in point of apparent irreverence and inconsistency in its manifested conduct, provoke a comparison with the procedure of the man who, with the amplest proffers of recompense and reward to all that may strive to raise the most luxuriant produce from an unpromising soil, would yet guard, by the threatened interference of an armed force, against every attempt to sow the seed, or, if already somehow or other deposited, would, by the visitation of flaming fire to blast and devour, prevent the possibility of its ever attaining to maturity. Let the supreme Government of these realms prove faithful to the God of Providence by dealing out perfect righteousness and judgment to the multitudes over whom it has, in a way so marvellous and unprecedented, been constituted the protector and the guardian, and the God of Providence will smile propitious on its efforts, and render its administration a source and surety of abounding prosperity to itself, a guarantee of brightening hope to the millions of the present generation, a fount of reverendary bliss to future myriads, who, as they rise in long succession, may joyously hail the continued waving of the British sceptre, as the surest pledge of the continued enjoyment of their dearest rights and noblest privileges.

V.—Propositions regarding Marriage and Divorce, chiefly as they affect Native Converts to Christianity.

Legis. Cons.
10 May 1841.
No. 23.
Enclosure

* On the importance of the institution of marriage to the peace and well-being of society it were idle to dilate. Contemporaneous with the origin of man, it has survived the wreck and ruin of the fall. Scarcely any tribe, however barbarous, has been known wholly to disregard it. And in the progress of society the due observance of it has ever been found at once a cause and a consequence of advancing civilisation.

It cannot therefore be without the deepest injury to any community, should any class or classes be found to exist therein, whose intermarriages, and all the grave and momentous interests which these involve, are wholly unprovided for, and, consequently, wholly unregulated by any recognised law. But such is the state of things in India. For British-born subjects, Muhammadans and Hindus, laws have been framed and promulgated. But for individuals of other races, whether pure or mixed, and more especially the large and constantly increasing body of natives who have renounced their ancestral faith, no laws whatsoever have been enacted by any established authority.

The deplorable consequences of this absence of all law on a subject so intimately interwoven with the best interests of man, has long been sincerely lamented by the friends of native improvement, and by none more so than by the Christian missionaries of all denominations. In Calcutta, in particular, these have heretofore united for the purpose of endeavouring to secure some commensurate remedy for the great and the growing evil. In January 1835, after repeated discussions, they published the result of their deliberations in the form of six propositions, accompanied by brief but able explanatory notes by the acting secretary, the Rev. W. S. Mackay.

No authoritative measure having yet been founded on these or any other propositions, the subject, in so far as it concerns the case of converts to the Christian faith, has again been taken up by the missionary conference, and, after reiterated discussion at successive meetings, has been handed over to the standing committee for its final and digested report. Accordingly, the chairman of that committee begs leave now to report as follows:—

I. The Bible being the true standard of morals to a Christian government, and its Christian subjects, it ought to be consulted in everything which it contains on the subjects of marriage and divorce, and nothing ought to be determined evidently contrary to its general principles.

Note.—This, with a slight alteration, is the second of the original propositions already referred to; and is too self-evident to require any comment.

II. It is in accordance with the spirit of the Bible, and the practice of the Protestant Church, to consider the State as the proper fountain of legislation in all civil questions affecting marriage and divorce.

Note.—This is the first of the original propositions which the former secretary proposes “nearly a truism.” “No marriage or divorce,” continues he, “is legal, unless it be according to the law; and whatever the law enacts, or even recognises, is to be held valid: thus the law practically defines marriage and divorce. It may define wrongly, and place them on other than a scriptural foundation; but so it may do in regard to everything with which it meddles. Under these circumstances, the duty of the Christian is plain. He needs not to seek for such marriage or divorce as is forbidden by the Bible, though legally free to do so, and if the law refuses what the Bible allows, he must submit to its ordinance. (Romans xiv. passim.) The duty of the minister is a little more complicated.

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Though the state may tighten or loosen the marriage tie, more than the Bible sanctions, it is plain enough that it has no power to force him to use improperly the authority it may have delegated to him; and accordingly, it may be his duty in certain cases to refuse both marriage and divorce. But it seems impossible to deny the validity of either, when sanctioned by the state, on the ground of its wanting the authority of Scripture: otherwise, as Christians are commanded to marry only in the Lord, we would be unmarried nearly the whole world. The law, for instance, might allow two persons to marry within the forbidden degrees of relationship; but, however much he lamented this, no Christian minister would feel himself at liberty to remarry one of those persons to a third party, while the other was still alive, and the legal union undissolved. If the contracting parties were Christians, and aware of their guilt, it would be a case for church discipline; but in other cases, surely common sense and charity require, that the offenders should be excused. To conclude, marriage and divorce are to be held legal and valid, when recognised in any way by the state; but there may be cases where, though the Christian allows the legal right, he denies the moral rightness: it is his duty to suffer them, but not to form or share in them; to bear his testimony against them, and to search the Scriptures, that he may be enabled to choose his own path aright."

III. A mere contract, oral or written, between the parents of two parties, proposed to be united in wedlock, without the actual celebration of the marriage ceremonial, not being regarded by the natives themselves as of the essence and validity of marriage, ought not to be so regarded by the Christian Church, or the Christian legislature.

Note—It is found on inquiry that such contracts are occasionally entered into; but that they are not held by the contracting parties themselves to be of the essence or validity of actual marriage. Either parent may resile from his promise, only the party so resiling is liable to reproach or disgrace.

IV. When the marriage ceremonial, authorised by Hindu and Muhammadan law and custom, is formally celebrated between the parties, whatever be their age, we are called on by reason and Scripture to regard such marriage as civilly and legally valid, and, consequently, its obligations as mutually binding.

Note.—It ought ever to be borne in mind that marriage is a contract, both civil and religious. As its essence seems to consist in the union of a man and woman, who are pledged to live together as husband and wife, its validity cannot depend on the mode or form of the ceremonial by which it is ratified. That ceremonial may be wholly civil, or partly civil and religious, and it may vary indefinitely with the manners, customs, and sentiments of different nations in different ages. In every country, whether civilised or barbarous, there is some act, form, or ceremony, which is generally held to constitute marriage, and to legitimate the children. When the question therefore is raised, whether we, as Christians, are called upon to regard those marriages as valid and legally binding, which are considered as such, by the tribes or nations to whom the married parties belonged at the time when the matrimonial alliance was contracted and the matrimonial rites duly celebrated? It is humbly submitted that we are so called upon. The very expression of the Apostle, "unbelieving wife, unbelieving husband," i. e. heathen wife, heathen husband, of necessity imports that he regarded them as legitimately husband and wife, while in their heathen state, because so constituted and accounted by their own customs and laws. So our Saviour, when he says, "What God hath joined together let not man put asunder," seems to imply that those were "joined together by an ordinance of God," or lawfully married, or were so united and regarded by the laws and customs which prevailed in his time, though none of the parties had then become believers in Christ.

V. Renunciation of Hinduism or Muhammadanism being regarded by Hindu and Muhammadan law and usage as tantamount to civil or legal death, the non-renouncing party is at liberty to treat the other as repudiated or divorced; but the Christian convert is not entitled to avail himself or herself of the Hindu or Muhammadan law, and regard his or her voluntary renunciation of ancestral faith as of itself releasing him or her from the obligations of the previous conjugal alliance, or as rendering him or her free at once to contract another.

Note—The law of the unbelieving party may entitle it to regard the other as civilly dead, or legally repudiated. But the law of the believing party does not entitle it to regard the other as *ipso facto* civilly dead, or legally repudiated. A change of religious opinion does not, according to Christian law, dissolve any previously contracted bonds or obligations. Should the unbelieving party, therefore, not avail itself of the conceded right or permission of its own law, but still think it good or well (*Συμφερόν*) i. e. consent, wish, or will to live with the believing party, and discharge, as before, the duties of husband or wife, it is concluded that the latter or believing party is bound by the previously contracted obligation, to treat the unbelieving party as husband or wife, precisely as if no change of religious sentiment had taken place. See 1 Cor. 12, 13, 14.

VI. If the unbelieving party wilfully desert or appear obstinately to refuse to live with the believing party, as husband or wife, such wilful desertion or continued refusal being presumptive evidence of a real or an intended divorce, it is supremely desirable that some legal plan or measure should be devised for universal adoption, whereby the believer might satisfactorily ascertain whether he or she has been definitively cast off or formally repudiated.

Note.—This proposition assumes it as indisputable that in no case whatever, save that of adultery, is the believer entitled to sue for divorce (see Matt. xix. 6—9, and 1 Cor. vii. 10, 11). Whether the Hindu or Muhammadan law declare a renunciation of Hinduism or Muhammadanism.

Muhammadanism to be, *ipso facto*, a just ground of divorce or, not, the law of the Christian utterly disclaims the validity of any such ground. Accordingly, if the unbelieving party be willing to abide by the antecedently formed nuptial bond, the believer has no option, no alternative, as in that case. There neither is nor can be any dissolution of the original marriage. But if in consequence of the permission and sanction of Hindu or Muhammadan law, the unbeliever depart, *i. e.* separate himself or herself,—in other words, finally and formally cast off, repudiate, or divorce the believing party,—the latter not being in this case the divorcer but the divorced, must be accounted as freed by the willful and deliberate act of the former, from the ties and obligations of the previous matrimonial union, and, consequently, at liberty to contract another (*see Cor vii. 16*). From the present constitution of Hindu society, however, and the entire want of any legislative enactment on the subject, it is often impossible to learn the real mind of the unbelieving party; particularly if that party be the wife. She may be herself in close confinement in her father's house, or in that of some other friend. Her husband, on his conversion, becoming an out-caste, may be positively debarred all access to her. How then is he to discover her own mind, her own unconstrained will or desire, concerning the continuance of her conjugal alliance with himself? How is he to know whether she is obstinately bent and determined to avail herself of her own law, and so to disown and repudiate him for ever? Or, whether from natural affection towards him, or any other cause, she is willing to forego the right and privilege conceded by her own law, and consequently willing still to live with him in conjugal union? Some authorised plan or method by which these important points can be legally ascertained without doing unnecessary violence to natural feeling or national custom seems imperatively demanded alike by the conditions of private and social wellbeing, and the pressing exigency of circumstances

VII. It is therefore humbly suggested, that, in order to ascertain the true sentiments of the unbelieving party, the magistrate be authorised, on petition of the believing party, to have the former (being at least 14 years of age in the case of a male, and 12 in the case of a female,) brought before him, in open court, or in his own private house, or in any other convenient place, there to be questioned in the presence or hearing of the petitioning party and friends, as to his or her willingness or unwillingness to live with and be considered the husband, or wife, of the latter; that, if the unbelieving party be found willing thus to live with the other, he or she be at once pronounced at liberty to do so, and immediate steps be taken to ensure the consummation of such voluntarily expressed wish, but that, in the event of a positive refusal on the part of the unbeliever, at the first examination, the same party (after the lapse of at least a twelvemonth, during which there may be ample scope for reflection on the one hand and conciliation on the other,) be again brought before the magistrate, and similarly interrogated as before; that after all possible means of conciliation have been tried, should the refusal be still persisted in, the fact be publicly announced and officially recorded, and that a copy of such record, countersigned by the magistrate, be furnished to the petitioning party, as the voucher of a legal divorce.

(No. 64)

From *F. J. Halliday*, Esq., Junior Secretary to the Government of India, to
J. C. C. Sutherland, Esq., Secretary to the Indian Law Commission.

Sir,

I AM directed by the Right Honourable the Governor-general in Council to transmit to you, in order to its being laid before the Law Commissioners, a memorial from the Rev G. Gogerly, and other missionaries, with two enclosures, complaining of certain legal grievances for which they desire a remedy, and to request that the case of the memorialists may be considered by the Law Commissioners in connexion with the subject of the *lex loci* of India, now before that body.

Fort William, 10 May 1841

I have, &c.
(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

Legis. Cons
10 May 1841.
No. 24.

Legislative Dept.

(No. 60.)

From *F. J. Halliday*, Esq., Junior Secretary to the Government of India, to
Rev. *A. Duff*, and other Missionaries.

Gentlemen,

I AM directed to acknowledge the receipt of a memorial to the address of the Right Honourable the Governor-general of India in Council, with enclosures, relating to certain grievances under which native converts at present labour, and to state in reply that the papers have been referred to the Law Commission for their consideration.

Fort William, 10 May 1841

I have, &c.
(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

Legis. Cons
10 May 1841.
No 25

Legislative Dept

SPECIAL REPORTS OF THE

No. 7.
Application with
respect to Native
Christians.

— No. 7. —

APPLICATION OF MISSIONARIES TO REMEDY THE DISABILITIES OF NATIVE CHRISTIANS.

Legis. Cons.
8 July 1842.
No. 16.

From J. C. C. Sutherland, Esq. Secretary to the Indian Law Commissioners, to T. H. Maddock, Esq. Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to acknowledge the receipt of your letter under date the 10th instant, and of the memorial therewith transmitted, which they are requested to take into consideration in connexion with the subject of the *lex loci* of India.

2. The memorial refers more particularly to the situation of natives who have abandoned the religious creed of their fathers, many of whom, it is stated, have become members of the Christian Church. This two-fold class, it is represented, "at present labour under sundry legal disabilities of a specific character, and are also left, in reference to many other momentous civil concerns and relationships, without any laws to guide and direct them."

3. On a reference to the draft of an Act for declaring the *lex loci* of the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts, which has been prepared by the Law Commissioners under the instructions conveyed in your letter dated 11th January, the Governor-general in Council will perceive that persons in the circumstances stated, are recognised as subject to the *lex loci*, and that a general provision has been made to guard persons, in such circumstances from any loss or forfeiture of rights, in consequence of their renunciation of the religion of their fathers.

4. In Note (i) appended to the draft Act, the Commissioners have expressed their opinion that the law to be administered by Her Majesty's Courts should be modified so as to afford the same protection to persons in similar circumstances within their jurisdiction respectively.

Para 4. The defects of the laws relative to marriages and rights of inheritance.

5. The grievances complained of in the memorial are reduced to three heads. Those that fall under the third head will be remedied by the application of the *lex loci* to persons in the circumstances stated, by which questions relative to marriages contracted subsequently to their change of religion, and rights of inheritance depending on such marriages, and rights of inheritance generally to property possessed by such persons under titles not depending on Hindoo or Mahomedan law, will be determined.

The loss or total forfeiture of property to which a Hindoo or Mahomedan is liable by renouncing the religion of his father.

6. The grievances stated under the second head will be prevented by the provisions in section XII. of the draft Act in all the territories under the government of the East India Company, excepting the places within the local limits of the jurisdiction of Her Majesty's Supreme Courts, if similar provisions are enacted for those courts, the measure will be complete.

The coercion and cruelties to which persons under legal age may be subjected by parents or guardians in consequence of their changing their religion.

7. The possible grievances set forth under the first head will be prevented in some degree if the provisions in sections XI. and XII. are made the general law, as sons or daughters, under the circumstances supposed, will be secured in their right to maintenance from their fathers; and if they are at an age at which, by the law of England, they would be considered competent to exercise a discretion in the matter of religion, they will be entitled, under the *lex loci* to claim such protection as the law of England affords against any coercion or oppression used to deter them from following their new religion.

8. In framing the code of substantive law, it will be an object to define the relative rights and duties of parents and children. At present the Law Commissioners are not prepared to offer any specific suggestions on the subject, and it does not appear to them that there is an urgent occasion for special legislation upon it.

Indian Law Commission,
22 May 1841.

I have, &c.
(signed) J. C. C. Sutherland,
Secretary.

To the Right Honourable George Earl of Auckland, G. C. B. Governor-general of India in Council.

IN compliance with the instructions of Government, conveyed to us in Mr. Secretary Maddock's letter of the 11th January last, we have now the honour to transmit a Draft Act, upon the principle of the four first recommendations of our Report of the 31st October 1840, in the form of an Appendix to that Report.

2. On the 10th ultimo, Mr. Secretary Maddock addressed a letter to our Secretary, transmitting a Memorial, from the Reverend George Gogerly and other Missionaries, with two enclosures, — complaining of certain legal grievances for which they desire a remedy. Mr. Maddock's letter conveyed to us the wish of Government that we should consider the Memorial in connexion with the subject of the *lex loci* of India.

3. We have accordingly done so, and we think that the provisions of sections X., XI. and XII. will afford a remedy for the grievances complained of, — as far at least as such an object can be properly connected with the other purposes of this Act.

4. We submit the Draft, together with some explanatory notes we have appended to it, to the consideration of your Lordship in Council.

A. Amos.
C. H. Cameron
F. Millett.
D. Elliot.
H. Borradaile.

Indian Law Commission, 22 May 1841.

DRAFT ACT.

WHEREAS it is doubtful what is now the substantive (*a*) law of the place (*b*) in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts at Calcutta, Madras, and Bombay;

And whereas also a practice has grown up in the Courts of the East India Company, of administering to every person not being a Hindoo or Mahomedan, — in all cases not specially provided for, — the substantive law of the country of such person, or of the country of the ancestors of such person, whenever such substantive law is not inconsistent with equity and good conscience;

And whereas also it is lawful for aliens to hold lands in the said territories, and there is a great and increasing number of aliens in the said territories;

And whereas also the diversity of laws, which the said courts of the East India Company, according to the said practice, may have to administer, is likely to occasion great and increasing inconvenience and difficulty;

And whereas also there is in the said territories a great and increasing number of persons, whose legal connexion with their country or with the country of their ancestors is interrupted by illegitimacy, and it is doubtful whether the said practice is applicable to such persons;

And whereas also the said courts of the East India Company will, in the application of the said practice, have frequently to determine intricate questions of pedigree, before they can decide what law they are to administer;

And whereas also there is in the said territories a large number of Armenians, and it is doubtful what is the Armenian law;

And whereas also the English substantive law is the law of the place (*b*) in such parts of the territories subject to the government of the East India Company as are within the local jurisdiction of Her Majesty's Supreme Courts aforesaid, and it is expedient that the law of the place in the territories subject to the government of the East India Company within and without such jurisdictions should, as nearly as circumstances will permit, be the same;

And whereas also there is a large and increasing number of British subjects in the territories subject to the government of the East India Company, and it is lawful for such British subjects to hold lands therein, as well without as within the

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local jurisdiction of Her Majesty's Supreme Courts aforesaid; and the courts of the East India Company now administer English substantive law to such British subjects whenever such substantive law is not inconsistent with equity and good conscience, and it is expedient that they should continue to do so,

It is hereby enacted, that from and after the day of in the year 1841, the substantive law of the place in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts aforesaid, shall be so much of the substantive law of England as is applicable to the situation of the people of the said territories, and as is not inconsistent with any Regulation of the Codes of Bengal, Madras, or Bombay, or with any Act passed by the Council of India, or with this Act;

II. Provided, and it is hereby enacted, that nothing in this Act contained shall apply, so far as regards marriage, divorce, or adoption, to any person professing in good faith any religion other than the Christian religion.

III. Provided also, and it is hereby enacted, that nothing in this Act contained shall be construed to prevent any court from deciding any case according to any good and lawful (c) local custom.

IV. And whereas also it is held by Her Majesty's Supreme Courts at Calcutta, Madras, and Bombay, that (d) no Act of Parliament, which has been passed since the thirteenth year of his Majesty King George the First, extends to India, unless there be in such Act a special provision to that effect; and it is expedient, as aforesaid, that the substantive law of the place in the said territories, within and without the local jurisdiction of the last mentioned courts, should be, as nearly as circumstances will permit, the same;

It is therefore enacted, that no Act of Parliament, passed since the thirteenth year of King George the First, shall be held to be extended to any place in India by virtue of this Act, unless there be in such Act of Parliament a special provision for extending it to India.

V. And whereas no court of the East India Company is in respect of the administration of English law, a Court of Law, as distinguished from a Court of Equity and good Conscience; and doubts might arise in what way such courts ought to adjudicate the legal rights of the persons subject to the substantive law of the place enacted by this Act; and to modify such legal rights whenever equity and good conscience require, (e)

It is hereby enacted, that the said courts of the East India Company shall adjudicate such legal rights, and modify the same, whenever equity and good conscience require, in the same way in which the said courts of the East India Company now adjudicate and modify the legal rights of British subjects.

VI. And whereas it is not expedient that the distinctions, (f) known in English substantive law, between real property and personal property, should subsist in the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts aforesaid;

It is hereby enacted, that all immovable property, situate within the territories subject to the government of the East India Company, and without the local jurisdiction of the said Supreme Courts, and every interest in immovable property so situate, shall be regulated by the rules which regulate personal property according to the substantive law of England, and shall be adjudicated upon accordingly in all courts within the said territories, whether established by royal charter or otherwise.

VII. Provided, and it is hereby enacted, that nothing herein contained shall be construed to affect the distinction (g) recognised by the law of England, as well as by the law of other civilised nations, according to which succession to immovable property of a person deceased, follows the law of the place where such property is situate, while succession to moveable property of a person deceased follows the law of the place of the domicile of such person.

VIII. And it is hereby enacted, that in all cases to be decided under this Act, an appeal shall lie from the decision of any of the courts of the East India Company to such one of the colleges of justice established by the Act of the Council of India, No. — of 1841, as is situate in the same presidency as the court whose decision is appealed from, subject to such rules as are contained in that Act,

IX. And it is hereby enacted, that in every suit brought in any court of the East India Company, wherein the matter out of which the cause of action arose, shall have had place before the said day of 1841, the decision shall be according to the law or laws under which the parties shall appear to the court.

to have supposed themselves to be living, or according to equity and good conscience, following such law or laws

X. And it is hereby enacted, that nothing in this Act contained shall apply to any Hindoo or Mahomedan, or to any property of any Hindoo or Mahomedan (*h*), unless such Hindoo or Mahomedan shall have renounced the Hindoo and Mahomedan religion (*i*).

XI. Provided that no Hindoo or Mahomedan shall by renouncing his religion lose any rights or property, or deprive any other person of any rights or property.

XII. And it is hereby enacted, that in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Courts aforesaid, so much of the Hindoo and Mahomedan law as inflicts forfeiture of property or rights upon any party renouncing either of those religions, is abrogated.

XIII. And it is hereby enacted, that nothing in this Act contained shall apply to the Court of the Recorder of Prince of (*k*) Wales' Island, Singapore, and Malacca (*l*).

NOTES TO THE DRAFT ACT.

(a) SUBSTANTIVE LAW

For two reasons we think it right to explain the sense in which we have used this expression

First, because, though the expression has been used in treatises of jurisprudence and in official reports, it has not, we believe, been before used in legislation

Second, because we believe the expression has been used, or at least understood, in a sense different from that which it is intended to bear in this Act.

It has been used or understood, we believe, as if it included the definitions of crimes, as if there were substantive criminal law, and substantive civil law, as if the only subject matter of the whole *corpus juris* excluded by it, were the rules of pleading, evidence, and procedure. When the expression is used in this sense, the rules of criminal pleading, evidence and procedure are considered as adjective to the penal code, or definitions of crimes, the penal code itself being considered, not as adjective to the civil code, but as substantive.

In this Act we intend the term to include only the definitions of rights and obligations; and we consider the definitions of civil injuries and the definitions of crimes as parts of adjective law.

This, we think, is clearly the correct import of the expression. The definitions of civil injuries and of crimes are evidently only necessary for preventing infractions of rights and obligations

If we suppose every member of the community to have sufficient motives, independently of legal proceedings, to respect the rights of his neighbour and his own obligations, there would be no use in defining civil injuries or crimes, that is to say, definitions of civil injuries and of crimes are of no use, except as adjective to definitions of rights and obligations.

We have also the authority of the Fourth Report of the English Commissioners of Criminal Law for this use of the expression

"It is in the first place material (they say) to advert generally to the relation which the criminal branch of the law bears to the whole system. Every system of municipal law consists necessarily of two distinct parts, which may be distinguished as substantive and adjective laws. The former comprehends the definition of civil rights and obligations; while it is the office of the latter to prevent the occurrence of certain grave infractions of such rights and obligations. And one mode of prevention, namely, the infliction of punishment on those who offend, in order, by example, to deter others from offending, constitutes the great principle on which the law respecting crimes and punishments is founded." p 6.

(b) LAW OF THE PLACE,

Lex loci. The Hindoo law and the Mahomedan law are properly the laws of persons belonging to the Hindoo and Mahomedan religions; they cannot therefore be considered as *lex loci*, in the sense in which English law is the *lex loci* of the Presidencies, although they are the laws of a vast majority of the inhabitants.

(c) LOCAL CUSTOM

Besides local customs, there are in this country customs of families and customs of sects; but we believe there are no customs of any families, other than Hindoo or Mahomedan unities, which are excepted from this Act by the general exception in section X

With regard to customs of sects, the case of the Parsees is the only one we are aware of, concerning which there can be any doubt. But all that relates to marriage, divorce, or adoption,

adoption, is excepted by section II., and we suppose there can scarcely be anything else which the Parsees would not be willing to sacrifice for the sake of having the law applicable to them the same in the mofussil as in the Presidencies.

Jains, Budhists and Seikhs are to be considered as Heterodox Hindoos.

(d) We wrote to the Judges of the Supreme Courts of Madras and Bombay to ascertain if this proposition is correct as to their Courts, and have been favoured with early answers. The answer of Sir Robert Comyn and Sir Edward Gambier shows that the proposition is correct as regards the Supreme Court of Madras. By Sir Henry Roper's answer, it seems that the question has never been decided at Bombay. From the evidence of Sir Ralph Rice, however, before the Select Committee of the House of Lords, 1830, it appears that the thirteenth year of King George the First has been considered at Bombay also, as the epoch at which English law was introduced by the establishment of the Mayor's Court.

We observe also in the Reports of Cases decided by the Sudder Dewanny Adawlut of Bombay, vol. 1, p. 333, that a case is cited by the Advocate-general from the *Courier* newspaper of the 30th January 1818, in which the learned Recorder of that day is made to say that "the first charter of justice might be said to be that of George I. in 1726, creating the Mayor's Court at each of the three Presidencies." Perhaps therefore the allegation in the preamble to this section may be considered sufficiently proved.

(e) EQUITY AND GOOD CONSCIENCE.

The mofussil courts as regards English law are not courts of law, but of equity.

They now administer to British subjects the same system which is administered by English courts of equity. See the case of *Hoo v. Peter Marquis*, Reports of the Sudder Dewanny Adawlut, vol. 4, p. 243

But one very remarkable difference in their circumstances causes an equally remarkable difference in the mode in which they administer that system. They are courts administering English equity in a country in which there are no courts of English law. This is a vast advantage. A very great portion of the business of English courts of equity consists of attempts (not always, though generally effectual) to prevent or remedy the mischievous effects of proceedings in courts of law. Where there are no such courts this function has of course no existence. The mofussil courts have nothing to do but to administer equity, following law of course, but unembarrassed by the co-existence of courts of law, that is to say, to give to every suitor his legal rights when there is nothing inequitable in them,—when there is anything inequitable, then his legal rights modified and corrected by equity. Again, as every British subject who sues in the mofussil is seeking equity, he is obliged, according to the well known rule, to do equity as the price of obtaining it.

The effect of this Act will not be, to introduce any new system into the mofussil courts, but merely to extend to all persons who are not Hindoos or Mahomedans that system which is already administered to British subjects.

(f) DISTINCTION BETWEEN REAL AND PERSONAL PROPERTY.

This, in the early stages of English law, would have been a very important change. But now every man may by that law dispose of his real property by will as he pleases. And by Mr Fergusson's Act the real estates of British subjects in the Presidencies are liable for debts of all kinds. Practically therefore, this change will not be a great one, especially when we take into account the circumstance that all the mofussil courts are courts of equity, in which kind of courts the distinction between realty and personalty are not looked upon with favour.

We apprehend that the law of primogeniture as it now exists in England has not much direct operation, because the greater part of landed property is either in settlement or passes by will. It is probable, however, that the original law of primogeniture, excluding as it did any testamentary power, has still a considerable indirect effect through the feelings of landed proprietors. It probably induces them in their settlements and wills to make an eldest son, as it is commonly expressed.

The question agitated among political economists has been, whether a compulsory law of equal partition is beneficial or otherwise. We believe it has not been frequently urged that, so long as every man is left at liberty to divide his property as he pleases after his death, the national welfare requires that, in the event of his making no provision, the principle of primogeniture should prevail.

Whether, in a country where the power to settle and devise real property exists, the feeling in favour of primogeniture, or something approaching to primogeniture, with its effect upon wills and settlements, is beneficial or not,—is a question too wide to be discussed in this note. Nor is such a discussion necessary for the present purpose; because the feeling does not exist with regard to the real property of Englishmen in India, and assuredly could not be created in such circumstances by merely permitting the remnant of the ancient English law of primogeniture to continue in existence. The existence of that remnant, therefore, surely holds out no prospect of advantage, equivalent to that of having a simple and uniform law of succession for all kinds of property.

There is one distinction between moveable and immoveable property, which we believe in practice observed in the mofussil, and which we think ought to have the sanction of law. We mean the distinction introduced into English law by the Statute of Frauds, which makes

writing and signature necessary to a conveyance of real property. But we think a provision to this effect will more properly form the subject of a separate Act than of an exception to this section.

(g) It cannot be denied that, by the recognition of this distinction, the difficult question of domicile will frequently arise for decision in the mofussil courts, and also that those courts will frequently have to inquire what is the law of the domicile of a deceased person, in respect of succession to moveable property. These difficulties, however, cannot be removed without making British India an exception in this respect to other British possessions, and perhaps to the whole civilised world; and, even if we thought it advisable to propose the abolition of the distinction, we should doubt whether any Legislature, except the Imperial Parliament, could with perfect propriety alter a part of the law which seems to have a near relation to the *comitas inter gentes*.

When we come to the codes of substantive law we shall go fully into this subject, and consider how far we can, consistently with a due respect to the general practice of nations, relieve the courts of this country from the necessity of applying any other law than that of the place.

(h) The right of Hindoos and Mahomedans to have Hindoo and Mahomedan law administered to them is limited, both in the Presidencies and in the mofussil, but the limitation is not the same in the two cases. Neither is the law administered to these two classes, in cases where they are not entitled to their own laws, the same (practically at least) in the Presidencies and in the mofussil.

When we are making the three codes of substantive law, which appear to be required for the three great classes of which the population of this Indian Empire consists, viz Hindoos, Mahomedans, and persons who are neither Hindoos nor Mahomedans, it is to be hoped that we may find it possible to give to the two former classes the same law, in the cases in which Hindoo and Mahomedan law are not now specially reserved to them, or may not continue to be specially reserved to them, as that to which the last class will be subject in such cases. It is also to be hoped, or rather it is not to be doubted, that we shall be able to provide that the legal condition of each of the three classes shall be the same respectively in the Presidencies and in the mofussil.

This Act, however, is intended for the last class only, and any provisions affecting the other two would be out of place in it.

(i) According to the view expressed in note (b), these persons no longer professing the Hindoo and Mahomedan religions, the Hindoo and Mahomedan laws will not be applicable to them respectively. They will become properly subject to the *lex loci*. It is necessary however to provide against any loss of rights to them, or to any other persons through them, by this change of law. This is done by section XI.

But besides the change from Hindoo and Mahomedan law to the *lex loci* which owes its origin to this Act, there is a loss of rights consequent upon renunciation of the Hindoo and Mahomedan religions, by the operation of the two systems of law belonging respectively to those religions. It was to prevent this loss of rights that Section IX Regulation VII of 1832 of the Bengal Code was enacted. Section XII of this Act will make the law uniform on this point, throughout the territories under the government of the East India Company, except within the limits of the local jurisdiction of Her Majesty's Supreme Courts. We think it ought to be the same within those limits, but to make it so does not fall within the scope of this Act.

(k) The whole of the Settlements in the Straits being subject to the law which is administered by the Recorder's Court, there is no room for the application of this Act to those Settlements.

(l) We at first thought of extending, by a general provision in this Act, all the Acts of the Council of India which have extended the provisions of Acts of Parliament to any parts of India, or to any persons in India. But having looked through those Acts, we believe it will be a more expedient course to make separate and special provision for that purpose.

MINUTE by the Honourable A. Amos, dated the 25th April 1842.

THESE papers have been detained for a long time by Lord Auckland, in consequence, I presume, of the extremely important and urgent matters which engrossed his attention. It is scarcely to be expected that Lord Ellenborough can, for some months at least, find time to consider and write upon the subject.

I incline to think that we should send the papers home directly; but it would be advisable to accompany them with some general remarks of our own. Perhaps we can say that, as regards East Indians Portuguese and others of European origin or descent, and perhaps Armenians, if they are desirous of the change, we think that the suggestions of the Commission are salutary, but we entertain doubts as to the prudence of the change as regards other classes; and that we are not to be understood as adopting the opinions of the Commission as to what, in the absence of any new provision, is the actual *lex loci* of the country; and under the present circumstances of the country, we think it most prudent not to publish

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publish the draft Act, especially without consulting the Governor-general, who would probably not like to give an opinion on the subject without examining it more at leisure than he can be expected to do at present.

(signed) A. Amos.

Leg. Cons.
8 July 1842.
No. 20.
Lex Loci.

MINUTE by the Honourable H. T. Prinsep, dated the 29th April 1842.

I AM sorry I cannot agree to the principles on which the propositions of the Law Commission in regard to the *lex loci* of India are based.

The Commission state it to be doubtful what is the substantive civil law to which parties not being natives of Great Britain, and not Hindoo or Mussulman, are subject, and add that a practice has grown up in the courts of the East India Company of administering their own law to such persons.

Now this seems to me to be an erroneous basis on which to found any law upon this subject, for it is a well known and fully recognised principle in all eastern countries, from China even to Smyrna and Constantinople, that foreigners, denizens Timmees (*i. e.* submitting enemies) and licensed residents of all kinds, if not Mahomedan or of the religion of the country, shall bring with them for all domestic transactions their own customs and laws, including their own rites of marriage and rules of inheritance.

Our courts, instead of being chargeable with allowing a new practice to grow silently up to this point, have only recognised and acted upon the law they found in force, that is, the law applied to Europeans when they were mere licensed settlers and traders residing under sufferance in the ports and cities of India.

The law of England, which is much less liberal on this point, is based on principles that can never, I conceive, be extended to Asiatics, and its origin will not bear close investigation; I cannot consent therefore to recommend to the Home Authorities the adoption of such a law as that recommended by the Law Commission, which, beginning with a declaration that it has hitherto been doubtful what was the law of India in respect to foreigners, and that in consequence of such doubts an erroneous practice had grown up, proceeds broadly to lay down that henceforward all foreigners, Asiatic as well as European, shall in all matters of inheritance be dealt with according to the law of England, modified only by the removal of the distinctions between real and personal estate.

But though I disapprove of the basis of this law, as it is now drafted, I am fully sensible of the disadvantages that arise from uncertainty, and of the necessity of prescribing what the law and practice shall hereafter be, more especially in cases where no special law is alleged and established as that recognised by the family of the deceased. Although, therefore, I would not hastily abrogate the recognised and well understood principle which allows to foreign settlers the privilege of handing down their property to their posterity according to the law of their nation and sect, I should have no objection to allowing to English law such a preference as should leave it to be the law of distribution, whenever another special law is not pleaded and put in evidence.

This will allow Armenians and Christians of the half race, and any other class that pleases to take the benefit of English law, and so the Portuguese and other European foreigners, unless these latter lay claim to their own law, which assuredly they have as much right to do in respect to their estates in the interior, some of which are very ancient, as we English have in respect to the estates our ancestors acquired at the same early period.

I object to the terms of sections X. XI. and XII of the Law Commissioners' draft of law.

In section X. it is provided that the Act is not to apply to any Hindoo or Mahomedan, or to the estates and property of such, "unless such Hindoo or Mahomedan shall have renounced his religion," implying that upon renunciation, his estate is to be administered to according to English law.

Section XI. provides that no one by renouncing is to acquire or deprive others of any rights of property.

Such a law as this would, as it seems to me, leave things in a strange confusion: A, a Hindoo, has turned Christian. His wife is still Hindoo, or may be Christian likewise. His estate, however, is to go by English law. and he may will it away

to the prejudice of both widow and brothers. If he dies intestate, the administration is still to be taken out by the widow, being a Hindoo, as heir of a Christian and British subject, and the family have thus to receive a strange law of which they are quite ignorant.

I would leave out both these sections, if the Act be ever passed, as imperfect and impossible of application, besides being calculated to do much mischief, by exciting apprehension that they are preparatory to an attempt to produce extensively the status for which the Government thus deems it necessary to legislate.

I have no objection to section XII. standing, provided the word "abrogated" be changed for "shall not be enforced by any British court."

We cannot pretend to abrogate what is matter of religious belief, and supposed to have revelation for its origin.

I would here remark, that if whatever calls itself Hindoo or Moosulman is to be left *in statu* so far as concerns the law of inheritance, &c. very little will be done to simplify the question of substantive *lex loci*, for the special customs of Goosaines, Jains, and all the various heterodox castes and races of India come within the word Hindoo, and the law of inheritance to them is not the law of Menu, nor the Metacshara and Dyabhaga, but their own special customs, as proved in evidence.

In like manner there are many varieties of Mahomedan law, and the Sheeas, Mahkees and others claim always, and have been allowed to have their estates descend and be administered to according to their special doctrines.

Even supposing, therefore, the draft of Act proposed by the Law Commissioners to be made law, the courts administering it will have to take evidence in regard to special customs, and be in the same uncertainty as to what law is to be applied to the particular Hindoo and Mahomedan estate before them, as they are now under the universally recognised principle of Asia, which respects the laws and customs of the settler of whatever race he may be, and allows the claims of inheritance to his estate to be preferred and decree of distribution to be made under that law.

In order to make their law more complete, the Law Commissioners ought, as it strikes me, to have laid down in respect to Mahomedans, that the Soonee law of Uboo Humcefa and his school should be the substantive law for Mahomedans, unless the fact of a difference of sect and other specific known law be established in respect to the deceased.

And so in respect to Hindoos the law of Menu, with specification of the tract in which the Mitholo varieties are to be the rule. This principle in respect to these two great classes would be quite consistent with the further provision, that for strangers the English law should be the rule, when other special law of the deceased might not be pleaded and proved.

We are not going to pass this law at present, or I should deem it necessary to go more in detail into this subject

I cannot, however, let it be sent home to be submitted eventually to Parliament without some protest against the principle which has been adopted in its preparation, which takes no account whatever of the recognised practice of Asia in respect to the estates of aliens, which I regard as a substantive law already established for them, and acted upon as such in all the courts of India.

(signed) H. T. Prinsep.

MINUTE by the Honourable A. Amos, dated the 2d May 1842; and Note by the Honourable the President, dated 7th July 1842.

I do not think it necessary, for the purpose of legislation, to come to a decision whether we are satisfied with the theory of the Law Commission, that British law is the *lex loci* of India, or with that of Mr. Prinsep in favour of a custom of Asia. We have before us a practice pretty clearly established, at least for the mofussil courts, which is consonant to the alleged *lex Asiatica*. That practice is attended with great uncertainty and inconvenience, especially where a preliminary question is doubtful, viz, as to what the law of the individual must be deemed to be; a question not depending on domicile, but involving inquiries of pedigree and legitimacy, besides many points of law which are by no means settled.

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The inconveniences of the existing practice being manifest, it becomes a subject of consideration how far it is expedient to remedy them by the introduction of the British law? Such a measure would remedy the inconveniences which attend the present system; but unless the British law be introduced with exceptions and qualifications, it would entail far greater evils than those which it would remedy.

The Law Commission have accordingly admitted that in no case can the whole code of English law be made applicable to any class of persons in the mofussil; the more complicated provisions of that code must be excepted. Again, upon certain matters which have, in some measure, a religious aspect, such as marriage, the Law Commission do not propose to interfere. They think it would be imprudent also to interfere with Mahomedans, and Hindoos, whether orthodox or heterodox.

Discussions on the subject have taken place in Council. I collected that it was the general opinion that in the cases of East Indians and descendants of Portuguese, in which so much difficulty arises as to determining what is the law of the individual, the proposed Act, drafted by the Law Commission would be highly beneficial. With regard to Armenians the difficulty is of another kind, viz., assuming that the law of the individual is that of Armenian customs; what are those customs? As the Armenians appear to be desirous of being relieved from the uncertainties attending their own customs, I did not collect that (if their wishes were clearly ascertained) there would be any reluctance on the part of the Council to extending the Act to this class of persons.

As regards all other European foreigners, I think there are many reasons for including them, and I do not see that they can complain of being subject to the same law by which they would be bound if they went to England or another English colony, especially after becoming domiciled. This indeed is agreeable to the general custom of Europe, especially as regards the transmission of immoveable property.

But there are other classes of persons in India, permanently or transiently residing there, who are neither of European origin, nor Armenians, Mahomedan, or Hindoos, even in the most extensive application of the two latter appellations. I do not suppose that we should be desirous of interfering with the usages of the Parsees, unless at their own desire, but, independently of this sect, I doubt whether it would be expedient to make further exceptions. However, as much difference of opinion prevails on this subject, I think the consideration of these cases may well be postponed so as not to impede the attainment of great benefits by extensive classes of the community, who in various cases do not know what law they are subject to, and in others, or sometimes the same, are said to be governed by laws, the provisions of which no one can define with accuracy.

There is, no doubt, much difficulty and delicacy in the question, where Hindoos or Mahomedans turn Christians; but I think the principle ought to be that they may become subject to British law, but that this shall not prejudice any vested rights in other Hindoos or Mahomedans.

(signed) A. Amos.

Note by the Honourable the President in Council.

THERE is so much difficulty and delicacy in this question, and it bears upon the interests of so many classes of persons, that it would be dangerous, I think, to legislate until opinions are less divided on the subject. In the meantime, it might be as well to ascertain the sentiments of the Governor-general, and to solicit the opinions of the subordinate governments, none of whom have yet been afforded the opportunity of taking a part in the discussion.

7 July 1842.

(signed) W. W. Bird.

INDIAN LAW COMMISSIONERS.

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From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to the Chief Secretaries to the Governments of Fort St. George (No. 157), and Bombay (No. 158), and Secretary to the Government of the North-West Provinces (No. 159).

No. 7.
Application with respect to Native Christians.

Legis. Cons.
8 July 1842.
No. 29.

Sir,
In a letter, No. —, from this department, dated the 31st May 1841, in which 12 copies of a Report of the Law Commissioners, dated 31st October, 1840, on the substantive law to which all persons in the mofussil, not subject to Hindoo or Mahomedan civil law, should be subject, were forwarded for submission to the Report, relates to a matter of general importance, that as the subject discussed in that Report, relates to a matter of general importance, the Honourable the President in Council is desirous of receiving the opinion of the Honourable the President through the government, the opinions of the judges of the Sudder Court, and of officers of judgment and experience in the Presidency of

I am now desired to state for the information of the Honourable the President in Council as desirous of receiving the opinion of the Honourable the President as well as, through the government, the opinions of the judges of the Sudder Court, and of officers of judgment and experience in the Presidency of

2. The Law Commissioners, agreeably to the request of the Supreme Government, prepared and submitted a draft Act upon the principle of their first four recommendations; 12 copies of that Act accompany this communication for similar opinions.

Legis. Depart.
Madras. Bombay. N.W. Prov.
No. 63 64 65
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M. B. N.W.P.
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I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Fort William, 8 July 1842.

(No. 57.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legis. Cons.
8 July 1842.
No. 23.

Sir,

On the 28th May 1841, 12 copies of a Report of the Law Commissioners, dated 31st October 1840, on the substantive law to which all persons in the mofussil, not subject to Hindoo or Mahomedan civil law, should be subject, were forwarded to you. I am now desired to state, for the information of the Honourable the Deputy-governor of Bengal, that as the subject discussed in that Report relates to a matter of general importance, the Honourable the President in Council is desirous of receiving the opinion of his Honor, as well as, through him, the opinions of the judges of the Sudder Court, and of officers of judgment and experience in the Presidency of Bengal.

Legis. Depart.

2. The Law Commissioners, agreeably to the request of the Supreme Government, prepared and submitted a draft Act upon the principle of their first four recommendations; 12 copies of that Act accompany this communication for similar opinions.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.
Fort William, 8 July 1842.

— No. 8. —

SALE IN EXECUTION OF DECREES OF CIVIL COURTS.

No. 8.
Sale in Execution
of Decrees of Civil
Courts

Legis. Cons.
20 March 1841.
No. 1.

(No. 1154.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to
F. J. Halliday, Esq. Junior Secretary to the Government of India, Judicial
Department.

Sir,

Judicial Dep.

I AM directed by the Right honourable the Governor of Bengal to forward for submission to the Supreme Government, an original letter from the register of the Sudder Dewanny Adawlut, No. 3579, of 20th December 1839, and one from the secretary to the Sudder Board of Revenue, No. 52, of the 4th of February last, on the subject of the draft Act forwarded with Mr. J. P. Grant's letter, No. 465, of 11th November 1839, for modifying section 2, Regulation XLV. 1793, by doing away with the necessity of the furnishing, by courts of justice to commissioners of revenue, of translations of decrees for the sale of lands in execution of awards of court.

2 At the same time, as connected with the same subject, his Lordship has directed me to transmit to you a letter from the register of the Sudder Dewanny Adawlut, No. 1877, of the 5th instant, explaining a difference of opinion between the Sudder Courts of Calcutta and Allahabad, regarding the respective powers of judicial and revenue authorities over sales effected by collectors for realisation of decrees of the courts.

3. It was stated in Mr. Grant's letter referred to, in the first paragraph, that the honourable the President in Council was not prepared to pass the law recommended by the Sudder Court, by a part of the Sudder Board, and by the Bengal Government, for transferring to the judicial from the revenue authorities the duty of selling lands in execution of judicial decrees. And it was intimated by his Honor in Council, that nothing further was needed to remove the practical inconveniences which had given rise to the proposition, but to pass a law for doing away with the necessity of the courts furnishing to commissioners of revenue translations of such of their decrees as direct lands to be sold.

4. The letter of the Sudder Board, and the latest letter from the Sudder Court, will satisfy his Lordship in Council that the furnishing of translations was not the only practical inconvenience requiring remedy, and a reference to the former correspondence on the subject now resubmitted, will show that the discussions really arose out of the very circumstances now again brought forward by the Court and Board; viz. 1st, the power over sales for decrees of court disputed between the revenue and judicial authorities; and 2d, the doubt as to the meaning of the expression "small portions of lakheraj land," used in section 3, Regulation VII. 1825, to fix the limit beyond which judges may not use other agency than that of the collectors to effect sales of land in execution of their decrees.

5. But a re-consideration of the points of former discussion, rendered necessary by these later letters from the Court and the Board, has induced his Lordship to wish that the present opportunity should be taken, since a part of the subject must, in consequence of these letters, again come before the Supreme Government, of resubmitting to the notice of the Governor-general in Council the entire proposition of the Bengal Government, to which in November last the Supreme Government hesitated to accede, but which his Lordship is yet disposed to think may, on re-examination, be found not unworthy of adoption.

6. The proposition is shortly this: That collectors should no longer be the agents of judges for the sales of lands in execution of decrees, but that the judges should cause such sales to be effected by their own subordinates.

7. There is obviously no peculiar fitness in a collector for this kind of agency, he is not subordinate to the judge, and not always at the same place with the
functionary.

functionary; he is subordinate to another functionary, the commissioner of revenue; and, as a representative of the pecuniary interests of Government, he may sometimes be indisposed, occasionally even unfit, to conduct, as agent for the judge, a portion of the money concerns of individuals.

8. The reasons which induced the Legislature in 1793 to place this agency in the hands of the collectors were peculiar: It was then the practice to sell distinct portions of estates to realise awards of court; each sale included a butwarrah, and affected the assessment and the permanency of the government jumma. It was indispensable, therefore, to give the chief charge of such operations into the hands of the collectors; and this necessity was expressly assigned by the preamble to Regulation XLV. 1793, in the following words: "In cases in which portions of estates may be ordered to be sold in satisfaction of decrees of the courts of judicature, it is necessary for the security of the public revenue that the jumma to be charged on the lands directed to be disposed of, should be adjusted agreeably to the principles prescribed in section 10, Regulation I. 1793. The Board of Revenue and the collectors being in possession of the accounts and information necessary for the adjustment of the jumma, and as the superintending the details of the attachment and sale of lands would necessarily occupy much of the time of the courts, and often occasion a delay in the enforcement of the decree, and it being necessary that Government should have the means of compelling the proprietors to furnish the requisite accounts and information for enabling the public officers to apportion the jumma, and that the courts by which the decrees may have been passed, or to which the enforcing of them may be committed, should be vested with a power of countermanding or postponing the sale, in the event of the amount of the decree being discharged previous to the sale being made, or for other cause that may appear to them sufficient, the following rules have been accordingly enacted."

9. Further, it was a provision of the law above quoted, that unless otherwise stipulated, all arrears of revenue other than those of the year in which the sale was held, should be paid to Government from the proceeds of sale. In practice, the stipulation was never made; and it was, therefore, for this second reason, necessary that the sales should be held by collectors, in order to ensure the realising by Government of all arrears of revenue out of the proceeds of each transaction.

10. Of these two special reasons for the use of an agency not otherwise fitted for the purpose, one no longer exists. It is never now the practice to sell distinct portions of land in realisation of awards of court; but to sell "the right, title, and interest of the debtor" (whatever that may be) in the estate named in the advertisement. This kind of sale causes no butwarrah, or new allotment of jumma, and has no effect whatever upon the interest of Government in the assessment of the land revenue; so far then as concerns the reasons assigned by the preamble to Regulation XLV. 1793, there is no longer any necessity for the agency of the collector.

11. The other special reason still exists; the collector is still in the habit of deducting from the purchase-money the amount of arrears of revenue due from the estate to Government.

12. Upon this unnecessary, if not mischievous practice, his Lordship's opinion was thus expressed to the Sudder Board, in a letter dated 13th June 1837:

"As his Lordship sees insuperable objections to the principle of such a plan, he need not examine in detail the mode in which it is proposed to carry it into execution; for he cannot perceive that sales by a judge (whether mediately or immediately) in execution of his awards, have any necessary connexion with either the revenue or the revenue authorities. The sale of property under judicial decrees seems to be (with certain exceptions, which will be noticed in the sequel), as far as the revenue authorities are concerned, a mere private transaction, and the Governor is not aware that there is any argument, sound in reason or equity, justifying interference in this case, which would not be equally valid in regard to all transfers. The real end of all the forms and safeguards alleged to be necessary is, his Lordship apprehends, to enable the collector to appropriate a portion, or the whole, of the purchase-money to the liquidation of the Government revenue, if any be due; and this proceeding appears to be not only inconsistent with justice, but unnecessary for the object contemplated.

"When A sues B in the civil court to recover possession of an estate, and obtains a decree, and with it the property, the revenue authorities are under no apprehension

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apprehension in regard to the Government revenue. They know that the security for the revenue is the estate itself, and that all parties are well aware of the lien; yet, the property has changed hands in the same way as if it had been sold by auction under an award of court. Strictly speaking, the cases are the same. In the one case the civil court transfers *B*'s estate to *A*; in the other, the estate is in point of fact transferred to *A*, and immediately sold by him to *C* for the discharge of the debt of *B*. The transaction is not altered because *A*, instead of selling the estate himself, in order to liquidate his debt, procures it to be sold through the medium of the judge. There is no reason, therefore, why any distinction should be made between the two cases. The sale consequent on an award of court should be looked upon as a private transaction; because *B* would not sell his estate to pay his debt to *A*, the judge interposes, and sells it for him. But if *B* had himself sold his estate and paid *A*, the collector would have had no reason to interfere. His Lordship does not see why the collector should interfere because the medium of sale is altered.

"If then a sale of this description be precisely the same as a private sale, and the duty of conducting it be entrusted to the judge, he will always inquire, as he now does, whether the debtor is in possession of the property declared by the creditor to belong to him; having received from the collector such information as his registers supply, the judge will proceed to sell 'the rights and interests' of the debtor in the property described. As soon as the sale is complete, he will inform the collector of the change of names, so as to enable that officer to register the name of the purchaser in the place of that of the debtor. If the debtor's name had not been previously registered, there will be no need to register that of the purchaser.

15. "As to the purchase-money, the judge will of course pay over to the holder of the decree the amount of his award, and will either return the residue to the debtor, or dispose of it as to him may appear just and proper.

"Arrangements might easily be made for notifying to the assemblage at the time of sale both the principle that the purchaser of a khalsa estate enters at once upon all liabilities of the seller, in relation to Government, and with respect to that particular mehal, and the fact of the precise amount of balance due from the whole estate, leaving purchasers to ascertain shares; but when once the principle was understood, both precautions might be omitted, as intending purchasers would satisfy themselves upon the latter score, as a matter of course, exactly as with regard to any other circumstances affecting the value of the property, and would regulate their bids accordingly.

"This plan, under which the sales of an estate for balances of revenue, and the sales of the rights and interests of individuals in an estate in execution of a decree of court, would be kept, as they ought to be, entirely distinct, appears to his Lordship to be infinitely preferable to the practice which is understood frequently to obtain, and which is fraught with injustice, of applying the proceeds of a sale of the latter description to the liquidation, in the first instance, of the revenue due from the mehal sold, and of handing over the balance only to the holder of the decree.

"By this course, in every case but the very rare one when the individual against whom execution has issued is the sole proprietor of the estate sold, great injustice is done to both parties. The balance due from the whole estate is made to fall upon one coparcener, and where the difference is not sufficient to satisfy the demand of the decree holder, he is driven to a further process for the recovery of the remainder of his debt, or loses it altogether. Under the system proposed by his Lordship, of putting up the rights and interests of the debtor burthened with his share of the unliquidated public demand, the creditor may expect to get exactly what the property of his debtor, subject to that prior lien, is worth. By the other plan, he only receives the difference between that value and the lien of Government on the whole estate.

"The law certainly warrants the proceeding objected to, because each sharer in a joint undivided estate is strictly answerable for the whole balance; and the necessity of the case, coupled with the consideration that any coparcener may at any time apply for a butwarra, justifies the rule. But there can be no good reason for acting upon it, to a breach of equity, when by a sale of rights and interests, subject to the Government demand, the safety of the public revenue might be abundantly secured."

13. It would seem then that there is but one apparent reason for the employment

ment of this agency, and that this one reason is a bad one, or rather, when properly examined, a reason for abandoning the agency altogether.

14. It may be said, that the chief inconvenience of the present system is in the appropriation by government of the proceeds of sale in payment of its own revenue, and that this might be prohibited, and sale proceeds invariably remitted intact of the civil court, without doing away with the agency of the collectors.

15. Undoubtedly, his Lordship observes, this might be done, and the change would be productive of good. But if so much be done and nothing be left to the collector but the mere agency, there are several reasons for believing that the measure should be completed by removing from collectors the agency also. It would seem more convenient to the judicial functionaries to cause execution of their decrees by an agency wholly subordinate and responsible to themselves, and acting under their own eyes, than by an officer very little if at all responsible to them, and acting often at a distance, under a system of checks belonging to another branch of the public service, and little known to the judicial officers. It would seem unnecessary to take up the time of a collector with a business rendered merely mechanical, and therefore it may be supposed distasteful to him and perhaps in some degree unbecoming his position; and lastly, it will be always difficult for the people, perhaps even for the collectors themselves, to distinguish accurately between the powers and functions with which they are invested when selling lands for arrears of revenue and those which appertain to them as sellers of land by order of zillah judges; yet it is highly important both for buyers and sellers, that this distinction, which would carry with it weighty consequences, should be properly understood.

16. It appears clear, therefore, to the governor of Bengal that the right of appropriating purchase-money to payment of revenue being, for the reasons already given, removed from the hands of the collector, the agency should properly cease, and that the judicial functionaries should be allowed to effect sales through the medium of their own subordinates. A sudder ameen, acting under a judge's order, might, his Lordship thinks, conduct such sales with perfect propriety under simple rules to be laid down by the Sudder Court, and subject to the immediate control of the zillah judge, and if (which does not seem to be the case) the judges have less facility than necessary in obtaining proper information from collectors, the remedy can at once be supplied by the executive government.

17. All that seems necessary of a legislative nature to effect the alteration desired is in the draft * last submitted by the Sudder Court, of which a copy is for facility of reference appended to this despatch; and it will be observed that this draft provides effectually for the difficulties upon which the Sudder Courts of Calcutta and Allahabad are now understood to be at variance as well as for all the points alluded to as yet unsettled; in the letter of the Sudder Board of Revenue of 4th February last

18. The power of making judicial sales* would be taken from the revenue department, where it ought not to be, and given to the judicial, where it ought to be; and the right of interfering with the purchase-money would be taken away from government, such sales would become in practice what they are in theory, mere private transactions, enforced by the civil courts, and all the petty details would be arranged by the Sudder Court according to experience, and would always be under the check of the controlling executive government.

Fort William,
30 June 1840.

I have, &c.
(signed) F. J. Halliday,
Secy to the Govt of Bengal.

* See letter from
the Register Sudder
Dewanny
Adawlut, No. 1914,
dated 19th July
1839.

COPY of DRAFT ACT appended to the Sudder Court's Letter, No. 1914, of the 19th July 1839.

Be it enacted, that from the such parts of Regulation XLV. of 1793, Regulation XX. 1795, Regulation XXVI. of 1803, and VII. of 1825, of the Bengal Code, and of any other Regulation or Act in force as relate to the sale by collectors of landed property of any description in satisfaction of decrees of the courts of civil judicature, or in execution of any other judicial process, be repealed.

II. Be it enacted, that the courts of civil judicature within the territories subject to the presidency of Fort William in Bengal, shall be empowered to sell or to

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cause to be sold lands of every description, in execution of any decree or judicial process, in virtue of which such sales may be authorised by the Regulations or Acts now in force or which may hereafter be enacted.

(signed) *J. Hawkins*, Register

Judicial Department, 30 June 1840.

(A true copy.)

(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

Legis. Cons.
29 March 1841.
No. 2.

(No. 629.)

From *J. F. M. Reid*, Esq. Register, Fort William, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal.

Enclosure.

Sir,

Sudder Dewanny
Adawlut.
Present: *R. H. Rat-
tray*, *C. R. Barwell*,
W. Braddon, Esqrs.
Judges, and *N. J.
Halhed*, Esq. Offi-
ciating Judge.

I AM directed by the court to forward to you the accompanying copies of correspondence, as per margin*, and to request that you will lay the same before the Right honourable the Governor of Bengal.

2. The court concur in the opinion expressed by the Court of Sudder Dewanny Adawlut for the Agra presidency, in the concluding paragraph of their register's letter, and beg to suggest that an Act be passed, defining the extent to which it is intended that the term "small portions of land held exempt from the public assessment," in the provisions of Regulation VII. 1825, shall be applicable.

Fort William,
18 March 1836.

I am, &c.
(signed) *J. F. M. Reid*,
Register.

Abstract.

Par. 1. Submitting correspondence noted in the margin.

Par. 2. Concurring in the opinion of the Agra court, and suggesting that an Act be passed defining the extent to which the term, "small portion of land held exempt from the public assessment" shall be applicable.

(Copies.—No. 1.)

From *E. J. Harington*, Esq. Officiating Judge, Hooghly, to *J. F. M. Reid*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

I HAVE the honour to state that the reply contained in your letter of the 28th November last is sufficient, inasmuch as it acquaints me that the court has ruled that the right and interest of a ryot in his jote jumma may be sold in satisfaction of a decree, but is incomplete in the omission of information whether the sale can be legally conducted by the judge and his officers, or that the duty must on all occasions be performed by the collector, without reference to the extent of the tenure liable to sale.

2. The construction placed upon the regulations by my predecessors, evinced by their proceedings, which accompanied my former letter, has authorised them to direct and empower the officers of their court to sell lakheraj and jummae lands to a certain regulated extent; and the practice which I found to be established and observed on assuming charge of this office, consisted in the sale of lakheraj land to the extent of 25 beegahs, and of jummae lands to the extent of 50 beegahs, by the principal sudder ameen, in execution of the decrees of his own court, without direct

Court's reply of
28th Nov. suffi-
cient in declaring
the right of a ryot
in his jote jumma
liable to sale in
satisfaction of a
decree,
but incomplete in
regard to the want
of explanation
whether the duty
should be per-
formed by judge or
collector
Predecessors con-
ceive that they were
authorised to em-
power their officers
to sell as follows:
Principal Sudder
Ameen.
25 beegahs lakhe-
raj
50 jummae.
Sudder Ameen;
10 beegahs lakhe-
raj.
25 jummae
Moonsiffs
5 beegahs lakhe-
raj
10 jummae *

* Letter from Officiating Judge of Hooghly, dated 6th January 1835, No. 1.
" to ditto, dated 23d January 1835, No. 313.
" from ditto, dated 30th December 1835, No. 284 and its Enclosures.
" to the Register of the Court of Sudder Dewanny Adawlut for the Agra presidency, dated 22d January 1836, No. 182
" from ditto, dated 12th ultimo, No. 168

direct reference to the judge. The sudder ameens were similarly empowered in regard to the sale of lakheraj lands to the extent of 10 beegahs, and of jumae lands to the extent of 25 beegahs; the moonsiffs to the extent of five beegahs of lakheraj lands and 10 beegahs of jumae lands; and the nazir had similar authority to dispose of lakheraj lands to the extent of 10 beegahs, and jumae lands to the extent of 25 beegahs, in realization of sums of money adjudged by this court. An instance has occurred of jumae lands to the extent of 102 beegahs being sold by the nazir, under the order of the judge, in satisfaction of a decree for 102 rupees; and in another case lakheraj land to the extent of 94 beegahs was similarly disposed of, under the same circumstances, for 3,401 rupees.

3. I have the honour to solicit the instruction of the court with regard to the continuance or discontinuance of the above procedure and general practice.

Zillah Hooghly,
6 January 1835.

I have, &c.
(signed) *E. J. Harington,*
Officiating Judge.

Nazir:
10 beegahs lakheraj
25 jumae.

Instances of sale by Nazir under order of judge:
102 beegahs jumae land for 102 rupees;
94 beegahs lakheraj for 3,401 rupees.
Court's orders requested.

(No. 313)

From *J. F. M. Reid*, Esq. Register, Fort William, to the Officiating Judge of Zillah Hooghly.

Sir,

I AM directed by the court to acknowledge the receipt of your letter of the 6th instant, No. 1, and in reply to observe, that clause 2, section 2, Regulation VII. of 1825 defines the property which may be brought to sale by nazirs (independent of the collector), and to request that you will strictly conform to that rule, and direct the courts subordinate to you to do so likewise.

Fort William,
23 January 1835.

I am, &c.
(signed) *J. F. M. Reid,*
Register.

Sudder Dewanny Adawlut.
Present: R. H. Ratray, H. Shakespear, W. Braddon, and J. C. Robertson, Esqrs. Judges.
Directing strict adherence to the rule laid down in Sect. 2, Reg. VII. of 1825.

(No. 284.)

From *E. J. Harington*, Esq. Officiating Judge, Zillah Hooghly, to *J. F. M. Reid*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William

Sir,

THE execution of a decree requiring recourse to the sale of 32 beegahs of land, comprised in two separate portions, consisting of 21 and 11 beegahs, I addressed the commissioner on the subject. His opinion and construction of the Regulations are embodied in the enclosed copy of a letter which I have the honour to transmit to you, in order that they may be considered by the Court of Sudder Dewanny Adawlut, and that instructions may be addressed to me on the subject.

The orders of the Sudder Court, dated 23d January last, in reply to my letter of the 6th of that month, relative to the procedure of the courts of this district generally, in regard to the sale of landed property in execution of decrees, had impressed me with the belief, by which my conduct has since been regulated, that in their opinion, Regulation VII. of 1825 did not uphold the practice formerly observed in this district, of selling, through the agency of judicial officers, the extents of land which were specified in my letter, and that the intervention of the revenue authorities, by whom sales of landed property can be conducted in the most public and satisfactory manner; with reference to the protection of all interests concerned, would be indispensable on every occasion when the disposal of an extent of land exceeding five or ten beegahs, on which houses, orchards, &c. might be situated, whether subject to or exempt from the payment of revenue, or any portion of land equally limited, being exempt from revenue, should become necessary in execution of decrees of court.

Zillah Hooghly,
30 December 1835.

I have, &c.
(signed) *E. J. Harington,*
Officiating Judge.

No. 8.
Sale in Execution
of Decrees of Civil
Courts.

(No. 1418.)

From *E. M. Gordon*, Esq. Officiating Commissioner of Revenue, Hooghly,
E. J. Harington, Esq. Officiating Judge of Hooghly.

Sir,

WITH reference to your letter of yesterday's date, No. 278, and the copy of the correspondence that accompanied it, I beg to remark as follows:—

2. The instructions communicated to you in the letter from the register of the Sudder Dewanny Adawlut, to your address, No. 313, dated the 23d of January 1835, do not define the precise amount of land which it is competent for the civil courts, in execution of decrees, to sell, without the intervention of the revenue authorities; neither is that amount fixed by the clause in the Regulation, to which in the above instructions, you are referred; at the same time it is held by the Board of Revenue, that parcels of land less than 100 beegahs are to be regarded as "small portions," and no claim is made by government to a portion of lakheraj land (however defective may be the proprietor's title), which does not amount to 100 beegahs. The only object, as I conceive, why sales of land in execution of decrees passed by the civil courts, are made by the collectors is, that the government's interest in the lands may not be neglected. As government does not profess to have any claim upon lakheraj lands less than 100 beegahs in extent, there does not seem to be any good reason for requiring, in the case to which this correspondence relates, that the land shall be sold by the collector. If, however, you think it would be proper to refer the matter for the opinion of the Sudder Dewanny Adawlut, I see no objection to the following of such a course.

I have, &c.

Commissioner's Office,
14th Division at Hooghly,
29 December 1835.

(signed) *E. M. Gordon*,
Officiating Commissioner of Revenue.

(A true copy.)
(signed) *E. J. Harington*,
Officiating Judge.

Sudder Dewanny
Adawlut.

Present. *R. H. Rattray*, *W. Braddon*,
C. R. Barwell, Esqs.
Judges, and *N. J. Halhed*, Esq. Officiating Judge.

(No. 182.)

From *J. F. M. Reid*, Esq. Register, Fort William, to the Register of the Sudder Dewanny Adawlut, Agra Presidency.

Sir,

Forwarding correspondence with the Judge of Hooghly relative to the quantity of land which civil courts may cause to be sold in satisfaction of decrees.

2d Dissenting from the opinion of the Board of Revenue, and proposing to instruct the civil judges to call on the revenue authorities to sell certain lands for satisfying decrees.

I AM directed by the court to request that you will lay before the court of Sudder Dewanny Adawlut for the Agra presidency, the accompanying copies of correspondence as per margin*, with the judge of Hooghly, relative to the quantity of rent-free land which it is competent to the civil courts to cause to be sold through their nazirs, in satisfaction of decrees under the provisions of Regulation VII. of 1825.

2. The court cannot concur in the opinion of the Board of Revenue, cited by the officiating commissioner of the 14th Division, in his letter of the 29th ult. that "parcels of land less than 100 beegahs are to be registered as small portions" of lakheraj land, which may be sold under the provisions of clause 2, section 2, Regulation VII. 1825, and propose, with the concurrence of the Agra Court, to instruct the civil judges to call on the revenue authorities to sell all portions of rent-free land exceeding 10 beegahs, the sale of which may be necessary for satisfying decrees of court.

I am, &c.

Fort William,
22 January 1836.

(signed) *J. F. M. Reid*,
Register.

* Letter from Officiating Judge of Hooghly, dated the 6th January 1835, No. 1.
Letter to - - ditto - - dated 23d January 1835, No. 313.
Letter from - - ditto - - dated 30th December 1835, No. 284, and its Enclosure.

(No. 168)

From *H. B. Harrington*, Esq. Officiating Register, Allahabad, to *J. F. M. Reid*, Esq. Register to the *Sudder Dewanny Adawlut*, Fort William.

Sudder Dewanny Adawlut, Agra Presidency.
Present: *W. Ewer, A. J. Colvin, and W. Lambert*, Esqs. Judges.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 182, under date the 22d ultimo, with its enclosures relative to the quantity of rent-free land which the civil courts are competent, under the provisions of section 2, Regulation VII. of 1825, to sell through their nazirs, in satisfaction of decrees of court, without reference to the revenue authorities.

2d. In reply, the court direct me to observe, that in the absence of any specific declaration in the enactment itself as to what is to be considered as constituting a "small portion" of land, coming within the provisions of section 2, Regulation VII of 1825, there is nothing to guide them in forming an opinion on the subject, but a consideration of what was the probable object which the Legislature had in view in limiting the powers of the civil courts in regard to the sale of lands held exempt from the payment of revenue in satisfaction of decrees of court.

3d On this point the court direct me to observe, that the argument made use of by the commissioner of the 14th Division, in his letter to the judge of Hooghly, in which, in concurrence with the opinion of the Board of Revenue, he states that the sole apparent object why sales of land in execution of decrees by the civil courts are made by the collectors, is that the interest of government in the lands may not be neglected; and that as government does not profess to have any claim upon lakheraj lands less than 100 beegahs in extent, there does not seem any good ground why parcels of land under that quantity should be sold by the collectors, would appear to supply the only cause that can be assigned for the restriction above mentioned, and the court, as far as they have the means of judging, are disposed to consider that reason as good and sufficient, and to act upon it accordingly.

4th. But as any opinion which they may give as to whether 100 or 10 beegahs of rent-free land should be considered as constituting a "small portion" within the intent and meaning of the section of the Regulation above cited, must be altogether an arbitrary one, in consequence of the Regulation being silent on this point, and therefore defective, they would suggest that the whole of the correspondence which has taken place on the subject be submitted for the consideration of the Right hon. the Governor-general of India in Council, with a view to the removal of the doubts that have arisen by the enactment of an explanatory Act, which would be binding on the officers of both departments, judicial as well as revenue, and set the matter at rest.

Allahabad,
12 February 1836.

I have, &c.
(signed) *H. B. Harrington*,
Officiating Register.

(True copies.)
(signed) *J. F. M. Reid*, Register.

(No. 655.)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to *C. E. Trevelyan*, Esq. Officiating Secretary, *Sudder Board of Revenue, Lower Provinces*.

Sir,

I AM directed by the Right hon. the Governor of Bengal to request that you will lay before the Board, for report, the accompanying copies of a letter from the register of the *Sudder Adawlut*, dated the 18th ultimo, and of its enclosures relative to the construction of the expression quoted on the margin, from Regulation VII. of 1825.

2d. If they consider any limitation necessary, the Board will be pleased to state the point at which they think that it should be fixed, but his Lordship is not immediately aware of any sufficient reason why the several zillah judges should not be authorised to sell all lakheraj land in execution of decrees of court, without the intervention of the revenue authorities, to whom it must be perfectly immaterial whether a tenure, valid or invalid, be held by A or B.

3d. Further, the Governor requests that the Board will take the same opportunity of reporting, under distinct heads, with respect to lands paying revenue directly

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directly to government, and to under-tenures of whatever description respectively, why all sales in execution of decrees of court should not be conducted by or under the immediate orders of the judicial authorities by whom such decrees may be passed, without the intervention of revenue officers. If the Board consider such a measure, which has great and obvious advantages in regard to economy of time and labour in correspondence, &c., to be generally practicable, they will be pleased to state what safeguards will, in their judgment, be necessary for the security of the public revenue in cases where the tenure sold under a decree of court is that of a sudder malgoozar.

I am, &c.

Fort William,
3 May 1836.

(signed) *R. D. Mangles*,
Secretary to the Government of Bengal.

Sudder Dewanny
Adawlut.

(No. 276.)

Present: R. H. Rattray,
W. Braddon,
Esqrs Judges, and
D. C. Smyth, Esq
Temporary Judge.

From *J. F. M. Reid*, Esq. Register, Fort William, to *R. D. Mangles*, Esq.
Secretary to the Government of Bengal, Judicial Department.

Sir,

Submitting copy
of the court's reso-
lution regarding the
duty to be per-
formed by com-
missioners in re-
gard to sale of
lands by the revenue
authorities

I AM directed by the court to request you will submit for the consideration and orders of the Right hon. the Governor of Bengal, the accompanying copy of a resolution this day recorded, on the subject of the duty to be performed by the commissioners of revenue in regard to the sale of lands by the revenue authorities in satisfaction of decrees of court.

Stating that the ac-
companying cor-
respondence will
put government in
possession of the
facts of the case out
of which this dis-
cussion arose.

2d. The accompanying copies of letter addressed to the register of the court of Sudder Dewanny Adawlut in the Western Provinces, by order of the court, under date the 18th November last, No. 2751, and of that officer's reply, dated 16th ultimo, No. 1082, will put the Right hon. the Governor in possession of the facts of the case out of which this discussion arose.

Fort William,
27 January 1837.

I have, &c.
(signed) *J. F. M. Reid*, Register.

RESOLUTION relative to the Sale of Lands by the Revenue Authorities in satisfaction of Decrees of Court.

Present: R. H. Rattray, W. Braddon, Esqrs. Judges, and D. C. Smyth, Esq.
Temporary Judge.

Letter from Judge of Dacca, dated 12th April 1836, No. 199.
" to - ditto - dated 6th May 1836, No. 954.
" from - ditto - dated 21st May 1836, No. 254.
" to - ditto - dated 1st July 1836, No. 1450.
" from - ditto - dated 11th July 1836, No. 355.
" to Commissioner Revenue 16th Dn. dated 5th August 1836,
No. 1764.
" from - ditto - dated 25th August 1836, No. 64.
" to Register Sudder Dewanny Adawlut, Western Provinces,
dated 18th November 1836, No. 2751.
" from - ditto - dated 16th Dec. 1836, No. 1082.

THE court having taken into consideration the correspondence noted in the margin, are of opinion that the duty of confirming or reversing a sale of land made by a collector, in satisfaction of the amount of a decree of court, should be performed entirely by the zillah judge, under section 4, Regulation VII. of 1825; and that the duty of commissioners of revenue should be confined solely to directing the collector

to select the lands for sale agreeably to section 2, Regulation XLV. 1793, and section 17, Regulation XXVI. 1803.

2d. The court deem it, however, proper before issuing any general instructions to the zillah judges, to refer the subject for the consideration of government, in order that, if considered necessary, the opinion of the revenue authorities may be obtained.

Ordered, That a copy of this resolution be forwarded to the Secretary to the Government of Bengal, with a request that it may be submitted for the consideration and orders of the Right hon. the Governor.

(No. 2751.)

From *J. F. M. Reid*, Esq. Register, Fort William, to the Officiating Register of the *Sudder Dewanny Adawlut*, Allahabad.

Sudder Dewanny Adawlut,
Present: *R. H. Rattray*, *W. Braddon*,
Esqrs. Judges, and
D. C. Smyth, Esq.
Temporary Judge.

Sir,

I AM directed to request you will submit, for the consideration and opinion of the judges of the Western Court, the following case:—

2d. The judge of *Dacca* having ordered certain lands to be sold in execution of a decree, the sale was made by the collector on the 4th January 1836, accordingly. After the sale, but previous to the confirmation of the same by the commissioner, claims were preferred to the property in the judge's court, and on the 1st February 1836, the judge, *Mr Cooke*, requested the revenue commissioner, *Mr. Dampier*, to suspend the confirmation of the sale until these claims had been disposed of. *Mr. Dampier*, the commissioner, postponed passing any orders on the case until the 18th March 1836, when, on the grounds set forth in his rubucuree (translation of which is entered in the margin)* he reversed the sale of the property. The judge of *Dacca* being of opinion that the commissioner exceeded his authority, referred the matter for the orders of the court. The commissioner was accordingly requested to favour the court with a statement of the grounds on which he deemed it necessary to reverse the sale, and to specify the regulations under which he considered himself competent to do so. Copy of his reply, dated the 25th August last, No. 64, is herewith annexed.

Requesting him to submit to the Western Court a case connected with the sale of certain lands in execution of a decree, and a letter from the commissioner of the 16th Division regarding the reversal of it.

"Although it is the opinion of the judge that the confirmation of the sale should be suspended, still should the sale remain unconfirmed till a final order is passed, the rights of government would be injured, the collections being suspended"

3d. The court are of opinion that the judge, *Mr. Cooke*, was not authorised to direct the commissioner to suspend the confirmation of the sale, but that the commissioner was equally in error in reversing the sale on the grounds set forth in his letter, as that officer is only authorised to reverse a sale when the sale rules have not been duly complied with, or to confirm it when made in conformity to the regulations.

4th. With regard to the protest contained in the second paragraph of *Mr. Dampier's* letter, the court are of opinion that in these cases the revenue officers are acting purely in a ministerial capacity in carrying the orders of the court into effect, and the court therefore consider themselves authorised to call for any information, and to issue such orders to the revenue authorities as may appear necessary for the due execution of the duty entrusted to them by the Regulations.

5th. The court therefore propose, should the Western Court concur, to inform the judge of *Dacca* and commissioner of revenue of the 16th Division, of the views held by them on this subject. They would instruct the judge of *Dacca* not to issue any orders to the revenue authorities after a sale has been made by a collector, until the commissioner has either confirmed or reversed the sale, after which the judge may of course, under section 5, Regulation VII. 1825, inquire into any objections preferred to the sale, and if necessary reverse it himself. They would also request the commissioner not to reverse any sale in future on the grounds assumed by him in the present instance, but merely to confine himself to the fact of the sale having been made according to the sale rules or otherwise, and to confirm or reverse the same on those grounds alone.

Fort William,
18 November 1836.

I am, &c
(signed) *J. F. M. Reid*, Register.

(No. 1082.)

From *H. B. Harington*, Esq. Officiating Register, Allahabad, to *J. F. M. Reid*, Esq. Register, *Sudder Dewanny Adawlut*, Fort William.

Sudder Dewanny Adawlut, Western Provinces
Present: *M. H. Turnbull*, *W. Ewer*,
A. J. Colvin, and
W. Lambert,
Esqrs. Judges.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 2751, under date the 18th ultimo, with its enclosures, from the commissioner of the 16th Division.

2d. In reply, I am directed to inform you that the court concur with the *Calcutta* court, that the course of proceeding observed by the judge of *Dacca* in the

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the instance adverted to was irregular; and likewise that the commissioner was not warranted in issuing the order referred to in the 2d paragraph of your letter.

3d. With respect to the 5th paragraph of your letter, wherein the Calcutta court proposed to instruct the judge of Dacca not to issue any orders to the revenue authorities after a sale has been made by a collector, until the commissioner has either confirmed or reversed it, the court are of opinion that it does not fall within the proper province of a commissioner of revenue either to annul or confirm a sale of lands made by a collector under the orders of a civil court in satisfaction of a decree, but that the duty of the commissioner in such cases is confined to directing the collector to select and bring to sale such portion of the lands included in the statement received from the civil court as he may consider most convenient to sell in satisfaction of the award: and in the event of a collector being guilty of any irregularity in publishing and conducting such sale or otherwise, the party deeming himself aggrieved thereby has his remedy in a summary application to the zillah or city court which may have ordered the sale, agreeably to the provisions of clause 1, section 5, Regulation VII. of 1825, which expressly invests all judicial officers who may have ordered sales of land by revenue officers, with power to declare such sales null and void, and to order a resale if on summary inquiry any material irregularity be satisfactorily established, but confers no such authority on the commissioners of revenue; and the court are consequently of opinion that those officers cannot legally exercise it; that, in fact, they have no jurisdiction in matters of this nature beyond that with which they are invested by section 17, Regulation XXVI of 1803, as modified by clause 3, section 4, Regulation VII. of 1825.

On the subject of the 4th paragraph of your letter, the court direct me to observe, that as the commissioner would appear to have waived his objection to the call for explanation made upon him by the Calcutta court, they are of opinion that it would be better not to take further notice of the subject on the present occasion, as the discussion might give rise to questions of form and practice admitting of doubt, and the determination of which might be attended with difficulty; and as the Calcutta court have not called upon this court for an expression of their sentiments on this part of the subject, they propose to defer offering any opinion in regard to it until a case may arise more particularly calling for a decision on the point.

I have, &c.

(signed) H. B. Harrington,
Officiating Register.

Allahabad,
16 December 1836.

(True copies.)
(signed) J. F. M. Reid, Register.

(No. 251.)

From R. D. Mangles, Esq. Secretary to the Government of Bengal, to Secretary
Sudder Board of Revenue.

Sir,

Revenue

No reply having been received to orders of the 3d May last, regarding the construction of the expression "small portions of land held exempt from the public assessment" contained in Regulation VII. of 1825, and other points, I am directed by the Right honourable the Governor of Bengal to call the attention of the Board to the subject of that reference, and to request an early report.

I am, &c.

Fort William,
21 February 1837.

(signed) R. D. Mangles,
Secy to the Govt of Bengal.

(No. 143.)

From F. J. Halliday, Esq. Secretary, &c. to R. D. Mangles, Esq. Secretary to the
Government of Bengal, Revenue Department, Fort William.

Sir,

Misc. Dep.

I AM directed with reference to your letters, No. 655, of the 3d May 1836, and No. 251, of the 21st February last, to forward, for the consideration of the Right honourable

honourable the Governor of Bengal copies of the Minutes noted in the margin, together with a set of Rules for the conduct of sales of malgoozaree lands, on satisfaction of decrees.

Sudder Board of Revenue,
Fort William, 4 September 1837.

I have, &c.
(signed) *F. J. Halliday*,
Secretary.

Minute by Senior Member, 22d June 1836, with Junior Member's opinion added.

Minute by Mr. C. W. Smith, of 14th Nov. 1836. Ditto by ditto, 13th Dec 1836.

MINUTE by Senior Member.

I HAVE considered the letter from the secretary to the Government of Bengal, under date the 3d May 1836.

We are desired to submit our sentiments on the following points:

1st. Why all sales of land in execution of decrees of court, whether lakeraj or malgoozary, or under tenures of whatever description respectively, should not be conducted by or under the immediate orders of the judicial authorities by whom such decrees may be passed, and without the intervention of revenue officers.

2d. As to the proper construction of the portion quoted in the margin of Regulation VIII. of 1825, and if any limitation be considered necessary, the extent of that limitation.

3d. What safeguards will be necessary for the security of the public revenue in cases where the tenure sold under a decree of court, and under the immediate orders of the judicial authorities, is that of a sudder malgoozar.

The government, it is declared, considers the measure of transferring these sales to the judicial authorities has great and obvious advantages, in regard to economy of time and labour in correspondence, &c. &c.

I beg respectfully to state, that as far as my experience enables me to judge, such a measure could not be put in practice, with any due observance of the rules and safeguards which it would require, without entailing on the public officers whose duties it would be to carry it into execution infinitely more labour and time than is required to conform to the existing rules.

The judicial authorities could not with any hope of accuracy prepare the papers for a sale of lands, &c. advertisements, solbundy, and account sale, &c. without the necessity for repeated reference to the collector's office and records, to say nothing of the great additional difficulties, embarrassments, and mistakes which would be necessarily incurred during the period the native judicial officers would be acquiring a knowledge of this duty.

As it is at present, the collectors possess at their immediate command records showing the names of malgoozary estates, of their proprietors, and the sudder jumma fixed on them respectively; yet accuracy, with these important advantages, is only obtained by great vigilance of superintendence, and by the great facilities of check and control; whilst it is notorious that the least relaxation in this respect is always productive of errors and irregularities, which entail on this Board, before they can be corrected, and sometimes on the government, a very vexatious addition to its ordinary labours.

Comparatively speaking, it appears to me to be unquestionable that a collector should experience no difficulty in preparing for and conducting with every accuracy and promptitude that is requisite, sales of land, whether malgoozary estates or under tenures, or lakeraj lands; and I am equally convinced that difficulty, delay, and disappointment would, for many years at least, (however judicious might be the rules and safeguards provided) prevail, were the sales of land in execution of decrees conducted by and under the immediate orders of the judicial authorities.

I have no objection to offer to the precautionary rules prepared by my colleague for observance; they are good as far as they go; but practical experience can alone suggest all the preventive rules which will be needed to protect the rights of government in malgoozary estates, if so wide an opportunity to fraud and deception is created, as would necessarily be, were the revenue officers relieved from duties, which long experience, immediate access to records, and long existing habits of practice and responsibility, have made them and their native officers so peculiarly qualified to execute adequately and satisfactorily.

It is not, I consider, desirable for the interests of the government that the revenue authorities should be deprived of any portion of the fiscal influence created by their conducting all sales of land; and it was the increase of this influence

Small portions of land held exempt from the public assessment

No. 8.

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that I considered rendered it particularly advisable that the revenue authorities should, as far as might be practicable, carry into execution summary judgments for rent.

I cannot imagine any safe plan, according to which sales of land in execution of decrees could be conducted (as proposed by the judicial authorities), without multiplying official labour, uncertainty, irregularity, and occupation of time, nor without great risk of even much more serious evils.

The causes have not yet been thoroughly ascertained, but the fact is indisputable, that the government revenue is realized with greater difficulty, with respect to promptitude, to what it was formerly, and therefore I submit this is not the fittest moment to adopt any measure manifestly calculated to abstract from the influence and prevalence of the authority of our collectors.

I beg to be excused the liberty I am taking in referring to the judicial bearings of this question, but I hope I may, without incurring blame, respectfully submit that the consistency may be questioned of imposing on the judicial authorities the duties of conducting sales in execution of decrees when the courts have so recently been divested of the power of selling lands in execution of summary awards for arrears of rent, and so much relieved of their former labours by the creation of native judges, to whom have been assigned powers and jurisdiction so very extensive.

In conclusion, as I am adverse to a change of system, transferring to the judicial from the revenue authorities the immediate conduct of sales in execution of decrees, whether for malgoozary or laktraj lands, it remains for me to state the point at which I think the limitation should be fixed, in order to assign an uniform construction of the expression in Regulation VII. of 1825, viz. "small portions of land held exempt from the public assessment." I think that limitation should be confined at 100 rupees.

I entertain no doubt that the landholders would one and all object to any change in the present system which would transfer the sale of land in execution of decrees to the courts, and that such a change would cause great and general dissatisfaction amongst all concerned with agriculture, and tend considerably to diminish the value of landed property.

22 June 1836.

(signed) *J. Pottle.*

I concur with senior member in thinking it would not be advisable to remove the power of selling malgoozary estates in satisfaction of decrees of court from the collectors of revenue.

(signed) *H. Walters.*

MINUTE by Mr. C. W. Smith.

I HAVE considered the question regarding the expediency of making judges sell land in execution of their own awards. The following precautions would be necessary; others will probably be suggested by my colleague, and we may then discuss the subject before drafting our reply to government.

1st. As to lands held rent-free.

To prevent collusion and fraud, it would be necessary that the judge should refer the petition of the party holding a decree who applies to have rent-free lands sold to the collector, and that the collector should certify, in his return, whether the land in question is held rent-free or not, and whether the name of the party against whom the decree is given is or is not registered as proprietor, or joint sharer in such rent-free land.

That the judge, on receiving the reply, provided the land alleged is rent-free, should proceed to sell it, but if the name of the party is not registered, that he should cause a local inquiry to be made, whether the party is in possession of the whole, or what portion of it, and then proceed to sell the rights and interests of such party so ascertained.

Next, as to revenue lands:

Here we must cautiously guard the government rights so expressively laid down in Clause 3, Section 3, Regulation XIV. of 1825.

When

* At present I would not vest any other functionary except the judge with the power of making the actual sale, but the preliminary investigation might be conducted by the sudder ameen.

When the decreedar applies to the judge to sell revenue lands it will be necessary that the judge should apply to the collector to ascertain the following points :

1st Is the debtor the recorded proprietor of the entire estate, or a co-sharer if the estate be undivided ?

2d. Is the estate in balance to government or not ?

3d. Are you aware of any other cause which would compromise the rights or claims of government ?

If the collector replies to this requisition by stating that the debtor is the recorded proprietor of the whole estate, or a co-sharer in an undivided estate, and that the estate is not in balance to government, nor has government on other account any cause to object, in such case the judge might proceed to sell either the entire estate or the rights and interests, as the case may be. If the collector joins to the information of the debtor being a recorded proprietor, that the estate itself is in balance to government,* it would be necessary that the judge should issue an injunction to the collector to sell the estate for the balance, sending the surplus proceeds of sale to him, the judge, and leaving the judge, of course, to dispose of all claims to the same †.

If the collector in reply to the judge's requisition sends information that the debtor is not a recorded proprietor of the estate, in such case the judge should cause a local inquiry to be made, through his moonsiff, to ascertain whether the debtor, although not a recorded proprietor, is or is not a joint sharer in the estate ; and if satisfied by the reply that the debtor is a sharer, he might then put up to sale the right and interests of the said debtor, whatever they be.

14 November 1836.

(signed) C. W. Smith.

By Mr. C. W. Smith.

MINUTE regarding the Transfer of Sales in Execution of Decrees to the Judicial Authorities.

In my former Note of the 14th November last, I confined my remarks to a consideration of the safeguards which it would be necessary to introduce for the protection of the public revenue, provided the judicial authorities should be declared competent to sell rent-free and malgoozary lands, in execution of their own decrees, reserving the discussion of the expediency of giving such powers to the courts, and of the subject generally, until favoured with my colleague's opinion.

The senior member, in his Minute of the 22d June last, has entered into a full discussion touching the expediency of the proposed measure, and having declared himself unfavourable to its adoption, has stated the several objections and difficulties which occur to him against conceding the power to the judicial authorities of selling landed property in execution of decrees of court.

In a matter of so much moment as that of introducing the above important change into the existing law, it would not be considered sufficient that I should state my own opinion to be favourable to the projected alteration, unless I could at the same time demonstrate that the objections made to it have been entertained on insufficient grounds, or though entitled to some weight, are not so great as to leave a comparison with the concomitant advantages which will attend it.

I am altogether in favour of the alteration. I believe it will be an economy of time and labour both to the Judicial and Revenue departments ; that it will relieve the revenue authorities from a very unnecessary and heavy duty, without causing any of those dangers anticipated by my colleague ; that it will relieve the judicial authorities from much unnecessary trouble and many vexatious references ; and that the measure itself will be found to be in strict consistency with the tenor of Act VIII. 1835, which " transferred " the power of selling " lands in execution of summary suits, hitherto vested in the judges of the Dewany Adawlut, to the collectors of revenue," by saddling the functionaries in each department with the duty of executing their own decrees.

I shall

* It would be requisite that the judge give notice to the collector of every sale made by him within seven days of its taking place, the collector to certify on the notice what revenue was due to the day of sale, and the judge reserving that sum before paying the decreedar.

† If the collector's sale was avoided by the revenue being paid, and the collector had no other claims on account of sureties, &c, in such case the judge, on receiving a notification to that effect from the collector, could proceed to sale.

I shall now proceed to consider, one by one, the objections to this measure which are brought forward by my colleague, and I shall then embody in a more complete and tangible shape the several precautions which will be necessary for the security of the public revenue where the tenure to be sold under a decree of court is that of a sudder malgoozar.

These objections may be thus enumerated :

1. The judicial authorities could not prepare the advertisement, lotbundee, and account sale without the necessity of repeated references to the collector's office and records, producing infinitely more labour and loss of time than is experienced under the existing rules

2. The native judicial officers would create additional delays, difficulties, disappointments, and embarrassments, and mistakes, during the period they were acquiring a knowledge of this duty.

3. That although the collectors of revenue have at their immediate command records showing—

- 1st. Names of malgoozaree estates ;
- 2d. Names of the proprietors ;
- 3d. Sudder jummah ;

Yet with all these advantages, accuracy is not obtained but by vigilant supervision, and by special facilities of check and control, and any relaxation is always productive of errors and irregularities, which entail on the Board, and sometimes on government, an addition to their ordinary labours.

4. It is impolitic to deprive the revenue authorities of the influence derived from their conducting all sales, and it was to increase this influence that the senior member deemed it advisable, as far as practicable, that collectors should sell in awards for rent

5. That with reference to the present difficulty in realizing the government revenue, the present is not a fit moment to detract from the influence and authority of the collector

6. That when the courts, though their labours have been so much lightened by this creation of native judges, have been so recently deprived of the power of selling lands in execution of decrees for arrears of rent, it seems inconsistent to propose giving them the power to sell lands in execution of their own decrees of court

Taking them up in consecutive order, I commence with the first objection, that

1st Objection—The judicial authority could not prepare the advertisement, lotbundee, and account sale without the necessity of repeated reference to the collector's office and records, producing infinitely more labour and loss of time than is experienced under the existing rules.

the information which a judicial officer would require preparatory to issuing advertisements for sale could be obtained by a single reference to the collector of revenue. This information is as follows :

1. The names of the recorded proprietors in the estate, the whole or a share in which he proposed to sell.
2. The sudder jumma, and where subdivided, its component parts, with a specification of names.
3. Information whether the estate or share of estate is in balance to government, and to what amount.

This is all the information which the court could want, or which the collector could give ; and it is worthy of peculiar notice, that no additional trouble would be incurred by this reference, as the information is of that nature, without which no collector could prepare his advertisement and lotbundy. The moment that the court received the collector's reply, advertisement of sale would issue if the party from whom the amount of the decree was due was found to be possessed of the alleged property.

The lithographic form in which this information might be embodied will be found in its place at the conclusion of this Minute, where I lay down the precautions to be observed ; &c.

If this prompt and easy process, preliminary to the issue of advertisements of sale by a judicial officer, be compared with that laid down in Regulation XLV. 1793, Regulation XX. 1795, Regulation XXVI. 1803, and Clauses 2 and 3. Section 4, Regulation VII. 1825, which are at present in force, the simplicity of the one, and the great and unnecessary trouble, delay, and expenses of the other, will be at once apparent.

1. The court whose duty it may be to execute the decree must transmit a copy (1)

copy (1) and a translation (2) of the decree to the Board of Revenue, (now the commissioner of revenue), as well as a statement (3) of the lands which the party issuing out execution may point out as belonging to those from whom the amount of the decree is demandable.

2. The Board of Revenue must then prepare a second copy of these three documents, *i.e.* the decree (4), the translation (5), and the statement (6) of lands, and write a Persian or an (7) English proceeding, when transmitting them to the collector, instructing him to select any parts of the lands for sale which may appear sufficient.

3. The collector, after having carried these orders into effect, has to transmit two proceedings, one (8) to the commissioners and a second (9) to the court, intimating what lands be proposed to sell, or otherwise; he informs them that the party has no property in the lands, and all this labour is then thrown away.

It will thus be found that the court selling the land could proceed to issue the advertisement of sale without entailing any additional trouble on the collector than he is obliged to take in every instance of sale in his own office, and without all these complex references, and multiplication of copying papers, and attendant expense, which I have thus enumerated.

I really do not see the force of this objection, and I think it will disappear at once when it is remembered that the duties of a collector in selling lands, in execution of a decree of court, are the mere mechanical operations of an auctioneer; that is, if the party by whom the amount is due does not pay the same by the day of sale, the collector puts up the property and knocks it down to the highest bidder. All the more difficult points in sales under decrees of court, such as petition denying that the amount is due, or denying that the estate or share of estate belongs to the party whose name appears in the advertisement and lot-bundee, all counter claims, and all objections to the sale of every description, must be referred, under the existing law, to the judicial authorities under whose orders the sales take place. In fact, all the real difficulties attending a sale for arrears of revenue, which form the subject of revision in the Revenue Department, either do not exist in sales under a decree, or are determined by the judicial officers themselves, even in the present state of the law; and the courts of law, to whom indeed all sales are ultimately appealable, have a much more intelligent and efficient body of men to protect the interests of either party in their constituted vakeels, than the comparatively ignorant and irresponsible race of mooktears who appear in a collector's kutcherry.

I am thoroughly convinced that the judicial officer sitting in court, with his vakeels ready to advocate the interests either of the party holding the decree, the party from whom the debt is due, or the third party objecting to the sale, would not make half the mistakes which are continually brought to our notice in the Revenue Department; and that the appellate authority, to whom a final and conclusive power to reverse or confirm the sale should be given, would have placed before him, by his pleaders, the arguments for and against the sale, drawn out with infinitely more acuteness, and in a much more correct shape than the loose, and irrelevant productions which the parties themselves, or their mooktears, usually present to the Board or commissioner.

Vide supra

I have already pointed out that the power of collectors in the sale of lands in execution of a decree of court are restricted to the mere mechanical duties of an auctioneer; that the authority and order for the sale emanates from the courts, from a sudder ameen, for instance, to whom all points of difficulty or objection are made or referred, and who, in fact, stands over the collector, reversing the sale where he sees proper.

To my mind, the influence and dignity of the collector is rather impaired than strengthened by the subordinate position in which he stands to the courts in such sales, and so long as he has the power to sell the largest yeemeenduffee in his

Sale in Execution of Decrees of Civil Courts

I speak from experience. *Vide* my letter as commissioner of revenue at Patna, which is annexed.

2d Objection — The native judicial officers would create additional delays, difficulties, disappointments, and embarrassments, and mistakes, during the period they were acquiring a knowledge of this duty.

3d Objection — That although the collectors of revenue have at their immediate command records showing,

1st. Name of malgoozary estates;

2d. Ditto of their proprietors;

3d. Sudder jumma, yet with all this advantage accuracy is not obtained but by vigilant supervision, and by special facilities of check and control, and any relaxation is productive of errors and irregularities, which entail on the Board, and sometimes on government, an addition to their ordinary labours.

4th Objection. — It is impolitic to deprive the revenue authority of the influence derived from thus conducting all sales, and it was to increase this influence that he deemed it advisable, as far as practicable, that collectors should sell in awards for rent.

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5th Objection.—
That with reference
to the present diffi-
culty in realizing
the revenue of
government, the
present is not a fit
moment to detract
from the influence
and authority of the
collector.

6th Objection.—That when the courts, though their labours have been so much lightened by the creation of native judges, have been so recently deprived of the power of selling lands in execution of decrees for arrears of rent, it seems inconsistent to propose giving them the power to sell lands in execution of their own decrees of court.

district, if the public revenue is not punctually discharged, he will feel no diminution of his authority and influence from being no longer employed to play the part of auctioneer to the courts.

I have already given my opinion on the preceding paragraph, that the influence of the collector will not be impaired by leaving the judicial authorities to execute their own decrees, &c. The increasing difficulty in realizing the government revenue is a subject which has long occupied our attention, and we have ever considered the overwhelming multiplicity of duties which are allotted to the revenue authorities as one of the causes from which, if that difficulty has, not originated, yet which operates to deprive him of the power of giving his undivided attention to his more strictly fiscal duties. In this respect then, by relieving him of a heavy duty, which more properly belongs to another defendant, he will be enabled to give greater attention to the many subjects more immediately connected with the balances of revenue in his district, a greater efficiency in the realization of which is so truly desirable, and is so intimately and directly connected with the influence he possesses in the district.

I look upon this measure in a totally different light from my colleague. I can see no inconsistency; on the contrary, I observe the same principle at work in the alteration of the law which is now proposed

as that which led to the enactment of Act VIII. of 1835.

It was considered an anomalous proceeding, fraught with unnecessary detail and delay, that the award of one court should require the assistance of another court to execute it, and for the same, or even stronger reasons, it is considered a waste of time and labour to send a decree of court for execution *quoad* sale of lands to the collector, while the whole control and power of settling upon and deciding the validity of such sale is left with the court itself; thus the same reason which dictated the transfer on that occasion operates in favour of the transfer now proposed.

And this leads me to consider, in the last place, what safeguards are necessary, so that this power to sell lands in execution of a decree may be vested in the judicial officers, without endangering the public revenue.

1. It is necessary to protect the primary indefeasible rights of government to levy any arrears of revenue which may have accrued on the estate or share of estate about to be sold by the courts before the proprietary right in such estate or share of estate is transferred by sale to another person.

This object cannot be obtained with that degree of safety and accuracy certainly which its importance demands by any other mode than by special enactment, that where an estate or share in an estate, standing in the name of a registered proprietor, which is about to be sold, in satisfaction of a decree, is in arrears of revenue to government, the sale shall in such case be made by the judge or other officer of government in the Judicial Department, who, after concluding the sale, shall first deduct the balance of revenue up to the day of sale, with the prescribed penalty and interest, from the amount of purchase-money, remitting to the collector his full demand, without question or demur, who will forward a dakhila or receipt for the amount, to be filed with the proceedings of the judge, and the judge shall then pay the residual sum to the party to whom the amount of the decree is due.

2. Provision must also be made for the realization of any arrear of public revenue on estates or shares of estates sold by the courts, which, although not in balance up to the date on which the judicial officer, having ascertained that point, issued his advertisement of sale, have fallen into balance between that period and the date of actual sale.

The principal cause of delay in bringing to actual sale lands fixed upon for the satisfaction of the decree is the investigation of claims either by co-sharers, alleged purchasers, mortgagees, or other creditors. These inquiries frequently consume so much time, that occasionally a whole year may elapse between the first advertisement and the sale. I think it would be found a good plan to issue, in the first instance, a simple attachment and notification for the appearance of claimants, and not until all claims had been disposed of to apply for information to the collector.

Nothing

Nothing could in such case prevent the sale taking place on the day fixed upon after the receipt of the particulars from the collector's office, and in that short period little or no arrear of revenue could accrue.

3. Care must be taken to protect the interests of government from the injurious effects likely to arise from any irregular or illegal specifications of the share, or juma or rugbah of shares of estates sold by the courts.

This most important principle will be best obtained by a strict adherence to the following rule:

In the ishtehar of sale, and the lotbundee, &c., whether the party whose property is about to be sold be a recorded proprietor of a distinct estate, or a recorded proprietor of a share in a divided or undivided estate, or otherwise, it shall be specifically mentioned that no more than the rights and interests of such party are to be sold, and nothing is guaranteed to a purchaser under a sale made by the civil courts, save and excepting the said rights and interests of the said party, whatever they may be.

I shall conclude this Minute by giving specimens of the following Forms for giving effect to the provisions and precautions necessary to secure the public revenue in sales made in execution of the decrees of the civil courts, which, if approved, should be appended to the new law which it will be necessary to frame.

1. Form of lithographed letter from the court to the collector, calling for information as to the names of the recorded proprietors, and other particulars, &c. &c.

To the Collector of

Zillah _____

No of Suits, Names
of Parties
— plaintiff,
v
— defendant.

Sir,

In the suit noted in the margin, A. has presented a petition to this court, praying that the landed property as per particulars, and belonging to the parties detailed in the margin, shall be sold by this court.

STATEMENT of Lands to be Sold

Name of Proprietor from whom the Decree is due.	Statement of Lands given by Parties to whom the Decree is due		
	Per-gunnah	Estate	Share
A. -			
B. -			
C. -			

2 I hereby enclose an istehar of sale, by which you will perceive that the day of sale is fixed for the _____

3. You are requested to fill up and return the annexed form within _____ days of receiving it.

4. If the landed property in question, or any part of it, belongs to any of the said parties, and is in arrear of revenue to government, you will be pleased to notify the same in column 7, together with any further sum of interest or penalty which may be due by the said parties, calculated up to the _____ of _____ 18 _____

5. If there are any other claims against the property or the party whose rights and interests in the same are about to be sold, you are at liberty to state the same, or to bring them forward in my court.

Court,
183 _____

I have the honour to be, &c.

(signed)

No. 8
Sale in Execution
of Decrees of Civil
Courts

Form to accompany the letter from the judicial officer to the collector:

1. No.	2. Pergumal.	3. Name of Estate.	4. Sudder Jamma.		5. Name of the recorded Proprietor.	6. Specific Share of each recorded Proprietor; or if not divided, state undivided		7. If in arrear of Revenue, state Amount due by each Proprietor, or if Shares are not divided, state the Round Sum.				8. REMARKS.
						Name	Share	Arrears -	Rs.	a.	p.	
												Here state any additional information, also any identity of interests or relationship between the recorded proprietor and that of the party by whom the amount of decree is due which may have transpired

2. Form of lithographed letter from the collector to the judicial officer returning the figured statement:

No. of Suit.
— plaintiff,
v.
— defendant.

To the Judge of

Sir,
I HAVE the honour to return the figured statement, duly filled up, received with your letter No. _____ of the _____, which reached this office upon the _____, in the case noticed in the margin.

Collector's Office,
_____ 183

I have, &c.
(signed)

Should the sale not take place on the day mentioned, it will be necessary for the judge to ascertain the exact amount of revenue due to government up to the day of sale by a letter to the following effect:

To the Collector of _____

Sir,
In continuation of my letter of the _____, I have now the honour to inform you that the sale of the _____ property did not take place until the _____

2. I request you will inform me within _____ days what demand is due to government on the estate in question as arrear of revenue up to that date.

Court,
_____ 183

I have, &c.
Sir, your obedient servant,

The form which now follows is to be drawn up by the judicial officer after he shall have received the figured statement from the collector, and the advertisement of sale, lotbundee, and the terms of the account sale will be regulated by it.

1. No.	2. Pergumal.	3. Name of Muhal.	4. Sudder Jamma of whose Estate		5. Name of recorded Proprietor in Collector's Office.	6. Names and Shares of recorded Proprietors by whom the Amount of Decree is due, whose Right and Interest only are to be Sold			7. Names of Persons to whom the Amount of Decree is due.	8. Amount of Decree	9. REMARKS
						Name	Share	Right and Interest in Share.			
											Here state the principle laid down in Clause 7, Sec 3 Regulation VII 1825.

It will often occur that the figured statement, when filled up and returned by the collector, will not exhibit the name of any one of the parties by whom the decree is due, and that subsequently a petition may be filed asserting that, although these parties are not recorded in the collector's office regulation, yet that they are actual shikune proprietors, or have other transferable right in the property. In such case it is usual with some courts* to institute a local inquiry. When this local inquiry, or any other mode of inquiry which the court may see fit to adopt, establishes the fact that the party by whom the decree is due has a saleable right in the property, of which he is in actual possession, the following form would be a suitable shape for drawing up the information obtained, and the precise nature of the property about to be sold, and would regulate the terms of the advertisement, lotbundy, and account sale.

1.	2.	3.	4.	5.	6.	7.	8.	9.
No	Per- gunnah	Name of Estate	Sudder Juma of whole Estate	Names of recorded Proprietors	Names of Persons not recorded Proprietors, whose Right and Interest, whatever they may be, are about to be Sold.	Names of Persons to whom the Decree is due.	Amount of Decree	REMARKS.
								<p>1. Here may first be stated the inquiry, local or otherwise, and the result of it, to ascertain that the party from whom the amount of decree is due have transferable property in the estate.</p> <p>2. The principle of Clause 7, Sec 3, Regulation VIII of 1836, must be inserted.</p>

I have thus shown the safeguards which I consider necessary, may be practically obtained. I should not conceive that the courts would experience the slightest difficulty in effecting sales in execution of their own decrees.

On the contrary, I have a strong impression that they would execute their own decrees in a far more prompt and efficient manner than under the complicated system by which sales in execution of decrees are now conducted.

The delay under the present system is so great as scarcely to be credited, and thus it must continue to be so long as the party interested in obstructing a sale can play his procrastinating game between two offices.

It will be necessary to repeal all the Regulations which now exist, and to frame a new law,† but I am not aware of a single difficulty which would be experienced in so doing.

Sale of Lakheraj Tenures.

I see no necessity for any particular precautions in regard to the sale of rent-free land. The courts never direct a sale without some inquiry as to whether the party

* The practice varies in many courts, no local inquiry is made, and the court trusts to the nazir's report after the return of the person who served the proclamation and attachment, and to the usual readiness with which claimants make this appearance to contest right or wrong; the right of property in the land about to be sold in execution of the decree, at the present period, when the duties of moonsiffs have assumed so much more importance, and their time is fully occupied in the decision of civil suits, their deputation for the purpose of making local inquiries of the nature now under consideration would not be permitted, however, this is a subject which does not affect the question at issue, since equal difficulties would be experienced by the courts in determining the right of property in land, goods, or chattels, about to be sold in execution of a decree, whether the sale was conducted by a court or a collector of revenue.

† In the new law it will be necessary to re-enact provisions for a deposit of a portion of the purchase-money for cases of resale, &c., and to define what judicial authority shall be empowered to conduct sales. I should not think that the duty could well be entrusted to any officer under the rank of a sudder ameen. The courts would of course draw up the deeds of sale, and notify the sales to the collector of the district.

No. 8;
Sale in Execution
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Courts.

party is in possession, and it is quite immaterial to government whether *A.* or *B.* is in possession of such land; and it is scarce necessary to mention that no sale by a judicial officer can confer any validity upon land alleged to be rent-free, which, by a subsequent decision, is declared liable to assessment.

It will of course be necessary to restrict the sales made by the civil courts to estates permanently assessed, and to declare that no proceeding of a civil court in selling an estate in satisfaction of a decree, shall bar the revenue rights and interests of government in the property within 12 years after the sale.

It will also be necessary to provide that the collector of revenue shall be fully at liberty to bring an estate to sale,* for as demand of government, notwithstanding any proceedings of the judicial authorities to bring it to sale for execution of a decree or other award, notifying the same to the judge.

I wish this Minute to be recorded, and a copy of it to be submitted to government with the reply to the letter of government, under date the 3d May 1836.

The subject is one of great importance, and the papers must now be laid before the third member.

13 Dec. 1836.

I have, &c.
(signed) C. W. Smith.

DECREE Jaree Sale Rules.

ALL sales, by whatever authority authorised or held, in satisfaction of decrees of court, shall be of the nature of private transfers, and shall not affect processes of collector for realization of revenue, or the rights and interests of co-sharers in the estates sold, or mofussil tenures or tenants, any more than would a private sale by one individual to another.

2. Sales in satisfaction of decrees shall be held by collector, or other duly authorised revenue officers, under precept of the judge.

3. When the judge may direct lands to be sold, the collector shall sell the rights and interests only in the lands of the party against whom the decree is to be enforced in the property sold, or in a specific defined share or portion of tuchhan thereof, but not with any defined juma.

4. No sale of lands in satisfaction of a decree where a recorded proprietor declares the party against whom the decree has passed has no interest or right, shall take place till the right be established by a suit in court.

5. No sale of lands in execution of a decree shall take place except after advertisements at the moonsiff's kutcherry in the tannah in which the property, or the principal part of it is situated, at the judge's court, and the collector's sudder kutcherry, for a period of 30 days previous to the day of sale.† The advertisements and the lotbundy shall specifically state, that from the proceeds of the sale will be first deducted whatever arrears may be due to government on the day of sale, from the lands sold.

6. The collector shall not entertain any objections to the sale to be made, but shall refer all petitions touching the same, whether before or after sale, to the judge, who shall pass such order as he may think fit thereon. The collector is to be merely the ministerial officer executing the judge's precept.

7. The collector on completing the sale shall make his return to the judge's precept, and forward to him the money realized, minus the arrear of revenue that may be then due to government.

8. No order interfering with the authorised revenue measures of the collector, under the existing regulations relative to estates advertised for sale for decrees, or the revenue to be paid on the rights and interests sold, or on any question touching the revenue status thereof, shall be issued by the judge, or if issued, shall be of any effect.

9. The judge shall be competent to annul a sale held in satisfaction of a decree if he think fit, provided his order is passed within 20 days from the date of sale, and provided all arrears of revenue then due to the government shall be paid up.

10. The

* Should it so happen that the date of sale fixed by the judge and the collector be the same, the collector will complete his sale, and the judge will stay proceedings until made acquainted with the results.

† The object is to permit the collector to realize the government revenue, if in arrears, by sale previously.

10. The collector shall forward to commissioner, for his information, statements of all sales ordered to be held in satisfaction of decrees; all appeals against such sales shall be made to the judge.

11. Should the commissioner see grounds to object to a sale in execution of a decree, on the plea of illegality, i. e. on any of the grounds set forth in Section 5, Regulation XI. 1822, or on any point involving the permanent interests of the government, he shall have a right of appeal to Sudder Dewanny Adawlut, through the judge, who shall forward that appeal within five days after it has been preferred. The Sudder Board of Revenue shall in like manner be at liberty to bring before government, for final orders, any case that may appear to them to require such notice.

12. No purchaser buying at a sale held in execution of a decree, shall be entitled (merely by virtue of his purchase) to registry in collector's books as proprietor, unless the name of the party whose rights and interests he has purchased, was registered as proprietor of the full right sold; or, in other words, the purchaser of such by virtue of his purchase merely will be allowed only in the register the same place as was held by the individual whose rights and interests have been sold, and no place if that individual had none. He will not, however, be debarred from pursuing the prescribed course in order to obtain registration of his name as a proprietor, should he think fit.

13. All forms, statements, reports, &c. now in use between collector and commissioner, touching the sales referred to, to be discontinued, except such as are specified in these rules.

(True copy.)

(signed)

F. J. Halliday, Secretary.

Sudder Board of Revenue, Fort William,

4 April 1837.

(No. 1490.)

From R. Macan, Esq. Officiating Register, Fort William, to R. D. Mangles, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

In continuation of my letter, No. 276, of the 27th January last, on the subject of the duty to be performed by the commissioners of revenue, in regard to the sale of lands by the revenue authorities in satisfaction of decrees of court, I am directed by the court to forward to you the accompanying copy of a letter, with its enclosure, from the register of the Sudder Dewanny Adawlut in the Western Provinces, and to request that you will lay the same before the Right honourable the Governor of Bengal.

Fort William,
26 May 1837

I have, &c.

(signed)

R. Macan,

Officiating Register.

Sudder Dewanny
Adawlut.
Present: R. H. Rat-
tray, W. Braddon,
Esqrs. Judges,
D. C. Smyth, Esq
Temporary Judge,
J. R. Hutchinson,
and J. F. M. Reid,
Esqrs. Officiating
Judges.

(No. 410.)

From H. B. Harington, Esq. Register, Allahabad, to J. F. M. Reid, Esq. Register to the Sudder Dewanny Adawlut, Fort William.

Sir,

I AM directed by the court to require that you will submit, for the perusal of the Calcutta Court, the accompanying copy of a letter from the judge of Moradabad, under date the 20th instant.

2. The court observe that the point submitted by Mr. Tayler is at present under the consideration of the Calcutta Court, on a reference from the judge of Dacca, and the commissioner, of the 16th December, in regard to which the opinion of this court was communicated in my letter to your address, No. 1082, under date the 16th December last, and the court therefore await the receipt of a reply to that communication, to which they beg to request the attention of the Calcutta Court, previously to passing any orders on the present reference from the judge of Moradabad.

Allahabad,
28 April 1837.
300.

I have, &c.

(signed)

H. B. Harington, Register.

Sudder Dewanny
Adawlut, North-
west Provinces.
Present: M. H.
Turnbull, A. J.
Colvin, W. Lam-
bert, and W. F.
Dick, Esqrs. Judges.

No. 8.
Sale in Execution
of Decrees of Civil
Courts

(No. 24.)

From *B. Tayler*, Esq. Judge, Zillah Moradabad, to *W. Jackson*, Esq. Register to the Sudder Dewanny Adawlut, North West Provinces, Allahabad.

Sir,

ON the occasion of sales of land in satisfaction of decrees of court, it is usual for the collector, at the close of the sale, to report the same to the commissioner for confirmation, and also to give notice to the court of the sale of the estates; the commissioner having ascertained that there is no balance of government revenue due from the estate, confirms the sale. By Clause 2, Section 5, Regulation VII. of 1825, a period of one month is allowed to admit of any objections being offered to the sale, and it sometimes happens that the sales, which have in the meantime received the sanction of the commissioner are cancelled by order of the court. The confirmation of those sales by the commissioner, previous to any sanction from the court, appears to me inexpedient. The purchaser, on confirmation by the commissioner, has a right to immediate possession, and the collector is required to give it to him, unless otherwise directed by the court. In sales for decrees, the proper authority for confirmation should, in my opinion, be the court by whom the sale has been ordered.

2. The reversal of a sale where possession has been given involves a further inquiry regarding collections, and I would therefore suggest that the commissioners be instructed, through the Sudder Board of Revenue, to withhold their confirmation until the court notify to them the confirmation of the sale.

I have, &c.

Zillah Moradabad, Judge's Office,
20 April 1837.

(signed) *B. Tayler*, Judge.

(True copy)

(signed) *H. B. Harrington*, Register.

(True copies.)

(signed) *R. Machan*,
Officiating Register.

(No. 1073.)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to the Officiating Additional Secretary to the Sudder Board of Revenue, Fort William.

Sir,

27 Jan 1837, No.
276
26 May 1837, No.
1490.

IN transmitting the two accompanying letters, dated and numbered as per margin, from the register of the Sudder Dewanny Adawlut, for the report of the Sudder Board, I am directed by the Right hon. the Governor of Bengal to invite them to a reconsideration of the subject discussed in the minutes to which your letter of the 4th of April last gave cover.

2. The reason for which the Legislature of 1793 imposed upon collectors of revenue the duty of selling lands in execution of the decrees of courts of justice, is stated in the preamble to Regulation XLV. of that year to have been principally the security of the public revenue, "in cases in which portions of estates," (meaning actual lands, not a share or shares of a whole estate indicated by fractional parts of a rupee, representing the jumma,) "may be ordered to be sold." This reason, as the Board are aware, does not now exist. In consequence of the inconvenience and hazard to the revenue with which they were found to be attended, sales of specific portions of estates are no longer made, either for arrears of revenue or under awards of courts. In the former case the entire estate is now sold, without reference to the amount of balance due; and in the latter, the "rights and interests" of the person against whom judgment has been given are sold, without any further specification.

3. But for the reason above specified, which has now ceased to exist, his Lordship cannot think that the Legislature of 1793 would have transferred to the collector a part of the judge's duty, which it appears to him might be much more easily and simply transacted by the latter.

4. The

4. The senior member, indeed, states that the proposed transfer "could not be put in practice with any due observance of the rules and safeguards which it would require, without entailing on the public officers, whose duties it would be to carry it into execution, infinitely more labour and time than is required to conform to the existing rules," because "the judicial authorities could not, with any hope of accuracy, prepare the papers for a sale of lands; viz. advertisement, lot-bundy, and account sale, &c. without the necessity for repeated reference to the collector's office and records, to say nothing of the great additional difficulties, embarrassments, and mistakes which would be necessarily incurred during the period the native judicial officers would be acquiring a knowledge of this duty." Mr. Pattle adds, that even collectors, with the aptitude they have acquired from long practice, and with the important advantage they possess of immediate reference to their records, often fall into errors and irregularities; and thence infers, that judges, who do not possess the same knowledge and facilities, will be liable to many more.

5. It appears to the governor, however, that in these arguments the entirely different nature of the property sold, and of the modes of proceeding consequently necessary at a sale for the recovery of arrears of revenue and at a sale under a decree of a court of justice, have been lost sight of. In the former there is, certainly, under the existing system, some complication of detail; in the latter, as far as his Lordship is informed, there actually is, and assuredly need be absolutely none.

6. In the first case, the revenue authorities are required to sell absolute zemindary property, as defined by the Regulations. The rules laid down are precise and numerous; the consequences of departure from them certain and unavoidable.

7. In the second case, the collector is required to sell by order of the civil court the "rights and interests" of *A* in estate *B*. The rules are few and simple, and much is left to the discretion of the revising officer. Were the judge or his officer required to do in this case all that the collector does, some addition would certainly be made to his duties, but it would, in his Lordship's opinion, be a slight one, and not more than properly belongs to his office. Indeed, as observed by Mr. Smith, "all the real difficulties attending a sale for arrears of revenue, which form the subject of revision in the Revenue Department, either do not exist in sales under a decree, or are determined by the judicial officers themselves, even in the present state of the law." The collector is the mere instrument, and all that he does might, as far as the governor can see, be done without danger or inconvenience by the judge's nazir.

8. His Lordship is so far from thinking that the revenue officers derive any increase of influence (which Mr. Pattle contends to be the case) from acting in this purely ministerial capacity, and are able to use that influence for the better performance of their proper duties, that he considers it very desirable that they should be relieved from the task, in order that they may be enabled to attend to their strictly fiscal duties with less distraction and increased efficiency. If the duty of conducting these sales have any effect upon the collector's influence, his Lordship is inclined to think that it must be unfavourable, for that officer is placed by the present system in immediate subordination to the judge, and has sometimes, it is believed, to undergo animadversion from him. He has no discretion in the matter, must sell as he is ordered; and cannot even postpone a sale without the risk of incurring the objections of the judge. With all this the people must be necessarily well acquainted, and such functions cannot surely tend to increase a collector's influence.

9. Mr. Pattle remarks, that the duty of selling lands in execution of summary awards, for rent, has recently been transferred from the judicial officer to the collector, and thence argues that it would be inconsistent to transfer the duty of selling lands in execution of regular awards from the collector to the judges. But this argument appears to his Lordship to be founded in a misconception of the principle which dictated the Act (VIII of 1835) alluded to, and which, rightly understood, is entirely favourable to the proposed transfer; for the object of the Act in question was to correct the anomaly of the law under which the collector passed the decree, and the judge alone was empowered to execute it by a sale of land. It is equally anomalous to require the judge to call upon the collector to execute his decree, and a regard for simplicity would dictate the application of the same remedy.

10. Lastly, Mr. Pattle thinks that the zemindars and other agriculturists would

object to the transfer of these sales to the civil court, and that such transfer would have a tendency "considerably to diminish the value of landed property." His Lordship does not see how the zemindars would be affected by the change, nor in what manner the transfer would tend to depreciate the value of estates, nor, consequently, why the landholders should object to a change of system upon this head; as the senior member has not stated the grounds of his apprehension, the governor would gladly receive a further exposition of the views of the Board.

11. Mr. Smith was in favour of the proposed transfer from the revenue to the judicial officer, but he considered it necessary to suggest many rules and safeguards for the protection of the interests of government, founded on the assumption that balances of revenue due to government are to be paid out of the proceeds of sales in execution of decrees of courts, previous to their appropriation to the objects for which such sales are effected.

12. As his Lordship sees insuperable objections to the principle of such a plan, he need not examine in detail the mode in which it is proposed to carry it into execution; for he cannot perceive that sales by a judge (whether mediately or immediately in execution of his awards) have any necessary connexion with either the revenue or the revenue authorities. The sale of property under judicial decrees seems to be, (with certain exceptions, which will be noticed in the sequel,) as far as the revenue authorities are concerned, a mere private transaction; and the governor is not aware that there is any argument, sound in reason or equity, justifying interference in this case which would not be equally valid in regard to all transfers. The real end of all the forms and safeguards alleged to be necessary is, his Lordship apprehends, to enable the collector to appropriate a portion, or the whole of the purchase-money, to the liquidation of the government revenue, if any be due; and this proceeding appears to be not only inconsistent with justice, but unnecessary for the object contemplated.

13. When *A.* sues *B.* in the civil court, to recover possession of an estate, and obtains a decree, and with it the property, the revenue authorities are under no apprehension in regard to the government revenue; they know that the security for the revenue is the estate itself, and that all parties are well aware of the lien, yet the property has changed hands in the same way as if it had been sold by auction under an award of court; strictly speaking, the cases are the same. In the one case the civil court transfers *B.*'s estate to *A.*, in the other the estate is, in point of fact, transferred to *A.*, and immediately sold by him to *C.* for the discharge of the debt of *B.* The transaction is not altered because *A.* instead of selling the estate himself in order to liquidate his debt, procures it to be sold through the medium of the judge. There is no reason, therefore, why any distinction should be made between the two cases; the sale consequent on an award of court should be looked upon as a private transaction. Because *B.* would not sell his estate to pay his debt to *A.* the judge interposes and sells it for him; but if *B.* had himself sold his estate, and paid *A.*, the collector would have had no reason to interfere. His Lordship does not see why the collector should interfere, because the medium of sale is altered.

14. If, then, a sale of this description be precisely the same as a private sale, and the duty of conducting it be intrusted to the judge, he will always inquire, as he now does, whether the debtor is in possession of the property declared by the creditor to belong to him. Having received from the collector such information as his registers supply, the judge will proceed to sell "the rights and interests" of the debtor in the property described. As soon as the sale is complete, he will inform the collector of the change of names, so as to enable that officer to register the name of the purchaser in the place of that of the debtor. If the debtor's name had not been previously registered, there will be no need to register that of the purchaser.

15. As to the purchase-money, the judge will, of course, pay over to the holder of the decree the amount of his award, and will either return the residue to the debtor, or dispose of it, as to him may appear just and proper.

16. Arrangements might easily be made for notifying to the assemblage at the time of sale, both the principle that the purchaser of a khalsa estate enters at once upon all liabilities of the seller, in relation to government, and with respect to that particular mehal, and the fact of the precise amount of balance due from the whole estate, leaving purchasers to ascertain shares. But when once the principle was understood, both precautions might be well omitted; as intending purchasers would satisfy themselves upon the latter score as a matter of course, exactly as with regard

regard to any other circumstance affecting the value of the property, and who would regulate their bids accordingly.

17. This plan, under which the sales of an estate for balances of revenue, and the sales of the rights and interests of individuals in an estate, in execution of a decree of court, would be kept, as they ought to be, entirely distinct, appears to his Lordship to be infinitely preferable to the practice which is understood frequently to obtain, and which is fraught with injustice, of applying the proceeds of a sale of the latter description to the liquidation, in the first instance, of the revenue due from the mehal sold, and of handing over the balance only to the holder of the decree.

18. By this course, in every case but the very rare one when the individual against whom execution has issued, is the sole proprietor of the estate sold, great injustice is done to both parties. The balance due from the whole estate is made to fall upon one coparcener, and where the difference is not sufficient to satisfy the demand of the decree holder, he is driven to a further process for the recovery of the remainder of his debt, or loses it altogether; under the system proposed by his Lordship of putting up the rights and interests of the debtor, burthened with his share of the unliquidated public demand, the creditor may expect to get exactly what the property of his debtor, subject to that prior lien, is worth. By the other plan, he only receives the difference between that value and the lien of government on the whole estate.

19. The law certainly warrants the proceeding objected to, because each sharer in a joint individual estate, is strictly answerable for the whole balance; and the necessity of the case, coupled with the consideration that any coparcener may at any time apply for a butwarra, justifies the rule. But there can be no good reason for acting upon it, to a breach of equity, when by a sale of rights and interests, subject to the government demand, the safety of the public revenue might be abundantly secured.

20. His Lordship is given to understand that many collectors, aware of the great hardship involved in the course above described, endeavour to avoid it when directed to sell the rights and interests of individuals in khalsa estates, in pursuance of awards of the courts, by advertising, in the first instance, the whole estate for its revenue balance; and then, if the balance is paid, by proceeding to the sale under the award.

21. This, which is at best but a clumsy expedient, will not be practicable when fixed days are appointed for the holding of periodical sales for the enforcement of the public demand in each district, as his Lordship hopes will shortly be the case; and even under existing circumstances, it opens the door to the obvious fraud upon the decree holder of his debtor buying his own estate under a fictitious name, and thus altogether baffling execution.

22. All this inconvenience and injustice would, in the opinion of the governor, be avoided by the simple plan of keeping the two cases of sale in satisfaction of judicial decrees, and sale for the realization of the government balances totally distinct.

23. But it appears necessary to the good effect of this plan, that the duty of conducting sales under awards of court should be transferred from the collector to the judge; so long as these sales are made by the same officer, who sells for arrears of revenue, it will be difficult, the governor thinks, to make the people comprehend that, as collector, he has no interest in, or connexion with the sales which he conducts by order of the civil court. The people do not generally, he apprehends, draw this distinction at present; they see the collector making both descriptions of sale, and this induces the erroneous conclusion that the effects are the same. But, were the duty transferred to the judge, there would be no hazard of such confusion; and the reason of the change in the law would at once be understood.*

24. The exceptions alluded to in paragraph 12 of this letter, as those in which the vigilance of the collector might be required for the protection of the interests of government are, firstly, when any property, khalsa or lakheraj, pledged to him in security

* In confirmation of this opinion, in regard to the existing confusion of notions, it may be noticed that a native gentleman, who wrote very ably in the public prints some years ago against the resumption laws, urged strongly that much lakheraj land had been bought by its present possessors "at collectors' sales" (in execution of decrees) under the impression, evidently, that such sales involved a recognition on the part of the revenue authorities of the validity, &c. &c. of the tenures so transferred.

No. 8.
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Courts.

security for farmers, abkars, or others, is advertised for sale in execution of a decree of court; and secondly, where an estate, in balance beyond its own value, but the property of a wealthy individual, is in the same predicament.

25. As regards the first, his Lordship does not see that the collector would be in a worse position than he is, or ought to be at present, if it be provided that all advertisements for sales of land should be sent to his office; and if, as an additional safeguard, he furnish the vakeel of government with a list of all landed property hypothecated to him, and of the parties pledging it, in order that timely notice may be given of all suits in which such lands or parties are involved, and by which the security of government is likely to be affected.

26. The second case is an extreme one, but it is mentioned as one in which fraud might possibly be perpetrated. It must be the fault of the collector, however, if any estate is allowed to fall in balance beyond its value, and still more if he allowed time for the consummation of the supposed fraud, such a case need not be specially provided for.

27. A full consideration of the subject has led his Lordship to think that the repeal of Regulation XLV of 1793, and such other laws as now prescribe that sales in satisfaction of decrees of the courts of judicature, should be made by collectors of revenue, is very desirable in point of principle, provided the change of system can be effected without any undue inconvenience, or a necessity for an increase of establishments; and that the courts should be empowered to sell all property in execution of their own decrees, after making all necessary inquiries in the collector's office. These sales when affecting landed property, whether khalsa or lakheraj, should be strictly confined to the rights and interests of all the debtors in such property, without any further specification.

28. Further, his Lordship inclines to the opinion that the collector should be debarred from all claims on the proceeds of such sales, on account of any demand of government upon the debtors, except when such demand is sanctioned by a decree of court, or when the specific property, or the general property of the party whose rights and interests have been sold, is specially hypothecated to government.

29. Under such a system there would, his Lordship believes, be no such injustice done as now, he apprehends, is often committed; and, after much deliberation, he cannot perceive that the government revenue would be placed in any jeopardy by its adoption; on the other hand, its simplicity and convenience would certainly be great. The early report of the Board upon the whole subject is requested.

I am, &c.

Fort William,
13 June 1837.

(signed) *R. D. Mangles,*
Secretary to the Government of Bengal.

(No. 1413.)

From *R. D. Mangles*, Esq. Secretary to Government of Bengal, to *R. Macan*,
Esq. Officiating Register of the Sudder Dewanny Adawlut,

Sir,

Judicial Dep.

WITH reference to Mr. Reid's letters of the 18th March 1836, No. 629, and 27th January 1837, No. 276, and yours of the 26th May last, No. 1490, and their respective enclosures, I am directed by the Right honourable the Governor of

Copy of a letter to the Officiating Secretary to the Sudder Board
of Revenue, dated 3d May 1836, No. 655.

Ditto - - from ditto, dated 4th April 1837, No. 143.

Ditto - - to ditto, in reply, of the present date, No. 1073.

Bengal, to request that will lay before the court the correspondence noted on the margin, with a request that they will favor his Lordship with their sentiments upon the question, as far as it relates to the department under their superintendence.

I have, &c.

Fort William,
13 June 1837.

(signed) *R. D. Mangles,*
Secretary to Government of

(No. 1866.)
From *P. Tayler*, Esq. Deputy Register, Fort William, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sudder Dewanny Adawlut.
Present. *R. H. Rattray*, *W. Braddon*, Esqrs. Judges, *D. C. Smyth*, Esq. Temporary Judge,
J. F. M. Reid, Esq. Officiating Judge.
No. 62, the 3d April 1837.

Sir,
IN continuation of Mr. Reid's letter, dated 27th January last, I am directed by the court to request that you will lay before the Right honourable the Governor of Bengal the accompanying copy of a letter from the officiating judge of zillah Cuttack, dated as per margin, and solicit his Lordship's early instructions on the same subject.

Fort William,
30 June 1837.

I am, &c.
(signed) *P. Tayler*,
Deputy Register.

(No. 62)
From *H. V. Hathorn*, Esq. Officiating Judge, Zillah Cuttack, to *J. F. M. Reid*, Esq. Register to the Sudder Dewanny Adawlut, Fort William.

Sir,
I beg to transmit, for the opinion of the Sudder Dewanny Adawlut, copy of a letter from the commissioner of this division to the address of the collector of Cuttack, dated 10th September 1835, and also of the Persian Proceeding therein alluded to, directing the collectors in the division to discontinue the practice of submitting to that office for confirmation accounts of sales made in execution of decrees of court, such being deemed by the commissioner unnecessary to the validity of the sale, useless in form, and, with reference to the provisions of section 5, Regulation VII. of 1825, likely to lead to embarrassment.

2. I make the reference, being aware that in some districts public sales made by collectors, on whatever accounts, are not considered final until confirmed by the local commissioners.

3. The regulations in force do not, I believe, clearly lay down any positive rule for the confirmation of such sales, either by the commissioners of revenue or the judges of the court. In sales for arrears of revenue it is distinctly provided for, *vide* section 4, Regulation VII. 1830; but when made by the collectors in execution of decrees of court, the section quoted by the commissioner (clause 1, section 5, Regulation VII. of 1825), although it declares that the judicial authorities shall be competent to annul a sale in proof of irregularity, does not advert to the confirmation of sales where no irregularity has taken place.

4. In like manner, by section 16, Regulation XLV of 1793, the courts are vested with the power of countermanding or postponing judicial sales about to be conducted by revenue officers, but no reference is made as to the necessity of a formal confirmation by either one authority or the other.

5. From the tenor of the Regulations, however, I would suppose that the commissioners' confirmation was requisite, after allowing one month from the date of sale for filing in the court petitions for objections, as per clause 1, section 5, Regulation VII. of 1825, for otherwise, if the local commissioner be not required to superintend the collector's proceedings, or to be apprised of the result of the sale, I do not understand the necessity of transmitting to the collector through that officer the statements of lands belonging to the defendant, pointed out by the decree holder, and yet this is provided for by Regulation.

6. Again, the more recent enactment of Regulation VII of 1830, declares "that the local commissioners of revenue, with the concurrence of the Board, shall be competent to prescribe the conditions, in regard to the term and mode of making good the purchase-money, under which public sales shall be hereafter made, and this rule, it further provides, shall be applicable also to sales made in satisfaction of decrees of court."

7. From this it would appear that the Legislature had intended that the commissioners should regulate the proceedings of sale, held by the collectors in satisfaction of decrees of court, as well as on account of arrears of revenue.

8. For the reasons before stated, I beg to solicit the opinion of the Sudder Dewanny Adawlut on this point.

Judges' Office, Zillah Cuttack,
3 April 1837.

I have, &c.
(signed) *H. V. Hathorn*,
Officiating Judge.

(True copy.)
(signed) *P. Tayler*, Deputy Register.

Sudder Dewanny
Adawlut.
Present. R. H. Rat-
tray, W. Braddon,
Esqs. Judges, D. C.
Smyth, Esq. Tem-
porary Judge, J. R.
Hutchinson and
C. Harding, Esqrs.
Officiating Judges.

From *P. Tayler*, Officiating Register, Fort William, to *R. D. Mangles*, Esq.,
Secretary to the Government of Bengal, in the Judicial Department.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 1413,
dated the 13th June last.

2. In reply, I am desired by the court to forward to you the accompanying
copies of the minutes recorded by the several judges upon the subject in question,
and to request that you will lay the same before the Right honourable the Governor
of Bengal.

Fort William,
20 October 1837.

I have, &c.
(signed) *P. Tayler*,
Officiating Register.

Mr. *Rattray's* MINUTE.

I HAVE read and attentively considered the correspondence which accompanied
this, and entirely concurring with the government in the view taken by them, (as
exhibited in Mr. Secretary Mangles' letter to the Sudder Board of the 15th June
last) of the question at issue, see no occasion to obtrude observations which would
necessarily be the echo of what has already been set forth in support of the change
which I would advocate adoption of.

28 August 1837.

(signed) *R. H. Rattray*.

Mr. *D. C. Smyth's* MINUTE.

1 THE object that the government have in view is to expedite the execution
of judicial decrees without endangering the security of the public revenue.

2. The Right honourable the Governor of Bengal is of opinion that Regulation
XLV. of 1793, and other sale Regulations may be safely rescinded, and the
courts empowered to sell all property in execution of their own decrees, such sales
being strictly confined to the rights and interests of the debtors in such property
without any further specification.

3. I beg to observe that this subject was brought forward by Mr. H. T. Prinsep
in September 1830, when he was specially deputed by government to investigate
the causes of the delays that were alleged to have taken place in the execution of
the decrees of the courts, and was duly reported on by this court in their letter to
government under date the 8th June 1821, No. 53.

4. In the 56th paragraph of his report, dated 30th September 1830, Mr.
Prinsep submits the following remarks regarding the uselessness of a reference to
the Board of Revenue, observing very justly that the reference "is a mere form,
that has no effect whatever beyond that of occasioning unnecessary delay."

5. "Para. 56. The question now to be decided by government is, whether it is at
all necessary or expedient to fetter the courts in their mode of proceeding against a
debtor's property, and to tie them down to any particular forms; if this be thought
advisable, distinct rules might be laid down, either by a government Regulation or
by some circular orders on the subject from the Sudder Dewanny Adawlut. It
seems expedient that the necessity of a reference to the Board of Revenue prior
to the sale of petty interests in land should be dispensed with, more especially
when it may not be a government zemindaree that is proposed to be sold. In
cases of minor importance, there can be no reason why the collector should not
sell immediately on a requisition from the court, and perhaps small zemindarees
even might safely be included in the more summary process above suggested, as in
such the reference to the Board is a mere form that has no effect whatever beyond
that of occasioning unnecessary delays."

6. In these remarks, and in the suggestions of the Right honourable the Go-
vernor of Bengal, as far as relates to the sale of lands held exempt from the
public assessment by the courts, I entirely concur; and I would accordingly
suggest that the courts be empowered to sell any portion of land held exempt
from the public assessment, without application to the Boards of Revenue or to
the collector of the district, or to any other officer in the revenue department.

7. To

7. To the plan, however, suggested in Mr Secretary Mangles' letter of the 13th June last, of selling the rights and interests of the debtors in property under attachment without any further specification, I am altogether opposed. I believe such a system would give rise to much fraud or chicanery, as well as to serious affairs and disturbances. On this very subject Mr. Prinsep in the 57th and 58th paragraphs of his report observes as follows:—

8. "Para. 57. It occurred to me at one time, that much of the confusion experienced in this department of the business of the court was owing to the custom of suspending sales whenever claimants appeared, and I thought it might be preferable, in order to cut off the inducement which the debtor has under such a system to investigate evasive claims, that the sale of his interest should be made peremptorily before any inquiry takes place, under a declaration that the debtor's right and title only would be conveyed, and that any parties whose claims might be preferred before the day of sale, should be entitled to have their case investigated at the time of delivering over possession to the purchaser. This is pretty nearly the system under which sales are now made by the sheriff of Calcutta of lands lying in the mofussil; for if the mofussil authorities conceive them to have been at the time in the possession of a third person, they seldom cause them to be delivered to the purchaser; but, on the contrary, the latter is obliged to bring a regular action, in order to prove the right of the person whose interest was sold, to be superior to that of the claimant, whose temporary possession is considered proved."

9 "Para. 58 All the natives to whom I mentioned the plan of selling peremptorily, in the above manner, seemed to think that bidders would be few at such a sale, from the want of security to the purchaser, or at all events that the bidders would be confined to those immediately acquainted with the debtor's circumstances, that is, to his neighbours and relations, by means of whom collusive purchases would often be made in order to bear further process against the same property. The point is, however, one which well deserves consideration, and I am still by no means satisfied that the plan of immediate sale could not be preferable to that now in use. Even at present, the collector is obliged, for his own security, to give public notice that it is only the debtor's interest that he sells, and sometimes he suspends the sale on the appearance of claimants, notwithstanding that the judge has disposed of all the cases brought forward under the proclamation of the court. In fact, therefore, the sale is little better than it would be if immediately, in so far as the title conveyed at it is concerned; but the investigation by the court is a *prima facie* award against any claims that may have been brought forward, and in addition to this assurance, the purchasers are now certain of obtaining possession by the means of the courts, a thing perhaps more looked to than the title itself."

10 My own experience enables me to say that the concluding remarks of the foregoing paragraph are exceedingly correct, and I have no hesitation in stating it to be my belief, that unless the purchasers were certain of being put in possession of their purchase by the courts, the property would sell for little or nothing; and unless a summary investigation into the claims of parties coming forward is made, it will be utterly impossible to put any purchaser in possession, as the decree holders in Bengal would, I have no doubt whatever, point out and attach property not only belonging to their debtors, but also to any person with whom they might be at enmity, merely for the purpose of involving him in a lawsuit.

11 With regard to the recession of Regulation XLV 1793, and the other sale Regulations, and the plan of empowering the courts of justice to sell lands paying revenue to government in satisfaction of decrees without application to the revenue authorities, I must also, after much consideration, decidedly object.

12. It will, as is very justly observed by my colleague, Mr F. C. Smith, establish two rival shops for the sale and purchase of property, and will, I believe, lead to infinite confusion and to much clashing of authority. A Patnee estate held under Regulation VIII. 1819, may be at the hammer at one and the same moment before the judge and the collector, the judge selling the property in execution of a regular suit under Regulation IV. 1793, the collector again selling it for arrears of revenue under Regulation VIII. of 1819. In short, I feel satisfied, however plausible this scheme may appear in theory, that in practice it will be a decided failure.

13. I have therefore to suggest that in replying to Mr. Secretary Mangles' letter

No. 8.
Sale in Execution
of Decrees of Civil
Courts.

letter of the 13th June, No. 1413, we inform the Right honourable the Governor of Bengal that the court is of opinion,

1st. That all lands held exempt from the public assessment may be sold by the civil courts of judicature in satisfaction of their own decrees, without any application to the revenue authorities.

2d. That all lands paying revenue to government and the subordinate tenures connected therewith, should continue to be sold at the requisition of the civil courts, in satisfaction of their decrees by the revenue authorities, under such an improved system of sale as the Sudder Board of Revenue may consider advisable; and,

3d. That the present regulations and rules of practice authorising a summary inquiry into the truth and foundation of claims preferred to any lands attached and advertised for sale be upheld.

14. In concluding this note, I beg to add a remark recorded by Mr. C. Smith on the 8th June 1821, when this subject was formerly under the consideration of the court, and which observation, I regret to notice, is equally applicable to the revenue authorities of the present day.

15. I object to any change in the law with respect to the sale of lands for decrees; the provisions of Regulation XV, 1793, Regulation XX, 1795, and Regulation XXVI, 1803, I think highly proper. It would be as well, however, if the revenue authorities were made to understand better than they seem to do the meaning of the words "*with all practicable dispatch*."

26 Sept. 1837.

(signed) D. C. Smyth.

Mr. Braddon's MINUTE.

COINCIDING entirely in opinion with Mr. D. C. Smyth, it is unnecessary to add anything more.

(signed) W. Braddon.

Mr. F. C. Smith's MINUTE.

IT is now nearly ten years since I last held charge of a zillah court; and I feel, therefore, considerable diffidence in giving an opinion on a point of practice like the present. I recollect that the impression on my mind with regard to the sale of maufee lands and houses, &c., which was transferred to the Adawlut from the collector's office, shortly before I gave over charge of the last zillah court I had exercised jurisdiction in, was decidedly adverse to the change. I found the Dewanny courts had neither the records requisite for the duty to refer to with dispatch and facility, nor amlah acquainted with the details of revenue requisite to perform the duty without mistakes, nor amlah of respectability to perform the duty of auctioneers, and to give possession after the sale.

There is one objection which must strike every person who may peruse Mr. Mangles' letter, namely, that the system proposed of making the civil courts sell the lands for realization of decrees, will establish two rival shops for the sale and purchase of landed property. One, the revenue, must inevitably obtain a superiority over the civil, because there will be a certainty that a purchase made there is free from all government demands. That certainly cannot well exist in the civil auction room.

Moreover, it may well happen that an estate may be advertised and sold by both departments. What confusion such proceedings must produce I leave to conjecture.

On the other hand, the simplicity of Mr. Mangles' plan is certainly in favour of it; and if it could be arranged so that there shall be neither confusion, nor rivalry, nor delay, it would no doubt be advisable to adopt it. I do not attach much importance to the arguments about the dignity of the collector being injured by his subordination at sales of land to the courts. The people are accustomed to see him, hammer in hand, performing the duty of auctioneer, with all the usual flourishes and embellishments; but it will be a novel sight, and rather *infra dignitatem* to see a judge on the bench first pass a decree in a suit, and then descend to the auction box to sell estates to release the debt.

4 Sept. 1837.

(signed) F. C. Smith.

Mr. Hutchinson's MINUTE.

I CAN perceive none of the difficulties anticipated by my colleagues in the proposed alteration of the process of sale of malgozaree estates, but, on the contrary, believe that it will save much time, expense, and confusion. The collector at present is a mere auctioneer, under the orders of the civil court, which conducts all the necessary inquiries (summary) as to claims of property, &c. in the estate to be sold. Of course all the necessary information to be derived from the collector's office will be required and supplied previously to sale by the judge. By the present law the right and interest of the party against whom is issued process of execution, is all that is guaranteed by the selling officer, and the purchaser must regulate his bidding by his knowledge of the mehal, and the state of its proprietary title; in other words, he buys with his eyes open, and makes the bargain at his own risk. I agree, however, with Mr. F. C. Smith, that the duties of auctioneer, do not befit the dignity of the bench; indeed the nazir is now therefore always employed, and it is matter for consideration whether an officer receiving a salary of 25 or 30 rupees per month would be sufficiently trustworthy in sales of value and importance. I have long thought that the appointment of a respectable person, native or European, on a competent salary, would be of vast benefit to our mofussil courts for such duty, and the present occasion affords an opportunity of discussing the question.

I fully approve the proposed measure of empowering the civil courts to sell in execution of decrees landed property, whether malgozaree or rent-free, without limit, subject to the provisions of Regulation VII. 1825, which I do not think can be rescinded.

2 October 1837.

(signed) *J. R. Hutchinson.**Mr. Harding's MINUTE.*

AFTER duly considering what has been urged for and against the subject discussed in the accompanying papers, I am of opinion that it no longer is necessary or desirable that the revenue authorities should be applied to for the purpose of selling estates in execution of judicial decrees. I doubt not but that this duty, under prescribed and judicious rules, can be and ought to be performed by some respectable and trustworthy officer of the court. It could never have been seriously contemplated to make an auctioneer of the judge; but it is nevertheless desirable that he should always be at hand, and near the room or other place in which sales are to be conducted. On commencing the new system, various frauds will doubtless be attempted, and in some instances serious depreciation of property will be experienced, and dissatisfaction ensue; this, however, will not last long, and will be more or less extensive according to the nature of the rules which may be established, and the manner in which they are carried into execution.

The provisions of Regulation VII. 1825 to be observed.

October 1837.

(signed) *C. Harding.**Mr. Reid's MINUTE.*

I SEE no objection to the plan proposed in the secretary's letter of the 13th June, provided that care be taken that the sales by the civil courts and by the collectors do not clash, and that the judges be not compelled to perform in person the office of auctioneers. The judges have no time to devote to this extra duty, as they have all now to perform the duty of commissioner in addition to their own. The duty of conducting sales should not, however, be left to the nazir, but should be entrusted either to the principal sudder ameen, or to a covenanted assistant, and this would be a good opportunity of re-urging on government the expediency of appointing covenanted assistants to the judges to relieve them of some of their duty.

I suppose it is intended by selling merely "the right and interest" of the person against whom the decree is given, that the Supreme Court practice of leaving the purchaser to institute a suit to get possession of his purchase is to be followed, if this plan be adopted, the execution of decrees will become more difficult than ever, for the property will be depreciated in value, and much more must therefore be sold to satisfy the demand.

16 October 1837.

(signed) *J. F. M. Reid.*

(True copies.)

(signed)

P. Tayler, Officiating Register.

No 8.
Sale in Execution
of Decrees of Civil
Courts

(No. 573.)

From *J. Dunbar*, Esq. Officiating Secretary, Sudder Board of Revenue, to
F. J. Halliday, Esq. Officiating Secretary to the Government of Bengal,
Revenue Department, Fort William.

Misc Dep.

Sir,
THE Sudder Board of Revenue having had under consideration your predecessor's letter, No. 1073, of the 13th June last, regarding the transfer of the sales of lands in execution of decrees of court from the revenue to the judicial authorities, direct me to communicate as follows for the information of the Honourable the Deputy-governor of Bengal.

2. The senior and temporary members having paid earnest attention to the several arguments referred for their consideration, direct me to inform you that they do not see any reason to alter the opinions they have already expressed on this important question in their minutes bearing date the 22d June 1836

3. Mr. Patle observes, that selling the lands of recorded proprietors in execution of decrees (without first satisfying the demands of government) by the agency of the courts, is liable to the objections he has already urged, but that the litigation, fraud, and injustice that would be perpetrated consequent on authority being given to the courts to sell the rights and interests in zemindaries of individuals not recorded, and on the subsequent enforcement of such sales, would be not only extensive and endless, but would be productive of an immense increase of exactions, and very troublesome cases for the adjudication of the civil and criminal courts. He adds, that the Supreme Court even does not pretend to such a jurisdiction; for, although it sells rights and interests, by the agency of the sheriff, yet if resistance to the purchaser be offered, the sale is not enforced, but the purchaser is left to prove, by a regular suit, that the rights and interests in the estates belonged to the party on whose responsibility they were sold.

4. The temporary member also considers that, by the introduction of the proposed innovation, a door to considerable fraud and injustice would be opened, and that the loss which government would sustain would be great, inasmuch as although it may be practicable to recover the revenue due on estates by the sales of those estates when the balances are not heavy, it will be very difficult indeed to recover balances not realized in full by the sale of the estates on which they may have accrued, as well as all claims or security-bonds and other miscellaneous demands, including abkaree balances, which even under the present system can only be partially realized by means of great vigilance on the part of the revenue officers. There is no part of a collector's duty, he observes, more difficult than to realize balances due on miscellaneous accounts, and none on which he is more generally thwarted, as may be ascertained on a close examination of the Khass mehal, and irrecoverable balance statements for the last five years.

5. Mr. Walters considers that a broad objection to the proposed measure is, that if it be carried into effect the courts will more than ever be resorted to by those who are indebted to the state, with a view to evade the collector's demand. It may be fairly inferred, he supposes, that a judge is always eager to execute his orders, and satisfy his decrees, and that a collector is as much so to collect his balances. Under the present system the collector acts as a check on the judge, for the judge cannot sell without applying to the collector, and informing him of what is going on. Let this restriction be removed, and the result will be, in the opinion of the temporary member, that fictitious claims and transfers, and benami purchases, supported by orders and decrees of court, will so abound, more especially in the courts of the largely empowered native judges, that there will be little chance of any recovery of the dues of the state.

6. Lastly, Mr. Walters observes that the only remedy, he sees, if the innovation be insisted upon, is the improvement of the sale and registry laws, and the giving to registered obligations a positive and practical lien on the property pledged, second only to the lien the land gives to the state in the recovery of its revenue balances, which should be more strictly upheld and enforced.

7. On the extent of the lien on the property of defaulters, which the law as it stands gives to the government, Mr. Walters embodied his sentiments at large, in a minute dated 30th May last, on a reference from the commissioner of Moorshe-dabad; and as this is a very important point, as connected with the present discussion, a copy of the minute is annexed at Mr. Walters' desire, for the consideration of government. But even then the balances due on estates sold would not

not, he thinks, be realized, unless the lien the law now gives in such cases is upheld and enforced.

8. The officiating member, Mr. Tucker, under the aspect and character given to the question in your predecessor's letter under acknowledgment, is disposed to concur in the view therein taken of it. He remarks, that were the present system to continue in operation, he would object to the transfer; but if government are prepared to alter the system, and to render sales made by the judges nothing more than private transactions between the parties, in as far as the government interests are concerned, the purchaser buying his lot with all its responsibilities, he cannot see the dangers that are apprehended by his colleagues.

9. Mr. Tucker concurs with his Lordship the Governor of Bengal, that the arrangement proposed would prevent much injustice both to creditor and debtor, which at present can scarcely be avoided; and it appears to him that in cases of land or other property pledged to any government officer as security, in which alone risk is apprehended, the government interests would be quite as much protected as they are at present, if the judges were required to send notice of every approaching sale to the collector one month before the day fixed for the sale. That period, together with another month after the sale, to allow of objections being offered previous to confirmation, will, in Mr Tucker's opinion, afford the collector ample opportunity for opposing the sale, should he consider it necessary to do so; and as regards the risk and loss attendant on fraudulent transfers of property pledged in security of collusive decrees to evade responsibility, &c., to which the government is at present subjected, he thinks that they would not be increased by a change of the authorities by whom sales are to be made, provided the collector had due intimation of all intended sales.

10. With reference to the temporary member's observations, in paragraph 7 of this letter, the officiating member instructs me to state, that differing altogether in opinion with Mr. Walters on the subject of the extent of the lien held by government on the property of revenue defaulters, he had made notes for replying to that gentleman's minute, and was prevented embodying them in proper form only by his subsequent illness, and he has not since had leisure to resume the subject, but is prepared to do so if government desire it.

Sudder Board of Revenue,
Fort William, 14 November 1837.

I have, &c.
(signed) J. Dunbar,
Officiating Secretary.

MINUTE.

THE commissioner of Moorshedabad, under date the 18th February 1837, No. 287, reported that a sale of certain Patnee talooks, the property of Dergundernath Baboo, had been made in satisfaction of a decree, and that the collector had proceeded to carry the amount, S. Rs. 1,900, to the credit of government, in satisfaction of a claim of Rs. 5,371, outstanding against Dergundernath Baboo, on account of arrears of revenue of 1242 B. S. or Purgunnah Mundulghaut, the sale of which had fallen short by that sum of the demand of revenue due thereon.

2. The Commissioner, however, considering this proceeding on the part of the collector to be "illegal and unjust towards the decreedars," referred the matter to the Sudder Board of Revenue.

3. The Board (Messrs Pattle and Tucker, Mr. Walters dissenting) expressed their opinion, under date the 30th May, to the following effect, in opposition to their orders, issued in the same case, under date 25th April 1837, No. 58: "The Board concur with you in opinion, that the government has no right to appropriate, in liquidation of Mundleghat balances, the money realised by the sales of Patnee talooks, in satisfaction of Trenath Mullick's decree."

"But I am also directed to state, that if the collector had caused measures to be taken for the sale of the Patnee talooks in satisfaction of the claim of government on the proprietor previously to the decree being taken out, as it was his duty to have done, the public interests would not have been sacrificed as they have been."

Government has, of course, a prior claim on an estate on which an arrear is due; but with regard to other property of the defaulter, it has only, all other circumstances being the same, an equal claim with other creditors, and it is therefore

On the right of the government to appropriate in the first instance, in payment of revenue demands, assets arising from sales made by collectors in satisfaction of decrees of court

therefore particularly incumbent on a collector, when he finds that the claim of government is not satisfied by the sale of the estate in arrear, to institute a strict inquiry for other property of the defaulter, and to secure it, if any be forthcoming, on account of government before it be laid hold of by other claimants.

4. Now by Section 44, Regulation XIV. 1793, it is enacted, that "If the land subject to the payment of revenue to government belonging to any defaulting proprietor or farmer of land, any surety or purchaser of land, which may be sold under this Regulation, shall not produce a sum sufficient for the liquidation of the public demand, any other real or personal property which the defaulter may possess, is to be attached and sold to make good the deficiency, under the same rules as his lands subject to the payment of revenue to the government are directed to be sold, as far as the rules may be applicable to such property."

5. And by Section 14, Regulation III. 1794, it is further enacted, that, "If the whole of the lands of a proprietor shall be sold for the discharge of arrears of revenue, or any of the demands specified in Section 40, Regulation XIV. 1793 (tuccavy and the like), and the proceeds of the sale shall not be sufficient to make good the arrears; or if the lands of a defaulting proprietor shall be put up to sale, and no person shall offer to purchase them, in the first case, the person of the defaulter, and any personal property which he may possess, and in the second, his person and property of every description, shall be liable, for the balance, to the operation of all the rules regarding defaulting proprietors contained in Regulation XIV. 1793, &c."

6. Further, Clause 1, Section 3, Regulation XI. 1822, declares, "The Regulations of government having made the estates of proprietors, under engagements with government, primarily answerable by public sale for any arrear in the monthly payment of the revenue as defined in Section 2, Regulation III. 1794, and the property of all persons under stipulations with government, whether as proprietors for their own estates or as farmers or managers, and their sureties being likewise answerable for such arrears; it is hereby declared, &c that collectors shall be entitled to have recourse to this process for the realization of any arrear or interest thereon, or other revenue demand that may be due from parties so under engagements, &c."

7. By Clause 3, Section 10, Regulation XI. 1822, it is also further enacted as follows:—

"Provided also, that no claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of government, nor any private demand or cause of action whatsoever, held or supposed to be held by a farmer or other engager against government shall be allowed to bar or in any way affect the right of government and its officers summarily to enforce the payment of public revenue by the sale of the lands or property of the person, so long as any part of the assessment for which such zemindar or other person aforesaid may be liable, shall remain undischarged."

8. Now it appears to me from the above provisions; 1st, That primarily all lands are hypothecated to government for the revenue assessed upon them; 2dly, That the real and personal property of all persons under stipulations with government, whether as proprietor for their own estates, or as farmers or managers or their sureties, and whether for arrears of revenue or interest, or other revenue demand, is hypothecated to the government in payment of the revenue due from them; 3dly, That the persons of defaulters are, on failure of assessments, liable to incarceration for revenue demands.

9. There is no distinction in the above provisions as to the decree of hypothecation, or the mode and power of enforcing the revenue claim, whether as arising direct on the land to be sold, or on other revenue demands.

10. And I maintain that the Regulations above quoted give the government a lien and claim on all real and personal property of revenue defaulters, which must be satisfied prior and in preference to any ordinary private claim.

11. By the provisions of Sect. 15, Reg. XLV. 1793, indeed, it is enacted; "That arrears or suspensions of revenue on lands sold in satisfaction of decrees of court, under that Regulation, if not stipulated to be made good by the purchaser, are to be paid from the proceeds of the sale."

12. It has, consequently, been invariably the custom to act in all cases on the spirit of that Regulation, which makes no exception with respect to the deduction of arrears from the sale proceeds in cases in which the lands sold are other than those on which the balance occurred, and the accountant revenue department, in a circular order to the collectors, under date the 6th December 1833, called their attention to its due enforcement on all occasions.

13. The objections taken to the measure by Mr Lewis are in his own words, as follows: "That beyond an indefeasible primary lien upon the land actually in balance, it appears to me that the law confers upon Government no peculiar right. The other property of its debtor is no doubt available for the realisation of the claim of the state; but I do not find that any priority of claim to such property is anywhere bestowed, and I therefore hold that the summary appropriation of funds which come into the collectors' hands by a process such as is above described, is altogether objectionable, being, as it appears to me, both illegal and unjust.

"I beg to submit a doubt whether, even when an arrear of revenue is due from the property sold in satisfaction of a decree, it be legal to realise the said revenue from the proceeds of such sale.

"The orders of the accountant of the 6th December 1833 appears to me erroneous, as having reference to a different state of things. Under the old law, to which he refers, Sect. 15, Regulation XLV. 1793, a positive property was sold, and the realisation of the revenue from such property from the sale proceeds was of course unobjectionable.

"He overlooks the circumstance that a positive property is now never sold in satisfaction of a decree, and that Regulations XIV. 1822, and VII. 1825, have entirely changed the complexion of both kinds of sale."

14. In his further letter of the 3d May, No. 637, Mr. Lewis observes.

"This letter now under reply, refers only to cases of sale in satisfaction of decrees, in which the revenue of the land sold is in arrear. Sect. 15, Regulation XLV. 1793, referred to in paragraph 7 of my letter, and now quoted by the Board, directs the deduction from the sale proceeds of the arrear of revenue due from the land sold, the practice then being to sell a specific portion of land, the revenue of which was distinctly ascertained, and I argued, that as specific portions of land were now not sold in satisfaction of decrees, the means of executing the law of Sect. 15, Regulation XLV. 1793, was in fact not in our power, and that the pretence of still acting on this impossible law involved gross and flagrant injustice."

15. Mr. Lewis's objections to the present practice are in fact, it will be observed, founded on his own opinion as to what the law ought to be, not upon the law as it stands. Now, I maintain, that by the law as it stands, the government have a prior lien upon all the property, real and personal, of the defaulter, whether the balance has accrued upon the lands to be sold or not, and that such has been the invariable construction put upon the above Regulations, and which has justified the practice of the revenue authorities.

16. The law is so clear with respect to balances accruing on the land to be sold, Sect. 29, Regulation XI. 1822, declaring the land to be perpetually hypothecated to government for the revenue, and that no claim of right founded on any act of the original engager or his representative, &c. shall be allowed to impugn the right of government to make the sale, &c. that Mr. Lewis' doubt cannot for a moment be entertained; indeed, he appears himself to have relinquished it in his second letter.

17. Mr. Lewis's assertion that a positive property is now never sold in satisfaction of a decree, and Regulation XI. of 1822, and VII. of 1835, have entirely changed the complexion of both kinds of sale, does not appear to me to be borne out by the fact.

18. For Regulation XI. of 1822 is a Regulation for the conduct of sales for arrears of government revenue, only making no allusion to proceedings of the civil courts except in the penultimate section, which declares government not liable for their errors; and Regulation VII. of 1825, which continues in force as the law under which sales in satisfaction of decrees of court are conducted, empowers indeed the civil courts to sell houses, gardens, orchards, and small parcels of lakhraj land, but leaves the sale of malgozaree lands, as before, in the hands of the collector under the provisions of Regulation XLV. of 1793, which, with respect to such sales, it scarcely modifies. Moreover, Clause 3, Section 4, Regula-

tion VII. of 1825, authorises the collector to select for sale any part of the lands contained in the (judge's) statement, which it may be most convenient to sell in execution of the decree or other process.

19. I do not therefore see the application of the remarks in paragraph 2 of Mr. Lewis' letter, No. 687, or paragraph 7 of his letter, No. 278, or understand how he makes it out that positive property cannot now be sold, or that the whole complexion of the sale law is changed.

20. If it is Clause 7, Section 4, Regulation VII. 1825, which enacts that nothing is guaranteed to bidders beyond "the rights and interests" of the individuals answerable for the amount of the decree, to which Mr. Lewis means to take exception, I would then ask him whether it would not involve "gross and flagrant injustice" to guarantee to purchasers "rights and interests" which did not belong to the individuals answerable for the amount of the decree? *

21. Section 29, Regulation XI. 1822, it is true, makes a distinction between, and defines the rights conveyed by sale in cases where an estate may be sold for arrears accruing on another mekul as contradistinguished from the rights conveyed where an estate may be sold in recovery of the revenue assessed upon it; and it seems to me, that it is from this limitation of the rights conveyed by the sale in the former instance, that an inference has been drawn limiting and impugning the right to sell, and the powers and incidences of sale as conferred by the Regulations on the government.

22. Now though the rights and interests only of defaulters, in cases where the arrear has accrued on other than the lands to be sold, are liable to sale by government, being the same in this respect as in sales in satisfaction of decrees, still the prior lien, general if not specific, which the Regulations confer on the government revenue demand, are not annihilated by the equality in this respect; and to maintain that the mere presentation of a petition to the judge, praying for the sale of the property of the person against whom a decree for the amount of a simple contract bond may have issued, or its actual sale on a summary order of the judge in consequence, is sufficient to bar the prior right of government, which is unlimited as to time, to a satisfaction of its demand from the defaulter's assets wherever and whenever available, even in part, (for Mr. Lewis would assign the whole in satisfaction of the decree,) is to give to such parties a privilege which the law does not warrant, and to deprive the government of a privilege which the law does warrant. †

23. If a decree should have issued assigning a government defaulter's property to his creditor in satisfaction of a mortgage security or the like, previous to any enforcement of the claims of government against the same property, then of course, as the rights of the defaulter would have been already assigned over and barred in that property by competent authority, there would be no "rights and interests" of the defaulter left therein, wherewith to satisfy the government demand.

24. When the government entered into contract with its malgoozars, it is stipulated that all their property, real and personal, should be answerable for the assessed revenue. When the creditor lent his money on a simple contract bond at an exorbitant rate of interest, he made no such contract, and took no such collateral security from his debtor. This is the position of the parties, and the lien of the former cannot be annulled by any act of the latter.

25. It is incumbent undoubtedly upon collectors to take immediate measures for the enforcement of the demands of government, and it has been the knowledge that the government possessed a prior lien which has probably been the main cause of delay in the enforcement of such claims.

26. To

* The thing justly liable to sale is, in fact, exactly the same now as before, viz the property of the debtor. But, under the former process, property was often pointed out by the creditor, and exposed for sale, which proved not to be the property of the debtor. To avoid this injustice, and the litigation it gave birth to, the rights and interests of the party in the property specified only were guaranteed at the time of sale. If he possessed no positive property in the thing sold, no legal title could evidently be conveyed either under the former or present process.

† By construction of the Sudder Dewanny Adawlut, dated 9th September 1836, parties holding decrees divide assets rateably. The revenue claims of government cannot surely, at all events, be placed in a worse position than a decree holder who has not sued out attachment? In England the King's "broad arrow" overrules all claims.

26. To sell first the rights of the debtor in satisfaction of the decree, burdened with the claim of revenue, as suggested in paragraph 7 of Mr. Lewis' letter, as below,* and then to sell the property again in satisfaction of the government demand, would be an awkward expedient †. Who would buy to-day a property liable to be sold to-morrow? And if a man should buy with the intention of making good the government demand, there can be no question that the price he would offer under such circumstances, would be much less than the sum the estate would otherwise fetch, less amount to be paid to government, so that the change of the system would be anything but advantageous to the interests of the debtor.

27. There can be no doubt, and my own experience has abundantly taught it me, that the civil courts view with jealousy, and are sometimes not backward to thwart the proceedings of the revenue authorities, and that they are not unfrequently resorted to for the purpose of being played off against government revenue demands; and the present case shows that even revenue commissioners may be found to support their pretension.

28. With our present system of native judges then, a system rapidly progressing, who are at liberty to execute their own decrees, there can, in my opinion, be no question that the revenue interests of government will be very materially injured unless the prior and indefeasible lien of the sale on the property, real and personal, of all malgoozars, is jealously maintained, and the courts are barred from filching from the collectors, on the plea of satisfaction of decrees, real or fictitious, assets in their hands which ought to be carried to the credit of government. Further, to allow the civil judges to sell malgoozaree lands in satisfaction of decrees without reference to the collectors, would, I am convinced, soon lead to such a loss of revenue as would speedily render a remedial law absolutely necessary.

29. I submit then it would be far wiser to prevent the evil by not removing the conduct of sales from the hands of the collectors, as recommended in our new draft of a sale in satisfaction of decree law, and by distinctly upholding and enforcing the prior lien of government on all property "or rights and interests" of defaulters, real and personal, introducing an explanatory provision to this latter effect in the new law referred to if considered necessary.

Sudder Board of Revenue,
Fort William, 30 May 1837.

(signed) H. Walters,
Sudder Board of Revenue, Fort William,
14 November 1837.

(True Copy.)

(signed) J. Dunbar,
Officiating Secretary.

* "It appears to me that the more correct method of procedure, one more in accordance with the true principles of our revenue system, would be to sell, as we nominally do, the actual rights of the debtor in the land, burdened of course with the claim for revenue, to pay the whole proceeds of such sale over to the civil court, and then to sell the estate, if need be, to realise the revenue, just as if no sale in satisfaction of a decree had taken place."

† This could only be made applicable to the case of balances accruing on the land to be sold, where the claim is on the land itself; but in such cases Mr. Lewis does not deny the indefensible hypothecation to government; so that the remedy, as far as Government is concerned, is a remedy for an evil which is non-existent. In all other cases where the claim is on the defaulter personally, as the sale in satisfaction of the decree would also lately transfer the defaulter's rights and interests in the property sold, the government would be absolutely without a remedy: the claims of the state could not be satisfied.

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Sale in Execution
of Decrees of Civil
Courts.

Legis. Cons.
29 March 1841.
No. 3
Enclosure.

(No. 2,406.)

From *F. J. Halliday*, Esq. Officiating Secretary to Government of Bengal, to
J. Hawkins, Esq. Officiating Register of the Sudder Dewany Adawlut.

Sir,

I AM now directed by the Honourable the Deputy-governor of Bengal to acknowledge the receipt of Mr. Taylor's letter, No. 3,118, to the address of my predecessor, dated the 20th October last, submitting copies of minutes recorded by the several judges of the Sudder Court, in the question transferring the sales of lands in execution of decrees of court from the revenue to the judicial authorities.

2. As the majority of the judges have expressed their concurrence in the projected alteration of the system at present in force, his Honor requests that the Court will prepare and submit the draft of an Act to give effect to the measure contemplated.

3. An original letter, No. 573, from the officiating secretary to the Sudder Board of Revenue, dated the 14th ultimo, containing the sentiments of the members of that Board on the above subject, is herewith transmitted for the information of the Courts. You are requested to return the document when no longer required.

I am, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to Government
of Bengal.

Fort William, 5 December 1837.

(No. 740.)

From *J. Hawkins*, Esq. Register, of the Sudder Dewany Adawlut, to
F. J. Halliday, Esq. Officiating Secretary to Government of Bengal,
Judicial Department.

Sir,

Sudder Dewany
Adawlut.

Present:
R. H. Rattray,
W. Braddon, esqrs,
judges,
W. Money and *J. R.*
Hutchinson, esqrs,
temporary judges.

IN conformity to the instructions conveyed in your letter, No. 2,406, dated the 5th December last, I am directed to transmit the accompanying draft of an Act empowering the courts of civil judicature to sell landed property in execution of decrees.

2. His Honor will observe, that the draft might have been rendered much more brief by merely declaring that the civil courts should be vested with the power which it is now proposed to confer upon them; but the Court have deemed it the preferable plan to embody the entire subject with its details into one Act.

3. The enclosure of your letter is herewith returned, a copy having been kept for the use of the office.

I have, &c.

Fort William, 16 March 1838.

(signed) *J. Hawkins*, Register.

I. It is hereby enacted, that from the Regulation XLV. of 1793, and XX. of 1795, and such parts of Regulation XXVI. of 1803, and VII. of 1825, of the Bengal Code, and of any other Regulation or Act in force as relate to the sale of landed property of any description in satisfaction of decrees of the courts of civil judicature, or in execution of any other judicial process, shall be repealed.

II. And it is hereby enacted, that the courts of civil judicature within the territories subject to the presidency of Fort William, in Bengal, shall be empowered to sell, or to cause to be sold, lands of every description, in execution of any decree or judicial process; provided however, that whenever the judges of the zillah and city courts, and the principal sudder ameens, shall employ their nazirs in conducting any sale, the judges, or the principal sudder ameen, as the case may be, shall personally superintend their nazirs while so employed. Provided also, that whenever the sudder ameens or moonsiffs shall have to conduct any sale, they shall be required to conduct such sale themselves.

III. And it is hereby enacted, that in cases of execution of a decree of court, on receiving from the decree holder, a statement of the land or lands belonging to

the

the debtor, or other person against whom execution has been taken out, together within an application for the sale of such property, the court to whom such application is made shall, if necessary, apply to the collector of land revenue, for the purpose of ascertaining whether the debtor or other such person aforesaid is the recorded proprietor of the whole or any portion of such property, and for such other information regarding such property as may be necessary to enable the court to prepare the sale papers, and the collector of land revenue shall be required to reply to all such applications, and afford all such information as the records of his office may enable him to do.

IV. And it is hereby enacted, that in the event of its appearing that the debtor or person aforesaid is not a recorded proprietor of the whole or any portion of such property aforesaid, the court before which the decree is in course of execution shall not be thereby barred from making such further inquiries as may be necessary for the purpose of ascertaining whether the debtor or other such person aforesaid be the proprietor of the whole or any part of such property aforesaid, nor from proceeding to sale should such appear to be the case.

V. And it is hereby enacted, that whenever a zillah or city judge, or principal sudder ameen, or sudder ameen, shall have determined to bring to sale any land or lands in execution of any decree or judicial process, the court shall cause a copy of a notice to be fixed up for 30 clear days before the day of sale, in the court-house, and shall send a copy of such notice to the collector of land revenue, or other officer in charge of the office of collector, to be fixed up in his kutcherry for the same period, and shall also send a copy of such notice to the moonsiff in whose jurisdiction the estate may be situated, to be fixed up in the cutcherry of such moonsiffs for 20 clear days before the day of sale.

VI. And it is hereby enacted, that whenever a moonsiff shall in like manner proceed to the sale of any land or lands, he shall cause the requisite notice to be fixed up for 30 clear days before the day of sale in his cutcherry, and shall send a copy of such notice to the judge, and another copy to the collector of land revenue of the city or zillah, to be fixed up in their cutcherries for 20 clear days before the day of sale. Provided that no court shall sell lands situated within the jurisdiction of another court, but shall forward a requisition for the sale of such property to the court in the jurisdiction of which the lands are wholly or chiefly situated.

VII. And it is hereby enacted, that such notice shall be written in the vernacular language of the district, and that such notice shall specify the land or lands in which the rights and interests of the debtor are proposed to be sold, the place and day fixed for the sale, and the jumma of lands paying revenue to government, payable annually, for such land or lands.

VIII. And it is hereby enacted, that all sales shall be made at the place and time specified in the advertisement; provided, however, that in cases of execution of a decree of court, it shall be competent to the court ordering or conducting the same to postpone the sale for any good and sufficient cause to be recorded on the proceedings of sale; provided also, that notice of such postponement be given at the time by proclamation in open court, and by noting the same at the foot of the notice first issued; but if the postponement exceed one week, a fresh notice shall be issued in the sudder kutcherry and in the mofussil.

IX. And it is hereby enacted, that when the bidding shall commence, it shall be the duty of the officer conducting the sale to receive the bid of every one without inquiry; but prior to knocking down the lot and concluding the sale, he shall call upon the person who may have made the higher offer, to make a deposit of 15 per cent. on the amount bid.

X. And it is hereby enacted, that if the person who may have made the last offer shall not, when called upon, forthwith tender the prescribed deposit, the officer conducting the sale shall be at liberty to reject the bid, and to put up the lot again at the amount of the next highest bid. The person who may have made such offer shall have the benefit of his bid, and be allowed to maintain it by tendering the required deposit, if no higher offer shall be made, and on his failure to do so the officer conducting the sale shall be competent to have recourse to the next highest bidder; provided, however, that it shall at all times be competent to the officer conducting the sale, at his discretion, to commence the sale of the estate *de novo*, instead of concluding the sale with the next highest bidder.

XI. And it is hereby enacted, that any person bidding at a public sale held by order of court, who upon being called upon to conclude his purchase, and lodge

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the prescribed deposit may be unable, or may refuse to do so, shall be deemed guilty of contempt of court, and be punishable by a fine not exceeding 100 rupees, if the sale be held by order of a zillah or city judge, or principal sudder ameen; not exceeding 50 rupees, if conducted by a sudder ameen or moonsiff; and in default of payment of the fine ordered to be levied by any of the aforesaid authorities, he shall be committed to the civil gaol of the district until the fine is paid, or for a period not exceeding one month.

XII. And it is hereby enacted, that the entire amount of the purchase-money shall, in all cases of sale held under the provisions of this Act, be made good by the tenth day from the day of sale; and that if the whole sum, including the amount deposited, be not made good before noon that day, it shall be competent to the court to cancel the sale, to advertise the property for resale, and to declare the deposit to be forfeited, the amount of such deposit being regarded as a part of the proceeds of the sale.

XIII. And it is hereby enacted, that when a sale of land held under the provisions of this Act shall have been completed, the court, by the immediate order or by the instrumentality of which the sale was made, shall proceed to put the purchaser in possession of the land or lands sold to him, by delivering to him the usual bill of sale and ummulamah, and by causing a notice to be issued on the spot, certifying the fact of the sale of the rights and interests of the debtor to the purchaser.

XIV. And it is hereby enacted, that when a sale of land under the provisions of this Act shall have been completed, and application shall be made, it shall be the duty of the collector of land revenue to cause entries of the transfer to be made in the public registers, according to the description of property transferred, in the manner prescribed by the regulations in force.

XV. And it is hereby enacted, that the proceeds of sale shall be made over to the decree-holder, after deducting one per cent. from the amount of proceeds, to be carried to the account of Government for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for giving effect to the provisions of this Act: provided, however, that if any surplus shall remain, after paying to the decree-holder the amount of his claim, and deducting a commission of one per cent. as aforesaid, such surplus shall be paid to the former proprietor of the land sold.

XVI. And it is hereby enacted, that arrears of rent or revenue, on account of land sold under the provisions of this Act, that may be due to the former proprietor from his dependant talookdars, under farmers or ryots, preceding the date on which the lands may be sold, shall belong to him, and shall be recovered by him by a regular or summary civil suit, as the case may be.

XVII. And it is hereby enacted, that in the event of any claim being preferred to the property advertised for sale, or any objection being offered to the proposed sale within the period of the proclamation, such claim or objection shall be inquired into by the judge or other officer who may have ordered the sale; and if it appear necessary, the time of sale shall be postponed till such claim or objection have been investigated, provided that the representation of it (which shall in all instances be preferred to the judge or officer ordering the sale as soon as practicable after the publication of the intended sale) shall not appear to have been designedly and unnecessarily delayed, with a view to obstruct the ends of justice. In such cases, when the fraudulent design may appear evident, the sale shall not be postponed, and the claimant shall be left to prosecute his claim after the sale by a regular civil suit.

XVIII. And it is hereby enacted, that if on the presentation of a petition, (written on the stamped paper required for miscellaneous petitions in the zillah and city courts,) within one month after any sale, and on a summary inquiry into the allegations contained therein, it shall appear that any material irregularity, at variance with the rules herein prescribed, or with any other rule or regulation in force, has occurred in the conduct of such sale, in such case it shall be competent to the court by which, or by order of which, such sale was effected, to cancel the same, and to direct a return of the purchase-money with or without interest, as in each instance may appear proper.

XIX. And it is hereby enacted, that all orders passed under this Act shall be open to a summary appeal, agreeably to the general rules in force for such appeals.

XX. And it is hereby enacted, that if in cases of execution of a decree of court

the party whose land may have been sold, or other person claiming a right therein, shall desire to contest the sale, it shall be competent to him to institute a regular civil suit for that purpose.

XXI. And it is hereby enacted, that the statement of land required under section 3 of this Act shall specify any property of the nature of a putnee talook, described in Regulation VIII. of 1819, of the Bengal Code, or any share of an undivided estate, without specifications of the lands composing such share, or any other description of right or title to or interest in land, it shall be competent to the courts to dispose of such property, under the rules provided for in this Act, so far as they may be applicable to each case.

XXII. And it is hereby enacted, that in all cases of public sale of property under the provisions of this Act, nothing shall be considered to be guaranteed to the purchaser in the property sold beyond the rights and interests therein of the individuals answerable for the amount of the decree in execution of which the sale is made.

XXIII. And it is hereby enacted, that in cases of lands paying revenue to the government, nothing contained in this Act shall be construed to interfere in any way with the claim of the government to arrears of revenue due for any period antecedent to the date of sale, or with its right to realise such arrears by sale of such lands, in the same manner as if no such sale or transfer had taken place

(signed) J. Hawkins, Register.

(No. 648.)

From F. J. Halliday, Esq. Officiating Secretary to the Government of Bengal, to J. Hawkins, Esq. Register of the Sudder Dewany Adawlut.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to request that you will move the Court's attention to the second paragraph of my letter (No. 2406), dated the 5th December last. His Honor awaits the receipt of the draft Act therein alluded to, with which you will be pleased to return the original letter from the Officiating Secretary to the Sudder Board of Revenue, forwarded to you with my letter above cited.

Judicial Dept.

Fort William,
20 March 1838.

I am, &c.
(signed) F. J. Halliday,
Officiating Secretary to the Government
of Bengal.

(No. 1007.)

From J. Hawkins, Esq. Register, to F. J. Halliday, Esq. Officiating Secretary, to the Government of Bengal, in the Judicial Department.

Sir,

In reply to your letter, No. 648, of the 20th ultimo, I am directed to state that the draft therein required was forwarded with my letter, No. 740, of the 16th idem

Sud Dewany Adawlut
Present
R. H. Rattray,
W. Braddon,
N. J. Halhed, esqrs.
Judges,
W. Money,
J. R. Hutchinson, esqrs.
temporary judges

Fort William,
14 April 1838

I am, &c.
(signed) J. Hawkins, Register.

(No. 1928.)

From J. Hawkins, Esq. Register, to F. J. Halliday, Esq. Secretary to Government of Bengal, Judicial Department.

Sir,

I AM directed to request that you will submit, for the consideration of his Honor the Deputy-governor, the accompanying copy of a * letter addressed by the register of

Sud Dew. Adawlt.
Present.
R. H. Rattray,
W. Braddon,
N. J. Halhed, esqrs.
Judges.
W. Money and J. R.
Hutchinson, esqrs.
temporary judges

No. 8.
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Courts.

of the Sudder Dewany Adawlut, North West Provinces, to the secretary to the Right honourable the Governor-general, in the Judicial Department, on the subject of the transmission of translates of decrees to the revenue authorities, under the provisions of Section 16, Regulation XXVI. 1803, (Section 2, Regulation XLV. 1793, for the Lower Provinces,) and, with reference to the second paragraph of Mr. Harrington's letter, to suggest as the most advisable alternative a modification of the law which renders such translations indispensable.

Fort William, 6 July 1838.

I am, &c.
(signed) *J. Hawkins*, Register.

(No. 789.)

From *H. B. Harrington*, Esq. Register, to *J. Thomason*, Esq. Officiating Secretary to the Right Honourable the Governor-general, in the Judicial Department, North West Provinces.

Sir,

Sud. Dew. Adawt.
N. W. P.
Present:
M. H. Turnbull,
A. J. Calvin,
W. Lambert,
W. Monckton,
B. Tayler, esqrs.
Judges.

WITH reference to the correspondence noted in the margin*, relative to the modes and form of address to be observed by the native judicial functionaries, when corresponding on matters of business with the covenanted officers of government and natives of rank, I am directed by the court to forward to you, for the purpose of being submitted for the consideration and orders of the Right honourable the Governor-general, the accompanying copies of the two letters from the judges of Ghazee pore and Azimghur, from which it will be perceived that the commissioner of the Benares division declines to receive communications direct from the principal sudder ameens of those zillahs, unless accompanied by an English letter, with which requisition it is not in the power of those officers to comply, in consequence of their not being acquainted with that language; a copy of a letter on the same subject, subsequently received from the commissioner of the Allahabad division, is also annexed for his Lordship's information.

2. With regard to applications for the sale of lands paying revenue to government in satisfaction of a decree of court, the court direct me to observe, that Section 16, Regulation XXVI. of 1803, expressly requires the court by which the decree is to be enforced to transmit a copy of the same, with a translate of it in English, to the Board of Revenue, whose powers as regards sales of land in execution of decrees have been transferred by subsequent enactments to the commissioners of revenue; under these circumstances the court observe it will be necessary either that the law as above quoted should be modified, or, as respects this particular class of cases, that the applications of the principal sudder ameens should continue to be forwarded, as heretofore, to the commissioner of revenue, through the zillah judge; though, as noticed by Mr. Heyland, this will tend in some measure to defeat the object contemplated in the arrangement which has given rise to the present reference.

3. With regard to other applications, which the law may not require to be accompanied by any English correspondence, the court would suggest that the necessary instructions be issued to the revenue authorities in these provinces, informing them that the principal sudder ameens have been expressly authorised to correspond direct, on matters of business connected with their office, with all covenanted officers of government, with the exceptions specified in the court's circular letter of the 1st December, issued from this office on the 9th February last, a copy of which was duly submitted for the information of the Right honourable the Governor-general.

4. On the subject of the remaining part of Messrs. Heyland's and Cartwright's letters, regarding the certificates which the principal sudder ameens are required by the circular orders of the 23d February last to forward with their returns to the court's precepts, the court propose to communicate with the Calcutta-court.

Allahabad, 15 June 1838. I have, &c.
(signed) *H. B. Harrington*, Register.

(True copy)

(signed) *J. Hawkins*, Register.
H. B. Harrington, Register.

* Letter to Government, with Enclosure, dated 5th January 1838.
Reply from ditto, dated 31st July 1838

(No. 1593.)

From *J. H. Young*, Esq. Deputy Secretary to Government of Bengal, to
E. Currie, Esq. Secretary to the Sudder Board of Revenue.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to request that you will lay before the Board the accompanying copy of a letter from the register of the Sudder Dewany Adawlut, dated the 6th ultimo, No. 1928, and of its enclosure, for their report whether there be any objection to dispensing with a translation of the decrees which the courts of justice are required by Section 2, Regulation XLV, of 1793, to transmit to the revenue authorities.

Judicial Dept.

Fort William,
14 August 1838.

I am, &c.
(signed) *J. H. Young*,
Deputy Secretary to the Government
of Bengal.

(No. 1693.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to
T. H. Maddock, Esq. Officiating Secretary to Government of India, in the
Legislative Department.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to forward to you, for the purpose of being laid before the Government of India, for consideration and orders, the accompanying copy of a letter from the register of the Sudder Dewany Adawlut, dated the 16th March last (No. 740), and of the draft of a proposed Act for empowering the courts of civil judicature to sell landed property in execution of decrees.

Judicial Dept.

Fort William, 28 August 1838.

I have, &c.
(signed) *J. H. Young*,
Deputy Secretary to the Government
of Bengal.

(No. 489.)

From *E. Currie*, Esq. Secretary, to *F. J. Halliday*, Esq. Secretary to the
Government of Bengal, Revenue Department.

Sir,

In reply to your letter (No. 1593) of the 14th instant, I am directed to state, for the information of the Honourable the Deputy-governor, that it is the opinion of all the members of the Sudder Board, that there exists no objection to the rescission of Sect. 2, Regulation XLV, of 1793.

2. The officiating and temporary members, however, would suggest that this question must necessarily be disposed of in the contemplated enactment for transferring the duty of holding sales in satisfaction of decrees from the revenue to the judicial authorities, and they beg permission to urge upon the Government the expediency of early legislation on the subject.

Miscellaneous Dep.

Present:

J. Pattle, esq.
C. Tucker, esq.
R. D. Mangles, esq.

Sudder Board of Revenue, Fort William,
28 August 1838.

I have, &c.
(signed) *E. Currie*,
Secretary.

No. 8.
Sale in Execution
of Decrees of Civil
Courts.

(No. 1772.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to
T. H. Maddock, Esq. Officiating Secretary to Government of India, Legislative
Department.

Judicial Dept.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to forward to you the accompanying copies of letters noted in the margin*, on the subject of modifying the provisions of Section 2, Regulation XLV. of 1793, and Section 16, Regulation XXVI. of 1803, in order to the dispensing with the translation of decrees which the courts of justice are required to transmit to the revenue authorities, and to request that you will lay the same before the Supreme Government for consideration and orders.

Fort William, 4 Sept. 1838.

I have, &c.
(signed) *J. H. Young*,
Deputy Secretary to the Government
of Bengal.

(No. 153.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to
F. J. Halliday, Esq. Secretary to Government of Bengal.

Legislative.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letters, dated respectively the 28th of August 1838 (No. 1693), and the 4th of September 1838 (No. 1772), with the copies of papers enclosed with each.

2. In reply to the first-mentioned letter, I am desired to inform you that the draft Act therein submitted appearing to his Honor in several particulars to be objectionable, he is of opinion that an Act containing a brief declaration, such as is referred to at the beginning of the second paragraph of the *Sudder Court's* letter, dated the 16th of March 1838, would be decidedly preferable. The court should therefore be directed to prepare and submit one accordingly.

3. In the same draft Act the judges may be requested to provide for the modification of Section 2, Regulation XLV. of 1793, and of Section 16, Regulation XXVI. of 1803, in the manner proposed in the papers which accompanied your above-mentioned letter of the 4th of September last.

Council Chamber, 15 April 1839.

I have &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government
of India.

(No. 767.)

From *J. H. Young*, Esq. Secretary, to *J. Hawkins*, Esq. Register *Sudder Dewany*
Adawlut.

Judicial Dept.

Sir,

WITH reference to your letter of the 16th March 1838 (No. 740), submitting a draft of a proposed Act for empowering the courts of civil judicature to sell landed property in execution of decrees, I am directed by the Honourable the Deputy-governor of Bengal to request that you will lay before the court the accompanying original letter from the Officiating Secretary to Government of India, dated the 15th instant, in order that the court may Act upon the instructions contained therein.

Fort William, 30 April 1839.

I am, &c.
(signed) *J. H. Young*,
Secretary.

P. S.—You will be pleased to return the enclosure along with your letter.

* Letter, No. 1928, from the Register of the *Sudder Dewany Adawlut*, dated the 6th July 1838, and its enclosure.
Letter, No. 1793, to the Secretary to the *Sudder Board of Revenue*, dated the 14th August 1838.
Letter, No. 489, from ditto, dated the 28th August 1838.

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No. 8.
Sale in Execution
of Decrees of Civil
Courts.

(No. 1370.)

From *J. Hawkins*, Esq. Register, to *J. H. Young*, Esq. Officiating Deputy Secretary to the Government of Bengal, in the Judicial Department.

Sir,
WITH reference to your letter, No. 767, dated 30th April last, and its enclosure, from the Officiating Secretary to the Supreme Government, I am directed by the court to request that they may be furnished with a copy of your letter of the 4th September last, alluded to in Mr. Grant's communication to your address of the 15th April, No. 153.

Sudder Adawlut.
Present:
R. H. Rattray,
W. Braddon,
C. Tucker, esqrs.
judges; and
J. F. M. Reid, esq
officiating judge.

Fort Wilham, 31 May 1839

I have, &c.
(signed) *J. Hawkins*, Register.

(No. 1068.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to the Register Sudder Dewany Adawlut.

Sir,
IN reply to your letter, No. 1370, dated the 31st ultimo, I am directed by the Honourable the Deputy-governor of Bengal, to transmit to you, as requested by the Sudder Court, the accompanying of the letter addressed to Mr. Maddock, the Officiating Secretary to the Government of India, in the Legislative Department, on the 4th September last, and alluded to in Mr. Young's letter to your address of the 30th April last.

Judicial Dept

Fort William, 20 June 1839.

I am, &c.
(signed) *J. H. Young*,
Deputy Secretary to Government
of Bengal.

(No 1914.)

From *J. Hawkins*, Esq Register, to *F. J. Halliday*, Esq Secretary to the Government of Bengal, in the Judicial Department

Sir,
WITH reference to your letter, No. 767, dated 30th April last, and its enclosure, from the Officiating Secretary to the Supreme Government, I am directed to transmit draft of an Act on the subject of transferring the power of selling lands in execution of decrees of court from the revenue to the judicial authorities.

Sud. Dew. Adawt.
Present
R. H. Rattray,
W. Braddon, and
C. Tucker, esqrs
judges.
A. Dick, and
J. F. M. Reid, esqrs
temporary judges.

2. Adverting to the concluding paragraphs of Mr. Grant's letter to your address of the 15th April, I am directed to observe, for the consideration of government, that the enactments therein specially alluded to prescribe the primary steps to be taken in making the requisition to the fiscal authorities for the sale of land, and would of course be superseded, in common with all other enactments bearing upon the subject, upon the transfer of the power of sale from the revenue to the judicial functionaries. The object of the court in my letter, No. 1928, of the 6th July 1838, was the immediate passing of a law to do away with the legal necessity now existing for the principal sudder ameens to forward translations of their decrees to the commissioner of revenue, but which cannot be adopted in practice, in consequence of the majority of the officers of that class not understanding the English language. If the government, however, consider that this point does not require immediate legislation, a separate provision on the subject in the law of general transfer of the right of sale to the courts of justice will not be necessary.

3. The enclosure of your letter is herewith returned.

Fort William, 19 July 1839.

I am, &c.
(signed) *J. Hawkins*, Register

No. 8.
Sales in Execution
of Decrees of Civil
Courts

BE it enacted, that from the such parts of Regulation XLV. of 1793, Regulation XX. 1795, Regulation XXVI. of 1803, and VII. of 1825, of the Bengal Code, and of any other Regulation or Act in force, as relate to the sale by collectors of landed property of any description in satisfaction of decrees of the courts of civil judicature, or in execution of any other judicial process, be repealed.

2. Be it enacted, That the courts of civil judicature within the territories subject to the presidency of Fort William, in Bengal, shall be empowered to sell, or cause to be sold, lands of every description in execution of any decree or judicial process, in virtue of which such sales may be authorised by the Regulations or Acts now in force, or which may hereafter be enacted.

(signed) *J. Hawkins*, Register.

(No. 1300.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dept.

WITH advertence to your letter, No. 153, dated the 15th April last, which was referred to the Sudder Court on the 30th idem, with intimation that the court might act upon the instructions contained therein, I am directed by the Honourable the Deputy-governor of Bengal to transmit to you, to be laid before the Government of India, for consideration and orders, the accompanying letter (No. 1914), in original, from the register of the court, dated the 19th ultimo, submitting the draft of an Act on the subject of transferring the power of selling lands in execution of decrees from the revenue to the judicial authorities.

2. With your reply you will be pleased to return the original document.

I am, &c.

Fort William, 8 August, 1839. (signed) *J. H. Young*,
Deputy Secretary to the Government
of Bengal.

(No. 465.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative.

I AM directed to acknowledge the receipt of your letter, No. 1300, dated the 8th August last, with its enclosure, and in reply, to state that the Honourable the President in Council does not, on further consideration, feel prepared to pass a law transferring the conduct of the sale of lands of every description sold in execution of decrees to the judicial authorities generally.

2. His Honor in Council is of opinion that it would be sufficient merely to do away with the necessity of the courts furnishing commissioner of revenue with translations of their decrees when lands are thereby directed to be sold, which would appear to be the practical difficulty that has led to the proposed new law. The draft of an Act is accordingly herewith transmitted, for any suggestions which his Honor the Deputy-governor or the Court of Sudder Dewany Adawlut may wish to make on the subject.

3 The original paper which accompanied your letter is herewith returned.

I have, &c.

Council Chamber,
11 Nov. 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government
of India.

DRAFT OF ACT.

It is hereby enacted, in modification of Section 2, Regulation XLV. of 1793 and Sect. 16, Regulation XXVI. of 1803, of the Bengal Code, and of any other Regulations, or parts of a Regulation, in the same code, which require any court

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of civil judicature to transmit to any revenue authority with any decree, requisition, or other paper, a translate of the same in English, that it shall not hereafter be necessary for any court of civil judicature, subordinate to the presidency of Bengal, to transmit to any revenue authority translates in English of any decrees, requisitions, or other papers which such court may have to transmit to such authorities

Sale in Execution
of Decrees of Civil
Courts.

(signed) *J. P. Grant,*
Officiating Secretary to Government
of India.

(A true copy.)

(signed) *J. P. Grant,*
Officiating Secretary to Government
of India.

(No. 1928.)

From *F. J. Halliday,* Esq. Officiating
Secretary to Government of Ben-
gal, to Secretary Sudder Board of
Revenue.

Sir,
WITH reference to my letter, No. 1593, to your address of the 14th August 1838, and to your reply, No. 489, dated the 28th idem, I am directed by the Honourable the Deputy-governor of Bengal to transmit to you the accompanying copy of a letter, No. 466, from the Officiating Secretary to the Government of India, dated the 11th instant, stating that,

on further consideration, the President in Council was not prepared to pass a law transferring the conduct of the sale of lands of every description, in execution of decrees, to the judicial authorities generally. His Honor in Council was, however, of opinion, that it would be sufficient merely to do away with the necessity for the courts, furnishing commissioners of revenue with translations of their decrees, to which effect the accompanying draft of an Act has been submitted with Mr. Grant's letter, and on which, the opinion of the Sudder Court is requested.

I am, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to Government
of Bengal.

Fort William,
28 November 1839.

(No. 1927.)

From *F. J. Halliday,* Esq. Officiating
Secretary to Government of Bengal,
to the Register Sudder Dewany
Adawlut.

Sir,
YOUR letter, No. 1914, dated the 19th July last, with its enclosure, having been submitted to the Supreme Government, for consideration and orders, I am directed by the Right honourable the Deputy-governor of Bengal to transmit to you the accompanying copy of a letter, No. 465, from Mr. Officiating Secretary Grant, dated 11th instant, stating that,

I am, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to Government
of Bengal.

Fort William,
28 November 1839.

Board.

(No. 3579.)

From *J. Hawkins,* Esq. Register, to *F. J. Halliday,* Esq. Secretary to Government of Bengal, Judicial Department.

Sir,
I AM directed to acknowledge the receipt of your letter, No. 1927, dated 28th ultimo, with its enclosures, and in reply to state, for the information of his Honor the Deputy-governor, that they have no remarks to offer on the subject of the proposed draft of an Act, dispensing with the necessity for sending to the revenue authority a translate of the decree, or other requisition for the sale of landed property, in execution of decrees of court, and which they are of opinion may be passed in its present form.

2. Previously, however, to the proposed Act passing into a law, the court consider that the Sudder Board of Revenue might be advantageously consulted, with

Sud. Dew. Adawt.
Present :
R. H. Rattray,
W. Braddon,
C. Tucker, esqrs.
judges,
A. Dick and
J. F. M. Reid, esqrs.
temporary judges.

300.

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the view of eliciting the sentiments of that body as to simplifying the mode of conducting sales. The result of the reference, if approved, might be made to form part of the new law.

Fort William,
20 December 1839.

I have, &c.
(signed) J. Hawkins,
Register.

(No. 132.)

From J. H. Young, Esq. Deputy Secretary to the Government of Bengal, to
Secretary to the Sudder Board of Revenue.

Judicial Dept.

Sir,
I AM directed by the Honourable the Deputy-governor of Bengal to request that you will call the attention of Sudder Board to my letter, No. 1928, to your address, dated the 28th November last, requiring their opinion on the draft of an Act for doing away with the necessity of the courts furnishing commissioners of revenue with translations of decrees for the sale of lands in execution thereof.

Fort William,
16 January 1840.

I am, &c.
(signed) J. H. Young,
Deputy Secretary to the Government
of Bengal.

(No. 52.)

From E. Currie, Esq. Secretary to the Sudder Board of Revenue, to F. J. Halliday, Esq. Secretary to the Government of Bengal, in the Revenue Department.

Miscellaneous Dep.
Present.
J. Pattle, esq.
C. W. Smith, esq.
and
J. Louis, esq.

Sir,
WITH reference to your letter of the 28th November, No. 1928, enclosing copy of a letter from the Secretary to the Government of India, with draft of an Act for modifying Section 2, Regulation XIV. of 1793, I am directed by the Sudder Board of Revenue to request that you will submit the following observations and suggestions in regard to the present state of the law for the sale of lands, in satisfaction of decrees of court, to the consideration of the Honourable the Deputy-governor.

2. Neither your letter nor its enclosures make any mention of the question submitted to government by the Court of Sudder Dewany Adawlut, in their letters of the 27th January and 26th May 1837, copies of which accompanied your predecessor's letter to this Board, under date the 13th June of the same year. But since it has been determined to continue to the revenue authorities the duty of making sales in satisfaction of decrees of court, it appears highly desirable that the opportunity should be taken of settling by a declaratory enactment the respective functions of the revenue and judicial officers in regard to such sales. That much doubt and difference of opinion has existed on this subject is sufficiently evidenced by the letters of the Sudder Dewany Adawluts above referred to; and I am desired to add, that the ordinary practice of the revenue authorities is opposed to the construction of the courts.

3. The Board (senior and junior members) are of opinion that the confirmation of every sale by the commissioner is a necessary condition to the completion of the proceedings; and with reference to Section 5, Regulation VII. 1825, they would propose that the several powers of the commissioner and the judge, in regard to sales in execution of decrees, should be thus defined:

First. The commissioner of revenue should, as now, revise the proceedings of the collector, his revision to be confined to enforcing the prescribed legal formalities of the proceedings, and his power of reversal limited to cases where any of the rules and regulations prescribed for conducting such sales may have been contravened.

Second. The judge, when petitioned by a dissatisfied party, should decide all questions of individual claim or right of property, of every kind whatsoever, cancelling or confirming the sale accordingly.

A. For.

4. For instance, the following would be the course of procedure: The collector, after making the sale, would transmit, as hitherto, the sale papers in the first instance to the commissioner of revenue, and the latter officer, having satisfied himself that the sale had been legally conducted, would certify the same to the judge, or in the event of his finding the proceedings irregular, would cancel the sale, and direct a resale, acquainting the judge why that course had been adopted.

5. The Board would observe, that their rule and practice are alike so consonant to reason, that although on a cursory view Clause 1, Section 5, Regulation VII. 1825, would seem to vest the sole power and control in the courts of judicature of setting aside a sale in execution of a decree, yet that the practice, as above laid down, has continued interruptedly from 1793 to the present moment.

6. If, however, a reference be made to the tenor of the clause and section in question, it will be at once observed, that under it, every irregularity or illegality in the mode of publishing and conducting a sale must be brought to the notice of the court by a petition; of course this extends only to the parties in court, and such a provision could not in any way provide for the detection of those illegalities in the form of conducting a sale, by which the interests of government would be continually sacrificed, and for the protection of which the parties in court would feel no anxiety, nor indeed have the means of knowing when such interests were in jeopardy. The Board are prepared to send up a number of cases, if that is thought necessary, where the supervision of the superior revenue authority has alone prevented serious loss and inconvenience to government, in sales made in satisfaction of decrees of court. In short, it is only the following out of a general principle, which pervades every department of government, that each department shall give effect to and control its own peculiar processes. If the court require the revenue authorities to sell property, it is the province of the revenue authorities to conduct the sale according to the rules and regulations in their department, while it is the peculiar province of the civil court to dispose of the proceeds arising from the sale, and of all civil rights and claims appertaining thereto.

7. The temporary member desires me to say, on his part, that under Regulation VII. 1825, (he conceives) the exclusive power of determining all points connected with sales in satisfaction of decrees is vested in the court from which the precept to sell emanates. In Mr. Louis's opinion, the collector is, under the law, precisely what he ought to be in regard to such sales, the agent of the judge, who, under Section 5 of the Regulation quoted, is competent to annul the sale, "if any material deviation from the Regulations, and consequent irregularity in the sale, be satisfactorily established." Mr. Louis would declare no confirmation by the commissioner to be necessary, and would allow no revenue authority to exercise any discretion in the matter, beyond that vested in the collector by the concluding portion of Clause 3, Section 4, Regulation VII. 1825. Sales so made without the sanction of any revenue authority, would have the force, and nothing more, of private transfers, and could in no degree affect the interests of government either one way or the other.

8. Mr. Louis would also beg to recal the attention of government to a point which is very strongly urged in Mr. Secretary Mangles's letter of the 13th June 1837, viz. the practice of deducting from the sale proceeds any arrear of government revenue which may be due at the time of sale. In that letter the inconvenience and injustice of the practice are fully exposed; and Mr. Louis would only remark, in addition to what is there urged, that what was perfectly just and reasonable under the law of 1793, when specific parcels of land were sold on which the government had a distinct lien, becomes alike unjust and unreasonable under the law of 1825, by which the rights and interests of a certain individual, whatever they may be, are sold upon which the government has no distinct primary lien. Indeed, the whole of Regulation XLV. 1793, with the exception of the formal provisions contained in sections 12, 13 and 14, is (Mr. Louis observes) entirely inapplicable to the present state of the law regarding sales in satisfaction of decrees, and might with advantage be formally rescinded.

Sudder Board of Revenue,
Fort William, 4 February 1840.

I have, &c.
(signed) E. Currie,
Secretary.

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Sa'c in Execu'on
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SPECIAL REPORTS OF THE

(No. 137.)

From *J. F. G. Cooke*, Esq. Judge of Zillah Dacca, to *F. J. Halliday*, Esq.
Secretary to Government of Bengal, Fort William.

Sir,

Civil Court.

At the request of Mr. J. Reily, the principal sudder ameen of this district, I have the honour to submit the accompanying letter and its enclosure.

Zillah Dacca,
5 March 1840.

I have, &c.
(signed) *J. F. G. Cooke*,
Judge.

(No. 462.)

LET this letter and its enclosure be sent in original to the Sudder Board of Revenue for their report.

Fort William,
17 March 1840.

By order.

(signed) *J. H. Young*,
Deputy Secretary to the Government
of Bengal.

From *James Reily*, Esq. Principal Sudder Ameen, to the Secretary to the Government of Bengal, in the Judicial Department, Fort William.

Sir,

From the accompanying decree given by this court (of which I have the honour to send copies both in the vernacular and in English), it will be seen that plaintiff sued for the reversal of a sale of his estate, but that none of the conditions of the validity of a sale having been infringed, and plaintiff having prayed not for damages, but for the annulment of the sale, his prayer was refused.

The circumstances attending the case appear, however, to involve hardship and injury to the plaintiff, who was a minor at the time of the sale, and I therefore avail myself of the provisions of Section 26, Regulation II. of 1822, in submitting the case for the gracious consideration of the Right hon. the Governor-general of Bengal, and in recommending that the estate may be restored to the plaintiff.

Zillah Dacca,
Principal Sudder Ameen's Court,
28 February 1840.

I have, &c.
(signed) *James Reily*,
Principal Sudder Ameen.

(Case No. 9575.)

Bulram Sen v. The Collector of Dacca.

PLAINTIFF'S suit is, that his estate was under butwarrah when his father died, in the beginning of the year 1240, leaving him a minor; that his father had paid up all the revenue due for 1239, but that the estate having subsequently to his demise fallen into arrears, his father's servant took him to the collector, who, from compassion to his circumstances, brought the estate under the protection of the Court of Wards; that the collector appointed a manager to make the collections, but that this officer collected only 100 rupees from the estate; that the commissioner, under the orders of the Sudder Board, but contrary to the provisions of Regulation X. of 1793, cancelled his appointment, and directed the sale of plaintiff's estate; that the collector accordingly cancelled the appointment of the manager, and in the 11th chyet, 1241, without specifying the sudder jumma and the mongas and kismuts of the purchasers who held specific portions of the estate, sold it, with the mere declaration that the tenures of the purchasers were excepted; that the omission of this detail, in conjunction with the exhibition of the entire assessment against plaintiff's interests, alone was the cause of no one having bid for the estate, and of government having bought it for themselves; that the collector sold plaintiff's interests in the estate for a balance of Rs. 361. 9. 6. 3. of the assessment.

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ment and Rs. 558. 5. 13. 3. of penalty and interest, due from the entire estate; that his family servants had moreover petitioned the collector, alleging that the purchasers had paid less than the proceeds of their lands; that the collector after purchasing plaintiff's share of the estate admitted, in his roobakaree of the 16th December 1835, that such was the fact; that in 1241 the purchasers have consequently paid a much larger sum, more than covering the government assessment, leaving a surplus besides. Plaintiff prays therefore, that the sale may be cancelled, and the property restored to him.

Defendant pleads that plaintiff's estate is a joint estate, and that it could not be brought under the Court of Wards; that it was under butwarrah, and that the estate was sold under Section 34 of Regulation XIX. of 1814.

It is enacted in section 5, Regulation XI. of 1822, that the civil courts are not competent to reverse a sale if—

- 1st The lands form the estate on account of which the arrear has accrued.
- 2d. If the permission to make the sale have been received from the Board of Revenue.
- 3d. If due notice of the demand shall have been given.
- 4th. If some part of the amount demanded in the notice shall be due at the time of sale.
- 5th. If the sale shall be made at the time and place mentioned in the advertisement.

It is further declared, in section 4, that "any person who may consider himself aggrieved by any act or circumstance connected with a sale not amounting to such failure, shall have his remedy in a personal action for damages against the individual by whom or by whose fault he may have been endamaged."

As plaintiff sues for an annulment of the sale, and not for damages, the court is primarily required to ascertain whether the conditions of the validity of a public sale, enumerated above, have been infringed.

We find that clause 1st of the section requires that the lands sold form the estate on account of which the arrear has accrued. Plaintiff alleges that the collector did not specify the particular mongas and kismuts which were exempted; but does not deny that the estate in question is the estate for which the balance is said to have been due. The omission therefore of a more particular specification of the vested interests is rather an argument in favour of the sale received with reference to this section; inasmuch as no specific portion of the estate can be said to have been omitted.

Clauses 2 and 3 and 5 are not disputed.

Clause 4th requires that some part of the amount demanded in the notice shall be due. And plaintiff contends that had the purchasers paid up all they ought to have paid, no balance would have been due:

It is necessary therefore to inquire—

- 1st. Whether it was imperative to ascertain the precise amount which the lands of the purchasers yielded?
- 2d. Was all that they yielded actually taken?

In respect to the first question, we suppose it was necessary that the whole of the available assets should have been ascertained, as Section 34, Regulation XIX. of 1814, directs that the tender of the balance due shall be calculated in the proportion which the produce of such mehal may bear to the jumma of the whole estate, and because it may happen that a proprietor may sell only a portion of his lands, and yet that portion may more than suffice to pay the whole of the sudder jumma. For instance, suppose an estate with a sudder jumma of 1,000 rupees (the whole of which is in balance) is about to be sold and that the original proprietor has paid no portion of the balance, suppose also that the purchaser's lands are estimated to yield 2,000 rupees, deducting from this sum 20 per cent. for malikana and expense of collection, his estimated sudder jumma would be 1,600 rupees, and the account would stand thus:—

Sudder jumma	-	-	-	-	-	-	-	-	-	Rs. 1,000
Balance	-	-	-	-	-	-	-	-	-	1,000
Estimated jumma of the purchasers	-	-	-	-	-	-	-	-	-	1,600

which will give 1,600 rupees, or 600 rupees over and above the amount due to government for the whole of the estate. The possibility then that such might

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have been the case, clearly made it the duty of the collector, not only towards the owners of the specific mehals, to enable them to save their lands, but towards the original proprietor himself, whose interests were equally at stake, to ascertain the precise amount recoverable from the purchasers.

We come then to the second question, Was all that was available actually taken? We find from the admissions made on both sides that this was not done. In 1240 only Rs. 2,033 14 13 2 is declared to have been received. In 1241 the purchasers paid Rs. 7,449 11 11 which apparently covered the whole of the assessment. But this does not impugn the collector's proceedings, as he is simply required "to satisfy himself that the produce of the mehal has not been under-rated," and thus he appears to have done by the only means available to himself, of making the butwanies swear to the authenticity of their accounts.

It may, however, be urged that though the collector is not to blame, yet if it appears that he was in error, or that he was deceived, and that the actual amount of proceeds, if really ascertained, would have saved plaintiff's interests from the hammer, these circumstances are enough, on the ground of equity, to justify a reversal of the sale. But the fact is, that though the amount paid in 1240 appears to have covered the whole of the assessment, that amount was more than ought to have been received from the purchasers. They were illegally required by the collector to pay in the entire proceeds of their lands without deducting the percentage for mahkana and expense of collection allowed by the Regulation. The sum to be carried to the credit of the estate would therefore be 10 per cent. or Rs. 517. 6. 15 2 short of the sum paid, viz. Rs. 2,921 11. 3 5. If to this be added the 100 rupees collected by the manager, we shall find, that taking the payments of 1241 as the criterion, the amount which ought to have been received in 1240 could not have exceeded Rs. 3,032 1. 3 3, and that the difference between this sum and the assessment, Rs. 7,236 7 6 3 would have been Rs. 204 6 3, and the argument of the error and the deception therefore at once falls to the ground.

From all these considerations, we arrive at the conclusion that some part of the amount demanded in the notice was due, and that none of the conditions involving the validity of the sale having been infringed, the court has not the power to cancel or annul the sale.

Plaintiff contends, that being at the time a minor, he ought to have been taken under the jurisdiction of the Court of Wards, but though his estate was not a joint estate, none of the purchasers having a right in the whole of it, their interests extending only to specific portions of it, yet as he does not come within the qualification of being "sole proprietor of the estate," and as the power of undertaking or declining the care of a minor's interests is, under Regulation VI. of 1822, left optional with the Court of Wards, plaintiff's plea on this point can avail him.

But it appears that the appointment of the manager, however laudable in the motive which induced it was still an illegal procedure, that the minor's friends were thereby precluded from making the collection during the period in which the manager held his appointment, and that the collector's illegal and unauthorised interference was the cause, partly at least, of the arrears not having been completely realized. And this we consider as sufficient in itself to constitute a valid ground for reversing the sale, the manager having been appointed on the 4th October 1834, and dismissed on the 14th February, only 37 days anterior to the advertised date of sale.

The illegality of the collector's proceedings will appear more palpable when we find that the Regulations have prescribed the course which he ought to have pursued on the demise of the minor tatar. Regulation I. of 1800, section 2, directs that "In all cases of joint undivided estates, when one or more of the proprietors shall be left or heirs who are minors, it shall be the duty of the collector, within whose jurisdiction such estates may be situated, on the receipt of a report from the collector, stating the grounds on which he or they may consider the minor of kin as unfit to be entrusted with the care or the person or management of the estate of the heir, to investigate the merits of the objections, to be at least of kin, and if satisfied himself that they are well founded, the judge shall nominate some other person of character and respectability to act as guardian of the heir." Regulation V. of 1812, section 26, also declares that, "inconvenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, it is hereby enacted, that whenever sufficient cause shall be shown by the revenue authorities, &c.,

shall be competent to the zillah judge to appoint a person duly qualified to manage the estate."

It is probable therefore that had these provisions been complied with the judge would have appointed some one interested in the welfare of the family of the deceased, which the collector did not do, and the appointment of such a man would have saved the minor's interests.

The hardship of the case assumes a yet stronger aspect when it is considered that the estate was not in arrear whilst the father was living, and that the assessment of the preceding year of his demise—that is 1239, had been all paid up, though he died in the beginning of 1240, the year in which the present arrears occurred; which establishes the presumption that the estate was not wanting in assets to pay up the arrears, and that the loss of the estate to the minor has arisen from the neglect and disorder into which his interests had been thrown in consequence of the demise of his father accelerated by the collector's illegal and unauthorized interference with the estate.

We find further, that collectors are authorized generally to sell the entire estate for any balance that may accrue upon it, and individual interests only in cases of both arrears or partition. The section which gives him the power (sect. 34) contains two provisions, viz. the collector's right to sell an individual portion, and the right of the owner of specific mehals to pay up, and save his interests. If the right had not been given, it is believed that the right to sell their individual interests would not have been given. The one right therefore is evidently a concomitant of the other. If therefore by any intervening circumstance transpiring subsequent to the commencement of the partitions, such as the demise of any of the proprietors and the succession to his interests of an infant, an obstacle is induced which prevents the proprietor from availing himself of the provision in his favour, it follows I presume that the right of the collector to sell his individual interests lapses also. The collector in such a case can only proceed under the general provisions of the Regulations, and sell the entire estate. With reference even to a common obligation, the rules of legitimate interpretation are that whenever an obligation contains more than one condition, annexed conjunctively, all the conditions must be accomplished, and if any one do not take place the obligation is of no effect.

It may be urged that section 34 provides simply for the owners of specific mehals, not for the original proprietor. But though the section thus professedly protects an owner of a specific mehal only, yet the general principles of the rule will allow of a similar application to the original proprietor, who during a partition is literally no more than the owner of that specific portion which was left to him after the alienation by sale of the other portions.

It is clear also that the interest and penalty stated in the notice as Rs. 658. 5 13. 3 was due from the entire estate, more indeed from the purchasers than from the original proprietor. For what could be due from the latter upon a balance of 204 rupees at 24 per cent? Not more certainly than 48 rupees for the whole. If a part of the interest or penalty was recovered from the purchasers, it was from the original proprietor. This was obviously unjust. And a deduction on this account would still have left a balance due from the original proprietor. The demand of money which was not due was an act of injustice, and a reason for not discharging the remainder of the claim. The reduction of the demand would moreover have left so small an amount recoverable from the minor, as to have enabled his friends with less difficulty to have borrowed the amount, and thus saved the estate.

But not only has plaintiff lost the estate in question, but there is every possibility of his being reduced to a state of positive destitution if the sale of this estate is not annulled. For the estate was bought by the government for the nominal value of a rupee, leaving the whole of the balance for which it was put up still due from the minor, and the collector of Dacca has requested the collector of Backergunge to sell another estate belonging to the plaintiff for the balance in question: a step which in the present state of the case must be considered as strictly legal, though extremely hard, and which nothing short of the reversal of the original sale, or the intermediate interference of government can prevent, the right of the court to stop the sale for even the temporary period that this suit was under investigation having been both disputed and disallowed by the revenue commissioner of the division.

From these particulars we gather—

1st That the collector, by his illegal and unauthorized interference, prevented the realization

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realization of the arrears of the assessment, which might otherwise have been realized by the friends of the minor.

2d. That the Regulations provided the course of procedure, in giving the judge the power of nominating a guardian, which the collector did not avail himself of.

3d. That the law which authorizes the sale of individual interests under butwarrah was not applicable to the case of the minor, and that the sale thereof was illegal:

4th. That the estate was not in arrears till the father died, and he was succeeded by the helplessness of youth.

5th. That the sum demanded of the minor was nearly five times above what was actually due, which was not only unjust, but a sufficient reason in itself for withholding the demand.

6th. That the claim of an amount so much above what was actually due prevented the friends of the minor from advancing it themselves or borrowing it of others; it being more than probable that had the real amount only been demanded, the smallness of the sum might have ensured a loan.

7th. That unless the sale be cancelled, the minor will have lost a second estate for a balance, four-fifths of which was due by others.

Whilst, therefore, we dismiss the plaintiff's suit, in conformity with the law which bars the court from annulling the sale, except under certain conditions, the court cannot avoid availing itself of the privilege it possesses under Section 26, Regulation II. of 1822, of recommending to the government that the sale be cancelled, and the property restored to the plaintiff.

As the estate was purchased for the nominal sum of one rupee by the government themselves, it is not necessary to give a statement of the compensation which the law directs should be awarded to the purchaser.

Zilla Dacca,
6 February 1840.

(signed) *James Reily,*
Principal Sudder Ameer.

(No. 204.)

From *E. Currie, Esq.* Secretary to the Sudder Board of Revenue, to *F. J. Halliday, Esq.* Secretary to the Government of Bengal, Revenue Department.

Sir,

Present:
J. Pattle, esq.

I AM directed by the Sudder Board of Revenue to acknowledge the receipt of your letter, No. 462, of 17th ultimo, forwarding for report a letter from the judge of Dacca, under date 5th idem, together with its enclosures, regarding the case of *Bulram Sen v. The Collector of Dacca*; and in reply, am instructed to submit the following observations for the consideration and orders of the Right honourable the Governor of Bengal.

2. The former zemindar of Chuckla Ameerabad, zillah Dacca, disposed by private sale of several portions of his estate to various individuals, who thus acquired proprietary interests in the zemindaree, with the right of separation. Butwarrahs were applied for and granted, and up to the end of 1239 B. S. the revenue appears to have been punctually discharged. Early in 1240 B. S. the zemindar died, leaving an only son, a minor of 12 years old. During this year heavy arrears accrued, in satisfaction of which the estate was advertised for sale. The proprietors of the specific mehals under butwarrah claimed the privilege of Section 34, Regulation XIX. of 1814, and having paid in what the collector conceived to be their fair proportions of the jumma, their shares were exempted from sale. A balance of Rs. 361 current revenue, and 638 penalty and interest, remained due, in satisfaction of which the collector was about to sell the share which had been retained by the former zemindar, when it was represented to him that this share was the sole property of a minor, in consequence of which representation the sale was postponed. The share was not actually taken under the charge of the Court of Wards, but the commissioner approved the suspension of the sale, and appointed a surbarakar to make collections; but little or nothing appears to have been done by this man. Upon the case being reported to the Board, they considered that the minor's share could not be brought under the Court of Wards, and that it was liable to sale for the arrears due upon it. The sale accordingly took place, and in the absence of bidders the minor's share was bought by government for one rupee. On 24th March 1835, a petition against this sale was transmitted to the Board for report

report by Mr. Secretary Mangles; and the Honourable the Governor of Bengal particularly desired to be informed upon what grounds the Board had deemed it proper to withdraw the protection of the Court of Wards from the estate of the minor petitioner. On 3d April the Board furnished a report upon the case, and stated, that as Chuckla Ameerabad was a joint undivided estate, they considered themselves to be precluded by Section 3, Regulation X. of 1793, from extending the protection of the Court of Wards to the minor. On 28th April his Honor again referred the case for the further consideration of the Board, expressing his doubt whether the minor's share of Chuckla Ameerabad had not been virtually brought into the condition contemplated by Section 4, Regulation VI. of 1822, inasmuch as all the other coparceners had claimed and exercised the right of paying their respective portions of the balance due, and especially referring to the general tenderness of the legislature for the interests of minor zemindars. On 11th May 1836 the Board submitted the result of their deliberations, and expressed their opinion that Section 4, Regulation VI. of 1822, was never intended to have any reference to a minor possessing a portion of an undivided estate, and that consequently the sale of the minor's share in Chuckla Ameerabad (which, although under butwarrah, was still an undivided estate) was strictly legal. On 28th June 1836, the Right honourable the Governor was pleased to express his concurrence in the Board's view of the matter, and his opinion that a share in a mehal under butwarrah, though liable to be exposed to sale separately and independently for the recovery of its proportion of the revenue assessed upon the integral mehal, in case the other coparceners shall exercise the privilege accorded to them by Section 33, Regulation XIX. of 1814, and shall pay up the respective portions of the balance due, is not an "estate" in the general acceptance of the Revenue Regulations, nor of the particular enactment above cited.

3. The guardians of the minor having thus failed in obtaining a reversal of the sale, either from the revenue authorities or from government, instituted a suit for that purpose in the civil courts. The suit was referred by the judge to the principal sudder ameen of Dacca, Mr. Reily, a translation of whose decision accompanied Mr. Cooke's letter to your address, under date 5th ultimo. The principal sudder ameen is of opinion, that as none of the conditions declared by law to be essential to the validity of a sale have been violated, the court has no power to pass a decree in favour of the plaintiff, but at the same time, considering the case to be one of great hardship towards the minor, he has availed himself of the permission granted by Section 26, Regulation II. of 1822, to recommend to government that the estate should be restored to its former proprietor.

4. The Board have given their best attention to Mr. Reily's decision; and although it contains a good deal of reasoning in which they cannot concur, particularly with regard to the construction of Section 34, Regulation XIX. of 1814, yet after a careful consideration of all the circumstances of the case, they are disposed to support the recommendation for the restoration of the estate. The fact that the revenue was punctually paid during the lifetime of the late zemindar, shows that the arrear was not occasioned by insufficiency of assets, and affords a strong presumption that had the local authorities acted in conformity with the Regulations, and applied to the civil court for the appointment of a manager and guardian, under Regulation I. of 1800, the necessity for the sale would not have occurred; at all events, the appointment of the surburakar, who appears to have completely neglected the interest of the minor, was an unauthorized proceeding on the part of the commissioner and the collector. It also seems to be doubtful whether a portion of the penalty and interest was not due from the proprietors of the specific mehals, although the whole was charged to the account of the minor, whose remaining property in zillah Backergunge has been advertised for sale in realization of the same, his share of Amerabad having fetched only one rupee. The fact of government being in this case the purchaser obviates the objections founded upon the rights acquired by third parties, which generally present themselves to any interference with a sale once confirmed; and the Board may add that, except under very particular circumstances, they are inclined to doubt the expediency of government becoming the proprietor of a share in a joint undivided mehal. They would therefore suggest that the minor's share be restored to him, upon payment of the balance of revenue actually due at the time of sale on account of such share, and that, under all the circumstances, the demand for penalty and interest be reinstituted.

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5. Pending his Lordship's orders upon this report, the Board have directed the commissioner of Dacca to suspend the sale of the minor's property in Backergunge; and they have also called for an explanation of a very extraordinary passage in the principal sudder ameen's decree; from which it would appear that subsequently to the purchase of government the proprietors of the specific mehals were required by the collector to pay Rs. 3,449. 7. 19. 1. as their share of the revenue, although the sudder jumma of the entire estate is only Rs. 3,236. 7. 6. 3. It is true that Mr. Reily states this requisition to have been illegal; but still, adverting to the tenor of his arguments, and particularly to the illustration which he adduces in support of them, it would appear that that gentleman really supposes that Section 34, Regulation XIX. of 1814, may, in certain cases, be considered to warrant that payment should be demanded from the proprietors of specific mehals under butwarrah of a larger amount of government revenue than the sudder jumma of the entire estate. The Board trust that the commissioner's report will show, that at all events none of the revenue authorities have entertained so erroneous an opinion.

Sudder Board of Revenue,
22 April 1846.

I have, &c.
(signed) E. Currie,
Secretary.

P. S.—The original enclosures of your letter under acknowledgment are herewith returned.

(No. 686.)

From F. J. Halliday, Esq. Secretary to the Government of Bengal; to the Secretary to the Sudder Board of Revenue; dated 5th May 1840.

Sir,
I AM directed by the Right honourable the Governor of Bengal to acknowledge the receipt of your letter, No. 204, of the 22d ultimo, respecting the suit instituted by Bulram Sen against the collector of Dacca, to obtain the annulment of the sale of Chuckla Ameerabad, in zilla Dacca.

His Lordship having fully considered all the circumstances under which the estate in question was brought to sale, concurs with the Board in opinion that the case of the plaintiff is deserving of favourable consideration; he is pleased accordingly to authorise the restoration to him of his share of the estate, upon payment of the balance of revenue actually due at the time of sale on account of such share.

His Lordship is likewise pleased to sanction the remission of the penalty and interest due from the plaintiff.

In giving effect to these orders, the Board will take effectual steps to prevent the plaintiff from acquiring and exercising the power over the under-tenants which the government became entitled to as purchasers of the estate.

I have, &c.
(signed) F. J. Halliday,
Secretary to the Government of Bengal.

(No. 242.)

From E. Currie, Esq. Secretary Sudder Board of Revenue; to F. J. Halliday, Esq. Secretary to the Government of Bengal, Revenue Department.

Present:
J. Pattle, esq.

Sir,
WITH reference to my letter, No. 204, of 22d ultimo, reporting upon the case of Bulram Sen v. Government, I am directed by the Sudder Board of Revenue to transmit to you, for the purpose of being laid before the Right honourable the Governor, the accompanying copies of a letter, No. 128, of 4th instant, from Mr. Commissioner Gordon, and of their reply to this date. His Lordship will perceive, that it is the commissioner's wish that the issue of orders in this case should

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should be delayed until the receipt of a report which he has promised to furnish, and which he has been directed to transmit as speedily as possible.

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Courts.

Sudder Board of Revenue,
16 May 1840.

I have, &c.
(signed) E. Currie,
Secretary.

P.S. Since this letter was written, the Board have received (on the 15th) the orders of government, bearing date the 5th instant. With his Lordship's permission, the Board will delay the issue of those orders until they shall receive Mr. Gordon's report.

(No. 128.)

From E. M. Gordon, Esq. Commissioner of Revenue, to the Sudder Board of Revenue, Fort William.

Gentlemen,

In reply to your letter, No. 58, dated the 22d ultimo, respecting the case of Bulram Sen v. Government, I do myself the honour to state as follows:

2. I will, as soon as possible, submit a report on the subject referred to in the third paragraph of your letter. My object in writing to you at present is, to request you will do me the favour to delay, until you hear from me again, your recommendation to government to restore to Bulram Sen his share of the estate sold.

3. As the decree in question appeared to me to establish a very dangerous precedent, I considered it to be my duty to appeal from it to the zillah judge. All the facts of the case are not set forth in the decree. For instance, the balance for which the estate was sold did not include the balance of one whole year in addition to the sale balance. The reason of this was, that the sale took place when Clause 3, Section 3, Regulation XI. of 1822 obtained, regarding estates under butwarrah, and as the sale took place on the 27th April 1835, the balance for which the estate was sold was that which still remained for the years 1833-34.

I have, &c.
(signed) E. M. Gordon,
Commissioner of Revenue

Commissioner's Office,
Dacca Division, Mymensingh,
4 May 1840.

From M. A. Bignell, Esq. Deputy Superintendent Legal Affairs, to the Commissioner of the 15th Division, Dacca.

Sir,

I AM directed by the Sudder Board of Revenue to acknowledge the receipt of your letter, No. 128, of 4th instant, regarding the case of Bulram Sen v. Government, and to inform you, in reply, that their report was submitted to the Right honourable the Governor on 22d ultimo. They have, however, forwarded a copy of your letter for his Lordship's consideration, and they request that you will lose no time in furnishing your promised report.

2. The Board did not consider it necessary to refer to the local authorities previously to recommending the return of the estate to the minor defaulter, as the circumstances of the case were fully discussed in the correspondence which took place at the time of the sale; but they will give their best attention to any suggestions you may wish to offer, as well as to any facts which you may bring forward, and with which they may not hitherto have been made acquainted. At present the Board are at a loss to understand your object in appealing to the zillah judge. The decree of the principal sudder ameen dismissed the suit against government, and Mr. Reily's mere recommendation, that the estate should be restored to the minor defaulter, will, of course, be of no avail, unless the government shall be satisfied that such restoration is just and proper. It is true that Section 26, Regulation XI. of 1822, provides for an appeal in cases of this description; but it seems obvious that the provision can be applicable only to cases in which the estate, sold at auction, and proposed to be restored, shall have been purchased by a private party. When government is the purchaser

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Present:
J. Pattle, esq.

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it can, of course, restore the estate, if it think proper to do so, without any recommendation from the civil courts; and on the contrary, it may decline to return the property, notwithstanding such recommendation, if it be not satisfied of the propriety of the proceeding.

Sudder Board of Revenue,
16 May 1840.

Sudder Board of Revenue,
Fort William, 16 May 1840.

I have, &c.
(signed) M. A. Bignell,
Deputy Superintendent Legal Affairs,
(signed) E. Currie, Secretary.

(No. 1877.)

From J. Hawkins, Esq. Register, to E. J. Halliday, Esq. Secretary to the
Government of Bengal, in the Judicial Department.

Sir,

Sud. Dew. Adawt.
Present:
R. H. Rattray,
C. Tucker,
E. Lee Warner, and
D. C. Smyth, esqrs.
judges.

To W. Court,
No. 934, 27 March,
with enclosures.
From W. Court,
No. 837, 24 April.

I AM directed by the court, with reference to Mr. Register Reid's letter, No. 276, of the 27th January 1837, and the resolution annexed thereto, and to his letter, No. 1490, of the 26th May 1837, to forward to you, for submission to the Right honourable the Governor, copy of a letter (No. 8, dated 8th January last) from the judge of Dacca, regarding the reversal by the commissioner of the division of a sale in execution of a decree, which had been previously confirmed by the principal sudder ameen of that district, together with copy of the correspondence which has, in consequence, taken place between the two courts on the subject.

2. As there is a difference of opinion between the two courts, and collisions may be expected to occur between the judicial and revenue authorities in the present unsettled state of the law, the court solicit that the revenue authorities be consulted, and that it be decided by government whether the resolution of the 27th January 1837 shall be promulgated among the subordinate authorities for their observance, or whether sales in execution of decrees of court shall be confirmed in any other mode than that proposed therein.

3. Mr. Carmichael Smyth, who joined the court since the occurrence of the recent discussion, has recorded his sentiments in a Minute, of which a copy is herewith submitted.

Fort William, 5 June 1840.

I have, &c.
(signed) J. Hawkins, Register.

(No. 8.)

From J. F. G. Cooke, Esq. Judge of Zillah Dacca, to J. A. F. Hawkins, Esq.
Register to the Sudder Dewany Adawlut, Fort William.

Sir,

Civil Court.

I HAVE to bring to the notice of the court a case in which the civil court and the commissioner have passed opposite orders regarding a sale made in satisfaction of a decree of court.

2. Mr. Reily, the principal sudder ameen, on a petition of objections to the sale, overruled them, and confirmed the sale. In the meantime the commissioner took up a petition and upset the sale. I think it is quite necessary that it should be decided which authority has the power of passing orders regarding sales, and that only one authority should interfere. I beg to call the court's attention to my letters, No. 199 of the 12th April, No. 249 of the 21st May, and No. 355 of the 11th July 1836, to which I have received no reply.

3. The property has since been sold, for arrears of revenue, for about half as much as it sold for at first. It is true the amount for which the sale was made was a small sum, but there are many other decrees against the same parties, which will not now be satisfied.

4. I must say that I cannot agree with the commissioner that the following are valid reasons (in their present form) for upsetting a sale. The petitioner asserts the ishtohar was not issued in the mofussil, and that the signatures to the soomthal are forgeries. The collector replies, that the ishtohar was served in the mofussil one month and a day before the sale. On this the commissioner

remarks,

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remarks, "that the collector ought to have examined witnesses on the petitioners' behalf, but he had not done so." This is taken as one reason for upsetting the sale; but I think the collector ought to have been ordered to take evidence, as it was considered necessary. The petitioner again says, that Sheeb Chander bid more than the purchaser; that the collector sent a chupprassees with him to get the deposit, but before he returned it was sold to the next highest bidder, without being put up again. The collector replies, that he waited till evening, and that the estate was put up again according to regulation. On this the commissioner remarks, "that the collector should have taken evidence on behalf of the petitioner," and this is another reason. But I think the collector ought to have been instructed to take evidence.

5. The other reason for upsetting the sale is, that it should have been sold in portions, as the amount of the decree was so small.

6. I annex copy of a petition from Gopeenauth Shah, and Ramnarain Shah, buyers at a sale ordered by the court, to show that another instance has occurred besides the abovementioned one.

I have, &c.
(signed) J. F. G. Cooke, Judge.

Zillah Dacca, 8 January 1840

P. S.—Copies of roobakaries from the commissioner of Dacca, dated 21st August 1839, and of Mr Reily, dated 12th September 1839, together with the translations thereof in English, are annexed.

(signed) J. F. G. Cooke, Judge.

(No. 934)

From J. Hawkins, Esq. Register, to the Register of the Sudder Dewany Adawlut, North West Provinces.

Sir,

I AM directed to request that you will submit the accompanying copy of paper as per margin*, regarding the respective powers of the judicial and revenue authorities, in confirming sales of land made in execution of decrees of court, for the consideration and opinion of the judges of the Western Court.

2 The resolution, a copy of which is now forwarded, was adopted by the court, with reference to the correspondence therein adverted to, especially the letter of this court, and your predecessor's reply of the 18th November and 16th December 1836, respectively.

3 The proposed letter to government, a copy of which accompanies, was prepared under instructions of the court, in consequence of a collision which has recently occurred between the judge of Dacca and the commissioner of the 15th Division, and which has satisfied the court of the necessity of some final adjustment of the question of the extent of power to be respectively exercised by the authorities above referred to in paragraph 1, in cases of the nature under consideration.

4 The western court will observe that Mr. Tucker has taken exception to the resolution, for the reasons stated in his Minute. The majority of the court, however, are of opinion, that the law as laid down in the resolution is correct, and that the commissioner of revenue has no power either to confirm or reverse sales made in execution of decrees of court; they further consider, that all objections to such sales, after they have been completed, should be preferred to the judicial authority, who, in their opinion, has the power to confirm, in the event of no objections having been urged.

I have, &c.
(signed) J. Hawkins, Register.

Fort William, 27 March 1840.

* Resolution of the Court, and letter to Government, 27 January 1837.—Proposed letter to Government.—Minute of Mr. Tucker.

Sud. Dew. Adawt.
Present:
R. H. Rattray,
C. Tucker,
E. Lee Warner, Esqrs.
judges; and
J. F. M. Reid, Esq.
temporary judge.

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(No. 276.)

From *J. F. M. Reid*, Esq. Register, to the Secretary to Government of Bengal.

Sir,

Sud Dew. Adawl.

Present:
R. H. Rattray,
W. Braddon,
D. C. Smyth, esqrs.
judges.

I AM directed by the court to request you will submit for the consideration and orders of the Right honourable the Governor of Bengal, the accompanying copy of a resolution, this day recorded, on the subject of the duty to be performed by the commissioners of revenue, in regard to the sale of lands by the revenue authorities, in satisfaction of decrees of court.

2. The accompanying copies of a letter addressed to the register of the court of Sudder Dewany Adawlut, in the Western Provinces, by order of the court, under date the 18th November last, No. 2751, and of that officer's reply, dated the 16th ultimo, No. 1082, will put the Right honourable the Governor in possession of the facts of the case out of which this discussion arose.

I am, &c.

(signed) *J. F. M. Reid*, Register.

Fort William, 27 January 1837

RESOLUTION of the Presidency Court of Sudder Dewany Adawlut, under date the 27th January 1837.

Letter from Judge of Dacca, dated 12 April 1836, No. 199.
Letter to - - ditto - - dated 6 May 1836, No. 954
Letter from - ditto - - dated 21 May 1836, No. 254.
Letter to - - ditto - - dated 1 July 1836, No. 1450
Letter from - ditto - - dated 11 July 1836, No. 355.
Letter to Comm of Revenue, 16th Division, dated 5 Aug.
1836, No. 1764.
Letter from ditto, dated 25 Aug 1836; No 64.
Letter to Register of Sudder Dewany Adawlut, W. Ct. dated
18 Nov. 1836, No. 2751
Letter from ditto, dated 16 Dec. 1836, No. 1082.

THE court having taken into consideration the correspondence noted in the margin, are of opinion, that the duty of confirming or reversing a sale of land made by a collector, in satisfaction of the amount of a decree of court, should be performed entirely by the zillah judge, under Section 4, Regulation VII. of 1825, and that the duty of commissioners of revenue should be confined solely to directing the collector to select the lands for sale, agreeably to Section 2,

Regulation XLV. 1793, and Section 17, Regulation XXVI. 1803.

2. The court deem it however proper, before issuing any general instructions to the zillah judges, to refer the subject for the consideration of government, in order that, if considered necessary, the opinion of the revenue authorities may be obtained.

Ordered, that a copy of this resolution be forwarded to the secretary to the government of Bengal, with a request that it may be submitted for the consideration and orders of the Right honourable the Governor.

(Proposed Letter)

To the Secretary to Government of Bengal, in the Judicial Department.

Sir,

Sudder Dewany
Adawlut.

As instances are occasionally occurring in which the judicial and revenue authorities are brought into collision, in consequence of the existing practice in regard to the confirmation or reversal of sales of land made by collectors, in satisfaction of decrees of court, I am directed to request that you will bring the subject to the consideration of his Honour the Deputy-governor. A previous reference on the same subject was made, under the court's instructions, by my predecessor, in his letter, No. 276, of the 27th January 1837, which the court presume has not been replied to, in consequence of the contemplated measure of transferring the entire conduct of such sales from the revenue to the judicial authorities. As that measure, however, has recently been disapproved by the Supreme Government, the court are induced to re-submit, for his Honour's consideration, this branch of the subject, as urgently requiring the immediate application of some remedy for the evils which exist.

2. The

2. The remedy which the court beg to suggest is, the circulation to the several judges and collectors of the resolution which accompanied Mr. Register Reid's letter above cited. The resolution declares the law on the subject as construed by the sudder courts, and the court would, therefore, consider it necessary to act upon it in cases of the kind brought before them; but it is clear that, in order to secure the co-operation of the revenue authorities, it will be requisite for the Sudder Board to issue corresponding instructions to their subordinate officers.

I have, &c.

Fort William, the

MR. TUCKER'S MINUTE.

1 THE Resolution of 27th January 1837, referred to in this draft, not having been yet submitted for the concurrence of the Western Court, I may be permitted to express my opinion, that it goes beyond the law. It sets out with saying, "that the duty of confirming or reversing a sale of land made by a collector, in satisfaction of the amount of a decree of court, should be performed entirely by the zillah judge, under Section 4, Regulation VII. 1825." Now, I can find nothing in the section quoted, nor indeed in any part of the Regulations of government, which conveys to the zillah judges the authority to confirm sales of the nature of those alluded to, whilst I may confidently appeal to the recorders of the Revenue Boards, from 1793 to the present day, to show that such has never been the practice. Had the resolution confined itself to saying that the zillah judges only had authority to cancel such sales, it would have my entire concurrence, as an exposition of the law, and this would, I imagine, be quite sufficient for all purposes.

2 Though I find no express law directing the superior revenue authorities to confirm such sales, yet I am of opinion such duty must be admitted to appertain to them as matter of course, in the absence of any prohibition to the contrary. It must be remembered that the conduct of sales of law, whether in satisfaction of arrears of government revenue, or of decrees of court, has uniformly been vested in the revenue authorities. I presume it is not denied that confirmation is essential to the completion of a sale; undoubtedly it is so under the present system, when the purchase-money cannot be demanded until the sale has been confirmed. This duty, therefore, viz. conducting sales generally, having been entrusted to the revenue authorities, it was deemed superfluous, I suppose, to provide expressly for the confirmation of sales made in satisfaction of decrees by the same authority; for when the courts call upon the revenue authorities to effect a sale of lands in satisfaction of a decree, it necessarily follows that the revenue authorities must do every thing essential to the completion of such sale. I am the more inclined to adopt this view of the subject, from the fact of the law having expressly provided for the reversal of such sales by the zillah judges, though altogether silent on the point of confirmation: the state of the case seemed to require this authority being vested in the judges, and in them alone; but the confirmation of a sale by the judge appears altogether unnecessary: the exception here seems to prove the rule.

3. My opinion is, that a sale having been made by a collector on a lotbundee, previously sanctioned by a commissioner, the commissioner is bound to confirm the sale on the expiration of 30 days from the day of sale, unless objections have been preferred to him, or unless the judge shall have directed him to stay confirmation; in either of these cases he must await the judge's final orders, and be guided thereby. If the objections be deemed valid by the judge, he, the judge, will of course cancel the sale, if otherwise, he will reject them, and then the commissioner must confirm the sale.

4. I think, however, it would have been better had the authority to cancel sales, for any material irregularity in the conduct thereof, been reserved to the superior revenue authorities, whilst all other objections might with propriety have been left to the disposal of the court ordering the sale. It seems immaterial by whom this duty should be discharged; but whilst the revenue authorities are not only more conversant with the details of sale proceedings, it seems at the same time reasonable that they should exercise that degree of supervision over their subordinates which may be necessary to control their proceedings, and provide for their being

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being conducted in a legal and proper form; instead, therefore, of recommending the Resolution of 27th January 1837, for the sanction of government, I would solicit my colleague's attention to the mode of proceeding suggested in the 3d paragraph of this Minute, as being in strict conformity with the existing law, and providing fully against the delay likely to result from the reversal of sales by the revenue authorities in mere matters of form.

(signed) C. Tucker.

(No. 837.)

From M. Smith, Esq., Officiating Register, Allahabad, to J. Hawkins, Esq.,
Register to the Sudder Dewany Adawlut, Fort William.

Sir,

Sud. Dew. Adawt.

Present:
W. Lambert,
B. Tayler, esqrs.
judges.
G. P. Thompson &
F. Currie, esqrs.
officiating judges.

Sec 2, Reg. XLV.
1793.
S. 17, Reg. XXVI
1803

Messrs. Tayler,
Thompson, and
Currie.

C. 7, Sec 4, Reg.
VII. 1825.

I AM directed to acknowledge the receipt of your letter, No. 934, dated 27th ultimo, relative to the respective powers of the judicial and revenue authorities in confirming sales of land made in execution of decrees of courts, on which the opinion of the Calcutta court is communicated, and the sentiments of this court asked in return.

2. It appears that the majority of the presidency court hold that, under the law, the commissioner of revenue has no power either to confirm or reverse sales made in satisfaction of decrees, his duty being restricted solely to directing the collector to select the lands for sale, agreeably to enactments quoted in the margin, the duty of confirming and reversing such sales being considered by them to devolve entirely on the zillah judge, under Section 4, Regulation VII. 1825.

3. In this view I am desired to state Mr. Lambert's concurrence. He remarks that, by Section 5, Regulation VII. 1825, the civil courts possess the authority of cancelling sales made in execution of decrees, on the ground of any irregularity in conducting them, whence he thinks it may be fairly inferred that such power is exclusively vested in them, and was not intended to be conferred on any other authority; and the possession of such power, Mr. Lambert argues, implies the competency to confirm also, which duty should, in all cases where objections may not have been urged, or may have been overruled, be performed by the civil court, the obligation of the revenue authorities being purely ministerial.

4. But the majority of this court differing from their colleague, and from the majority of the Calcutta court, on the question of the confirmation of such sales by the civil courts, agree with each other to the extent that no power of confirmation is conferred on those tribunals by law, as well as that no formal confirmation by any authority is essential to the legal validity and completeness of a sale made in execution of a judicial decree by order of a court; and, supposing that part of the rule which declares the necessity of confirmation of such sale by the court to be relinquished, I am instructed to say that Mr. Tayler would, in that event, acquiesce in the proposed resolution of the Calcutta court.

5. On the other hand, Messrs. Thompson and Currie regard the nature and extent of the functions exercisable by the revenue authorities respectively, in the conduct of sales in satisfaction of decrees, in a different and more extended point of view. They observe, that the authority to whom the courts must, under the law, look for effecting the sale is the commissioner of revenue, who makes use of the agency of the collector, and no doubt possesses the power of controlling the proceedings of his subordinate, in so far as regularity and conformity to established rules are concerned. To what extent the commissioner may consider it necessary to approve and confirm those proceedings, before reporting the completion of the sale to the court, is a matter of revenue procedure in which the court can exercise no interference; at the same time no order (they remark) issued by a commissioner, in reference to the proceedings of a collector in conducting a sale, can of course alter the competency of the court to stay or cancel the sale in any stage of those proceedings.

6. Messrs. Thompson and Currie further observe, that a reference to the extracts (paragraphs 146 and 147) cited in the margin of the printed rules of practice of

146. Commissioners are sometimes, in the habit of interfering in or withholding confirmation of sales made in satisfaction of decrees of court, and of ascertaining from the court, before confirming them, whether there be any objection to the sale being made final.

the Sudder Board of revenue, will show that the rule of revenue procedure in these provinces is in conformity with the above principle, and that, therefore, no construction or order would seem to be required in this division of the presidency.

Allahabad,
24 April 1840.

I have, &c.
(signed) M. Smith,
Officiating Register.

NOTE.

1. Mr. Tucker's Minute, of the 27th March last, being about to be submitted to government, with the correspondence that has lately taken place between the Calcutta and Allahabad courts regarding sales, I wish, as one of the judges who approved of the Resolution of the court under date the 27th January 1837, to record a few remarks on this subject.

2. The Resolution declares that the duty of confirming or reversing a sale, made by a collector in satisfaction of a decree of court, should be performed entirely by the zillah judges, under Regulation VII. of 1825.

3. Mr. Tucker states, that he can find nothing in the Regulations that gives zillah judges authority to confirm such sales, and he contends that this power should be exercised by the revenue authorities.

4. In arguing this subject, it appears to me that Mr. Tucker has not sufficiently kept in view the difference between a sale for an arrears of revenue and a sale made in satisfaction of a decree of court.

5. In the former instance, if the proceedings of the collector appear in a court of law to have been improper or irregular, damages may be adjudged against the government, and in such cases it is important that the revenue authorities should have the power of revising the proceedings of the collector, and of either confirming or annulling the same, as to them may appear proper.

Sec. 26, Reg. XI.
1822.

6. When land, however, is sold by order of the courts, in satisfaction of a decree, no responsibility whatever is thrown on the revenue authorities, or on the government. The Regulation (VII. of 1825) expressly states, moreover, that if the revenue officers of government are guilty of any irregularity in conducting the sale, the parties dissatisfied are to go to the judge, who on proof of such irregularity may summarily annul the sale; such orders being open to summary appeals to the higher tribunals. If the courts, therefore, hold a sale to have been conducted regularly, no action of damages can lie against the government; but if the revenue authorities take upon themselves to say that there was no irregularity in the sale, it is open to any one to question that decision in a court of law.

Sec. 38, Reg. XI.
1822.

7. The fact is, that no express confirmation of a sale made in satisfaction of a decree, under the orders of a court of justice, is called for by any Regulation; unless some party comes forward, to question the regularity of the sale within one month, the decree holder obtains the proceeds of the sale, and the auction purchaser of the lands obtains possession as a matter of course. In such cases no order of confirmation is ever recorded. In the Revenue Department the law and the practice is quite different. No sale is final until actually confirmed by the local commissioner, and, for the reasons I have stated, it is highly proper it should be so.

8. It was on a full consideration of these circumstances that the court, consisting of the judges whose names are noted in the margin, came to the opinion that the duty of confirming (in all cases where confirmation might be called for), as well as of reversing these sales, should be performed by the zillah judges, and not by the commissioners, seeing very clearly from the correspondence that had been brought under their consideration, that a contrary course had led to much confusion, and would give rise to constant collisions between the revenue and judicial authorities.

Mr. Rattray,
Mr. Braddon,
Mr. D. C. Smyth.

9. Thus

147. "The depreciation in the value of the property sold, and the inconvenience caused to parties interested by the uncertainty and delay inseparable from this practice, render it necessary to prohibit it in future, and you are therefore requested to bear in mind that it is incumbent on commissioners to confirm all such sales, if conducted in conformity with established rules, when not otherwise instructed by the authority from which the order for sale proceeded, and without interfering in any way with the court's power of cancelling under Regulation VII. of 1825."

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9. Thus the court might have cases brought in appeal before them, in which sales had been confirmed as legal by the revenue authorities, and reversed as illegal by the judicial authorities; or sales denounced by the revenue commissioners as having been conducted with gross irregularity, declared by the judges, under the power vested in them by Section 5. Regulation VII. 1825, to have been conducted with all the requisite forms of office.

10. The judges who assisted in drawing up the Resolution dated 27th January 1837, deemed it their duty to put a stop if possible to such discreditable collisions between the covenanted functionaries of government; they observed, that nothing was guaranteed to the purchaser of lands at these sales but the rights and interests of the individuals answerable for the decrees, and consequently the rights of government could not in any way suffer; they considered it inexpedient, therefore, that the power to confirm these sales should be exercised by the revenue commissioners when the law empowered the zillah judges to annul them; and they held that as the law had given the zillah judges the power of controlling the proceedings of the collectors whenever they might consider those proceedings to be illegal and irregular, there could be nothing contrary to the intent of the Legislature in entrusting the same judges with the power of confirming these proceedings when they were of opinion that they had been held in a regular and legal manner, and in strict conformity to the Regulations.

11. Under the above circumstances, believing the resolution to be founded on a correct construction of the Regulations, and that it will prevent fraudulent and litigious applications from one authority to another, I recommend it to be upheld and carried into effect, as the only course in the present state of the law that will prevent the collisions which, from the papers now submitted to government, would appear to be of constant occurrence in the Dacca Division.

30 May 1840.

(signed) D. C. Smyth.

(True copies.)

(signed) J. Hawkins, Register.

(No. 265)

Legis. Cons.
29 March 1841.
No. 4.From F. J. Halliday, Esq. Junior Secretary to the Government of India, to
J. Thomason, Esq. Secretary to the Government of the North West Provinces.

Sir,

Legislative Dept.

I AM directed to transmit to you for submission to the Honourable the Lieutenant-governor North West Provinces, copies of the accompanying papers noted in the margin*, on the subject of modifying the law for the sale of lands in execution of awards of court, and to express the wish of the Governor-general in Council to be favoured with his Honour's opinion on the proposed enactment, together with the opinions of the sudder court and Board at Allahabad.

Fort William,
17 August 1840.I have, &c.
(signed) F. J. Halliday,
Junior Secretary to the Government
of India.

* Letter from Register Sudder Dewanny Adawlut, dated 16th March 1838, No. 740, to Secretary to the Government of Bengal, with enclosures.

Letter from the Officiating Secretary to Government of India, to the Secretary to Government of Bengal, No. 153, dated 15th April 1839.

Letter from Register Sudder Dewanny Adawlut, to the Secretary to Government of Bengal, No. 1928, dated 6th July 1838.

Letter from ditto to ditto, No. 1914, dated 19th July 1839.

Letter from Officiating Secretary to Government of India, to Secretary to Government of Bengal, No. 465, dated 11th November 1839, with enclosure.

Letter from Secretary Sudder Board of Revenue at Calcutta to the Secretary to Government of Bengal, No. 52, dated 4th February 1840.

Letter from Secretary to Government of Bengal to Jun. Secretary to Government of India, No. 1154, dated 30th June 1840.

(No. 1626.)

From *J. Thomason*, Esq. Secretary to the Government in the North West Provinces, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India.

Legis. Cons.
29 March 1841.
No. 5.

Revenue Dept.

Sir,

I AM directed by the Honourable the Lieutenant-governor to acknowledge the receipt of your letter, dated August 17th last, regarding a proposed enactment for transferring the conduct of sales of land in execution of decrees of court from the revenue to the judicial authorities, and to request you will lay before the Right honourable the Governor-general in Council the enclosed copies of letters from the Sudder Board of Revenue* at Allahabad, and the Sudder Dewanny Adawlut† regarding the measure.

2. It will be observed that whilst the Court of Sudder Dewanny Adawlut is favourable to the transfer, the members of the Sudder Board of Revenue see no advantage in the change, and are apprehensive lest evil effects should arise from it.

3. His Honour, after giving the subject his fullest consideration, has come to the conclusion that the change is inadvisable, as being unnecessary, unsuited to the constitution of the department in these provinces, and likely to lead to much abuse.

4. It cannot be here said, as is observed in paragraph 7 of Mr. Halliday's letter of June 30th, that the collectors of land revenue do not possess any particular fitness for this duty. On the contrary, they have in these provinces a peculiar fitness for conducting all operations connected with the transfer of landed property. They are at present the investigators and definers of all rights connected with the landed property. A full and accurate register of the present state of that property, founded on minute survey and searching local inquiry, is formed in their office. A further provision is made through the putwarries and connongoes, offices for maintaining and correcting the register. Minutely subdivided as the property is, none of it can change hands without the effect being felt through the numerous branches of the tehsildary agency, or in the Summary Suit Department, which is here the legal method of adjusting all village accounts, when anything tends to interrupt the amicable arrangement of such matters.

5. It is unnecessary to allude to the strong attachment which is felt by the natives of this country for their hereditary land. Our first transfers of such property, whether in satisfaction of the government demand or the liquidation of private debts, is exceedingly distasteful to them, and opposed to their former practice. Great evils and confusion have arisen from the abuse of the authority to make such transfers, and it is to be feared that these abuses might occur with still greater force if the whole process of transfer were vested in a class of public officers whose powers are so new, untried, and in many respects so little under control as are those of the subordinate judges. When the execution of the proposed transfer is lodged in a separate class of officers whose records furnish the fullest and most authentic information regarding the selected property, and who are themselves conversant with the interests and quality and liabilities of that property in other respects, and under different circumstances, evidently a strong check is laid upon any abuse of the process, and this check his Honour is unwilling lightly to forego. The measure would greatly increase the power of the courts, and facilitate the realization of money under its decrees, but the present process fairly carried out adequately, appropriately, and safely, meets all these objects.

6. Under Section 6, Regulation VII. 1825, the courts are empowered to use the agency of the collectors of land revenue in the execution of all decrees regarding landed property. Such has been extensively and beneficially the practice during the progress of the settlement. So far from diminishing the duties of the collectors in the case of sales, his Honour would feel disposed to extend their powers by rendering general and obligatory the provisions of the above enactment. It is most essential to the security of the landed property here, that the register of estates should be maintained correctly; and this would be insured by providing that

* No. 413, dated 6th October 1840.

† No. 1979, dated 9th October 1840

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that no transfer of land should be carried into effect except through the agency of the office where that register is kept.

7. The whole of the system of record and registry organised in these provinces will be found fully explained in sections 5-9 of the Sudder Board's printed circular on records and registration, dated August 28th last, which has just been published. The few remarks in section 10 of that publication place the subject in a strong light.

8. His Honour is convinced that nothing will tend so much to improve the judicial administration in these provinces, in the numerous and important class of cases which affect the landed property, as the maintaining to the utmost the reciprocal action of the judges and collector's offices upon each other. The duties of the latter are strictly ministerial, but they are necessarily so performed as to detect errors and prevent collusions to which the past history of our civil administration proves that our courts of civil judicature are sometimes liable. Such then being his Honour's general views on the subject above discussed, he proceeds to notice those points in the correspondence now before him which call for peculiar remark, as requiring adjustment by legislative interference.

9. It is thought necessary to dispense with translations to accompany decrees furnished by the courts of justice to the collectors as now required by Section 16, Regulation XXVI. 1803. A provision similar to that contained in the draft of an Act, bearing the signature of Mr. J. P. Grant, and dated November 11th, 1839, answers the required purpose. It may, however, be remarked that the merest note of the contents of a decree which should set forth the parties, subject-matter, and final decision, may in some sort, and sufficiently for all legal requisition, be termed a translation, and might be prepared with small trouble in the clerk's office, and be a useful accompaniment of the original decree. The necessity or expediency of entirely dispensing with an English notice of the event is very questionable.

10. The powers of the superior revenue authorities, and of the courts of justice, are held to require explanation. The distinction assumed by the senior and junior members of the Calcutta Sudder Board, in paragraphs 3-6 of their letter of February 4th last, appears to his Honour to be just; so long as the process is conducted by a junior revenue officer it is right that its execution be reported to his superior, in order to provide that none of the interests committed to the departments, and none of the rules prescribed for its guidance, are violated. Whatever regards the reciprocal rights of individuals, parties to the suits or otherwise, arising out of the process, may advantageously be left to the civil courts.

11. A definition is wanted of the term "small portions of lakheraj land," alluded to in Section 3, Regulation VII. 1825. This may be easily ruled. Portions less than a whole mouzah might be held transferable by the judicial authorities.

12. A provision is required authoritatively restricting the sale to the right, title, and interest of the person against whose property the process is directed, and rescinding all Regulations which can be held to authorise the absolute sale of any mehal, or portion of a mehal, without the proviso implied in the above words.

13. It is also held that the deduction of an outstanding balance of revenue from the price bid at a public sale, should be prohibited by law. The Board, in paragraphs 2 and 3 of their letter of October 6th, observe, that such a practice is positively forbidden in these provinces, in all cases except in the sale of an entire mehal, the property of the defendant, and the prohibition might with safety be made general.

14. These are the only points which appear to his Honour deserving of legislative interference, and none of them are so pressing but that sufficient provision might be made for them by means of circular orders.

15. If however it should be ultimately determined to transfer the conduct of sales of land in execution of decrees from the collectors of land revenue to the judicial authorities, his Honour trusts that precise and stringent rules will be laid down for their guidance in the performance of this important duty, so as to guard against the abuses to which the hasty or corrupt exercise of the power might lead. A brief Act which should devolve on the Court of Sudder Dewanny Adawlut the preparation of the rules as proposed in Mr. M. Smith's letter of Act IX. is much

See also Printed
Circular on Rent
and Revenue,
sec. 8, para. 133.

to be deprecated; rules of that sort are often little known beyond the limits of the department in which they are promulgated, and they do not carry with them the force or sanction of law.

Sale in Execution of Decrees of Civil Courts.

I have, &c.

(signed) J. Thomason,

Secretary to the Government in the North-west Provinces.

Agra, 17 November 1840.

(No. 413.)

From H. M. Elliot, Esq., Secretary to the Sudder Board of Revenue, North-west Provinces, Allahabad, to J. Thomason, Esq., Secretary to the Honourable the Lieutenant-governor of the North-west Provinces,

Sir,

Revenue Dept.

In reply to the orders conveyed in your letter, No. 1348, dated the 30th ultimo, the Sudder Board of Revenue, North-west Provinces, request that the following observations may be submitted to his Honor the Lieutenant-governor,

1. In these provinces the sale of lands in execution of decrees has now been for some time entirely separated from the sale of land for arrears of revenue, and the collectors have been prohibited from levying arrears of revenue from the proceeds of sales by order of court. The only exception to the above rule was in case of the sale of an entire mehal, the sole property of the defendant in the suit. But the Board are satisfied that no inconvenience will arise from that case also being included in the general rule, because of course when purchasers are aware that the mehal will continue responsible for any arrear of the revenue assessed upon it, notwithstanding the sale, they will decrease the amount they would otherwise bid, by the exact sum which they will have to pay on account of the arrear.

2. It was for this reason alone that the Board allowed the exception to stand hitherto, because they saw the result was exactly the same either way in the case of the sale of an entire mehal, being the sole property of a defendant for as a purchaser, knowing that he must pay the arrear in addition to the price, will deduct from the price, which he would otherwise be willing to pay, the amount of the arrear; so a purchaser, knowing that the arrear would be deducted from the purchase-money, would offer the full value of the estate as his bid. It follows that the revenue of government can be in no respect imperilled or injured by the proposed measure.

3. It will, the Board remark, save much time and trouble, both to the collectors and the courts, to adopt the mode now proposed, the sale of lands in execution of decrees being for some reason always an unwelcome duty to the collectors, and one in the performance of which they require much pressing.

4. The only hesitation which the Board feel on the subject regards neither the principle of the proposed measure, nor any fear of its effect on the revenue, but its effect on the landed interest.

5. The Board, from their opportunities of observation, cannot but fear that unless very strict rules of procedure be laid down, and some means of superintendence beyond what now exists established to enforce attention to those rules, very great irregularities and great peril of detriment, not to say ruin, to third parties will arise from entrusting indiscriminately to all the native judicial officers the power of sale, if attended also with the power of making over the thing sold.

6. The Board are of opinion, that every facility should be given to the free sale of landed property in these provinces, as the only remedy to the people for the pauperizing effect of the minute and constantly increasing subdivision resulting from the combined operation of their own laws and our early regulations. The object of the Board's labours in the settlements has been to effect so complete a record of every man's possession, that there might be no difficulty in effecting a sale, either by his own voluntary act, or by the interposition of the court to act for him. Provision has been made for keeping up this record, so that it shall be always available.

7. The collector can always, therefore, tell the court what any individual holding separately, actually has in possession, or what any two or more individuals, holding jointly, have in possession.

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9. If on the sale, by a court, of one of these interests, the court direct the collector to put the purchaser in possession of what was held by the person whose property is sold, this can always be done; and if the purchaser claims more, he may have his suit for the specific thing which he claims. If the defendant object, he may have his suit to reclaim anything to which he objects.

10. But if it be left to the native judges to give possession, the Board's experience induces them to fear that there will continually be endeavours made to put the purchaser in possession of something more than the defendant actually held. The Board make this remark on the ground of having had continually before them instances in which the native judges have endeavoured to force the collectors to give possession both in suits and sales of what is held by third parties. Now there is nothing which so completely tends to break up an agricultural community as attempts of this kind; it nullifies all the records made with so much cost and pains, and makes all property uncertain, and the strictest rules should be laid down in this matter.

11. In lands in which no person is appointed to administer the law without a previous ample training, or at least the power of obtaining the advice and aid of those that possess that training, such perils do not exist; but the class of persons who exercise judicial functions in this country makes it incumbent on the government, not only to put forth sound principles, but where the rights of third parties are concerned, to fence by strict rules the limits within which the powers given are to be exercised, as it regards any other than the actual parties to the suit or matter before the court.

Sudder Board of Revenue,
North-west Provinces, Allahabad,
6 October 1840.

I have, &c.
(signed) *H. M. Elliot*,
Secretary.

(No. 1979.)

From *M. Smith*, Esq., Officiating Register, Sudder Dewanny Adawlut, North-west Provinces, to *J. Thomason*, Esq., Secretary to the Honourable the Lieutenant-governor in the Judicial Department, North-west Provinces, Agra.

Sir,

Sud. Dew. Adawt.
N. W. P.
Present.
W. Lambert,
B. Tayler, and
F. Currie, esqrs.
judges; and
G. P. Thompson,
esq., officiating
judge.

I AM directed to acknowledge the receipt of your letter, No. 2776, dated 19th ultimo, and its annexures, on the subject of a proposed law for empowering the courts of civil judicature to sell land property in execution of decrees, without the intervention of the revenue authorities, on which the sentiments of the court are called for; and, in reply, I am instructed to express the acquiescence of the court in the arguments set forth in the communication of the secretary to the government of Bengal, No. 1154, dated 30th June last, and in the preference given therein to the draft of a brief Act appended to the Sudder Court's letter of 19th July 1839, No. 1914, in respect of which this court would merely suggest a verbal modification and addition or two, as follow:

Sect. 1. For, "as relate to the sale by collectors of landed property," &c., the court would substitute "as relate to the sale by the revenue officers of," &c.

Sect. 2. After the words, "shall be empowered to sell or cause to be sold," the court would insert, "under such rules as may from time to time be devised by the Courts of Sudder Dewanny Adawlut, the rights and interests of parties in lands," &c.

2d. The court observe that the rights and interests are all that, under any circumstances, the civil courts can have aught to do with, and as regards the subjection of the sale to rules to be prepared by the court, the judges would beg strongly to urge that all minor details, concerning the time and place of sale, mode of conducting it, agent for that purpose, nature of his remuneration, &c., should be left to be settled by the two courts in communication with each other.

Allahabad,
9 October 1840.

I have, &c.
(signed) *M. Smith*,
Officiating Register.

(True copies.)
(signed) *J. Thomason*,
Secretary to the Government in the North-west Provinces.

(No. 1731.)
From *F. J. Halliday*, Esq., Secretary to the Government of Bengal, to *T. H. Maddock*, Esq., Secretary to the Government of India, Judicial Department.

Legis. Cons.
29 March 1841.
No. 6.

Judicial Dept.

Sir,
I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the register of the Sudder Dewanny Adawlut at the presidency, being in continuation of the communication, dated 5th June last, forwarded to you under cover of my letter, No. 1154, of the 30th idem.

No. 3742, dated
30 Oct. 1840.

Fort William,
17 November 1840.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

P. S.—You will be pleased to return the original document now forwarded.

(No. 3742.)

From *J. Hawkins*, Esq., Register, Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, in the Judicial Department.

Legis. Cons.
29 March 1841.
No. 7.
Enclosure.

Sir,
I AM directed by the court, in continuation of my letter, No. 1877, of the 5th June last, to forward to you, for the purpose of being laid before the Right honourable the Governor, copy of a communication from the officiating judge of Shahabad (No. 288, of the 15th ultimo, with its enclosures), in which that officer reports that the commissioner of the division reversed a sale in execution of a decree, which had been confirmed by the court under whose authority it took place.

Sud. Dew. Adawt.
Present.
D. C. Smyth, esq.
Judge.

2 The court beg leave to suggest that the subject be taken into early consideration, and the judicial authorities furnished with some definite rules for their guidance.

Fort William,
30 October 1840.

I have, &c.
(signed) *J. Hawkins*, Register.

(Copies.)

From the Officiating Judge of Shahabad to the Court, No. 288;
dated 15th September 1840.

I HAVE the honour to forward copy of a communication from the Board of Revenue to the commissioner of the Patna Division, approving of the course pursued by that officer in upsetting a sale authorised and confirmed by the civil court; and, as the principle involved in the Board's letter appears to infringe on the powers vested by Regulation VII. of 1825, in the courts of judicature, I beg the Supreme Court will favour me with their opinion on the subject, for the future guidance of myself and the inferior judges.

2. In the case noted in the margin the plaintiff obtained a decree in the court of the principal sudder ameen, and the execution thereof was made over to the additional principal sudder ameen, who forwarded, on the 14th December 1837, a proceeding to the collector of Shahabad, for the sale of Mouza Kewa, Pergunnah Chynpore. The collector, after the usual course had been gone through, effected a sale of the property on the 27th October 1838.

Birmohun Doss,
plaintiff, v. *Chut-
torseul Sing*,
defendant.

3. A petition was presented, in conformity with the provisions of Regulation VII. 1825, to the additional principal sudder ameen, on the part of the decree holders, against the validity of the sale, and the same, after due inquiry, was rejected, and the sale confirmed. An appeal was preferred before the judge, who, however, saw no reason for interfering with the order of the subordinate court.

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4. On the 25th May the purchaser of the property presented a petition to the additional principal sudder ameen, informing that officer that, notwithstanding the sale had been confirmed by the civil courts, the commissioner of the division had reversed the same.

5. On the 22d August I addressed the Commissioner on the subject, and received in reply the papers which I now forward.

(signed) *W. S. Alexander*,
Officiating Judge.

From the Commissioner of the Patna Division to the Officiating Judge of Shahabad,
No. 978; dated 28th August 1840.

In reply to your letter, No. 270, dated 22d instant, I have the honour to transmit copy of a letter, No. 302, of the 21st of August 1839, from the Sudder Board of Revenue, together with my roobacarry of this date, regarding the sale of Mouza Kawa, Pergunnah Chynepoor.

(signed) *E. C. Ravenshaw*,
Commissioner.

From the Secretary to the Sudder Board of Revenue to the Commissioner of the
Patna Division; dated 21st August 1839.

Miscellaneous Dep.

Present:

J. Pattle and
C. W. Smith, esqrs.

I AM directed by the Sudder Board of Revenue to acknowledge the receipt of your letter, No 612, of the 7th ultimo, transmitting copy of an appeal preferred by Shew Shewek Sing, &c. auction purchasers, against the annulment by you, on the 17th May, of the sale of Mouzah Jeypoor Heettyah Kendah, Pergunnah Munnair, made in satisfaction of a decree of court, the same sale having been previously confirmed by the court on the 19th April, and to communicate the following remarks for your information and guidance.

2. Undoubtedly there is something unseemly in the collision of decisions between the court confirming the sale and the commissioner reversing it; but the apparent inconsistency is easily reconciled, if the different functions of the court and of the revenue authorities be duly considered. The Revenue Board have continued, from the earliest period, to exercise a supervision over the acts of the officers subordinate to them, and are expressly constituted to protect the fiscal rights of the state from loss. In the present instance the collector, obeying a precept of the court, put up to sale the rights and interests of the mahks of Talooka Jynpore Huttia Kendar (these mehals having a sudder jumma of 2,801 rupees) in Jynpore only, assigning to these mehals an arbitrary jumma of Rs. 2,027. 11. 8., which sale, on the papers being submitted, you thought proper to reverse.

3. In submitting an appeal from the reversal, you, for the second time, state your doubts as to the legality of your having reversed the sale, and of your issuing any order conforming or reversing sales held by collectors in satisfaction of decrees of civil courts.

4. Clause 1, Section 5, of Regulation VII. of 1825, appears to favour such an interpretation, as it provides for an application to the court directing the sale, and gives that court power to annul the sale, for any material deviation and consequent irregularity in the sale; but the provisions above referred to go on to show that such deviation or irregularity is to be brought to the notice of the court by petitions within a month; they clearly, therefore, have reference only to petitions by individuals being parties before the court; and do not limit, much less interdict, the inherent ministerial power of supervision possessed by Boards of revenue, from the earliest enactment of the Statute Book in 1793, to revise, confirm, and annul, under certain restrictions, all sales made by collectors of revenue.

5. The powers of the court under the law referred to are quite distinct from those with which the Board are nevertheless and notwithstanding invested for the protection of the rent-roll, and generally the interests of the state, against the consequences of gross irregularities and informalities in the conduct of sales; and as the powers to be exercised by both these authorities are of different descriptions,

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there is nothing to prevent their co-existence, nor their enforcement when necessary, without any collision or interference with each other, inasmuch as the occasions and purposes for which they are respectively provided have no necessary connexion, but, on the contrary, differ widely from each other.

6. This is no new doctrine, for on the 13th September 1833 the Sudder Board sent the following instructions to the commissioner of Patna :

"The Sudder Board having had before them your letter of the 23d ultimo, with its enclosures, direct me to inform you in reply, that as no sale is consummated until confirmed by you, you should proceed to perform your part towards the end directed, whenever a sale is ordered by a court of law, in satisfaction of a decree, without reference to the court, which is, of course, competent to interfere on its own motion, if it see cause. The duties of the revenue authorities are confined, in these cases, to the conduct of the sales, ordered in a legal manner, in a revenue point of view, and, if all due forms have been observed, confirmation is a matter of course; also, further responsibility rests with the court that directs the sale, and to which only an appeal therefore lies." *

7. Again, on the 7th February 1834, when the commissioner of Patna, in which the court had decided against the prayer of a petitioner to annul the sale, and the said petitioner had appealed to the Sudder Dewanny Adawlut against the judge's order, solicited further instructions as to whether the commissioner ought to suspend his own decision touching the sale, in regard to its having been conducted conformably to the sale laws, the Board, replied in the following terms: The Sudder Board, having had before them your letter of the 7th ultimo, direct me to inform you that, under the circumstances stated by you, you should proceed to confirm the sale in due course, notwithstanding the appeal to the superior court. That appeal regards a matter in which the revenue authorities are in no wise concerned; it is sufficient for you to have received the orders referred to in Clause 2, Section 4, Regulation VII. of 1825; and in the execution of these orders no reference should be had to any proceedings going on out of your own department, of which, strictly speaking, you can have no official knowledge. But if in any special case you desire instructions for your guidance, and that of the collector, you ought to solicit them from the court which directed the sale to take place.

8. The power, therefore, exercised by you in the present instance is in strict conformity, in every respect, with the instructions of this Board, of the legality of which they have no doubt, and of the wholesomeness of which there cannot be a stronger instance than the present, in which the collector, after having advertised the share of four dependents, viz. Raee Ram Bullub Horeer Roy, Roomar Raee, Bidder Narain, and Raee Ram Mohem, proceeds to sell the shares of the two first named only, without a new advertisement, and then most illegally sells one mehal upon an arbitrary jumma of Rs. 2,027.11.8. in a talook, consisting of several undivided mehals, recorded in his own books, with a sudder jumma of 2,801 rupees. It is with such errors and illegalities, in a revenue point of view, the occurrence of which would, if not checked, entail heavy loss of revenue upon the estate, that the commissioner, as a Board of revenue and not court, has to deal, and which it is incumbent upon it to correct with promptitude.

9. The Board, therefore, direct that the appeal be rejected, and they refer you to their previous instructions, observing that all inconveniences might be obviated, were the courts to await the decision of commissioners of revenue on the legality or illegality of sales in a revenue point of view, before deciding upon the question of confirmation or annulment in regard to the objections of parties in court.

(signed) E. Currie, Secretary.

The original native papers of your letters are herewith returned.

(True copies.)

(signed) J. Hawkins, Register.

* See circular of 15th January last.

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SPECIAL REPORTS OF THE

No. 8.
Sale in Execution
of Decrees of Civil
Courts.

Legis. Cons.
29 March 1841.
No. 8.
Judicial Dept.

No. 86, of the
8th instant.

(No. 149.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the register of the Sudder Court, annexing copy of a communication from the judge of Dacca, respecting the inconvenience experienced from the want of instructions on the subject of the interference of the revenue authorities with sales effected under the orders of the civil courts.

2. The letter of the 5th June last, referred to by Mr. Hawkins, was submitted along with my communication of the 30th idem.

Fort William,
26 January 1841.

I have, &c.

F. J. Halliday,

Secretary to the Government of Bengal.

P.S.—Please to return the enclosures.

(No. 86.)

Legis. Cons.
29 March 1848.
No. 9.
Enclosure.

Sud. Dew. Adawt.
Present:
D. C. Smyth, esq.
judge.

From *J. Hawkins*, Esq. Register of the Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

WITH reference to my letter, No. 1877, of the 5th June last, I am directed by the court to forward to you, for the consideration of the Right honourable the Governor, copy of a letter (No. 715 of the 17th ultimo) from the judge of Dacca, representing the inconvenience experienced from the want of instructions on the subject of the interference of the revenue authorities with sales effected under the orders of the civil courts.

Fort William,
8 January 1841.

I have, &c.

(signed) *J. Hawkins*, Register.

From the Judge of Dacca to the Court, dated 17th December 1840, No. 715.

I BEG to call the Court's attention to my letter (No. 8, of the 8th January last), to which I have as yet received no reply, and request the court will inform me what orders have been passed on the subject, as the sale of the other property is delayed in consequence.

(signed) *J. F. G. Cooke*, Judge.

(True copy.)

(signed) *J. Hawkins*, Register.

(No. 151.)

Legis. Cons.
29 March 1841.
No. 10.

Judicial Dept.

No. 60, of the
1st instant.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter, together with certain statements, and the draft of an Act from the register of the Sudder Court, relative to the great delay caused by the revenue authorities in the execution of the decrees of the mofussil courts.

Fort William,
26 January 1841.

I have, &c.

(signed) *F. J. Halliday*,

Secretary to the Government of Bengal.

P.S.—Please to return the enclosures.

(No. 69.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, to *F. J. Halliday*,
Esq. Secretary to the Government of Bengal, in the Judicial Department.

Legis Cons.
29 March 1841.
No. 11.
Enclosure.

Sir,

THE court being desirous of ascertaining, on correct data, whether the delay apparent in some of the districts under their superintendence, in the execution of decrees, arose from the references necessary, under the present state of the law, to be made to the revenue authorities, issued a circular order on the 12th June last, directing the several district judges to forward, with all practicable convenience, a copy of the last quarterly statement sent by those officers to the commissioners of their divisions, agreeably to Form (B.) of the circular order of the 12th December 1834, No. 127.

Sud. Dew. Adawt.
Present:
R. H. Rattray,
C Tucker,
E. Le Warner, and
D C Smyth, esqrs.
judges, and
J. F. M. Reid, esq.
temporary judge.

2. Greater delay than the court were led to expect has taken place in furnishing these returns, which, they have noticed with much regret, in some districts have never been kept up and sent to the revenue commissioner. Two returns, however, prepared with great accuracy, and in strict conformity to the circular order above quoted, have been received, and carefully revised by the court; and as it is evident from these statements that the present system of selling landed property by the collectors of revenue, is productive of the most discreditable delay in the execution of the decrees of the courts, and that the collectors of revenue, either from want of time or other causes, have in many instances evinced great inattention to this very important part of their duty, the court deem it highly expedient that the subject should be brought without further delay to the notice of government, with a view to the reconsideration of the necessity of passing the Act forwarded with my letter, No. 1914 of the 19th July 1839, with such modifications as may appear, on further deliberation, to be called for.

3. I am directed by the court to forward, for the purpose of being laid before the Right honourable the Governor of Bengal, copy of the returns submitted by Mr. Pulton, the judge of the 24-Pergunnahs, and Mr. Cardew, the judge of Tipperah. An examination of these documents will at once satisfy his Lordship of the urgent necessity that exists for empowering the courts of civil judicature to sell all landed property in execution of their own decrees.

4. In the 24-Pergunnahs the references made from the judicial to the revenue authorities appear to have been generally pending for 18 months; and in the majority of cases the collector has furnished no report whatever. In one instance, a reference made by the sudder ameen in March 1831, remained altogether unanswered. Two other instances of references, made in 1836 and 1837, are to be found, in which cases no sale of the property has been hitherto effected.

5. The return from the 24-Pergunnahs, however, may be pronounced to be highly satisfactory when compared with the state of things in the district of Tipperah. The first case on the Tipperah statement appears to have been referred to the collector in December 1836. In May 1840 the collector states the lands were sold by him on the 9th April 1840, or after three years and a half; but up to the date of the return, 30th June 1840, the account sale had not been confirmed by the commissioner. The second case in the statement is one of a similar nature.

6. The next case on the list that will particularly attract the notice of his Lordship is the 5th. In this the reference was made to the collector in June 1837, but up to June 1840 no report whatever had been furnished. In cases 6 and 7 five proceedings appear to have been sent to the collector from the court, calling his attention to the subject, but no notice whatever had been taken of the references.

7. In the 10th case the reference was made in July 1835, more than five years ago. The collector reports that the lands have been sold on account of arrears due to government, and that the officers of the collectorate have been called on to state the right of the defendant to a share in the surplus of the sale. The judge considers the reasons assigned by the collector to be "satisfactory"; the court consider them to be quite the reverse. Here is a decree holder entitled to a certain sum of money in 1835, and who, owing to the vexatious delays of the office, has been kept out of his money for nearly five years.

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8. In cases Nos. 11 and 12 six proceedings appear to have been sent to the collector without effect, or even notice; in cases Nos. 21 and 22, the references have been pending before the revenue authorities for eight years; in many other instances the references appear to have been pending for two, three, four, and five years. In case No. 28, which had been pending before the collector for five years, that officer states, apparently under an idea that he is only performing his duty, that "orders have been passed to ascertain whether there are any objections to forward the proceeds of sale to the civil court;" forgetting entirely that the sale had been made under the express orders of the court, and that it was the court, and not the collector, that had to decide on these objections.

9. In case No. 37, which was referred to the collector nearly four years ago, that officer appears lately to have requested the court to ascertain "who was the real possessor of the estate;" and in case No. 30 no less than 11 proceedings appear to have been sent to the collector without success, the case having been referred to the revenue authorities about two years ago. In many other instances two, three, and four calls appear to have been made on the collector without any effect whatever.

10. It is unnecessary for the court to bring other instances to the particular notice of the Right honourable the Governor, as they must already have satisfied his Lordship that the present system, as existing in the 24-Pergunnahs and in Tipperah, is discreditable both to the judicial and to the revenue authorities: to the judicial officers, in not having reported to this court the delay that had occurred in carrying the orders of their courts into effect; and to the revenue, in the neglect of duty on their parts that these statements have brought to light.

11. The remedy for the irregularities which have been found to exist in these two districts (and which will, the court apprehend, be found to prevail more or less throughout the Bengal presidency) will, the court feel satisfied, after a full consideration of this subject, be found in the draft of the Act they have directed me to submit with this letter; and should the draft as it now stands be approved of by his Lordship, the court will be prepared to frame such rules of practice for the guidance of the subordinate courts of judicature as will, they feel assured, protect the just rights of government, and enable the judicial authorities to carry out, without delay, the execution of their decrees, by enforcing the just payment of debts, and putting owners in possession of the property decreed to them in a much more efficient manner than the returns now submitted would show, as far as relates to these two districts, to have been heretofore the case.

Fort William,
1 January 1841.

I have, &c.
(signed) J. Hawkins, Register

1. It is hereby enacted, that from the 1st of — 1841, such parts of Regulation XLV. of 1793, Regulation XX. of 1795, Regulation XXVI. of 1803, and VII. of 1825, of the Bengal Code, and of any other Regulation or Act in force as relate to the sale by collectors of landed property of any description, in satisfaction of decrees of the courts of civil judicature, or in execution of any other judicial process, be repealed.

2. And it is hereby enacted, that the courts of civil judicature within the territories subject to the presidency of Fort William in Bengal, shall be empowered to sell, or to cause to be sold, lands of every description in execution of any decree or judicial process in virtue of which such sale may be authorised by the Regulations or Acts now in force, or which may hereafter be enacted.

3. And it is hereby enacted, that the Courts of Sudder Dewanny Adawlut within the territories subject to the presidency of Fort William in Bengal, shall frame such rules of practice for the attachment and sale of property in satisfaction of decrees or other judicial process of the courts of civil judicature, as may appear necessary, and shall submit the same to the Governor-general of India in Council; and that the said rules, when approved of by the said Governor-general of India in Council, shall be of the same force as if they were inserted in this Act.

(signed) J. Hawkins, Register.

QUARTERLY REPORT of Requisitions to Collectors of Zillah 24-Pergunnahs and Calcutta by the Civil Courts of Zillah 24-Pergunnahs, relating to Execution of Decrees remaining incomplete on the 30th December 1839.

—	Names of Parties.	Dates of Reference.	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
To Collector of 24-Pergunnahs by Principal Sudder Ameen.					
1	Gunga Govind Mundal, plaintiff, v. Nellamber Banerjee.	- 28th June 1834 referred for sale.	- - To sell defendant's lands in mouzah Sursoonah, pergunnah Magoorah, 421 begahs 15 collahs.	- - The collector, on the 7th September 1839, sent 2,463 rupees, and stated that the remaining property would be sold soon.	- - The collector should proceed to an immediate sale.
2	Kalle Kant Roy and heirs of Ram Coomeer Roy, plaintiffs, v. Anundchunder Roy, &c, defendants.	- - Referred for sale 20th September 1839.	- - To sell 26 begahs of land situate in Bursah, pergunnah Magoorah.	- - The collector has furnished no report.	ditto.
3	Kally Kisto Nang, plaintiff, v. Bydnath Roy, &c, defendants	- - Referred for sale 2d September 1839	- - To sell a third share of 10 mouzahs of a talook, situate in pergunnah Surfurazpoor, mouzah Ramjeebunpoor, &c, 16 mouzahs, No. 951, the sudder jumma of which is Rs. 555. 7. 8.; and in Kismut Ramnuggur, pergunnah Meernuggur, 7 mouzahs, No 1029, sudder jumma, Rs. 88. 7. 7; and talook, No. 989, mouzahs Huldard, Khulla, &c, pergunnah Preunuggur, sudder jumma, Rs. 1,486. 7. 11.	- - ditto	- - The collector should sell the lands as soon as possible, and transmit proceeds to this court
4	Koowar Sulh Churee Ghosaul, plaintiff, v. Luckenaram Mundal &c., defendants	- - Referred for sale 3d January 1839. 25th May lothundee papers corrected and returned to collector. Takeed, sent 25th November 1839.	- - To sell a half of the 14 collahs of land belonging to defendants, situate in mouzah Kidderpoor, pergunnah Magoorah.	- - Ditto. The lothundee papers were corrected and sent.	- ditto
5	Nyas Luskur, plaintiff, v. Nund Mundul.	- Ditto, 7th June 1839.	- - To sell 21 begahs 11 collahs, situate in mouzah Ransdhunnee, pergunnah Magoorah.	No kyfeut as yet received	- ditto.
Sudder Ameen:					
6	Kissenmoonee Dossset, plaintiff, v. Doohhinee Beebee, defendant.	- Ditto, 29th December 1839 24th June 1839 takeed sent.	- - To sell 2 begahs of land, situate in Kunder Pungger, Baleah.	- - The collector, on the 9th August 1839, stated that the 13th September was fixed for the day of sale.	- - If the sale has been effected, the proceeds should be remitted without delay.
7	Hurnarain Mundul, plaintiff, v. Luckhenarain Mundul, defendant.	- Ditto, 7th August 1839	- - To sell 344 begahs 2 collahs of land belonging to defendant, situate in mouzahs Chuckmunick and Taber.	- - The collector has furnished no kyfeut.	- - The sale should be effected as soon as possible.
8	Bulram Serear, plaintiff, v. Gungadhar Holdar, defendant.	- Ditto, 30th November 1839	- - To sell 1 kung 3 gundah and 2 kraut of the 3-anna share of talooka mouzah Bhuntpurat, pergunnah Havillee Shahr, and 2 begahs out of the 6 begahs of his residence, with appurtenances thereon.	- - ditto	- ditto.
)	Tarrachand Ghose, decree holder, by purchase from Mr. Lacklal, plaintiff, v. L. P. Moore.	- - Referred for sale on the 6th December 1839.	- - A soonderbund grant, No 1, attached to pergunnah Balugda, measuring 1,000 begahs,	- - ditto	- ditto.
Moonseff of Russah.					
)	Kissenchunder Moorkerjee, plaintiff, v. Moojdeen Lushur, defendant.	- Ditto, 17th April 1839.	- - To sell, after excepting a buyyah and its appurtenances, 12 begahs 19 collahs, 3 c of land situated in mouzahs Panchoo and Kallickapoor, pergunnah Buleah.	- - ditto	- ditto.

(continued)

SPECIAL REPORTS OF THE

	Nam's of Parties.	Dates of Reference.	Substance of Requisition	Reasons assigned by Collector for Non-execution	Judge's Opinion of those Reasons.
Moonseff of Russah—continued					
11	Ramhury Pooulee and others, plaintiffs, v Ramkissen, &c, defendants.	-- Referred for sale on the 31st July 1839.	-- To sell 29 begahs 10 collahs of land situate in mouzah Kulloah, pergunnah Masoorah.	-- The collector has furnished no kyfeut.	-- The sale should be effected as soon as possible.
12	Sheikh Mookeereum, plaintiff, v. Sheik Mookeem Mistrig.	-- Ditto, 31st July 1839	-- To sell 15 begahs 10 collahs of land, with house and garden, situate in mouzah Chunderdeep, pergunnah Khashpoor.	- - ditto - - -	- ditto.
13	Nemye Chand Roy, plaintiff, v Goo-roo Doss Tautie, son of Perithram Tautie.	-- Ditto. On the 27th December 1839 a map of 7 begahs 16 beswas of land was forwarded, on which claim had been abandoned.	-- To sell 20 begahs 19 ½ collahs of land, situate in mouzah Rulberbaeah, pergunnah Azemabad	-- The collector, on the 13th November 1839, stated that the lotbun-dee of 13 begahs 3 ½ biswas is ready, and begged to know if he would sell the remaining portion.	-- The collector should sell the whole of the property
14	Bhyrobe Chunder Roy Chowdery, plaintiff, v. Kya-moodeen, &c, defendants.	-- Ditto, 19th November 1839.	-- To sell 21 begahs 2 ½ collahs of land, situate in Chuck Punna-poor.	- - The collector has furnished no kyfeut	-- An immediate sale should be effected, and proceeds transmitted.
Moonseff of Sulkeah					
15	Bishonath Ghose, plaintiff, v. Ram-chunder Ghose, defendant	20 August 1837	-- To sell 6-anna share of dry and doobee land, situate in mouzah Bygurree, pergunnah Buirow.	- The collector reported that the 22d November 1839 was the day fixed for sale	- - If the sale has been effected, the proceeds should be sent immediately.
Moonsiff of Kuddumgochee:					
16	Kalachand Bhoose, plaintiff, v Ram-coomar Sirdar.	-- Referred for sale 4th April 1839. 20th June takeed sent. On 26th September 1839 papers corrected and sent	-- To sell 60 begahs in mouzah Sharaburreah Kismut Ramkesenpoor, pergunnah Anunpoor, and 43 begahs 2 collahs situate in mouzah Otterhunt	-- On the 13th July 1839 the collector sent the papers for correction sent on the 26th September 1839.	-- The collector should proceed to an immediate sale.
17	Goopee Mohun Roy, plaintiff, v Bulram Doss Kybart.	- Ditto, 13th July 1839 22d November 1839 takeed sent	-- To sell 14 begahs of land, situate in mouzah Prashandpoor, pergunnah Annespoor	-- The collector has furnished no kyfeut.	- ditto
Moonsiff of Nawabgunge					
18	Muss. Bhagbullee Dobbea, plaintiff, v Bissonath Banerje.	- - Ditto, 10th April 1839.	- To sell 11 biswas of land, situate in pergunnah Sakooah, pergunnah Calcutta	- - ditto - - -	- ditto.
19	Casseenath Chuckerbully, plaintiff, v Moocheeram Santra.	- Ditto, 25th July 1839.	-- To sell half a begah of land, situate in mouzah Pakoorah, pergunnah Calcutta.	- - ditto - - -	- ditto
To the Deputy Collector of Calcutta by Principal Sudder Ameen:					
20	Mothoor Mohun Chuckerbully, plaintiff, v Shibraram Ghose, defendant.	- Ditto, 15th August 1839.	-- To sell 3 begahs of land in mouzah Tilallee Dhee Birgee, and 5 begahs 12 collahs in mouzah Gooah, and 7 begahs 2 ½ collahs in Koolah Tengrah Dhee Soorah.	-- The collector has furnished no kyfeut since the papers were corrected and returned.	-- The collector should sell the lands as soon as possible.
Sudder Ameen.					
21	Mirzah Yakooob, plaintiff, v. Bhaloo Khan, &c., defendants.	- - Ditto, 19th March 1831. On the 5th November the papers were corrected and returned.	-- To sell 14 begahs of land in mouzah Kooleah Debee Puchawongong.	-- On the 5th November 1839 the collector reported that he would forward the sale proceeds after the sale was confirmed.	- If confirmed, the proceeds should be forwarded quickly.
22	Mr. J. J. Joseph, plaintiff, v Sheer Ally.	-- 31st May 1836 24th June a takeed sent.	-- To sell 1 begah 10 collahs of land, situate in Soorah Debee Puchawongong.	-- On the 26th November 1839 the collector reported that he would proceed to an immediate sale.	- If sold, the proceeds should be sent early.

	Names of Parties.	Dates of Reference.	Substance of Requisition	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
	Sudder Ameén— <i>continued.</i>				
23	Kallypersand Holdas, plaintiff, v. Kissenmohun Sircar.	-- Referred for sale 1st February 1837. 16th February 1839 a report called for to inquire the bid offered for the land.	-- To sell 1 begah of land, with house and tank, situate in Chuckerbarry Bellallah Debee Punchawongong	+ - The collector, on the 11th September 1839, reported that the 27th instant was fixed for the day of sale.	-- If sold, the proceeds should be sent early
24	Ramdun Dutt, plaintiff, v. Radshoonder Miller	- Ditto, 12th December 1839.	-- To sell 5 begahs 10 collahs of land, with appurtenances, in Chuckerbarry Puchawongong.	- - The collector has sent no kyfeut.	- - The collector should proceed to an immediate sale.
25	Monabebee, plaintiff, v Shuteh Chowdree.	-- Ditto, 3d November 1839	-- To sell 6 begahs 10 collahs of land, situate in mouzah Kullees Debee Moonburpoor	- - ditto - -	- ditto.
26	Ramchand Mitre, &c, plaintiffs, v Deegunbarree Bustome, &c, defendants.	- Ditto, 17th February 1839. 16th Aug 1839 takeed sent.	-- To sell 5 biswas of land in mouzah Bhowaneepoor.	- - On the 9th November 1839 the collector reported that he had not then received a confirmation of the sale.	- - The collector should send the proceeds immediately after the confirmation of sale.
27	Rajchunder Hagra, plaintiff, v. Beemullah Dossee, defendant	- Ditto, 23d September 1839.	-- To sell 3 collahs of land, with house, situate in Entally Dhee Puchawongong	- - No kyfeut as yet received.	- - The collector should effect an immediate sale

Zillah, 24-Pergunnahs, Civil D. Court, }
8 April 1840

(True copy)

(signed) J. Hawkins, Register,

(True copy)

(signed) J. H. Patten, Officiating Judge.

REPORT OF REQUISITIONS to Collectors of Tipperah and Bulloah, by the Civil Courts of Zillahs Tipperah, relating to Execution of Decrees remaining incomplete on the 30th June 1840.

	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution	Judge's Opinion of those Reason
1	Tulluck Chunder Roy v Colly Sunker Roy and others.	21 Dec. 1836	-- To sell defendants' lands in pergunnah Noornuggur, zillah Tipperah.	-- It appears from a roobakree of the collector of Tipperah, dated 5th May 1840, that the rights and interests of the defendants were sold by public sale on the 9th April 1840, and the account sale forwarded to the commissioner for confirmation.	-- The reasons assigned by the collector, are satisfactory
2	Tulluck Chunder Roy v Colly Sunker Roy and others	21 Dec. 1836	- - ditto	- - ditto	- ditto.
3	Tulluck Chunder Roy v. Groodross Deb and others.	6 June 1836	- - ditto	-- It appears from a roobakree of the collector of Tipperah, dated 27th March 1840, that orders have been passed by him to ascertain whether there are any government claims on the estate sold, after which the amount sale will be forwarded.	- ditto.
	Tulluck Chunder Roy v Sheebnath Dhur and others	20 Dec. 1836	- - ditto	- - The rights and interests of the defendants were sold by public sale on the 9th April 1840, and the account sale forwarded to the commissioner for confirmation.	- ditto
	Ransunder Seir v Doorgachurn Kumbra.	27 June 1836	-- To sell defendant's lands in pergunnah Mehercool, Pohur Kalla, and Munhellah, zillah Tipperah.	- - none	-- No reasons assigned by the collector, although a proceeding was sent to him on the subject, on the 23d June 1840.

SPECIAL REPORTS OF THE

	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
6	Berjomohun Shah v Dewan Tohurally.	26 Jan. 1839	-- To sell defendant's lands in pergunnah Seryle, zillah Tipperah.	- - - none - - -	-- No reasons assigned by the collector, although five proceedings have been sent to him on the subject.
7	Tupessaram v. Ramjoy Chowdry.	16 Jan. 1839	-- To sell defendant's lands in pergunnah Noornugger, zillah Tipperah.	- - - none - - -	- ditto.
8	Gour Kissen Doss v. Byrubchander Roy.	16 Aug. 1838	-- To sell defendant's lands in pergunnahs Elkudpoor, Kasempoor, and Muchoonkhalee, zillah Tipperah.	-- It appears from a robakarry of the collector, dated 15th February, 1840, that orders have been issued by him for the preparation of the lotbundee.	-- The reasons assigned by the collector not appearing to be satisfactory, a proceeding was sent to him on the 23d June 1840, on the subject.
9	Maharaja Kissen Kishore Manick v Juggomohun Seeba.	7 Nov. 1838	-- To sell defendant's lands in pergunnah Mahercool, zillah Tipperah.	- - - none - - -	-- No reason assigned by the collector, although five proceedings have been sent to him on the subject.
10	Dyah Moee v. Shurbmangullah.	27 July 1835	-- To sell defendant's lands in pergunnah Hoomnabad, zillah Tipperah.	-- The lands of the defendant were sold for arrears of government revenue, and a report has been required from the tonjhee navies and treasurer, relative to the rights of the share of the defendant to the surplus of sale.	-- The reasons assigned by the collector are satisfactory.
11	Rampersand Tewarry v. Rogonath Burdhan.	29 Jan. 1839	-- To sell defendant's lands in pergunnah Noornugger, zillah Tipperah.	-- The lands of the defendant having been pledged in security of the former sherishtadar, a reference has been made to the commissioner to ascertain whether the said lands are to be put up to sale or not.	-- Since which two proceedings have been sent to the collector on the subject.
12	Telluck Chunder Roy and others v. Bishenat Roy.	10 Nov. 1838	- - ditto	- - - none - - -	-- No reasons assigned by collector, although six proceedings have been sent to him on the subject.
13	Ramsantose Seen v. Rajkissen Burman.	20 June 1839	- - ditto	- - - none - - -	- none.
14	Ramsurshaw v. Bhubanath Doss	27 June 1839	- - ditto	- - - none - - -	-- A person presented a durkhast claiming the land, consequently a robakarry was sent to collector, requesting him to postpone the sale until further orders.
15	Punnvollah v. Pholabee and others	22 Aug. 1839	-- To sell defendant's land in pergunnah Singergong, zillah Tipperah.	- - - none - - -	- none.
16	Mr. F. Courjoa v. Sumbhoo Chunder.	27 May 1840	-- To sell defendant's land in pergunnah Buldakhah, zillah Tipperah.	- - - none - - -	- none.
17	Salt Agent of Bulloah v Sheebanund and others.	27 Dec. 1838	-- To sell defendant's land, Chier Jugdanund, zillah Bulloah.	-- The lands of the defendants were sold by public sale on the 24th January and 23d April 1840.	-- The amount of the sale has not yet been received.
18	Salt Agent of Bulloah v Ramlochun Chuckerbuly.	16 May 1839	-- to sell defendant's land in pergunnah Singergong, zillah Tipperah.	-- Orders have been passed to ascertain whether any demand of government is due from the estate.	-- The reasons assigned by collector are sufficient, and a proceeding has been sent to him on the subject, on the 24th June 1840.
19	Deputy-collector of Bulloah v Mohobooobun Meshah	23 July 1839	-- To sell defendant's lands in pergunnah Dundra, zillah Bulloah	-- A proclamation for the sale of the lands of the defendant has been issued.	- ditto.
20	Neelmonee Bhoose v Goodos Gohoo	2 March 1837	-- To sell defendant's lands in Tippera Forokabad, zillah Tipperah.	-- A reference has been made to the Civil Court, relating to the name of the possessor of the estate.	-- A reply to the reference was sent on 4th June 1840.

Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of these Reasons.
21 Sellaram Dobay v. Muss' Phellabeb and others.	8 March 1832	-- To sell defendants' lands in pergunnah Khunchunpoor, zillah Bullooh.	-- The sale was postponed in consequence of the heir of the defendant being a minor, and his estate being under the management of the Court of Wards.	-- The decree holder presented a petition on the 17th August 1839, that the heir of the defendant having arrived to his majority, since which four proceedings have been sent to the collector on the subject ditto.
22 Sodaram Dobay v. Golam Enuff.	8 March 1832	-- ditto	-- ditto	-- ditto.
23 Ramlochun Burman v. Assudeolah.	3 Jan. 1832	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- The rights and interest of the defendant were sold by public sale in February 1840, and the amount sale forwarded to the commissioner for his confirmation.	-- The amount of the sale has not been received, although proceeding was sent to the collector on the subject.
24 Chunder Mudeb, on the part of Subsoondoree v. Mus' Luckheepriah.	26 April 1837	-- To sell defendant's lands in pergunnah Singergong, zillah Tipperah, and pergunnah Bullooh, zillah Bullooh.	-- The collector of Tipperah states, that the sale of the defendant's property was postponed, according to a petition presented by a decree holder, and the collector of Bullooh states, that until the heavy claim of government on the estate is realized the estate cannot be sold for the claim of others.	-- The reasons assigned by the collector are satisfactory, since which a roobakarry has been sent to that officer on the subject.
25 Maharajah Kishen Kishore Mamek v. Collyunker Chowdry.	29 Nov. 1837	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- The lands of the defendant were sold in another case, and the account sale forwarded to the commissioner for his confirmation.	-- The reasons assigned by the collector are satisfactory.
26 Shamsunder and others v. Ramlochun Chowdry.	16 May 1839	-- To sell defendant's lands in pergunnah Narampoor and Mahercool, zillah Tipperah.	-- none	-- No reasons assigned by collector, although two proceedings were sent to him on the subject
27 Moonsee Podar v. Tureeza Bannoo.	16 Dec. 1839	-- To sell defendant's lands in pergunnah Bullooh, zillah Bullooh.	-- none	-- none.
28 Beshonath Roy v. Mahomed Nizah and others.	28 Jan. 1835	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah	-- Orders have been passed to ascertain whether there are any objections to forward the proceeds of sale to the Civil Court.	-- Since which two proceedings have been sent to the collector on subject.
29 Kishen Govind Bose v. Mahomed Ellabuse.	20 Feb. 1837	-- To sell defendant's lands in pergunnah Bulloohpoor and Bullooh, zillah Bullooh.	-- none	-- none
30 Juggohmohun Dhur v. Sumbho Chunder Burdhan.	12 June 1838	-- To sell defendant's lands in pergunnah Gungamundul, zillah Tipperah.	-- none	-- Eleven proceedings have been sent to the collector on the subject, but no reply has been received.
31 Kebul Kishen Serinah v. Shaik Dowlut and others.	1 Sept. 1837	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- The lands of the defendants were sold in another case on the 9th April 1840, and the account sale forwarded to the commissioner for his confirmation.	-- The reasons assigned by the collector are satisfactory.
32 Goordoyal Dhoos v. Bishonath Dhur	2 May 1838	-- ditto	-- The lands of the defendant were sold in another case, and the account sale forwarded to the commissioner, for confirmation.	-- ditto.
33 Ramlochun Burman v. Chundernath Burman.	22 Feb. 1839	-- ditto	-- none	-- No reasons assigned by the collector, although four proceedings have been sent on the subject
Muss' Doorpasee v. Bhowanny Sunker and others.	29 Jan. 1839	-- To sell defendant's lands in pergunnah Buldakhul, zillah Tipperah.	-- Orders have been passed for the preparation of the lot	-- The reasons assigned by the collector are satisfactory.
Bendrabun Shah v. Juggut Isurry.	5 Sept. 1839	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- none	-- Two proceedings have been sent to the collector on the subject

(continued)

SPECIAL REPORTS OF THE

—	Names of Parties	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
36	Takoopersand Tuvarry v. Alice Mehendee Khan.	12 Sept. 1838	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- A reference has been made to the Civil Court, respecting the disposal of the amount proceeds of the sale to the different claimants	-- A reply to the reference was made on the 29th June 1840, requesting the collector to send the money to the court.
37	Ramsurn Shah v Ranydoolub and others.	13 Sept. 1836	-- ditto	-- A reference has been made to the Civil Court, respecting the name of the real possessor of the estate.	-- A reply to the reference was made on the 16th May 1840.
38	Sheebshah Sookul v. Golucknath Roy.	5 June 1839	-- ditto	-- none	-- Four proceedings have been sent to the collector on the subject.
39	Mahomed Buser v. Ramanund Serina.	17 April 1839	-- To sell defendant's lands in pergunnah Singergong, zillah Tipperah.	-- Orders have been passed to ascertain the estate, previous to the preparation of the lotbandy.	-- One proceeding has been sent to the collector on the subject.
40	Punchanund Ghose v Juggut Isurree.	8 June 1839	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah	-- none	-- Two proceedings have been sent to the collector on the subject.
41	Intramony Shah v. Kooranee Shah.	19 Aug. 1839	-- ditto	-- none	-- Four proceedings have been sent to the collector on the subject
42	Ramsunker v Wusumodeen	17 April 1839	-- To sell defendant's lands in pergunnah Omrabad, zillah Tipperah.	-- The lands of the defendant were sold on the 24th January 1840, and the account sale forwarded to the commissioner for his confirmation	-- Since which a proceeding has been sent to the collector on the subject.
43	Sunker Dessee v Nobodoorgah.	22 Dec. 1839	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- none	-- One proceeding has been sent to the collector on the subject.
44	Madub Sing. v. Goree Sunker	27 Dec. 1839	-- ditto	-- none	-- ditto.
45	Deputy Salt Agent of Bulloah v. Mahomed Uffier, Oddeen and others	24 Jan. 1838	-- To sell defendant's lands in Chuckha Urshadeeah, zillah Bulloah.	-- Account sale forwarded to the commissioner for his confirmation.	-- The reasons assigned by the collector are satisfactory.
46	Salt Agent of Bulloah v. Nueemboodeen and others.	3 June 1839	-- ditto	-- A proclamation for the sale of the defendants' lands has been issued.	-- ditto
47	Rogonath Roy v Gourmohun Roy and others.	20 June 1839	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- none	-- One proceeding has been sent to the collector on the subject
48	Salt Agent of Bulloah v Sreeram Dutt.	9 April 1839	-- To sell defendant's lands in Chur Moothoval, zillah Bulloah.	-- The orders of the commissioner for the sale of the defendant's lands were erroneously sent to the collector of Tipperah, since the receipt of which orders have been passed for the preparation of the lotbunde.	-- The reasons assigned by the collector are satisfactory.
49	Raja Kissen Kishore Manick v. Hurry Kissen Seen, &c	29 June 1839	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- none	-- Three proceedings have been sent to the collector on the subject.
50	Raja Kissen Kishore v Bishonath Dhur.	20 July 1839	-- ditto	-- none	-- Two proceedings have been sent to the collector on the subject
51	Sheebjoy Thakoov. Doorgachura Deb.	3 Jan. 1839	-- To sell defendant's lands in pergunnah Putterghutta, Mehercool, and Mumluttah, zillah Tipperah.	-- none	-- One proceeding has been sent to the collector on the subject
52	Shoorjoopersard Wastee v Juggomohun Sobah	2 Jan. 1839	-- To sell defendant's lands in pergunnah Dhunnajoy Nagger, zillah Tipperah.	-- Perwannah issued to the lotnovees to prepare the lotbunde.	-- The reasons assigned by the collector are satisfactory.
53	Sook Cheenee Tewarry v. Rogonath Roy.	23 Sept. 1839.	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- none	-- One proceeding has been sent to the collector on the subject

	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
54	Raja Kishen Kissorsore Manieh v Juggomohun Soba	12 June 1839	-- To sell defendant's lands in pergunnah Dhunnunjoy Nuggur, zillah Tipperah.	- - - none - - -	- The proceedings have been sent to the collector on the subject.
55	Seebnath Sen v. Bhyrubchunder.	16 May 1839	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	-- A person having presented a petition as a mozahur, a proceeding was sent to the collector to postpone the sale until further orders.
56	Seebnath Sen v Byrubchunder.	16 May 1839	- - ditto - - -	- - - none - - -	- ditto.
57	Raja Kissen Kishore Munich v. Colly Sunker Roy.	22 Nov 1839	- - ditto - - -	- - - none - - -	-- One proceeding has been sent to the collector on the subject.
58	Mr. G. Lamb v. Nobokishen Roy and others.	9 Aug. 1839	-- To sell defendants' lands in pergunnah Mohabulpoor, zillah Tipperah.	- - - none - - -	-- Three proceedings have been sent to the collector on the subject.
59	Rajah Kissen Kissorsore Marrick v. Colly Sunker Roy and others.	5 July 1839	-- To sell defendants' lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- ditto.
60	Rajah Alenoollah v. Seebchunder Doss.	9 Jan. 1839	-- To sell defendant's lands in pergunnah Buldakhul, zillah Tipperah.	- - - none - - -	- none.
61	Rajah Alemoollah v Merzah Mahomed	9 Jan. 1839	- - ditto - - -	- - - none - - -	- none.
62	Goburdhan Podar v Doorgachurn Dhur and others.	13 May 1839	-- To sell defendants' lands in pergunnah Olter Gunganuggur, zillah Tipperah	-- Orders have been lately passed to ascertain whether there are any government demands on the estate	-- The reasons assigned by the collector are satisfactory.
63	Sheebshah Sookul v. Deenanath Eardun.	4 June 1839	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	-- Orders have been lately passed for the preparation of the lot-bundee.	- ditto.
64	Seeb Golam Wuslee v Ramgovind Gopt and others.	8 Nov. 1838	-- To sell defendants' lands in pergunnah Munhillah, zillah Tipperah	-- Account sale having been forwarded to the commissioner for his confirmation.	- ditto.
65	Sibnarain v Kasse-nath Burman	23 May 1838	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	-- Two proceedings have been sent to the collector on the subject.
66	Sheddee Gopaul Messer v. Gour-hurree Dhur	16 Aug 1839	-- To sell defendant's lands in pergunnah Oltargun Ganuggur, zillah Tipperah	- - - none - - -	-- The sale was ordered to be postponed, according to the petition of a moyahim, and on the 20th April 1840 a proceeding was sent to the collector to renew the sale.
67	Holassram Shah v Rampuan Doss	25 Aug. 1835	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- none.
68	Ramdoolal Deb and others v. Sheonath Dhur and others.	25 Aug. 1835	- - ditto - - -	- - - none - - -	- none.
69	Bishonath Roy v Kollysunker Burnam and others.	2 April 1836	- - ditto - - -	- - - none - - -	- none.
70	Ramgopal Pall v Ramjoy Dhur and others.	2 April 1836	- - ditto - - -	- - - none - - -	- none.
	Telluckchunder and others v. Seebchunder Doss	11 July 1836	- - ditto - - -	- - - none - - -	- none.
	Telluckchunder and others v Chum-pah and others.	11 July 1836	- - ditto - - -	- - - none - - -	- none.

SPECIAL REPORTS OF THE

—	Names of Parties.	Dates of Reference	Substance of Requests.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
73	Telluckchunder and others v. Colly Kinker Doss.	11 July 1836	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	none
74	Telluckchunder and others v. Cossynath Purdhum and others.	11 July 1836	- - ditto - - -	- - - none - - -	none.
75	Holasram Shah v. Luckenaram Deb.	6 Dec. 1836	- - ditto - - -	- - - none - - -	none
76	Kossachunder and others v. Muss' Suckee, &c.	31 Dec. 1836	- - ditto - - -	- - - none - - -	none.
77	Telluckchunder and others v. Juggomohun Ghose.	31 Dec. 1836	- - ditto - - -	- - - none - - -	none.
78	Telluckchunder and others v. Kissen Kishore Burdun.	22 Aug. 1837	- - ditto - - -	- - - none - - -	none.
79	Golucknath Roy v. Kewul Kishen Sermer.	5 April 1837	- - ditto - - -	- - - none - - -	none.
80	Rogoonath Roy v. Muss' Unnodah Moe.	16 Dec. 1836	- - ditto - - -	- - - none - - -	none.
81	Ramdyal Sookul v. Muss' Dyamunte and others.	5 April 1837	- - ditto - - -	- - Orders have been lately passed on the lotnovees to prepare the lotbundee.	- - - The reasons assigned by the collectors are satisfactory.
82	Dooigoomonee Wuzar v. Bishonath Chowdry.	5 April 1837	- - ditto - - -	- - ditto - - -	ditto.
83	Selram Sing v. Kewal Kissen Sirma.	5 April 1837	- - ditto - - -	- - - none - - -	none.
84	Mohelall Patuck v. Juggomohun Dhur.	5 April 1837	- - ditto - - -	- - - none - - -	none
85	Muss' Arradunnee v. Goopee Nath Dhur.	31 Dec. 1836	- - ditto - - -	- - - none - - -	none.
86	Muss' Collylah v. Bishonath Dhur.	5 April 1837	- - ditto - - -	- - - none - - -	none.
87	Muss' Collylah v. Beshonath Dhur.	5 April 1837	- - ditto - - -	- - - none - - -	none
88	Telluckchunder and others v. Juggomohun Dhur and others.	31 Dec. 1836	- - ditto - - -	- - - none - - -	none
89	Sheebjoy Thakoor v. Muss' Chundra Kullah.	5 April 1837	- - ditto - - -	- - - none - - -	none.
90	Ramsurn Shah v. Odye Audittor and others.	25 Aug. 1837	- - ditto - - -	- - - none - - -	none.
91	Rajah Kissen Kishore Manick v. Ramanath Sirmah and others.	30 June 1838	- - ditto - - -	- - - none - - -	none.
92	Ramdolall Deb and others v. Ramghatty Dhur.	19 Mar. 1838	- - ditto - - -	- - - none - - -	none.
93	Sheebnath Seen v. Casseenath Dhur and others.	17 Nov 1838	-- To sell defendant's lands in pergunnah Oolter, Gunganugger, &c Moornuggur, zillah Tipperah.	- - - none - - -	none.
94	Sheebnath Seen v. Nobokissen Dhur.	19 Mar. 1838	- - ditto - - -	- - - none - - -	none.
95	Ditto - - -	19 Mar. 1838	- - ditto - - -	- - - none - - -	none.
96	Juggernath Deo v. Uloofah Bebee.	23 Aug. 1838	-- To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	none.
97	Ramsurn Shah v. amkissub Dhur.	19 Mar. 1838	- - ditto - - -	- - - none - - -	none.

No.	Names of Parties	Date of Reference	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
98	Buddeen Chunder Shah v. Kussee nath Dhur, wife, and others.	17 Nov. 1838	-- To sell defendant's lands in pergunnahs Noornuggur and Olter Gunganugger, zillah Tipperah.	- none - - - -	none.
99	Buddeen Chunder Shah v. Goopeonath Dhur.	17 Nov. 1838	- ditto - - -	-- Orders have been issued on the lotnovees for the preparation of the lotbundeas.	-- The reasons assigned by the collector are satisfactory.
100	Telluckchunder and others v. Rammo-hun Sein and others.	20 Aug. 1839	-- To sell defendant's lands in pergunnah Noorunggur, zillah Tipperah.	- none - - - -	none.
101	Telluckchunder and others v. Bishen. Bhukt Morrain.	31 Dec. 1838	- ditto - - -	- none - - - -	none.
102	Ditto - - -	31 Dec. 1838	- ditto - - -	- none - - - -	none
103	Telluckchunder and others v. Ramki-sen Serina and others.	31 Dec. 1838	- ditto - - -	- none - - - -	none
104	Telluckchunder and others v. Ramgun-gee Serinah	31 Dec. 1838	- ditto - - -	- none - - - -	none
105	Telluckchunder and others v. Kissen Chunder Serina.	31 Dec. 1838	- ditto - - -	- none - - - -	none.
106	Khoda Buksh v. Luckeenarain.	15 June 1839	- ditto - - -	-- Orders have been issued for the preparation of the lotbundeas.	-- The reasons assigned by the collector are satisfactory.
107	Muss ^t Doorpadee v. Muss ^t Doopu-dee.	20 Aug. 1839	- ditto - - -	- none - - - -	none.
108	Soree Dos Chung v. Ramjewun Doss and others.	20 Dec. 1839	- ditto - - -	- none - - - -	none.
109	Rajah Kissen Ke-shore Manick v. Muss ^t Afauk.	20 Aug 1839	- ditto - - -	- none - - - -	none.
110	Rajah Kissen Ke-shore Manick v. Konymohun Ghose.	20 Aug. 1839	- ditto - - -	- none - - - -	none.
111	Telluckchunder and others v. Srelochan Dhur.	15 May 1839	- ditto - - -	- none - - - -	none.
112	Telluckchunder and others v. Luckea-caut Serina and others.	15 May 1839	- ditto - - -	- none - - - -	none.
113	Telluckchunder and others v. Rugo-nath Serina.	15 May 1839	- ditto - - -	- none - - - -	none
114	Telluckchunder and others v. Ram-churn Acharjee	15 May 1839	- ditto - - -	- none - - - -	none
115	Telluckchunder and others v. Nobo-chunder Burdhun.	15 May 1839	- ditto - - -	- none - - - -	none.
116	Telluckchunder and others v. Rogonath Burdhun.	22 Aug. 1839	- ditto - - -	- none - - - -	none.
117	Telluckchunder and others v. Ramgul-lee Dhur.	15 May 1839	- ditto - - -	- none - - - -	none.
118	Telluckchunder and others v. Issur-chunder Sermun.	15 May 1839	- ditto - - -	- none - - - -	none.
119	Rajah Kissen Kis-sore Manick v. Hurreschunder Burdhun.	20 Aug. 1839	- ditto - - -	- none - - - -	none.
120	Rajah Kissen Kis-sore v. Nobochun-der Burdhun.	20 Aug. 1839	- ditto - - -	- none - - - -	none.
121	Rajah Kissen Kis-hore Manick v. Rogoonath Burd-hun.	20 Aug 1839	- ditto - - -	- none - - - -	none

(continued)

SPECIAL REPORTS OF THE

—	Names of Parties	Date of Reference	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
122	Rajah Kissen Kishore Manick v Berjomohun Ghose	20 Aug 1839	-- To sell defendant's lands in pergunnah Noorunggur, zillah Tipperah.	- - - none - - -	- none.
123	Bendabun Shaw v. Nubee Newaz Khan.	20 Aug. 1839	- - ditto	- - - none - - -	- none.
124	Rajah Kishen Kishore Manick v. Ramsurro Dhur.	20 Aug 1839	- - ditto	- - - none - - -	- none.
125	Rajah Kishen Kishore Manick v. Oboychurn Dhur.	19 Aug. 1839	- - ditto	- - - none - - -	- none.
126	Rajah Kishen Kishore Manick v. Deorgachurn Burdhun.	16 Sept. 1839	- - ditto	- - - none - - -	- none.
127	Telluckchunder and others v. Doorgachurn Burdhun.	26 Sept. 1839	- - ditto	- - - none - - -	- none.
128	Telluckchunder and others v Bedonath Sudh.	26 Sept 1839	- - ditto	- - - none - - -	- none.
129	Mohellal Pullack v Nobokissen Dhur.	2 Oct. 1839	-- To sell defendant's lands in pergunnah Gunganugger, zillah Tipperah	- - - none - - -	- none.
130	Mus. Arradhunee v Gopunath Dhur	2 Oct 1839	- - ditto	- - - none - - -	- none.
131	Ramsunbose Seen v. Dhunnunjoy Chowdry.	20 Dec. 1839	-- To sell defendant's lands in pergunnah Norrunggur, zillah Tipperah.	- - - none - - -	- none.
132	Ramsunbose Seen v Gourao Sunker	20 Dec. 1839	- - ditto	- - - none - - -	- none.
133	Bhowanny Sunker Deo v Bessonath Chowdry	3 Sept. 1839	- - ditto	-- It appears, from a roobookary of the collector, that the land of the defendant was sold on the 14th February 1840.	-- The amount of sale has not been received.
134	Kessenkanth Baboo v Kavuiram Roy.	19 Jan. 1838	-- To sell defendant's lands in pergunnah Mohebulpoor, zillah Tipperah.	- - - none - - -	- none.
135	Mahomed Jaker v. Buchoo Bebee.	21 Dec. 1838	-- To sell defendant's lands in pergunnah Torah, zillah Tipperah.	- - - none - - -	- none.
136	Bungshee Budduh Moojoomdar v. Mus. Surbance and others.	21 Dec. 1838	- - ditto	- - - none - - -	- none.
137	Issurree Sing v. Mohabarut Dutt.	25 July 1839	-- To sell defendant's lands in pergunnah Joogdeah, zillah Bulloah.	-- The land of the defendant was sold on the 7th April 1840, and the account sale forwarded to the commissioner for confirmation.	-- Since which proceedings were sent to collector for the proceeds of the sale.
138	Goburdhun Tewarry v. Mahomed Muneerooddeen.	27 Mar. 1840	-- To sell defendant's lands in tuppah Joy-nuggur, zillah Bulloah.	- - - none - - -	- none.
139	Goburdhun Tewarry v. Mus. Rugdoheeta and others.	27 Mar. 1840	-- To sell defendant's lands in pergunnah Bulloah, zillah Bulloah.	- - - none - - -	- none.

(True copy.)

Tipperah, Judge's Office, }
10th September 1840. }

(signed) C. Cardew, Judge.
J. Hawkins, Register.

REPORT OF REQUISITIONS to Collector of *Dacca*, by the Civil Courts of *Zillah Tipperah*, relating to Execution of Decrees remaining incomplete on the 30th June 1840.

—	Names of Parties.	Date of Reference	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
1	Munee Ram Sirkar v. Joyhurrybosoo and others.	19 Mar. 1838	-- To sell defendant's lands in pergunnah Doorgapoor, zillah Dacca.	none	none.
2	Salt Agent of Bulloah v Suckee-kunth Gazee.	11 Jan. 1839	ditto	none	-- No reason assigned by the collector, although three proceedings have been sent to him on the subject.
3	Shumkissore Roy v. Samboonath Dutt and others.	11 Jan. 1838	-- To sell defendant's lands in tappa Ramchorval, zillahs Mymensingh and Gazarash, in Tipperah.	-- The collector of Mymensingh states, that the lands of the defendant have been sold, but the proceeds were not sent to the civil court, owing to the demand of government not being settled.	-- The reasons assigned by the collector of Mymensingh are satisfactory, and a proceeding has been sent to the collector of Tipperah on the subject.

(True copy.)

Zillah Tipperah, Judge's Office, }
the 10th September 1840. }

(signed)

C. Cardew, Judge.
J. Hawkins, Register.

(No. 312.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India in the Legislative Department.

Legis. Cons.
29 March 1841.
No. 12.

Sir,

As the subject noticed in para. 6 of the Honourable Court's despatch to the Government of Bengal, No. 18 of 1840, dated the 23d December, is under consideration with the Supreme Government, the Right hon. the Governor of Bengal directs that a copy of the paragraph in question be herewith forwarded for the information of the Right hon. the Governor-general in Council.

Judicial Dept.

Fort William,
2d March 1841.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

EXTRACT from a Despatch from the Honourable the Court of Directors of 18, dated the 23d December 1840.

Para. 6. From the papers here referred to, it does not appear certain that the land in question was liable to be sold in satisfaction of a decree, as it formed a dependent talook, and not an estate paying revenue to government. The process pursued in cases of the kind is to send the decree of the court to the collector, to be executed by the sale of land. The collector then applies to the commissioner for sanction to sell the land, and afterwards submits the sale for his confirmation. In this case Mr. Harvey, the commissioner, refused to confirm the sale; and being called on for explanation, stated that even supposing the land liable to be sold, the amount of the decree was only Rs. 1967. 15. 4, whereas the sale produced Rs. 12800; that the property sold was undefined as to its extent, situation, and amount of jumma; that the Regulations require all these points to be correctly ascertained before a sale, and that so unsatisfactory a sale might be expected to produce subsequent litigation. We cannot doubt the propriety of the commissioner's conduct in refusing, under these circumstances, to confirm the sale, and we have adverted to them thus particularly, with the view of desiring that an inquiry may be instituted into the general practice in the case of judicial sales of land.

18 to 23, annulment by Commissioners of sales of land, in satisfaction of a decree of a zillah court.

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land. Care should be taken to limit the amount of the sale as nearly as possible to the amount required for the satisfaction of the decree; and to define accurately the land which is to be sold, and the jumma which it bears.

(A true extract.)

Judicial Department,
2 March 1841.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 39.)

Legis. Cons.
29 March 1841.
No. 13.

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to
F. J. Halliday, Esq. Secretary to the Government of Bengal.

Legislative Dept.

Letter, No. 1154, of 30 June 1840.
Letter, No. 1731, of 17 Nov. 1840
Letters, Nos. 149 & 151, both of 28 Jan. 1841.
Letter, No. 312, of 2 March 1841.

Sir,

I AM directed to acknowledge the receipt of your letters of the numbers and dates noted in the margin, with their respective enclosures, on the subject of the sale of landed property in execution of decrees of court; and to request that the Right honourable the Governor of Bengal will call upon the Sudder Court to submit a draft of the rules of practice under which they would propose that sales should be held by judicial officers. Until the Governor-general in Council shall see these rules, and be able to judge of the responsibility under which the sales will be made, and their applicability to all descriptions of tenures, his Lordship in Council feels unable to decide as to the expediency of altering the existing law on the subject of sales of land.

2d. As connected with this subject, I am desired to transmit, for submission to the Right honourable the Governor of Bengal, the accompanying copies of a letter, No. 1,626, dated the 17th November last, and of its enclosures, from the secretary to the government N. W. provinces.

I have, &c.

Fort William,
29 March 1841.

(signed) *F. J. Halliday*,
Secretary to the Government of India.

(No. 172.)

Legis. Cons.
14 Feb. 1842.
No. 5.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Mad dock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dept.

No. 141, of the
21st ult.
No. 275, of the
21st May 1841.

In compliance with the requisition conveyed by your letter (No. 39) dated the 29th March last, I am directed by the Right honourable the Governor of Bengal to transmit, for the information of the Supreme Government, the accompanying letters from the register of the Sudder Court and the secretary to the Sudder Board of Revenue, relative to the existing laws for the sales of land in execution of decrees of court.

I have, &c.

Fort William,
1 February 1842.

(signed) *F. J. Halliday*
Secretary to the Government of Bengal.

P. S.—Please to return the enclosures.

(No. 141.)

Legis. Cons.
14 Feb. 1842.
No. 6.
Enclosure.

From *J. Hawkins*, Esq. Register of the Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

Sud. Dew. Adawt.
Present:
R. H. Rattray,
C. Tucker,
E. Lee Warner, and
J. F. M. Reid, esqs
judges.

I AM directed to acknowledge the receipt of your letters, Nos. 624 and 794, dated respectively 13th April and 15th June last, together with their enclosures, relative to the existing laws for the sale of landed property, in execution of decrees of court. The reply of the former letter was on the eve of despatch when your latter communication was received; but was withheld, in order to enable the court to dispose of the subject without multiplying letters, and to curtail as much as possible the already lengthened correspondence on the subject.

Messrs. Rattray,
Lee Warner, and
Reid

2. In reply, I am desired to state, that the majority of the court are of opinion that sales of landed property, in execution of decrees, should be made as at present

present, by the revenue authorities. On this point they concur in the opinions, expressed in the letters from the Sudder Board of Revenue at Allahabad, and from the secretary to the Government of Agra, dated respectively 6th October and 19th November 1840, and in that from the Sudder Board of Revenue to your address, No. 275, dated 21st May 1841; and they consider that were an Act of the nature of that, a draft of which accompanied the latter communication, passed, and a few rules enacted to carry out details, there would be no cause for complaint, and delay could not arise but from official neglect, for which the guilty individual would of course be answerable.

3. Mr. Tucker was long of the same opinion as his colleagues; and he still considers, that in the event of the government deciding to continue the present system of effecting sales by the fiscal authorities, the commissioners of revenue should possess the power proposed to be conferred upon them by the 2d section of the draft Act submitted by the Sudder Board of Revenue for the Lower provinces. Mr. Tucker, however, has recently seen so much of the delays and obstructions to the execution of money decrees under the system now in force, of calling in the aid of the fiscal authorities to conduct sales in execution of decrees of court, that he is now of opinion that the duty should be altogether transferred to the judicial officers.

4. An extract from the proposed reply to your letter, No. 624, of the 24th April last, which was prepared before the receipt of your letter of the 15th June following, will show the opinion entertained by the late Mr. D. C. Smyth, in regard to the subject of the call made upon the court by your first communication, and to the rules for the conduct of sales, which are herewith submitted.

5. Should the government resolve to transfer the duty of conducting sales to the judicial authorities, the court unanimously would suggest the adoption of rules, a draft of which is herewith submitted, as requested in the letter of the Supreme Government of the 29th March last. Mr. Lee Warner is of opinion that the sales should be conducted by an officer appointed for that specific purpose. In this opinion the court generally concur, but they consider that, as an experimental measure, the duty be entrusted to the sudder ameen of the district; and if the plan be found to answer, that then an officer should be appointed, as suggested by Mr. Lee Warner.

6. I am desired to take this opportunity of stating, that in consequence of the unsettled state of the question involved in the correspondence under consideration, the case alluded to in my letter, No. 1,877, of the 5th June 1840, as well as some others of long standing, are still pending on the files of the court.

7. The enclosures of your letters under reply are herewith returned, copies having been retained for the use of this office.

I have, &c.

(signed) J. Hawkins, Register.

Fort William,
21 January 1842.

EXTRACT from the Court's proposed Letter, showing the Opinion of the late
Mr. D. C. Smyth.

Par. 3. Mr. D. C. Smyth has directed me to state, that the court, in his opinion, are now not called upon by government to express any opinion on the general question of transferring the sales of lands in execution of decrees of court, from the revenue to the judicial authorities. That subject, Mr. Smyth observes, has been fully discussed from June 1837 up to the present period. The duty of the court on the present occasion is, in Mr. Smyth's opinion, merely to submit a draft of the rules of practice under which sales of land may be conveniently held by judicial officers.

4. For the above reasons, therefore, Mr. Smyth has purposely refrained from entering upon this part of the subject. He deems it sufficient to observe, that instances of the most harassing nature have been brought under the consideration of the court, and of government, showing the great difficulties and grievous delays which, under the present system, impede the due execution of the decrees of the courts of justice. It has become, therefore, absolutely necessary that some alteration in the present system should be made in the Lower provinces, and it rests with the government to say what that change will be. The rules now submitted

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appear to Mr. D. C. Smyth to be well calculated for carrying out the proposed alteration in the law. Should objections be made to any of the details, Mr. Smyth feels satisfied that other rules may be framed, calculated to meet every difficulty; but it appears in every respect advisable that the consideration of these rules should be postponed until the general question of transferring the sales of lands to the judicial officers shall have been finally disposed of by government.

Proposed Rules.

Rule 1st. Every sale of landed property, whether malgozaree or lakiraj, in execution of a decree of court, shall be conducted by the sudder ameen of the district in which the property to be sold is situated

Rule 2d. The sudder ameen of each district shall be allowed an establishment of English writers and mohurrirs of the vernacular language of the district, to be fixed by the judge in the first instance, for the purpose of keeping up such books and statements as may be found requisite for the due performance of this duty. To meet the expense of this extra establishment, a deduction of one per cent. for the present (subject to such future increase or decrease as may be found necessary) shall be made from the proceeds of sale; an account of which shall be kept by the sudder ameen, and submitted monthly to the judges, and quarterly to the secretary to government in the judicial department.

Rule 3d. In cases of execution of decrees, the court, on receiving from the decree-holder a statement of the lands belonging to the party or parties answerable for the amount of the decree, proposed to be attached and sold, shall, if necessary, apply to the collector of the district within which the lands are situated, for the purpose of obtaining any information regarding such property as may be requisite to enable the court to prepare the sale papers; and the collector of land revenue shall thereupon furnish all such information as the records of his office may afford, with all practicable despatch.

Rule 4th. After the attachment of the landed property and the preparation of the sale papers, the court will forward a copy of the report of the officer who may have attached the property, and a copy of the sale papers, to the sudder ameen of the district in which the property may be situated, requesting him to proceed to the sale.

Rule 5th. The sudder ameen, on the receipt of this requisition, shall use the proclamations and notices of sale required by Clause 2, Section 3, Regulation VII. 1825; and shall proceed at the proper time to sell the property in his public cutchery, agreeably to the rules contained in Regulation XLV. 1793, and VII. 1825.

Rule 6th. All sales conducted under these Rules shall commence on the 1st day of every English month (unless the same may fall on a Sunday or on some authorized holiday when the courts are closed, in which cases the sales shall commence on the Monday following, or on the next public court day), and shall continue *de die in diem* until the whole shall have been disposed of.

Rule 7th. On the conclusion of a sale, made as above directed, the sudder ameen shall require the purchaser to pay down 5 per cent. on the amount purchased, as earnest money; and in failure thereof shall immediately proceed to a resale. The deposit having been paid, the remainder of the purchase-money shall be paid by 12 o'clock of the day following; and if not so paid, the deposit shall be forfeited to government, and a resale made forthwith, without any fresh proclamation or notice of sale being necessary. In all such cases the sale roobocaree shall record the circumstances in full.

Rule 8th. If any intending purchaser, after having been called upon as above, to make the deposit of 5 per cent. on the amount purchased, shall refuse or neglect to do so, it shall be competent to the sudder ameen to impose a fine on the delinquent not exceeding 100 rupees; commutable, if not paid, to imprisonment in the civil gaol for a period not exceeding 15 days.

Rule 9th. When a sale shall have been concluded and the purchase-money paid in full, the sudder ameen shall grant the purchaser a receipt for the same, and forthwith remit the amount (minus the actual authorized expenses incurred in bringing the property to sale and the per centage authorized in Rule 2d) to the treasury of the judge of the district to which he is himself subordinate. As soon after as may be practicable (being in no case beyond 10 days from the day of sale)

the

the sudder ameen shall draw out a statement of the sale in English, and also in the native language current in the district, agreeably to form A., and transmit the same to the judge or other officer under whose order the sale was made; who, after disposing of any objections which may have been urged against the sale, shall confirm or annul the same, as to him may seem right and proper, and communicate the result immediately to the sudder ameen.

Rule 10th. On receipt by the sudder ameen of the confirmation of any sale, he shall prepare a bill of sale, agreeably to form B., to be delivered to the purchaser.

Rule 11th. It is to be distinctly understood that the duty of the sudder ameen in conducting these sales is purely ministerial (except in cases in which the sale may have been ordered by himself, in execution of a decree passed in his court); that it will be his duty to see that the property is fairly sold under the provisions of the Regulations applicable to sales in satisfaction of judicial awards; and that he is not to investigate objections which may be urged against a coming sale; nor is he authorized even to postpone a sale, except under the special orders of the judge or of the officer who may have directed the sale to be made.

Rule 12th. It is further to be distinctly understood, that nothing contained in these Rules is to be construed or shall be construed to interfere in any way with the claim of government to arrears of revenue due for any period antecedent or subsequent to such sales, all such claims will remain unaffected by the sale, the same as though no such sale had taken place. Accordingly, no deductions whatever shall be made from the proceeds of sale, except such as are authorized by these Rules; the sale being in the light of a private transfer from A to B, with all its liabilities and responsibilities.

Rule 13th. Whenever a sale of land made under these Rules shall have been finally confirmed and possession given to the purchaser, then, if the transfer be of that nature as, under the Regulations, the collector is authorized to record in the registers of landed property kept in his office, the collector shall, on application being made to him by the purchaser, accompanied by the original bill of sale, make the necessary transfer in the public registers, in the manner prescribed by the Regulations.

Rule 14th. The sudder ameen shall be required to keep up such statements and books as may be found to be requisite and necessary.

Rule 15th. In the absence of the sudder ameen, the whole of these rules shall be applicable to the officiating sudder ameen; and in his absence, to the principal sudder ameen of the district.

(signed) *J. Hawkins*, Register.

(No. 275.)

From *E. Currie*, Esq. Secretary to the Sudder Board of Revenue, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Revenue Department.

Legis. Cons
14 Feb. 1842.
No 7.
Enclosure.

Sir,

THE attention of the Board having been recently called, by the Sudder Dewanny Adawlut, to the delay which has occurred on the part of the revenue authorities at Chittagong, in effecting sales of landed property in satisfaction of decrees of court; and it being also within the knowledge of the Board, that the question of the respective powers of the judicial and revenue authorities, in regard to such sales, is at present under the consideration of the Right honourable the Governor, I am directed to submit the following observations for his Lordship's consideration.

2. In the particular cases which attracted the notice of the Sudder Dewanny Adawlut, a great portion of the delay is to be attributed to a want of method in the collector's office, and to the commissioner having considered it expedient to ascertain certain local details regarding the property directed to be sold, without observing that under the provisions of Clause 8, Section 3, Regulation VII. of 1825 (extended by clause 1, section 4, to sales made by collectors), no such information is required by the revenue authorities; but still the delay was also in some measure attributable to the system in force respecting sales of this description; and it is with reference to this subject that the Board now solicit his Lordship's attention,

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3. His

Present
C. W. Smyth, esq.

3. His Lordship is aware that there has been considerable difference of opinion, as to the extent to which the commissioners of revenue can legally interfere in the confirmation or otherwise of sales made under the orders of the civil courts. Some of the judicial authorities have held, that under the provisions of Regulation VII. of 1825, the revenue commissioner is restricted to directing the collector to select for sale such portion of the lands included in the statement transmitted by the civil court as it may appear most convenient to dispose of in satisfaction of the decree; and that he has nothing whatever to do either with the confirmation or reversal of the sale, which rest exclusively with the civil courts. On the other hand, the practice of the commissioners of revenue has, with very few exceptions, proceeded upon the principle, that if a judge calls upon the revenue authorities to effect a sale, it is the bounden duty of the commissioners to see that the sale is effected in conformity with the rules upon which its legality depends, and with which the revenue officers have better means of becoming thoroughly conversant than any other class of functionaries. They observed that, although it is universally allowed that there should be some kind of confirmation of a sale previous to the realization of the purchase-money, yet the law nowhere speaks of the confirmation of a sale by a judge: no doubt the judge may, under certain circumstances, reverse a sale upon summary inquiry; but Clause 3, section 5, of the Regulation above quoted (and which was enacted for the express purpose of clearing up doubts which had previously existed, as to whether a sale could be reversed except by the institution of a regular suit) obviously contemplates such irregularities only as may be brought to the notice of the court by petition, and makes no provision whatever for the occurrence of irregularities which either do not attract the attention of individuals imperfectly acquainted with the forms of revenue procedure, or, as affecting only the interests of government, are intentionally allowed to pass without notice. It has been contended, in short, that unless the superior revenue authorities have the power of revising the sale proceedings, there is no check whatever upon irregularities and errors which, although passed over in silence by the parties, might produce much confusion and possibly ultimate injury to government; and that there is a practical absurdity in maintaining that, when the revenue authorities are called upon to effect sales, they should not have the power of seeing that such sales are effected legally and properly, so far as their own department is concerned.

4. But wide as has been the difference of opinion upon this subject, the discussion has been confined hitherto to the interpretation of the existing law; and the result would seem to show either that the law is in itself indefinite and obscure, or that its provisions cannot with safety be reduced to practice. It is the wish of the Board to avoid entering upon this debateable ground; and instead of inquiring what is the correct construction of the Regulations as they stand, they would rather solicit his Lordship to consider what would be a good and sound law for the future.

5. It seems to the Board that the respective provinces of the judicial and revenue authorities, in regard to sales in satisfaction of decrees, are clearly marked out by the reason and common sense of the case. It has been determined that sales of a certain description of property shall be made through the agency of the revenue authorities. The functions of these authorities are purely executive. Neither collector nor commissioner has anything to do with the justice of the order directing the sale, nor possess any power to decide upon claims advanced by third parties to the property advertised for sale. These matters must be dealt with by the civil courts, and by them alone. It seems, however, equally clear that the revenue authorities ought to have the sole control over the actual sale proceedings; and that after a sale has been effected by the collector, the papers should be submitted to the commissioner, for the purpose of enabling him to ascertain whether the advertisements have been properly issued, the interests sold rightly described, and all necessary formalities of sale duly observed. To these points the commissioner should limit his attention; and upon being satisfied that the proceedings have been properly conducted so far as his department is concerned, he should notify the same to the civil court. If the commissioner should be of opinion that the sale has not been duly and properly made, he should reverse the sale and direct a resale; notifying the fact to the civil court, which should have no power of interfering in either case. On the other hand, the civil court should exercise the full power of reversing on summary inquiry, upon any question of right connected with the order directing the sale, questions which the revenue authorities would not be

at liberty to enter upon; but it would be expedient to provide that this power of summary reversal should not be exercised, except upon application preferred within a certain limited period, and as the inquiries connected with every such claim are quite distinct from the proceedings of sale, the present prescribed period of one month from the date of sale might be preserved.

6. It seems to the Board so evident that there ought, if possible, to be no interference on the part of the civil courts with the peculiar functions of the revenue department, and *vice versa*, that they do not consider it necessary to adduce any lengthened arguments in support of the position. They would, however, remark briefly that the civil courts have not within their reach efficient means of checking irregularities in the conduct of sales, nor can they be supposed to be as conversant with the forms of revenue procedure as the officers at the head of that department, and it would be by no means difficult to adduce cases in which the timely interference of the local commissioner, or of the Sudder Board, has alone prevented the consummation of illegal sales in satisfaction of decrees, and the consequent injury and confusion which would have ensued; for the grounds of interference are frequently so strictly of a fiscal nature as to preclude the probability that they should ever have been brought to the notice of the civil court. Two instances may be adduced as illustrative of this observation. Talooka Jaipore consisted of 12½ villages with a sudder jumma of Rs. 2,801. A decree was obtained against two out of several sharers in the estate, and the collector sold, not the rights and interests of the two sharers, but three villages, with a specific jumma of Rs. 2,027. 11. 8, without any previous butwarrah. There were other irregularities in this sale, but the one just mentioned is a striking instance of the mischief and confusion which might result if the superior revenue authorities were to exercise no control over the proceedings of their subordinate officers in regard to these sales. Again in 1838 upwards of 100 villages belonging to the estate of the late Baboo Bynath Saho, of Patná, were illegally separated from each other and sold with specific jummas in satisfaction of decrees of court, a course of proceeding which, had it not been for the interference of the Sudder Board, would have been fraught with danger to the revenue of government at any future period when the purchasers or their heirs and representatives might have colluded together with fraudulent intentions.

7 The Board would also avail themselves of this opportunity to suggest the expediency of abolishing the existing form of practice, under which the civil court is constrained in every instance to apply to the revenue commissioner for his sanction to a sale, instead of issuing its precept direct to the collector. Much delay is necessarily occasioned by this circuitous mode of proceeding, which, now that the collectors are authorised to advertise estates in arrears to government without previous application to the commissioner, has not even the plea of uniformity to recommend it.

8. Should his Lordship be disposed to adopt the suggestion contained in the last paragraph, it will be necessary to modify Clause 2, Section 4, Regulation VII. of 1825, by substituting "collector" for "Board of Revenue", and to rescind clause 3 altogether. The Board transmit herewith the draft of an Act for the consideration and approval of the Right honourable the Governor.

Sudder Board of Revenue,
Fort William, 21 May 1841.

I have, &c.
(signed) E. Currie,
Secretary.

Preamble.

WHEREAS it is desirable to curtail the forms observed in selling the rights and interest of individuals in satisfaction of decrees, and to define with clearness the functions of the court and revenue authorities in such sales;

The following rules have been enacted to be in force from the date of their promulgation.

2 Such portions of Regulations XLV. 1793, XX. 1795, XXVI. 1803 and VII. 1825, as provide that the civil court shall apply to the Board of Revenue to direct the sale to be made, are hereby rescinded; henceforth the court will transmit the statement of lands required by clause 2, Section 14, Regulation VII. 1825, direct to the collector of revenue, and the collector shall in future be competent

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petent to advertise and to proceed to actual sale without any previous reference for sanction to the local commissioner of revenue.

3. In modification of Clause 1, Section 5, Regulation VII. 1825, it is hereby further enacted that,

When the collector has completed the sale, he shall transmit the sale papers to the commissioner of revenue, who, if he find any irregularity in the mode of publishing and conducting the sale, shall be competent to reverse the sale and to order a resale to be made. If no such irregularity be found, or after a resale legally conducted, the commissioner will certify the completion of the sale to the court which may have ordered the same, and the court shall then, and not until then, be competent to confirm the sale.

4. It is hereby declared, that all sales made under the authority of an order of a court of justice are of the nature of private transfers from one individual to another, and carry with them all their responsibilities, and do not in any manner whatsoever affect the rights or interests of the state.

(No. 15.)

Legis. Cons.
14 Feb. 1842.
No. 8.

From Secretary to the Government of India to *J. C. C. Sutherland, Esq.*

Sir,

Legislative Dept.
Leg. Cons 29 Mar.
1841, Nos 1 to 13
(in original).
Letter from Sec. to
Government of
Bengal, No. 172,
of 1 Feb. 1842,
with enclosures.

I AM directed by the Right honourable the Governor-general in Council to transmit to you, for submission to the Law Commissioners, the accompanying papers noted on the margin, relating to the existing laws for the sale of landed property in execution of decrees of court, and to request that the Commissioners will submit a report on the subject, at their early convenience, for the consideration of the Supreme Government.

2. You are requested to return the original papers with your reply.

I have, &c.
(signed) *T. H. Maddock,*
Secretary to the Government of India.

Council Chamber,
14 February 1842.

Legis. Cons.
30 Sept. 1842.
No. 7.

From the Indian Law Commission to the Honourable the President of the Council of India in Council.

WE have now the honour to report our opinion upon the existing law of the Bengal Presidency relating to the sale of landed property in execution of decrees of the civil courts, which subject was referred to us in Mr. Secretary Maddock's letter, No. 15, of the 14th February 1842.

2. The correspondence received with this reference embraces four questions :

First, The maximum quantity of lakheraj land which by the terms "small portions of land held exempt from the public assessment," employed in Clause 2, Section 2, Regulation VII. 1825, it was intended by that clause should be disposed of by the courts in execution of their decrees or other process, without application to the revenue authorities.

Second, The expediency of discontinuing the transmission of English translations of decrees to the commissioners of revenue, on occasion of making application to those officers for the sale of lands in satisfaction of such decrees.

Third, The ascertainment of the relative functions of the civil courts and the commissioners of revenue in regard to the confirmation or annulment of sales of land made by collectors of revenue in execution of decrees.

Fourth, The expediency of transferring from the revenue to the judicial authorities the duty of conducting sales of land in execution of decrees or other judicial process.

3. On the first point some of the revenue authorities in the Lower Provinces are of opinion, that under the clause specified the courts are authorised to sell any parcels of lakheraj land not exceeding 100 beegahs. The reason assigned for this opinion is, that the government having abandoned to the landholders the revenue assessable on all such parcels in case of the resumption of the lakheraj tenure, the intervention

intervention of the revenue officers in the disposal of them by public sale is not necessary for the protection of the government interests.

The Allahabad Sudder Court have expressed their concurrence in this view of the intentions of the Legislature. The Calcutta Sudder Court, on the contrary, regard the terms as limited to portions not exceeding 10 beegahs. Both courts agree in recommending an explanatory Act for the settlement of the question.

4. It does not appear to us that the meaning of these terms can be discovered by reference to the resumption laws. The limit which the government has imposed upon its own right to the revenue of lakheraj lands, held under invalid grants in certain parts of the county, is not uniform. In Bengal, Behar, and Midnapore it embraces grants of 100 beegahs; in Benares, grants of 50 beegahs only; whilst in the Ceded and Conquered Provinces, including Cuttack, the government has not relinquished its right to a revenue from the smallest extent of land held lakheraj under an invalid tenure.

But the expressions in question are general, and the clause containing them is in force throughout all the provinces of the presidency.

5. The rule was intended to legalise a previous practice; and we find, on an examination of the documents on which the provisions of Regulation VII. 1825 were founded, that the parcels of lakheraj land sold by the courts without reference to the revenue officers are therein described as small parcels, of a few beegahs, or such as when situated in and about towns, afforded suitable spots for building. This result is confirmatory of the view taken by the Calcutta Sudder Court, and a declaratory Act in accordance with that view would, in our opinion, give a correct interpretation of the intention of the Legislature at the time.

6. On the second point there seems to be no difference of opinion, and it further appears to us that the transmission of the copy of the decree to the revenue officers now required by law, might likewise be dispensed with; and that a tabular statement, specifying the number of the suit, the names of the parties, the date and substance of the decree, the court by which it was passed, and the property proposed for sale, would convey to those officers all the information they would require.

This statement, as suggested by the Presidency Sudder Board of Revenue, might be sent direct to the collector, who should be empowered to proceed to actual sale without previous reference for the sanction of the local commissioner.

7. On the third point, viz. the relative functions of the civil courts and revenue authorities in respect of the confirmation and annulment of sales of land in satisfaction of decrees, a great diversity of opinion exists, which has in some instances produced very embarrassing results. Of the existing law different views have been taken by the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad at different times; and the opinions of the members of the Presidency Sudder Board of Revenue are not in unison on the subject.

8. The question generally relates to the construction of Regulations XLV. 1793, XX. 1795, Sections 15-27, Regulation XXVI. 1803, and Sections 4 and 5, Regulation VII 1825; and the specific points of difference will be best understood by a statement of the several opinions, which are as follows:

First, That the duty of the collectors and commissioners of revenue consists solely in selecting the lands of the debtor for sale, and in making the sale; and that it rests with the courts to confirm or annul the sale when made; the power of confirmation being inferable from the power to cancel declared to reside in the courts by Clause 1, Section 5 of Regulation VII 1825.

Second, That the courts have power to reverse, but not to confirm a sale; the latter formality resting with the commissioner, and being necessary to the validity of the sale, but not to be resorted to until it has been ascertained that no prohibitory order is expected from the court.

Third, That the courts possess no power of confirmation, and that no formal confirmation is necessary to the validity of the sale.

Fourth, That the revenue commissioners have power to control the proceedings of the collectors in the conduct of these sales, so far as to ensure regularity and conformity to prescribed rules; but that this power in nowise affects the acknowledged authority of the courts to cancel the sale. Such is stated to be the principle on which the commissioners of revenue act in the Western Provinces according to circular orders of the Allahabad Board.

Fifth, That the confirmation of the revenue commissioner is necessary to the validity of the sale; and that his revision, and if requisite, reversal of the sale, should be confined to the enforcement of the prescribed legal formalities, and the protection

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protection of the rights of government, and that the power of the Courts to reverse, the sale is meant to apply to circumstances independent of the mere conduct of the sales, and affecting the rights of interested parties.

In confirmation of this view it is urged, that it is supported by the practice of the revenue authorities in the Lower Provinces from 1793 to the present time; and that the conduct of these sales being committed to them, they must necessarily be held answerable for the duty being properly performed. And to exemplify the necessity of this controlling power for the protection of the interests of government, two instances are adduced, in which specific lands were separated from the estates to which they belonged, and sold by the collectors with specific jummas arbitrarily fixed, without any previous inquiry into their real assets, on which alone the allotment of the jumma could be made in the manner prescribed by law. Such irregularities, it is observed, were not likely to come to the knowledge of the courts, nor, if made known, was it the duty of the courts to rectify them.

9. We think that a comparison of the laws which have been passed from time to time up to the late Act of 1841, for the conduct of sales of lands for arrears of revenue, and in satisfaction of decrees, will throw light on this question, and perhaps lead to a satisfactory solution of it.

Sec. 3, Reg. VII.
1830.

10. From 1793 to 1830 no sales could take place for realizing arrears of revenue until the sanction of the superior revenue authorities had been received to the arrangement of the lots as prepared by the collector; in the last-mentioned year the necessity of this prior sanction was removed. There is no provision in any of the Regulations from 1793 to 1822 for the transmission of the account sales for the confirmation of the Board or commissioners of revenue after the sale had taken place; but the Board of revenue was by law expressly made responsible for the careful execution of the duty of conducting sales of land for arrears of revenue, and we believe it ever was the invariable practice to transmit such accounts, and to consider no sale complete until the confirmation of the superior authorities had been received. In 1822 such confirmation was by positive law made necessary to the completion of the sale.

Sec 30, Reg. VII.
1799.
Sec. 28, Reg XXVI.
1803.

Sec. 24, Reg. XI.
1822.
Sec 4, Reg. VII.
1830.

11. So also in the original Regulations for the sale of lands in execution of decrees, it was evidently the intention that the letting of the lands should receive the sanction of the revenue Board before the actual sale; the appointment of the jumma on the specific lands selected for sale, when not composing an entire estate, in one lot, being preliminary to the issue of the sale advertisements. Perhaps the practice was so far modified, after the enactment of Regulation VII. 1825, as that the collectors were authorised to select the lands and proceed to sale, without the previous sanction of the Board of revenue to the arrangement of the lots, as was afterwards the case in sales for balances of revenue. It appears to have been the general practice throughout all the provinces of this presidency, from 1763 to the present time, for the collectors after sale to transmit the account sales for the confirmation of the Board and commissioners of revenue. Indeed, the law which declared the responsibility of the Board of revenue for the regularity of public sales of land, is placed, in the Regulations for the Western Provinces, after the rules for sales both for arrears of revenue and in satisfaction of decrees, and may well be held to apply to both.

Sec Cl. 3, Sec 4.

It is reasonable, on general grounds, that this controlling power should exist; it is absolutely necessary for the security of the public revenue, if, according to the strict letter of the law, the jumma be apportioned on lands detached for the purpose of the sale from an entire estate; more especially if, since the passing of Regulation VII. 1825, the duty of arranging the lots has been committed to the collectors.

Reg XLV. 1793
Reg. XX 1795.
Sec. 15-27,
Reg. XXVI. 1803.

In fact, in the contemplation of the law, it was formerly the Board, and is now the commissioners of revenue who conduct the sale, and not the collectors; and though the sales, when made in the zillahs, are made through the agency of the collectors, they cannot be said to be completed until the superior authorities, by confirmation, have made the collectors' acts their own. This is the view taken by two of the judges of the Allahabad Sudder Court.

Letter from the
Allahabad to the
Calcutta Sudder
Dewanny Adawlut,
24 April 1840.

12. The difficulty appears to have arisen from the provisions of Section 5, Regulation VII. 1825, which declares the power of the civil courts summarily to set aside for irregularity a sale made by the revenue authorities in satisfaction of a decree; but we think that no inference can fairly be drawn from this rule, to the prejudice of the controlling power of the commissioners of revenue. The long-established practice of the revenue department must have been well known to the government

government at the time of the passing of this law; and as in cases of sales for arrears of revenue confirmed by the Board and commissioners, dissatisfied parties were at liberty to institute regular suits for the annulment of the sales, on the ground of irregularity, so also they might, under the general law, have recourse to a like remedy in cases of sales, in execution of decrees similarly confirmed. But probably instances had occurred of the civil courts summarily setting aside sales of the last-mentioned class, on account of irregularity in publishing and conducting them, of the legality of which proceeding, as no special law had invested them with such power, doubts might well be entertained. We say probably, for neither in the records of government, nor of the Presidency Sudder Dewanny Adawlut, where the Regulation was framed, can we find any notice of the particular circumstances which led to the insertion of this section. The intention of it appears to have been to furnish parties deeming themselves aggrieved by the mode in which the sale was conducted, a cheaper and speedier remedy than a regular suit, and to obviate the delay which would otherwise occur in the execution of the decree.

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Secs. 10, 11, Reg. III. 1793. Sec. 7, 15, Reg. II. 1803.

13. If the present system of effecting sales of land in satisfaction of decrees is maintained, it might be proper to provide, that parties dissatisfied with the sale as irregular, should first prefer their objections to the commissioner of revenue, and in case he confirms the sale, and of their still being dissatisfied, that they shall be at liberty to petition the court within a month after such confirmation. But that no plea on the ground of irregularity shall be admitted by the court, unless it shall have been urged to the commissioner, or unless the failure to do so shall be satisfactorily accounted for.

14. The last and most important point to be considered is, the expediency of transferring from the revenue to the judicial authorities the duty of conducting sales of land in execution of decrees.

15. Before examining the reasons which have been urged for and against this measure, we shall review the past and present state of the law relating to sales of land, both for arrears of revenue accruing thereon, and for the realization of sums due on account of decrees of court, so far as they concern the question before us.

16. By the original regulations for the sale of lands for balances of revenue, the revenue authorities were required to select for sale such a portion of the estate of the defaulter as was sufficient to liquidate the arrear, and to allot to that portion a share of the fixed jumma of the entire estate, to be calculated according to certain established rules. This apportionment of the revenue on the detached lands was considered necessary for the ascertainment of their real value, and consequently for the full developement of the benefits expected to result from the permanent settlement of the public burthen, the security of the revenue equally required this allotment of the public burthen, the security of the revenue equally demanded that it should be made under the immediate direction of the revenue officers of government.

Sec. 10, Reg. I. 1793. Secs. 13, 24, Reg. XIV. 1793. Sec. 30, Reg. VI. 1795. Sec. 7, Reg. XXVII. 1795. Cl. 6, Sec. 23, Reg. VII. 1799. Sec. 37, Reg. XXV. 1803. Preamble and Sec. 2, Reg. XXVI. 1803. Cl. 1, Sec. 30, Reg. XXVII. 1803. Sec. 27, Reg. IX. 1805.

17. Subsequently it was enacted, that if the lands to be disposed of consisted of distinct mehals, separately assessed for the public revenue, they should be sold in distinct lots according thereto; or though not separately assessed, if they were of considerable extent, and so situated that they could without much delay or difficulty be divided into distinct lots, they were to be so divided and sold accordingly. But an estate might be sold entire, on the written application of the proprietor, or if, from local circumstances, it might appear more for his advantage that the whole should be sold in one lot.

Reg. V. 1790, extended to Benares by Sec. 26 Reg. V. 1800. Cl. 4, Sec. 2, Reg. XXVI. 1803.

18. It was found that the zemindars, taking advantage of the want of information in the public officers of the real assets of estates, encouraged instead of preventing the public sales of portions of their lands, for the purpose of repurchasing the same in fictitious names, at an under-rated assessment; or of reducing the assessment upon the residue of their estates by over-rating the proportion sold. To remedy this it was provided, that on the occurrence of an arrear, the estate or portion intended for sale should be taken under the immediate management of the collector, in the expectation that he might thus obtain sufficient data for the allotment of the assessment, preparatory to a sale at the end of the year. But this being found inefficacious, it was afterwards enacted, that where an attachment for arrears of revenue became necessary, the entire estate should be attached, and in case of the existing pecuniary penalties proving ineffectual to compel the proprietors,

Secs. 21, 28 Reg. VII. 1799.

Preamble & Sec. 27, 3, 5, Reg. I. 1801. Cl. 2, Sec. 4, Reg. XXVI. 1803.

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Sec 6, Reg. I
1801
Sec 9, Reg. XXVI.
1803.

Sec VII, Reg. I.
1801
Sec 2, Reg. XXVI
1803

Sec. 11, Reg. I
1801
Sec 13,
Reg. XXVI. 1803

Cl 2, Sec 2,
Cl. 1, Sec. 6,
Reg. XI 1822.

Sections 6 & 34

Cir Or. No. 89,
22 May 1827.

Act No. XII. of
1841.

Pream Reg. XLV.
1793
Pream. Reg. XX
1795

Reg V. 1796.
Sec. 7, Reg. I
1801

prictors, or their farmers, to produce their accounts, the whole estate was to be immediately sold for the arrear.

19. It was also found that the operation of the rule requiring that such lands should be selected for sale as might appear likely to sell for the amount to be recovered by the sale, and no more, was prejudicial to the public interests in the subdivision of small estates, as well as to the proprietors of such estates by parceling them in lots so inconsiderable as to prevent a competition for the purchase of them. The revenue authorities were therefore empowered to sell the estates of defaulters entire, when the sudder jumma did not exceed 500 rupees, or when the surplus proceeds of the sale, after discharging the arrear, were likely to be inconsiderable. The provision for the public sale of estates of considerable extent, in distinct lots, was also declared not meant to require the division and distinct allotment of a pergunnah, turuf, or other established local division, which were to be preserved entire.

20. The rules for the sale of lands in satisfaction of arrears of revenue having been thus simplified, it was thought that it could seldom, if ever, be necessary to sell a fractional portion of an estate, such as eight annas, four annas, or other proportion, to be held in joint partnership or common tenancy, without a previous division of the land, and distinct assessment of the revenue thereon; and as such sales were considered to depreciate the value of the property sold, from the uncertainty of the assessment, and the responsibility attached to the share of a joint undivided estate, it was enacted that no sale of that nature should take place without the express permission of government.

21. On the consolidation in 1822 of the laws relating to the sale of lands in liquidation of revenue balances, a discretion appears to have been left with the collectors in the selection of the lands for sale; but in case of their proposing for sale lands forming a parcel or fractional part of an estate, they were to explain to the Board of Revenue the grounds on which they fixed the proportional assessment.

22. Before this period it had become a general practice throughout the Lower Provinces to sell fractional portions of estates, without a division of the land and apportionment of the jumma, except in cases of estates assessed at a jumma not exceeding 500 rupees, which were sold entire. The facility which this description of sale afforded of realizing arrears of revenue was its great recommendation, and it may be doubted whether after the passing of Regulation XI. 1822, it could be deemed a legal mode of proceeding. That Regulation, by which Section 11, Regulation I. 1801, and Section Regulation, XXVI. 1803, were rescinded, apparently contemplates only sales of entire estates, or specified portions of estates with a definite jumma assessed thereon respectively. The practice was considered objectionable by the Presidency Sudder Board of Revenue, as creating interests in common tenancy, and as tending to depreciate the value of land by opening a door to indefinite subdivision of landed property; and they accordingly prohibited it. But, aware of the difficulty and delay attending the original process of severing from an estate a specific portion of land with a jumma specially assigned to it, they laid down the general rule, that every estate should be sold entire for any amount of balance due upon it, unless the collectors were in possession of accounts sufficiently accurate fully to satisfy them that they had the means of determining a proportionate adjustment of the jumma upon specific lands or mehals of known limits or divisions contained in entire estates, without incurring any risk of loss to government from the distinct assessment.

23. Under the law recently enacted all estates are now sold entire, whatever the amount of revenue balance due.

24. The laws relating to the sale of malgozaree lands in satisfaction of decrees, so far as they regarded the selection of the lands for sale and the adjustment of the government jumma thereon, were precisely similar to those originally regulating the sales of lands in liquidation of revenue arrears, and were based on the same principles, and the reasons why the duty of conducting sales on the former account was committed to the revenue authorities were: "Because they are in possession of the accounts and information necessary for the adjustment, and the superintending the details of attachment and sale would necessarily occupy much of the time of the courts, and often occasion a delay in the enforcement of the decree"

25. These laws, though for a time modified in partial accordance with the modifications of the rules for the sale of lands for arrears of revenue, have since 1822

1822 stood as they originally existed, excepting that gardens and orchards are now sold immediately by the courts. In the application of them the same difficulties were encountered as opposed the sale of lands in liquidation of arrears of revenue when conducted in the same manner, and the evil, though unremedied by law, has been obviated in practice. The revenue authorities, when called on to sell malgoozaree lands in satisfaction of decrees, dispose of the whole or a part of the debtor's interest in the entire estate or in some specific portion of it, without any adjustment of the government jumma. We deem this practice to be at variance with the law, but we think that practical convenience requires that it should be legalized.

Sec 25,
Reg XXVI. 1803.
Sec. 2, Reg. XI.
1822.

26. We now proceed to state shortly the grounds on which the proposed transference of the duty of conducting sales of land in execution of decrees is recommended by the government of Bengal, and advocated or opposed by the Lieutenant-governor of the North-west Provinces, the courts of Sudder Dewanny Adawlut, and the Sudder Boards of Revenue.

27. In favour of the transference, it is urged:

First, That the reasons assigned in the preamble of the law which imposed this duty on the revenue authorities, viz. "That the Board of Revenue and collectors are in possession of the accounts and information necessary for the adjustment of the jumma," and that "the superintending the details of the attachment and sale of lands would necessarily occupy much of the time of the courts, and often occasion a delay in the enforcement of the decree," no longer apply, inasmuch as no sales of distinct portions of estates with adjusted shares of the jumma ever take place; and that delays in execution are experienced to a very serious extent under the present system.

Second, That the transfer will save the time and labour of the officers of both the judicial and revenue departments, any information required from the collectors' records for the purpose of arranging the lots being easily procurable from that officer.

Third, That being purely a ministerial duty, it will be better performed either by the judicial officers themselves, or by agents of their own appointment.

Fourth, That sales of land in execution of decrees being in their nature and consequences essentially different from those for arrears of revenue, the public could more readily distinguish between them if conducted in different departments.

28. The objections made to the proposed measures are:

First, That the change is unnecessary, as the delays experienced may be remedied by a stricter superintendence on the part of the superior revenue authorities.

Second, That as the lots cannot be prepared without repeated references to the collector's office for information, time would be lost, not gained, by the change.

Third, That the revenue officers are the fittest instruments for conducting these sales, more especially in the Western Provinces, where the experience acquired in investigating and defining the various interests connected with land during the progress of the settlements, has given them a peculiar aptness for it; whereas the civil courts are less able to detect irregularities, and particularly the inexperience of native judges would be productive of great errors and abuses.

Fourth, That the proposed plan would throw difficulties in the way of collectors realizing the government balances, if heavy, especially on miscellaneous accounts, and when the government demand upon the land arose out of security bonds, or similar obligations.

Fifth, That having two distinct public offices for the sale of lands would create confusion and conflict of authority, as one estate might be exposed to sale on different accounts in different places on the same day.

29. The Regulations which imposed on the revenue authorities the duty of conducting sales of land in execution of decrees, in terms appear to apply only to estates paying revenue immediately to government, and to lands held exempt from the payment of revenue. As respects the former, all past experience proves the impracticability of selecting particular parts of estates for the purpose of such sales, and assigning to those parts specific portions of the government jumma, and consequently the expediency of employing the agency of the revenue officers for effecting these sales can no longer be made to rest on the original grounds. And as respects the latter, some of those officers who advocate the continuance of the present system as far as malgoozaree estates are concerned, see no objection to the proposed change in regard to lakheraj lands, in which the government have no immediate interest.

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Dated 20 Sept.
1841.

30. It appears from the papers before us, that on the sale of the interest of one or more shares in a joint undivided estate in execution of decrees, the collectors have been in the habit of applying the proceeds to the liquidation of arrears of revenue due from the whole body of proprietors. This mode of proceeding is animadverted upon in the letter from the secretary to the government of Bengal to the Sudder Board of Revenue, dated the 13th June 1837, as inequitable, both to the debtor and creditor, and the Board have by a recent circular prohibited generally the deducting from the sale price any arrears of revenue due from a mehal sold in execution of a decree. In that circular the Board observe, that "as such sales are declared to convey only 'the rights and interests of the individuals answerable for the amount of the decree in execution of which the sale is made,' they should be treated, so far as government is concerned, as mere private transfers; and that it is alike unnecessary and inexpedient to deduct from the sale price any arrears of revenue due from the mehal in which the rights and interests of any person or persons may be brought to sale. Such a course is obviously unfair and inequitable when the party against whom the process is enforced possesses only a limited share in a joint undivided estate; and it is in all cases objectionable, as tending to confuse two very different processes, and to infringe the great principle of the hypothecation of the land itself for the revenue assessed upon it." At the same time they instruct the collectors "to be careful in causing it to be distinctly understood, in every case of sale held in satisfaction of a decree of court or other similar claim, that it is a condition of the sale that the purchaser succeeds to all the liabilities of the former proprietor, and that the government claims against the mehal are in no degree affected by the sale."

Letter to Secretary
Lieut-Governor
N. W. P. 6 Oct.
1840.

31. On this subject the Allahabad Sudder Board make the following remarks
"In these provinces the sale of lands in execution of decrees has now been for some time entirely separated from the sale of lands for arrears of revenue, and the collectors have been prohibited from levying arrears of revenue from the proceeds of sales by order of court. The only exception to the above rule was in case of the sale of an entire mehal, the sole property of the defendant in the suit. But the Board are satisfied that no inconvenience will arise from that case also being included in the general rule, because of course when purchasers are aware that the mehal will continue responsible for any arrear of the revenue assessed upon it, notwithstanding the sale, they will decrease the amount they would otherwise bid, by the exact sum which they will have to pay on account of the arrear.

"It was for this reason alone that the Board allowed the exception to stand hitherto, because they saw the result was exactly the same either way, in the case of the sale of an entire mehal being the sole property of the defendant; for as a purchaser, knowing that he must pay the arrear in addition to the price, will deduct from the price which he would otherwise be willing to pay, the amount of the arrear, so a purchaser, knowing that the arrear could be deducted from the purchase-money, would offer the full value of the estate as his bid. It follows that the revenue of government can be in no respect imperilled or injured by the proposed measure."

32. There is a general concurrence of opinion, that sales of malgoozaree estates, or portions of them, in satisfaction of decrees, must be regarded in the light of mere private transfers, and therefore as in no respect affecting the paramount right of the government to hold the entire estate, in whosoever hands it may be, responsible for the revenue assessed upon it. In this view of the case, which appears to us the correct one, any special references to the revenue officers from the judicial (in case the proposed change be adopted), for the purpose of securing the maintenance of this principle, would, we think, be quite unnecessary. In any law providing for the change of system, it would of course be proper to announce the principle in the most explicit terms.

33. The other cases in which the interests of government are concerned in the public sale of lands, malgoozaree or lakheraj, the property of individuals may be divided into two classes

First, Those in which lands are pledged to the government on the part of sureties for farmers of estates, persons under engagements in the abkarry, stamp and other departments, and for officers in the revenue employ of government.

Second, In which the landed property of defaulting zemindars may become liable to sale for arrears of revenue due from other estates, the sale of which has proved insufficient to liquidate such arrears, or in which the lands of defaulting sudder

sudder farmers may become liable to sale for balances due under their engagements.

34. As a notification of all proposed sales in execution of decrees would of course be transmitted to the collector's office, that officer would have an opportunity of bringing before the court all claims on the part of the government in either of the above two classes of cases, and the courts would deal with them as law and equity required. The revenue officers being legally authorised to enforce their own demands by the sale of any property liable to sale in satisfaction of them, some embarrassment might occasionally arise from the mistakes of the officers of either department, or from the uncertainty of the law; but a remedy would be found for the former by application to the controlling authorities, and no time should be lost in making the law clear, if any obscurity rests upon it. The mere circumstance of public sales being conducted in this or that department, ought not to occasion any difficulty in disposing of the questions of priority of claims, and liabilities affecting particular lands.

35. But under the construction which the law has received, not only are malgozaree estates and lakheraj lands sold through the officers of revenue in execution of decrees, but likewise dependant talooks, and all other land tenures which by the title-deeds or established usage are transferable by sale or otherwise, as well as certain descriptions of ryotty tenures; the only exceptions being houses, gardens, orchards, and small parcels of lakheraj land, which are sold immediately by the courts. And as in the case of malgozaree estates, no private allotment of the government jumma can exonerate the entire estate from sale in satisfaction of any arrears of revenue accruing on it, so neither can any distribution of the jumma of a dependant talook, or other similar tenure unsanctioned by the zamindar, operate to relieve the whole talook from responsibility for the punctual discharge of the rent assessed upon it.

Nos. 349, 897 &
921, of the Book of
Constructions

36. It is evident that very serious inconvenience has arisen from the double agency employed in this branch of the judicial system. The delays in the revenue department have long been a subject of complaint, and are well exemplified in the following extracts from a letter from the register of the Presidency Sudder Dewanny Adawlut to the secretary to the government of Bengal, dated the 1st January 1841, submitting statements from two districts in the Lower Provinces, exhibiting irregularities which, "the court apprehend will be found to prevail, more or less, throughout the Bengal presidency. In the 24-Pergunnahs the references made from the judicial to the revenue authorities appear to have been generally pending for 18 months, and in the majority of cases the collector has furnished no report whatever. In one instance, a reference made by the sudder ameen in March 1831 remained altogether unanswered. Two other instances of references made in 1836 and 1837 are to be found, in which cases no sale of the property has hitherto been effected.

Paras. 4 to 10

"The return from the 24-Pergunnahs, however, may be pronounced to be highly satisfactory when compared with the state of things in the district of Tipperah. The first case on the Tipperah statement appears to have been referred to the collector in December 1836. In May 1840 the collector states that the lands were sold by him on the 9th April 1840, or after three years and a half, but up to the date of the return, 30th June 1840, the account sale had not been confirmed by the commissioner. The second case on the statement is one of a similar nature. "The next case on the list that will particularly attract the notice of his Lordship is the fifth. In this the reference was made to the collector in June 1837, but up to June 1840, no report whatever had been furnished. In cases 6 and 7 five proceedings appear to have been sent to the collector from the court, calling his attention to the subject, but no notice whatever had been taken of the references.

"In the 10th case the reference was made in July 1835, more than five years ago; the collector reports that the lands have been sold on account of arrears due to government, and that the officers of the collectorate have been called on to state the right of the defendant to a share in the surplus of the sale, the judge considers the reasons assigned by the collector to be satisfactory, the court consider them to be quite the reverse. Here is a decree holder entitled to a certain sum of money in 1835, and who, owing to the vexatious delays of the officer, has been kept out of his money for nearly five years.

"In cases Nos. 11 and 12, six proceedings appear to have been sent to the collector without effect, or even notice; in cases Nos. 21 and 22, the references have

No 8.
Sale in Execution
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have been pending before the revenue authorities for eight years; in many other instances the references appear to have been pending for two, three, four and five years. In case No. 28, which had been pending before the collector for five years, that officer states, apparently under the idea that he is only performing his duty, that 'orders have been passed to ascertain whether there are any objections to forward the proceeds of sale to the civil court,' forgetting entirely that the sale had been made under the express orders of the court, and that it was the court and not the collector that had to decide on these objections."

"In case No. 37, which was referred to the collector nearly four years ago, that officer appears lately to have requested the court to ascertain 'who was the real possessor of the estate;' and in case No. 30, no less than 11 proceedings appear to have been sent to the collector without success, the case having been referred to the revenue authorities about two years ago. In many other instances, two, three, and four calls appear to have been made on the collector without any effect whatever."

"It is unnecessary for the court to bring other instances to the particular notice of the Right honourable the Governor, as they must have already satisfied his Lordship that the present system, as existing in the 24-Pergunnahs and in Tipperah, is discreditable both to the judicial and to the revenue mofussil authorities; to the judicial officers in not having reported to this court the delay that had occurred in carrying the orders of their courts into effect, and to the revenue in the neglect of duty on their parts that these statements have brought to light"

37. From the remarks of the Allahabad Sudder Board of Revenue, we conclude that similar delays are experienced in the Western Provinces. In their letter above quoted, they say, "It will, the Board remark, save much time and trouble, both to the collectors and the courts, to adopt the mode now proposed, the sale of lands in execution of decrees being for some reason always an unwelcome duty to the collectors, and one in the performance of which they require much pressing."

38. If public sales of malgozaree estates in execution of decrees, are regarded strictly in the nature of private transfers, no danger, as before observed, can arise to the interests of government from the proposed change. It would always be necessary for the court or officer conducting the sale to obtain from the collector's office, either immediately or through the creditor, a copy of the register of the mehal, specifying the names and shares of the proprietors, and the amount of jumama, and a statement of any balance of revenue due to government, for all purposes preparatory to the sale, and for the information of bidders at the sale. After sale the purchaser should be left to make his own application to the revenue authorities for the insertion of his name in the register of mutations, and for the separation of his share from the estate, if he desired it.

The same mode of proceeding, as far as applicable, would also be observed in the sale of lakheraj lands.

39. The duty of conducting sales of subordinate land tenures would not be new to the zillah courts in the Lower Provinces. From 1793 to 1832, and 1835, dependant talooks and other like tenures could be sold only through the zillah courts in satisfaction of arrears of rent accruing on them, but since the latter dates these sales have been transferred to the revenue department. We are not aware that this change was occasioned by any irregularities in the mode of making the sales whilst the duty remained with the judicial officers.

40. Regarding the injurious effects which the proposed transference, if unaccompanied by strict regulations, might have on the landed interest in the Western Provinces, we extract the following passages from the letter of the Allahabad Sudder Board already cited:

"The only hesitation which the Board feel on the subject regards neither the principle of the proposed measure, nor any fear of its effect on the revenue, but its effect on the landed interest.

"The Board, from their opportunities of observation, cannot but fear that unless very strict rules of procedure be laid down, and some means of superintendence beyond what now exists, established to enforce attention to those rules, very great irregularities, and great peril of detriment, not to say ruin, to third parties, will arise from entrusting indiscriminately to all the native judicial officers the power of sale, if attended also with the power of making over the thing sold.

"The Board are of opinion that every facility should be given to the free sale of

Sec 16, Reg. VII
1832.
Act No. VIII of
1835

of landed property in these provinces, as the only remedy to the people for the pauperizing effect of the minute and constantly increasing subdivision resulting from the combined operation of their own laws and our early Regulations. The object of the Board's labours in the settlements has been to effect so complete a record of every man's possession, that there might be no difficulty in effecting a sale, either by his own voluntary act, or by the interposition of the court to act for him. Provision has been made for keeping up this record, so that it shall be always available.

"The collector can always, therefore, tell the court what any individual holding separately actually has in possession, or what any two or more individuals holding jointly have in possession.

"If on the sale by a court of one of these interests, the court directed the collector to put the purchaser in possession of what was held by the person whose property is sold, this can always be done, and if the purchaser claim more, he may have his suit for the specific thing which he claims. If the defendant object, he may have his suit to reclaim anything to which he objects. But if it be left to the native judges to give possession, the Board's experience induces them to fear that there will continually be endeavours made to put the purchaser in possession of something more than the defendant actually held. The Board make this remark on the ground of having had continually before them instances in which the native judges have endeavoured to force the collectors to give possession, both in suits and sales, of what is held by third parties. Now there is nothing which so completely tends to break up an agricultural community as attempts of this kind. It nullifies all the records made with so much cost and pains, and makes all property uncertain, and the strictest rules should be laid down in this matter."

41 As it is enacted in Section 14, Regulation VII. 1822, that the rights of all tenants as ascertained and recorded by the revenue authorities in their settlement proceedings, shall be maintained by the courts until altered by a judgment passed in a regular suit, we think a general rule prohibiting the courts from selling summarily in execution of decrees any interest in land alleged to belong to the debtor in a village of which a detailed settlement has been made, and which is not entered in the record of such settlement, would sufficiently provide against the danger anticipated by the Allahabad Board of Revenue. But, not being informed of the nature of the measures which have been taken under the directions of the Board for keeping up these records, we are doubtful whether some exception ought not to be made, authorising the court to inquire summarily into the fact of an alleged transfer by the recorded proprietor to the debtor, though such transfer has not been entered on the record. The extract from the record which for the purpose of this rule the court must have before it, should be furnished by the decree-holder with his application for sale; and, as in cases of sales of malgoozaree estates, the purchaser of any subordinate tenure should be left to take his own measures under Clause 8, Section 15, Regulation VII. 1799, Sections 5 and 6, Regulation VIII. 1819, and any other rules, to procure the registration of his name in the proper office, and the apportionment of the rent on the land purchased by him.

42. What part of the judicial establishment should be employed in conducting these sales, the times, places, and conditions of sale, and similar matters, are details capable of easy arrangement, should the principle of the proposed measure be approved. After a full consideration of all the reasons advanced for and against it, we are of opinion that under the restrictions suggested, it may be adopted without risk of injury to the interests of any party, and with a fair prospect of materially improving this branch of the judicial administration.

43. We may add that in the presidency of Madras all real property is sold immediately by the courts in execution of decrees, excepting permanently assessed estates, or portions of them, situated chiefly in the Northern Sircars, which are sold through the collectors, and that in the Bombay presidency all such sales are conducted by the judicial authorities.

We submit this our report for the consideration of your Honour in Council.

(signed)

A. Amos.
C. H. Cameron
F. Mullett.
D. Elliott.
H. Borradaile.

Indian Law Commission,
1 September 1842.

No 8.

Legis Cons.
30 Sept 1842.
No 8

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to
F. J. Halliday, Esq. Junior Secretary to the Government of India, Legislative
Department.

Sir,

THE Law Commissioners, having this day submitted to the Supreme Govern-
ment the report on the execution of decrees, directed by Mr. Secretary Maddock's
letter, dated 14th February 1842, I am directed, as required by that letter, to
return the papers enclosed in Mr. Maddock's letter.

Leg. Cons 29 Mar.
1841, Nos. 1 to 13,
in original

They are specified in the margin.

I have, &c.
(signed) *J. C. C. Sutherland*, Secretary.

Legis Cons.
30 Sept 1842
No 9.

FORT WILLIAM, Legislative Department, 30th September 1842.

THE following draft of a proposed Act was read in Council for the first time on
the 30th of September 1842.

ACT No. — of 1842.

AN ACT for the better Execution of Decrees in the Territories subject to the
Presidency of Fort William, in Bengal.

I IT is hereby enacted, that so much of Sections 10 and 11, Regulation I. 1793, Section 7, Regulation XXVII. 1795, Sections 37 and 38, Regulation XXV. 1803, and Sections 27 and 28, Regulation IX. 1805, as relate to the adjustment of the government jumma on lands exposed to public sale, in satisfaction of the decrees of the courts of civil judicature; Regulations XLV. 1793, and XX. 1795, Sections 15 to 26, inclusive, of Regulation XXVI. 1803; so much of Section 27 of the same Regulation as relates to sales of land in satisfaction of decrees; and Sections 4 and 5, Regulation VII. 1825, be repealed.

II. And it is hereby enacted, that attachments and sales of land, or of any interest in land in satisfaction of the decrees, or other process of the courts of civil judicature, shall hereafter be made by such courts, or under their immediate directions; and that the rules now in force for the attachment and sale of such real property as the courts of civil judicature were heretofore authorised to sell in satisfaction of decrees without application to the revenue authorities, shall apply to all attachments and sales made under the authority of this Act.

III. And it is hereby enacted, that all sales of land, or of any interest in land made under the authority of this Act, shall be deemed to be of the nature of private transfers

IV. And it is hereby enacted, that the Courts of Sudder Dewanny Adawlut shall from time to time frame such rules as to them shall seem meet for the attachment and sale of property in satisfaction of decrees or other process of the courts of civil judicature, which rules shall, after they have been approved by the Governor-general of India in Council, have the same force as if they had been part of this Act, until revoked by the said Courts of Sudder Dewanny Adawlut, with the approbation of the said Governor-general of India in Council, or by the said Governor-general of India in Council.

V And it is hereby enacted, that all applications which may have been made by the courts of civil judicature to the revenue authorities for the sale of land, or of any interest in land, in satisfaction of decrees, or other process of such courts, previously to the passing of this Act, shall be proceeded upon in the same manner as if this Act had not been passed.

VI. And it is hereby enacted, that the operation of this Act shall be confined to the territories subject to the presidency of Fort William in Bengal; and that no part of this Act shall affect the process of Her Majesty's Supreme Court of Judicature, or of the Court of Requests at Calcutta, or of the Recorder's Court in the Straits of Malacca.

Ordered,

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India, after the 30th day of November next.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government
of India.

No. 8.
Sale in Execution
of Decrees of Civil
Courts.

(No. 74.)

From Officiating Secretary to the Government of India to *F. J. Halliday*, Esq.
Secretary to the Government of Bengal.

Legis. Cons.
30 Sept. 1842.
No. 10.

Sir,

WITH reference to your letter, No. 172, dated the 1st February last, I am directed by the Honourable the President in Council to transmit to you, for submission to the Honourable the Deputy-governor of Bengal the accompanying draft of a proposed Act for the better execution of decrees in the territories subject to the Presidency of Fort William in Bengal, for any observations his Honor may feel disposed to offer on its provisions, in communication with the Sudder Board and Court, with reference to their letters of 21st May 1841, and 21st January 1842, to your address, and received with your letter above alluded to, and which are herewith returned, copies having been kept for record.

Legislative Dept.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government
of India.

Council Chamber,
30 September 1842.

(No. 245.)

From Officiating Secretary to the Government of India to *R. N. C. Hamilton*,
Esq. Secretary to the Government of North-west Provinces.

Legis. Cons.
30 Sept 1842.
No. 11.

Sir,

I AM directed by the Honourable the President in Council to transmit to you, for submission to the Honourable the Lieutenant-governor North-west Provinces the accompanying draft of a proposed Act for the better execution of decrees in the territories subject to the presidency of Fort William in Bengal, for any observations his Honor may feel disposed to offer on its provisions, in communication with the Sudder Court and Board at Allahabad.

Legislative Dept.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government
of India.

Fort William,
30 September 1842.

(No. 1157.)

From *Henry Ricketts*, Esq. Commissioner Sudder Board of 16th Division, to
F. J. Halliday, Esq. Officiating Secretary to the Government of India, Legislative
Department, Fort William.

Legis Cons.
2 Dec. 1842.
No. 38.

Sir,

I HAVE the honour of referring to the draft of a proposed Act for the better execution of decrees.

Revenue Dept.
Miscellaneous.

2. Provision does not appear to be made for informing the collector of transfers made under the Act, and the Court of Sudder Dewanny Adawlut being authorised to make rules for attachment and sale only, could not, under the Act, prescribe rules for these proceedings subsequent to sale. I beg, therefore, to suggest, that

300.

No. 8.
Sale in Execution
of Decrees of Civil
Courts

to section 3, these be added, "but it shall be incumbent on the civil court to give notice to the collector of the district, of all transfers of property made under this Act, in order to the enrolment of the names of purchasers in the books of the collectorship," or, "and that purchasers of the property sold shall apply to the collector of the district to have their names registered under the penalties prescribed by the Regulation for non-registration of private transfers."

I have, &c.

(signed) *Henry Ricketts,*

Commissioner of 16th Division and Sudder
Board.

Commissioner's Office,
Chittagong Division, 18 Oct. 1842.

Legis. Cons.
2 Dec. 1842.
No 39.

From Officiating Secretary to the Government of India to Secretaries Governments
of Bengal (No. 90) and North-west Provinces (No. 301).

Sir,

Legislative Dept. I AM directed by the Honourable the President in Council to call attention to my letter; No. $\frac{74}{245}$ dated the 30th September last, and to state that the reconsideration of the draft proposed Act for the better execution of decrees in the territories subject to the presidency of Fort William in Bengal, is suspended pending a reply to that communication.

I have, &c.

(signed) *F. J. Halliday,*

Officiating Secretary to the Government
of India.

Fort William,
2 December 1842.

— No. 9. —

TRAINING OF JUNIOR CIVIL SERVANTS.

No. 9.
Training of Junior
Civil Servants.

Jud. Cons.
18 April 1836.
No. 6.

NOTE by the Honourable *H. Shakespear*, Esq.

BEING desirous of bringing under the consideration of the Council the subject of the best mode of training and employing the junior civil servants in the revenue and judicial departments under the three presidencies; I beg to suggest that the several governments be requested to report the rules under which the junior servants are now employed, from the time of their leaving college, or entering on public duties, until promoted to the office of joint-magistrate or deputy-collector, and that they will be pleased to furnish copies or abstracts of any papers or proceedings which may have been recorded on this subject during the last five or six years.

18 April 1836.

(signed) *H. Shakespear*.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal (No 41), and the Chief Secretaries to the Governments of Fort St. George (No. 29) and Bombay, (No. 30)

Jud Cons.
18 April 1836.
No. 7

Sir,

I AM directed to request that you will submit to the Right honourable the the wish of the Supreme Government to be favoured with a report of the rules under which the junior civil servants are now employed, from the time of their leaving college, or entering on public duties, until promoted to the office of joint-magistrate or deputy-collector*; and that you will, with the permission of his Lordship*, furnish to me copies of abstracts of any discussions or proceedings which have been recorded on the subject during the last five or six years.

Judicial Dep.

I have, &c.

Fort William,
18 April 1836.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

*To Madras and
Bombay write—
Sub-collector.
Governor in Council.

(No. 789.)

From *R. D. Mangles*, Esq., Secretary to Government of Bengal, to *W. H. Macnaghten*, Esq. Secretary to Government of India, in the Judicial Department.

Jud. Cons.
13 Aug. 1838.
No. 1.

Sir,

I AM directed to acknowledge the receipt of your letter, dated the 18th ultimo, and to inform you in reply, that the Right honourable the Governor of Bengal is not aware of the existence of any "Rules under which the junior civil servants are now employed, from the time of their leaving college, or entering upon public duties, until promoted to the office of joint-magistrate, or deputy-collector." The young officers who enter those branches of the public service which are subordinate to this department of the government, are invariably appointed assistants to one or other of the commissioners of revenue and circuit for employment, according to the discretion of these functionaries, in the districts composing their respective divisions.

Judicial Dep.

2. No "discussions or proceedings" of the nature to which you refer "have been recorded on the subject" above alluded to in this department during the last five or six years; but at page 733, *et sequitur*, of the volume "I. Public," entitled "Minutes of Evidence taken before the Select Committee on the Affairs of the East India Company," &c. &c., ordered by the House of Commons to be printed on the 16th August 1832, will be found a discussion on the topics to which your letter relates, extending to a considerable length.

I have, &c.

Fort William,
3 May 1836.

(signed) *R. D. Mangles*,
Secretary to the Government of Bengal.

No. 6.
Training of Junior
Civil Servants.

Jud Cons.
13 Aug. 1838.
No. 4.
Employment of
junior civil servants.
*3 May 1836.

MINUTE by the Honourable *H. Shakespear*, Esq.

I REGRET to find from the answer* from the Secretary to the Bengal Government, in the judicial department, that no rules have been laid down for the employment of the junior civil servants on their first entering upon the public service. They are appointed assistants to the commissioners of revenue and circuit, to be employed, at the discretion of those officers, in any of the districts composing their respective divisions.

2d. Is it possible that no better means can be devised for training men to the judicial administration of the country than this?

3d. Is it possible that, under this course of tuition, they can acquire any knowledge whatever even of the forms of judicial proceeding, still less any acquaintance with the general principles of Hindoo and Mahomedan law, and the regulations under which they must, at no distant period, be called upon to administer justice to the people?

4th. Defective as the system unquestionably was, under which young men, almost immediately on their quitting college, were intrusted with the decision of civil suits, though small in amount, the present system, under which the judge will take his seat on the bench, utterly ignorant of the forms of pleading, of the rules of appeal, and of the constitution and powers of the courts below, which he is expected to control, is a hundred times worse.

5th. In the early stage of our administration, an assistant was directed to assist the register in procuring all acts of the courts to be executed, and in translating and transcribing papers, and in arranging and keeping the records of the courts.

6th. When promoted to the office of register, he was empowered to try and decide suits to the amount of 200 rupees, which amount of jurisdiction was afterwards increased to 500 rupees. If of sufficient experience and tried ability, he might have been promoted to the office of assistant-judge, or subsequently, when that office was abolished in 1814, he might have been specially empowered to decide suits equal in amount to those tried by the judge himself.

7th. If from this grade he was appointed to the office of revenue collector, he obtained thereby an insight into the details of revenue management, of great assistance to him in adjudicating upon the relative tenures of the landed proprietors and their tenantry; but he never could forget the instruction he had got during his judicial training, and he returned to that branch of the service (as was generally the case) better qualified than before for the high office of a judge.

8th. But how is it now? Literally in respect to the administration of civil justice, which I am particularly adverting to, he has no opportunity, as far as I can see, of acquiring the slightest information.

9th. After the animated discussion that took place amongst the very intelligent committee got together at Simla, in 1831, it might have been expected that some employment would have been chalked out and substituted to supply the judicial instruction, the supposed want of which (I am free to admit the actual want of which) in the first stages of their initiation into the mysteries of jurisprudence, had brought about the removal of the registers and the abolition of their office.

10th. Nothing of the kind was done. The Governor-general, in his minute of the 10th of November 1831, seems to have come to the conclusion that the whole was a matter of obedience and subordination to superior authority. In recommending the system of Sir Thomas Munro, "of uniting the appointment of collector and magistrate, of destroying the independence of each other of every officer employed in the same district; of making the collector's a great office, consisting of deputy-collectors and joint-magistrates, subordinate to one head and acting upon the same system." Lord William Bentinck entirely overlooked the fact that however well that system might work, as to the administration of the revenue and the police, it made no provision whatever for the employment of young men in the judicial branch; they were in fact immediately removed from it, and from that time to this they have been excluded from all means, excepting what their own desire of information may prompt them to seek, of obtaining even a practical knowledge, much less a sound knowledge of judicial business.

11th. Lord William Bentinck had certainly not formed a very elevated notion, of what the acquirements of an Indian judge ought to be. At the conclusion of the paragraph (28th) of his minute, from which the above is an extract, he adds,

"It

"It is in a school of this kind that young men will be best trained; a profound knowledge of jurisprudence, or the high attainments that distinguish English lawyers and judges, are not to be looked for, nor, however desirable, are they indispensable; but what is necessary is, that those, both young and old, who have the decision of suits, whether for 10 or 1,000 rupees, and who are vested with the powers of fine, imprisonment, and corporal punishment, should have served their apprenticeship, should be conversant with the manners and business of the country, and that their opinions should be formed upon the practice and greater experience of their superiors in office. This plan is in the course of introduction," &c.

12. And it has been going on ever since. Yet I can hardly bring myself to believe that when Lord William introduced it he was fully aware that by abolishing the office of register, and placing the assistants under revenue and police officers, he was debarring them from all opportunity of acquiring that knowledge which is essential to their sustaining the character of a judge with honour and propriety. I must repeat the fact, that for the last four years, there have been no means afforded to him by which a young man in the civil service can officially learn anything of the forms of judicial procedure, or of the civil laws and regulations, until he takes his seat on the bench to sit as a judge of appeal upon the decisions of the native judges, who, from their greater experience, would be more likely to be better acquainted with the question at issue than himself.

13. I ask if this is a position in which the government ought to place its judicial officers. Is the government not bound by every principle of justice to the people, and regard for the character of its institutions, to leave no stone unturned to correct such a state of things as this, and to avert the reproach that must inevitably follow a persistence in it?

14. Premising therefore that I have no wish to see the office of register restored, which in fact became incompatible with the extensive powers with which it was necessary to invest the native judges, the question I wish to have considered is,

By what means can civil servants be best educated to fill the office of civil judge? And it is difficult to conceive a question of more vital importance to the good government of the country and to the character of the British rule.

15. I have already shown how little this feature in "the best mode of employing the junior civil servants" received attention from Lord William Bentinck: it may be truly said not to have engaged it at all, and it may therefore almost be considered a question still pending to be decided, after mature deliberation on the information then obtained, or which may be obtainable now.

16. In pursuance of this view, I shall make no apology for referring to the reports of the committee dated the 24th of May and 22d of June 1831, and I would particularly attract the attention of the council to the following extracts from the latter, which entirely convey my own sentiments on the particular point under review, in language which I should not improve by attempting to alter.

Para. 3d. "In all countries considerable time is occupied in learning the principles of any liberal profession before an attempt is made at reducing them to practice, and this long after the ordinary period of education has passed. We see no reason why the office of judge in this country, more arduous perhaps than in any other, should alone be exempted from preliminary probation. The liberality of the pay granted during the probatory interval cannot alter the nature of the case. We should have thought that the preparation of cases, the collating or abstracting of papers, the taking of evidence, and reporting on accounts, were appropriate occupations for a young civil servant, and that if these duties can really be better performed by writers and mohurrers receiving one-tenth of their pay, the advantages of superior education cannot be very conspicuous, neither do we think that in any means follows that the superior cannot derive relief from the employment of his subordinate without a transfer of responsibility."

Para. 5th. "We fully admit that the judge who has to pass a decision cannot be relieved from the duty of research and investigation; but it is by no means evident to us that he might not derive most important aid from the employment of a junior civil servant in the conduct of ministerial duties. It does not follow that because this duty has been hitherto performed by the amlah, that it has been properly, impartially, and satisfactorily performed. Every thing is now done, by all-paid and irresponsible individuals, save only the actual decision or determination.

We need not say how much the value of such decision or determination must depend on the fidelity of the preliminary proceedings.

Par. 6th. "We are of opinion that there is a great variety of duties in the Judicial Department in which the junior civil servants can be employed, independently of the decision of civil and criminal cases. We conceive that there are many ministerial duties, to aid in the performance of which their services would be most beneficial. The preparation of a case for decision is of itself a duty which would afford ample occupation to any junior servant attached to a civil court. It is a duty which, though of especial importance, requires only attention, integrity, and a competent knowledge of the native languages for its efficient performance. It is a duty, however, which is now of necessity left entirely to the amlah, and by the abuse of which there can be no doubt of their reaping a most abundant harvest, to the detriment of honest claimants and the general perversion of justice.

Para. 7th. "We see no objection to the junior servants being entrusted with the execution of decrees, or to their being employed in giving effect generally to all acts of the courts," &c.

17. It is quite incomprehensible to me how Lord William Bentinck, with these opinions before him from men so well qualified to take just and practical views of the subject as Mr. Pakenham and Mr. Macnaghten, could have allowed the judicial part of the employment of the junior servants to escape his notice.

18. I have a note by me on the subject, which I think must have been recorded in the month of February 1831 in the Sudder Court; and as it contains the opinions which I still entertain on this important question, I shall beg permission to insert a transcript from it in this place. It shows how exactly my ideas correspond with those of the gentlemen above mentioned.

"I would employ the junior servants as heretofore as assistants to the judge, magistrate, or collector, as circumstances might require, dividing them into two classes of senior and junior assistants; the former to be considered such after they shall have served three years from the time they may have been declared qualified for the public service.

"In the judicial branch the juniors to be employed in translating papers, revising statements, and in the performance of such other duties of ministerial nature as the judge might prescribe, and also in the trial of petty offences as at present, with the exception that they should be prohibited from inflicting corporal punishment under any circumstances.

"The senior assistants, in addition to the duties authorised to be performed by the junior, to be employed in preparing civil cases for the decision of the judge, and when deemed properly qualified, to be vested in the trial of criminal cases with the special powers specified in Regulation III. 1821. He might also be deputed into the interior to make local inquiries; or, with the sanction of government, to take charge of any portion of a district in case of the prevalence of crime or inefficiency of the police.

"The senior assistant of the zillah station, whether in the Judicial or Revenue Department, to have, *ex-officio*, the registry of deeds, and in cases of death, indisposition, or other casualty, to take charge temporarily of the office of judge or magistrate, or collector, as the vacancy might be, reporting the circumstance to the commissioner or provincial court of the division.

"I think the judges would derive essential service from their senior assistants in the preparation of suits, previously to their being brought forward for final adjudication, in the following manner

"When a suit is filed in the judge's court, the judge would refer it to the assistant, with directions to superintend the issue of process, for the attendance of the defendant, to see that the answer, replication, and rejoinder were regularly filed, and all other preliminary acts gone through, and then to return it to the judge.

"The prescribed pleadings being thus completed, the court, as required by Clause 3, Section 10, Regulation XXVI. 1814, would consider and record the points to be established by the parties, and return the case to the assistant, whose duty it would be to ascertain that the exhibits were filed and the evidence taken without unnecessary delay, in conformity to the judge's order. The assistant would then return the case to the judge, certifying its being prepared for hearing.

"I feel confident much time would be gained by this mode of procedure. At present much of the judge's attention is occupied in passing orders in interlocutory and

and miscellaneous matters immaterial to the real merits of the issue. Nor would this be the least of the advantages which would result from this mode of employing the junior servants; they would not only become by it intimately acquainted with the forms of judicial proceedings, but they would learn the principles of evidence, and obtain a knowledge of the laws and regulations before they were called upon to administer them. Above all, they would learn habits of regular application and attention to business, which not one in ten will acquire if left to make their way as barristers in the Mofussil courts."

19. Since the above note was written, the practicability of employing an assistant in preparing a case for the trial of the judge, has had a practical illustration in the very great assistance which the judges of the Sudder have derived from that course of procedure under the management of Mr. D. C. Smyth.

20. The majority of the Simla committee are entirely mistaken in their assertion that "the judge has no trouble with a case until it is brought to an issue to require his orders or a judgment, when the papers must be read before him, and the parties heard." (p 30.)

21. There is not a more troublesome and vexatious part of a judge's duty than the having to call over the file, and pass some petty order for causing the attendance of a party, or for accelerating the filing of a paper or the appearance of a witness. I speak within bounds when I say that one-third of the judge's time is occupied in looking after such and similar matters, which would be equally well managed by the assistant, who would be all the time informing himself of the forms of process and the regulations applicable to them.

22. Not to trouble the Board with further remarks at present, the substantive proposition which I would wish to suggest is, that the Sudder Dewanny Adawlut may be called upon to furnish rules for the employment of covenanted assistants in matters connected with the administration of civil justice. If rules can be framed such as to afford satisfactory grounds for believing that their introduction will be attended with benefit to the suits, relief to the judge, and the means of instruction to the juniors, doubtless the Supreme Council will not hesitate to suggest their adoption by the local government, with a recommendation that the employment of assistants may be extended to the courts of civil justice, and not be restricted, as at present, to the offices of magistrate and collector.

23. It does not appear to me necessary to defer submitting these remarks until the receipt of the information called for from the presidencies of Fort St. George and Bombay.

(signed) *H. Shakespear.*

Calcutta, 19 May 1836.

(No. 476.)

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *W. H. Macnaghten*, Esq. Secretary to the Government of India.

Sir,

Para. 1. I am directed to acknowledge the receipt of your letter of the 18th April last, No. 30, and to transmit herewith, for the information of the Right honourable the Governor-general of India in Council, the accompanying copy of a letter addressed to the Board of Superintendence for the College, under date the 13th May 1825, containing the rules established at this presidency for the employment of the junior civil servants on quitting college, and to acquaint you that no discussions on the subject have taken place during the last six years.

2. I am further directed to inform you, that in consequence of a necessity which existed, in the year 1826, of rendering as many of the junior assistant collectors as possible available for the public service, a slight deviation from the rules now submitted was authorised, by which all assistant collectors without exception who had served one year and upwards in the provinces in that capacity were made eligible, at the pleasure of government, for general employment, but it was at the time declared that this latitude was only temporary and confined to the exigency which then existed.

Fort St. George, 30 May 1836.

I have, &c.
(signed) *H. Chamier,*
Chief Secretary.

300.

3 R 2

Jud. Cons.
13 Aug. 1838.
No. 2.

Judicial Dep

No 9,
Training of Junior
Civil Servants.

Jud Cors.
13 Aug. 1838.
No. 3.
Enclosure.

Judicial Dep.

(No. 181.)

From *D. Hill*, Esq. Chief Secretary to the Government of Fort St. George, to
the Board of Superintendence for the College.

Gentlemen,

In consequence of instructions from the Honourable the Court of Directors, the following rules have been framed for the civil service of this presidency:

1st. Civil servants on quitting college shall be sent into the provinces, and employed for at least two years in the Revenue Department as assistant collectors.

2d. The time which a civil servant, while attached to the college, may, with the sanction of government, have resided in the provinces under the superintendence of a collector, for the prosecution of his studies, may, to the extent of one year, be reckoned as part of the prescribed period of two years.

3d. Should any peculiar case occur, in which the application of the foregoing rules would be attended with great and unquestionable injury either to the public or to the individual, such case will be specially provided for.

4th. As far as the state of the service will admit of it, government will select such persons as shall have acquired a practical knowledge of revenue in the provinces to be judges of the Sudder Adawlut, and of the provincial and zillah courts, chief secretary and secretary to government in the Judicial and Revenue Department, register to the Sudder Adawlut, and secretary to the Board of Revenue; and will select to fill vacancies in the Board of Revenue persons who have served as collectors in the provinces.

I have, &c.

Fort St. George, 13 May 1825.

(signed) *D. Hill*, Chief Secretary.

(A true copy.)

(signed *H. Chamier*, Chief Secretary.

Jud. Cons.
13 August 1838
No. 5.

Minute by Mr.
Shakespear, on the
employment of the
junior civil ser-
vants.

MINUTE by the Honourable *A. Ross*, Esq., dated 10th August 1836.

UNDER the system of revenue administration introduced by Regulation I. of 1829, the junior civil servants of this presidency, when they first enter upon the public service, are appointed assistants to the commissioners of revenue, by whom they are placed under collectors possessing the powers of magistrates; and under these latter officers they get, or may get, a knowledge both of revenue business and of the administration of criminal justice. But as Mr. Shakespear truly observes, they have nothing to do in the administration of civil justice, and consequently they cannot acquire that practical knowledge of the business and proceedings of the civil courts which is requisite to qualify them for the office of a civil judge,

In a note recorded by Mr. Shakespear in the Sudder Dewanny Adawlut in 1831, and to which he has referred as containing the opinion he still entertains, he recommends that junior covenanted servants should be appointed assistants to the judges of the zillah and city courts, suggesting that they might be employed in translating papers, revising statements, performing such ministerial duties of the courts as the judges might commit to them, making local inquiries in the interior, registering deeds, and preparing suits for the decision of the judges.

I was also a judge of the Sudder Court in 1831, and objected to covenanted civil servants, however young, being employed to do what would afford them little or no useful instruction, and what can be better and more economically done by uncovenanted officers. I then thought, and still think, that the knowledge required for the discharge of the functions of a judge would not be attained by giving any length of time to such employments as the five first of those above specified; and in regard to the last, viz. the preparation of a suit for decision, I would now observe that it is an employment for which a junior assistant is not fit, and which, if he were fit, it would not be right to commit to him. It involves the tracing out and the examination of all the evidence which a suit affords: it is, in fact, the trial of a suit; and to ensure right decision, it is necessary that it should be conducted by the judge himself who is to decide. It is a very great objection to our present system of civil judicature, that it allows the judges to employ others to perform

perform this important duty for them, and a rule or order which required them to entrust its performance to inexperienced young men just arrived in India, would aggravate this objection.

Mr. Shakespear proposes that the "Sudder Dewanny Adawlut may be called upon to furnish rules for the employment of covenanted assistants in matters connected with the administration of civil justice." I would rather propose to send Mr. Shakespear's Minute, with all the reports and opinions which have been submitted to government on the subject of it, to the Law Commissioners, to be considered by them when the constitution of the courts for administering civil justice shall come under their revision. It is not likely that rules framed by the Sudder Adawlut for giving employment to covenanted assistants in those courts, as they are now constituted, would be adapted to their constitution and forms of procedure, as established after they have undergone revision.

(signed) A. Ross.

(No. 92)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to
C. Macsween, Esq. Secretary to the Lieutenant-governor of the North West Provinces, Agra.

Jud. Cons.
31 October 1836.
No. 18.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to acknowledge the receipt of your letter, No. 3482, dated the 30th ult., submitting abstracts of proceedings for the month of July last.

Judicial Dep

2. In reply, I am desired to request that his Lordship in Council may be furnished with a copy of a letter and its enclosures from the officiating register of the Sudder Dewanny Adawlut, No. 3, of the abstract of civil proceedings for the month of July last.

3 With reference to the entry No 14, of the same abstract, I am desired to request the attention of the Honourable the Lieutenant-governor to the remarks contained in my letter, dated the 3d instant, suggesting doubts as to the legality of dispensing with the services of the Hindoo law officers.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Fort William, 31 Oct. 1836.

(No. 3873.)

From *C. Macsween*, Esq. Secretary to the Lieutenant-governor, North West Provinces, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, Judicial Department, Fort William.

Jud. Cons.
13 August 1838.
No. 6.

Sir,

I AM directed by the Honourable the Lieutenant-governor to acknowledge the receipt of your letter, No. 92, of the 31st ultimo, and to transmit to you, as requested, copies of the letter from the officiating register of the Sudder Dewanny Adawlut, dated 10th June last, and of its enclosure, entered as No. 3, of the abstract of the civil proceedings of July last.

Judicial Dep.

2. With reference to the subject noticed in the 3d paragraph of your letter, I am desired to refer you to my letter, No. 3872, of the 15th instant, in reply to yours of the 3d October.

I have, &c.
(signed) *C. Macsween*,
Secretary to the Lieutenant-governor,
North West Provinces.

Agra, 17 Nov. 1836.

No. 9.
Training of Junior
Civil Servants.

(No. 587.)

Jud. Cons.
13 August 1838
No 7

Enclosure

Sudder D Adawlut,
N. W. Prov.
Present M H.
Turnbull, W. Ewer,
A. J. Colvin, and
W. Lambert, Esqrs.
Judges.

From *H. B. Harrington*, Esq. Officiating Register Sudder Dewanny Adawlut, North West Provinces, to *C Macsween*, Esq. Secretary to the Honourable the Lieutenant-governor, North West Provinces.

Sir,

In continuation of the court's annual civil reports for the past year, I am directed to request you will submit, for the consideration of the Honourable the Lieutenant-governor, the accompanying copy of a Minute recorded by Mr. Ewer, one of the judges of the court, on the subject of the abolition of the office of register.

The court concur generally in the sentiments expressed in Mr. Ewer's Minute. they apprehend that little doubt can be entertained that the abolition of the office in question, by doing away with the only school in which the junior servants of the Company had an opportunity of making themselves acquainted with the judicial regulations, and of acquiring an insight into the practical duties and powers of the civil courts before they were called upon to exercise the more extensive and responsible functions of a zillah or city judge, possessing under the system now in force original and appellate jurisdiction equal in extent to that which was vested in the late courts of appeal, must tend materially to impair the efficiency of the judicial establishment, which, as remarked by Mr. Ewer, on the occurrence of vacancies in that department, they must necessarily be filled up by men who have had little or no judicial experience, and who may then be called upon for the first time to preside in a court, whose decisions in a large proportion of the cases that come before it are final, and not open to appeal or revision by this court, or any other tribunal

I have, &c.
(signed) *H. B. Harrington*,
Officiating Register.

Allahabad, 1 July 1836.

Mr. Ewer's Minute, dated the 10th June 1836.

I WOULD strongly recommend the re-establishment of the office of register, or something of the same description. At present I know not whence the supply of experienced judicial officers of the higher rank is to come from, while at the same time the administration of justice is hourly acquiring more importance, both in the eyes of the government and of the public.

During the last year we have seen several instances of judges appearing in that character for the first time, without the slightest notion of the duties they were called on to perform in their own court, and altogether unable to control the proceedings of their inferiors. On one occasion, indeed, the Sudder have had the disagreeable duty of reporting an acting judge unfit for the office.

At present a judge cannot be absent on leave without a stop being put to the trial of civil suits in his court. At Mirzapoor the judge was absent for three months, and the court shut merely because there was nobody to officiate for him. The same has occurred at Mynpoory and at other stations for various periods; and a calculation might easily be made, showing the number of additional suits which would have been disposed of had there been a register to take charge, instead of an assistant or principal sudder ameen to conduct the current duties.

A strict control over the proceedings of the inferior courts is more called for since the passing of Act XI. 1836, but where we are to find men capable of exercising it, is another matter. The only remedy is providing education for future judges as we do for collectors, and the sooner it is applied the better.

(signed) *W. Ewer*, Judge.

(True copy.)

(signed) *H. B. Harrington*, Officiating Register.

(True copies.)

(signed) *C. Macsween*,

Secretary to the Lieutenant-governor of the North West Provinces.

MINUTE by the Honourable *H. Shakespear*, Esq., dated 13 December 1836.

THE sentiments expressed by the Allahabad sudder judges on this very important subject are so much in accordance with the opinions which I submitted to the Board in a Minute, dated the 19th of May last, that I beg to suggest the consideration of them in connexion with that Minute.

(signed) *H. Shakespear*.

Jud. Cons.
13 August 1838.
No. 8.
Secretary to the
Lieut.-governor,
N. W. Provinces,
17 Nov. 1836.
Want of training
for the judicial
office.

MINUTE by the Honourable *H. Shakespear*, Esq., dated 19 October 1837.

IN my Minute, dated the 16th of May 1836, I was not so fortunate as to impress the Governor-general and my colleagues with my own view of the vast importance to the best interests of the country of some systematic plan being adopted for training up the junior members of the service for employment in the administration of civil justice.

It is a subject, however, which I feel bound by every consideration of public duty to press on the attention of the government, and I think this a fit opportunity for doing so, at a moment when we are about to be deprived for a length of time of personal communication with the Governor-general.

His Lordship will have many opportunities during his tour of satisfying himself of the present state of the judicial establishment, and I am much mistaken indeed if his Lordship does not find, that as the present incumbents are disposed of, there are few among their juniors who are competent to sit in judgment on the proceedings and decisions of the experienced native functionaries, whose acts they are expected to control; or at all events, that the number so qualified are rapidly diminishing under the present system.

(signed) *H. Shakespear*.

Jud. Cons.
13 August 1838.
No. 9.
Employment of junior civil servants in the judicial branch of the service.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India.

Sir,

I AM directed to transmit to you, for submission to the Honourable the President in Council, the accompanying copy of a Minute recorded by the Right honourable the Governor-general of India, containing the impressions entertained by his Lordship on the question of the judicial education of civil servants.

2. The papers which gave rise to this Minute, and specified below, are enclosed herewith in original

I have, &c.

Head Quarters, Camp Delhi,
19 February 1838.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India,
with the Governor-general.

Letter from the Secretary to the Government of Bengal, dated 3 May 1836.

Letter from the Chief Secretary to the Government of Fort St George, dated 30 May 1836.

Minute by the Honourable *H. Shakespear*, Esq., dated 19 May 1836.

Minute of the Honourable *A. Ross*, Esq. of 10 August 1836.

Letter from the Secretary to the Lieutenant-governor, North West Provinces, dated 17 November 1836, with Enclosure.

Note by the Honourable *H. Shakespear*, Esq., dated 13 December 1836.

Jud. Cons.
13 August 1838.
No. 10.

Judicial Dep.

No. 9.
Training of Junior
Civil Servants.

Jud. Cons.
13 August 1838.
No 11.
Enclosure.

Judicial education
of civil servants.

MINUTE by the Right honourable the Governor-general, dated 17 February 1838.

THE important subject of the best means of providing for our civil servants a suitable education for the office of civil judge, has at different periods been discussed, with much variety of opinion, and it was specially brought to the notice of the Council by Mr. Shakespear, in a Minute of the 19th May 1836 (on which observations were offered by Mr. Ross, in a Minute of August 10, 1836), and in a subsequent note of December 13, 1836, referring to a Minute by Mr. Ewer, judge of the Sudder Court in the Western Provinces, of June 10, and a letter addressed to the local government by that court collectively on July 1st of the same year. I have continued to give my attention to the opinions recorded in these papers as the opportunities of observation and experience have occurred to me, and I now proceed to state briefly the impressions which I entertain on the question.

Mr. Shakespear refers with general approbation to the letter of the Western Sudder Court, who are inclined strongly to the re-establishment of the office of register, or the adoption of some arrangement of a similar character, and who would think it necessary "to give our officers a training to make them judges, as we do to make them collectors." I observe, however, that in his Minute of May 19, 1836, Mr. Shakespear states, that he has no wish to see the office of register restored, "as it in fact became incompatible with the extensive powers with which it was necessary to invest the native judges." Mr. Shakespear at the same time feels strongly that the present system affords no opportunity to our officers of acquiring information in respect to civil justice, to the forms of pleading, the rules of appeal, the constitution and powers of the inferior courts, and still less as to the general principles of Hindoo and Mahomedan law, and the civil Regulations. He refers to opinions recorded by Mr. Pakenham and Mr. Macnaghten in 1831, and strongly supports them, as to the propriety of employing our junior officers to some extent in different ministerial duties in the courts of the judges, of which the most important is the preparation of cases for decision, in the mode in which so much excellent assistance was rendered to the Sudder Court by Mr. D. C. Smyth. He proposes to call upon the Sudder Courts for a scheme of rules for the employment in this manner of the junior assistants. Mr. Ross, on the other hand, considers that the preparation of cases for decision, "which involves the tracing of evidence," is the most important part of a trial, which ought if possible to be always performed by the judge himself; that it is a great defect in our existing practice that such preparation is so greatly made over to subordinate ministerial officers, but that this defect would be in no measure remedied by entrusting the duty to inexperienced junior civil servants. He would refer the whole subject for the consideration of the Law Commission.

Para. 14.

I would first advert to the opinion of the Western Sudder Court, which is shared doubtless by others, that it is of advantage to bring up our judges in something of an exclusive and separate course of training.

I should, for myself, accede only with much qualification to the conclusion, that for the provision of well-qualified judicial officers to the Indian service a distinct course of education, or a distinct class of men, is either expedient or necessary. I have always been inclined to doubt whether for any profession or for any career the early training of young men in one particular course, and apart from others, is conducive to good; for it forms them into a caste; it limits within that caste general knowledge and general experience; it gives to each individual, however inferior in natural qualification, a claim to advancement within the course for which he has been instructed; and to this degree it limits the powers of those by whom selection for advancement is to be made. I know how fairly open the question is to argument upon both sides, but for one, I would rather for the naval, military, or Indian service select candidates who had acquired the standard of qualification from general education, than accept in succession all who might be presented to me on the ground that they had been educated in the naval or military colleges, or at Haileybury; but if this view be at all tenable in first selections, it may, as it seems to me to be, urged with much greater force, as applicable to a subdivision and close classification within the services in India. I must strongly doubt whether a judge in India can be pronounced as qualified for the duties imposed upon him who has not had considerable experience in revenue matters and in the general business of the country, and who has not been in that contact with the people, and in that familiarity with their prejudices, their habits,

habits, their attachments, their merits and their faults, which a connexion with their monied interests, an intimate knowledge of their landed tenures, and the frequent view of their differences, apart from the reserve and formality of a court of justice, seem best to promise. As it seems to me, the most accurate knowledge of regulations and of forms and precedents, and even the long apprenticeship of a court, would but imperfectly supply the want of this experience; on the other hand, it would appear to me that a high revenue officer cannot be pronounced to be fit for his duties who is not also well conversant with much of that knowledge which would seem to be essential to the judicial character; and I should not think with great respect of the zeal and of the abilities of any one who had successively filled appointments in the magistracy and the collectorship, and who had not at the same time become much imbued with technical and with legal learning. This acquirement, grafted upon an habitual control of establishments and an insight into the ways of men, would perhaps give a very satisfactory degree of qualification for a judge in this country; and though different men will in very different degrees so qualify themselves, and though their dispositions will, with much variety, more or less incline them to that class of their mixed duties which may bear a judicial or a revenue character, I have no fear but that while the feeling of the government on the propriety of seeking a knowledge of all classes of duties is thoroughly understood, and an active superintendence exercised over the exertions of the service, officers will be found well able to fill either department.

It is to be remembered on this subject, that much information upon judicial principles and procedure is necessarily acquired in the mere ordinary performance of the duties of a magistrate and collector. Our magistrates are, in fact, criminal judges, with considerable powers, and a collector has very frequently to conduct investigations in their nature wholly judicial. In either class of situations an officer must become familiar with rules of process and principles of evidence.

A collector has to conduct in the courts of justice numerous suits on behalf of government, which must afford him instruction in their pleadings and practice. A collector mixing with the people from his youth must also have an intimate knowledge of agricultural rights and tenures, with which so much of the litigation in our Indian courts is connected, and he cannot avoid forming at least a general acquaintance with both the Hindoo and Mahomedan laws of inheritance. It is fortunate, also, that an Indian judge is not required to master a voluminous and complicated body of statutes and precedents, and that the duty of judicial administration generally is here very simple; so that, without even the more extensive study which may fairly be expected from a number of intelligent and zealous servants, an Indian magistrate or collector would ascend the bench with much of very valuable preparation, and with comparatively little of difficulty to encounter.

While I am, upon these grounds, disposed to think that the existing practice is not open to all the strong objections which Mr. Shakespear feels to it, I am yet not insensible to the advantage of mixing, if it could be effected, some early and more direct practical acquaintance with the administration of civil justice with the other experience which is acquired by the junior civil servants. I am favourable to the employment of any leisure which can be spared from more pressing avocations, to the object of acting under the judges in the preparation of cases, in the mode which Mr. Shakespear has suggested, and I should readily concur in a requisition on the sudder courts to prepare rules under which such ministerial co-operation could best be afforded. I fear that few of the junior officers will be found at present to possess leisure for the purpose; and I would not withdraw them, by any compulsory directions on the subject, from those duties of revenue inquiry and settlement which are of paramount importance as being calculated to define the rights and possessions of the community with a certainty and clearness hitherto unknown, and to give invaluable facilities to all administration. But I doubt not that there will be found officers who, from their desire to accomplish themselves in all that may tend to their greater efficiency as public servants, and in pursuance of an expressed wish of the government, would make additional exertions in order to enable them to devote some portion of their time to this new description of duty. I should not object, therefore, to an instruction to the judges and junior officers, of and below the grade of joint magistrates and deputy collectors, encouraging the one class to seek and the other to render assistance in this

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Civil Servants

form, so as not to occasion detriment to the proper functions of any. . The same opportunity might be taken of making more generally known the value attached by the government to a systematic study, although not required in the immediate course of duty, of the laws and regulations which must be referred to in the decision of civil controversies.

That the actual amount of assistance thus afforded to the civil judges would, according to its degree, be useful to them, I do not doubt. The appointment of uncovenanted officers of a superior class to render exactly the same description of assistance, is an arrangement which has been strongly recommended to me by intelligent officers of the Judicial Department. The duty would appear to me to be rather a faithful and intelligent superintendence of the collection and record of evidence adduced by parties or their agents, than the searching out of evidence by the assistant so employed, for which Mr. Ross would consider him not qualified

It will be quite proper, I would however add, whatever be the immediate determination of the government, that the subject, as connected with the permanent scheme of our Indian judicial establishments, should be referred for the deliberation of the Law Commissioners.

(signed) *Auckland.*

(A true copy.)

(signed) *W. H. Macnaghten,*
Secretary to the Government of India,
with the Governor-general.

Jud Cons
13 Aug 1838
No 12.

MINUTE by the Honourable *W. W. Bird, Esq.*, dated 27th July 1838.

THE opinions expressed by the late Mr. Shakespear, and by the judges of the Sudder Court in the Western Provinces, on the necessity of providing some means for the judicial education of the junior civil servants, are by no means confined to those gentlemen. There are many others who still continue to think, that since the abolition of the office of register to the zillah and city courts, no school exists in which a practical knowledge can be acquired by the younger servants of judicial duties, and that some exclusive and professional training is necessary before they can be properly qualified to preside in a court of justice.

I do not concur in these opinions. It is true that in the office of register, to which it not unfrequently happened that junior civil servants, just out of college, were appointed, without any experience whatever, and almost without the power either of understanding or making themselves understood, some knowledge of forms and of proceedings was gradually acquired; but it was attended with great inconvenience, arising from the youth, ignorance, and inexperience of the junior servants employed, and the undue influence of the native officers of the court, on whom they had to depend, in the discharge of their judicial functions, for guidance and instruction. By dint of deciding they become at last conversant with decisions; but knowledge so acquired is at the expense of the parties concerned, and to disseminate it by such a process is (to quote an observation of Mr Courtney Smith), "as if surgeons were to be instructed in their art by dissecting living men"

It was, therefore, I think, wise to abolish the office of register, and to postpone calling upon the junior servants of government to preside in courts of civil justice until they became, from maturer age and experience, better qualified for the purpose. A knowledge of judicial forms and proceedings is not the only requisites for a judge, he should possess likewise an intimate acquaintance with the habits, manners, feelings, and prejudices of the people; an acquaintance which is not to be picked up within the walls of a kutcherry, where a judicial officer is compelled to sit from morning till night, surrounded by his amlah, whose interest it is to blind both him and the people as to the real character of each other, and keep them as far apart as possible.

In fact, it is only in the Revenue Department that any real intercourse with the people

people can be carried on, and it is on that account that at the Madras presidency, as appears from the letter of the Chief Secretary to the Government of Fort St. George, dated the 30th of May 1836, the junior civil servants are required, on leaving college, to enter the Revenue Department as assistant collectors, under a promise that, as far as the state of the service will admit of it, the government will select such as shall have acquired a practical knowledge of revenue in the provinces to be judges of the zillah and provincial courts and of the Sudder Adawlut.

“This arrangement,” says Sir Thomas Munro, “was adopted not merely to teach them revenue business, but because it enables them to see the natives in their best form, as industrious and intelligent husbandmen and manufacturers; to become acquainted with their habits, manners, and wants; to lose their prejudices against them; to become attached to, and feel a desire to befriend and protect them; and because this knowledge and feeling will adhere to such servants for ever, and be most useful to them and to the natives during the rest of their lives.”

The truth of these remarks no one, I conclude, will venture to deny. Moreover, it is quite a mistake to suppose that a knowledge even of judicial proceedings and forms is not to be obtained in the offices of magistrate and collector. As justly observed in the Minute of the Right honourable the Governor-general, dated the 17th of February last, “Our magistrates are, in fact, criminal judges with considerable powers, and a collector has very frequently to conduct investigations in their nature wholly judicial; in either class of situations an officer must become familiar with rules of process and principles of evidence.” Hence it appears, that while the necessary qualifications for a civil judge cannot be satisfactorily acquired without going through the office of collector, the offices of collector and magistrate afford an excellent preparation for discharging the functions of civil judge.

If in the naval and military services of England it would, as stated by his Lordship, be preferable to select candidates who had acquired the standard of qualification from general education, rather than accept in succession all who had been educated in the naval and military colleges, such a principle of selection is still more applicable to the Indian service. The attempt to confine men to a particular line, and train them in the mode suggested, was once tried and found impracticable. Whenever there is a call for particular qualifications, the individual who possesses them must be selected, let him belong to what line he may. So long as the civil service continues an exclusive one, there is no other alternative; and it is a remarkable fact in illustration of this necessity, that since the introduction of the revenue system of 1829, the majority of the members appointed to the sudder Boards have been judicial men.

The more general, therefore, the knowledge and experience in different departments which a man acquires in his progress through the service, the greater will be his facilities for executing the duties which he may be required to perform, and the more valuable will be his services to government. It is of course desirable to afford the junior civil servants every facility for qualifying themselves in the Judicial as well as in the Revenue Department; and for this purpose the plan proposed by Mr. Cameron for the judicial education of native candidates for the office of moonsiff might perhaps be adopted. On being appointed assistants to the commissioners of revenue, to be employed at the discretion of those officers in any of the districts composing their respective divisions, they may, when not engaged in revenue or other duties of a pressing nature, attend as assessors at the cutcherry of the civil judge, in order to acquire not only a knowledge of forms and proceedings, but likewise a familiarity with the disposal of judicial questions, which on being eventually required to preside in a court of justice, cannot fail to be of the greatest advantage.

(signed) *W. W. Bird.*

No. 9.
Training of Junior
Civil Servants.

Jud. Cons
13 August 1838.
No 13
Resolution.

FORT WILLIAM, JUDICIAL DEPARTMENT, the 13th August 1838.

READ the Minutes and correspondence noted on the margin,* on the subject of re-establishing the office of register, and of other propositions for securing an adequate knowledge of law and procedure in junior civil servants in this establishment.

Resolved, that with reference to the Minute of the Right honourable the Governor-general, dated the 19th February 1838, the following letter be written to the secretary with his Lordship, and that the question be referred to the Law Commission.

Ordered, that a copy of the foregoing Resolution, with the papers connected with it, be transferred to the Legislative Department, for the purpose of being communicated to the Indian Law Commission.

Jud Cons
13 August 1838
No 14

(No. 168.)
From T. H. Maddock, Esq. Officiating Secretary to the Government of India, to
W. H. Macnaghten, Esq. Secretary to the Government of India, with the
Governor-general.

Judicial Dept

Sir,
I AM directed by the Honourable the President in Council to communicate to you, for the information of the Right honourable the Governor-general, that the subject of his Lordship's Minute, dated the 19th February 1838, on the question of the judicial education of civil servants, which was forwarded by you to Mr. Mangles in your letter of the same date, has met with that attention from the Honourable the President in Council which the high importance of the question therein discussed is calculated to excite.

2. On the first point to be disposed of, viz. the expediency of re-establishing the office of register, the President in Council is of opinion that no sufficient reasons in support of that measure were adduced in the Minute of Mr. Eyer, one of the judges of the Sudder Court in the Western Provinces, of date June 10th, 1836, while sufficient objections against it are admitted in Mr. Shakespear's Minute of the 19th of May in the same year; and the present organization of the civil service, taken in connexion with the extensive powers now exercised by native judges, seems to preclude the practicability of restoring the office of register, were it even desirable to do so.

3. The question therefore to be decided is, by what means, since the office of register, in which young men were early in their career introduced into judicial practice, and had opportunities of becoming acquainted with the forms and procedure of courts of law, is, not to be re-established, provision may be made for training up a portion at least of the juniors of the service in such a manner that, although their career is commenced in the discharge of duties pertaining to the Revenue Department, they may not be without opportunities of attaining considerable proficiency in knowledge of the laws, and the forms and practice of the courts. For, in the opinion of the President in Council, whatever arguments may be adduced in favour of a system under which a certain number of the gentlemen of the civil service should be set apart for the judicial branch of it, and should be confined exclusively to that branch, he concurs entirely in the sentiments expressed
by

* Copy of Note by the late Honourable H. Shakespear, Esq., dated 18th April 1836.
To Secretaries to Governments of Bengal, Fort St. George, and Bombay, dated 18th April 1836.
From Secretary to Government of Bengal, dated 3d May 1836.
From Chief Secretary to the Government of Fort St. George, dated 30th May 1836, with Enclosures.
From Secretary to the Lieutenant-governor, North West Provinces, dated 17th November 1836, with Enclosure.
Minute by the late Honourable H. Shakespear, Esq., dated 19th May 1836.
Minute by the Honourable A. Ross, Esq., dated 10th August 1836.
Minute by the late Honourable H. Shakespear, Esq., dated 13th December 1836.
Minute by the late Honourable H. Shakespear, Esq., dated 19th October 1837.
Letter from Secretary to the Government of India with the Governor-general, dated 19th February 1838, with Enclosure.
Minute by the Honourable W. W. Bird, Esq., dated 27th July 1838.

by the Governor-general, that such exclusiveness would, in India, tend to a greater evil than any advantage which it is likely to produce, because the officer confined to his court and to its forms and proceedings from the beginning of his career, can never have the opportunities, which the revenue officer enjoys, of personal intercourse with all classes of the people, nor those inducements to interest himself in their affairs, from which the revenue officer acquires a considerable knowledge of their characters for good as well as for evil; and while the most serious obstacle opposed to the success of our efforts for the good government of India consists in ignorance, on the part of European functionaries, of the language, habits of thought, feelings, and prejudices of the people entrusted to their rule, any scheme of confining a civil officer throughout his career to the courts of justice, where he lives apart from the people, can tend only to perpetuate, with respect to one class of functionaries, an evil more or less unavoidable, and inherent in the circumstances in which we are placed, and, in the opinion of his Honor in Council, is least of all calculated to convert the individual so situated into a wise, and intelligent, and beneficent judge.

4. Besides, when it is considered how very large a portion of our subjects belong to the agricultural class, or is connected by dealings with the people who cultivate the soil and pay the government revenue, and how much of the entire capital of the country, which must be the subject of litigation in the civil courts, is employed directly and indirectly in agriculture, or in advances of seed, grain, tuccaver, and for paying the government revenue, and that the revenue officer of all others has the best opportunities of becoming intimately acquainted with the nature of these and all other transactions of the various parties concerned in the multifarious operations of agriculture and revenue receipts and disbursements, it would seem that a familiarity with the revenue system is indispensable to fit a man for the efficient discharge of the greater portion of his duties as a judge. Nor is it to be overlooked that the revenue officer, even in the discharge of his proper duties, cannot fail to become apt in the adjudication of disputes of precisely the same nature as those which come by a different process under the cognizance of the courts. He has to investigate and to decide upon questions of partition of disputed boundaries, of contracts, and of accounts; he has to take and weigh evidence, to decide upon the validity of documents, and to interpret as well as to obey a considerable portion of the Regulations of the Bengal Code. With the opportunities which such duties afford him of exercising and improving his talents, and acquiring, with much experience, habits of regularity and application to business, and a fitting confidence in his own judgment, it would be hard to imagine that when length of service and the exigencies of the State call him from his duties in the Revenue Department to the discharge of functions purely judicial, he should be found altogether wanting in sufficient qualifications to undertake them. He may be ignorant of the forms of procedure of the court in which he is appointed to preside, and he may be too little acquainted with those Regulations which apply exclusively to the administration of law; but these desiderata are not attainments so difficult to be acquired that a man trained in habits of regularity and application would permit himself to labour long under a deficiency in such kinds of knowledge.

5. Under a system also which admits of the employment of civil officers successively in different departments, the government, with the knowledge which it possesses of the characters and qualifications of the members of the civil service, is enabled to select for the highest employments in each branch of the administration those individuals, out of the whole body of the service, who appear best adapted for the performance of the duties which they are appointed to discharge, an advantage which would be in a great measure lost by any separation of the members of the service into distinct classes.

6. Entertaining these sentiments, the Honourable the President in Council entirely concurs in opinion with the Governor-general, as expressed in his Lordship's Minute, that in India the exclusive employment of any portion of the civil service in judicial proceedings would be calculated to limit their opportunities of acquiring general knowledge of men and things, and in so far tend to contract their minds; whereas experience of the duties which each individual must, in his capacity of magistrate and then of collector, have for many years been trained to perform, will, out of a numerous body of zealous and intelligent servants, produce many who may ascend the bench as judges, "with much of very valuable preparation, and comparatively little difficulty to encounter."

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SPECIAL REPORTS OF THE

500

No. 9.
Training of Junior
Civil Servants.

7. The President in Council is, however, averse to the exercise by the same officer, at the same time, of the duties of magistrate and collector, and would think it far preferable that such a system of gradation and promotion should be introduced as would enable government to employ civil officers, on their preferment from subordinate situations, first in the capacity of magistrates, from which grade they might afterwards rise to be collectors, and after serving in that capacity for a sufficient period of time, might be eligible to be promoted to the situation of judge.

8. His Honor doubts the practicability of the plan of employing young men under the rank of deputy collectors and joint magistrates in judicial duties, under the zillah and city judges, which is recommended by the Right honourable the Governor-general. He has directed that it shall be submitted to the Indian Law Commission, to be taken into consideration in connexion with the code of procedure, in the arrangement of which the Commissioners are at present engaged.

9. The President in Council has not, however, judged it expedient at the present moment to call upon the Sudder Court to draw out rules, as suggested by the Governor-general, under which the attendance of young civilians in the zillah courts, and their subordinate co-operation in judicial proceedings, might best be regulated, as the present rules of procedure, according to which the court could alone draw out any subsidiary rules with regard to the occasional employment of young civilians in judicial proceedings, are likely to be considerably modified and altered, and it would seem better that these subsidiary rules should be formed with reference to the new law of procedure, and that it will be sufficient that the subject should at once be referred to the consideration of the Law Commission, and the question has accordingly been referred to that body.

10. The papers connected with this subject have been sent to the Law Commission with a letter, a copy of which, with the papers already considered by the Governor-general, and a Minute since recorded by Mr. W. W. Bird on the subject, is herewith enclosed.

I have, &c.

Fort William,
13 August 1838.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

Legis Cons.
13 August 1838.
No 16

(No. 282.)

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India,
to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

Legislative Dept.

I AM directed to forward to you copies of the papers noted in the margin,* and to request the attention of the Law Commissioners to the subject to which they relate, in connexion with the system of judicial procedure, in the arrangement of which the Commissioners are at present engaged.

I have, &c.

Fort William,
13 August 1838.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

* Copy of Note by the late Honourable H. Shakespear, Esq., dated 18th April 1836.
To Secretary to Governments of Bengal, Fort St George, and Bombay, dated 18th April 1836.
From Secretary to Government of Bengal, dated 3d May 1836.
From Chief Secretary to the Government of Fort St. George, dated 30th May 1836, with Enclosure.
From Secretary to the Lieutenant-governor, North West Provinces, dated 17th November 1836, with Enclosure.

Minute by the late Honourable H. Shakespear, Esq., dated 19th May 1836.
Minute by the Honourable A. Ross, Esq., dated 10th August 1836.
Minute by the late Honourable H. Shakespear, Esq., dated 13th December 1836.
Minute by the late Honourable H. Shakespear, Esq., dated 19th October 1837.
Letter from the Secretary to the Government of India, with the Governor-general, dated 19th February 1838, with Enclosure.
Minute by the Honourable W. W. Bird, Esq., dated 27th July 1838.

INDIAN LAW COMMISSIONERS.

501

No. 9,
Training of Junior
Civil Servants.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the
Governor-general, to *T. H. Maddock*, Esq. Officiating Secretary to the
Government of India.

Jud. Cons.
1 October 1838.

No. 5

Judici

Sir,
I AM directed by the Right honourable the Governor-general to acknowledge
the receipt of your letter, No. 168, dated the 13th ultimo, communicating the
sentiments of the Honourable the President in Council on the question of the
judicial education of junior civil servants.

2. In reply, I am desired to acquaint you, for the information of the President
in Council, that his Lordship approves, for the reasons stated in your communi-
cation now acknowledged, the reference which has been made on this important
subject to the Law Commission.

I have, &c.

(signed) *W. H. Macnaghten*,
Secy to the Govt of India,
with the Governor-general.

Simla,
6 September 1838.

(No. 1572 of 1838.)

From *J. P. Willoughby*, Esq. Secretary to the Government of Bombay, to the
Officiating Secretary to the Government of India, Fort William.

Legis. Cons.
30 August 1838
No 36

Sir,

I AM directed to transmit, for the purpose of being laid before the Honourable
the President in Council, the accompanying extracts, para 17, of a letter from
the assistant register of the Sudder Dewanny and Sudder Fouzdarry Adawlut,
dated the 12th of September last, and paragraphs 24 to 31 of a circuit report
of the Judicial Commissioner for the Southern Mahratta country, on the completion
of his tour.

Judicial Dept.

2. The Honourable the Governor in Council is aware that the subject of
training the young civil servants for the judicial office, referred to in the 17th
paragraph of the assistant register's letter, and in the 24th to the 31st of the
report, has excited much anxious consideration, and that much discussion has
occurred regarding it in the Indian Law Commission. It will no doubt receive the
full deliberation of that body, when it arrives at the point in framing the code of
civil procedure.

3. As, therefore, anything that could be done by this government in respect
to the Bombay presidency would be partial, I am desired to refer the matter for
the consideration of the Supreme Government, leaving it to his Honor in Council
to hand over the papers to the Indian Law Commissioners, or to take such other
course in respect to them as may be deemed fit.

4. The Governor in Council, however, is of opinion that it would be unwise
to break in upon a system which has been so recently established as that of making
over the decision of all original suits, with certain exceptions, to the native judicial
functionaries, and because it is a very great question if it would be just to train
junior servants to the judicial office by giving the decision of questions of right and
property to inexperienced hands.

5. In respect to assistant judges trying appeals, the Governor in Council
thinks that this should only be allowed where the state of the business of a parti-
cular court requires it, and never when the assistant is not amply qualified for
the duty; nor for the purpose of providing a school of instruction for assistants.

I have, &c.

(signed) *J. P. Willoughby*,
Secretary to Government.

Bombay Castle,
28 July 1838.

No. 9.
Training of Junior
Civil Servants.

Legis. Cons.
20 August 1838.
No. 37.

EXTRACT of a Letter from the Assistant Register of the Sudder Adawlut, dated the 12th of September 1837.

Para. 17. The defect under the existing system in the means of obtaining a judicial education for the junior members of the administration by that excellent school, the trying of original suits, adverted to in the 24th to 31st paras., has, I am directed to observe, more than once incidentally presented itself to the attention of the judges. The subject involves topics of the highest importance in the judicial system, and amongst these there appears to the judges a difficulty somewhat hard to be reconciled, which arises from the distinction of authority in the European and native branches. If to the former are to be confined the high grade in judicature of appellate jurisdiction, it will, the judges conceive, be obvious that correspondent qualifications must be possessed by these functionaries; and amongst these the court would assign, at nearly the top of the list, a practical knowledge of the character, habits, and customs of the people, the attainment of which, however, appears to the judges to be hopeless, excepting by some such means as the schooling above adverted to. Upon the return of the absent judges, and when a full court can thereby be assembled, the subject will be brought on for consideration, with the able and judicious remarks Mr. Greenhill has offered, and the court will thereafter submit its sentiments to government.

EXTRACT of a Circuit Report from the Judicial Commissioner for the Southern Mahratta County, dated 1st August 1837.

Office of assistant-judge not so useful as it ought to be. No judicial school for civilians

Para. 24. This office is requisite in many respects, but owing to the present laws, is not nearly so useful as it ought to be. By the code, as promulgated by Mr. Elphinstone's government, a judge could refer small causes to his assistants; but this enactment was altered by subsequent governments, and no original suits can now be tried by an assistant judge, excepting a very small class, such as suits in which the native judges may be interested. He may, however, hear appeals. The singular position in which this class of public servants has been placed by the alterations in the code, calls for grave consideration; and although it has a long time back, and often, presented itself to myself and others as requiring the attention of the legislature, I have hitherto been deterred, by various causes, from alluding to it in an official manner.

25. The spirit of legislation has been of late to employ natives as judges, either for the sake of economy merely, or for their supposed efficiency, reserving to the European civil servants the much more difficult and important office of judging on appeals, executing decrees, and of controlling the native servants. These are delicate and difficult duties, requiring great practical knowledge of the detail of a court, and also an intimate acquaintance with the habits of the people, their usages, and rules of conduct. I shall not allude in this place to the knowledge of the rational rules of evidence, of procedure, and of jurisprudence generally requisite for a judge to possess; in short, I would say that something more is required of a judge of appeal and control than common sense, and a merely studied acquaintance with the Regulations, and that without it, a man of talent even, is not likely to fill the judgment seat, at first especially, with credit either to himself or the government.

26. The operation, however, of our present Regulations is fast bringing the judicial branch of the service to a condition which I cannot contemplate without anxiety. The juniors have no opportunities of learning; they are partially employed in criminal cases only (and these necessarily of too serious a nature to be entrusted to a young man on his first entrance on public employment), and probably have little or no opportunity of gaining an insight into the business of the civil courts, till they are at once raised to the bench, where they have to sit in final judgment on the decrees of judges of far greater practical knowledge and experience than themselves; and that such a state of things would lead to a loss of public confidence, and to contempt of the judicial administration, I think there is too much ground for apprehension.

27. The actual state of the judicial branch of the service seems to render an early and serious consideration of the subject of importance; and in venturing to suggest it, I would allude, with great deference, to a mode of remedying the existing defect, which would perhaps not be unsuccessful.

28. By

28. By the present Regulations, all original causes are tried by native judges, the principal of whom resides at the sudder station, and who alone has unlimited jurisdiction. At large towns it is generally necessary to have a court of inferior jurisdiction, to relieve the principal sudder ameen. I would propose to invest the assistant judge with concurrent jurisdiction with the chief native judge, whatever might be his powers.

29. By this very simple arrangement several important ends would be gained; it would enable the judge to limit his assistant to such causes as he might consider him competent to investigate, with reference to his judgment, knowledge and experience. To a very young assistant he would refer the simplest cases; and those of a more difficult nature, to a more experienced servant only. It would give the public the advantage of two descriptions of courts, which I rather think would be very acceptable, and it would relieve the principal sudder ameen of the large towns, and in some cases would allow of the reduction of a junior ameen.

30. If it were left to the suitors to file their cases in either court, a competition for the confidence of the public would arise, and an index to the public opinion in regard to native and European judges, generally and comparatively with each other, would be obtained, whereby the sometimes questioned and important fact, that natives prefer the administration of justice of the European civil servants to all others, would be determined; but the difficulties of regulating such a system, so as to prevent some courts from being overwhelmed, appear to be considerable, and I am not prepared to say that it could be carried into a practice.

31. If such an alteration as alluded to in para. 28th of the present law were to be made, I am inclined to believe that the appellate jurisdiction now possessed by principal sudder ameens and assistant judges, should be abolished, as it must be advantageous to lessen the grades of appeal, so as to bring the final appellate court as near that of original jurisdiction as possible, and the first step of the ladder of appeal (of which there may be six) being the worst, can only promote litigation.

(True extract.)

(signed) J. P. Walloughby,
Secretary to Government.

(No. 295.)

From T. H. Maddock, Esq. Officiating Secretary to the Government of India, to
J. C. C. Sutherland, Esq. Secretary to the Indian Law Commission.

Legis Cons
20 August 1838,
No 38.

Sir,

In continuation of my letter, No. 282, dated the 13th instant, I am directed by the Honourable the President in Council to forward to you the accompanying copies of letter, No. 1572, from the Secretary to the Government of Bombay, dated the 28th ultimo, and of its enclosure, and to request that you will lay the same before the Indian Law Commissioners.

Legislative Dept.

Fort William,
20 August 1842.

I have, &c.
(signed) T. H. Maddock,
Officiating Secy to the Govt of India

From the Indian Law Commissioners to the Right honourable Lord Ellenborough,
Governor-general of India, dated 2d July 1842.

Judicial Cons
4 Nov. 1842
No. 12.

My Lord,

We have the honour to reply to your Lordship's letter of the 4th April last.
2. This communication embraces three topics:
1st. The legal training in India of the Honourable Company's civil servants destined for the judicial branch of the service; and the means of retaining in that branch such qualified persons as may once adopt it.

Acknowledge his
Lordship's letter of the
4th April 1842,
respecting—

1st The legal training
and emoluments of the
Company's covenanted
judicial servants

300.

od The

2d The appointment of a chief judge to each sudder court
 3d The conferring upon the sudder courts a certain extent of original jurisdiction
 Before submitting their sentiments on these topics, furnish an historical account of the several judicial systems of Bengal, Madras, and Bombay

2d The expediency of appointing a chief judge, with superior emoluments, to each of the Company's sudder or highest courts of judicature.

3d. The expediency of conferring upon the superior courts of appeal a limited extent of original civil jurisdiction.

3. We propose to submit our sentiments on these topics in the order in which we have noticed them; but we think it will conduce to a clearer understanding of the whole subject, if, before entering upon the consideration of the particular points, we place before your Lordship a concise historical account of the several judicial systems prevailing at the three presidencies of Bengal, Madras, and Bombay, exhibiting their original character, and tracing them through their various modifications, to their present state.

This narrative occupies paragraphs 4 to 104 of this address.

Narrative of the judicial system of Bengal System as consolidated in 1793

4. On the consolidation of the judicial system of Bengal in 1793 the administration of civil justice was vested in zillah and city courts having unlimited original jurisdiction: provincial courts of appeal, and the Sudder Dewanny Adawlut, the Company's highest court of appeal, consisting of the Governor-general and members of Council.

Ditto

5. The zillah and city judges were authorised to refer to their registers suits for property not exceeding 200 rupees in value, but their decrees were not valid until countersigned by the judges.

Ditto

6. The only native courts which found a place in this system were those of certain functionaries styled referees (aumeens), arbitrators (salisan), and moouaffis, who were empowered to try, either immediately or by reference from the zillah or city judge, suits for personal property not exceeding 50 rupees in value.

Alterations since rendered necessary by the increase of litigation

7. These establishments were perhaps originally inadequate to the duties imposed upon them. However that may have been, it is certain that in process of time the increase of litigation consequent on the general improvement of the country and the growing confidence in the judicial tribunals, rendered alterations in the system necessary, and as these causes continued to operate, various methods were from time to time resorted to, to check the growing evil of overburdened judicatories.

Nature of the remedial measures adopted, as respected European agency

8 These remedial measures, as they affected the European agency, consisted in removing the primary cognizance of the more valuable suits from the zillah and city to the superior courts; in augmenting the number of judges, and increasing the powers of single judges of those courts; extending the judicial functions of the registers; and appointing assistant judges to share the labours of the zillah and city judges.

And Native

9. But the limited number of civil servants at the disposal of the government, and the heavy expense attending this description of agency, presented serious obstacles to a general resort to it, whilst a liberal policy pointed to a more extensive employment of the natives of the country as a means both of increasing the efficiency of the courts and of improving the moral condition of the people.

Changes in the Civil Branch of the system, from 1793 to the present time

10. The various changes in the civil branch of the judicial system from 1793 up to the present time may be thus briefly stated.

1808
1817

11: Original suits, exceeding 5,000 rupees in value, were transferred from the zillah to the provincial courts, though subsequently those between 5,000 and 10,000 rupees were allowed to be instituted in the zillah or provincial court at the election of the plaintiffs.

1814

Original suits, above 1,000 rupees, were also made transferable from the zillah to the provincial court, at the discretion of the Sudder Dewanny Adawlut, which court was further authorised to call up from the provincial courts any original suits of the value of 43,103 sicca rupees (the amount then limited for appeals to the King in Council), which they deemed could be more conveniently and expeditiously tried by themselves. This last-mentioned power, we understand, the court never exercised.

1819-1814
Ditto

12 Each judge of a provincial court, sitting singly, was empowered to perform a considerable part of the functions of the whole court.

1833 Ditto

13. In 1833 the provincial courts were abolished, and original suits, above 5,000 rupees, made cognizable in the zillah courts.

14: The

14. The rule which made the zillah judge's counter-signature essential to the validity of his register's decrees was repealed; the register's powers were extended to suits of 500 rupees, and might be specially extended to suits of 5,000 or 10,000 rupees. The appointment of additional registers was provided for; and the services of the registers of the provincial courts were made available for the trial of original suits.

Changes in the Civil branch of the system from 1793 to the present time

1794.
1803.
1814-1817.
1814.

15. The office of register to the provincial courts was abolished in 1821, and that of register to the zillah courts in 1831-32.

1819.
1821.
1831.

16. The office of assistant judge was instituted in 1803 for the purpose of relieving the zillah judges of any portion of their work which circumstances prevented their performing themselves. It was abolished in 1814, but has since been revived with the designation of additional judge.

Ditto. 1803.

1814.
1833.

17. Commissions to natives to act as referees and arbitrators were recalled, and the original jurisdiction of the moonsiffs was successively extended, first to suits for personal property to the amount of 64 rupees, provided the cause of action had arisen within one year (in 1817, extended to three years) before the institution of the suit, next to similar suits not exceeding 150 rupees; and lastly, to all descriptions of suits (except for lakhiraj lands) not exceeding 300 rupees in value, and subject only to the general rules of limitation for the institution of suits. At this point it now stands, but the moonsiffs have not jurisdiction over British subjects, European foreigners, or Americans, excepting in suits relating to arrears or exactions of rent.

Ditto. 1814.

1821.
1831.

18. Sudder ameens were first appointed in 1803 for the trial, by reference from the zillah judge, of suits for real and personal property to the value of 100 rupees.

1803.

Their powers were afterwards enlarged to suits of 150 rupees, and in special cases of 500 and 1,000 rupees. This last amount had since 1831 become the general standard.

1814
1821-1827
1831.

19. Finally, in 1831, the office of principal sudder ameen was constituted for the trial, by reference from the zillah judge, of suits to the value of 5,000 rupees. Their jurisdiction now embraces causes of an unlimited amount, and the few original suits which remained to the zillah judges have thus been virtually transferred to the native functionaries. In a recent report on the subject of special appeals we have recommended that all suits cognizable by the principal sudder ameens, and sudder ameens, should be instituted immediately in the courts of those officers.

1831
1837

20. It is unnecessary to detail the various changes which the system of appeals underwent during the period under review. It may be stated generally, that previous to the year 1831 a regular appeal lay to the zillah judge from the decrees of all his subordinate courts, and a special appeal to the provincial court; and when such first appeals were tried by the register or sudder ameen, a special appeal lay to the zillah judge. From the zillah judge's decrees in original suits an appeal lay to the provincial court, and a special appeal to the Sudder Dewanny Adawlut. From the decrees of the provincial courts in original suits an appeal lay to the sudder.

Ditto

21. Under the present system the decrees of moonsiffs and sudder ameens are appealable to the zillah judge, whose decisions thereon are conclusive. But the sudder court may authorise the reference of any such appeals to the principal sudder ameen, from whose decisions thereon a special appeal lies to the zillah judge.*

From the principal sudder ameen's decrees in original suits not exceeding 5,000 rupees in amount, an appeal lies to the zillah judge, and a special appeal to the Sudder Dewanny Adawlut. From the decrees of the zillah judges in any original suits which for special reasons they may have retained on their own files, and from the

* In a Report, dated the 14th December 1841, on the subject of special appeals, we have recommended that from all first decisions in appeal from the decrees of moonsiffs and sudder ameens a special appeal should lie to the Sudder Dewanny Adawlut.

No. 9.
Training of Junior
Civil Servants.

Present salaries of
zillah judges and ad-
ditional judges, prin-
cipal sudder ameens,
sudder ameens, and
moonsiffs

Statement of the civil
business of the zillah
and subordinate courts
in the Lower Pro-
vinces for 1840

the decrees of the principal sudder ameens in original suits exceeding 5,000 rupees, a regular appeal lies to the sudder court.

22. The salary of the zillah judges is 2,500 rupees per mensem, or 30,000 per annum, and that of an additional judge, rupees 2,166. 10. 8 per mensem, or 26,000 per annum. Principal sudder ameens of the first grade receive 600 rupees, those of the second grade 400 rupees per mensem. The sudder ameens have 250 rupees per mensem. Moonsiffs of the first grade receive 150 rupees, those of the second grade 100 rupees per mensem.

23. The following statement shows the quantity of civil business depending before and disposed of by the zillah and subordinate courts in the Lower Provinces during the year 1840:—

Number of Judges	DESCRIPTION OF JUDGES	Number of Suits depending on the 1st January 1840	Number Admitted within the Year.	Re-admitted or received by transfer in the Year.	TOTAL.	Decreed on Trial.	Dis-missed on Default.	Adjusted or with-drawn.	Trans-ferred to other Courts.	Total disposed of.	De-pending on 1st Jan. 1841.
	ORIGINAL SUITS										
252	Moonsiffs - - - -	37,788	91,563	7,953	137,304	57,179	16,918	15,541	6,665	95,703	41,601
27	Sudder Ameens - - - -	2,204	-	3,968	6,172	2,558	560	278	401	3,797	2,375
	ORIGINAL SUITS AND APPEALS.										
40	Principal Sudder Ameens - -	5,799	-	10,659	16,458	8,157	1,236	278	1,207	10,878	5,580
20	Zillah Judges - - - -	3,219	17,578	8,299	29,096	3,768	295	103	20,760	24,926	4,170
4	Additional Judges - - - -	-	-	-	-	-	-	-	-	-	-
		49,010	109,141	30,879	189,030	71,662	18,409	16,200	29,033	135,304	53,726
	SUMMARY AND MISCELLANEOUS SUITS:										
	Moonsiffs and Sudder Ameens, -	18,397	-	-	-	-	-	-	-	35,728	20,217
	Principal Sudder Ameens -	6,292	-	-	-	-	-	-	-	11,891	6,497
	Zillah Judges and additional Judges - - - -	3,247	-	-	-	-	-	-	-	11,771	2,323
		27,936	-	-	-	-	-	-	-	59,390	29,037

Changes in the Criminal
Branch of the system,
from 1793 to the
present time

24. The system of criminal judicature established in 1793 has, like that for the administration of civil justice, undergone extensive alterations.

25. Originally the zillah and city magistrates had judicial cognizance of petty offences only, which they were competent to punish with 15 days' imprisonment, or fine not exceeding 50 rupees, except in the cases of certain descriptions of landholders, when the fine might be increased to 200 rupees.

For petty thefts they could award corporal punishment or one month's imprisonment*

All other trials were disposed of by the courts of circuit and the Nizamut Adawlut.

26. The first enlargement of the magistrate's power extended to sentences of imprisonment not exceeding six months, with corporal punishment in cases of theft, and in other cases with fine not exceeding 200 rupees, commutable, if not paid, to a further imprisonment not exceeding six months.

Subsequently they were empowered to pass sentence of two years' imprisonment with corporal punishment on persons convicted before them of aggravated thefts, simple burglaries, or receiving stolen property; to which cases of conviction of two or more thefts were afterwards added; and lastly, they were empowered to sentence

* Corporal punishment was abolished in 1834, and the undermentioned additional periods of imprisonment substituted in sentences passed by—

The Nizamut Adawlut and session courts	2 years.
Magistrates and joint magistrates	1 year.
Assistants, principal sudder ameens, and sudder ameens	1 month.

This change is to be attended to in the perusal of what follows.

to one year's imprisonment, and 200 rupees fine, commutable, if not paid, to a further imprisonment of one year, persons convicted of affrays unattended with certain circumstances of aggravation. By some recent Acts certain specific offences have also been made cognizable by the magistrates, to some of which punishments are affixed exceeding the usual jurisdiction of these officers.*

27. According to the original plan the zillah judges were likewise magistrates, but in 1810 the separation of the two offices was legalised, and at the same time the offices of assistant magistrate and joint magistrate were constituted, with the same judicial powers as belonged to the magistrate, but the former office has been discontinued. The offices of magistrate and joint magistrate are now held by collectors and deputy collectors, or the former are held as distinct appointments, in the Lower Provinces.

28. To afford relief to the magistrates, they were authorised to refer for trial to their assistants such petty offences as were originally within their own judicial cognizance.

Subsequently the assistants were empowered to adjudge both fine and imprisonment, commuting the fine, if not paid, to an additional imprisonment of 15 days; and in cases of theft, both corporal punishment and imprisonment.

And eventually the government were authorised to invest an assistant with special power to pass sentence of imprisonment not exceeding six months, with a fine of 200 rupees, commutable to a further imprisonment of six months, and in cases of theft to six months' imprisonment and corporal punishment. At the same time the magistrates were authorised to refer to the Hindoo and Mahomedan law officers and sudder ameens of the zillah courts, trials for offences not requiring a severer punishment than 15 days' imprisonment and a fine of 50 rupees, commutable, if not paid; to a further imprisonment of 15 days; and in cases of theft one month's imprisonment and corporal punishment. This rule was made applicable also to principal sudder ameens.

29. The judges of the provincial courts were also judges of the courts of circuit. The jurisdiction of these courts was eventually extended, in ordinary cases, to sentences of imprisonment for seven years, with corporal punishment for certain descriptions of offences; in cases of robbery by open violence, unattended with certain circumstances of aggravation, and in aggravated cases of theft, burglary, and receiving stolen property, to 14 years' imprisonment with corporal punishment; in cases of wounding with intent to murder, to 14 years' imprisonment.

These courts had also the power of imposing fines, fixing a specific period of imprisonment in default of payment.

30. To increase the efficiency of the courts of circuit for the despatch of current and appeal business, single judges of the court were invested with similar powers to those conferred upon them in their civil capacity.

31. All trials in which the judge of circuit differed from his Mahomedan law officer regarding the guilt or innocence of a prisoner, and all trials in which the offence proved required a severer punishment than the circuit court was competent to award, were referred for the determination of the Nizamut Adawlut.

32. In 1829 the courts of circuit were abolished and their duties were transferred to commissioners of circuit, who were likewise commissioners of revenue. But this plan was found to impose too onerous duties on the commissioners, and since 1832 the zillah judges, in the capacity of session judges, have, with few exceptions, discharged the functions of the former courts of circuit.

33. Formerly the course of appeal in criminal cases was from the assistants, principal sudder ameens, sudder ameens, and law officers, to the magistrate or joint magistrate, and from the orders of the latter officers to the courts of circuit, or session, with a further appeal to the Nizamut Adawlut.

34. The system of criminal appeals has been lately revised, and the following are the rules now in force.

1797,

1807.

Ditto.

Ditto.

1831,

Ditto.

Ditto.

Ditto.

Ditto 1829.

1832.

Ditto.

Act XXXI of 1841.

From

* See the Post Office Act, No. XVII. of 1837, and the Act respecting the expatriation of yarlike stores, No. XVIII of 1841

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Training of Junior
Civil Servants.

Changes in the Crimi-
nal Branch of the
system from 1798 to
the present time

From the sentences and orders of assistants, principal sudder ameens, sudder ameens, and law officers, one appeal lies to the magistrate or joint magistrate.

From those of magistrates, and joint magistrates, and assistants vested with special powers (except in certain minor cases) one appeal lies to the session judge; and from sentences or orders passed in criminal trials by the session judges, one appeal lies to the Nizamut Adawlut.

The decisions of the appellate authorities on such appeals are final, except that a power is vested in the Nizamut Adawlut to call for the records of any criminal trials of any subordinate court, and pass orders thereon. But no superior court has power to enhance any punishment awarded, or to punish any person acquitted by the court below.

Present salaries of
collectors and magis-
trates, magistrates,
deputy collectors, and
joint magistrates,
assistants, and law
officers

35. The salary of a collector and magistrate in the North-western Provinces is, we believe, 2,250 rupees per mensem, or rupees 27,000 per annum; in the Lower Provinces, rupees 2,000 per mensem or 24,000 per annum.

That of a magistrate is rupees 1,125 per mensem, or 13,500 per annum.

Deputy collectors and joint magistrates of the first grade receive 1,000 rupees per mensem or 12,000 per annum; those of the second grade rupees 700 per mensem or 8,400 per annum

Assistants to collectors and magistrates and to deputy collectors and joint magistrates receive rupees 400 per mensem or 4,800 per annum. The salaries of the Hindoo and Mahomedan law officers, not being sudder ameens, are 60 rupees and 100 rupees per mensem respectively.

Statement of the crimi-
nal business of the
zillah and subordinate
courts in the Lower
Provinces for 1840

36 The following statement shows the quantity of criminal business depending before, and disposed of by the session and subordinate courts in the Lower Provinces during the year 1840:—

Number of Officers	Description of Offices	Number of Prisoners under Examination on the 1st Jan. 1840	Number Apprehended in 1840	TOTAL	Con- vacted.	Ac- quitted.	Com- mitted to the Sessions	Died, Escaped, or Transferred.	Total of Prisoners disposed of.	Prisoners re- maining on the 1st Jan. 1841	REMARKS.
27	Magistrates	2,162	(A) 64,192	66,354	40,116	19,547	9,597	643	(B) 63,905	2,449	(A) Heinous cases 16,739
21	Joint Magistrates										Petty cases 47,453
30	Assistants to Magistrates										64,192
40	Principal Sudder Ameen										
27	Sudder Ameen										
43	Law officers not being Sudder Ameen										(B) Number of cases disposed of by P. S. Ameen 1,895 Sudder Ameen 1,325 Law officers 3,946 <u>7,166</u>
		Cases depending 1st January 1840.	Cases Admitted in 1840.	TOTAL.	Total Cases disposed of in 1840.	Cases remaining 1st January 1841.	REMARKS				
Magistrates and joint magistrates.		62	1,862	1,924	1,924	510	These are cases of forcible dispossession or disturbance of possession of land, &c.				

INDIAN LAW COMMISSIONERS.

5 (A)

Number of Officers	Description of Offices.	Number of Prisoners under Trial, 1st Jan 1840.	Committed or referred back by Nizamut Adawlut, 1840	TOTAL	Convicted.	Acquitted.	Referred to Nizamut Adawlut	Committed, called, Died, or Escaped	Total Prisoners disposed of.	Prisoners remaining under Trial 1st Jan. 1841.	REMARKS
26	Session Judges Commissioner of Circuits	803	3,638	4,436	2,502	1,001	598	00	3,967	460	—

Cases depending 1st January 1840.	Cases Admitted in 1840	TOTAL.	Total Cases disposed of	Cases remaining 1st January 1841	REMARKS.
513	3,607	4,120	3,757	363	- - Appeals from magistrates and joint magistrates in criminal trials.*
77	646	723	824	99	- - Ditto - Ditto in miscellaneous cases.

* During this year, 1,361 persons were required by the magistrates to find security for their good behaviour; and the cases of 621 security prisoners were reviewed by the session judges.
 * These appeals include second appeals, which are now cut off by Act No XXXI of 1841

37. The courts of Sudder Dewanny and Nizamut Adawlut at Fort William, as constituted in 1793, consisted of the Governor-general and the members of the Council; but, to obviate the delay of justice which arose under this arrangement, and to separate more distinctly the judicial functions of the government from its legislative and executive authority, each court was made to consist of three judges, styled respectively Chief, Second, and Third judge, the chief judge being one of the civil members of council, and the two puisne judges selected from among the civil servants not members of council. Two judges were necessary to hold a court, and on a difference of opinion arising, the voices of the majority determined the question. The special sittings of the court were summoned by the register under the direction of the chief judge; the senior puisne judge exercising the power of the chief judge during the non-attendance of the latter.

Changes in the constitution of the Courts of Sudder Dewanny and Nizamut Adawlut, from 1793 to the present time
1801

38. The duties of chief judge, however, were found incompatible with those of a member of council, and to complete the separation of the judicial from the executive authority, it was enacted that the chief judge should be selected in the same manner as the puisne judges. But this law was repealed two years afterwards, the office of chief judge was replaced on its former footing, and provision was made for the appointment of three puisne judges.

Ditto.

1805
1807.

39. The business of the courts being greatly on the increase, the government was empowered to appoint as many puisne judges as might be found necessary for its despatch; and to prevent the interruptions in the proceedings of the courts from the occasional absence or indisposition of the judges, and further to increase the efficiency of the courts, any judge sitting singly was empowered to hold a court, and generally to pass orders or judgments, excepting for the modification or reversal of the orders or judgment of one or more of the judges of the court, or of those of an inferior court.

Ditto, 1811.

1808 1810.
1814 1817.

40. It was provided also, that in cases of a difference of opinion between four judges present, and the number of voices being equal, the chief judge, concurring with any one of the other judges, should possess a casting vote.

Ditto.

41. The distinctive appellations of Chief, Second, Third, Fourth, &c. judges of the sudder courts, having in some instances been found productive of inconvenience, they were abolished in 1829.

Ditto.

42. In the changes in the judicial system which took place in 1831, separate courts of Sudder Dewanny and Nizamut Adawlut were established at Allahabad for the Western Provinces, and at the same time, in consequence of the accumulation of appeals, civil and criminal, before the sudder courts at Calcutta, the powers of single judges were further increased; the rules on which subject were also made applicable to the Western court. And it was provided that, when in

Ditto.

300.

SPECIAL REPORTS OF THE

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Training of Junior
Civil Servants

Changes in the constitution of the courts of Sudder Dewanny and Nizamut Adawlut from 1788 to the present time

Former salaries of the sudder judges.

Present salaries of the sudder judges.

Co - Rs
52,200 per annum
42,000 -

Statement of civil and criminal business of the Courts of Sudder Dewanny and Nizamut Adawlut for 1841 and 1840 respectively

any case the opinions of the judges of one court of Sudder Dewanny or Nizamut Adawlut were balanced, the question should be referred to a judge of the other court of Sudder Dewanny or Nizamut Adawlut.

43. By a recent enactment the sudder courts have been empowered to transfer to their registers the duty of preparing appealed cases for trial, and of executing the decrees and orders of those courts.

44 From 1811 to 1829, the sudder court of Calcutta was composed of a chief judge (not being a member of the Supreme Council) whose salary was 5,000 sicca rupees per mensem, and puisne judges drawing sicca rupees 4,583. 5. 4. But the powers of the chief judge, as described above, differed in nothing from those of his colleagues, excepting that special meetings of the court were summoned, when necessary, by his direction; and in cases of equality of voices, when four judges were present, the chief judge, concurring with one of the other judges, possessed a casting vote.

45. The Presidency sudder court now consists of four permanent and three temporary judges; we believe, however, that this arrangement is at present in abeyance by order of the Honourable Court of Directors, that at Allahabad, of three permanent judges. The salary of the permanent judges is 4,350 Company's rupees per mensem; the temporary judges receive 3,500 rupees.

46. The following statements show the quantity of civil and criminal business depending before and disposed of by the courts of Sudder Dewanny and Nizamut Adawlut at Calcutta; the former in 1841, the latter in 1840.

CIVIL BUSINESS, 1841.

	Depending 1st Jan 1841	Admitted in 1840	TOTAL	Decided on Default	Dismissed on Default	Adjusted or withdrawn	Transferred to other Courts	Total disposed of.	Depending on 1st Jan. 1842
Regular appeals - - -	446	194	640	220	38	12	- - -	270	370
Special appeals - - -	219	134	353	158	6	2	- - -	166	187
	665	328	993	378	44	14	- - -	436	557
Miscellaneous and summary appeals - - -	477	2,100	2,577	985	1,014	- - -	- - -	1,009	576
Miscellaneous petitions and procedure - - -	-	-	-	-	-	-	-	4,770	-

CRIMINAL BUSINESS, 1840

	Number of Prisoners under Trial, 1st Jan. 1840.	Prisoners referred in 1840.	TOTAL under Trial.	Convicted	Acquitted.	Remanded or Commitments Cancelled.	Died or Escaped.	Total Prisoners disposed of	Total Prisoners remaining 1st Jan 1841
Criminal trials - - -	146	598	744	365	228	59	3	655	89

	Cases pending 1st January 1840	Cases received in 1840.	TOTAL Cases	Total Cases disposed of.	Cases remaining 1st Jan. 1841.
Appeals from sentences of Commissioners of Circuit and Session Judges, or trials called for	20	95	115	100	15
Special appeals from orders of Commissioners of Circuit and Session Judges, on appeals from Magistrates and Joint Magistrates.	110	387	497	432	65

.. These special appeals are now cut off by Act No. XXX. of 1841

47. We should observe, that the preceding narrative does not embrace those parts of the territories of the Bengal presidency, in which the Regulations are not in force, and in which are established special systems of judicial administration, but the statements of business in the Calcutta sudder courts include cases received from the special courts subject to its jurisdiction.

Preceding narrative does not embrace the non-regulation provinces.

48. The Madras judicial system, instituted in 1802, was formed upon the model of that established in 1793, for Bengal. It consisted of—

Madras judicial system instituted in 1802.

Zillah courts for the trial of civil suits in the first instance, without any limitation as to the amount or value of the subject of litigation;

CIVIL JUDICATURE as Zillah courts.

Provincial courts of appeal, for hearing appeals from the zillah courts;

Provincial courts of appeal.

And a sudder adawlut at the presidency, for hearing appeals from the provincial courts.

Sudder Adawlut.

49. The judges of zillah courts were authorised to refer to their registers suits to an amount not exceeding 200 rupees, with a discretionary power to revise their decisions, and to grant commissions to natives to hear and decide suits for a value not exceeding 80 rupees, viz. suits preferred to them directly against under-renters or ryots; suits against other persons referred to them by the judge; and suits submitted to them as arbitrators.

Registers of zillah courts.

Native commissioners.

50. In 1809, the original jurisdiction of the zillah courts was limited to suits not exceeding 5,000 rupees, and suits exceeding that amount were transferred to the jurisdiction of the provincial courts.

Jurisdiction of zillah courts limited
Jurisdiction of provincial courts extended.

In the same year, the occasional appointment of assistant judges, to aid the judges of zillah courts in disposing of arrears, was authorised; and the jurisdiction of registers was extended to 500 rupees.

Assistant judges of zillah courts.
Register's jurisdiction extended.

The original jurisdiction of native commissioners or moonsiffs was also extended to embrace all suits for money or personal property within the former limitation of 80 rupees; and authority was given for the appointment of head native commissioners, or sudder ameens, for the trial of suits referred to them by the judges, not exceeding 100 rupees.

Native commissioners or moonsiffs' jurisdiction.

Head native commissioners or sudder ameens appointed.

The same jurisdiction was conferred upon the law officers of the zillah courts, *ex-officio*.

51. In 1816, the office of moonsiff was put on an improved footing, following the arrangement made in Bengal in 1814. Every zillah was divided into districts, comprising one or more whole tahsildaries or police jurisdictions, to each of which a "district moonsiff" was appointed, with power to determine suits to the value of 200 rupees.

District moonsiffs.

In the same year, a Regulation was passed declaring the head inhabitants of villages to be moonsiffs in their respective villages, with power to decide suits to the value of 10 rupees, and to settle by arbitration suits to the value of 100 rupees.

Village moonsiffs.

And the old institution of punchayets was revived for the adjudication of suits, without limitation of amount or value, upon the agreement of both parties to that mode of trial. Village punchayets to be assembled by the village moonsiffs, and district punchayets by the district moonsiffs; the jurisdiction of the former being restricted to suits for money, or other personal property; that of the latter being unrestricted.

Punchayets.

The appointment of sudder ameens was restricted to the law officers of the zillah courts, the jurisdiction being extended to 3,000 rupees.

Jurisdiction of sudder ameens extended.

52. In 1821, the jurisdiction of registers of zillah courts was extended to 1,000 rupees, of sudder ameens to 750 rupees, and of district moonsiffs to 500 rupees.

Jurisdiction of registers, sudder ameens, and district moonsiffs extended.

53. In 1833, the jurisdiction of these officers was further extended to 3,000 rupees, 2,500 rupees, and 1,000 rupees respectively; and these are the present limitations.

Jurisdiction of registers, sudder ameens, and district moonsiffs further extended.

54. There are 19 districts in the Madras presidency. Formerly each district constituted a "zillah," and had its own zillah court. But in 1827 a considerable change was made, first by the establishment of auxiliary courts under assistant judges, with the full power and authority of zillah courts, and afterwards of courts with

Auxiliary zillah courts established under assistant judges and native judges.

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with nearly* similar powers under native judges, now called principal sudder ameens. In eight of the 19 districts, the zillah courts have been abolished. In seven of those districts they have been succeeded by courts under assistant judges, and in the remaining one by a court under a principal sudder ameen.

In one zillah, Malabar, besides the zillah court, there are two auxiliary courts under assistant judges. In another zillah, Canara, there are also two auxiliary courts, under principal sudder ameens.

Provincial courts.

55. The provincial courts are each composed of three judges, members of the civil service.

Until 1831, two judges were required to constitute a court. In that year, a Regulation was passed authorising the judges to sit singly, subject to the restriction of not reversing any order or decision passed by another judge of the court, or by any subordinate court.

Provincial courts.

56. At first the provincial courts had no original jurisdiction, except in cases specially transmitted to them by the Sudder Adawlut. Since 1809, they have had original jurisdiction in all cases above 5,000 rupees.

Sudder Adawlut.

57. The Sudder Adawlut, or chief court of appeal, as originally constituted, consisted, as in Bengal, of the Governor and the members of council.

By Regulation IV. of 1806, it was enacted that the Governor should be the chief judge, and that the second and third judges should be appointed from among the covenanted civil servants, not being members of council.

By Regulation I. of 1807, it was enacted, that the chief judge should also be selected from among the covenanted civil servants, not being members of council.

By Regulation III. of the same year, it was enacted that the courts should in future consist of a chief judge, being a member of council, but not the Governor nor the Commander-in-chief, and of three puisne judges, to be selected from among the Company's covenanted servants; and this constitution has continued ever since, except that the Governor in Council is empowered by law to appoint additional judges at his discretion.

Sudder Adawlut.

58. In 1816 the Sudder Adawlut was empowered to call up from the provincial courts original suits amounting to 45,000 rupees. This power it is believed has never been exercised.

Ditto

59. Until 1831 two judges were required to constitute a court. By Regulation VIII. of that year the judges were empowered to sit singly, subject to the restriction of not reversing orders and decisions passed by another judge of the court or by subordinate courts. The puisne judges are designated as first, second, and third. When sitting together the senior presides, but he has not a casting voice. If three judges are present, the majority decide; if two, and they differ, they are to wait for the attendance of the third.

The chief judge never sits except when one of the puisne judges is absent, and there is a difference of opinion between the two who are present, or when there is only one judge present, and a case arises in which he thinks the decision of the lower court should be reversed, for which the concurrence of another judge is necessary.

60. Below are presented at one view the several civil judicatories at present existing, with a specification of their jurisdiction, original and appellate.

COURT	ORIGINAL JURISDICTION.	APPELLATE JURISDICTION.
<i>Sudder Adawlut,</i> Composed of a chief judge, a member of the council, and three puisne judges, members of the civil service; salary of each puisne judge, 49,000 rupees per annum.	Authorised, at discretion, to call up original suits, filed in the provincial courts, amounting to 45,000 rupees and upwards.	Regular appeals from decrees of the provincial courts in original suits. Special, from decrees of the provincial courts on regular appeals from decrees of zillah judges, and from decrees of assistant judges and principal sudder ameens in suits above 1,000 rupees.

* The difference is, that principal sudder ameens are restricted from taking cognizance of suits in which European officers of government are concerned.

COURT.	ORIGINAL JURISDICTION.	APPELLATE JURISDICTION.
<p><i>Provincial Courts.</i> Each composed of three judges, members of the civil service. The salary of the 1st Judge, 42,000 Rs. p^a ann 2d ditto 38,500 Rs. ditto 3d ditto 35,000 Rs. ditto</p>	<p>Original suits above 5,000 rupees.</p>	<p>Regular, from decrees of zillah judges in original suits, and from decrees of assistant judges and principal sudder ameen in original suits above 1,000 rupees. Special, from decrees of zillah judges on regular appeals from assistant judges, principal sudder ameen, registers, and sudder ameen.</p>
<p><i>Zillah Courts.</i> Salary of the judge, 28,000 rupees per annum.</p>	<p>Original suits to the amount of 5,000 rupees.</p>	<p>Regular, from decrees of assistant judges and principal sudder ameen in original suits not exceeding 1,000 rupees, and from decrees of registers, sudder ameen, and district moonsiffs. Special, from decrees of assistant judges, principal sudder ameen, registers, and sudder ameen, on regular appeals from district moonsiffs.</p>
<p>Auxiliary courts under assistant judges. Salary of the assistant judge, 16 800 rupees per annum</p>	<p>Original suits to the amount of 5,000 rupees.</p>	<p>Regular, from decrees of sudder ameen and district moonsiffs. Special, from decrees of sudder ameen on regular appeals from district moonsiffs.</p>
<p>Auxiliary courts under principal sudder ameen. Salary of principal sudder ameen (uncovenanted), 6,000 rupees per annum.</p>	<p>Original suits to the amount of 5,000 rupees.</p>	<p>Regular, from decrees of district moonsiffs.</p>
<p><i>Attached to Zillah Courts.</i> Register's Salary, 1st Class, 8,400 Rs per ann. 2d Ditto, 7,200 Rs. ditto.</p>	<p>Original suits referred by the judge to the amount of 3,000 rupees.</p>	<p>Regular appeals from decrees of sudder ameen and district moonsiffs referred by the judge</p>
<p><i>Attached to Zillah and Auxiliary Courts.</i> Sudder ameen's salary, 2,400 rupees per annum.</p>	<p>Original suits referred by the judge, &c, to the amount of 2,500 rupees.</p>	<p>Regular appeals from district moonsiffs referred by the judge, &c.</p>
<p><i>District Moonsiffs.</i> Salary, 1st Class, 1,680 Rs. per ann. 2d Ditto, 1,380 Rs. ditto. 3d Ditto, 1,200 Rs. ditto.</p>	<p>Original suits to the amount of 1,000 rupees, preferred directly, or referred by the judge.</p>	
<p><i>Village Moonsiffs.</i></p>	<p>Original suits to the amount of 10 rupees preferred directly as arbitrator, at the request of both parties, to the amount of 100 rupees, jurisdiction confined to suits for money or other personal property.</p>	
<p>District punchayets assembled by district moonsiffs.</p>	<p>Suits for real and personal property without limitation of amount or value, both parties consenting.</p>	
<p>Village punchayets assembled by village moonsiffs.</p>	<p>Suits for money or other personal property without limitation of amount or value, both parties consenting.</p>	

No. 9.
Training of Junior
Civil Servants.

Criminal judicatories
Office of magistrate
vested in zillah judges.

Transferred to collec-
tors

Powers extended

Joint criminal judges.

Principal sudder
ameens

Sudder ameens

Magistrates, joint
magistrates, and
assistants.

The local limits of their
charges or in cases re-
ferred to them.

Foujdârie Adawlut.

Changes lately recom-
mended

Civil department

61. As in Bengal, the office of magistrate was originally vested in the zillah judges, who were also charged with the superintendence of the police. The jurisdiction of the magistrate was confined to petty offences, and petty thefts, as it was in Bengal prior to 1807, their power of punishment being limited to imprisonment for 15 days or a fine of 50 rupees, (200 rupees in the cases of zemindars, &c.) for the former, and imprisonment for one month, or 30 strokes with a rattan, for the latter.

62. In 1816 a great change was made by transferring the office of magistrate and the superintendence of the police to the collectors of revenue, with the same jurisdiction and powers of punishment as had been previously vested in the zillah judges. The zillah judges were still however charged with criminal jurisdiction, the cognizance of cases punishable by six months' imprisonment with 30 strokes with a rattan, or a fine of 200 rupees, having been transferred to them from the courts of circuit, and to them was left the duty of committing to the court of circuit persons charged with graver offences brought before them by the magistrate or by the police.

63. In 1822 the criminal judges were empowered in special cases to pass sentence of imprisonment for two years, with corporal punishment not exceeding 30 strokes with a rattan, (since commuted to 130 lashes with cat of nine tails) and this is the maximum of their power at present.

64. Assistant judges of auxiliary courts are joint criminal judges of their zillahs, and have the same power and authority as the criminal judge. So also have principal sudder ameens, except in cases in which persons charged with offences are Europeans or Americans.

65. Sudder ameens of zillah and auxiliary courts are authorised to exercise jurisdiction in criminal cases referred to them by the criminal judge, joint criminal judge or principal sudder ameen presiding in the court, with the same power of punishment as the presiding officer; but their sentences are liable to revision by him.

66. The jurisdiction of magistrates remains in general as it was settled in 1816; but as in Bengal they have extended powers under particular acts, sub-collectors are joint magistrates, and assistant collectors are assistant magistrates, with the powers of the magistrates within the local limits of their charges, or in cases referred to them.

The courts of circuit were originally constituted as in Bengal, and still exist, exercising the same jurisdiction and powers as were exercised by those in Bengal until 1829.

67. The judges of the Sudder Adawlut are also judges of the Foujdârie Adawlut. The jurisdiction of the court corresponds with that of the Nizamut Adawlut of Bengal.

68. We subjoin statements of the administration of civil and criminal justice by the several judicatories in the presidency of Madras from 1st July 1839, to 30th June 1840, the latest period, 12 months, of which we are able to give any account.

69. We have recommended* the abolition of the provincial courts, and have proposed to establish 18 superior zillah courts to take up the whole of the appellate jurisdiction heretofore exercised by them, (except in cases liable to the jurisdiction of the Privy Council reserved for the Sudder Adawlut) together with the appellate jurisdiction of the zillah and auxiliary courts as at present constituted, and to organize a set of subordinate but independent zillah courts, by continuing those already established in some districts under assistant judges and principal sudder ameens, and by establishing others of the same class in all the rest, to exercise original jurisdiction in all cases now cognizable originally as well by the provincial† courts as by the present zillah and auxiliary courts; that is to say, in all cases beyond the jurisdiction of district moonsiffs, and in all cases within the jurisdiction of district moonsiffs in which the parties suing prefer to have

* Reports, 21st August 1840, and 10th July 1841.

† Report, 4th December 1841.

have their causes tried and decided by them, but not to exercise appellate jurisdiction except in cases referred to them by the superior zillah court, or under special orders.

70. We have also proposed that the office of register shall be abolished.

71. We have recommended that the subordinate zillah courts shall be conducted partly by assistant judges and partly by principal sudder ameens, or principal sudder ameens; or in other words, partly by covenanted civil servants and partly by natives and other persons not covenanted, at the discretion of the local government. In making this recommendation, we stated* that we looked to dispensing eventually with assistant judges altogether, and placing all the judges in courts of this class on the footing of principal sudder ameens, but that we thought it expedient that the change should be brought about gradually.

72. The subject has been referred to the government of Madras, with an intimation from the government of India that it is considered desirable to get rid of the class of assistant judges altogether, and to introduce the principle of making over to uncovenanted judges (native or European) the duties of original jurisdiction, unless in cases reserved on very special grounds, and of confining the European covenanted judges to the decision of appeals and to the functions of general control. It is not expected that it will be possible to do this all at once, but the Governor-general in Council has expressed a hope that it will not be necessary in carrying the proposed reforms into effect to add to the present number of covenanted assistant judges, which is above shown to be nine.

73. In the department of criminal justice we have recommended that the jurisdiction now exercised by the courts of circuit should be vested in the judges of the superior zillah courts as session judges, and that the present jurisdiction of criminal judges shall be exercised by the judges sitting in the subordinate zillah courts, who shall also commit to the superior court persons charged with crimes and offences beyond their own jurisdiction, as the criminal judges now commit to the courts of circuit; leaving the existing system untouched in other respects. But we believe that further changes have been proposed by the government of India.

Criminal Department.

STATEMENT showing the Civil Business done by the Courts in the Presidency of Madras, 1839-40, and remaining.

	ORIGINAL SUITS.			APPEALS.		
	Disposed of	Instituted	Depending.	Disposed of	Instituted	Depending
Sudder Adawlut				19	24	44
Provincial Courts of Appeal						
Centre	9	12	22	75	67	90
Northern	18	11	29	38	29	59
Southern	10	7	5	30	35	13
Western	4	4	4	23	39	46
Total	41	34	60	166	170	208
<i>Superior Zillah Judicatories :</i>						
Judges and assistant judges	1,167	9,288	1,381	1,107	2,348	1,581
† Assistant judge attached to a zillah court	2					
Principal sudder ameens			35	62		164
Registers	135	643	108	59		25
Sudder ameens	402	(a)	395	339	(a)	350
	7,445	(a)	3,074	662	(a)	183
Superior Zillah Judicatories } Total	9,151	9,931	5,993	2,229	2,407	2,303

(continued)

* Report 21st August 1840.

† Under Reg VII. of 1809.

(a) No suits are instituted before the register and sudder ameens. What they receive are referred to them by the judge, assistant judge, or principal sudder ameen of the court, before whom all are instituted.

No 9.
 Training of Junior
 Civil Servants

	ORIGINAL SUITS.			APPEALS.		
	Disposed of.	Instituted.	Depending	Disposed of.	Instituted	Depending
<i>Inferior Zillah Judicatories :</i>						
Moonsiffs { District - - -	52,395	55,336	23,018	—		
Moonsiffs { Village - - -	4,035	3,926	1,854	—		
Total - - -	56,430	59,262	24,872	—		
Punchayets { District - - -	16	16	21	—		
Punchayets { Village - - -	14	6	6	—		
Total - - -	30	22	27	—		
Inferior Zillah } - Total - - -	56,460	59,284	24,899	—		
Judicatories }						
GRAND TOTAL - - -	65,652	69,249	29,954	2,395	2,577	2,511

ABSTRACT of the Administration of Criminal Justice by the Judicial Functionaries in the Madras Presidency, 1839-40.

	Balance	Officers apprehended	Total Number of Persons charged under the Police Courts of Criminal Jurisdiction	Acquitted or Discharged	Convicted and Punished	Confined.		Fine.	Flogging.	Imprisonment.						Detained for Security.	Committed for Trial	Transferred.	Died, Insane, &c	Balance remaining.	
						Choultra	Stocks			Simple	With Fine	With Flogging	Simple								With Flogging
													Not exceeding 7 Years.	Above 7 Years	Not exceeding 7 Years						
Village Police -	-	5,700	5,700	2,365	3,335	2,344	991	-	-	-	-	-	-	-	-	-	-	-	-		
District ditto -	2,423	106,660	109,083	79,257	27,338	8,404	484	18,180	270	-	-	-	-	-	-	-	-	102	-	2,326	
Magistrate -	72	7,920	7,002	5,297	2,695	-	-	1,727	216	812	-	-	-	-	-	-	-	-	-	60	
Criminal Courts -	-	-	7,752	2,075	2,140	-	-	515	89	1,248	78	260	-	-	-	-	318	1,800	10	15	494
Circuit ditto -	-	-	2,093	727	781	-	-	-	-	-	0	-	380	341	21	30	-	-	-	-	525
TOTAL - - -	-	-	132,620	80,761	36,280	10,748	1,475	20,422	525	2,060	87	200	380	341	21	80	318	1,800	112	15	3,225

	Total Number of Persons charged under the Police Courts of Criminal Jurisdiction.	Acquitted or Discharged	Convicted and Punished.	Death	Transportation		Imprisonment for Life.	Imprisonment.			
					With Flogging.	Without Flogging.		Simple		With Flogging	
								Under 7 Years	Above 7 Years	Under 7 Years	Above 7 Years
Foydaree Adawlut -	352	63	289	52	0	85	14	58	62	2	5

Bombay presidency
 Number of districts
 comprised therein

Each district how
 superintended before
 1827

Civil courts.

74. The Presidency of Bombay comprises (12) twelve districts, of which six are on the coast (Goojrat and the Konkans), and six above the Ghats (the Dekhan, Khandesh, and the Southern Mahratta country),

75. Under the system which obtained until 1827, each district had a judge and a collector, except in the territories above the Ghats, where, after the Dekhan was formed into zillahs in that year, one judge presided over two collectorates.

76. The European judicial functionaries in each zillah were, under the denomination of judge, register, and assistant-register, vested with the trial of all original

original suits, except those of very small amount. The judge tried all original suits beyond the cognizance of the register, and all appeals. The register's jurisdiction was at first limited to suits of rupees 200, but his decrees were final up to rupees 25. His powers were afterwards raised to rupees 500, and assistant registers were appointed for trial of the suits under rupees 200, which the register used to decide.

Powers of judge Register.
Regulation I of 1802
Regulation II of 1808.
Assistant registers.

77. Special powers were then conferred on registers who had served six years in the judicial line, enabling them to try original suits not exceeding rupees 1,000, and to hear appeals from the assistant register, sudder ameens, and moonsiffs; his decisions thereon being final, unless under special appeal. Appeals from his decisions in original suits above rupees 500 went direct to the Sudder Adawlut.

Registers, special powers—Regulation VI of 1820

78. In A. D. 1827, the jurisdiction of the register and assistant registers (from that time termed senior and junior assistant-judges), was greatly enhanced; but in 1830 all original jurisdiction was entirely taken away from the European functionaries of every grade, except as to suits in which the government was a defendant, or any European or American, or any near relative or dependant of a native judicial servant of any grade was a party. And by Act XI. of 1836, principal sudder ameens and sudder ameens were empowered to try suits in which Europeans or Americans are parties. The suits still reserved from cognizance of natives are tried by the assistant judge, from whose decision an appeal lies to the judge. If he confirm the decree, his decision is final, otherwise the case may be further appealed to the Sudder Adawlut.

Changes made by Code of 1827

Original jurisdiction taken away from European judges.

79. In the Dekhan, where natives of rank (sirdars), are exempted from the jurisdiction of the ordinary courts, the judge of Poonah, under the title of agent for sirdars in the Dekhan, and the judge of Dharwar, as agent for sirdars in the Southern Mahratta country, try all cases in which any native of rank within their respective jurisdictions is defendant. These sirdars are divided into three classes, and an appeal lies to the Governor in Council, and not to the Sudder Adawlut, in all cases wherein a sirdar of the two first classes is a party.

Sirdars' suits in the Dekhan.

From decisions in sirdar cases by the assistant agents, an appeal lies to the agent in the first instance, and from his decision a special appeal, either to the Governor in Council or the Sudder Adawlut, as the case may be.

80. The whole number of original suits decided by (16) European functionaries in 1838 was 84; of which 65 were sirdar cases—the proportion of the whole number (84) to that decided by natives is only 1.35 to 1,000.

Original suits decided by European officers in 1838

The civil functions of the zillah judge are thus, with a trifling exception, confined to deciding ordinary and special appeals, from his assistants, and from the native tribunals. The assistant judges try appeals from the native functionaries' decisions, as referred to them by the judge, or filed by themselves if at a detached station.

Present civil functions of judges

And assistant judges.

81. The salary of every zillah judge is rupees 28,000 except at Surat, where it is rupees 30,000

Salaries of European officers

That of an assistant judge at a detached station is rupees 14,400. At the sudder station, rupees 8,400.

82. By the Code of 1827, civil jurisdiction over a certain class of suits, those relating to land, was given to the collectors of revenue, their assistants and head native officers, and by a very wide construction put upon this part of the code, the entire cognizance of every suit having the most remote connexion with land, was taken away from the zillah courts, and transferred to the collectors. A limit has, however, been put to this very extensive jurisdiction by Act XVI. of 1838, and the revenue officers are now confined to, 1st, giving possession of lands or the like to any party forcibly dispossessed of the same, if a plaint be preferred within six months of the date of dispossession.

Collectors' courts.

2dly. Cognizance of all disputes regarding rent of the current or former years, between ryot and superior holder, which the parties may submit to arbitration of the revenue officers.

3dly. Of all questions regarding use of wells, tanks, and water-courses, or of roads, and

4thly. Of all disputes respecting boundaries, such being by the Act still reserved for the collectors' courts.

300.

Jurisdiction of native judges

Regulation VII of 1802—Ditto II of 1808.

Increased in 1827 to 5,000 rupees.

Made unlimited in 1830

83. The civil jurisdiction conferred on the native judicial servants was exceedingly limited until 1827, moonsiffs being only empowered to try suits for rupees 50; sudder ameens for rupees 100. In that year every native functionary, then termed commissioner, was empowered to decide causes up to rupees 500; and might have his powers extended to rupees 5,000. In 1830, original jurisdiction, to an unlimited extent, was conferred on every native functionary; that of the European officers being strictly confined to a few special cases already mentioned.

Reduced in 1831

84. In the following year, however (1831), this jurisdiction was very much circumscribed; the principal sudder ameens alone being invested with unlimited original jurisdiction; the power of hearing appeals from decisions of other native functionaries up to rupees 100 being also conferred upon them. The jurisdiction of sudder ameens was confined to rupees 10,000; that of moonsiffs reduced to rupees 5,000, the limit fixed by the Code of 1827.

Have no criminal jurisdiction.

85. The native judicial functionaries of the Bombay presidency have no criminal jurisdiction whatever.

Court of appeal.

86. From the zillah courts, constituted as above, an appeal formerly lay to the court of appeal in Goojurat, and from it to the Sudder Adawlut at the presidency. The court of appeal (while in existence) had also jurisdiction for the trial of any original suits referred to it by the Sudder Adawlut, but we have no reason to believe that it was ever called upon to exercise it.

Had original jurisdiction

Its abolition.

In 1820 it was found practicable to abolish the first-named court as an intermediate court of appeal; and though it was judged expedient to re-organize a court of appeal for Goojurat in 1828, it was again and finally abolished in 1830.

Leaving a direct appeal to Sudder Udawlut.

87. In the presidency of Bombay, therefore, for the last 22 years, with exception of a brief interval, the appeal has been immediate from the zillah courts to the court of highest resort in civil cases.

Sudder Udawlut now first constituted.

88. The system, which at one time prevailed at the other presidencies, of vesting in the Governor in Council the supreme jurisdiction, both civil and criminal, was in force at Bombay so late as A. D. 1820. In that year, on the abolition of the Goojurat court of appeal, the judges of it were constituted the judges of the Court of Sudder Dewanee and Sudder Foujdaree Udawlut, the Governor and members of council being thenceforth relieved from the judicial duties which, as judges of that court, they had hitherto been required to perform.*

Re-organized in 1820

And again in 1830.

89. The new Court of Sudder Dewanee and Sudder Foujdaree Udawlut was composed of a chief and three puisne judges, the puisne judges being still required to perform their former functions of a circuit court, visiting the different zillahs (the Six Coast Districts) then subject to their jurisdiction, delivering the goals, and generally performing all the duties devolving on a circuit court.

Puisne judges perform circuits

90. These combined labours of a superior and circuit court having been found too onerous for the judges of a single court, the court of circuit and appeal was, in 1828, re-organized, but soon abolished as above stated. The duties of a court of circuit however were not again imposed on the Sudder Foujdaree Udawlut, but instead thereof the zillah judges were, under the designation of session judges, invested with the ordinary jurisdiction of a court of circuit as regards the trial of criminal cases; and the three junior puisne judges of the Sudder Foujdaree Udawlut, though still required to perform circuits, were relieved "from holding any but State trials or any other trials of a peculiar or aggravated nature which from any circumstance government, on report from the local authority, may wish to be reserved for that purpose."

They are only required, on these circuits, to receive petitions, and make a general inquiry into the judicial management of each zillah visited by the commissioner.

Three circuits.

91. The presidency, for this purpose, is divided into three circuits, which may be termed the northern, middle, and southern, each being visited once in the year by one of the commissioners.

92. In

* In 1827, the Governor in Council was made a special court for trying, in place of the Sudder Udawlut, appeals from decisions passed by the zillah judges above the ghats, as agents for sirdars. Vide paragraph 79. These functions the Governor in Council still exercises.

92. In order to provide for the due performance of the duties of the Sudder Udalut during the absence of the puisne judges on these circuits, one of the members of council was constituted chief judge of the court, as is still the case at Madras; but his functions were expressly limited to attending in court when a full court of three judges could not be assembled without his attendance. The Honourable Mr. Anderson, in his capacity of chief judge, presided at the trial of five causes in the first half of 1840, and this is the only instance we can find in which the Member of Council has been called in, since his appointment for this particular duty.

Member of council made chief judge Regulation I. of 1830 Extent of his duties.

93. Neither the chief nor senior puisne judge has any superior function except that of having the casting vote when the number of voices happens to be equal.

No superior powers.

94. The judges when present at the seat of the court are occupied in trying appeals direct from the decisions of assistant judges in cases above 5,000 rupees, and regular and special appeals from the decisions in appeal by the judges and assistant judges, as well as in miscellaneous business. Appeals to the Sudder Dewanee Udalut are, in the first instance, taken up by a single judge of the court; and if he is disposed to concur in the decision of the lower court, his decree, affirming it, is final; but if he see reason to doubt the correctness of the decision, or find in the case any point of interest or importance that has not been yet decided, he refers it to a full court, consisting of three judges, of whom he may himself be one. In criminal cases the court has to revise all sentences passed by session judges for more than seven years' imprisonment, or solitary confinement for six months, and has generally to exercise control over all zillah judges and magistrates.*

Civil duties of the court.

Mode in which civil appeals are tried

Criminal duties of the court.

95. The salary of the senior puisne judge has for some years been fixed at

	Rs.	
That of the second at	40,000	
Each of the others at	36,000	
	35,000	

Salaries of the judges

By very late orders from England it is understood that the senior and each of the other puisne judges is hereafter to receive rupees 42,000 per annum. The three juniors get each 316 per mensem, as travelling allowances, in addition.

96. The criminal and magisterial powers of the subordinate authorities may be very briefly explained.

Subordinate criminal tribunals,

97. Formerly, each judge, besides being the criminal judge, was also the magistrate of his own zillah, until 1818, when the duties of magistrate were transferred to the collector, except at the sudder station of each court, which remained subject to the control of the judge as magistrate; but in 1830 the police and magisterial duties of each sudder station were also transferred to the collectors, except at the city of Surat, where they are still performed by the judge.

Criminal judge was also magistrate of his district till 1818.

Collectors now magistrates

98. In 1830 the powers of the criminal judge were increased to those of a session judge, in which capacity he has to perform all the functions of a court of circuit, trying (with the aid of his assistants) all cases involving more than one year's imprisonment; and, the number of zillahs having been reduced to six by placing two collectorates under the jurisdiction of one court, the session judge, in four out of the six, has to perform circuit twice a year to the subordinate division of the zillah, there to deliver the gaol, and generally scrutinize the state of the establishment.

Criminal judges made session judges, 1830

Perform circuits

99. The assistant judges try criminal cases referred to them by the session judge (or, at the detached stations, those committed by the magistrate) having power to sentence to two, or (with special powers) subject to confirmation by the session judge, to seven years' imprisonment with hard labour. The assistant judges at detached stations have somewhat higher powers, both civil and criminal, than those immediately under the judge's superintendence; they prepare cases for the sessions, have charge of the gaol, &c.

Duties of assistant judges

Act XIX of 1831

100. Every collector, or sub-collector, as magistrate, or joint magistrate, has been since 1818 vested with the entire magisterial and police duties of his own district.

Collector also magistrate

* We observe from the draft of a law lately published, that in civil cases the same course of procedure is about to be prescribed for the sudder courts of the Bengal and Agra presidencies.

his powers.

Assistant collectors are assistant magistrates
Ordinary powers of magistrate.

Special in the Dekhan.

Reduced and made uniform everywhere

district; and, since 1830, of the sudder station also. He has jurisdiction in criminal cases to the extent of awarding one year's imprisonment, with hard labour and fine. All cases requiring greater punishment than this he commits for trial to the session judge. The assistant collectors are also assistant magistrates. Under the Code of 1827, magistrates had power to adjudge to fine, ordinary imprisonment not exceeding two months, flogging to thirty stripes, and personal restraint. Assistant collectors were constituted assistant magistrates; the magistrate having power to refer to them any cases within his own cognizance, but with liberty to mitigate or annul any sentences passed by them. By a Regulation passed in the same year for the Dekhan, then first brought under the operation of the General Regulations for the presidency, much greater powers than those above stated were conferred on the magistrates in that province, to the extent of two years' imprisonment with hard labour, fine, flogging, and personal restraint. In 1829 the power was given to government to invest assistant magistrates with the same powers. In 1830 these powers were reduced, and those of the magistrates and assistant magistrates in the other parts of the presidency were enhanced to one year's imprisonment with hard labour; and this is now everywhere, the limit to the magistrate's penal jurisdiction under Bombay. Sentences exceeding three months' imprisonment, passed by assistant magistrates, must be confirmed by the magistrate.

101. The salaries of the Revenue and Magisterial departments are as follow:

	Per Mensem.	Per Annum.
Principal collector of Surat	Rupees 2,666	32,000
All other collectors and magistrates	" 2,333	28,000
Sub-collector and joint magistrate	" 1,400	16,800
First assistants	" 800	9,600
Ditto, rutnagiree and kaira	" 700	8,400
Second assistants	" 550	6,600
Third assistant principal collector	" 500	6,000
Third assistants	" 400	4,800
Fourth assistant principal collector	" 450	5,400
All others	" 300 to 400	3,600 to 4,800

Original suits.

102. Statement of causes decided by the courts under the Bombay presidency, 1838.

ORIGINAL SUITS.	No.	Balance depending	Filed.	Total.	Decided on merits.	Adjusted or withdrawn	Dismissed.	Total.	Balance.
European Agency									
Judges as agents for sirdars	2	4	7	11	2	2	1	5	6
Assistant ditto	1	25	52	77	53	-	7	60	17
Judges	6	-	-	-	-	-	-	-	-
Assistant ditto	10	14	15	29	10	1	11	22	7
Total	16	43	74	117	65	3	19	87	30
Native Agency									
Principal sudder ameens	6	371	4,301	4,672	2,838	549	703	4,090	582
Sudder ameens	14	841	12,504	13,345	8,177	2,597	1,699	12,473	872
Moonsiffs	66	3,726	46,627	50,353	27,143	12,828	5,704	45,675	4,678
Jahgeerdars	not known	144	418	562	353	-	70	423	139
Total	86	5,082	63,850	68,932	38,511	15,974	8,176	62,661	6,271
GRAND TOTAL	-	5,125	63,924	69,049	38,576	15,977	8,195	62,748	6,301
APPEALS									
Agent	2	3	25	28	20	-	-	20	8
Judges	6	518	919	1,437	1,017	51	34	1,102	335
Assistant judges	10	378	1,875	2,253	1,222	42	75	1,339	914
Principal sudder ameens	1	11	76	87	81	1	4	86	1
Total Subordinate Courts	19	910	2,895	3,805	2,340	94	113	2,547	1,258
Sudder Adawlut	4	116	129	245	143	-	-	143	102

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103. Abstract of work performed by judges of the Sudder Dewanny Udalt, Bombay, 1838.

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	Sitting as single Judge.			Sitting in full Court of Three Judges.	Decided by full Court			
	Confirmed	Referred.	Total.		Confirmed.	Amended.	Reversed.	Total.
Simson	15	5	20	57				
Giberne	27	25	52	19				
Pyne	15	30	45	76				
Greenhill	10	29	39	76				
	67	89	156	-	19	12	38	69
By the full court	19	-	-	-	19	-	12	-
TOTAL Confirmed	86	-	-	-	-	-	50	-

104. Statement showing the amount of criminal business disposed of by the tribunals under the Bombay presidency, 1838

Balance of past year with district and village officers	-	-	-	648
Magistrates	-	-	-	300
Judges	-	-	-	316
				<u>1,264</u>
Received during the year	-	-	-	37,987
				<u>39,251</u>
				TOTAL - - - 39,251
Disposed of	{ By district and village police }	Acquitted	-	12,301
		Punished	-	12,939
		Under examination,		703
				<u>25,943</u>
		Transferred to magistrate	-	13,308
By magistrate	{	Acquitted	-	5,818
		Punished	-	4,200
		Under examination,		548
				<u>10,566</u>
		Transferred to judge	-	2,742
By judge	{	Acquitted	-	1,052
		Punished	-	1,401
				<u>2,453</u>
		Under examination by judge	-	289

Sudder Foudjaree Udalt.

Number of offenders whose trials referred	-	-	-	272
Sentences confirmed				
Death	-	-	-	22
Transportation for life	-	-	-	29
Imprisonment for life	-	-	-	6
Ditto with fine	-	-	-	187
				<u>244</u>
Acquittals	-	-	-	28
Review of sentence on petition	-	-	-	291
Confirmed	-	-	-	201
Mitigated or annulled	-	-	-	90
				<u>291</u>

300.

Principle of employing native agency for the disposal of original suits

105. It will be seen from the foregoing narrative that the system now in operation for the administration of civil justice in the territories of the Bengal and Bombay presidencies, and which it is proposed to extend to those of Madras, is based upon the principle of employing native industry and intelligence in the primary disposal of suits, under the safeguards of an immediate appeal to the European functionaries, and of their constant and vigilant supervision of the general conduct of the native judges.

Absence of judicial training in those destined to become civil judges of appeal

106. To the justice and sound policy of this principle we cordially subscribe; but in reducing it to practice, an evil of a very serious nature has been incurred, which has already been extensively felt, and which if not remedied will greatly impair the judicial administration. We allude to that which has attracted your Lordship's attention, the absence of all previous training in those to whom as judges of first and local appeal the government must principally look for the guidance and control of the courts of primary jurisdiction. At present there is not a single situation in the civil branch of the Judicial Department in Bengal open to a covenanted servant before his elevation to the important office of zillah judge; nor in Bombay do the zillah and assistant judges exercise any original jurisdiction before they are invested with appellate jurisdiction.

And session judges in some cases.

107. In the criminal branch, those civil servants who have risen through the grades of assistant, joint magistrate, and magistrate, have the benefit of the knowledge and experience acquired in those offices when called to exercise the powers of a session judge; but in Bengal at least, such a preparation is not considered indispensable, and an officer conversant only in revenue matters is equally eligible to that appointment.

Principle of admission to the Company's civil service, and educational training of their civil servants

108. In devising a remedy for this anomalous state of things we have been led to review generally the principle of admission to the Honourable Company's civil service, and the educational training both in England and India which the persons nominated have to undergo before entering upon the active business of life.

Great importance of subject.

109. Considering the great importance of the duties which the civil servants of the Company are destined to perform in the various branches of our Indian administration, and the extent to which, from the weakness of the native character, the happiness of the people depends upon the individual dispositions and capacities of the officers placed over them, it will readily be admitted how essential it is to the credit of the government and the welfare of the millions committed to their charge, to raise to the utmost the moral and intellectual qualifications of the covenanted civil service. In the depressed condition of the people caused by the long period of misrule, and confusion which preceded the establishment of British supremacy in India, the benefits of the strong and settled government which succeeded were no doubt sensibly felt; though the instruments employed were but ill qualified by previous education and pursuits for the discharge of the new duties which devolved upon them; but circumstances are now greatly changed. Population has increased; cultivation and trade have extended; European residents are gradually spreading themselves over the country; and the commercial and other transactions of life must be expected to assume a more complex character as society advances in civilization, and the elements of it become more mixed. At every step the country takes in the march of general prosperity and improvement, the duties of those employed in its civil administration become the more delicate and important, and whilst extensive efforts are making by means of an improved education to raise the qualifications of the natives of the country for the subordinate situations under government, it is a matter of paramount importance to exact from those for whom the offices of greater responsibility and control are exclusively reserved a higher standard of qualification than has yet been required of them.

Suggestions regarding it

110. In the suggestions which we are about to submit to your Lordship on this subject we advocate not those measures which abstractedly we should consider the best, but such as we believe will be found the most effectual, consistently with a due regard to the patronage vested in the Honourable East India Company.

Mode of appointment to the civil service

111. We think the first object should be to extend as far as practicable the field of selection for the civil service; and by adopting the principle of competition, to secure from among a large body of candidates a sufficient number of young men possessing superior talents and acquirements.

112. With

112. With this view, we propose that all nominations by the Directors of the East India Company for each season should be to the general service in the first instance; that no person should be eligible for such nomination before the age of 17, and that all so nominated should be at liberty to enter themselves as candidates for admission to the civil service. These candidates should undergo an examination, involving a test of high attainments; and on the required number declared duly qualified by the result of it, the appointments to the civil service should be bestowed according to priority in the examiners' lists.

Mode of appointment to the civil service.

Those nominees who declined to compete, and those who failed in the competition for the civil branch of the service, would stand appointed to the military branch.

113. If this scheme cannot be adopted in its fullest extent, we recommend as near an approach to it as may be found practicable, and that at all events the principle of competition be preserved.

Ditto.

114. The appointments to the civil service having been thus settled on the principle of superior attainments, we propose that the nominees should continue in England three years, for the purpose of further qualifying themselves for the higher stations they are destined to fill. We have fixed on 17, as the age at which school education is usually completed, and the student is prepared to profit by an advanced course of study in science and general knowledge. The additional three years make 20, the minimum age at which a civil servant would quit England for India, which we think a preferable minimum to that now established.

Education in England of the civil servants.

115. The course of study to which the civil servants should devote themselves during the remainder of their stay in England is, in our opinion, history in general, and the history of India in particular; political economy; moral and political philosophy; and jurisprudence, especially that branch of it which relates to the conflict of laws. It would be advisable that a syllabus of these subjects should be prepared, in which the best sources of information should be pointed out.

Ditto.

116. The progress of the students in these departments of knowledge should be ascertained by annual examinations; and the examiners should have full authority to reject at the final examination any one whose attainments did not reach a certain fixed standard, or whose general conduct and character were found to be unsatisfactory.

Ditto.

117. It would of course be essential to the success of this plan that the standard of qualification should be rigidly adhered to, and that the Board of examiners should be so constituted as to command the confidence of all, and secure the support of public opinion in the firm and upright discharge of their duty.

Ditto.

118. We do not attach importance to the study of the Oriental languages in England beyond such an elementary acquaintance with them as would accelerate future proficiency in India. It is in the latter country that the greatest facilities for acquiring this description of knowledge exist, and we think the principal part of the time spent in England would be most profitably devoted to the pursuit of European literature and science. Considering also the very limited means of instruction in the Oriental languages available in England, the establishment even of a low Oriental test might interfere with the principle which we suppose will be acted upon, of allowing the civil servants to choose their own plans and places of instruction.

Ditto.

119. On their arrival in India, the attention of the civil servants should be principally directed to the study of the vernacular languages, proficiency in two of which should be required of them.

Ditto.

120. Then professional studies should now assume a local character; means should be afforded them of acquiring a knowledge of the system of the internal administration of the country, and of the principles of law and equity which have regulated the decisions of the Indian courts. For this purpose the Regulations enacted for the particular presidency; the printed reports of cases decided by Her Majesty's and the Company's superior courts, and the most useful portions of the Hindoo and Mahomedan laws which have been rendered accessible to the English student by translations and treatises, should be made the subjects of lectures. And as a means of obtaining some practical knowledge of the administration of justice, the student should be required, at convenient times, to attend the trials,

civil

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Civil Servants.

civil and criminal, in the Queen's courts of judicature. The courts we are recommending for the trial of the matters which are now brought before the supreme courts in civil actions at law, as well as the subordinate criminal courts proposed on a former occasion, would also be available for this purpose, perhaps with even greater advantage than the supreme courts, with reference to their more simple course of procedure.

Education in England
of the civil servants

121. Periodical examinations should be held for the purpose of ascertaining the progress made in these various branches of study; and on a civil servant passing a certain test, he should be declared qualified to take a part in public business

Training of the civil
servants on being re-
ported qualified to
take a part in public
business

122. In this stage of his noviciate, we think it very desirable that he should be afforded the best opportunities of perfecting himself in the languages, and acquiring a general knowledge of the manners, habits, feelings, and institutions of the people.

Ditto

123. In our courts of justice the native character is seen in its worst aspect, and the unfavourable impressions which the mind of the young civilian receives from this partial view is too apt to have a prejudicial influence upon the whole tenor of his future conduct. On the other hand, first impressions drawn from intercourse with the respectable classes, and a more general survey of the people in their ordinary intercourse with each other, would lay the foundation for a kindness of feeling towards them, and a reasonable consideration for their prejudices and failings.

Ditto

124. It is chiefly at the beginning of his career, and whilst holding a subordinate situation, that the civil servant will find time for the prosecution of general inquiries, and the greatest readiness on the part of the natives to communicate their sentiments. The possession of superior office is at all times an obstacle to free communication with the people; nor would we advocate in the higher judicial functionary that familiarity of intercourse which would be useful and proper in the officers of revenue.

Ditto

125. To the acquisition of this description of knowledge the revenue systems of Madras and Bombay are peculiarly favourable; there, the annually recurring ryotwary settlements require a constant and local intercourse between the revenue officers of government and the agricultural inhabitants, and the minute information respecting the interests of the different classes of the village communities, the various rights in land, and the instruments by which those rights are modified or transferred, necessarily acquired in the course of such detailed arrangements, cannot but prove valuable to the future judicial officer.

Ditto

126. We would therefore recommend for those presidencies that the civil servants, on being reported qualified to take a part in public business, should be attached as assistants to collectors and magistrates for the period of three years; that is, we would continue the initiatory system now in force there, which was introduced during the governments of Sir Thomas Munro and Mr. Elphinstone.

Ditto

127. Regarding the junior civil servants on the Bengal establishment, we find it more difficult to come to any decided opinion. The detailed village settlements which have been for some years in progress in the Western Provinces and Cuttack, and partially in Bengal, Behar, and Benares, afford perhaps even better opportunities of acquiring practical information than the ordinary revenue arrangements of Madras and Bombay; but these settlements are now drawing to a close, and we understand that in about two years the whole will be completed either in perpetuity or for terms of 25 or 30 years. The principal business of the revenue officers will then be reduced to the simple duty of collecting the revenue and making the usual arrangements in the departments of Abkarry and Stamps; and it is only the occasional failure of a settlement, or the management of a few estates under the superintendence of the court of wards which would call for local and minute investigation. To a knowledge of the mere routine of a Bengal collector's office as conducted at the sudder station, we attach no importance as a preparation for judicial duties.

Ditto

128. Where the charge of the police is also vested in the collector of revenue (as is universally the case at Madras and Bombay) the occasional deputation of the assistant into the interior for the purpose of local inquiries would give opportunity for acquiring information, and would operate as a check on the native officers

officers of police. But we believe that in most districts of the Lower Provinces of the Bengal presidency the functions of revenue and police are committed to distinct officers, and the same assistant could not work satisfactorily under two seniors.

129. If sufficient employment could be found for the junior civil servants of this presidency of a nature calculated to store their minds with that general practical knowledge which we think so desirable an acquisition, we would recommend the same disposition of them, during the three years, as at the other two presidencies; otherwise we would at once commence with those selected for the judicial line, the peculiar training to which we shall presently advert, and continue it for a period of three years.

130. On the expiration of the three years of mofussil preparation we would choose the ablest and most competent of the civil servants for employment in the judicial line; and as we propose that all so chosen should thereafter be confined exclusively to that line, we would, in making the selection, consult individual inclination as far as the exigencies of the service permitted.

Subsequent selection for the judicial line

131. We have not fixed upon an earlier stage in the civil servant's career as the period of selection, because it appeared to us important that it should be deferred to as late a period as possible, consistently with other considerations, to allow of the fullest development of those qualifications which should guide the government in the distribution of its agency.

Ditto

132. The legal part of the education which we have proposed for the civil servants in England, and on their first arrival in this country, may be thought unnecessary for those who are eventually attached to the revenue branch of the administration, but when we consider the important functions, partaking often of a judicial character, which such officers as they advance in the service are called upon to perform, and the numerous instances in which they act as the legal advisers of government, we think the accurate acquaintance with the principles of right and wrong, and the general knowledge of the laws of the country to which such a course of study must lead, will be found of essential advantage to them.

Why legal instruction important for civil servants eventually attached to the Revenue Department

133. For the civil servants, who, after three years of revenue practice, are set apart for the judicial branch, we would recommend at least one year of judicial apprenticeship previous to their appointment to the exercise of independent functions.

Special training for the judicial servant

134. We beg to draw your Lordship's attention to a Minute recorded by Mr. Cameron, when officiating as fourth ordinary member of the Council of India, on the subject of judicial training, copy of which, and of the letter to Lord Goderich therein referred to, is appended to this address. The Minute has special reference to the judicial training of natives, but the principle is equally applicable to our purpose, except that in the case of English gentlemen the defect of moral principle insisted on in the letter to Lord Goderich, does not exist. The mode proposed by Mr. Cameron, of constituting the courts schools for judicature, appears to all of us unexceptionable; and we recommend that every civil servant, on his first appointment to the judicial line, should be attached as an official assessor to a mofussil court superintended by a covenanted European judge, or to the civil and criminal courts subordinate to the Supreme Court which we contemplate for each presidency.

Ditto

135. It is not necessary that in this capacity his time should be exclusively occupied in assisting at the civil and criminal trials in court. There are ministerial duties now left principally to the native officers of the courts in the superintendence of which he might be beneficially employed, and we also think it very desirable that he should be occasionally deputed for the purpose of conducting local investigations connected with cases depending before the judge.

Ditto

136. Mr. Cameron dissents from the recommendation that the civil servants, intended for the judicial line, should pass the first three years of their novitiate in the Revenue Department, and has thought it right to state his view in a separate Minute.

Mr. Cameron's dissent from the recommendation of his colleagues respecting the training of the civil servants.

View of the majority
of the Commissioners.

137. To the majority of the Commissioners it appears that by such employment in the Revenue Department as they contemplate, a young man would acquire a better command of the native languages, which he must of necessity be continually using, than if he were occupied during the same time in the duty of an assessor to a court without any obligation or having any need to take an active part in the proceedings as an interlocutor. It appears to them, also, that a man whose duties have brought him into contact with people of all classes, and have afforded him opportunities of making himself acquainted with their manners and habits, their ways and forms of dealing, and intercourse with each other, and the details of their economy generally, who has conversed with them freely, and is used to hear them speak without reserve, is likely to be better able to deal with a witness so as to elicit the truth from him, and to know when he has got the truth; better able to estimate the value of native documents exhibited in evidence, and to understand the merits of causes turning upon the ordinary transactions and dealings of natives among themselves; better able, therefore, in general to perform the office of a judge, than one of the same standing who has had no opportunities of becoming acquainted with the character of the natives except as it has been exhibited by those whom he has had to do with only as adverse litigants, or as tutored witnesses, although by his practice in judicial business he may have become better versed in jurisprudence, and more expert in applying its principles and rules.

Ditto.

138. They do not apprehend, however, that a young man well grounded in jurisprudence by the education proposed to be given him in England, and having in view to attach himself eventually to the judicial line, and being of an age at which he may be expected to have attained some stability of character, would altogether neglect this science during his temporary employment in active duties in other branches of the service. They would expect him rather to prosecute the study and to improve his theoretical knowledge whilst laying up a store of information and experience which must be of the greatest service to him when he is called upon to apply that knowledge practically in the discharge of judicial functions.

On the completion of their probationary course, the judicial servants to be appointed judges of courts of original jurisdiction, then to rise to the office of zillah judge, and afterwards to be eligible, according to merit, to the situation of sudder judge.

139. On the completion of the last stage of his probationary course, the civil servant should be eligible to the office of judge of a court of primary jurisdiction, from which he should be promoted in his turn to the situation of zillah judge of appeal, and from the most distinguished of the officers of this grade the judges of the sudder courts should be selected. The number of courts of original jurisdiction to be reserved according to this plan for the covenanted officers, should, as far as practicable, be so regulated as to insure to each three years' experience, in the trial of original suits, before his promotion to be a zillah judge.*

Modification of a recommendation connected with this subject in a former Report.

140. By thus securing to the civil servants destined eventually to superintend and control the native judicatures an appropriate training in the first place, and afterwards a due degree of experience in the administration of justice in courts of primary jurisdiction, we think a sufficient remedy will be provided for the great defect which we noticed as attaching to the present judicial systems of Bengal and Bombay. And with the full information which we have obtained in the course of our

* We have adverted in two previous notes to the manner in which the institutions which we contemplate for the improvement of the English portion of Indian judicature may be made conducive to the judicial education of the young civil servants. The subordinate civil courts will consist of several judges with various degrees of knowledge, and various amounts of salary. They will have to administer English law, Hindoo law, and Mahomedan law. The chief of each court will distribute the suits among himself and his colleagues (after the plaintiff has disclosed the nature of each suit) according to the qualifications of each. Now we think that when this court shall be established, young civil servants, before they are sent to administer justice in the *mosussil*, might officiate as inferior judges. None but the most simple suits would be confided to them in the beginning of their career, by the chief of the court, none but such suits as, according to the theory of the present system, are intended to be brought before the court of requests. There are provisions in our scheme for the transfer of suits to judges of higher qualifications if unexpected difficulties should emerge in the course of their investigation. The young civil servant will thus exercise the judicial function in such a manner that his mistakes may be prevented, by the transfer of the suit, or by consultation with his superiors, or may be set right by an immediate appeal on the spot. He will exercise his function under the eye of the College of Justice and the Government, and in the presence of the watchful and not very submissive public of the capital. He will acquire habits of attention and method, and the art of weighing evidence, and of separating law from fact.

our present consideration of this subject, we would wish to modify on the same principle the recommendation we submitted in a late Report on the proposed change in the judicial establishments at Madras, to the effect that all original jurisdiction should be left eventually in the hands of the native judges.

141. In order that those who have once become attached to the Judicial Department may have no cause for disappointment, with reference to the pecuniary advantages of other lines, the emoluments of it should be so adjusted as to render it on the whole the most lucrative branch of the service;

Emoluments of the
judicial branch of the
service

142. Having thus submitted to your Lordship the suggestions which have occurred to us on the first topic proposed for consideration, we proceed to the second, viz the expediency of appointing a chief judge with superior emoluments to each of the supreme native courts.

Second topic -
Expediency of appoint-
ing a chief judge to each
sudder court.

143. In England, the judges of the superior courts sit together, in the presence of a numerous bar, and a large concourse of spectators. In those courts there are numerous occasions, besides the pronouncing of decisions, on which it is fitting that only a single authority should speak in the name of the court. On all such occasions it is desirable that what is delivered should be expressed with propriety and dignity of language and manner, and not merely that it should be unobjectionable in substance. There are also many occasions in which decisions are pronounced, where, if the chief justice delivers his opinion on the law, or facts, correctly, and in a luminous manner, the judges who follow will be shorter in the exposition of their own views, and will frequently do no more than express a simple assent. In this manner a great deal of time is saved to courts. In England, also, the chief justices have in charge the *Nisi Prius* sittings at Westminster and London (including most of the great mercantile causes) in addition to their share of assize business. This is, perhaps, the most difficult duty discharged by the English judges. It may be added, that, until very recently the Chief Baron of the Exchequer discharged, alone, a large equitable jurisdiction, he at present tries all the revenue jury cases. The Chief Justice of the Queen's Bench is Coroner of England. The chief justices are usually appointed to the Privy Council; and more than one of them are commonly promoted to the House of Lords, where their services have often been of great utility upon judicial appeals, as well as other legal matters. The present Chief Justice it is believed exercises particular functions in conducting the business of the House of Lords. The chief justices are, moreover, entrusted with various *ex officio* duties of minor importance, including the appointment to several subordinate offices.

Reasons for appoint-
ment of chief justices
in England.

144. As the occupation of chief justices in England requires, rather than that of puisne judges, powers of communicating their sentiments with impressive effect in the presence of a public audience, whilst the most valuable qualifications of puisne judges are frequently not combined in any high degree with that of eloquence; so, in England, there is no difficulty in selecting for the one or other station. The Attorney-general usually succeeds to any vacant chief justiceship. The Attorney-general will commonly be a person competent to take a part in the debates of the House of Commons; at all events, he will generally have acquired distinction as a leader of causes. The talents of a leader of causes, and those of a learned and sensible juror, who, possibly, would be very incompetent to address a jury with effect, but the value of whose legal opinions was generally appreciated, will often indicate the proper person to be selected with a view to a chief justiceship or puisne judgeship. The promotion of a puisne judge to a chief justiceship is unusual; and if it were common it might tend to shake the public opinion in the independence of the puisne judges. It often happens, in England, that the puisne judges of a court have, in many trials, at *Nisi Prius*, acted under the control and directions of the chief justice, as their leader.

Qualifications for those
offices, and selection
for them

145. In India, none of these circumstances exist to affect the constitution of the Company's supreme courts. The functions of the sudder judges are confined to the judicial business before their courts. In Bengal, and Bombay, the greatest part of the civil business of these courts is disposed of by the judges sitting singly. In the Sudder Court at Calcutta, about two-thirds of the civil suits are thus disposed of; and in that of Bombay, about one half, and the same might take place at Madras under the existing law. The number of intelligent practitioners is very small, and we believe the audience, generally speaking, consists of little more than the parties interested or their agents and authorised

Contrast of circum-
stances in India, as
affecting the sudder
courts.

No. 9.
Training of Junior
Civil Servants

And the appointment
of the Indian judges

Proposed college of
justice.

Ditto

Ditto

Last topic Expediency of investing the
sudder courts with
original jurisdiction

Reasons against such
a measure

Ditto

Ditto

authorised pleaders, and other parties or their agents awaiting the trial of their own suits.

146. Nor do the circumstances of the two countries differ less with regard to the mode in which the judges are appointed. The sphere of selection for the highest judicial offices under the Company's control is limited to the civil service, in which promotion is regulated on the principle of seniority as the general rule. It is seldom that very superior qualifications are to be found in any particular judge which would render his elevation to an eminent position in the court conducive to its greater respectability, and the improvement of the administration of justice; whilst from the peculiar nature of the civil service, selection according to individual merit, unless that merit is generally acknowledged, has been found to create dissatisfaction. Indeed, it was an inconvenience of this description which induced the Government of Bengal, in 1829, to abolish the distinctive appellation of the judges of the Sudder Court, and as the duties of all the sudder judges are essentially the same, there does not appear to be any sufficient reason, while the constitution of the Sudder Court remains in other respects unaltered, for re-establishing the distinction of rank and emolument that formerly prevailed.

147. The highest courts in the country which we shall recommend (and which, for the sake of distinguishing them from the present supreme courts, we propose to call the colleges of justice) will consist of the judges of the supreme courts, and the judges of the sudder courts. The chief justice of the Supreme Court will become the chief of the College of Justice.

148. Should our recommendation on this subject meet with the approval of the government of India, the chief justice, as president of the college, will be invested with certain powers of superintendence and direction, which would give consistency to its proceedings; whilst the combination of the knowledge and experience of the English and Indian judges would tend greatly to improve the practice of the courts, and generally to raise the standard of the judicial administration.

149. We admit that the appointment of English lawyers to preside over courts which are to superintend all the judicial establishments is not unattended with risk, but we think, that, upon the whole, it is preferable to the appointment of judicial servants of the Company; for we think it more probable, in these days, that an English lawyer may be found free from the narrow prejudices, which his professional education has, it may be admitted, a tendency to create, than that a judicial servant of the Company should be found with a mind sufficiently disciplined in the principles and distinctions of jurisprudence to watch effectually over the whole administration of justice.

150. The last subject is the expediency of investing the sudder courts with a limited extent of original jurisdiction.

151. To this measure we think there are, under present circumstances, serious objections. We consider the great object of the sudder courts to be, to fix and maintain right principles, to preserve uniformity in the administration of the law; and to exercise a general supervision and control over all the inferior courts. The system of special appeals, which we have recommended in our Report of the 4th December 1841, for the better attainment of this object, would throw open the sudder courts to a large class of appeals now altogether excluded from them, and we believe the present number of judges would not be found more than sufficient to the despatch of the business so increased, even under the modification of the present practice of trying special appeals which we have suggested in the same Report.

152. We entirely agree with your Lordship that "no man can be capable of appreciating the value of evidence who has never heard a witness examined, and who is not well acquainted with the mode of conducting causes in courts of justice, and generally with the national character, as well as the national languages; for upon the value of such evidence, and such knowledge of character and of language, the decision must in most cases depend."

153. In most cases the decision must depend upon these things, but not in all; and even in those cases in which it does depend upon these things, it does not depend upon these things only. In many cases it depends wholly, or in part upon

upon a correct knowledge of the principles of law or jurisprudence, upon the habit of applying these principles to the facts which evidence establishes, upon the habit of eliciting from the evidence (assuming it to be credible) the facts which form a proper basis for the application of the principles of law or jurisprudence.

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154. We now take the liberty of observing that this knowledge and these habits are what are specially requisite in an appellate judge. We admit that no man ought to be appointed an appellate judge who has not acquired practical skill in the decision of original suits.

Reasons against such a measure.

155. We admit, also, that if considerations of economy do not forbid, the practical skill thus acquired by the appellate judge might with advantage be kept up by the occasional exercise of original jurisdiction, while the ordinary judges of first instance would derive benefit from the model thus exhibited to their observation.

Ditto.

156. But we hold that, as the qualities most essential in an appellate judge are not likely to be found united to an intimate acquaintance with the national character and the national languages, it will be expedient to have some judges in the appellate court whose unacquaintance with the national character and languages must be excused on account of that knowledge of law and jurisprudence, and of those judicial habits which at present, at least, can be most effectually acquired in courts of English judicature.

Ditto.

157. There are three functions, as it seems to us, which an appellate court may perform, though it does not follow that every appellate court performs all the three. First, to say whether the evidence appears to have been properly taken and properly appreciated by the court below; if not, the course is to have it investigated afresh, either by the same or another court of original jurisdiction.

Functions of an appellate court

158. The appellate court ought never, we think, to set up its own opinion in opposition to that of the court which heard the witnesses give their evidence, further than to order a fresh investigation; but it may, upon reasonable grounds of doubt, order that the same inferior court, or another, should hear the witnesses over again, or merely that the inferior court should reconsider its finding.

Ditto

159. The only one of these three courses known in English practice, is the second. Upon a motion for a new trial upon the ground that the case has not been properly investigated by the judge and jury at nisi prius, the court, if it assents to the grounds of the motion, orders that the case shall be investigated again by another jury. The evanescent nature of a jury makes it impossible to direct that the same jury should either reconsider its finding, or investigate the case afresh.

Ditto

160. In the supreme courts of India, there being no trials at nisi prius, and no jury in civil cases, the analogy of English practice is preserved, as far as those important differences permit, by the court which first tried the cause ordering a new trial before itself; a proceeding which seems to be recommended by nothing but the preservation (little more than nominal) of the above-mentioned analogy.

Ditto

161. Secondly, the appellate court has to say whether the facts of the case have been correctly elicited from the evidence (assuming the inferior judge's opinion of the credibility of the evidence to be correct.) If it thinks they have not, it should correct the error itself. This is what is done in English practice upon a demurrer to evidence.

Ditto

162. Lastly, the appellate court has to say whether the court below has correctly applied the law to the facts. Here, again, if it thinks the court below has erred, it sets right the error without any further inquiry.

Ditto

163. If this is a correct account of appellate judicature, the appreciation of testimony from the national character, and the demeanor of witnesses, is no part of it, though we do not deny that an appellate judge who is capable of such appreciation would bring to the decision of questions of law more of the desired acuteness

Ditto

* Note—It is not everything called a fact in common speech that is a fact for this purpose "Factum vocamus omnem eventum qui ad jura vel constituenda, vel immutanda, vel tollenda valet." Mühlenbruch, *Doctrina Pandectarum*, I, 173.

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Commissioners request permission to submit a copy of this address to the Honorable the President in Council in reply to official references on the subject of the judicial training of the junior civil servants.

acuteness of mind, and perspicuity of judgment, than one who has not that advantage.

164. In conclusion, we beg to apprise your Lordship that the question of the best mode of training the junior civil servants in the judicial department was referred to us by order of the honourable the president in court, in August* 1838, to be considered in connexion with the general system of judicial procedure; and as this address contains all that has occurred to us on the subject, we take the liberty of requesting your Lordship's permission to submit a copy of it to the Honourable the President in Council, as a formal reply to the official communication adverted to.

We have, &c.,
(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Elliott.
H. Borradaile.

(A true copy.)

J. C. C. Sutherland, Secretary.

Mr. Cameron's MINUTE on the Means of educating for Judicial Functions.

THE Committee of Public Instruction suggest, as the best mode of supplying the want of official knowledge, as well in the young men educated at the public seminaries as in others, that "a certain number (say five) of native assistants on small salaries should be appointed to each district, three of whom might be placed at the disposal of the judge, and two under the orders of the revenue commissioner, the latter being available for employment in any district of the division at the discretion of that officer. The three attached to the judge might be posted," the committee proceed to suggest, "according to his judgment, either in his own court or that of the principal sudder-ameen, where they would be very useful, after a short time, as confidential clerks, and they would obtain the very best practical education, especially as to details and forms for munsiffs."

Having myself, on a former occasion, been obliged to give much of my attention to the subject of preparing natives of the East for the judicial office by appropriate moral and intellectual culture; I am desirous of now stating the opinion at which I arrived: and for this purpose these papers have, at my request, been transferred to the legislative department.

The occasion which attracted my attention to the subject was the preparation of a plan for judicial establishments for the island of Ceylon, which was part of my duty as a Commissioner of Eastern Inquiry under the Colonial-office.

As the least troublesome mode of explaining my views, I annex the letter to Lord Goderich, in which I proposed, that in every court of original jurisdiction there should be a paid and permanent officer assisting the judge throughout the conduct of the cause, and giving his opinion upon every matter arising for decision, which opinion, however, should have no legal effect, and indeed no other effect than such moral influence as the learning and character of the officer delivering it, and the arguments by which he might support it, should produce upon the mind of the judge.

This proposition received the assent of the Secretary of State for the Colonies, and the plan has been gradually brought into operation at Ceylon. It is there connected with the plan of assessors which I had previously recommended; but there is, of course, no necessary connexion between them. A paid and permanent officer, with the proposed functions, might sit in every court, though no unpaid and unofficial colleagues were associated with him.

To the reasons adduced in my letter to Lord Goderich I have now only to add some remarks upon the merits of the plan, as compared with other plans which have been proposed or adopted for the attainment of the same end.

I am only aware of three such plans.

1. The plan of appointing the probationer to a clerkship or other office in a court of justice.

2. The

* Mr. Officiating Secretary Maddock's letter, No. 232, dated 13th August 1838, and No. 295, dated 20th idem.

2. The plan of appointing the probationer a judge for the decision of small causes.

3. The plan of appointing the probationer to take the evidence upon which the judge is afterwards to decide.

1. The first is the plan which forms part of the recommendation of the Committee of Public Instruction, and it is, I think, much to be preferred to the other two; but it is liable to objections which do not apply to my proposition, and which in my judgment far outweigh the small advantage which I admit it to possess in point of economy.

For, a person employed as a clerk or other officer of court, though he does indeed witness with more or less attention the transaction of judicial business, does not himself transact it. The process necessary for coming to a correct decision, the process necessary for making a decree, does not pass through his mind; he does not acquire actual experience of that duty for which it was intended to fit him.

2. In the second plan the probationer (if it be not abuse of language to call him so), whose business it is to hear and decide small causes, does indeed acquire actual experience, but he acquires it at the expense of the unfortunate suitors, on whom his education inflicts all the misery resulting, not only from injustice, but from injustice aggravated by the fallacious promise of justice.

Moreover, as small causes are generally the causes of the poor, and large causes are generally the causes of the rich, the unseemly spectacle is exhibited of a judge learning to adjudicate well the rights of the great and opulent, by adjudicating well or ill the rights of the vulgar.

3. The third plan, that of making the probationer (if here again it be not an abuse of language to call him so) take evidence upon which the judge is afterwards to decide, is open to the objections which have been stated against both the others. It is not, indeed, open to these objections in so great a degree as each is respectively to its own share of them; but it is liable to another of very great weight, viz. that it separates two functions, those of hearing and deciding, the union of which is essential to the best constitution of a court.

The arrangement which this plan suggests for educating men to the administration of justice is such, that under it the administration of justice must be defective even though performed by the best-educated men. In the plan which I propose there is no such injurious distribution of the functions of hearing and deciding.

In that plan the probationer actually transacts judicial business himself. He actually performs every office which he would perform if he were a judge, not even excepting the office of deciding; but his decision can do no harm. He gets all the benefits of real experience, without inflicting upon the suitors any of those evils to which judicial inexperience gives rise.

I have now only a few words to say on the economical part of the subject. I must candidly admit that the plan I propose is more expensive than any of its three competitors; for in all of them the probationer, though paid by the public, is not paid for learning the business of a judge, but for some service which must at any rate be performed, and for the performance of which the public must at any rate pay.

I submit, however, that if my reasonings are sound, the expense of training judges in the manner I suggest will be far more than repaid by the advantage of placing on every bench a man who begins his judicial career with a thorough practical knowledge of his duty. Of course, during the illness or temporary absence of the judge, the probationer will be generally competent to transact any business of routine.

The expense, too, of training judges in this manner will be really much less than it may appear at first sight. It will probably become still less as the plan works and becomes understood. It may perhaps vanish altogether in the course of a few years; for independently of any salary which may be paid to the probationer, he will have a strong temptation to accept the office in the promise which should be made to him that nothing but some moral or intellectual defect will prevent his being in due time promoted to the bench.

That such a promise will operate as a very strong inducement is made certain by experience. In England, young men are tempted by the very uncertain chance of success at the bar, not only to do gratuitously the work of other men, but pay

100 guineas a year during two or three years, for the privilege of being allowed to do it.

Now, though it is probable that the candidates for the office of munsiff will be too poor to pay for the instruction to be thus afforded, or even to subsist without some salary, it is, I think, clear that a very small salary indeed will be sufficient from the first, and perhaps none at all hereafter will be necessary. The functions of the probationer are not such as to require that he should be well paid, as a security against bribery; it can be worth no man's while to offer him a bribe.

It is to be observed, besides, that although my plan requires an immediate expenditure of money, which the others do not, it will appear upon examination that this expenditure is not all to be placed to the account of judicial training. I expect, from the adoption of the plan, a further collateral advantage, itself worth some pecuniary sacrifice. It seems to me that we shall have what is good in a plurality of judges, while we avoid what is evil in that arrangement.

A plurality of judges is mischievous, because the disadvantage of dividing and weakening responsibility outweighs the benefit resulting from the joint application of several minds to the same subject.

Here will be two minds applied impartially to the examination and discussion of each cause, while the legal responsibility of the decision is concentrated upon one.

The probationer, upon this plan, may be regarded in some respects as an advocate, only that instead of being the advocate of a party, exercising his ingenuity in one out of two cases to mislead the court, he will be the advocate of truth and justice, stimulated by the hope of promotion to the bench, to do his utmost for the interest of those his clients.

Two objections have been suggested to me which are certainly deserving of notice.

First, it may be objected that each suit will consume more time than it now does.

Each suit will certainly consume more time than it now does; but, before we can pronounce this to be an evil, we must know whether the time now consumed is sufficient for a thorough investigation of the case.

It seems to me that a judge sitting without colleagues, without jury or assessors, and without any effective public, is likely to be in too great a hurry. He has scarcely any adequate motive for stating to himself distinctly the grounds of the opinion which the evidence and arguments may impress upon his mind. A judge so situated must be apt to decide, without any separation of law from fact, of the sound argument from the sophistry which may have been addressed to him, and of the trustworthy from the suspected evidence which may have been adduced.

He must, I think, be prone to make up his mind upon the whole matter in the gross, just as an unpractised man makes up his mind in common life when two conflicting stories are told him; and, seeing, or thinking he sees, that one of the contending parties is right, and the other wrong, he pronounces accordingly.

This is not the proper mode of arriving at any decision, least of all a judicial decision, which ought to show what propositions the judge assumes as law, and what propositions of fact he considers to be established; and I am, therefore, of opinion that time, which will be for the most part employed on the analysis above mentioned (as will probably be the case when two men have to record their joint opinions upon a complicated matter which they have examined together) is upon the whole time well spent, even though some of it may be consumed in superfluous discussions.

The second objection is that the responsibility of the judge will be divided and thus weakened. As the opinion of the probationer will have no legal effect, the legal responsibility will not be divided. His moral responsibility will, however, be in a slight degree shared by the probationer, and in that respect weakened; but on the other hand both his legal and moral responsibility will be strengthened, because his decision will be so much more open to criticism when the steps by which he arrives at it are thus laid open.

Before I conclude, it may be proper to say a few words upon the mode adopted in Great Britain for selecting persons for a judicial office.

The judges are there invariably selected from among practitioners at the bar; but justice is there administered under circumstances so very favorable to the purity and learning both of the bar and the bench, that, however excellent the judges may have generally been who have gone through this kind of training for their

their office, much of their excellence cannot, I think, be attributed to that training. It is rather to political and social, than to professional causes, that the lawyers of the mother country owe their freedom from pecuniary corruption, and with regard to intellectual qualities, those which insure success to the advocate who is maintaining one side of the question, are by no means the best calculated to insure a just discrimination of the merits of both sides.

Eloquence, skill in cross-examination, and readiness in taking advantage of any real or seeming flaw in the adversary's case, are indeed qualities which are capable of a beneficent application. † But they are exerted at the bar avowedly and systematically without reference to the merits of the case.

Even thus exerted they do not fail to produce some good, but that is because they are generally to be found arrayed in something approaching to an equal degree both on the part of the plaintiff and defendant.

But it cannot be doubted that they are calculated to engender a habit of mind the reverse of what is desirable in a judge; a habit of mind which the advocate must throw off before he can satisfactorily perform the nobler duties of the bench.

It is not necessary that I should go into a more elaborate examination of this part of the subject, as, for a long time to come, it is very unlikely that the bar of the mofussil courts, should be so much improved as to be thought advantageous seminaries for the education of judges, even by those who are disposed to attribute more merit than I do to the system of the mother country.

Since writing the above I have referred to M. Dumont's work, *De l'Organisation Judiciaire*, chap. ix, of which I had only a general recollection, and there I find that the plan of training judges, which received the sanction of Mr. Bentham's high authority, is that there should be a judge-delegate in each court to whom the principal judge should refer such causes as he thinks fit.

It is not said how the principal judge is to distinguish the causes which he selects for reference to his delegate. Probably Mr. Bentham intended that the causes should not be selected until the pleading is completed, and the matter ripe for argument or trial.

This plan is open, in a slight degree, to the objections I have urged against the second and third of the plans examined above, and would, I fear, have a great tendency in this country to degenerate into the second plan; and therefore, notwithstanding the great name of the inventor and the merit of the invention, I still venture to prefer my own.

(signed) C. H. Cameron.

March 1838.

LETTER from Charles Hay Cameron, Esq to the Right honourable Viscount Goderich.

My Lord,

Chester-street, 10 August 1832.

I took from C H
Cameron, Esq 10 Aug
1832

In the report I had the honour to address to your Lordship on the 31st January last, I recommended that each court of original jurisdiction in Ceylon should consist of one judge and three assessors, and that the assessors should be chosen as the jurymen now are in the maritime provinces, p. 78; Ceylon Reports.

I stated to your Lordship at some length, in that Report, the reasons which appeared to me to justify the scheme of judicature described in it. But it has since occurred to me, that by a slight modification, that scheme may be made subservient to the very important and beneficial purpose of giving to a class of native functionaries the skill and integrity necessary to render them fit for becoming judges of original jurisdiction.

Vide Paper presented
13th March 1832, to
House of Commons,
No 274.

If this object can be accomplished, a very great saving of expense will ensue; for the salary with which a native judge would be amply remunerated is quite trifling, in comparison with the amount necessary to tempt a competent European to undertake so laborious an office in so warm a climate, and in so distant a region.

But, independently of the economical question, it is of the utmost importance, with a view to the future stability of our dominion in the East, and the improvement of our native subjects in general, that the higher classes among them should be rendered morally and intellectually competent to fill offices of trust.

What I now propose is, that one of the three assessors in each court of original jurisdiction should be a permanently official person, receiving such a moderate salary

300.

salary as will be necessary to remunerate a native of respectable station for giving up his whole time to the public.

It would be scarcely worth the while of any suitor to attempt to bribe or intimidate a functionary having so little power to affect the fate of the cause, except by reasons founded in law and justice; and as all the functions of the official assessor will be performed under the eye of the European judge and public, an attempt on his part to sacrifice justice to his private interests could hardly end in anything but detection and disgrace.

Here, then, will be a public servant, obliged by his office to revolve constantly in his mind the maxims of law and morality, and to assist, by his opinion and advice, in the application of them to the real business of life, who will at the same time be removed by his peculiar position, from all temptation to pervert those maxims to purposes of chicanery, fraud, or oppression.

It seems difficult to imagine a situation better calculated to strengthen the principles of morality, by exercising them in the solution of real and practical questions, and at the same time to avoid the mischiefs which might result from the insecure hold which those principles have hitherto acquired over the minds of the natives in general.

A native who has for some years been subjected to this discipline, and who has gone through his novitiate with credit, may, I think, be very safely placed in the more arduous and responsible office of a judge of original jurisdiction, and by such an appointment four-fifths of the salary necessary to remunerate a European judge will be saved to the public, the honourable ambition of the upper classes of natives will be safely gratified, and the great mass of the people will be bound by ties of affection to a government which ceases to withhold offices of power and emolument from its native subjects, as soon as they become qualified to fill them with advantage to the native community.

I have, &c.

(signed) C. H. Cameron.

MINUTE of Mr. Cameron, on the subject of the Recommendations contained in Paragraph 126.

1. UPON this recommendation I have the misfortune to differ from my colleagues. I would have the time, which they think should be passed in the revenue and police departments, occupied in sitting as an official assessor at the presidency or in the mofussil, and in performing such ministerial duties, as the judge may properly delegate.

2. It is said that in India, and particularly in the presidencies of Madras and Bombay, a young civil servant, who has passed some years in the revenue department, makes a better judge than one who, under the present system, has been always employed in the judicial department.

3. This proposition is proved by so many and such competent witnesses, that I cannot refuse my assent to it.

4. But under the present system there is nothing that can be properly called judicial apprenticeship, excepting the appeal (and the appeal considered as a means of instructing inexperienced judges is a most defective instrument) there is nothing to correct the erroneous notions which a young man may fall into at the commencement of his judicial career, and it is consequently probable that many of those erroneous notions may become inveterate.

5. But in our scheme of official assessors there is a real apprenticeship under a competent instructor always present, and ready to remove the false impressions which might otherwise mislead the beginner.

6. I do not, therefore, hold the proposition which I admit to be proved by testimony, to be conclusive of the present question, and with respect to certain arguments which I have seen used in support of that proposition, and which if sound, would be conclusive of the present question, I think I can show that those arguments involve a great and very dangerous, because very plausible, fallacy.

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7. The fallacy is that of not distinguishing between the knowledge which a judge ought to bring into court, and the knowledge which he ought to acquire in court, through the various instruments of evidence; or, in other words, of not distinguishing between jurisprudence and the several subject-matters to which the principles of law and justice are applied by means of jurisprudence.

8 I admit that a knowledge of the several subject-matters which he has to deal with, would be useful to a judge, if he could acquire that knowledge without sacrificing time which ought to be occupied in the study of law and jurisprudence. But believing that such knowledge cannot be acquired without making that sacrifice, I think upon the whole such knowledge is not useful to a judge.

9. With regard to such subject-matters as only appear at intervals in courts of justice, there is probably no difference of opinion among thinking men. No one probably would contend that a judge ought to make himself a good chemist or a good navigator, because he may have occasionally to decide suits for infringing a chemical patent, or for running down a ship. But in the courts of the East India Company, so many suits relate to subject-matters connected with the revenue system of the country, that men of great and deserved reputation have thought a judge ought, on that account, to have a practical knowledge of that system.

10. An aspirant to a seat on the bench of these courts ought certainly to learn the revenue law which he is to administer. He ought also to learn, by constant attendance in court, how that law is to be applied to the affairs of men. But that he should, on this account, go through such an apprenticeship as would fit him for the discharge of a revenue office, is to require something of him which cannot be attained without a very serious interruption of his properly judicial education.

11. Let us consider a question of the same kind where there is no authority of respected names to withdraw our consideration from the mere reason of the thing.

12 There is in the county of Cornwall a court called the Court of the Stannaries, in which all the suits arising out of the business of mining are decided. How should an aspirant to the bench of that court be educated? I should say he ought to learn the general law of England, and the particular law of the mining districts by reading, and so much of the business of mining as may be thought necessary to him by sitting as an official assessor to the present judge. He will thus acquire at the same time a practical knowledge of Cornish mining, so far as it forms the subject-matter of lawsuits, and of law as applied to Cornish mining; whereas, if he were sent for three years to acquire practical knowledge under the superintendent of a copper mine, it is to be feared that there would be an irreparable hiatus in his judicial pursuits.

13 The grounds, however, on which my colleagues recommend a revenue apprenticeship for judicial officers, are different from those of which I have been endeavouring to expose the fallacy.

14 To them "it appears that by such employment in the revenue department as they contemplate, a young man would acquire a better command of the native languages, which he must of necessity be continually using, than if he were occupied during the same time in the duty of an assessor to a court without any obligation, or having any need to take an active part in the proceedings as an interlocutor."

15. As the official assessor is bound to express an opinion upon the case, and as he is liable to be consulted by the judge at any moment during its progress, it seems to me that the shame of being obliged to confess, or of letting it be seen in public that he does not understand what is said, would be a very powerful stimulus to the acquisition of the language in which the proceedings are conducted, such a stimulus as I should suppose none but the incorrigibly idle and worthless could disregard.

16. It also appears to my colleagues that "a man whose duties have brought him into contact with people of all classes, and have afforded him opportunities of making himself acquainted with their manners and habits, their ways and forms of dealing and intercourse with each other, and the details of their economy generally, who has conversed with them freely, and is used to hear them speak without reserve, is likely to be better able to deal with a witness, so as to elicit the truth from

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from him, and to know when he has got the truth; better able to estimate the value of native documents exhibited in evidence, and to understand the merits of causes turning upon the ordinary transactions and dealings of natives among themselves; better able, therefore, in general, to perform the office of a judge, than one of the same standing who has had no opportunities of becoming acquainted with the character of the natives except as it has been exhibited by those whom he has had to do with only as adverse litigants, or as tutored witnesses."

17. If the question were simply which of these two men is likely to know most of the natives generally, I should not probably have much difficulty in giving the same answer as my colleagues would give; but the question is, which of these two men is likely to know most of the natives, considered as "adverse litigants and tutored witnesses"? To that question I am compelled to answer, "he who has devoted his time to the study of them in that particular character, under the advice and correction of a man who has already acquired expertness in the process of examination, and sagacity in estimating the results."

If it should be objected to my opinion that the popular theory of the jury is opposed to it, I can only answer that I hold the popular theory of the jury to be fundamentally and completely erroneous.

July 1842.

(signed) C. H. Cameron

(True copies)

East India House, }
26 May 1843. }

(signed) T. L. Peacock,
Examiner of India Correspondence.