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RELATING TO SLAVERY IN THE EAST INDIES.

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APPENDIX III.

REPORTS OF CASES connected with Slavery in India.

1. Mussummaut Chutroo *versus* Mussummaut Jussa.
2. Shekh Khawaj und others *versus* Muhammad Sabir.
3. Kewal Ram Deo and others *versus* Golak Narayan Ray.
4. Kishn Chandar Datt Chaudhari *versus* Bir Bal Bhandari and others.
5. Mahant Surjan Puri *versus* Basanti (female) and others.
6. Kirti Narayan Deo and others *versus* Gauri Sankar Ray.
7. Nair, *alias* Narayan Singh, Pauper, *versus* Ramnath Sarma and others.
8. Loknath Datt Majmuadar and others *versus* Kubir Bhandari and others.
9. Shekh Hazari and others *versus* Dewan Masnad Ali (Nizamut case).
10. Ram Gopal Deo *versus* Gokal Chandra and others.
11. Taki and others, Appellants.

Mussummaut Chutroo, Appellant, versus Mussummaut Jussa, Respondent.

No. 1.

28 March 1822.

THE respondent, Jussa, was plaintiff in an action brought against Chutroo, in the city of Benares, on the 2d of December 1815, for the recovery of 1,400 rupees, on account of a monthly allowance due agreeably to a written engagement. The defendant suffered judgment to go by default. On the 24th of February 1818, the register of that court dismissed the suit of the plaintiff on the following grounds:—

The suit appeared to be founded on the plea, that the defendant had been entirely brought up and educated by the plaintiff. The defendant leaving her, and going to live with Baboo Surub Jeet Sing, the plaintiff preferred a complaint, in the Foujdarry court, against the said Baboo, in which she stated that Chutroo had executed a written obligation, promising to pay monthly to her mistress, that is to say, the plaintiff, the sum of 25 rupees, not however specifying the period during which the allowance was to continue. A compromise was made, and the defendant, Chutroo, paid to Jussa 750 rupees, or a sum sufficient to recompense her for her care and instruction. The written engagement, on which the present action was brought, did not specify that the plaintiff was to receive the said sum during her life; and though at the time of its execution, the defendant, then a young girl, had it in her power to have given more, yet, owing to her advanced age, she did not then appear to be able to pay such a sum.

On these grounds the suit was dismissed, and the costs made payable by the respective parties; on this the plaintiff, Jussa, appealed to the provincial court of Benares. The third judge of that court (in conformity with the opinion of the senior judge) deeming the authenticity of the written obligation to be sufficiently established, and being of opinion that so long as Mussummaut Chutroo was not under the control of her mistress, the latter had a right to the monthly stipend above mentioned, and that it was proved from the proceedings in the Foujdarry court, that the former had absconded with various ornaments and wearing apparel belonging to the latter, for which no equivalent had yet been received, reversed the decree of the register, and passed a decision in favour of Mussummaut Jussa, directing that she should receive from Chutroo the sum of 1,400 rupees on account of the monthly stipend of 25 rupees, from the 8th of February 1811 up to the 8th of October 1815; also, 1,175 rupees, on account of the same allowance, from October the 8th, 1815, up to the 8th of September 1819; and, in future, from the 8th of September 1819, as long as the latter remained out of her control, she was to pay her monthly the sum of 25 rupees. From this decree Chutroo was allowed to bring a special appeal to the court of Sudder Dewanny Adawlut. After attentively going through all the proceedings, the chief and officiating judges (W. Leycester and W. Dorn), before whom the case was finally heard, on the 25th of March 1822, recorded their opinion to the following effect:—

The fact of the execution of the deed under which the respondent claims is not established to the satisfaction of the court; and, according to the allegation of the defendant, it was executed by Baboo Surub Jeet Sing without her knowledge or consent. Admitting it, however, to have been established by sufficient proof, still there remains a question as to the legality of its provisions. It appears that both parties were of the Mahomedan persuasion; now it has been proved by a formal exposition of the law, as delivered by the mouluvees of this court on a former occasion,* a copy of which has been filed with the proceedings agreeably

A dancing girl having left her mistress, by whom she had been purchased when a child and educated, and having discontinued the payment of monthly allowance to which she had bound herself by a written obligation, on a suit by the mistress to enforce the engagement or recover the girl, claim disallowed, the girl not being legally a slave, and the mistress not having proved that what had already been received was insufficient to cover the expense of her education

* The case here alluded to originated in the year 1816, in the district of Furruckabad. A girl had been purchased when an infant from her parents by a prostitute, and having been educated in the courses, and for a long time followed the disreputable practices of her mistress, she at length attracted the special notice of

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agreeably to the order of the court, as well as from the tenor of the futwah of the said moulavees on the present occasion, that unless Chutroo was the lawful slave of Jussa, she (Jussa) had no right to exercise any control over her, or to cause her to do any act contrary to her wishes and inclination. The magistrate of the Foujdarry court would have had no power to cause Chutroo to be given to her mistress, Jussa, had the case not been compromised. In this case there is no proof that Chutroo was the legal slave of Jussa; it is merely set forth by the plaintiff that she had educated the defendant from her childhood; and it is a well-known fact, that, in Benares, many children are annually stolen and sold to the persons who profess dancing and singing; besides, it is equally notorious that those people obtain much of their livelihood by the practice of prostitution. It is incumbent on the judicial authorities to abstain, without the fullest proof of free will, from countenancing the servitude of any individual entitled to freedom; and in the present case, in the absence of any such proof, an order of a compulsory nature would have been clearly illegal. Even if the execution of the deed were proved to have been by the consent of the girl, it was nevertheless a nude pact, and a contract which did not promise her any equivalent; in other words, an undertaking to pay a sum of money in consideration of being exempted from a control to which the contracting party was not legally subject; or, as the alternative, to return to a state of servitude, which the law in her case did not recognize. Such an undertaking, then, as this is utterly illegal and unworthy of support. The respondent has not attempted to prove that she has not been fully reimbursed for whatever she might have expended by the sum of 750 rupees received by her from the appellant, and by the profits of her pupil during the time she remained with her; nor does it seem at all likely that what she received in this manner was less than her expenses for education. It is but equitable to consider her receipts equal to her disbursements on the above account. It is obvious, moreover, that if the appellant absconded with any ornaments or articles of dress belonging to the respondent, the latter is at liberty to bring an action for them, but that has nothing to do with the present case. With respect to the alleged customs of the dancers, on which the vakeels of the respondent lay considerable stress, it is sufficient to say, that such customs are in opposition to the law, and unworthy of being judicially recognized, from their manifest tyranny and injustice.

Accordingly the decree of the provincial court was reversed, and judgment was given in favour of the appellant. The costs were made payable by the respective parties.

No. 2.

Shekh Khawaj, Nawaz, Bolaki, Manik Muaiyin-uddin and Imam-uddin, Paupers, Appellants, versus Muhammad Sahir, Respondent.

28 August 1830.

A legal right to the service of another person can only arise to a Muslim, when the party claimed as a slave or his progenitor was an infidel captive to the Muslim force, prevailing in holy war.

On the 19th June 1824, in the zillah court of Dacca Jalalpore, respondent (estimating his cause of action at 501 rupees), against the appellants and others, instituted a suit to establish his property in, and recover the services of, seven male and eight female slaves, of the Muslim creed; viz. Bolaki, Nawaz, Khawaj and Iwaz (four brothers), and Manik, adult males, their respective mothers, wives and children. The parties claimed as slaves, as well as the two brothers, Imam-uddin and Muaiyin-uddin, and their sisters, were made defendants.

The case of plaintiff was this: "The 15 persons claimed are the hereditary slaves of my family, and descended to me from my father, Muhammad Bakir, who died in 1211 B. S. In 1217, Imam-uddin set up Musammat Jetan, as a widow of Bakshi Muhammad, the brother of my grandfather, Muhammad Jamal, and caused her to give to Zaki Manji, a conveyance of a moiety in the slaves, and a six anna share of a talukah inherited by me. Imam-uddin attested the conveyance. Zaki Manji failed in forcibly getting possession of the slaves, and under an order of the magistrate, sued for the share of the talukah, but his suit was dismissed. After this, Imam-uddin and his brother, by imposing on the magistrate, in Sawan 1230, obtained an order for the interference of the police darogha; whereby they deprived me of possession of these domestic slaves. I remonstrated in vain to the magistrate, and therefore under his directions seek redress by civil action."

Imam-uddin in his defence alleged, that the slaves were the joint property of the brothers, Zia Muhammad (his father), Muhammad Jamal (the plaintiff's grandfather), and Bakshi Muhammad. By a deed of partition, in 1166 B. S., the father of Manik, and grandfather of Bolaki and his brothers, were assigned to Zia Muhammad, and thus descended to him.

Plaintiff denied this, and alleged that Zia Muhammad had died without issue.

Bolaki

Hadi Yar Khan, a most respectable person, who agreed to marry her in the event of her relinquishing her unlawful occupation. This she consented to do, and, having left the house of her mistress, proceeded to that of the individual above named. The prostitute who had purchased her, and who, of course, dreaded considerable loss of profit from her departure, petitioned the magistrate of Furruckabad to compel her return, with which request that officer, from a mistaken notion of duty, complied. An appeal having been preferred from the above order, the opinions of the best authorities in that quarter were taken as to the validity or otherwise of the prostitute's claim; and the same question having been propounded to the law officers of the Sudder Dewanny Adawlut, they all unanimously declared that it rested on no legal foundation whatever; that a child purchased in its infancy was at full liberty, when of mature age, to act as best suited its inclination, and that it was even a duty incumbent on the magistrate to punish any attempt at compelling adherence to an immoral course of life.—For further information on this subject, see "Principles and Precedents of Mahomedan Law," article "Slavery."

Bolaki admitted that he and his brother were the hereditary slaves of plaintiff, and that he had deserted from his house, at the instigation of Imam-uddin, and expressed his readiness to revert to the service of plaintiff, if assured of forgiveness.

Manik, Khawaj and Nawaz, for selves and families, denied the right of plaintiff, and alleged that they had been the hereditary slaves of Muhammad Zia, father of Imam-uddin. They admitted occasional service in the house of plaintiff, in consequence of proximity of residence; and pleaded that against them, as Muslims, no legal claim for their services as slaves could lie.

On the 14th June 1821, the zillah judge passed judgment in favour of plaintiff, awarding his property in the persons claimed as hereditary slaves, and right to their services as such. Costs were made payable by Imam-uddin and his brother. The judge, from the evidence, found that Bolaki and Manik and their families were hereditary slaves in the family of plaintiff, and had descended to him as heritage. They had served in his house as such till 1230, when they were wrongfully removed by Imam-uddin, with the intervention of the police. The deed of partition exhibited by Imam-uddin was an obvious forgery. He claimed in right of Zia Muhammad; but it appeared that Zia Muhammad's widow, Chaud, had taken his estate as creditor for dower, and never opposed the plaintiff's possession of the slaves: it did not appear who were her legal heirs, but that point was irrelevant. Moreover, Imam-uddin had attested the conveyance of a share in the slaves to Zaki Manji, from Jetan; and this fact was repugnant to his later pretensions. In the contest, too, between plaintiff and Zaki, neither Imam-uddin nor his brother had intervened.

On the appeal of Imam-uddin, Muaiyin-uddin, Nawaz, Khawaj and Manik, the Dacca court of appeal, on 4th February 1829 (sitting Mr. C. Smith), affirmed the decision of the zillah court, with costs against Imam-uddin and Muaiyin-uddin.

Khawaj and Manik now moved the Sudder Dewanny Adawlut for admission, on their part, of a further and special appeal *in formâ pauperis*; and on the 6th May 1829, such appeal was admitted accordingly by Mr. Ross, the prescribed conditions being observed. Mr. Ross, in this, concurred in the previously recorded opinion of Mr. Rattray, before whom the application for the admission of the special appeal had originally come on. Mr. Rattray had adverted to the 9th Book of Institutes in the *Hidaya*, which indicated capture in war of infidel enemies as the legal origin of slavery; and as the legalizing essential, under the Muslim law, appeared to be wanting, he had proposed to admit the appeal. At a later stage of the case, execution of the decree of the lower court was stayed by Mr. Rattray, exaction of caution from the appellants being waived, with the concurrence of the collective court, which held such exemption to be proper, with reference to the poverty of the appellants, and their inability to pursue the appeal effectually, if reduced to the dominion of the respondent. An order for the early adjudication of the appeal being at the same time passed, it was heard by Mr. Rattray on the 7th June 1830, and postponed for consideration.

Subsequently, Imam-uddin, Muaiyin-uddin, Bolaki and Nawaz moved the court to be admitted as pauper appellants in the case; and the court dispensed with the observance of the conditions usual with reference to their poverty, and the performance of those conditions by the other appellants. On the 27th July, Mr. Rattray delivered his judgment, to the effect, that the legal hereditary servitude of the appellants, claimed as slaves, with their families, in the family of respondent, was not established; and that therefore the judgments of the lower courts should be reversed with costs against respondent.

Mr. Ross next heard the case. He remarked, that the question to be determined was, whether the claim of respondent, to exact service from Bolaki and the rest, was legal under the Muslim law or not. In 1809, the muftis of the court had delivered an elaborate opinion, on the general question, to which Mr. Ross referred.* It was in substance this: freedom is the natural state of man, and legal servitude only arises from infidelity and captivity in open war with a Muslim conqueror, or from descent from such infidel captive. Consequently, the sale in a state of destitution of a child, or of the vendor's own person, establishes no right of property in, or dominion over, the object of the sale. With reference to these doctrines, Mr. Ross held that the essentials constituting legal servitude, and giving the respondent a legal dominion over the persons claimed as slaves, were wanting. It was true that Bolaki had admitted that he and his ancestors had rendered services of slaves in the family of respondent, and the others had made the same admission in regard to Imam-uddin's family; but they pleaded that the exaction of such services was illegal under the Muslim law. Mr. Ross, therefore, on the 28th of August, passed final judgment to the effect proposed by Mr. Rattray.†

* In consequence of a general reference to the courts of Sudder and Nizamut Adawlut (made on the 23d March 1808, by Mr. J. Richardson, the judge and magistrate of Zillah Bundelkund), the courts put certain interrogatories to their Muslim and Hindoo law officers, calculated to elicit the doctrines of their respective codes in regard to slavery. The exposition of the Muftis given in reply is that to which Mr. Ross refers, and constitutes case 2, head "Slavery," in Macnaghten's *Precedents of Mahomedan Law*, page 312.

† This and the preceding case are copied from the published reports of the Calcutta Sudder Dewanny Adawlut. The others are reported by the secretary to the commission, on reference to the original papers.

N^o. 3.
Sudder Dewanny
Adawlut, 5th May
1832.

Kewal Ram Deo, Kalikinkar Deo, Sarup Chand Deo, Sambanuth Deo, Jagnath Deo, and Deb Chand Deo, Appellants, versus Golak Narayan Ray, Respondent.

ON the 9th September 1826, in the civil court of Dacca, against Kewal Ram Deo and 16 others, respondent instituted the suit whence arose this appeal. The substance of his plaint was this:—"I sue defendants to establish my right to reduce them to my dominion as my slaves, and I estimate the cause of action in the sum of 500 rupees, their value. The persons sued are, Kewal Ram Sakdar, and wife; Kalikinkar Sakdar, and wife; Sarup Chand Sakdar, his wife and mother; Sambunath Sakdar, his wife and mother; Jaganath Sakdar, and wife; Bansi Sakdar and wife; Deb Chand Sakdar, wife and mother. Defendants are the descendants of Dakai, Puchai and Manai, the hereditary slaves of my ancestors. They and their descendants for generations have rendered service as slaves to my forefathers and to me, being supported by lands assigned. On occasion of festivals, they used to attend at my house and render services of slaves. On the 5th of Bhadun 1233, B. E., the male defendants, with their families, left Kismut Marta, in my division of pergunnah Bhawul, and located themselves on the seven anna section of the pergunnah. By local usage, they cannot emancipate themselves from my dominical power. I therefore bring my action."

Jagannath and Sambunath appeared and made this defence:—"The taluka of our ancestors, which has descended to us, is situate in the nine anna section of pergunnah Bhawal, the zemindari of plaintiff, and our profession is service. On this account, our father was employed by plaintiff as an agent in his zemindari affairs. Neither we nor our ancestor ever held nankar lands of plaintiff. The taluka referred to is component of plaintiff's estate, and comprises the Kismuts Marta and Daria Marta, and other mehals, and is recorded in the name of Dakai, Puchai, Manai Ram Deo. We hold this taluka with its component villages, and have never deserted any part, as charged by plaintiff. His object is to degrade and eject us by this claim. Our father, who acquired the taluka, made several pious assignments of its lands. Since his death, we have continued to hold, paying to the plaintiff, as our superior landlord, the yearly rent of 358 rupees nine annas, the fixed quota distributed on it. We refused to plaintiff the site of a dwelling, which he wished to include in a garden. From spite, plaintiff by force collected our rents. On our complaint to the magistrate, the daroga inquired and reported. It is owing to consequent resentment that plaintiff has brought this action."

Kewal Ram and Deb Chand made the same defence. After witnesses had been examined on the side of both parties, on the 23d May 1828, the case came on for trial before Mr. D. B. Morrieson, the acting judge. On this occasion plaintiff, with other documents, produced in evidence an ikrar dated 25th Bhadun 1197 (1790), purporting to be executed by Dakai, Puchai and Manai, and bearing signature on it of Mr. W. Douglas, collector of Jalalpur, a collectory purwana of 24th Kartic 1197, copy of the vyavastha of the pundit of the Sudder Dewanny and Nizamut Adawlut obtained in 1825, on a reference by the magistrate of Sylhet, and the relative official correspondence. Defendants also produced documentary evidence on the above date. Mr. Morrieson passed judgment with costs in favour of plaintiff, and directed writ to be issued to the nazir to make over defendants to plaintiff as his slaves. The motives of this judgment were thus expressed: "I find it clearly proved that Dakai Sakdar and his two brothers, the ancestors of defendants, and defendants also, are the hereditary slaves of plaintiff's family, and, according to the custom of slaves, held nankar lands of plaintiff and his ancestors. On occasion of festivals and ceremonies they have always rendered services as slaves to plaintiff's family; in particular in 1832, on occasion of the marriage of plaintiff's daughter. Puchai Sakdar was father of the defendant, Jaganath, and he attended on, and rendered service to, plaintiff's grandfather. In 1233, defendants left the estate of plaintiff as charged, and refused service. Two witnesses have proved admission of defendants since suit and their offer to settle amicably. Other witnesses, slaves of plaintiff, prove that defendants consort with them, as also that they are plaintiff's slaves. In the ikrar of 1197, Dakai and his brother, ancestors of defendants, admit that they are hereditary slaves of plaintiff's family; that plaintiff's grandfather bought the taluka in their name because they were slaves; that he fixed the yearly rent at 370 rupees two annas; and that after allowing them nine rupees from the established rent assets as their nankar for services as slaves, he made it over to their charge. This deed has also a clause that they and their descendants will continue to render the service of slaves to plaintiff; that in case of default, plaintiff may resume, and also that they will be subject to the local usage in regard to sale. The vyavastha and correspondence show that defendants fall within the 15 classes of legal slaves. Defendants say, that the cognomen of Sakdar was obtained by their ancestors, because they held the office of Sakdar; and they allege they are dependent talookdars on the estate of plaintiff. Two Muslims and a Hindoo depose in support of this; but I disbelieve their evidence, because the Muslims are not acquainted with the usages and parentage of Hindoos, and the Hindoo witness is a kinsman of defendants. Other witnesses of defendants prove, that in pergunnah Bhawul, slaves have the appellation of Sakdars. This cognomen of defendants is then presumptive of their slavery; for a freeman would not assume a servile appellation. The marriage of defendants' daughters with slaves, as also their relation to slaves, is proved. Had their ancestors not been slaves, they would not have executed, in 1197, the ikrar to ancestor of plaintiff before the collector. By the vyavastha, I find the master may exact service from or sell his slave, and the latter cannot quit his master without his leave. The defendants have this day filed a rubakari, of the Dacca court of appeal, dated 7th November 1826, held in the case of Sheo Chandra Surma and others *versus* Gopinath Deo and others. But the facts of the two cases are not identical. The defendants adduce the orders and proceedings of the magistrate, but these are

are preceded by the suit, and do not avail them to show that the object of plaintiff is to deprive them of their taluka."

The appellants and defendant, bansi badan to the provincial court of appeal, preferred an appeal, which was heard by Mr. W. Cracroft, a judge of that court, on the 19th November 1829, when he proposed to reverse the decree of the lower court, with costs. His motives were thus expressed: "I find the claim fraudulent and malicious. Plaintiff filed no deed, signed by appellants or their ancestors, which states them to be hereditary slaves of plaintiff. Without such deed, and full proof, it would be inequitable to condemn a mass of persons and their descendants to perpetual bondage. Respondent does, indeed, allege that the ancestor of defendants, in 1197 A. E. (1790), executed an engagement acknowledging their slavery, and that the real ownership of the taluka, recorded in their name, was in the ancestor of respondent. This deed appears to be very suspicious. It bears the signature of Mr. Douglas, in English, on the top; but why it should have been produced to him, and by whom, and in what case, is not apparent. It is stated that appellants' ancestor appeared before him, and acknowledged. Respondent was not summoned to give evidence, nor any of the persons whose names are signed as witnesses. It may be, that the father of respondent forged this deed to aid the usurpation of defendant's taluka. If genuine, he would have mentioned the paper in his plaint, so also in the case before the magistrate, in which he instituted inquiry as to the taluka, and the alleged slavery of appellants. The evidence of respondent's witnesses does not establish his case. They say, indeed, that appellants are hereditary slaves, and rendered service of slaves; but they enter into no details, such as when, what service, and by whom rendered. From the papers filed by defendants, it appears they are talukdars, and follow the profession of writers, and are respectable persons. Their taluka, recorded in the name of their ancestors, is component of the estate of respondent, and charged with the rent of 358 rupees 9 annas. This appellants have paid to respondent or his agent."

On the 29th December 1829, Mr. Charles Smith, a judge of the court, who next heard the case, proposed to confirm the decision of the lower court. Mr. Smith's judgment was thus expressed: "Claim of plaintiff is sufficiently proved by the evidence of the witnesses, and documentary proofs adduced by plaintiff. Of the latter, is the engagement of the ancestor of defendants, attested by Mr. Douglas. It establishes that the appellants and their ancestors are the hereditary slaves of plaintiff and his ancestor. According to usage, they attended at the house of plaintiff on marriages and other occasions, and rendered servile offices. It is true, the witnesses of appellants depose that they are ignorant of the servile state of appellants; but the depositions of some of them tend to support the case of plaintiff; for they admit that, in pergunnah Bhawul, the cognomen of Sakdar, by which defendants are designated, belongs to slaves. It is proved that the taluka, recorded in the name of the ancestor of appellants, was really the acquisition of the ancestor of plaintiff; for there is no ground to impugn the engagement authenticated by Mr. Douglas, the collector of Dacca Jelalpur. The receipts then of rent, on which the appellants rely, do not oppose the claim of plaintiff; for they are essential forms resulting from the tenure. It is very improbable that any person should bring forward an unfounded claim of this sort, and in such case it must be assumed absurdly, that 35 years ago the engagement adduced by plaintiff was got up by his ancestor in anticipation of the present claim. That engagement is duly authenticated by the principal civil functionary before the operation of the present code. At the time many other talukdars sought separation from the zemindari of defendants. Hence arose necessity of this engagement, as is in fact indicated by its terms, and the collector's purwanna, dated 24th Kartick 1198. Slavery of a family may be inferred from continuous service, and it seldom happens that, after the lapse of many years, the original title, showing acquisition of the slave's forefather, is forthcoming. In this part of the country, many slaves are apparently persons of respectability, and educated, and manage the zemindari affairs of their masters; but this constitutes no ground of emancipation. In a word, the appellants and their ancestors are the hereditary slaves of respondent; and, if discharged, notwithstanding proof of their servile state, most slaves will become recusant, and, on various pretexts, will find means to effect their discharge. It would be unjust, therefore, to liberate the appellants, notwithstanding the clear proof of their servitude, and the local usage, supported by the vyavastha of the sudder pundit. The report of the darogha, on which appellants rely, rests on depositions not taken on oath. However, some persons did mention that appellants were reputed slaves. The interference of the darogha at all was irregular. With reference, therefore, to the vyavastha, the correspondence relative to it, and the motives in the judgment of the lower court, I propose to confirm."

In consequence of this difference of opinion, the case was sent to the Murshedabad court of appeal to be heard by a third judge. Mr. C. W. Steer, a judge of that court, on the 20th April 1830, passed the judgment proposed by Mr. Smith.

The appellants now moved the court of Sudder Dewanny Adawlut for admission of special appeal, which was allowed on the 21st June 1830, by Mr. Alexander Ross and Mr. R. H. Rattray.

They were of opinion that the lower court had passed judgment against appellants without considering whether their ancestors had legally, as slaves, come under the dominion of respondent's father. On the precedent of the case of Shekh Khawaj and Nawaz *versus* Muhammad Sabur, they directed that the execution of the judgment of the lower court should be stayed, pending appeal, without exaction of security. The case being ordered for trial out of number, came on before Mr. R. H. Rattray, on the 26th March 1832, when he concurred in the judgment proposed by Mr. Cracroft, and its grounds. Kalikinkar, one of the appellants, had died, and the wakeels of respondent, who had brought this to notice, objected that

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that his heirs should be summoned to follow up his appeal. Mr. Rattray remarked that the objection was without weight, for there was no need to summon his heir to appear, if death had emancipated him.

The case was next heard by Mr. A. Ross, on the 5th May 1832, when he made final the judgment proposed by Mr. Rattray; his motives were thus expressed: "In my opinion the claim of plaintiff is not established by his witnesses or documents. The witnesses say that they had seen defendants render service like the service of slaves in the house of plaintiff; but this does not prove that they are really slaves. Moreover, if the genuineness of the engagement be conceded, still it is apparent from it that the defendants are dependent talukdars, holding on condition of paying a fixed rent and rendering service; if, then, the appellants should not render service, respondent may resume. From this, it seems, that, during the tenure of the taluk, service is obligatory, not after abandoning the tenure, and thereby discharging themselves; and it is to be observed, that he who has power to emancipate himself cannot be considered a slave."

No. 4.
Sudder Dewanny
Adawlut, 24 Nov.
1832.

Kishn Chaudhar Datt Chaudhari, Appellant, versus *Bir Bal Bhandari*; *Jaimani*, his wife; *Ram Mohun*, his minor son; *Rokni*, widow of his brother *Subal*; *Adri*, widow of his brother *Jugal*; *Sham Ram*, *Sheo Ram* and *Abha Bhandari*, Respondents.

On the 12th September 1827, plaintiff instituted in the civil court of Mymensingh, against the above defendants, an action, the cause of which was estimated in the sum of 16 rupees. The statement of his case exhibited by the pleadings was this: "The slave girl, Kabutari, was part of the nuptial present brought by his bride on the marriage of my great-grandfather. He gave her in marriage to his hereditary slave, Durga Das, and caused their daughter, Burati, to be married to Sonatan; their son was Nandu, who was father of the defendant, Bir Bal, his late brothers, Subal and Jugal, and his sisters, Abha and Panchami, of whom the latter is dead. This family was part of the hereditary slaves of my family, amongst whom also are included Jaimani, the wife of Bir Bal, by whom he has a son, Ram Mohun, a minor, also Rokni and Adri, the widows of Subal and Jugal respectively. They have rendered continuous services as slaves in my family, receiving support, lodging, and nankar land on our estate at Haripur. On a partition of slaves with my kinsmen in 1816, Bir Bal and his brothers and sisters, with their wives and families, fell to my lot, and continued to render service as slaves, being supported as before. The sister of Abha I gave in marriage, receiving the usual present; and Adri, the widow of Jugal, for the last six or seven years has resided at her father's house at Daluthan. In the year 1825, Bir Bal, who was in charge of my effects, absconded with the keys, being incited to this by Sham Ram, Sheo Ram and Abha; he obtained employ as a peon on the establishment of the magistrate, to whom I preferred my complaint. Before trial an adjustment took place. Bir Bal brought to me his nephew, Jewan, and on the 12th December 1825, executed an acknowledgment of his servile relation to me, which was filed in the magistrate's proceedings. In July 1827, Jewan died. Although Bir Bal and his family occupy the house and enjoy the lands allowed them by me as before, still, incited and harboured by the above persons, they refuse to render service of slaves. Owing to their recusancy I have incurred a loss of 16 rupees, in procuring work to be done by others; I therefore sue the said Bir Bal, his wife and son and brothers' widows, for the right of exacting their attendance and service as slaves, associating the other three, who incited them, as defendants. I estimate cause of action in above sum."

Except Bir Bal, none of the defendants appeared to defend.

The substance of his defence was this: "I deny that I or my family are the hereditary slaves of plaintiff, that we have received support, or that we hold of him, as charged, any dwelling or nankar land. My grandfather, Sonatan Rawat, married Parameswari, the daughter of Durga Das Talukdar. He did not marry the daughter of Kabutari. I and my forefathers are and were free, supporting ourselves as cultivators and householders. My father died at the age of 65. For 17 or 18 years I served Ram Rutton Munshi, at Kaliada, in Zaffur Shahi. Afterwards, about the year 1820, I settled on the estate of Vishnu Priya Dasi, as a ryot. When in copartenary with plaintiff, his uncle, Gunga Purshad, bought my sister, Panchami, from my father. This is irreconcilable with plaintiff's claim. In 1824, I received an advance of one year's wages, and entered the service of plaintiff. I left this because he did not support me, and attached myself to the magistrate's establishment as a peon. Plaintiff proceeded against me under Regulation VII. of 1819, before the magistrate. I was apprehensive I might be dismissed and imprisoned under that regulation, were my desertion of service proved. To adjust the case I succeeded in assigning my nephew to the service of plaintiff. I am illiterate, and plaintiff, in his compromise, may have got his kinsman, Kishn Mujumadar, to put in a claim to suit his purpose. If so, it is not valid. Plaintiff did not emancipate and marry my elder sister, Abha. My father effected her marriage at his own cost."

In his reply, plaintiff wrote: "Bir Bal never was hired as a servant, nor did I make him an advance of wages. The acknowledgment filed by Bir Bal was prepared by a person chosen by himself. It is untrue that his father sold Panchami. When defendant found that the residence on the location assigned by me did not suit, he rented a house on the Lakeraj premises of Vishnu Priya Dasi, and resided there. He tenanted also from me, at rent, lands exclusive of his before-assigned house and nankar. I did not prosecute him before the magistrate on an alleged receipt of wages in advance."

This

This case was originally referred for trial to the sudder amin, and witnesses were examined on both sides, and documents received. Owing to the relationship which existed between the person on whom that office devolved and plaintiff, the case reverted to the judge, before whom the plaintiff exhibited copy of the letter of the register of the Nizamut Adawlut, and a vyavastha of its pundit taken in another proceeding.* He had before filed the partition paper, and the acknowledgment of the defendant filed in the proceedings before the magistrate. On the 2d July 1832, the case was heard before Mr. Cheap, judge of the zillah, when he passed judgment on perusal of the papers, without considering the oral testimony. "The letter and vyavastha are irrelevant. They show the want of right in slaves to redeem themselves from servitude by payment of price and other points. The plaintiff has filed no deed proving that the defendants are his hereditary slaves. His ancestor assigned the nankar to the ancestor of defendants, in consideration of hard labour and gratuitous service. With reference to this, plaintiff has in a manner a claim on defendant as servants. If, really, the heirs of the original receiver for such a quantity of land are to be held to be slaves of the grantor, in such case the land would be insufficient for their support. It is inequitable (though even such had been the usage) that the descendants to the lowest generation for ever should be subject to slavery to plaintiff, because his ancestor may have given two or three beegahs to their remote forefather. Under these circumstances, I dismiss the suit with costs. If he who holds the nankar lands refuse in consideration to render service to plaintiff, in such case plaintiff may resume, but cannot eject the occupant without suit."

Plaintiff, dissatisfied with this judgment, preferred his appeal to the Sudder Dewanny Adawlut. The exceptions taken by him were these: 1. The zillah judge did not consider the oral testimony, which proved that Bur Pal and his family are his hereditary slaves. This was proved by one of the defendant's own witnesses, and his acknowledgment before the magistrate. The omission of the judge was illegal, particularly as the evidence had been taken after the issues fixed on perusal of the pleadings under Regulation XXVI. of 1814, section 10. 2. The letter and vyavastha are relevant; for they show the right of masters over their slaves and their duties of service. 3. The defect of any original deed is not conclusive; for deeds are lost and not forthcoming after lapse of long time, and hereditary right may be proved by circumstances and other documents. The long hereditary service of defendant's family for generations was sufficient proof, independent of the above-stated acknowledgment. 4. The support of plaintiff's family by assignment of dwelling and nankar lands can only denote their servitude, which was proved in evidence. 5. The argument, that the land originally assigned to a slave would be insufficient to support his descendants in progress of time, is inconclusive, because, when that occurs, owner may supply from other resources sufficient support. The fact is, defendants were sufficiently supported as is proved. 6. It is admitted by the judge, that the defendant's family had continuously held a house and lands from plaintiff's family for abode and support. They could not therefore be emancipated from their servile relation to plaintiff.

On the 24th November 1832, Mr. R. H. Battray, a judge of the Sudder Dewanny Adawlut, under clause 2, section 2, Regulation IX. of 1829, after perusal of the petition of appeal and judgment of the lower court, affirmed the latter, without calling for the proceedings at large. His motives were thus expressed: "Appellant has produced no deed showing that the respondents were his hereditary slaves. What avails his mere assertion that his ancestor assigned the nankar land to the ancestor of defendant in consideration of service and attendance? But let it be assumed that he did so. For two or three beegahs assigned as nankar or chakran to the ancestor of respondents, it would be most inequitable that the descendants of the receiver should for ever be slaves to the descendants of grantor. Could appellant supply the deficient deed it would not avail."

Mahant Surjan Puri, Appellant, versus Basanti (female) and others, Defendants.

No. 5.

On 7th February 1831, the Mahant Surjan Puri, of Palnau, in pergunnah Gargadh, in zillah Ramgarh, filed in the civil court of that zillah a plaint of which this is the substance: "In the great famine of 1769 (Fussly 1177), Prani, originally of the Modi caste, being impelled by distress, with her daughter, Basanti (then aged five years), messed with Kahars, and thus descended into their caste. When in this state, she sold and made over her infant daughter, as slave, to Mahant Gir Puri, my spiritual grandfather, for three rupees, executing a bill of sale dated in that year. My grandfather supported Basanti in the famine, and brought her up. Mahant Dalu Karan Puri, the disciple of Gir Puri, who died, succeeded him, and Basanti passed under his dominion. Dalu Karan married her to his male slave, Achamba. The issue of this marriage was two girls, Charua and Ramni. After this, Basanti and daughters attended on and served the Gosain Bechu Puri, at village Gujar Sotra. He was the spiritual brother and successor of Dalu Karan. At that place, Ramni produced one son, Dhura; and her sister produced five daughters and two sons. Her daughters are Kumiya, Sopiya Anandi, Namiya and Mongiya. Her sons are Dhukha and Sukha. Kumiya has three daughters, Dharmi, Nima, and Basanti second. Anandi has a son, Byra, and a female babe. Namiya produced a son, Tula. All continued to render services of slaves to the Gosain Bechu Puri, whom I succeeded. In 1227 Fussly, Charua, with her children, absconded from my dominion, and took refuge in village Urdi. My agent went to bring her away, and she executed an engagement (to which

Sudder Dewanny Adawlut, 5 Jan. 1835.

* See 8th Precedent Macnaghten's Hindoo Law, vol. 2.

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which Lachman Singh was caution) to attend on me, after settling her agricultural affairs; and she attended accordingly. In 1229, Charua again absconded with her children, except one daughter, Anandi. She went to village Khand Dih. Anandi, as also her grandmother, Basanti, and Ramni, with her son, remained under my dominion. In 1233, I was involved in a litigation in the civil court of Birbhoom regarding a Sanyasi convent and some villages. I could not therefore look after my slaves, but I often sent to summon them, and they promised to come. But after this, Nim Ray harboured Namiya and Tulsia. I lodged information with the police darogha, who reported the matter to the magistrate. By him I was referred to my civil remedy. I therefore sue Basanti, her daughter Charua and her offspring, for the right of recovering them as slaves, and Nim Ray, who has harboured two of them as stated. I estimate the cause of action in the sum of 148 rupees."

On the part of Basanti, Soniya, Kumiya, Dhukha and Sukha this defence was made: "Basanti's mother was Man Mati. She never sold her daughter nor executed a bill of sale. Basanti on her mother's death was yet a minor. In the famine her aunt brought her to village Gargadhi, in pergunnah Gharghadh, and laboured for their support. She received a loan of coarse grain from the Mahant Gir Puri. Two years after, he took an acknowledgment for five rupees, as the price of the grain supplied. After this, Phulu, the sister of the Gosain Bechu Puri of that village, took the acknowledgment by paying the five rupees, and Basanti remained with Phulu, by whose care she was married to a Kahar. Until Phulu died, Basanti remained with her. Subsequent to her death, and about 30 years ago, Basanti married her daughters with free Kahars. Besides, she sold her grand-daughter, Namiya, to Nim Ray. This act the plaintiff charged as a theft at the police-office, and on report to the magistrate was referred to his civil remedy."

In his reply, the plaintiff urged that in a famine no one supported another, particularly one of low caste, for the mere acknowledgment of grain or money. He admitted that Basanti and her children attended on Phulu, the sister of Bechu Ray, the disciple of Gir Puri; but (he added) that she died in 1224. The plaintiff also stated that the defendant Nim Ray, since the suit on the 28th April 1831, had voluntarily come to him and written an undertaking to give up his bill of sale; and that further of the defendants, Kumiya, Basanti and Charua, had executed an engagement promising to revert to their duty.

The rejoinder was to this effect: "Plaintiff got Nim Ray to engage to give up the bill of sale, by promise of repayment of the price paid by Nim Ray, but has not repaid the same. None of the other defendants have given any engagement of the nature asserted by plaintiff."

The case, having been referred to the sudder amin and mufti of the court, came on for judgment (on the 14th September 1832); after the examination of witnesses and receipt of proofs of both parties, it was passed in these terms: "Only five of the claimed slaves have defended; they assert their freedom; but the evidence proves that Basanti and her descendants attended as slaves on Gir Puri, Dlu Karan Puri, Bechu Puri, disciples of Gir Puri, on Phulu his sister, and on plaintiff. Defendants admit that Ramni, the second daughter of Basanti, is still in attendance on plaintiff. From this admission, too, it would seem that they admit service as slaves to Phulu, sister to Bechu, whom plaintiff succeeded. Defendants have failed to establish their freedom. Dhukha, defendant, has filed a paper, dated 5th Phagun 1179 Fussly, to support the story of defendants as to the pecuniary obligations said to have been transferred from Gir Puri to his sister, Phulu. This paper shows that Aluiya, her aunt, pledged Basanti for five rupees to Gir Puri. Bechu Ray, an alleged witness to the deed, was examined in support. Persisted in declaring his age to be that of 60 years; but he could then only have been five months old when the deed was executed. It is, too, quite apparent that his name is written over an erasure. He says, too, that the writing passed 20, 22, or 40 years ago. I hold the deed to be a fabrication. The witnesses of defendants prove that Basanti descended into the Kahar caste with leave of Bechu Puri, disciple of Gir Puri, and that she and her offspring attended on him. This confirms the claim of the plaintiff. The defence of the defendants, who admit receipt of grain in the famine of 1177 from Gir Puri, confirms the bill of sale charged by plaintiff. If defendants were not the hereditary slaves of plaintiff, Nim Ray, who had bought two of her grandchildren from Basanti, he would have never given his bill of sale to plaintiff; and such surrender is admitted. Defendants admit receipt by Basanti of grain from Gir Puri, whose successor plaintiff is; and one of their witnesses proves that she attended on that person. It is most improbable that in a famine any person would support with grain or money an unbought person. I decree Basanti and 13 other persons claimed as slaves to be made over to plaintiff as his slaves. The parties are to pay their respective costs; for the slaves are unable to earn for themselves."

From this decree, on the part of the defendants who had appeared, an appeal to the zillah judge was preferred. The zillah judge (Mr. T. R. Davidson) on the 17th December 1833, reversed the decision of the sudder amin with costs, in favour of the appealing defendants. The motives of his judgment were thus expressed: "Respondent has filed a bill of sale on plain paper, dated 1769 (Fussly, 1177), to prove his claim. It is odd that such a paper should have come into his possession. Nim Ray wrote indeed an engagement to plaintiff, and gave up the bill of sale of Namiya and Tulsia which he had taken from Basanti. But from this his collusion with plaintiff is apparent, or at all events such surrender and engagement cannot affect the other claimed slaves. I attach no weight to the engagement to attend, written by Kumiya, Basanti and Charua, and filed by plaintiff. It is subsequent to suit. Now, if after being satisfied, they, as slaves, attended on plaintiff and wrote the paper, why did not respondent get them to confess to his claim? Such a deed taken in the interim is nothing, and they now deny it. A claim to a slave is first tried with reference to documentary

mentary evidence. Now the paper filed by plaintiff cannot be accepted by the court. It remains to consider the evidence of the witnesses. Those of the respondent state, that during 14 or 15 years the appellants had run away. The sudder amin dwells indeed on the contradictions of appellant's witnesses; but it had been right had he equally adverted to the depositions of respondent's witnesses. I find that just as the witnesses of appellants are contradictory, so also are those of respondents, and their depositions are nothing. The sudder amin, passing by all the witnesses of appellants, attacks the evidence of Bechu Ray. Now, Chitan, a witness of respondent, questioned as to the ikrar written by Charua first, said he did not know, and then added that she wrote the deed. Under the premises the decision of the sudder amin is considered erroneous. Decreed that it be reversed, and that respondent do pay all costs of both courts."

From this decision, the Mahant Surjan Puri preferred a petition of special appeal to the Sudder Dewanny Adawlut, which on the 1st January 1835 was disallowed by Mr. R. H. Rattray, for defect of sufficient reason shown. The grounds of appeal urged were these: 1. In 1177 stamps were not in use; therefore the defect of stamps cannot be ground of suspicion of the bill of sale. 2. Independent of direct evidence to the deed, it was supported by the presumption arising from defendant's answer, which admitted that Basanti was pledged to Gir Puri, to secure an advance received. Now, a girl no where is ever pledged, and still less would she be taken in pledge during a famine. 3. The imputation of collusion with Nim Ray is repelled by the fact that plaintiff had complained against him in the police office. 4. The engagement of Charua and the two others, to which the judge alluded, is virtually a confession; and if the judge doubted the fact of execution, he should have investigated, particularly as those three did not appear to appeal. 5. Beni Ram, a rich Mahajan, kept Mungtya, one of the slave-girls, and had got up the appeal. 6. It was a misdirection in the judge to state that it appeared from the depositions that the slaves had during 14 or 15 years absconded. Only Charua and her children in 1227 run away, and in 1228 returned. When she again absconded, she left her daughter, Anandi, who, as also her aunt and cousin, were under the dominion of appellant.

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Kirti Narayan Deo and others, Appellants, versus Gauri Sankar Roy, Respondent.

No. 6,
Sudder Dewanny
Adawlut, 7 Dec.
1835.

ON the 17th April 1831, the respondent, in the civil court of Dacca, against Kirti Narayan Deo and others, instituted an action, cause of which was estimated in the sum of 16 sicca rupees. The statement of his case was this: "The late Ram Saran Ray and the late Bugui Ram Ray, brothers, were landholders in the Tupa Hazardeh. I and my half-brother, Kirti Sankar Ray, represent the former. In 1797, my father and uncle separated, and deeds of partition were exchanged. In a division of his family slaves, Binod Ram Deo and his family fell to my father's share, and his brother, Anandi Ram, and his family, to the share of my uncle. Binod Ram died, survived by his wife, Kusala, and three sons, Kirti Narayan Deo, Sri Narayan Deo, and Suraj Narayan Deo. Drupadi, Radha Mani, and Bejiya, are the wives of Kirti Narayan; Jai Narayan, Dullabh Narayan, and Kishn Narayan, are his sons, minors; Ratni and Isari (unmarried) are his daughters. Mahiswari is the wife of Suraj Narayan. These 13 persons are owned by me and my half-brother as slaves in equal shares, and owe us the service of slaves. Binod and his family and descendants have continuously been supported by our family, and are provided with house and lands for subsistence. They have also continuously rendered services as slaves to me and my half-brother. The total area of the lands still held by them in different kismuts of the joint estate is equal to three duns, three kanies, seven gundas, three kowries. When the family abode assigned to defendants was found too confined, they annexed to it part of the adjoining abode to Labin, another hereditary slave of my family. The marriages of Binod's sons were effected at our expense, and their marriageable daughters were married with our leave on receipt of the usual presents. On occasion of need we have assisted the family; for instance, we rebuilt at our cost their houses when burnt down. Dissension arose between me and my half-brother; and in September 1829, he protected and incited Kirti and the rest of the family to refuse to render me services, due to me as joint-owner, and to render them to him alone. Kirti had asked me to emancipate his daughter, Ratni, that he might marry her, but I wished to attach her to my household. Then it was that, in collusion with my brother, this recusancy occurred. In February 1830, he married his daughter to Briju, the bhandari or slave of Ram Narayan Ray, on the discharge of my brother alone, who received the present. I sue, therefore, to reduce to my dominion, as their joint-master and owner, the said 13 slaves belonging to the family of Binod; and I associate as defendants my said brother, Ram Narayan Ray, and Briju, the husband of Ratni. I estimate the cause of action in the sum of 16 rupees, the loss sustained by services refused."

Of the defendants, Kirti Narayan and Sri Narayan alone appeared. Their defence for themselves and the rest of the family was this: "We deny entirely the claim of plaintiff. Our father, Binod Ram, was free, and earned his livelihood as a cultivator and tenant of land, and by service, being settled at different periods of his life at various places. For instance, on paying nine rupees, he took some uncultivated land and half of the bed of a tank on the estate of Bijai Ram Ray and Kishn Ram Ray, and established his domicile there as a ryot. He, and, after him, we, his sons, have paid rent for any lands on the estate of plaintiff and his brother, which we have cultivated as tenants. We hold the acquittances. The intermarriages of our family are in the families of talukdars, our equals, and

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effected at our own costs. We act as managers of land, and thus add to our livelihood. Plaintiff himself appointed me, by sunnud, on a salary to manage part of his estate. The alleged deeds of partition between plaintiff's father and uncle are untrue. Anandi Ram had two other brothers besides Binod Ram. The partition must have extended to the whole. No discharge was taken from the plaintiff's brothers on Ratni's marriage. He gave to plaintiff and his brother, our landlords, the complimentary present, according to usage observed by other under-tenants. When our house was burnt we lost papers. Plaintiff takes advantage of this, and makes his brother and Ram Narayan defendants, expecting an admission for them, Ram Narayan being our enemy, and depriving us of the evidence of the brother. It is true, we annexed to our dwelling part of the premises of Labni; but we paid two rupees in consideration to his brother, Phulu, and hold it on rent. In 1830, when the management was taken from us, we gave up the lands we cultivated on the joint estate of plaintiff's brothers. We hold no lands for our support."

The plaintiff, in his reply, alleged, that by the custom of the country, if bhandaris, or household slaves, cultivated on rent lands of their master or others in excess of those assigned for support, such fact did not discharge them from their liabilities as slaves. Plaintiff further alleged, that defendant, Kirti, had delivered no account of the household effects in his charge, nor of the money of his mother invested in trade, with which he had been intrusted. He further alleged, that, since suit, defendant had offered to admit claim, if Ratni's discharge were given. Each party gave lists of numerous witnesses to be examined on their sides respectively, and filed documentary proofs. On the 24th August 1832, the case having come on for judgment before the principal sudder amín, he passed it to this effect, that the said 13 slaves should render as before to plaintiff their services as slaves, which he found due to him as joint and equal owner with his brother, Kali Sankar Ray. Each party was to pay his own costs. The motives of his judgment were thus expressed: "I do not find that the facts urged by defendants are established by their witnesses examined and documents adduced. I do not give credit to their witnesses; and, indeed, some parts of their evidence tend to substantiate the case of plaintiff. They corroborate the oral testimony adduced by plaintiff. This proves the partition of slaves charged by plaintiff, the continued support received by Binod Ram and his family, and services rendered by them before and after partition. One of the witnesses, Kishennath Deo Rai, the son of Bijai Ram, has produced the original deed of partition signed by plaintiff's father. The evidence of his witnesses also substantiates the other facts alleged by plaintiff, that of the marriage of the male defendants at the expense of plaintiff's family, and that of leave and discharge obtained from plaintiff and his brother on the occasion of their daughter's marriage. It also shows that the sons of Anandi Ram still serve the said son of Bijai Ram. The acquittances filed by defendants are old and defaced, and not entitled to credit; but, if genuine, they do not repel the claim; for a slave is not exempted from his liability as such because he may rent lands from his master or others in excess of those assigned for his support, or because the master, to favour the slave, commits to him the management of his lands and collection of his debts. Plaintiff has exhibited copies of two depositions of Kirti Narayan and Sri Narayan, examined in March 1828, as witnesses in an action of defendant, brought in the munsif's court against his brother, Kirti Sankar Ray. There is also copy of the answer of Kirti Narayan, taken before a magistrate in July 1825, to the complaint of Jagannath Deo. The defendants clearly admit that they are slaves (bhandaris) of plaintiff and his brother. The fact that defendants are the owned slaves of plaintiff being proved, they cannot be exempted from slavery, with reference to judicial usage and the vyavastha of the pundits of the Nizamut Adawlut."

From this decision, Kirti Narayan Deo appealed to the zillah judge; and on the 13th September 1832, the appeal was heard by Mr. Cheap, who held that office. He affirmed the judgment of the principal sudder amín, with the amendment indicated in the following, his judgment; each party was to pay his own costs: "Neither from the deed of partition, nor any other document, do I find that the ancestor of appellant rendered service to respondent as a slave. Nevertheless, appellant, in his answer before the magistrate, and his brother, Sri Narayan, in his deposition before the munsif, admitted that they were the bhandaris or slaves of respondent and his brother. His denial now, therefore, can avail nothing against his own admission. Respondent now says all his effects were in charge of appellant; but it is odd that being so he should sue, estimating the cause of action in the sum of 16 rupees only, his loss by the recusancy of defendant and his family. With reference to the premises, I infer that appellant and his ancestor, on receiving lands for support, rendered service to respondent and his ancestor. If respondent should not allow nankar lands for support of appellant and family free of rent and charge, then they will become exempt from their servitude, and may seek their support where they can get it."

On the 21st February 1833, Kirti Narayan in person preferred to the Sudder Dewanny Adawlut, on the part of himself and the other defendants, a petition for the admission of a special appeal. He alleged that the above decisions were contrary to the appeal* adjudged in the sudder on the 5th May 1832, and moreover urged these exceptions—1. "The deed of partition on which the principal sudder amín relied, was produced by Kashi Nath, the cousin of plaintiff, who is an interested witness, and it is a fabrication. This is indicated by the fact that the third and fourth brothers of Binod are not included in the partition. Of these, one died lately, a free person, and the sons of the other are free and reside at a distance from

* *Vide supra*, Appeal of Kewal Ram Deo and others, No. 3 of this Appendix.

from the abode of plaintiff. 2. The depositions alleged to have been made by me and my brother before the munsif were not so made, but must be those of other persons using our names. My answer before the magistrate was taken in Persian, of which I am ignorant. Whatever may have been inserted, I never admitted servitude to plaintiff. 3. All our designated witnesses were not examined, and we applied for writs of attachment, but no order was passed. 4. It is incompatible with our alleged servile state that we should be appointed agents of plaintiff and his brother, thus doing the business of free persons, and so is the hiring lands at rent. We rendered service to plaintiff as servants holding lands which produce six rupees. Our sanad of service is filed. 5. Plaintiff can adduce no bill of sale to prove our servile state, and the support of 14 or 15 persons on 19 kanies of land, as alleged by plaintiff, is absurd."

On the 23d March 1833, the special appeal was admitted by Mr. R. H. Rattray; because, with reference to the circumstances of the case, the exceptions of appellant, and cases previously adjudged in the court, the case required further consideration.

Subsequent to this, a wakeel was appointed to prosecute the appeal on part of Kirti Narayan and ten of the other defendants decreed to be slaves. Express authority to represent Drupadi, the wife, and Dullabh, the son of Kirti, was not given; but a female paramesuari, whose name does not appear amongst the original defendants, joined as a party to the appeal.

The appellants substituted the petition of Kirti Narayan for admission of appeal, in place of the bill of exceptions required to be filed subsequent to admission of special appeal. To this, the substance of the answer of respondent was this: "The appellants are our hereditary slaves; and they are of the fourth description of inherited slaves referred to in the vyavastha of the court's pundits, to which we crave a reference. It is the local custom to employ confidential bhandaris to collect rents. We gave a certificate to the appellants to accredit them, and the duty thus committed to them proved our good-will, for they got perquisites from the tenants. Neither such employ, nor the hiring of lands, repels our claim. Appellants absurdly assert that they only held lands yielding six rupees yearly; in consideration of which they render the service of servants. This would not give them eight annas each per annum." Nineteen kanies of land is not a small quantity; but the support afforded to appellants was not limited to this; they received rations and other aid; they derived dusturi on the purchases for the use of the family, besides the collection perquisites. Binod and his brother were the inherited slaves of our family; the other two brothers had passed to our kinsmen on a prior division. The want of a bill of sale after a lapse of ages does not affect our right. This is proved by continuity of hereditary service, the admission of Kirti and his brother, and the evidence adduced. I could not produce the deed of partition which my father received from my uncle, because my brother, the author of the recusancy of defendants, has possessed himself of it. But the counterpart, signed by my father and received by my uncle, was produced by his son in support of his evidence. He is a disinterested witness; for the kinsmen of defendants are his acquiescing slaves. It is true that Kirti Narayan did not make any deposition before the munsif; but his brother Sri Narayan did. The case of Lok Nath Majnuadar and others, adjudged by the Sudder Dewanny Adawlut, on the 21st November 1832, by Mr. Shakespear, is a precedent in favour of my claim, while that adduced by appellant is irrelevant."

On the 7th August the appeal came on for judgment before Mr. R. H. Rattray. He proposed to reverse the judgments of the lower courts, charging costs to respondents. The motives of this judgment were thus expressed: "Plaintiff has produced no deed to prove the assertion that appellants are his hereditary slaves. Plaintiff alleges that the appellants rendered service in consideration of house and lands for support allowed them. The defendants strongly deny this. No proof of their holding such house and lands as found in the papers of the case. Moreover, were it so, still when appellants have quitted they cease to be liable to any claim of servitude; for the statement of respondent himself proves that appellant rendered service on receiving subsistence or nankar. It thus would seem that appellants are 'bhakta dasa,' or slaves, for their food, who render service for food. On reference to Mr. Macnaghten's compilation on Hindoo law, and the 2d volume of the Digest, page 247, the condition of slaves is stated thus: that when the slave for his food abandons the service, he becomes free. Therefore, the appellants having given up subsistence, they are to be considered free. Several witnesses have deposed according to the purpose of respondent; but they are his servants, kinsmen and dependents. Their testimony, therefore, is not to be believed. But, if credited, their evidence does not avail the case of plaintiff; because appellants are to be considered as having become free by relinquishment of support. The copy of Kirti Narayan's examination before the magistrate is of no advantage to respondent; for a statement before the magistrate cannot be a proof in a civil case."

The case was next heard by Mr. G. Stockwell, on the 7th December 1835. On perusal of the relevant papers at the suggestion of the wakeels of the parties, his opinion concurred in that of Mr. Rattray; and he made final the judgment proposed by Mr. Rattray.

Appendix III.

Reports.

No. 7.

4 Feb. 1836.

Nair, alias Narayan Singh, Pauper, Appellant, versus Ram Nath Sarma, Bishn Nath Sarma, Gopi Nath Sarma, sons of Harkinkar Sarma, Ram Charan Kar and Kishen Charan Kar, Respondents.

On the 7th April 1826, in the civil court of Sylhet, against appellants and Kubiswur Sarma, respondents brought an action on a case thus stated in their plaint: "Maya and her son, Khush-hal, were the slaves of Ram Ballabh Bari. In 1164 Purgunati, he received from Harkinkar and his brother, Ram Nundan Sarma, the father of Kubiswur Sarma, the sum of 10 rupees, in consideration of which he executed to them a release of his said slaves, and Maya executed a contract of hire of herself and son, attested by Ram Ballabh. The said slaves from that time served their new masters in their house. In 1174, Harkinkar, under a deed of release, bought Wajuri for four rupees of her master, and married her to Khush-hal, then aged 19. After some time he removed from the house of the Sarmas, and established himself in a domicile given by them, and cultivated; but he and his wife continued to do servile duties for their masters. After producing Nair, her son, Wajuri died. In Assar 1200, the Sarmas bought Sitapi, alias Sipi, of her owner, under a deed of release, for one rupee, and gave her in marriage to Khush-hal. Subsequent to the death of his parents and grandmother, Nair as slave served us, the Sarmas, who married him at our own expense to his wife, Phul; and the issue of that marriage are two sons, Biju and Bouki, and a daughter, Urna. His step-mother resided with him, and the whole family did offices of slaves in the family of us, Sarmas. In 1231 B.S. (1824), Kubiswur, by deed, sold his half share in the said slaves for 500 rupees, to us, Ram Charan Kar and Kishn Charan Kar. Nair denied his servitude in a petition to the magistrate, who ordered his release. We appealed to the court of circuit, but were referred to our civil remedy. We therefore bring our action to establish our proprietary dominion over the said slaves, that is, Nair, his wife and children and step-mother, making them and Kubiswar Sarma defendants, and estimating the value of the slaves in the sum of 100 sicca rupees."

The defence of Nair, his wife and step-mother, was this: "We deny that we are slaves of the plaintiffs. Khush-hal was long settled as a resident cultivator on the estate of Gaur Parshad Sarma of Nunkari. He supported himself by his labour, and paid ground-rent for his house to the said Sarma; and, on his death, to Subarna Devi. He died in 1205. I continued to reside with my step-mother and wife at my father's abode, and supported myself in the same manner, paying rent to Subarna. In 1224 she died. On the 9th Assin 1232, Kubiswar Sarma broke into my house and beat me. He got from Ram Charan Kar, who is an officer of the civil court of Dacca, two peons, and placed them on my door, and attempted to take me away. I made an outcry, and neighbours interposed. They continued, however, to oppress me, and I petitioned the magistrate. Kishn Charan Kar, the brother of Ram Charan, did the same. On the 2d November 1824, the magistrate released me. Kubiswar and Ram Charan appealed without effect to the court of circuit."

On the part of the plaintiffs, the following two documents, in Persian, were exhibited:—Farigkati, dated 9th of the 2d Jamadi, or 15th Chet 1164 Purgunati, from Ram Ballabh Bari of village Kartik Aeng, in pergunnah Bojurah, Sarkar Sylhet. "Maya, wife of Raghwan Das, and Khush-hal, his son, are my slaves. I am unable to support them. I have therefore voluntarily received 10 rupees, as below specified, from Har Umkar and Ram Mandan, Brahmans, of village Nunkar, in the said pergunnah, and have executed this deed, releasing them from their service to me (ajiri state of hirelings). I engage and covenant that no claim of me or of my heirs in regard to the said Maya and Khush-hal remains. If any claim by any one be preferred, it is void and untenable. I am responsible. The deed of their hire (kabala ajiri) is lost: should that be forthcoming it will be false."

"In the name of Maya, 4 rupees; in the name of Khush-hal, 6 rupees:—Total, 10 rupees."

Deed, dated 15th of the 2d Jamadi, corresponding with Chet 1164, *anno regni*. "The legal and valid engagement of Maya, daughter of Narayan Das Nag, wife of Raghwan Das Bari, inhabitant of pergunnah Bojura, now of Nunkar, in Sarkar Sylhet. I hereby voluntarily engage and covenant as follows: In consideration of 10 rupees, as below distributed, from the date of these presents, for the terms of 60 and 70 years' service. I am adult (aged 30 years), and my son, Khush-hal, aged eight, have become khas ajirs (domestic hirelings) in the possession (dast) of Har Kinkar Brahmin and Ram Nundan Brahmin, heirs of Govind Ram, Brahmin, on these conditions: Receiving our necessary support, we will remain for the terms defined, and render to the hirers the service of husking rice, drawing water and ploughing, bringing wood and other legal services. We will not be recusant. I have received the full consideration of hire from the hirers. This I have made over to Ram Ballabh Bari, my master (khawind), and having obtained his release of the relation as hireling to him of myself and son, I have made over myself and son to the said hirers."

"In the name of Maya, 4 rupees; in the name of Khush-hal, 6 rupees:—Total, 10 rupees."

On the 25th February 1830, Mr. J. Campbell, the judge of the zillah court, dismissed the claim with costs. The motives of his decision were thus expressed: "The deed of sale, executed by Khush-hal's mother, filed by plaintiff, is limited to the terms of 60 and 70 years lunar, respectively. This action is after the expiration of the longest term. Now, after the term of hire, the object thereof ceases to be subject thereto. The deed of hire has no mention of the wife and issue of Khush-hal, and cannot therefore support plaintiff's claim. There is no averment of the origin of the alleged slavery of the defendant, Phul. I hold that the claim should be dismissed with costs."

The

The plaintiffs preferred an appeal to the commissioner of Assam, who had succeeded to the authority of the court of appeal in the place where the parties resided. This appeal was defended by Nair alone. On the 12th December 1833, Mr. Charles Smith, holding the above office, passed this judgment on the appeal: "Nair, his step-mother, his wife and children, are the hereditary slaves of the Sarma family. They received nankar lands. Kishen Chundan and other witnesses prove that the defendant, Briju, kept watch with other slaves at the marriage of that witness's slave-girl, and that Nair also consorted with slaves, whence his servile state is presumable. It is true in the deed of hire limited terms are defined, and no mention of descendants is made; but I do not concur with the zillah judge that the freedom of descendants is thence deduced. I consider the limitation of time as being merely in conformance with custom, and to ensure the exemption from labour in old age, not freedom. The respondent, moreover, was born within the period of the term; therefore, in conformity with the real meaning of the vyavastha of the pundits of the Nizamut Adawlut which the appellants produced,* the omitted mention of issue of the hired slaves, in relation to the hirer, is no argument of the freedom of appellant and his family. The defendants, though given time so to do, failed to advance proof of their liberty; and no deed decisive of their exemption from the claim has been produced. Let the appeal of appellants be decreed, and let Nair, with his wife, children and step-mother, be again liable to serve appellants. Costs of both courts are payable by Nair and his step-mother."

The appellant, as pauper, preferred a special appeal from this decision to the Sudder Dewanny Adawlut, which was admitted on the 3d April by Mr. Rattray, a judge of the court. The grounds of admission were thus expressed: "The foundation of plaintiff's claim is the deed of hire executed by Maya, and the plaint was filed after the expiration of the time therein limited. Neither by the regulations, the Hindoo law and usage, nor in equity, can it be legal that, when a person has assigned himself on hire for a defined time under such deed of hire, himself, wife and issue should pass as owned and hired persons, and be liable to render service to the issue of the hirers. The decision appealed from is also contrary to the decision of this court on the case of Khawaj, Manik and others.† The case therefore requires further consideration."

On the 18th January 1836, the case came on for judgment before Mr. Stockwell. His judgment was recorded in these terms: "From the proofs of plaintiff, I am not sufficiently satisfied to induce me to adjudge the claimed slaves with their issue to perpetual slavery. The witnesses depose generally to this, that they presumed the defendants to be slaves from services performed. But services are of various sorts; nor is every servant a slave. The deed of hire wants authentication. Moreover, a term is limited therein, and the object of such limitation is, that the performance of the condition be limited to the duration of the term. The witnesses assert usage to be this, that the person who is the object of the contract of hire does not become free at the expiration of the period. But such loose and vague assertion is entitled to no weight. Respondents allege the rent-free occupancy by defendants of land and dwelling as proof of slavery; but the witnesses depose to the contrary. I propose to confirm the decision of the zillah court, and reverse that of the commissioner."

The judgment proposed by Mr. Stockwell was passed on the 24th February 1836, by Mr. Braddon, who concurred.

CASE put to the Pundits of the Nizamut Adawlut, Calcutta.

A., an inhabitant of Sylhet, wishes to sell B., his female slave, with her four sons and daughters, having fixed the price. The slaves have petitioned the court to this effect: "We are willing to serve our master, but he, out of enmity, has made this arrangement with the intending purchaser, that he should remove us to another country, and re-sell us in different places."

Question 1. According to the Hindoo law current in Sylhet, is such an objection of the slaves, in respect to a sale under above circumstances, valid or not?

Question 2. If valid, can the slaves designate another purchaser selected by themselves?

Question 3. Or can they obtain their emancipation, if able by any means to tender their fixed prices?

ANSWER of the Pundits, Vaidya Nath Misr and Ram Tanu.

FIFTEEN slaves are propounded in Hindoo law. We infer from the terms of the case that the slaves referred to are of the class denominated Griha-jata, or house-born. Amongst the fifteen there are the house-born, the bought, the obtained (by gift), the inherited, the self-sold. The emancipation of these five does not arise without the will of their owner. If the owner (inclined to sell his slaves) desire the discharge from him of slaves (of those five classes) by means of a price fixed by himself, then on account of his dominion and power, he may sell his slaves, though desirous of serving their master. But if, by the sale to the purchaser selected by the master, grievance of the slaves should exist, their release from him ought to be held established by legal reasoning, the owner having received the price settled by himself either from a buyer designated by the slaves or any other buyer; for

* The vyavastha referred to, which was exhibited on the part of respondent, is annexed.

† No. 2 of this Appendix.

Appendix III:
Reports.

for thus the owner suffers no loss. But slaves are never emancipated from slavery by paying the price fixed by their master from their own wealth, for the owner has dominion in the property also of his slave. This exposition conforms with the Vivada Bhāṅgarnava, Daya Krama Sangraha, Daya Bhaga, and other books current in Sylhet, included in Bengal.

AUTHORITIES.

1. Text of Nareda cited in the Vivada Bhāṅgarnava and Daya Krama Sangraha :
"One born in the house, one bought, one received, one inherited, one maintained in a famine, one pledged by a master.
"One relieved from great debt, one made captive in war, a slave won in a stake, one who has offered himself in this form, 'I am thine,' an apostate from religious mendicacy, a slave for a stipulated time.
"One maintained in consideration of service, a slave for the sake of his bride, and one self-sold, are 15 slaves declared by the law."
2. Gloss thereon in the Daya Krama Sangraha: "Born in the house." "Born of a female slave."
3. Passage in the Daya Krama Sangraha: "There is no emancipation of these four slaves, the house-born and the rest, and the self-sold, without the indulgence of their owner."
4. Text of Vrihaspati cited in the Vyavahara Tatwa and other books: "A decision must not be made solely by having recourse to the letter of written codes. The law must not be expounded by mere adherence to written texts. For, if judgment passed without reference to reasoning, there might be a failure of justice."
5. Text of Menu cited in the Vivada Bhāṅgarnava, Daya Bhaga, Daya Tatwa and other books: "The wife, the son and a slave are considered without property. What they earn is his only to whom they belong."

No. 8.

Sudder Dewanny
Adawlut, 17th
May 1836.

Loknath Datt Majmuadar and Jainath Datt Majmuadar, heirs of Lakhmarayan Datt, Appellants, versus Kubir Bhandari, Kishwar Deb, Saha Deb and Maheswari, Respondents.

ON the 23d March 1830, in the zillah court of Mymensingh, against Kubir Deb, his daughter, Kishwar Deb and Saha Deb, Lakhmarayan Datt instituted an action, the cause of which was thus stated in his plaint: "Kubir Deb is descended from an hereditary slave of my family. Kishwar Deb and Saha Deb are his sons, and he has one daughter, of whom I do not know the name. Kubir and his family have always rendered to my family services of a slave, holding of me land and a house for their support. In 1229, they left their abode and went to another village. They continued, however, in possession of the land and house, and to render service till Asin 1233. Incited by Deva Datt and Ganga Datt, from the beginning of 1234 they left my service. I therefore sue them to establish my dominical right, and reduce them to servitude. I estimate the cause of action in the sum of 15 rupees, loss sustained; and I associate Deva Datt and Ganga Datt as defendants."

Kubir alone appeared and made this defence: "I deny that I am the hereditary slave of plaintiff, or held of him any land for my subsistence. When I lived in his village, he allowed me the use of some land in place of wages, and I occasionally served him, but not as a slave. For the last 12 or 13 years, I have lived in another village, where I am treated as a ryot. It is not true that I hold lands of plaintiff, and rendered service till 1233. Ganga and Deva Datt are made defendants that I may lose the benefit of their evidence."

In his reply, plaintiff alleged these facts: "Srimant, defendant's father, Sri Narayan, Chandra Narayan and Ramu, sons of Sena, are the hereditary slaves of my family. In a partition Srimant and Sri Narayan fell to my father's lot, Chandra Narayan and Ramu to the lots of Mod Narayan Majmuadar and Ramdhan Majmuadar, my uncles, respectively. The said slaves continued to render service, and in 1229, Srimant Anwar, son of Chandra Narayan, and Ganga and others, sons of Ramu, absconded. They went to village Ojunpur. The sons of Ramdhan Majmuadar obtained a judgment against Dina, Ganga and others, their slaves, and they reverted to their service; and so did Anwar to that of the sons of my uncle, Mod Narayan Majmuadar. Owing to deficient accommodation in his original house, Kubir resided at Ojunpur; and till Asin 1233 continued to hold the house and lands assigned him by me, and to render service to me. He married his sister, daughter, and other females of his family, on my discharge first obtained, making me the established present. His marriage and that of his sons were effected at my cost."

Kubir filed no rejoinder.

On the 27th August 1833, the principal sudder ameen, to whom the case had been referred, passed judgment in favour of plaintiff, and directed that defendant and his children should render service to plaintiff as slaves; each party to pay their costs. The principal sudder ameen remarked, that defendant had not supported his defence with any proof, while plaintiff had established by oral and documentary proof the facts charged in his plaint and reply. Kubir had prosecuted Nar Sing Majmuadar and others before the magistrate, and, on his examination adduced by plaintiff, had stated that plaintiff's cousins were his masters.

From this decision, Kubir to the zillah judge preferred his appeal, which was defended by Loknath, the son of plaintiff, who had died. On the 30th July 1833, the zillah judge reversed the decree of the principal sudder ameen, making costs payable by the parties respectively.

respectively. His motives were thus stated: "Plaintiff's action is estimated in the amount of loss for services withheld. It is not admissible, because not brought within one year from absence of defendant. Plaintiff files no deed proving the servile state of the defendant. His witnesses, who allege that defendant rendered service to plaintiff and held of him lands for support, depose on hearsay. Moreover, it is not equitable that a family in perpetual descent should be slaves in consideration of nankar lands for support."

From this judgment the application for special appeal, preferred by the sons of Lakhi Narayan Datt to the Sudder Dewanny Adawlut, was first heard by Mr. H. Shakespear. In it the name, before unknown, of Kubir's daughter was stated to be Maheswari. On the 21st November 1833, he referred to the pundit of the court petition of the appellant and decrees of the court produced, requiring him to state whether proofs, such as those recited in the decree of the principal sudder ameen, if adduced by plaintiff, would be sufficient legal evidence under the Hindoo law to establish the slavery of defendant. The reply of the pundit was to this effect: "The proof adduced by the plaintiffs to establish the fact of slavery, as set forth in the decision of the principal sudder ameen, is sufficient; for it seems that the defendants are inherited slaves, and this is one of the 15 legal classes of slaves." In support of this opinion the pundit cited the text of Narada, cited in various books, in which the "slave inherited" is enumerated.

On the 4th March 1836, Mr. Shakespear admitted the special appeal, because, with reference to the answer of the pundit, the accuracy of the judgment of the zillah judge seemed doubtful.

On the 13th April 1835, the case came before Mr. G. Stockwell. He wished to ascertain if any precedent existed amongst adjudged cases, in which the claim to reduce to slavery had been entertained, in which the alleged slaves were not associated with other defendants. He doubted the cognizability of such claim. The reference to the serishtadar produced this report: "I have searched the office. I have referred to the case of Kewal Ram Deo and others, appellants, *versus* Golak Narayan Ray.* In that, respondent sued appellants to reduce them to his dominion as his slaves, and others were not associated as defendants. Plaintiff succeeded by the judgments of the zillah court and court of appeal, but these were reversed in this court. Seemingly, then, there has not been any appeal in which the claim of a plaintiff to establish his dominion over a slave has been sustained in this court. Of course, then, occasion to enforce such judgment has not risen."

On the 17th May 1836, the case came on for judgment, when Mr. G. Stockwell affirmed the decree of the lower court with costs. His motives were thus expressed: "The report obviates my doubt. I find that the testimony of appellant's witnesses examined to prove respondent's slavery rests on hearsay, which therefore is insufficient. Plaintiff's claim is this; that defendants are slaves in consideration of lodging and lands for support. Now, if they received the same, it is clear they have abandoned such lodging and support. In the case,† No. 120, 1833, on the 7th December 1835, I passed a decree in concurrence with the opinion of Mr. R. H. Rattray. In conformity to that precedent, respondents are slaves of the class of slaves for their food. On surrender of the lands held they are entitled to emancipation. The zillah judge has ruled that the claim is not cognizable, because not brought within a year. In this I do not concur. I suppose he rests his doctrine on section 7, Regulation II. of 1805, which is irrelevant."

* *Shekh Hazari and others, Appellants, versus Dewan Masnad Ali, Respondent.*

SHEKH LAL MAHOMED, Phutia and Luchboo, of Sarail, in Tipperah, by petition claimed the protection of the magistrate against Masnad Ali, zemindar of a section of the pergunnah. They alleged they were free tenants, and that the zemindar restrained and coerced them, though desirous of emigrating. On the 7th May 1836, Mr. Aplin, the magistrate, after taking the oath of Hazari to the truth of petition, issued this order to the police darogah, "If the persons specified in the petition are restrained, or do not wish to remain, release them." On the issue of this order, Shekh Hazari, Ahsan Ullah, Shekh Bani and others, likewise claimed protection of the magistrate for selves and families against the said zemindar.

The magistrate passed successive orders to this effect, "that if the persons mentioned in the petition wished to quit the place where they were, they should be allowed to go." The darogah was ordered to report after inquiries as to certain effects and houses which the petitioners claimed.

On the part of Masnad Ali also several petitions were presented, to this effect, that the petitioners were his house-born slaves; the agent of the other section of the pergunnah had excited them to combine; and in consequence of the magistrate's order, 250 male and female slaves, to him belonging, had tumultuously broke out, to his disgrace.

From the above order of the magistrate, Masnad Ali appealed to the commissioner of circuit (Mr. Dampier), who, after sending for the papers on the 19th August, passed the following order: "The persons affected by the magistrate's order are stated to exceed 80. It was wrong in the magistrate, without inquiry, to pass his successive orders for release of the petitioners and their families. They appear to be the hereditary slaves of Masnad Ali, for in the petitions they are designated khana-zads and khana-bands of Masnad Ali. It appears that a numerous band tumultuously broke out from the house and adjoining premises of

No. 9.
Presidency,
Nizamut Adawlut,
2 March 1837.

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of Masnad Ali. This is not less than a riot. Now, a riot tends to great mischief, which is subversion of good order; for in this part of the country good order in respectable families depends on such inherited persons born and brought up in the family. In particular in the families of Hindoos and Muslims, the abiding of such inherited persons is not illegal; on the contrary, there are indications of the legality thereof. It is usual for respectable people to have this class of persons in their houses. It is not a new custom that a sweeping order for emancipation should be passed without great mischief, or that the magistrate should interfere summarily on their petition. If any extreme oppression, contrary to custom, were inflicted on this class of persons, and that should lead to disturbance and be subversive of good order, the magistrate (if in such case competent by regulation to interfere) may do so. Under every view, the orders are illegal, and should be amended. I reverse his orders directing the release of the parties and their families.

From this order Shekh Hazari, Phutia, Lal Mahomed, Ahsan Ullah, and Bani and others, appealed to the Nizamut Adawlut. Their petition was to this effect: "The order of the magistrate directed release of us and families. We are ruined by the reversal thereof. Masnad Ali contemplates perpetual imprisonment of us and our families. We are not his bought slaves, yet he always seizes and beats us, he does not allow us to go any where, nor to attend the festivals of our class-fellows. By the law and practice of this court, a rich person is not allowed to restrain an unwilling poor man as his slave or servant. Regulation III. of 1832 was passed merely to prevent sale of slaves. According to the 9th chapter of the Hidayah, a Muslim, living in a Mahomedan country, not a 'Harbi captive,' is not the slave of another. The claim of the zemindars is, therefore, contrary to Mahomedan law. We refer to the case of Khawaj and others, appellants,* and to the case of Kewal Ram Deo, appellant, versus Golak Narayan Ray.† These invalidate any claim on another as slave."

On the 2d March 1837, Mr. D. C. Smyth, Judge of the Nizamut Adawlut, after sending for various papers, passed this judgment: "The orders of the magistrate and commissioner have been passed without any previous inquiry. When Hazari and others charged Masnad Ali with assault, and alleged their freedom, the magistrate took his affidavit, and directed their release. As the agent of Masnad Ali alleged that the petitioners were his slaves, the magistrate should have instituted a summary inquiry as to the issue of fact. If he found petitioners were free, he should have directed their release; if he found them to be ajir, and house-born, he should then have passed such order as might appear fit under the law and local usage, adverting to the islam of the petitioners. Moreover, the magistrate at all events should have investigated the assault and seizing of which petitioners complained, whether they be free or slaves. Let the orders of the magistrate and commissioner be reversed, and the former proceed as above directed."

No. 10.
Sudder Dewanny
Adawlut, September
30, 1839.

Ram Gopal Deo, alias Gopal Bhandari, Appellant, versus Ghokal Chandra and others, Respondents.

THIS appeal arose from a suit which respondents on the 10th March 1828 instituted in the civil court of Mymensingh against appellant and others. They alleged that appellant, and his brother Ram Hari, the wife of each of them, and the son of appellant, were the hereditary slaves of the family, and the joint property of them and their coparceners of Brijnath and Bhajunath and Tarini Dasi. The plaintiffs alleged that their share in the slaves, considered as part of the joint undivided property, was three parts out of five, and they sought to establish their dominical right and power to that extent. They estimated the cause of action in the sum of 15 rupees, the assumed loss by service withheld. The plaint stated, that the persons claimed as slaves had continued to render service to them as joint owners up to 1224 (1817), when they, excited by their coparceners and others, who harboured them, became recusant. The plaintiffs, therefore, associated their coparceners and others alleged to have aided and conspired with the claimed slaves as defendants. Of the defendants, Ram Gopal alone appeared to defend. His defence was this "I deny the claim of plaintiff. During the scarcity of 1194 Fush, Hari Ram Deo, father of me and my brother, Ram Hari, remained some time with Jaganath, the zillahdar, the father of defendants, Brijnath and Bhajunath. He supported himself by weaving. After some time he established himself, marrying at his own expense. So also, since our father's death, we served at different places, and married at our own cost. Before the zillahdar died, he requested us to manage for his minor sons we acted as their agents."

On the 30th December 1838, after evidence received, the sudder amun, Kazi Jelal-uddin, to whom the case had been referred, passed judgment in favour of plaintiffs. He found the facts as charged by plaintiffs, and directed that the persons claimed should render service of slaves to plaintiffs in the proportion of their interest. The grounds were thus stated: "Khushhal had five sons, the plaintiff, Ghokal Chandra, and four others. The other plaintiffs represent two of the sons. The defendants, Brijnath and Bhajunath, represent a fourth, and Tarini is the widow of the fifth brother. Haru, the father of Ram Gopal, and his brothers, were bought while the family was joint and undivided. Indeed, the patrimonial lands are not divided, though for the last few years there has been a separation of mess. The defendants, charged to be slaves, rendered services to the plaintiff and other defendants up to 1234. In that year they ceased to render service to plaintiff, continuing, however, to render the same to Brijnath and his brother, and others. Plaintiffs have proprietary dominion over the slave defendants, as owners of three out of five shares." The costs were made

* No. 2 of this Appendix.

† No. 3 of this Appendix.

made payable by Brijnath and Bhajunath, and Mohun Kishn, defendants, who harboured the slave defendants.

The appeal from this decree was heard by the register of the court, who, on the 28th, June 1830, reversed the judgment of the sudder amin, substituting that of nonsuit. He, remarked, that dispute existed between plaintiffs and three defendants, their coparceners, as to extent of interest, and that on account of this dispute the joint estate had been attached.

The object of the suit was to obtain a judgment, settling shares, which would avail as to the real property. Moreover, the bill of sale, though required, had not been produced. The register pointed out that plaintiffs should first sue to settle their shares in the joint real estates.

From this decision the respondents (plaintiffs) preferred a further or special appeal to the zillah judge, Mr. G. C. Cheap, who, on the 7th June 1833, set aside the decision of the register, directing that the case should be *de novo* tried, and heard in appeal. Mr. Cheap remarked, that plaintiffs had sued to establish their right as to a share in the proprietary dominion over slaves; and difference existed in the form and essentials of such an action, and an action for ownership in land.

On the re-trial, on the 17th December 1833, before Mr. Cheap, the plaintiff exhibited two deeds, a bill of sale, purporting to have been executed by Jyoti Dasi, in 1193 B.S., and another, on stamp, purporting to have been executed by Akhi Narayan Das and others, on the 16th Bysack 1222. By questions put to the wakils of the defendant, Ram Gopal, it appeared that plaintiff and some of the defendants, charged as harbourers of the alleged slaves, were joint proprietors of real property, though collusion as to extent of interest existed. Mr. G. C. Cheap amended the decision of the sudder amin thus: "Let the appeal be dismissed, and let respondent on appraisement of the price of the slaves recover rateably. Let them, on execution of the decree, pray appraisement. Parties pay their own costs in both courts." His motives were thus expressed: "I refer to the evidence on the part of the plaintiff. It appears that appellants and other owned persons, rendered to plaintiffs and their coparceners services of slaves, and received support. But, without doubt, Tarini Dasi, and other coparceners of plaintiffs, excited the slave-defendants to refuse service. Though indeed the fabrication of the bill of sale, filed by respondent, is beyond doubt, still I consider all the circumstances of the case; that is to say, that slaves are included in personal property, and plaintiffs may sue to establish their interest in real property in the same action; but how the defined share of three-fifths of slaves is to be divided I do not know, and I marvel at the order of the sudder amin in this regard. Moreover, if provision is to be made in this regard by way of instruction, laying down the law, still justice did not require that any judgment incapable of execution should be passed. Considering all this, I amend the judgment of the sudder amin."

From the judgment, appellant on the 13th of March 1834, personally moved the Sudder Dewanny Adawlut for admission of a special appeal, presenting with his petition a copy of the zillah judge's decision. On 6th of May, Mr. R. H. Rattray, judge of the court, before whom the application was heard, directed the papers to be referred to the pundit to declare whether the decisions passed conformed with the Hindoo law as received in Bengal. The pundit, in reply, stated that the decision of the sudder amin was right, quoting a passage from the Daya Bhag, whereby property not partable is divided in use.

On the 3d June, Mr. R. H. Rattray, considering the above exposition, remarked, that the answer did not suit the reference. It is apparent that Haru only was bought as a slave, not his family and descendants. Nevertheless, the decision of the lower courts establish defendants' slavery; the pundit is to explain the law with reference to this. His further exposition was to this effect,—that the state of the descendants of Haru would depend on the clause of the bill of sale. If they were expressly excluded, they would be free, not otherwise. In that case they would not fall in any one of the 15 classes of legal slaves, but within the class of the coerced. But if not expressly excluded, the progeny born subsequent to the purchase is an accession to the property bought, and belongs to the buyer. The pundit declared this opinion to conform with the law laid down in the Bengal authorities.

The texts cited in support were these: 1. Text of Narada, which enumerates* the 15 classes of legal slaves: 2. Narada. Text prohibiting† kidnapping.

On the 29th July 1834, this second vyavastha was considered by Mr. Rattray, who proposed to admit the special appeal. Mr. Rattray remarked: "Although, under section 28, Regulation V. of 1831, the zillah judge's decision is final, still, considering the objections of the applicant, the nature of the case, the points deducible from the decisions of both courts, and also the vyavastha of the pundit, I think the case merits further consideration, and without admission of a special appeal the court cannot be satisfied. If appellant within two months observe all the conditions, a special appeal will be admitted."

On the 5th May 1836, appellant had not complied with the conditions of appeal, when Mr. R. H. Rattray directed that he should be summoned by notice to appear and conform within six weeks. Notwithstanding appellant had acknowledged notice and undertaken to appear, still on the 11th of August 1836, he had failed to do so; in consequence, Mr. Rattray directed the case to be struck off the file of pending cases.

On the 10th December 1836, appellant moved the court to revive his appeal; he excused the

* Digest, b. 3, chap. 1, v. 29.

† Digest, b. 3, chap. 1, v. 40.

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the delay in performing conditions, by urging, that on his return home to get security he felt sick for one and a half year; and that he supposed that the delay of six weeks was to be counted from his acknowledgment, and that he had accordingly arrived on the 12th August, one day after the case had been struck off. As without his return home he could not procure bail, and was provided with none, he returned to procure it without moving the court to revive his appeal, which he now did with necessary security.

On the 30th September 1839, the case being revived came on for trial before Mr. Abercrombie Dick, a judge of the court, when he ruled that the decisions of the sudder amin and zillah judge were imperfect, and directed the case should be restored to its number, and after taking further evidence, decided on its merits. Mr. Dick remarked: "The judge writes that the bill of sale produced by plaintiff is without doubt fabricated. It was wrong in him to decide the case merely on the evidence of a few witnesses taken before the sudder amin."

Shekh Taki and others, Appellants.

No. 11.
Sudder Dewanny
Adawlut, 22 April
1840.

ON the 15th May 1799, in the civil court of Sylhet, Muhammad Kadir of Zafur Gurh, in that zillah, against Hatla, Sanai, Adhum and Pokai (Muslims), instituted an action, of which the object was to establish his dominion over the defendants as his slaves. He alleged that they were his hereditary slaves, and had recently deserted. Hatla was brought in on the first process, and imprisoned on defect of security given, but he was enlarged when prosecutor failed to provide for his subsistence. The other defendants evaded; and the case was tried *ex parte* as regarded them.

Hatla in his defence denied his servile state.

On the 30th November 1799, Mr. Christopher Robertson, the judge of the zillah, passed this judgment: "It appears from the evidence of two witnesses examined on behalf of plaintiff, that defendants are the hereditary slaves of plaintiff. They, and their father, have rendered servile offices to plaintiff for more than 12 years; one witness says 21, the other 30 years. It is decreed that they will continue to serve plaintiff as slaves. If defendants can prove that plaintiff ill-uses them, they may obtain redemption on payment of 300 kahuns of cowries, the valuation in the plaint. Plaintiff will recover costs of suit from defendants."

In the year 1827, in the civil court of Sylhet, Muhammad Kadir brought a second action, of which the object was to establish his dominical right against the same Hatla, Sanai, and other persons, their kinsmen. The cause of action was estimated in the sum of 144 rupees. The plaintiff alleged, "that since the former decree, the former defendants, with their families, attended and rendered me service. In 1225 (1811), Sanai, Hatla and the other members of the family deserted. Some have settled at village Chand Haveli, in pergunnah Lakara Sate, the property of Murari Chand. These were Sanai, Hatla, Ujhai, Baz and Taki, the uncle's sons, and Bahadur, the whole brother of Sanai, Wasi, the female Alu and Aghun, children of Hatla's sister. Others have settled at village Rand Bari, pergunnah Baldar. These were Mufti, the son of Pokai's sister, and Khalil, his whole brother. Shekh Rahmut, who is the son of Adhum's sister, has settled at village Putta Gaon, pergunnah Doadi."

Of the defendants, Khalil admitted the claim of the plaintiff, and the rest did not originally appear. After evidence received, the sudder amin, Gholam Yahi, adverting to the former judgment, on the 10th July 1828, passed a decree in favour of plaintiff's claim.

From this decision an appeal was preferred to the zillah judge. The parties appellants were Shekh Hatla, Baz, Taki, Wasi, Aghun, Zaki, for selves, and as guardians of Lufu, the minor son of Sanai, who had died, Mariak, the widow, and Nazir and Wazir, sons of Ujhai, for selves, and Nasir, a third son of Ujhai, Zain Bibi, the widow of Bahadur, for self, and Shekh Mukim, her minor son, Alu and Shekh Rahamat. The appellants alleged that they were free cultivators. Golan Kadir having died, was represented by his widow, Rajab Banu, and his adult son, Muhammad Nadir. Pending appeal, the female Charu and others, kinsmen of defendants, intervened. They alleged that they and defendants were the hereditary slaves of the plaintiff, and prayed judgment against defendants, lest they suffered inconvenience from the emancipation of defendants, who would cease to consort with them.

The principal sudder amin, to whom the case was referred, after taking evidence on both sides, confirmed the decision of the sudder amin. He observed, that "it is true that the witnesses of appellants support in a manner their case; but in 1799 a judgment was obtained by plaintiff against the defendant, Hatla, and others, and the plaintiff's witnesses establish that the defendants are the hereditary slaves of plaintiff. Though the case was long pending before the sudder amin, yet appellants filed no documents, such as releases, showing that they were free cultivators."

On the 18th of June 1835, the zillah judge admitted the special appeal from this judgment for which application had been made. The appellants were Taki 2d and Zaki 2d, sons of Hatla (who had died), Baz, Wasi, Aghun, for selves, and Lufu, minor son of Sanai (who had died), Nazir and Wazir, sons of Ujhai, for selves, and minor brother, Nazir, Zain, the widow of Bahadur, for self, and minor son, Mukim, and Alu, female. The appellants urged, "We are free; in 1217, B. S., we left our location on plaintiff's estate, and settled on the estate of Murari Chand, whose discharges for rent we hold. The former decree, on which the sudder amin relies, does not show what ancestor, and of which defendants, became the slave of any and what ancestor of plaintiff, and how." The judge admitted the

the special appeal with reference to the disputed issue of fact in regard to the year in which defendants left the estate of plaintiff, which fact did not appear to his judgment to have been sufficiently investigated.

The widow and sons of plaintiff being summoned, defended the appeal. On the part of appellant were exhibited various receipts for rent, and it was alleged that similar documents obtained from plaintiff had been burnt. Mussamat Nasha, the mother of Taki and Zaki, intervened by petition, stating that she was ready to serve plaintiff's family, but was grieved for her sons. Mariak, by petition, alleged that she joined her sons, Wazir and Nazir, in appeal, but since it was dismissed had attended on plaintiff, her master; but she felt for her sons, and if they were declared free by the court, she hoped to be released also. After further evidence taken as to the disputed point noticed, Mr. Henry Stainforth, the zillah judge, on the 26th of December 1838, passed judgment in these terms: "I do not credit evidence of defendants' witnesses, adduced to prove the emigration in 1217, whereby the claim would be barred by rule of limitation. Were the fact so, defendants would have pleaded it in the original trial; so also would they have charged it in their first petition of appeal. The three witnesses adduced by defendants in first appeal do not depose consistently as to time when the family of the defendants emigrated from the estate of plaintiff. The witnesses of plaintiff prove that the desertion occurred about nine or ten years before suit; consequently the claim is not barred by rule of limitation. Bhagu Ram Datt, the agent of Murari Chand, deposed that the defendants located themselves on his master's estate in 1217, but Murari does not specify any precise time. The assertion of defendants, that they were settled as ryots on plaintiff's estate, was not proved by any deed, and the asserted loss of receipts by fire is a pretext. Defendants are proved to be hereditary slaves of plaintiff, by the evidence and by the decree of 1799 above mentioned. Of the original defendants, Hatla had died, leaving sons; Taki and Zaki. Sanai had died, leaving an adult son, also called Zaki, and Lufu, a minor. Ujhai had died, leaving Wazir, Nazir and Nasir, his sons. Bahadur had died, leaving a widow, and Mukim, a minor son. I affirm the judgment of the lower courts. Let appellants, Mufti, Khalil and Shekh Rahmut be made to serve respondent; and so also Muriak, widow of Ujhai, if she do not voluntarily serve. As to the unadult defendants, there is no need to issue any order. Parties will pay their own costs."

On the 6th April 1836, a petition by way of appeal, on the part of the nine appellants, was presented to the Sudder Dewanny Adawlut. The petitioning parties were Taki, Zaki, sons of Hatla, Baz, Wasi, Aghun, Taki, Nasir, Zaki 2d, and Alu. They prayed interference of the court to procure them liberty. The substance of their petition was this:—"1. The claim of plaintiff was barred by lapse of time, as we proved." 2. Shekh Zaki and others are our kin. They also, in 1217, located themselves with us on the estates of Murari Chand. Nawab Ali, brother of Muhammad Kadir, sued at the same time to establish his dominion over them. They exhibited the baboo's receipts, and their witnesses by the judge were credited as to their location on his estate in 1217, more than 12 years before suit, and the decisions of the same sudder amin and principal sudder amin were reversed on the 15th September 1835. 4. The decree of 1799, on which zillah judge relies, is of no avail. That decree resulted from a vindictive suit of plaintiff, who resented the emigration of the defendants as free tenants. No evidence was taken on part of defendants. The decree, too, provides for redemption of defendants. It was this clause which caused defendants to acquiesce. 5. No other proof showing the origin of our alleged hereditary slavery was adduced. The judge first notices this. It cannot be justice, that, like cattle and quadrupeds, we should be coerced into slavery, and be utterly ruined. 6. Under the Muslim law infidelity and capture in war are essentials to legal dominical power. We refer to the precedents of the case of Shekh Khawaj and others,* also to the case of Nair † alias Narayan v. Ramnath Sarma and others. As contrary to Muslim law and the regulations, a claim to slaves was dismissed. We refer also to Macnaghten's Mahomedan Law, p. 312, No. 1,022, Constructions; and section 14, Regulation III. of 1793."

On the 3d June 1839, the application was heard by Mr. J. F. M. Reid, a judge of the court, when it appeared to him that the judgment of the zillah judge on the special appeal was final, and no further appeal was admissible. But it was urged on the part of the applicants, that notwithstanding section 28, Regulation V. of 1831, in the case of Ram Gopal v. Ghokal Chandra, an appeal from a decision in special appeal had been admitted by Mr. R. H. Rattray, another judge, on the 29th July 1834, with reference to this, that the freedom or servitude of appellants was the issue of the case. Mr. Reid required production of copy of the rubakari of Mr. Rattray. This accordingly being produced, Mr. Reid resumed consideration on the 26th February 1840. He remarked, that the appeal of Ram Gopal was admitted as a third or special appeal by Mr. Rattray, with reference to the subject matter of the action, notwithstanding that, under section 28, Regulation V. of 1831, the zillah judge's decision on an appeal from the sudder amin was final. The present case was decided in special or second appeal by the zillah judge, and the application was really for a third appeal. Mr. Reid added: "I do not find from the circumstances of the case any special ground for interference. To consider the subject matter as a sufficient reason seems contrary to section 28, Regulation V. of 1831." Mr. Reid postponed final order that he might consult his colleagues; and directed the serishtadar to report if any other judge had joined in Mr. Rattray's order.

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In the case which Mr. Reid submitted to the court at large, he thus wrote: "While I was preparing a memorandum of this case for the English sitting, with a view to take the opinion of the court as to the propriety of any interference with it, we have received the sentiments of the western court and government on the subject. The western court now hold the interference of the sudder courts to be barred wherever the laws declare the order of the zillah judge to be final; and the government to whom, in consequence of a difference of opinion between the two courts, the papers were referred, concur with the western court. But it must be observed, that it has been the practice for the sudder courts, in virtue of the general powers of control vested in them, to interfere in such cases wherever excess of jurisdiction, manifest illegality, or gross and glaring irregularity may be apparent on the proceedings of the lower courts. (See Constructions, Nos. 1,003, 1,045 and 1,113.) In the precedent cited, no such special ground is stated to have induced the interference of the court; I therefore conceive that it is not incumbent on me to follow it in the case now before me. On this point, I solicit the opinion of the other judges, and also as to the mode in which I should proceed. My own opinion is, that I should, by an order in the native department, reject the prayer of the petition (without reference to the pleas urged by the petition, which can only be listened to when an appeal is admissible) as beyond the competency of the court to grant, and (as this order would be contrary to the precedent cited) send on the case for another voice."

"P. S.—I understand that the case of Ram Gopal Deo having been taken up in regular course by Mr. Dick, the decisions of the lower courts have been annulled, and the case, referred back for further inquiry."

Mr. Reid's colleagues, Mr. Rattray, Mr. Tucker and Mr. Lee Warner, concurred in the opinion by him expressed; Mr. Rattray remarked that the opinion expressed by government was decisive; and Mr. Lee Warner, concurring, added, "that until a new act was passed, the court could not interfere." On the 22d. April 1840, the report of the serishtadur beng read, Mr. Reid recorded his opinion, that any interference of the court on the matter of the petition would be improper, and directed that the case should be submitted for final judgment to another judge. Mr. Reid remarked: "The case was finally disposed of in special appeal by the zillah judge. Although the petitioners exhibit, as a precedent, the judgment of Mr. Rattray admitting the special appeal of Ram Gopal Deo, still I am of opinion, with reference to clause 1, section 28, Regulation V. of 1831, the interposition of the court in the matter would be improper."

Remark.—Though final judgment has not been passed, the principle by which it is to be governed is settled.—(May 15, 1840.)

APPENDIX IV.

SAUGUR and NERBUDDA Territories.

1. From the Honourable Mr. F. J. Shore, Officiating Commissioner, Jubbulpore, to Mr. H. B. Harington, Officiating Register, Nizamut Adawlut, Allahabad.
2. From Lieutenant M. Smith, Officiating Principal Assistant Commissioner, to the Honourable F. J. Shore, Commissioner, Jubbulpore.
3. From Major R. Low, Principal Assistant Commissioner, Jubbulpore, to Mr. H. B. Harington, Officiating Register, Sudder Dewanny and Nizamut Adawlut, Allahabad.
4. From Mr. D. W. McLeod, First Junior Assistant, Seonee, to the Honourable F. J. Shore, Officiating Commissioner, Jubbulpore.
5. From Mr. M. C. Ommaney, Officiating First Junior Assistant, Baitool, to Mr. H. B. Harington, Register, Sudder Dewanny and Nizamut Adawlut, Allahabad.
6. Letter, dated 29th April 1831, from Mr. F. C. Smith, Agent to the Governor-general, addressed to Captain Crawford, containing general instructions in regard to slave cases, enclosed in above,

Appendix IV.
Returns.
No. 1.

From the Honourable Mr. F. J. Shore, Officiating Commissioner, Jubbulpore, dated 8th March 1836, to Mr. H. B. Harington, Officiating Register, Nizamut Adawlut, Allahabad.

2. First. In these territories the practice of slavery seems to have had scarcely any reference to either Hindoo or Mahomedan law on the subject; moreover, the customs seem to have been very uncertain and arbitrary in different places, and at different times.

Second. Slaves were procured almost entirely by purchase of children from parents or relations in times of scarcity. The numbers do not appear ever to have been great, and are now very small indeed.

Third. The power of the masters over the slaves is by some, particularly the petty rajahs, asserted to have been unlimited, even extending to death; by others this is denied. I imagine, that in reality, it very much depended on the good understanding between the individual and the local governor.

Fourth.

Fourth. The masters were considered bound to afford protection to their slaves; to pay the expenses of their marriages. The progeny of slaves is by some asserted to have been free, by others not.

Fifth. The services on which slaves were employed appear to have been precisely the same as those of servants, either in domestic attendance, agriculture, or as military retainers.

3. In reply to the second query of Mr. Millett's letter, it does not appear that any cases have ever been preferred before the courts in these territories, excepting of the following natures:—

First. Demands of parents or other guardians to reclaim children sold by themselves during a period of scarcity or distress. In this case the practice has generally been to restore the children on repayment of the charges incurred for their subsistence. Lieutenant Smith, officiating principal assistant of Saugur, states, "that in cases, which are the most frequent, of the utter inability of the claimants to meet this charge, I have directed service to be levied from them by the purchaser for a fixed term, according to an equitable computation; or, if the child is old enough to be of service in his household, I have allowed the employer, on default of reimbursement for his expenses, and on condition of continuing to feed and clothe the child, to retain him or her for the same period in the relation of an apprentice; rather than incur the additional expense of which, without any ulterior object, the purchaser has generally foregone all claim and given up the child to its natural guardian, taking credit for having supported it meanwhile in charity."

Second. Female slaves complaining of ill-treatment by, or claiming their freedom from, bawds, and bawds wishing to reclaim their female slave prostitutes who have absconded.

4. By some officers the claims of the bawds seem to have been allowed; in others disallowed.

5. The practice of the different magistrates and courts seems to have varied much, to the great vexation and annoyance of the people. It would be highly desirable that a definite law should be passed, either totally abolishing slavery or allowing it; and if the latter, declaring under what rules and regulations it should be tolerated. There may possibly be some districts in which it would be impolitic to interfere with the ownership of masters over their slaves; but within the limits of the Agra presidency some such rules as the following might, I think, be safely and expediently enacted:—

First. None but a parent or legal guardian to sell a child; the sale to be registered in the office of the judge, or one of the local munsifs, or other authority.

Second. The rights over the child sold to be those only which the parent or guardian himself possesses.

Third. The purchaser to have the power to make the slave work, and to inflict chastisement in moderation, just as the parent or guardian would have done if he or she were in the labouring class.

Fourth. Ill-treatment of the slave by the master or mistress punishable by fine before a magistrate; gross ill-treatment to entitle the slave to freedom.

Fifth. Every male slave to be entitled to his freedom on claiming it on coming of age, or at any subsequent period.

Sixth. Every female slave to be entitled to demand her freedom on coming of age, or at any subsequent time, and to a small sum of money (the amount to be specified), as a dowry.

Seventh. A proclamation to be issued to all now possessing slaves, whether procured by purchase or born in slavery, to register them; after which the slaves to be subjected to the above rule.

Eighth. In the event of proclamation being neglected, at the expiration of (say) one year from its date, all unregistered slaves, if discovered, to be at once declared free.

6. It is urged by some, that the parents or legal guardians should be allowed to redeem the child at any time by payment of the sum originally received by its sale. I have some doubts of the expediency of any such rule; such to be fair should be reciprocal; and if the above be allowed on the one hand, on the other, the purchaser should be at liberty to return the child to the parents, reclaiming the sum he had paid. The practice of Lieutenant Smith shows the difficulty which would be entailed by such a rule when the parents would not pay.

7. There is an analogy in the case of apprenticeships in England. No parent can take away his child (except the indentures be cancelled in consequence of ill-treatment on the part of the master) until the period of apprenticeship has expired. If such were allowed, all the diligent lads who had learnt their trade speedily would be taken away by their parents, that they might earn money as journeymen, the idle and troublesome only being left with their masters. If the parents were allowed the power on the one hand, the masters on the other, must, in fairness, have the option of returning such apprentices as were idle and useless. This would be the abolition of apprenticeships, since it would be useless drawing up contracts which might be infringed by either party at his pleasure.

8. In this country, the chief object of tolerating a modified slavery (and slavery under the rules above suggested would be no more than an apprenticeship) is, that a family, by selling, or in fact binding apprentice, one of the children, should be saved from distress or even starvation. The object of the buyers would be to procure servants and attendants, whom it was worth while to take considerable trouble in instructing, because they were sure of their services for several years, and very probably for their lives; since it is but natural that men would remain in the same family in which they had so long lived if well treated.

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9. Only the poorest of the labouring classes, and that only in a time of distress, would sell their children. The idle children who would not work would not be reclaimed by their parents; and it would be any thing but equal justice that the parents should be able to reclaim those who were worth taking; many, perhaps most of whom, would prefer remaining with their masters, while the good-for-nothing should be left on their masters' hands.

10. Place the matter in the following light. A family consists of a man, his wife and two or three children. After struggling against distress caused by a bad season, he in the month of December sells his youngest boy, aged four years old, for 10 rupees, which sum enables his family to exist until the next wheat harvest in April; whereas they would otherwise have certainly died of starvation. After this, the harvest being good, and work obtainable, the family continue to live in tolerable comfort; but finding that the child sold is very comfortable with its master, the father does not reclaim it. The master supports the child, and, as he grows up, has him taught to read and to perform various services. When he is about 10 or 12 years of age, and able to make himself useful, the father claims him, while he would probably prefer remaining with his master, being too young to remember his parents, on repayment of 10 rupees. This can hardly be called justice. Even if he were obliged to pay the sum he had received, with simple interest at even 24 per cent., it would amount to but a small portion of the expense of the master, to say nothing of the latter's trouble. To attempt to settle the proper remuneration to the master would be very difficult. It would probably be better that the parent should not have the right alluded to; for, although few would enforce it, the fear of its being done would prevent most people from buying children in a scarcity.

11. All slavery for the purpose of prostitution should be prohibited.

No. 2. From Lieutenant *M. Smith*, Officiating Principal Assistant Commissioner, Camp Marowrah, dated 16th December 1835, to the Honourable *F. J. Shore*, Commissioner, &c., &c., Jubbulpore.

I HAVE had the honour to receive your circular, No. 1,685, dated the 24th ultimo, with its enclosures from the *Sudder Adawlut*, at Allahabad, and the law commissioners, regarding the principles and practice of our courts in respect of slaves.

2. I may premise in the words of Mr. Macnaghten in his preliminary remarks to the Principles and Precedents of Mahomedan Law, as quite applicable to this part of the country, that "of those who can legally be called slaves, but few at present exist;" and of those that do exist I may add, the condition is so comfortable and easy that the relation is hardly to be recognized.

3. The observations which immediately follow the words I have quoted, and those contained in a note in the next page (page 40) by Mr. Colebrooke, sufficiently account, perhaps, for the fact, that very few cases of slavery are ever brought before our courts. In the course of an experience of six years in these territories, I have met with none save those.

1st. Of parents or other natural guardians reclaiming children sold by themselves or others, during a period of scarcity or distress. 2d. Female slaves complaining of ill-treatment by, or claiming their freedom from, bawds who, having purchased them in their infancy, have brought them up to a life of prostitution.

4. I recollect no instance of a complaint from or against, or of any claim to, the person of a male adult slave, as such; and should any suit for emancipation occur, although I should necessarily be guided generally by the Hindoo and Mahomedan laws respectively, as far as they are understood here, yet after the conflicting principles and precedents which may be adduced, and the latitude which seems to be allowed by section 9, Regulation VII. of 1832, as well as by the practice of our courts in this territory, I confess I should be at a loss how to decide on any other principles than those of common sense, justice and good conscience.

5. The regulations not having hitherto been in force here, and no specific rule having been ever, so far as I am aware, laid down for our guidance respecting slavery, I have never had in the courts, with which I have been connected, any other guide than precedent and the custom of the country, modified by the discretionary power vested in the assistant, whose decisions are supposed to be governed by equity and reason. Such being the undefined nature of the law of slavery in these parts, the tendency of our practice, so far as my observation and experience extend, has been to condemn the principle altogether, and wherever it could be done with safety and without interfering too much with popular prejudices, to disallow its operation. But the promulgation of some certain and well-defined law on the subject appears highly desirable, and I myself see no danger in one of prospective effect, which should make all slavery from and after a fixed date illegal.

6. Here, in the absence of any distinct rule, the practice of one district has doubtless varied from that of another. In the first of the two cases instanced by me, while the custom of the country recognizes such a species of slavery, both with respect to Hindoos and Mussulmans, still, as it may be departed from without any ill effects, the practice of the ministerial officers does, I believe, vary. I myself have always restored the children on repayment to their protector of the charges incurred for their subsistence; and in cases which are the most frequent, of the utter inability of the claimants to meet this charge, I have directed service to be levied from them by the purchaser for a fixed term, according to an equitable computation; or if the child is old enough to be of service in his household,

I have

I have allowed the employer, on default of reimbursement for his expenses, and on condition of continuing to feed and clothe the child, to retain him or her for the same period in the relation of an apprentice; rather than incur the additional expense of which, without any ulterior object, the purchaser has generally foregone all claim and given up the child to its natural guardian, taking credit for having supported it meanwhile in charity.

7. In the case of slave prostitutes forming particular attachments and claiming their freedom, I have known the right of the master or mistress to their persons to be admitted, on proof of purchase from a parent or natural guardian; and this indifferently whether the girl and her purchaser were Hindoo or Mussulman. But my own rule, even if the purchase could not be invalidated, which is rarely the case when closely inquired into, has been to consider the female as entitled to her freedom after the age of 15, on paying what shall be considered by arbitrators an equitable remuneration for her food and clothing during her minority, and making due allowance for the wages of her prostitution, which have been enjoyed by her mistress, and which in most cases of this kind may well be considered to have discharged the debt.

8. After what I have said, it may seem unnecessary to go into greater detail on the points proposed by the law commissioners. Where the practice of slavery is discountenanced in the manner I have briefly described, in all cases of the nature alluded to in the last paragraph of Mr. Millett's letter, I would, on the same principle, give the slave the benefit of that law which was most favourable to his emancipation; and certainly would not support or enforce any claim to property in a slave, by any other than a Mussulman or Hindoo claimant, and not then if illegal by their own laws.

9. I will only observe in addition, with reference to the 2d and 3d queries of the law commissioners, that no acts such as would be punishable in other cases would in this court be held justified by the circumstance of the oppressed being the slave of the oppressor; nor would such relation between the parties be suffered to operate in mitigation of the punishment; but how far we should be justified in the eyes of the law by following the dictates of reason and humanity, and emancipating a slave, whether Hindoo or Mussulman, from a tyrannical master, on proof of gross and incorrigible ill-treatment, I am unable to say, though such would, I think, be the practice of this court.

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FROM Major R. Low, Principal Assistant to Commissioner, Jubbulpore, dated 31st January 1836, to Mr. H. B. Harrington, Officiating Register to the Court of the Sudder Dewanny and Nizamut Adawlut, Allahabad.

No. 3.

I HAVE the honour to acknowledge the receipt of your letter, No. 73, of the 15th ultimo, calling for the report required by the circular order of the court of the 13th November last, regarding the system of slavery as prevailing in this country.

2. I beg leave to state, that the reason why I did not at once reply to the order in question was, that I had no facts to furnish from personal experience on the subject.

3. The number of slaves in the district of which I have charge is very small, and they are only to be found in the situation of domestic servants. Their treatment in that capacity would certainly appear to be good, as in the course of my experience I cannot recollect an instance of any complaints preferred by them of cruelty or hard usage by their masters.

4. Most of these persons became slaves by having been sold by their parents, who were unable to support them during the frequent famines which have occurred in this part of India; and, in the same manner, great numbers of children belonging to the starving population of Bundelkund were sold by their parents here and elsewhere, during the two years that preceded the last year. Most of these sales were made privately, but whenever the parties came to my kutcherry to have the bargain publicly sanctioned and registered, I have always informed them, that in the event of the parent appearing at any future period to claim the child, that it would be required to be given up, on the parent paying a reasonable sum for its subsistence and education, should the latter have been bestowed upon it, the amount of such remuneration to be determined by arbitration, should the children be so claimed.

5. Upon the various points alluded to by the secretary to the law commission, I presume it cannot be the wish of the court that I should obtrude my opinions,—the object of the inquiries apparently being to ascertain the usual practice in such cases in the various courts and districts of the Agra presidency.

FROM Mr. D. F. McLeod, First Junior Assistant, Seonee, dated 26th December 1835, to the Honourable Mr. J. F. Shore, Officiating Commissioner, Jubbulpore.

No. 4.

I HAVE the honour to acknowledge your letter of the 24th ultimo, forwarding a circular from the Nizamut Adawlut on the subject of slaves.

In regard to the first point, "the legal rights of masters over their slaves recognized by this court," I am unable to state definitively what has been the practice observed heretofore, as I am not aware of any cases involving the question which have come under investigation. The view of the matter, however, by which I should myself be guided as that which appears to me most in conformity with the views of respectable natives themselves, is, that the property of a *bonâ fide* slave is the property of his master, saving what the latter may have himself bestowed; and that the slave's person, in like manner, is claimable by the master for the performance

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performance of all lawful services, such as may be obtained from others for hire, including, as regards female Mussulman slaves, concubinage, though not prostitution. And I would here observe, that I should consider the slave as having a reciprocal claim on the master for food, clothing, and lodging, which principle has been observed in cases decided at Jubbulpore.

On the second point, I should consider any act of coercion, which a court of justice would not prohibit on the part of a parent towards his child, to be admissible on the part of a master towards his slave. Any thing partaking of cruelty or vindictiveness, I should consider it incumbent on me to check, in either instance, by the infliction of a punishment on the aggressing party, though I should not deem myself authorized directly to liberate the slave on this ground, and, indeed, I am not aware of any definite distinction, as regards the acts, admissible, which I should admit between this relation and that of master and servant, as the liberty possessed by the latter, to quit an irksome service, furnishes him necessarily with a safeguard much more effectual than any minute interference of the court in his favour.

In illustration of the above view, I may mention, that not long ago a Mussulman of Seonee requested my permission to place an iron on the leg of his slave, who he stated would not obey his orders. My answer was, that kind and judicious treatment would be his only effectual means of obtaining work from him, and that I could on no account listen to such a request. I believe that other Mussulmans in court at the time viewed this as the only just order that could have been passed.

The indulgence extended to Mussulman slaves in criminal matters refers, I conclude, to their conduct towards their masters only; and here I should view the relation in the same light as above indicated; viz. all smaller offences, such as parents are in the habit of themselves correcting, if committed by a slave, I should consider as more fit for the cognizance of the master himself than of a court of justice, while, as regards all more serious offences, I should recognize no distinction between slaves and other individuals.

In answer to the third point inquired of by the secretary to the law commission, I am unaware of any cases in which I should afford less protection to slaves than to free persons against other wrong-doers than their masters, but in all such cases I should consider the latter as a party concerned, and would hold him responsible if he did not use his endeavours to protect his slave.

With reference to the 4th paragraph of Mr. Millett's letter, I need scarcely add, that in the above view I have been guided more by the dictates of my own judgment, and what I have been able to gather of the views of respectable natives themselves, than by any reference to the codes of law. Amongst Mahomedans, I believe that capture in an infidel land is the only authorized source of slavery; so that a legal right to the possession of a slave can scarcely be said at the present day to exist among them, while, as regards Hindoos, from the vyavasthas on record, and their own views, there would appear to be no sufficient ground for the governing powers hesitating to prevent cruelty or violence towards the slave.

In this view I am aware of no distinction I should make between a Mahomedan and Hindoo slave-owner, save in regard to concubinage, which the former view more in the light of marriage—the latter of prostitution and contamination; and considering the relation as conferring reciprocal rights, without giving to the master the power of exercising cruelty or violence any more than is possessed at all times by a parent, I should not be disposed to make any distinction in regard to persons of any other race. Slavery in this part is a widely different thing from what it is in some parts of the Dhukin, being, in fact, much more of the nature of a domestic tie than a condition of constraint. The obtaining possession of children, either by purchase or gift, is a thing which the frequency of famines occurring in a country only thus civilized renders so inviting, that I doubt whether any law will put a stop to it at present; while it may be questioned whether its entire prohibition consists at all times with charity and the public good; and the maintenance of the relation on the footing above indicated appears to me all that is necessary, in conjunction with the laws prohibitory of slave selling as a trade, in order to prevent its engendering serious evils. Already there is a very general feeling amongst natives, that under the British rule (more in consequence of its moral influence than any direct enactment) there is little advantage in the possession of a slave; for as they either are not permitted, or do not venture forcibly to detain them in their keeping, instances are daily becoming more frequent of slaves, on reaching maturity, deserting even from masters who have treated them with uniform kindness, and generally speaking, carrying away with them a portion of that master's property.

No. 5.

FROM Mr. M. C. Ommanney, Officiating First Junior Assistant, Baitool, to Mr. H. B. Harington, Register, Sudder Dewanny and Nizamut Adawlut, Agra Presidency, Allahabad.

I HAVE the honour to acknowledge the court's letter of the 15th November 1835, annexing a letter from the Indian Law Commissioners on the subject of slavery, and to submit such answers as the materials at my command and my own short experience enable me.

1. Cases involving points of disputes as to the proprietary right of slaves, whether as concerns their persons or property, have seldom or never come before this court. I have carefully examined, however, such as have occurred, as likewise such documents in the office as relate to the subject of slavery. Slavery, indeed, is hardly known in these parts—I mean the

the parts which were under the Maharatta rule; and where it does exist, it is in a mild form. The greater part of the slaves became so in consequence of famine, or the exorbitant prices of the necessaries of life. It is consequently found that only the richer and more wealthy part of the community are slave-masters. The slave is treated more as a member of the family than a hired servant or labourer. An attachment is generally engendered between them, bearing the character of that between parent and child. The master is considered to have a legal right to the slave's services and to his property, and in the event of his emancipation, can claim remuneration for the expense of feeding and clothing him. Such a thing as the sale or transfer of a slave, however, rarely or ever occurs, save on occasion of an extraordinary nature, such as famines or family distress.

2. Cruelty or maltreatment is not considered a justification of an act of liberation. The master may inflict on his slave such moderate chastisement as he may consider requisite; but a slave has as great a right to protection against severe and cruel treatment as any other British subject. I have reason to believe that this rule existed in force, as well under the Maharatta as under the British Government. I am not aware that indulgences of any sort have ever been or are ever granted to either party, master or slave, in any case. A master would be bound down by recognizances and sureties to keep the peace towards his slave equally as he would towards any other person.

3. There are no cases in which this court has ever afforded or would afford less protection to a slave against wrong-doers than to any other person.

4. In reply to the closing paragraph, I should be guided in all cases by the law, religion or usage of the defendant; and as slavery is not recognized, except between Mussulmans and Hindoos, I should not consider myself justified in enforcing any claim to property, possession or service of a slave on behalf of or against any others than Mussulmans or Hindoos.

5. That the court may have the fullest possible information on this subject, I do myself the honour to annex a copy of Mr. F. C. Smith's instructions on the subject of slavery. By the rules contained in this letter, all decisions are made and cases disposed of. With a view to ensure more uniformity between the system in force in these and the regulation territories, Captain Crawford was furnished, at his request, with a variety of cases disposed of in several courts of the western provinces, and these, together with the annexed instructions, form the guides for the assistant in any cases that may arise.

6. Indigenous slaves, I believe, scarcely exist here. Such as have become so were sold to their owners in the famine in 1818-19, or more recently in the terrible drought which occurred in this district and Berar in 1832. The only hope that parents had of seeing their offspring live, the only means of rescuing them from inevitable death, was their sale, which was carried to a great extent, though the liberality and charity of gentlemen were exerted to the utmost to prevent such a calamity. Of those sold, however, the greater number have been freed by the masters themselves, and a large proportion liberated on the parents' reimbursing the owners for the money expended in their food and maintenance.

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FROM Mr. F. C. Smith, Agent to the Governor-general, Jubbulpore, dated 29th April 1831, to Captain Crawford, Principal Assistant to Governor-general's Agent, Saugur and Nurbuddah Territories, Baitool.

No. 6.

IN reply to your letter of the 25th instant, I beg to state, that the only law passed by our government respecting slavery, is Regulation X. of 1811, which prohibits the importation of slaves by land or by sea into all places dependent on the presidency of Fort William, under a penalty of imprisonment for six months, and a fine of 200 rupees, commutable to six months' additional imprisonment; and persons imported as slaves are directed either to be discharged or sent back to their friends and connexions in the country from which they may have been imported, as may appear most advisable to the magistrate deciding the case; there is consequently no law prohibiting slavery within our own territories. On the contrary, questions of slavery have by several decisions of the Sudder Dewanny Adawlut been recognized as legal, and decided by the provisions of the Hindoo and Mussulman laws, according as the religion of the parties may have been.* In the year 1798, the court of Sudder Dewanny Adawlut stated their opinion, that the spirit of the rule for observing the Mahomedan and Hindoo laws was applicable to cases of slavery, though not included in the letter of it; which construction was confirmed by the Governor-general in Council on the 12th April 1798.

2. A reference was also made by the superintendent of police for the western provinces, on the 19th July 1814, to the Nizamut Adawlut, stating that instances had occurred of people having been subjected to punishment for the imputed offence of having sold or purchased slaves within our territories, and submitting an opinion, that the law exclusively prohibits the importation of slaves by sea or by land from the foreign states, but does not either supersede the operation of the Mahomedan law, or interfere with the purchase or sale of slaves within the Company's territories who may not have been so imported, and requesting to be informed whether his construction was correct. He was informed in reply, his construction of the law was correct and proper.

3. There

* Mussumaut Chutroo, appellant, v. Mussumaut Jussa, respondent (*vide* No. 1, Appendix III.) The case of Hadi Yar Khan (*vide* Enclosure of No. 84, Appendix II.)

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3. There are only two descriptions of persons recognized as slaves under the Mahomedan law; first, infidels made captive during war, and secondly, their descendants. These persons are subjects of inheritance and of all kinds of contracts in the same manner as other property; but as to slaves, in popular acceptance of the terms, such as those purchased in times of famine by Mussulmans and others, the legality is denied. In fact, the practice among freemen and women, of selling their own offspring, is declared to be extremely improper and unjustifiable, being in direct opposition to the principles of Mahomedan law, viz., that no man can be a subject of property, except an infidel taken in the act of hostilities against the faith. In no case, then, can a person, legally free, become a subject of property; and children, not being the property of their parents, all sales or purchases of them, as of any other article of illegal property, are consequently invalid. A freeman is also prohibited selling his own person, and the contract is void.

4. The Hindoo law fully recognizes slavery, which may occur from several causes; viz., capture in war; voluntary submission to slavery for divers causes (as a pecuniary consideration, maintenance during a famine, &c.); involuntary for the discharge of a debt, or by way of punishment of specific offences; birth (as offspring of a female slave); gift, sale or other transfer by a former owner; and sale or gift of offspring by their parents; from which may be perceived, that there are five descriptions of permanent thralldom.

5. In cases wherein both parties, or the defendant alone, are Mussulmans, you should decide according to the Mahomedan law; and when both parties or the defendant are Hindoos, by the Hindoo law.

APPENDIX V.

RETURNS of Public Officers respecting Slavery in the Province of Kumaon.

1. Eight questions circulated to certain functionaries by Mr. Lushington, the Commissioner.
2. Rubakari, dated 28th October 1839, of Mr. J. H. Batten, containing his own views, and submitting answers of subordinate judicial officers.
3. Reply of Bir Bhadra Joshi, Sudder Record-keeper of Almorah, Kumaon, to questions forwarded to the Commissioner through the First Assistant, and referred to in No. 2.
4. Reply of Trilochan Joshi, Sudder Amin of Zillah Kumaon, 2d October 1839, referred to in No. 2.
5. Report of Kishn Nand, Acting Peshkar of Huzur Collections, countersigned by the Chowdhuris and Kanungos of the Pergunnah, referred to in No. 2.
6. Report of Bhavdey Joshi, Munsif of Zillah Kumaon, 8th October 1839.
7. Report of Khushal Singh, Chhatre, Tahsildar of Kali Kumaon.
8. Proceedings of the First Assistant of Zillah Garhwal, 21st October 1839.
9. Arzi of Parmanand Notil, Record-keeper of Garhwal.
10. Report of Sevanand Khadudi, Sudder Amin, Pergunnah Garhwal, 17th October 1839, addressed to the First Assistant.
11. Arzi of Ramanand, Acting Tahsildar of Garhwal, attested by four Kanungos of the Pergunnah, addressed to the First Assistant.

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QUESTIONS by Mr. G. T. Lushington, the Commissioner of Kumaon, circulated to certain Functionaries, on 6th September 1839.

No. 1.

1. STATE particularly from what period has the custom of holding male and female slaves, halis and so forth, been current?
2. Up to what time have the claims of masters been heard in court, and in what year did the cognizance of their claims cease, and by whose orders?
3. Has the master any control over the requisition and property of his slave?
4. Are slaves of every class or only of the lower classes?
5. Has a census of slaves, with their classification, ever been made, or, if not, is it now practicable?
6. What services are exacted from slaves, halis and others respectively; what is the nature of their support and lodging?
7. They are now emancipated; before, how, and under what circumstances were they discharged; if any now apply for emancipation, how is it to be attained?
8. At present, does the former practice of selling men and women prevail in this country?

RUBAKARI

RUBAKARI of the First Assistant, Zillah Kumaon, Mr. J. H. Batten, 28th October 1839.

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No. 2.

FROM the papers sent by the peshkars and tahsildars, it seems that the slaves, including halis, remain willingly. I do not, however, much rely on their assertion; for they have in their houses many slaves, and they desire that the custom should be kept up. In my opinion slaves are in comfort; and the females labour more than the males. The native functionaries write that the emancipation of slaves began from the commencement of 1836; but they do not know how the pretensions of the slaves were brought forward, and how an order for their emancipation was issued by the Governor. Mention thereof may be found in the English office and correspondence. Since 1836, in suits for slaves, orders for their discharge are passed, and when it has happened that a master restrained his slave, on report, the magistrate has taken a recognizance from him. Claims of masters against fugitive slaves have been dismissed; but they were rare. Moreover, I have learnt a new practice not mentioned in any former rubakari. It is this, that the owners take a deed of mortgage from the slaves, whereby they bind themselves to serve a defined time in consideration of a sum stated. But, in my opinion, the practice is objectionable; for the slaves do not receive the money, but their fathers or other relatives. The claim is against the receiver of the money; but contrary to this, the native judges give judgment against the slave, in satisfaction of which they render labour. Some rule on this matter should be passed. Now-a-days prostitutes do not come into the hills to buy girls; nor do people of other countries come. Girls who are kept by persons are like slaves; and in my opinion this practice is not good. But it is not easily to be put down. If any girl, in person, or her father, whom they call (governor) "paik," should make this application to the magistrate's court, that she wishes not to practise prostitution, but live by other means, in that case her mistress, that is, the bawd, must be punished.

In my opinion, it is proper that cases against slaves should not be entertained in court, and that charges of slaves for assault should be heard, and masters punished like other breakers of the peace.

Order: Let copy of this rubakari, and the replies of the functionaries, be submitted to the commissioner.

ARZI of Bir Bhadra Joshi, Sudder Record-keeper of Almora, Kumaon.

No. 3.

Answer to the 1st question.—FROM 1815 (the accession of the English) till 1835, the practice of selling slaves has been current in this country. The sale was made by a parent under the signature of the rajah. On the 6th February 1818, a proclamation prohibiting the sale of slaves, and minatory generally against the buyer, was issued. Subsequently, in 1824, another proclamation was issued by the court to this effect: "Whoever shall sell a widow, or his wife, the price, by way of fine, will be confiscated to government, and the woman released from the buyer." After that, on the 15th June 1836, by authority of the Governor-general, the court issued a proclamation declaring no spit for a slave cognizable. From this date the sale and purchase have ceased.

Answers to the 2d and 3d questions.—FROM 1815 to 1835, the practice of sale continued. It was made by a parent under signature of the rajah. If the deed on the part of the parent was not authenticated, the person alleged to be a slave was discharged. Since the date of the proclamation, the purchase and sale are stopped. In respect to the property and effects of slaves there is no judicial order.

Answer to the 4th, 5th and 6th questions.—Deeds of sale under the signature of a parent used to be sustained as legal; not those by a brother or others. On account of the illegality of the latter, the illegal slave was released. I annex a Table showing particulars of cases.

Parties.	Residence.	Dates.	Claim, and substance of last Order.
1. Birna Dom versus Dowlut Singh, Uttam Singh.	-- Pergunnah Chongurlah.	1818: 24 October.	-- A suit for emancipation. Let both defendants divide themselves.
2. Birna versus Kunkunya.	Dhyanirau --	1819: 1 June.	-- Suit for emancipation. The sale which was by a brother held to be illegal.
3. Ohhuwani (female) versus Gita.	-- Shirkot Nadahpur.	1823: 6 October.	-- Suit for emancipation. A kinsman had sold her by a bill of sale for 15 rupees. Plaintiff declared free; price confiscated as a fine, the woman having paid it.
4. Govind (prostitute) versus Bijuli.	Almora --	1823: 13 March.	-- Claim for emancipation. Defendant declared free because not sold by a parent. The ornaments made up by defendant's sister restored to her.

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Parties.	Residence.	Dates.	Claim, and substance of last Order.
5. Biwali (female) versus Gopiya.	- - Ata Dhaniya Kot.	1824 : 22 February.	-- Claim for emancipation, which was awarded. Fine of 80 rupees awarded against defendant, or six months' imprisonment if he could not pay.
6. Fowkiya Auji versus Maha Deo and Ram Kishp.	- - Basariya Sichalsi.	1826 : 18 July.	-- Claim for emancipation of his daughter, Makani. Sale proved, and claim dismissed.
7. Gugua versus Hari Ram Sah.	Almorah -	1829 : 31 May.	-- Suit for discharge. Plaintiff discharged, for deed not proved.
8. Jai Narayan Ti- wari versus Be- roli (girl).	Almorah -	1830 : 7 August.	-- Suit for the recovery of a slave bought. Defendant made over to plaintiff.
9. Malati (female) versus Pukhi.	- - Dobatala Syuudara.	1832 : 6 September.	-- Claim for emancipation, which is ad- judged, because the deed written by the plaintiff's husband was not legal under the English Government.
10. Beelubhi Kan- ehani versus Anuwon.	Almorah -	1832 : 14 September.	-- Claim for emancipation disallowed, be- cause 80 years had elapsed from deed of sale executed by plaintiff's father.
11. Deutiya Naru versus Jyuni Chatrukhus.	Chakhura Agar.	1832 : 17 August.	-- Claim to recover defendant, his slave. The assistant gave a judgment in favour of plaintiff; reversed on appeal, by the com- missioner, on the 4th September 1832.
12. Jemadar Bhavan- ri Muschir ver- sus Sheolabh Pant, Dhanuli (female).	- - Balvan Chhastana.	1832 : 21 March.	-- Case as to sale of the girl Dhanuli to Luchhman Banjara. Plaintiff, defendant and Luchhman imprisoned three months.
13. Kishna Negipat versus Kishas Jinu.	Manrasah Tauli.	1834 : 21 June.	-- The girl, Ramuli, was sold for 106 rupees by her father to defendant, residing with Mohuni, prostitute. On the hills a father may sell his child; but the regulations prevent sale of hill children on the plains. Now defendant does not meditate such sale, let him get charge of the girl, binding himself not to sell her on the plains.

On the 30th June 1835, was received in the commissioner's court, rubakari of the agent of Deyra Dun, of which the object is information as to the sale of persons in the hilly tract, and with it a copy of a letter from rajah Darsan Sah. The reply written was to this effect: "Every one marries, and with his money buys a woman. Brahmins do not plough with their own hands; they buy persons of the Dumara and other classes to drive their ploughs." This is the usage of this country from ancient time. In my opinion, such sale and purchase of slaves are not prohibited; only the sale of widow and of a wife (husband existing) is forbidden. In answer, a rubakari of the 21st August 1835, was written. A rubakari of the Deyra Dun kutcherry, 26th July 1827, in the case "Ghaughu, plaintiff, versus Kali," was also received. The object was to give information as to the theft of a bought slave. In the reply from the commissioner's court, it was stated, that in that court only the sale by the father of a slave was recognized as sufficient; but no bill of sale from any other kinsman has been recognized in court, for the father only has the power to sell a son.

No. 4.

REPLY of Trilochan Joshi, Sudder Amin of Zillah Kumaon, 2d October 1839.

Answer to the 1st question.—As it is clear that slaves, including the hali, have been usual from olden time, I do not know why Mr. Smith, the former assistant, wrote to the sudder court his report, nor do I know what order came whereby from 1836 sale of slaves was stopped.

Answer to the 2d question.—It is apparent that formerly parents and masters used to sell slaves and hals, or transfer them to other places. Up to Sambat 1879 (1822) the sale was sustained in court as legal. Every owner who sued recovered through the court. From 1880 (1823) up to 1883, merely the sale by a parent and self sale remained legal, and owners

owners recovered objects of such sale. According to order of Mr. Turnbull, the commissioner, when the sale was by others, and claim preferred, the object was discharged; but from 1837, by order of Col. Gowan, the former commissioner, the sale and purchase of all slaves were absolutely forbidden. Be it observed, the slave or hali has control over his effects and property; on his death his heirs succeed, and, failing heirs, the same escheats to the king. If intimacy take place between the male slave of one owner and the female slave of another, and if any issue be born, the owner of the mother takes the same; but the children so born have no claim on the estate of their natural father.

Answer to the 3d question.—Most male and female slaves are in the houses of Brahmins. In those of the Khetris, Vaisyas and Soodras they are fewer. Domestic slaves are of that class by any person of which, being touched, water may be drunk. The hali is a Dome.

Answer to the 4th question.—There has not been any census of slaves taken as yet. To hold slaves does not depend on the class of the master; whoever has the means buys slaves and halis. From statements of zemindars of respectability, Brahmins, Chatris and others, it seems that a single person will have five or six male slaves, and six or seven female slaves, with their progeny, 20 or 25 souls; but a poor zemindar keeps one or two slaves, male and female, and halis.

Answer to the 5th question.—From the male and female slaves, every office, except cookery, is exacted. They and their children are fed and clad like the children of the house; they are provided with lodging in separate apartments; but the hali, who is a Dome or other low caste, is not lodged in the master's place of abode, but is located on his soil in a separate house. The treatment of slaves is various; some get two meals and clothes, and do all the work of their master at his bid; some get an assignment of land from their master's estate. They plough, cut wood and carry burthens, and otherwise labour; they cultivate the spot assigned for their support, and to this the master does not object; besides, the master on occasions of festivals and holidays gives them rations; also during the year a blanket and shoes, and at each of the harvests (autumn and spring) three or four sheaves. No rent is exacted for the land assigned for their support. The expense of the marriage of their children is defrayed by the master. Their children render the same services. Some halis get money from a master, and marry; in consideration of this, a claim for their services during life arises, but does not extend to their children. Some halis take money, engaging by yearly service to pay it off. Whatever proportion he may pay off in a year, he only gets one meal on the day he works, and gets nothing more.

Answer to the 6th question.—Slaves are sold by their parents; a brother cannot sell them. In this manner fathers of good caste will sell a daughter for money; but the father being dead, it is proper that the girl's mother or uncle should affiancé her; but to take money for her is wrong. The father and mother certainly procreate their children; they decide on what is moral or immoral. In the case here put, to sell a daughter is common. If any calamity occur or offence be committed, to sell a son or daughter on that account is less immoral. The Shaster provides for sale in such cases. Slaves sold by the master have been discharged by the court, but not those sold by parents, or self-sold. Moreover, now also, if a slave sold by his master petitions, his release is proper. In case of hereditary slaves, who have become as it were house-born, there is no power of sale; nor can parents sell such. The master defrays expense of marriage of such slaves. To release such slaves does not seem proper. In this country, through domestic slaves and halis, the cultivation and respectability of the respectable classes are kept up. On family partition, slaves are first divided. If there is a sole slave, he works by turns for the joint owners, getting food and raiment from the party for whom he works.

Answer to the 7th question.—The former government by proclamation prohibited the sale of men and women, and, on proof, the seller was severely punished. But prostitutes used to buy adopted daughters (dharma putris) for their trade, and go to other countries; there was no prohibition of this. Thus, also, during the present government, they certainly were allowed to buy and sell women.

In Sambat 1866, and two following years, there was a scarcity; from this cause, in Ghurwal and Dote, several men and women were sold, but the continued prevalence of this practice does not appear. In that year the proprietor of the Gor estate was punished as a seller.

REPORT of *Kishn Nand*, Acting Peshkar of Hazur Collections, countersigned by the Chowdhris and Kanungos of the Pergunnah.

No. 5.

Answer to the 1st question.—From the beginning, the practice of selling slaves and halis has prevailed. It does not appear when it was abolished; but in 1824 an order was issued prohibiting any one from selling a widow or his own wife; but sale of children has never been prohibited, at least we are not aware of the fact, if so.

Answer to the 2d question.—Up to 1879 Sambat (1822), on claims preferred to the court by the master, he recovered his slave, male or female, or hali, but from 1880 down to 1893 (1836) the master only recovered in cases of sale by a parent, or self-sale; where the sale had been made by others, the object was released. Laxmi-pat, by the judgment of the court of circuit, was confined on a charge of murder, and his two slaves were released. On appeal, he was enlarged by the Nizamut Adawlut, and the slaves were restored to him; but early in 1839 some order, the nature of which is not known, was received from the sudder; in consequence of it, the sale of slaves was entirely stopped. Slaves have no property, unless

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it be personal effects, money or ornaments, according to their quality; these remain in their possession, and the master does not claim the same. After their death, their children get their effects, but if none survive, they belong to the master. With the consent of the master, their effects remain in possession of the slaves. If the male slave of one master get a child on the female slave of another, such child has no right to his father's effects, for the child is considered as the slave of the mother's owner.

Answer to the 3d question.—Except the Brahmin class, slaves are of all other classes; but any person who would have a slave should take care not to take one of superior class; it is proper to take a slave of one's own, or inferior class.

Answer to the 4th question.—There has been as yet no census of slaves. The keeping of slaves depends on means. Brahmins, Dalavas, Daftries, Rajputs, Sahukars and other persons of respectability, such as are thrifty and active, have about 20 or 25 domestic slaves, male and female. On partitions, these are divided, like other property. He who was able, used to add to his stock by purchase; he who was reduced, used to sell, keeping, however, one or two, as a matter of course. When a single slave is a joint property, he serves each joint master in rotation, and so gets support. At present the number of slaves depends on means.

Answer to the 5th question.—Every service but cooking is exacted from the Hindoo slave, to whom no event of the family is a secret. The owner supports them like his own children, and they have access into the interior of the dwelling, as if kinsmen; their support is sufficient. When the family of a male or female slave is numerous, the owner assigns them some land, and detaches them. The hali is of a low class; his owner gives him a separate house. The master allows each bought hali food and raiment. He is married at the cost of owners; for this reason his children are his master's property. Some halis take a sum of money, engaging to serve during life. The hali who cultivates his master's lands gets yearly raiment and food. Some halis receive a sum of money, engaging to work till repayment. Such a hali merely gets a single meal on the day he works.

Answer to the 6th question.—Up to this time, those slaves who have been enlarged have not been sold by parents; for, in fact, a man partakes of the portions of his father; his mother cannot sell him; therefore the sale by any but a parent is improper. Besides, when a father or mother sells a son or daughter, being in distress, there is not so much objection, for they suffer much distress by the birth of children. But owners only buy slaves for their own convenience; so, when in distress, they sell. Thus male and female slaves are in the predicament of property. For this reason owners cherish them like children, and incur heavy expenses on their marriages. Thus, in the family of a person of rank and respectability, slaves descend for generations. Some respectable persons at their daughters' marriages make male and female slaves part of the nuptial present. Slaves, male and female, are, in respectable families, from ancient time, as it were, house-born. It is not right to give them freedom, for in this country every office, that is to say, agriculture and the preservation of the dignity of respectable persons, are secured by slaves, male and female, and the halis, and the rest. But it is right to liberate those who have not been sold by a parent, or self-sold. Previous to this, slaves not in this predicament have been invariably released by the court and the rajah of the country.

Answer to the 7th and 8th questions.—Exportation for sale was originally forbidden by proclamation in this country, and those who practised it were punished, but the prohibition to buy girls did not extend to the prostitutes of this country who emigrated in their vocation; but during the English Government this practice was also prohibited to them. The Sambat years 1867 and 1868 were years of scarcity in this country. On that account men and women were exported for sale in Ghurwal and Dobti; but the practice does not obtain there.—7th October 1839.

No. 6.

REPORT of Bhavdev Joshi, Munsiff of Zillah Kumaon, 8th October 1839.

Answer to the 1st question.—In former times, in this country, sale of slave, halis and others, was not prohibited. In 1824, sale of widows, and wives by their husbands, was prohibited by proclamation.

Answer to the 2d question.—From the accession of the English Government till 1836, on proof, judgment passed in favour of owners against slaves. From 1836 their claims were not heard. Thus sale and purchase were stopped at once.

Answer to the 3d question.—The master has control over the acquisitions of his slaves, but he leaves them in their enjoyment, or that of their heirs.

Answer to the 4th question.—Persons of every class (Brahmin excepted) may be slaves; it depends on means, and regard is had that the slave is not superior in caste. If superior, he may be kept in employ as a peon or other office; but a person of superior class cannot be domestic slave of a person of low caste.

Answer to the 5th question.—There has been no census. Persons hold as many slaves as they can; some have five, and some six slaves, male and female, and halis.

Answer to the 6th question.—The hali for the most part ploughs, but if he have leisure he brings in wood, grass, and so forth. They are supported in various modes; some have jagir land on the master's estate, by tilling which they live. Whoever has land erects a house on it for his hali. First he works for his master, whose family is fed by the grain produced by his labour. He produces enough for his own wants. On occasion of holidays and ceremonies, the halis get rations, and so forth; also some money as wages, and winter clothes or

or money in lieu. They get food on the day they plough. Their abode is outside, because they are of low caste. The marriage of their children is with the leave and at the cost of the master. Their children succeed to the hereditary task, and receive some allowance. Domestic slaves perform the various services required in the family; the females prepare the rice, flour and other dry food by their labour; they bring in water, wood and other supplies from outside, and get ready the materials for cooking. The males cultivate, and so forth, and go on messages. On occasion of marriages and of journeys, they carry the palkee of their master. They sometimes form part of the nuptial present of the master's daughter. Domestic slaves share the board of the family, and are clothed as members of it. The master charges himself with the marriage and support of his slave's children; they are supported when unequal to work, and in sickness the master expends large sums in medicaments; he defrays their funeral expenses.

Answer to the 7th question.—Slaves (including halis) are not entitled to liberation without assent of the master. If a master has conditionally pledged his slave in need, on redemption he takes him back. During the English Government down to the period stated, slaves did not use to get their release, and even now hereditary slaves are not entitled to liberty. In this country the lower classes are appointed to render services as slaves to the superior classes. The lower classes are the Kahar, Kota, Kurmi, Mali, Lodha, Murab, Kachhi, Sandi and others. They are for service to the Brahmins by carrying them. Moreover, carriages, horses and the like are established from olden times for the dignity of persons of rank, which is sustained thereby. In this country no class is appointed to any special business; it depends on means. Without slaves the respectability of the country will not endure; for here agriculture prevails, and, in particular, persons of high caste are supported thereby. Since 1836 the slaves liberated are those who were not sold by a parent or self-sold. I concur in enlarging these. But where the title to the slave is derived from a parent, from self-sale, or from the rajah of the country, in no instance has the slave been enlarged.

Answer to the 8th question.—According to the usage of the country, as above set forth, the master is competent to sell his slave; but this restriction has prevailed, that he is not to sell him to a Muslim or one of inferior class. The sales for exportations in Ghurwal and Dobti, during famine, cannot be considered to bear this character, for they were effected to save life by removal to other places. Those who have effected such sales by fraud and for profit have been punished.

REPORT of Khush Hal Singh Chhattri, Tahsildar of Kali Kumaon.

No. 7.

Answer to question 1st.—I HAVE inquired of the principal and old inhabitants of this country. They say the sale of slaves and halis is an ancient usage. Joshis and other subordinate officers state that Mr. Assistant Smith made a report on the subject to the sudder. In consequence, a proclamation prohibiting the sale was issued; but, with the connivance of government, people still buy and sell, for without slaves persons of respectability could not transact their affairs. All services required by Brahmins and Khatris are performed by slaves, who till for and carry them. Without them they would suffer much inconvenience, for hired labourers are not found in the hills. With reference to this, they buy male and female slaves, from whose hand they may receive water to drink.

Answer to 2d question.—I learn from the inhabitants of this country, that the sale of children by parents is legal. The buyer from a parent may resell or give away. They say from the beginning till 1893 Sambat, claims for slaves were heard in court, and they were restored to their owners. But from 1837,* by order of Colonel Gowan, the commissioner, the sale and purchase were entirely stopped, and claims are not heard.

Answer to 3d question.—It is clear that slaves only hold effects for their support. Such effects are under control of their masters, particularly if they are reculant in work. The master then seizes every thing. Slaves and halis have no property; had they, they would not serve others as slaves.

Answer to 4th question.—This usage prevails in this country, whether on the hills or under the passes. Persons of every class, Brahmins excepted, become slaves. It depends on means. Slaves of the three superior classes should be those from whose hands water to drink may be taken; halis are of low caste, Chumars and Domes.

Answer to 5th question.—I learn that no census of slaves has ever been taken. According to means, respectable persons may hold four or five male slaves and as many female, and three or four halis. Persons of inferior class have fewer. Each zemindar, whether of high or low caste, has still two, or three halis for agriculture, for the support of this country is therefrom.

Answer to 6th question.—I learn from respectable persons, that, cooking excepted, all work is exacted from slaves, male and female, such as preparing dry food and so forth. They have abodes near the houses of their masters. They receive food and raiment as members of the family, and provision for their marriages and other rites is made as such. They are as if children of the master. The halis, who are of mean caste, plough and bring wood and grass. They are located on the master's lands, without his dwelling. They get food on working days, grain at both harvests, and yearly winter clothes and shoes. Some halis take an advance of money, engaging to repay by work. Such halis receive nothing, but are released

* See orig.; A. D. seems meant.

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released when they have worked it off by ploughing during the time agreed ; or some halis have land rent-free for their support.

Answer to 7th question.—I learn that sale by parents and self-sale are considered legal. Those sold fraudulently by others are released, and the seller punished. Such sales have often been prohibited by proclamation, to the effect that kinsmen, other than a parent, cannot sell, and will be punished.

Answer to 8th question.—I learn that, in the division above the passes of Kote Gurwar, persons have not openly practised such sales. During the Ghurka government, at Almorah and other places, if sales secretly made were discovered, the sellers were punished. Thus for the most part apparently the traffic in slaves was stopped ; but in the division of Doti, on the hills, every where they sell children, and to this time the prostitutes every where buy girls from their parents, and, adopting them, take them to their own countries for their own profession. In later times, during extreme scarcities, parents have given away their children to the persons of the country, and some have received a pecuniary consideration. But apparently the traffic in slaves never was a fixed usage. It does not appear that since the government proclamation it has been clandestinely practised.

No. 8.

PROCEEDINGS of the First Assistant, Zillah Gurhwal, Mr. Henry Huddleston,
31st October 1839.

I HAVE received the reports of the functionaries on the questions put by the commissioner in regard to slaves, in his proceedings 6th September. This is the result.

Answer to question 1st.—Formerly the practice of selling slaves and halis prevailed ; but from the 31st May 1836, by order of the Lieutenant-governor, claims for service of slaves have ceased to be heard.

Answer to question 2d.—The table given in by the record-keeper and the reports show that up to 1835 claims of purchasers were heard, and masters recovered slaves claimed by order of court. But this was the practice, that they recovered on sales by parents, not by others. Since 1836 no orders showing admission of such claims are found ; some may exist, but I am not aware of the fact. The master has power over the effects of his slave, who is supported by him.

Answer to the 3d question.—Slaves are of various classes. The Rajput, Khutri and others. But a Brahmin cannot be a slave ; any other person may. It depends on means. No one considers whether the slave's class is high or low. But the hali is exclusively of low class,—the Dome for instance.

Answer to the 4th question.—There has been no census ; and this now would be impossible. Returns would be erroneous. Here respectable and rich persons have several domestic slaves and halis. Their children serve the children of the original buyers for generations, and are supported like their brothers and children.

Answer to the 5th question.—And the slaves who are of low caste plough and do other hard labour. They are located outside of the enclosure of the master's dwelling, or on some other spot on his estate. They are fed and clothed by work. From the Rajput and others who are slaves, ploughing likewise, and various household work are exacted. In food and raiment they are associated with the rest of the family.

Answer to the 6th question.—Slaves have as yet only been liberated by the court on the ground of the sale having proceeded from a person other than a parent. In the former government a stranger would sell another's son. Slave cases do not arise, for masters keep their slaves contented. According to the old usage of this zillah, if a slave case arise, the alleged slave would be enlarged unless sold by a parent.

Answer to the 7th question.—During the government of the rajah, sale for exportation was prohibited ; but during the Gorkha government they used to export and sell children of others on account of the poverty of the people. When the Nepal rajah was informed of this, the sellers were punished. But within the country the old practice of sale and purchase continued. During the English Government several persons have been exported and sold in other countries, but persons guilty of this on proof have been punished, and the practice was prohibited by proclamation ; at present it has here ceased. But zemindars and principal persons of reduced means do secretly sell their slaves to other zemindars. Here transport by carriage, oxen, and so forth, does not exist ; therefore zemindars keep slaves, male and female, for the purpose of carrying.

The above particulars appear to me correct, and the practice as set forth yet prevails. Copy of these proceedings with original reports will be sent to the commissioner.

No. 9.

ARZI of Parmanand, Notial Record-keeper of Gurhwal.

I SUBMIT by your order a tabular statement of slave cases. The practice of this country has thus continued down to 1835. Slaves were restored by the court on proof of sale by a parent, or being hereditary. But those sold by others were released. Afterwards from 1836, by order of the Governor, the cognizance of suits for slaves ceased ; and he who exposed, and sold slaves in another country was severely punished on proof. In Sambat 1880, the price of any widow sold was confiscated to government by the court, and the widow enlarged. The result has been the uncertain state of Brahmins and respectable persons, and persons of reduced means.

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Pergunnah.	Parties.	Particulars.
Nagpur - -	Umeido v. Bhindatt - -	- - Claim for release of plaintiff. Proved that defendant had received the money back. Order for release, 20th June 1832.
Badhan - -	Chatru v. Swariya - -	- - Claim for release of plaintiff. Plaintiff had written an acknowledgment to defendant. On proof, order to restore plaintiff to defendant, 18th January 1833.
Nagpur - -	Nadu v. Dhanya - -	- - Plaintiff claimed release, which is decreed, because sold by a stranger, 21st April 1833.
Badhan - -	Chamriya v. Bhupchand - -	- - Plaintiff claimed release; but claim was dismissed, because plaintiff had written a new deed to defendant, 13th July 1833.
Ditto - -	- - Suamur and another v. Ram Dat Debi Sing.	- - Plaintiffs claimed release. Order: with their assent, let plaintiffs continue to serve defendant, who is to restrain his children from ill-using them; 26th December 1833.
Ditto - -	Doka v. Badri Datt - -	- - Plaintiff claimed release. Order: unless plaintiff can repay advance of defendant, let him as before continue to work in defendant's family; 7th January 1834.
Ganga Salan - -	- - Ajbo v. Joshusudu Dhan-kee.	- - Plaintiff claimed the girl, Sebi, as bought by him. Dismissed on defect of purchase proved, 9th May 1835.
Talasalan - -	Sobha Sing v. Bisalu - -	- - Plaintiff claimed the defendant as his slave; on proof of purchase slave decreed to plaintiff, 11th May 1835.
Nagpur - -	Dhana v. Nathu - -	- - Plaintiff claimed defendant as his slave. Bill of sale not proved. Defendant to remain with plaintiff as a pawn.
Barasyun - -	Gyani Domo v. Sebu - -	- - Plaintiff's claim for his release dismissed, on proof that plaintiff was the hereditary bought slave of defendant; 22d November 1838.
Nagpur - -	Kukuri (female) v. Delu - -	- - Plaintiff claimed her liberty under the regulations of government. Liberty to her and child decreed, 28th April 1837.
Ditto - -	Guva v. Puran - -	- - Under the English Government no one can be a slave of another. Let plaintiff go where he pleases, 15th May 1837.
Ditto - -	Japuli (female) v. Patu - -	- - Let no one claim plaintiff as a slave. She may go where she pleases, 15th May 1833.
Malata Ganga Par	Manu v. Ram Sukh - -	- - Plaintiff claimed the girl, Devati. Claim dismissed on the rule of prescription, and the prohibition of such claims by the proclamation of government, 18th September 1837.
Bainghara - -	Banchu v. Kishna - -	- - Let plaintiff be liberated: the defendant under current regulations has no claim in law, 7th November 1837.
Tala Salan - -	Sobha v. Visalu - -	- - Plaintiff claimed defendant as his slave. Bound over to abstain from such claim, 26th March 1838.
Paltan Kumaon - -	- - Kalu Khalasi v. Dhani Jatra.	- - Plaintiff claimed emancipation, decreed 17th August 1838.
Barspu - -	Guru v. Harku - -	- - Plaintiff claimed his liberty. Defendant referred to civil action for his money, 3d September 1838.
Nagpur - -	Govinddyalu v. Hurku - -	- - Plaintiff claimed his liberty, decreed 13th February 1839.
Ganga Slan - -	Sounu v. Hushyara - -	- - Same claim and decree. Defendant bound over, 8th April 1839.
Ganga Par - -	Sangaradeya v. Kishn Datt	- - Plaintiff claims liberty. Order: defendant has no right to him, 26th June 1839.

REPORT of *Sivanand Khadudi*, Sudder Amin, Pergunnah of Gurhwal, 17th October 1839, addressed to the First Assistant.

No. 10.

I SUBMIT my answers to the questions put by the commissioner.

To the 1st question.—Claim for service of slaves and halis have from olden times been usual in the country. But in 1836, by order of the sudder court, the cognizance of such claims was stopped.

To the 2d question.—Down to 1835, claims of owners, purchasers of slaves, were heard in court; and on sales by parents they recovered.

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To the 3d question.—The property held by slaves belongs to the master who supports them.

To the 4th and 5th questions.—There has been no census of slaves, nor is any now practicable. The Brahmin class excepted, of all classes persons may be slaves. It depends on means.

To the 6th question.—Male slaves and halis plough. They do the work of the house. They get clothes in winter and the hot season. They partake of the dressed food of their master. If they do not get such food, land must be allowed them. The master pays the tax. The master provides his slaves with lodging.

To the 7th question.—Up to this time those released have been sold by persons not their parents, or have not been self-sold. But those sold by parents or self-sold have not been released. If this usage should continue, it will contribute to the power of persons of rank and respectability in this country.

To the 8th question.—The traffic in slaves is not practised now. Formerly any person who sold his wife or a widow was severely punished. Formerly this was usual; that if the wife of one man intrigued with another, she used to be sold to him. Zemindars amongst themselves would sell the widows of their kinsmen. This has been prohibited by government since the year 80. Since then it has been the usage to confiscate price. But under the regulations of the English Government all these usages are abolished; no one dares to export for sale. In this hilly country there are no carriages, oxen and so forth. Water too is brought from a distance. Brahmins and other respectable persons cannot bring themselves water and wood and so forth. Their subsistence depends on male and female slaves and halis; they therefore buy persons willing to sell themselves, and children sold in need by parents.

No. 11.

ARZI of *Ramanand*, Acting Tehsildar of Gurhwal, attested by four Kanungos of the Pergunnah, addressed to the First Assistant.

I SUBMIT the following answers to the questions of the commissioner.

To the 1st question.—Sale and purchase of slaves and halis continued in this country as an old usage. But in 1836 the cognizance of claims for services of slaves was stopped.

To the 2d question.—Down to 1835 purchasers recovered slaves bought from a parent.

To the 3d question.—To the master belongs the property of slaves, for he supports them.

To the 4th question.—Slavery is not restricted to low classes. It depends on means.

To the 5th question.—No census has been or can be taken. The usage has been, that the rich and respectable keep slaves whom they have bought. Their children serve the same person who supports them. Brahmins have the most slaves; respectable persons of other classes hold them in proportion. Persons of low class do not hold slaves.

To the 6th question.—From male domestic slaves and halis ploughing and menial offices, such as bringing wood and carrying loads, are exacted. They get clothes every six months, they mess with the family every day, they take food with the master. But if the master cannot let them mess with him, he allows them land rent-free for support. He erects abodes for their lodging. Formerly, if male or female slaves were recusant, the master corrected them. Now that a proclamation has been issued by government, the slaves have become very insolent. It would be proper and right if government punished and corrected them.

To the 7th question.—The court up to this time has not liberated slaves sold by a parent or self-sold, but only those sold by others. It would be very right to pass an order to sustain sales by parents or self-sales.

To the 8th question.—Formerly the practice of exportation of men and women for sale was never allowed. During the Gurkha government, from indigence and scarcity, people of the country used to sell, in other countries, their own children or kidnapped children at the rate of ten or four rupees. When the rajah of Nepal was informed of this, he sent the cazi buhadur, the thadi, the bukshi and great khatri to prevent the same. In 1868, those guilty of the practice were punished severely, and the practice prohibited for the future. Under the English Government the offence has been punished and is now stopped. Formerly the husband used to sell his frail wife to her paramour. Zemindars amongst themselves used to sell widows. Since the year 80, the prohibition has been proclaimed on the part of government, since when it has been well known that, on proof of the traffic in question, the price will be confiscated and the persons sold released. On account of scarcity and want during the Gurkha government, if any one sold the wife or children of another, on their complaint being preferred they were released. But those who were sold by parents, without assent of buyers, were not released. At present prices, now command high prices; some as much as 100 rupees. The Brahmins and other respectable persons of this country cannot plough with their own hands. There are no porters in this country as elsewhere. From this cause, though the practice of slaves and halis as occasion arises, and get work from them, for without their labour in this hilly country the work of respectable persons could not be done. The government protects the country. What it may decide on will be for the best.

APPENDIX VI.

OFFICIAL CORRESPONDENCE relative to Slavery in Assam.

1. Memorandum of Correspondence between Mr. D. Scott, Agent Governor-general, North-east Frontier, and the Government.
2. Letter of Mr. D. Scott, Agent Governor-general, North-east Frontier, dated 4th February 1830, to Captain J. B. Neufville, Political Agent in Upper Assam, on the subject of Registry of Slaves.
3. Letter from the latter to former, dated 26th July 1830, proposing restriction to sale and separation of near Correlatives.
4. Letter from Captain A. White, Officiating Magistrate, Lower Assam, to Mr. D. Scott, Governor-general's Agent, dated 9th August 1830, in reply to his Letter dated 15th July. Reports on the state of Slavery, and suggests ameliorative Rules.
5. Letter, dated 10th October 1830, from Mr. D. Scott, Agent Governor-general, North-east Frontier, to Mr. George Swinton, Chief Secretary to Government, Fort William, being Report on the state of Slavery in Assam, with propositions called for by Letter of Government, dated 30th April.
6. Extract Letter of Mr. T. C. Robertson, Commissioner, Assam, to Secretary to Government, Judicial Department, dated 28th February 1834, viz., those parts which relate to Rules in regard to Slaves and Bondsmen.
6. A. Extract Rules enclosed in above Letter, namely, Rule IX., providing for case where a slave is designated for sale to levy judgment.
6. B. Rule enclosed in above as to redemption of Bondsmen.
6. C. Rule as to purchase on appraisement of Slaves designated as assets, whereby judgments may be levied, and their redemption.
7. Extract Letter from Government, dated 25th August 1834, to Captain F. Jenkins, Commissioner, Assam, in acknowledgment of No. 6, and other Letters.
8. Extract Letter, dated 10th May 1835, from Captain Jenkins, Commissioner, Assam, to Government, being Judicial Report for 1834.
9. Extract, Section 10, from the original Draft Rules for the administration of Civil Justice in Assam, proposed by Mr. Robertson, late Commissioner of Assam, when Judge of the Sudder Dewanny and Nizamut Adawlut.
10. Extract from Enclosures of a Letter, dated 14th April 1836, from Captain F. Jenkins, Commissioner to Sudder Dewanny and Nizamut Adawlut, viz., opinions of Captain Matthie and Ensign Brodie on the said original Draft Rules.
11. Extract Minute of Mr. T. C. Robertson, Judge of the Sudder Dewanny and Nizamut Adawlut, dated 24th June 1836, on remarks of Captain Jenkins and subordinate Judicial Officers on Draft Rules.
12. Extract Letter, dated 25th October 1836, from the Bengal Government to Sudder Dewanny Adawlut, in reply to its Letter of the 29th July, 1836, on the subject of Draft of Judicial Rules.
13. Reply of Sudder Dewanny and Nizamut Adawlut, dated 14th April 1838, with enclosures.
14. Letter from Officiating Register, Sudder Dewanny and Nizamut Adawlut, Fort William, to Officiating Secretary to Government of Bengal, in the Judicial Department, dated 22d December 1837.
15. Letter from Officiating Secretary of Government to the Register Sudder Dewanny Adawlut, Fort William, dated 13th February 1838.
16. Letter from Captain F. Jenkins, Commissioner of Circuit, Assam, to Register Sudder Dewanny and Nizamut Adawlut, Fort William, dated 5th January 1836. This replies to the Letter of the Court of the 13th November 1835, communicating copy of the Circular Letter of the Law Commission, dated 10th October 1835.
17. Letter from Captain F. Jenkins, Agent Governor-general, to Secretary to Government of India, Political Department, Fort William, dated 19th February 1840, with copy of a Letter from Captain H. Vetch, Political Agent, Dibróoghur, Assam, on the subject of the construction of Regulation X. of 1811.*
18. Letter in reply from Secretary to Government of India to Captain F. Jenkins, Agent Governor-general, North-eastern Frontier, dated 9th March 1840.
19. Letter in reply to above from Captain F. Jenkins, Agent Governor-general, dated 20th May 1840, together with further Report enclosed therein [from Captain Vetch, Political Agent, dated 8th May 1840.

* *Vide* No. 1, Appendix II.

Appendix VI.

Correspondence.

MEMORANDUM OF CORRESPONDENCE between Mr. Scott and the Government, on the subject of Slavery in Assam.

No. 1.

No. 1. MR. SECRETARY SWINTON's letter to Mr. Scott of the 10th April 1829, alluding to Mr. Scott's letter of the 25th March (not forthcoming) states, that the orders of government prohibiting sale of slaves for arrears of revenue should be held applicable to Assam.

No. 2. Mr. Scott acknowledges receipt of above in his letter of the 31st December 1829, and solicits sanction of government for emancipating such persons when no assets may be forthcoming, at fixed rates, according to sex and age.

No. 3. Mr. Scott replies by letter of 26th February 1830. Observes that no objection appeared to the plan suggested of requiring of government defaulters the release of a given number of slaves, at the rates varying from 50 to 10 rupees, provided such an arrangement would prove immediately beneficial to the individuals emancipated. But with advertence to demands of individuals under decrees of court, and to the proposition in consequence, that government should acquire a right to the slaves by paying the creditors a fixed rate for the slaves, it was considered inexpedient that government should interfere in the matter, and that the former orders were not intended to apply to such cases; further directing, that previous to acting under the discretion accorded to him in the case of revenue defaulters possessing no property but slaves, carefully to ascertain if their emancipation were likely to be attended with any practically and permanently beneficial result to the parties concerned, and whether they would not again place themselves in the relation of bondsmen.

No. 4. Reply of Mr. Scott by letter of 24th March 1830, stating that he did not contemplate the probability of emancipated slaves again placing themselves in the condition of bondsmen, since, under arrangements of the kind, the bondsman always retained the right of redemption.

No. 5. Mr. Secretary Swinton, in his letter of the 30th April 1830, requests of Mr. Scott to furnish a general report on the state of slavery in Assam.

No. 6. Another letter from the above, dated 16th September 1830, conveys extracts from a letter from the honourable Court of Directors, dated 10th March 1830, and requests Mr. Scott's sentiments on slavery in Assam.

On receipt of this, Mr. Scott circulated copies to the magistrate of Sylhet, political agent in Upper Assam, and Captain White, then magistrate of Lower Assam, requesting their opinions. Replies were received from the magistrates of Sylhet and Lower Assam, and copies of them made; that from Sylhet is missing, and Mr. Scott's report itself (dated 10th October 1830) very unaccountably remains undespached. Mr. Robertson addressed a letter to the secretary to government in the judicial department, dated 11th February 1834, wherein he recommended for sanction the promulgation of a rule regarding the sale of slaves in execution of decrees. To this no reply has yet been received.

No. 2. FROM Mr. D. Scott, Agent Governor-general, North Eastern Frontier, to Captain J. B. Neufville, Political Agent in Upper Assam, Jorehaut, dated 4th February 1840.

PREVIOUSLY to submitting to government any proposals relative to slaves in Upper Assam, I have to request that you will ascertain, as nearly as practicable, the number of persons of that description in your district, and that, if it has not been already done, you will cause a registry of them to be made, and give public notice to all persons concerned, that the same will be closed at the expiration of six months, and that all persons not entered in the list will be considered as free after that period.

2. As this regulation, which has been sanctioned by government, may materially affect the rights of individuals, it is necessary that it should be very fully promulgated, and I would recommend that this should be done monthly in all the kutcheries, markets and considerable villages, and that the kheldars should be required to execute engagements that they will make the tenor of the order known to all persons belonging to their companies.

3. It is almost needless for me to remark, that the act of registry will confer no rights over persons so claimed as slaves that were not previously possessed, and it is not therefore necessary that any scanting should take place as to the actual condition of those whose names may be inscribed. To prevent future disputes, it is desirable that the list should include the names of runaway slaves, the circumstance being noted in a column of remarks, in which also, the manner in which the party was reduced to servitude should be mentioned in every case.

4. In respect to the sale of slaves of the same family separately, I have called upon the pundits in Lower Assam for a report, as I have reason to believe that it is already provided for by the Hindoo law.

5. The separation of a husband and wife, when they have been legally married and agree to live together, cannot by those laws take place; but it is a very common practice in Assam for masters to allow their female slaves to take husbands, who are not slaves, denominated "dhoka," when the connexion is avowedly conditional and temporary.

6. The exportation of slaves for purposes of trade is already illegal, and may be prohibited without further reference.

FROM

FROM Captain *J. B. Neufville*, Political Agent in Upper Assam, to Mr. *David Scott*, Agent to the Governor-general, North-eastern Frontier, dated 26th July 1830.

No. 3. ✓

I SOLICIT your sanction to the introduction of some regulations, calculated to lessen the evils entailed upon the class of slaves in Upper Assam, without materially infringing the rights of property already possessed by individuals, upon which their domestic arrangement and comforts in great measure depend.

The masters of slaves at present possess and practise the right of selling them, their wives and children, to separate bidders, a system repugnant to humanity, as it is subversive of all moral principle, and which, while it is permitted to exist, must interfere to prevent or retard all views of general improvement in the habits and condition of the people.

I should propose a prohibition to all sale of slaves in future, unless with the consent of the parties, as inconsistent with the spirit of the British Government, and the regulations by which its internal jurisdiction is conducted, as tending to increase crime and to check all improvement, by the hopeless degradation of the individual, and by loosening all the ties of natural affection and social existence. In order to give effect to this prohibition, I propose to require all slaves or transfer of slaves to be made before the chiefs of khels or villages, who will be required to ascertain the consent of the persons sold to the transaction, and that no forcible separation is allowed to be made in families between a man and his wife, or woman permanently cohabiting with him, or between a mother and her children, under a penalty of forfeiture (in case of violation of the order) by the freedom of the party.

I should also propose that all cases of great cruelty and oppression on the part of slave-owners towards their slaves might be subject to the same investigation by the heads of the villages (authorized by the police system to inquire into all abuses), and, if fully proved, to be visited by fine, or if of a confirmed and atrocious nature, by the freedom of the sufferers.

Cases, however, are frequent where the owners are compelled by poverty to sell their slaves as a marketable property, without reference to consent; in such cases the sale might take place before the parish meeting, which should be satisfied of the character of the purchaser and enforcing the prohibition against the division of a family.

I also beg to suggest, that the slaves belonging to revenue or other public defaulters, whose effects are confiscated, might be enrolled amongst the government pykes at the khats, or in a district khel, allowing the estimated value to the owner to the credit of his account.

I also solicit your attention to the barbarous custom which prevails in this province of selling female children, not only by the Assamese *inter se*, but actually as an article of trade to the provinces, and request your sanction to its total abolition, by proclamation, under severe penalties.

FROM Captain *A. White*, Officiating Magistrate, Lower Assam, to Mr. *D. Scott*, Agent to the Governor-general, North-eastern Frontier, dated 9th August 1830.

No. 4.

I HAVE the honour to acknowledge the receipt of your letter of the 15th July, calling upon me to state my opinion in regard to the condition of the slave population of Assam, as compared with the mass of the community; secondly, as to the measures which may be expedient for the gradual or the immediate abolition of slavery in Assam.

1. From the returns made out, it appears that there are about 11,000 slaves in Lower Assam, and about 4,000 bondsmen, who, in consideration of receiving a specific sum, mortgage their labour for a period of seven, fourteen or twenty years, in the same manner as is common in Europe with adventurers to the Canadas, Van Diemen's Land or elsewhere. Independent of this, there are a class of people, about 3,000 or 4,000 in number, who voluntarily place themselves under the protection of the great men of the province, and work upon their estates, approximating to slaves, inasmuch as they receive nothing but their maintenance, but differing from them so far that they are at liberty to depart when they please. The existence of such a class, I conceive, has arisen from the disturbed state of society which prevailed prior to the assumption of the government by the British state, and may be gradually expected to diminish under a better regulated system.

2. From every inquiry that I have made, the condition of the slaves is nearly upon a par with that of the agricultural labourers. They are employed in cultivating the lands of their masters, and receive a fair allowance of food and clothing. If a person possess many slaves, he only requires the labour of a few in rotation, and allows the others to engage in the cultivation of lands, for the rent of which he becomes responsible, reserving to himself what profit there may be after allowing the slave a fair maintenance. The slave-owner becomes responsible for any debts that the slave may contract, and possesses the power of selling him. With reference to his mental and physical qualities, the price of a slave varies from 15 to 50 rupees. The masters are understood to possess the power of inflicting corporal punishment, and occasionally there may be excesses in that way; but in the course of my official duty as magistrate, I have, generally speaking, had very few complaints of slaves against their masters, and it is by no means unusual for masters to complain against their slaves on the ground of idleness, &c. Indeed the geographical position of Assam, a narrow valley between two

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ranges of mountains, operates as a partial check to any undue severity on the part of masters towards their slaves, as a day's journey will enable the latter to escape beyond their reach, and there are many complaints of their running away. As compared with the paiks,—a superior class of cultivators, whose condition approximates to that of the Irish peasantry, the Scotch Highlanders prior to the introduction of sheep farming, and the French peasantry under the operation of the metayer system as prevailing through about the half of France at this day, inasmuch as that each peasant cultivates a certain portion of land with a permanent claim to possession, on condition of paying his rent, or a certain share of the produce, with this difference in favour of the Assamese paik, that his is understood to be fixed,—I have found, on inquiry amongst the paiks, that they scarcely considered the condition of the slaves at all inferior to theirs, except that they did not possess their personal liberty. The field labours of the slaves, from what I have learnt, do not exceed those of the paiks; and these are light indeed as compared with the agricultural population of Europe.

3. With reference to the whole population, the number of the slaves may be estimated as one to twelve. From the recent census taken, the population of Lower Assam would appear to be about 350,000 people; and the adult slave population to be about 11,000 or 12,000, of whom it is calculated about a quarter are married; allowing four births to one marriage, this would give altogether a slave population of 27,000 souls.

4. Although it has been shown above, that the condition of the slaves as compared with the mass of the community is scarcely inferior; yet, with reference to its effects on society, I am convinced the existence of slavery in Assam has had a most demoralizing tendency, as the course of my duty as a magistrate has afforded me ample evidence, that wherever atrocious crimes were instigated by the higher ranks, the perpetrators have invariably been their slaves, and indeed it is very common with masters to employ their slaves in acts of theft and dacoity, reserving to themselves a share of the plunder; and I should therefore hail with joy any measures leading to its abolition, as being likely to have a beneficial effect in elevating the character of the population. But with reference to the very backward state of society in Assam, I should think it would be inexpedient to abolish slavery entirely, and that it would be better to modify the existing system by prohibiting the sale of slaves for life, and enacting that in future no contract of bondage for a longer period than seven or fourteen years should be held legal. At the same time encouragement might be held out to individuals to manumit their slaves, by the hope of obtaining titles and distinctions, of which the Assamese are very ambitious. In addition to this, from a certain date, all children born in a state of slavery might be declared free.

5. An immediate abolition of the system of slavery and bondage prevailing in Assam would be apt to fail, I am led to think, from its inapplicability to the wants of the community, and the shock it would give to established habits and usage. From the records of history, Jewish, classical, Asiatic and European, it appears that slavery has every where prevailed, in the less advanced stages of civilization; and I apprehend, Assam, according to European notions, may be considered as a country exhibiting a still ruder state of society. Here, generally speaking, the ryots cultivate only for the supply of their individual wants, and do not calculate upon a certain sale for their surplus produce. What fabrics of manufacture are produced are generally the workmanship of the females of the family, not the product of a separate class of men; and as yet the commerce of Assam is still in its infancy. Under these circumstances, if a poor man wants a sum of money for a specific purpose, the only valuable article he can give in exchange is his labour; and this the rich men naturally endeavour to secure permanently by demanding a contract of slavery for life. Besides, here as elsewhere, in times of scarcity, parents are wont to part with their children from a benevolent wish to preserve their lives. Were the country further advanced in the career of improvement, and capital more widely diffused, it appears to me that this system of slavery and bondage would gradually diminish of itself, as the poor man would obtain a small advance on easier terms.

No. 5. FROM Mr. D. Scott, Governor-general's Agent, North-east Frontier, to Mr. George Swinton, Chief Secretary to Government, Fort William, dated 10th October 1830.

I HAVE now the honour to submit a report on the state of slavery in Assam, called for by your letters of the 30th of April and 16th of September last, to which I have considered it proper to add a report from the magistrate of Sylhet on the same subject, in consequence of its appearing from some of your despatches, that government was impressed with a belief, that the condition of civil life in question was peculiar to, or much more prevalent in, Assam than in other parts of the British territory in India; throughout which, including the jurisdiction of the supreme courts, I need not say, that slavery, as being consistent with the Hindoo and Mahomedan laws, is necessarily legal, and every where practised more or less.

2. For an account of the general condition of the slaves in Assam and Sylhet, I beg to refer* to the accompanying copies of letters from the magistrates of those districts. In the

* Of these letters, that from the magistrate of Sylhet is not forthcoming. The other seems No. 4 of this Appendix.

the zillah of Sylhet, where slavery appears to prevail to an unusual extent, probably in consequence of the preponderance of the Mahomedan religion, * *and perhaps the easy circumstances of a large portion of the community constituting the independent landholders*, the proportion of slaves to freemen would appear to amount to nearly 20 per cent. In Lower Assam, Captain White states the proportion to be about eight per cent., but there appears to me to be some material error in this calculation, and I have reason to think, that, when the further explanation I have called for is received, it will be reduced to about one-half.

3. In the estimate of the number of slaves made by the magistrate of Sylhet, and also, I conceive, in that for Assam, where the number is stated at 27,000, bondsmen are included, or persons mortgaging themselves for a sum of money, but retaining the right of redemption on repayment of the same; but as such persons are not slaves in the proper sense of the word, the following observations are not intended to apply to them, but to that portion of the servile class who are irredeemably sold, together with their posterity.

4. Slavery being consistent with the Hindoo law, and the precept of making donations of slaves to pious men being frequently repeated, it must have been practised by that people from the remotest period. In Assam, however, the practice was considerably checked by a fiscal regulation which forbids the sale of males, on account of their being subject to a capitation tax. This prohibition does not extend to females who may sell themselves, if of full age, or be sold by their parents, provided the contract entered into be valid agreeably to the Hindoo law.

5. With exception to a few Naga female slaves that were valued as curiosities, and presented by the mountain chiefs to the king of Assam, the people of that country do not appear to have imported slaves. They were brought up in the house of the owner, or transferred by one master to another, or procured by purchase from the parents, while grown-up women sometimes sold themselves.

6. By the Hindoo law, a free woman marrying a slave becomes herself a slave, and gives birth to a servile progeny, but although this is the law, both in Bengal and Assam, masters, in the latter country, frequently permit their slaves to marry free women, upon a special contract with the girl's father that the progeny shall be free. In cases of doubt, the ordinary rule is, that the children follow the condition of the parent with whose relations the family resided; a female slave giving birth to free children, if she marry a freeman and reside in his house, while they would be slaves if the husband went to live with her.

A good deal of litigation takes place in Assam on this subject; and as the pergunnah chowdries and corporations are very jealous of the abstraction of any portion of the male population and their detention as slaves, which would exonerate them from the payment of their quota of the pergunnah rate, there is no danger of a man being unjustly debarred of his freedom; and it even sometimes happens, that a person who professes himself to be a slave, is emancipated by a decree of court at the suit of the pergunnah corporation,—a fact which of itself shows how trifling an evil servitude is considered in Assam.

7. The price of a slave averages from 10 to 60 rupees; and in addition to the causes of variation assigned by Captain White, it is mainly influenced, amongst the Hindoos, in the case of domestics, by their caste; those being, of course, of the greatest value, whose purity of birth enables them to hand water, without contaminating it, to the higher classes. When ill-used by their mistresses, Hindoo girls of this description will sometimes, to spite them, forfeit their caste by some unclean act; and the mistress is often brought upon her knees before a domestic of value, to prevent the execution of such a threat.

8. The real value of slaves, except for domestic purposes, is very little, as farm business is conducted in Assam. They are usually exceedingly idle, and when they become numerous, the master is even put to expense on their account, as he must, under all circumstances, feed them, and provide for the expenses incidental to their births, marriages, deaths and all other religious ceremonies, which they perform with the same regularity as the free population. To sell them is considered highly discreditable and indicative of the total ruin of the master; and under such circumstances, it is not improbable, that masters might be occasionally induced, by the means suggested by Captain White, to emancipate a portion of their slaves.

9. In the poor and middling families, the slaves and bondsmen are treated like the other inmates, the same mess serving for the whole household, and both mistress and maid being entirely clothed in homespun manufactures. Amongst the rich they often obtain great influence, and rule the family affairs in the capacity of dewans.

Such persons frequently possess, by sufferance, farms and slaves of their own, and they are sometimes to be seen in Assam riding in a sort of palankeen, dressed in English shawls, &c., in the style of the wakeels and officers of our courts of justice.

10. The practice of making concubines of their female slaves, and of bringing up the offspring of such connexions along with their other children is *not uncommon* † amongst the nobles and even the kings of Assam, to whom in the public estimation these domestics are often greatly superior in purity of birth, and the servile classes are consequently in general treated by their masters with a degree of consideration, familiarity and kindness, of which few examples are to be found in ‡ *the intercourse between English masters and their hired*

servants.

* These words in *italics* are a marginal interpolation written in pencil by Mr. Scott.

† Originally, "common."

‡ The words in *italics* constitute an amendment in pencil intended to be substituted for this sentence. "English society; much less hauteur being displayed in the intercourse between an Assamese noble of the highest rank and his slave, than will be shown by an English master, even of the middling classes, to his hired servant."

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servants. They are in fact regarded as adopted children, and the universal designation for a female slave, in Assam, is *betee* or daughter.

11. On the subject of Mahomedan slavery, which chiefly prevails in the district of Sylhet, I consider it unnecessary to offer many observations, since the laws by which it is regulated are *already well known*.^{*} They appear to differ little from the divine precepts given on the same subject to the Jews, with exception to the periodical release of slaves of their own tribe. Those taken from other tribes are, however, on the other hand, more cordially adopted by the Mussulmans than they would appear to have been by the Jews. And, as the practice of cohabiting with the females is not unusual on the part of the masters, when the birth of a child entitles the mother to her freedom, her offspring being at the same time allowed to share the family property along with the children of wives, it must be needless for me to say, that amongst the Mahomedans also this class of persons cannot possibly be in a very degraded state. *They are, in fact, as stated by the magistrate of Sylhet, in many cases connected with, or related by the means already noticed to, the rest of the family, of whom they are considered as inferior members; and even, where this is not the case, I have seldom heard them addressed by their masters by any other term than that of brother or son.*[†]

12. To the abolition of slavery, during the continuance of the existing state of society in India, there appear to be several weighty objections.

1st. As I conclude that government does not contemplate the measure without making compensation to individuals for the loss of a valuable description of private property, the expense would appear of itself to render it impracticable, since the slaves and bondsmen in the two districts of Lower Assam and Sylhet only, cannot be valued at less than thirty or forty lacs of rupees.

2dly. The government being pledged to administer to the natives their own laws in matters of inheritance, contracts, &c., I am not aware how we could, with any consistency, infringe this principle by the abrogation of a practice so closely interwoven with the whole frame of society, and which is essential to the comfort and honour of the families of the higher classes, owing to the seclusion of their women, and to the early marriages of the lower orders, which renders it impossible to hire, as in European countries, unmarried females as servants, or to procure them at all, except at an expense unsupportable to $\frac{1}{10}$ of those, who, agreeably to existing usages, require such attendants; as is evinced by the fact that, even in Calcutta, where there is a large Christian population, and where caste is not a matter of importance, the hire of a woman servant is now nearly double that of an able-bodied man.

3dly. *It may reasonably be doubted*[‡] whether the change would in reality be beneficial to the lower orders to an extent that would justify the adoption of a measure so unpopular with the higher classes. That, morally considered, the slaves are in a certain, but small, degree degraded, must be admitted, and also that in Assam they are of more dissolute and depraved habits than the free population. But in advert^{ing} to this latter defect, it should be borne in mind, that no less than one-fourth of the whole number consists of those who have sold themselves for debt, and who may, therefore, be reasonably presumed to have belonged originally to that imprudent and spendthrift class of society, which even in England is, generally speaking, reduced to a condition of civil life, *differing only in name from*[§] that of the Assamese bondsman, when they enlist in the army or navy,^{||} or by conviction of a criminal offence become transportable to the colonies as the undisguised slaves of the crown. Whether it is possible, even in highly-civilized countries, to dispense with the retention of this portion of society in a state of constrained servitude, still remains to be proved, the experiment never having been fairly tried by the European states, where the armies, the navies, the galleys and the colonies, furnish receptacles for those who are naturally incompetent to manage their own affairs, and to preserve their personal independence. The people in this country have none of these resources; and the thriftless poor must consequently either starve or become the dependents of individuals, or, in the capacity of criminals and debtors, fill the public gaols.

13. In physical condition it does not appear that the slaves are worse off than the peasantry of the country. If they cannot accumulate property (which, however, practically speaking, is not the case), neither can they suffer those evils from the total want of it to which the freeman is subject. Nor should it be forgotten, with reference to the circumstances under which children are usually sold, that the probability is, that in many cases they would not even have been in existence but for that contract which, at the expense of their personal liberty, preserved their lives or those of their ancestors. Without, therefore, calling in question the theoretical advantages to be expected from the abolition of slavery in India, I am of opinion, that the practical evil arising from its continuance is not of sufficient magnitude to justify our incurring by its abolition the following results:—

Either an enormous outlay for the purchase of the vested rights of slave proprietors, or a spoliation of their property, with its necessary consequences.

A breach of the engagement, always heretofore held sacred by the government, that the natives were to enjoy their own laws and customs when not repugnant to humanity and good morals, which slavery cannot, with consistency, be said to be, by a nation professing Christianity, since it was enjoined by God himself to his favoured people the Jews, and since it is still only practised in India in the mild spirit in which it was established.

The

* Originally, "to be found in Hamilton's translation of Hidayah."

† Marked for expunction by pencil lines.

‡ Originally, "I doubt much."

§ Originally, "not in reality dissimilar to."

|| These words in *italics* denote interpolations in pencil.

The destruction of the consequence and comfort of the higher classes without any adequate benefit to the lower orders.

The necessity for government to maintain in times of scarcity the starving poor,—a thing in itself perhaps impossible, and which would at any rate be productive of great abuse, and would, in all probability, be attended with consequences not less injurious to the character of the people than those which Captain White in his report attributes to the prevalence of slavery in Assam.

14. The only change which it appears to me that it would be justifiable or desirable at present to attempt, in favour of those already in bondage, would be that of gradually substituting the state of servitude of the bondsman entitled to redemption for that of the slave absolute. And this I conceive might, to a certain extent, be effected, particularly in the case of agricultural labourers, by laying a tax of two or three rupees per annum upon the slave absolute, from which the bondsman should be exempt, provided the sum for which he was redeemable did not exceed 40 rupees. I would at the same time open a compulsory registry of persons of both descriptions, leaving it optional with masters to enter their slaves absolute as redemptioners, if they thought fit to do so to avoid the tax, the act being, however, legally binding on them and their heirs, and the slave thereby becoming entitled to all the privileges of the latter class.

15. Whether it might not be justifiable further to fix a price at which all slaves should be entitled to be emancipated, government will be best able to judge. Such a law would, to a certain extent, be an invasion of private property, and might occasion alarm and irritation amongst the higher classes of the natives. But if something must be done at their expense, to satisfy the philanthropic feelings of the people of England, I should consider this as the least objectionable measure that could be adopted, and as one which would also *seem likely to prove** acceptable to the English public, since it would afford to those who are zealous in the cause of emancipation an opportunity for the exercise of their benevolent views, by coming forward with the requisite funds.

16. The subject is, however, one of such importance to the domestic comfort of the native community, that I should be sorry to submit these crude suggestions, except in the belief that, before legislating upon it, government will obtain not only the opinion of its European functionaries, but also that of a committee of intelligent natives, who are alone, in my opinion, competent to judge in regard to a matter in which the English portion of society have no personal interest nor any minute acquaintance, and which is, besides, in the case of female slavery, so much complicated with the delicate question of marriage, and the internal economy of the zinnana (upon which the natives, both Hindoos and Mussulmans, are so exceedingly sensitive), that I should despair of any modification of the existing law, emanating from European legislators, that would be at all palatable to the upper and middle classes of the people.

17. Having now submitted the general information required, I take the liberty of offering some further explanation of the transaction alluded to in the extracts of a letter from the honourable the Court of Directors that accompanied your despatch of the 16th ultimo, and which I regret to find has excited their displeasure.

18. With advertence to the observations contained in the preceding part of this address, I trust that it will appear that, in sanctioning, during a time of famine, the sale of males as slaves in Assam, I violated no law or custom that is in force in any other part of the British territories in India; but that I merely suspended the operation of a local fiscal regulation enacted to prevent the abstraction of the Crown paiks or serfs, and the consequent diminution of the capitation tax. My proclamation had no other effect than that of waiving the claim of government to the capitation tax upon persons who might be compelled by famine to sell themselves as slaves: and it did not, as supposed by the honourable court, confer any validity or legality upon the contracts entered into that they might not otherwise possess agreeably to the provisions of the Hindoo and Mahomedan laws.

19. That the lives of many of the destitute persons, who in 1825 sold themselves in Assam, might have been preserved, without their being reduced to slavery, by supplying them with food on the public account, is very certain. But I doubt much whether, on application to government for leave to expend 20,000 to 30,000 rupees, or even a much larger sum, in that way, would have been complied with *then*†, while, as the distress was occasioned by a scanty crop, it may be questioned whether any thing short of the importation of a large quantity of grain could have afforded† material relief. Importation was, however, impracticable at the time, the whole tonnage on the river being required for the troops, and the evil admitted of no mitigation except that which might be derived from a diminution of individual consumption, to which I am aware of no means that could be more certainly and extensively conducive than making it the interest of those who had grain to divide it with those who had none.

20. That slavery, in the usual acceptation of the word, is repugnant to the feelings of Englishmen, I am well aware. But the question in this case to be considered was not whether slavery should, under ordinary circumstances, be patronized and encouraged, but whether I should, in deference to the speculative opinions of my own countrymen, and in defiance of the wishes and feelings of those who were alone interested in the result, doom to certain death hundreds, if not thousands, of a starving population by refusing them permission

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* Originally, "be no doubt very."

† The word "any" is here expunged.

† Originally, "at the time."

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sion to obtain the means of saving their lives upon terms, which, to them at least, seemed advantageous. To the natives of the east, who are practically acquainted with the effects of slavery, the *novel** prejudices of Europeans against that condition of civil life are quite unintelligible: and whatever motive I might have assigned for such a piece of cruelty, the Assamese would most undoubtedly have attributed it to a sordid determination on the part of their *new*† masters, not to sacrifice any portion of the capitation tax, let the consequences to their subjects be what they might.

21. As many female children continue to be sold in Assam, and instances occasionally occur of grown-up women voluntarily selling themselves with the view of discharging a debt or relieving the wants of their parents or relations, I beg to be instructed whether it is the desire of government, that the necessity for this practice should be removed, by affording the means of subsistence to those who may be reduced to have recourse to it for their own support or that of their offspring. I am afraid that any interference of the kind would lead to deception and great abuse. But as the honourable the Court of Directors have suggested the adoption of the measure, I am induced to solicit the orders of his Lordship in Council on the subject; and should the principle be approved of, I will be prepared to submit such rules as appear to me to be best calculated to check the evils to which it may be expected to give rise.

22. For the serious consequences that might be expected to follow the unconditional abolition of the practice of selling children in Assam, I beg to refer to the circular orders of the Nizamut Adawlut of date the 14th October 1815, and the communication from the superintendent of police upon which they were founded. As a prospective measure, I think it might not be unadvisable, as suggested by Captain White, to prohibit all future sales except those subject to redemption, and to limit the period of bondage either to a term of years, or to the lives of persons in being at the time of making the contract, so that all unborn progeny should be free. I would allow grown-up persons to sell themselves or to sell their children, as far as it might be consistent with their respective codes. But they should be disqualified from entailing servitude upon the progeny of their children, or upon their own immediate descendants born after one or both parents might become subject to bondage. Persons thus rendered subject to servitude should retain the right of redemption, upon payment, in the case of grown-up persons, of the principal sum advanced, and in that of young children, of that sum, together with a reasonable compensation for the expense of bringing them up,—this additional allowance to be fixed by law, and to be liable to be again gradually remitted according to the age the parties might have attained, and the services they might consequently be presumed to have rendered to their masters.‡

ABSTRACT of the above Letter from the Agent to the Governor-general to Mr. George Swinton, Chief Secretary to Government, dated 10th October 1830.

Para. 1. SUBMITS copies of reports on slavery in Assam and Sylhet.

Para. 2. Condition and number of the slaves in those districts.

Para. 3. Bondsmen, included in the numbers specified, although they are not in reality slaves.

Para. 4. Period from which slavery has obtained amongst the Hindoos.

Para. 5. Means of obtaining slaves in Assam; importation not practised.

Para. 6. Other means of obtaining slaves.

Para. 7. Price of slaves and conditions by which it is regulated.

Para. 8. Real value of slaves, except for domestic purposes, very small.

Para. 9. Mode in which the slaves are treated by the lower and higher classes.

Para. 10. The female slaves are frequently kept as concubines. The consequences of such connexions.

Para. 11. Mahomedan slavery, and the effects of the concubinage of the female slaves.

Para. 12. Abolition of slavery; and,

Para. 13. The objections thereto, viz.—

The expense; the infringement of our compact to administer to the natives their own laws; the advantages to the lower orders inconsiderable, whether reference be had to their moral or physical condition.

Para. 14. Proposes to tax slaves absolute, and by that means induce the masters to change their state of servitude into that of redemptioners.

Para. 15. Suggests the measure of fixing a price at which slaves might be emancipated.

Para. 16. Recommends that the subject should be referred to a committee of natives if government intends legislating on it.

Para. 17. Submits some further explanation respecting the permission granted to sell slaves in Assam.

Para. 18. The proclamation issued to that effect was consonant to the custom and practice of all our other Indian territories, and only abrogated for a time a local fiscal regulation.

Para. 19. Respecting the measure of supplying the natives of Assam with food in 1825, the probability of its being sanctioned, and its consequences.

Para. 20.

* A correction in pencil.

† This letter though signed was not despatched by Mr. Scott. After his death, it was found amongst his papers, and the corrections and additions in pencil above noted indicate intended revision.

‡ Originally, "relentless."

Para. 20. Slavery, although repugnant to the feelings of Englishmen, is not so to those of the natives of the country, whose interests we must consult; and had the permission in question been withheld, it would have been imputed by the latter to mercenary motives on the part of government.

Para. 21. Female children being still sold in Assam, requests the orders of government on the subject of affording relief to their parents.

Para. 22. Is of opinion that, prospectively, a term of servitude might be fixed, as proposed by Captain White, but that the total prohibition of future sales would be productive of the bad consequences referred to in the orders of the Nizamut Adawlut of 14 October 1815.

D. Scott, Agent to the Governor-general.

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EXTRACT of a Letter from Mr. *T. C. Robertson*, Commissioner of Assam, to Secretary to Government, Judicial Department, dated 28th February 1834.

No. 6.

4. This design has only been partly accomplished; but that the government may see that it has not been neglected, I enclose copies of the following rules, which I have drawn up in the English and native languages, for the guidance of the courts and parties in suits:—

No. 1. General rules of practice to be observed in the institution, trial and decision of civil suits.

No. 2. Rules regarding mortgages of land and real property.

No. 3. Rules regarding bondsmen or persons who may have pledged themselves in return for a sum of money borrowed by them.

No. 4. Rules regarding the sale of slaves in execution of decrees.

5. This last rule, although transmitted to the assistant in charge of the province, will not be acted on by him until he shall be apprized of its having received the confirmation of government. To understand its object, it is necessary to bear in mind that daily labourers are not to be hired in Assam. To meet, therefore, the wants of the inhabitants of Gowhattee, a certain number of paiks are sent in, according to an old custom, from the southern Doars. For these men a corresponding remission of revenue is granted; but this is covered by the amount received from the individuals, who hire these labourers at certain fixed rates from government. This forms one of the departments of the magistrate's office at Gowhattee, and the accounts are kept with the greatest regularity. Now, by the provisions of this rule, it is proposed to take advantage of this practice, in order to effect a partial but gradual emancipation of slaves, with little apparent and no real expense to the state. For every slave bought in on account of government, when subjected to appraisement in satisfaction of a decree, a paik less will be sent in from the Doars, and a corresponding increase will take place in the revenue paid by his superior to government. This will do more than cover the interest of the sum expended in purchasing the slave, while the principal will, unquestionably, if he lives for two or three years, be realized from the proceeds of his labour, after which he is to become a freeman, having in the interim had a portion of the waste land around Gowhattee assigned to him, on which it is probable that he will then permanently settle.

6. I sincerely hope that government will permit this experiment to be made, both on account of the money decree-holders, who cannot otherwise recover what is due to them, unless we sanction the absolute sale of slaves by auction, and also for the sake of the slaves themselves. My predecessor's rules permitted the sale of slaves in satisfaction of decrees. Thus, it will be seen from the 9th article of my 1st rule, that I have modified, in so far as to require the assistant, when applied to for the sale of slaves, to make a previous reference in each case to this office. This rule having been construed by the people into a positive prohibition of the practice, many petitions were presented, and many individuals also spoke to me, on the subject of the great injury sustained by them from the interruption of the only process by which, in many cases, the amount awarded can be realized. After much deliberation on the subject, I am of opinion that the scheme embodied in the rule under consideration is the only one by which we can, without positive injustice and disregard of rights of property, avoid the objectionable measure of permitting slaves to be seized and sold in satisfaction of decrees of courts.

EXTRACT Rules enclosed in above.

If claimants petition that the slaves of debtors may be attached, the assistant is to make arrangements to prevent the escape of such slaves, and transmit a report by roobakaree to the commissioner, who will issue such orders as the case may appear to require.

No. 6. A.
Section 9.

RULE regarding Bondsmen.

No. 6. B.

1st. If any individual has become or shall hereafter become bound to serve another in return for a certain sum of money during any clearly-specified term of years, such a transaction shall be accounted legal, and be upheld accordingly.

2d. If, however, any individual has become or shall become bound to serve in like manner for an unlimited term of years, under a general condition that his or her bondage is to continue

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continue until a certain sum of money be repaid, then on a suit being instituted by a person so situated, for his or her release, the court, before which it may be tried, shall, after fixing the price of the plaintiff's labour, and deducting therefrom what may be esteemed a fair equivalent for maintenance, carry the balance to the credit of the plaintiff. Whenever the sum total thus credited shall suffice to extinguish the original debt, with legal interest, or whenever a plaintiff shall pay up whatever may be wanting in the amount thus carried to his or her credit to effect such extinction of the said debt, in either case the court shall award to such plaintiff an entire discharge and liberation from his or her bondage.

3d. To prevent protracted investigations, as well as to protect masters from vindictive prosecutions, it is further enacted, that no master shall be required to account for any sum that may be carried to the credit of a plaintiff under the provisions of this rule, in excess of the amount of the original debt, with legal interest; and that no suit shall be entertained that may be instituted by a liberated bondsman for an amount alleged to be due to him on account of labour performed during the term of his bondage.

No. 6, C.

RULE regarding the Sale of Slaves in satisfaction of Decrees of Court.

WHEN a plaintiff shall point out slaves for sale in execution of a decree, then the assistant is empowered, if he judge it advisable, upon such person or persons being proved to be, according to the customs of the country, the property of the insolvent defendant, to cause them to be appraised, and to pay a sum equivalent to their estimated value to the plaintiff in satisfaction of his decree.

To indemnify government for the sum thus disbursed, slaves thus coming into its possession are to be employed on public works instead of the paiks furnished under the present settlement from the southern Doars. And the assistant is further authorized to hire them out to individuals requiring them, at the following rates; viz.—

Men, nine pice per day.

Women, six pice per day.

Boys and girls, four pice per day.

The sum to be thus realized is, after paying whatever may be the cost of their subsistence to be carried to the credit of each individual slave; and such slave is to be held entitled to emancipation, upon the principal of the sum originally paid by government on his account to the plaintiff being made good.

Slaves employed on public works are to have credit given to them for a sum equal to what their labour would have yielded had they been hired out to individuals.

When the assistant does not consider it advisable to act upon the discretion allowed him by this rule, he shall, on application being made to him for the sale of slaves, proceed as directed by article 9th of the Instructions of the 9th November 1833.

No. 7.

EXTRACT of a Letter from Secretary to Government, Judicial Department, dated 25th August 1834, to Captain *F. Jenkins*, Commissioner of Assam.

Para. 9. THE subject of the state of slavery and bondsmen will be taken into consideration hereafter. In the meantime the Vice-president in Council desires that the courts will abstain from selling slaves in satisfaction of decrees, or for any other object. The sale of slaves in satisfaction of government revenue was prohibited some years ago.

No. 8.

EXTRACT of a Letter from Captain *F. Jenkins*, Commissioner of Assam, to Secretary to Government of Bengal, Judicial Department, dated 10th May 1835.

Para. 23. No other observations occur to me at present, to which I have to request the attention of the government, than that on the state of slavery and bondage referred to in the 9th paragraph of Mr. Macsween's letter of the 25th August last, No. 1,705. I have not as yet received the instructions of government. The subject, I am aware, is one of the greatest difficulty and delicacy with reference to some of the classes of our subjects. But I think, in Assam, some enactments for the gradual emancipation of slaves and bondsmen might be introduced with comparative facility and safety; and I would respectfully beg to request the attention of government to the correspondence of my predecessors, to which the above quoted paragraph was a reply.

No 9.

EXTRACT Section X., from the Original Draft Rules for the Administration of Civil Justice in Assam.

SECTION X.—SLAVERY.

Clause 1st. A PROCLAMATION shall be issued, calling upon all persons having claims upon others as being their slaves or bondsmen to register the names of such alleged slaves or bondsmen in the office of the assistant in charge of the division in which they live, within the period of six months, under the penalty of forfeiture of all claim on those whose names they shall omit to register as required.

Clause 2d.

Clause 2d. Those only shall be held to be absolute slaves whose own servitude, or that of their progenitors, can be proved to have originated prior to the day of 1817, which is understood to be the date of the Burmese invasion of Assam. But the sale or alienation of such slaves, excepting with their own concurrence by their actual masters to any other person, is declared to be illegal and invalid.

Clause 3d. All slaves whose own servitude or that of their progenitors has commenced subsequently to the Burmese invasion, as above defined, shall be accounted redeemable bondsmen, entitled to obtain their enfranchisement, under the conditions and in the manner hereinafter indicated.

Clause 4th. The offspring of slaves or bondsmen of every class, born after the date of the proclamation enjoined in clause 1st, are to become free on attaining the age of 18 years.

Clause 5th. Any slave-owner who shall be proved before a competent authority to have maimed, wounded or otherwise grossly ill-treated his or her slave or bondsman, or to have sent or attempted to send such slave or bondsman out of the province, shall be declared to have forfeited all dominion over such slave or bondsman, who shall be thereon liberated.

Clause 6th. Any slave-owner convicted of having derived profit by letting out a female slave, for the purpose of prostitution, shall in like manner forfeit all claim over such slave, who is thereon to be declared free.

Clause 7th. The sale of children by their parents is not prohibited; but it is to be understood that children thus sold are, on attaining the age of 18 years, to become free.

Clause 8th. The legitimate offspring of a freeman are to be held free from their birth, whatever may have been the condition of the mother; and no claim against any married female as a slave is to be admitted, if it be not preferred at the time of the marriage, or as soon after as circumstances would permit.

Clause 9th. The direct sale of slaves in satisfaction of decrees of court is prohibited. But slaves or bondsmen may be transferred with their own concurrence to a plaintiff who may have obtained a decree against their master or owner, at a price to be settled between the said plaintiff and the owner; but all slaves or bondsmen so transferred are to be enfranchised, on the liquidation, by the estimated value of their labour, of the sum at which they were appraised; or, in the event of that sum not being covered by their labour, at the expiration of the term of seven years.

Clause 10th. The slaves or bondsmen of a defaulter may in like manner be taken, with the sanction of the commissioner, in satisfaction of the demands of government for the public revenue, and are to be entitled to their liberation, on the sum, at which they were valued, being covered by the estimated price of their labour; or, at the expiration of the term of seven years. Slaves or bondsmen so taken are to be employed on the government khats or farms.

Clause 11th. All engagements executed by a man or woman, whose age shall exceed 18 years, binding himself or herself to serve another for a term not exceeding seven years, shall have full force and effect, and be maintained by the local authorities. But any contract to serve for a longer term of years is hereby declared to be null and void.

Clause 12th. Any bondsman or slave, entitled under clause 3 to be regarded as a redeemable bondsman, wishing to obtain his or her liberty, may institute a suit for the same, against his or her master, in the court of the assistant in charge of the division in which the said master shall reside; and the court before which such suit may be tried, shall, after determining the price of the plaintiff's labour, and deducting therefrom what may be esteemed a fair equivalent for maintenance, carry the balance to the credit of the plaintiff. Whenever, in the case of a slave of the class described in clause 3, the sum thus credited shall appear to constitute a fair return for expense incurred in the support and maintenance of such slave, or whenever a plaintiff in such a suit shall pay up whatever may in the judgment of the court be wanting to make up an adequate compensation to the master, then such slave shall be decreed by the court to be free. In like manner, if a bondsman be the plaintiff, and the estimated value of his labour, after a proper deduction for maintenance, shall be found to equal the amount of the debt due to the defendant, or if he shall pay up whatever may be wanting to effect the extinction of the debt, then such plaintiff shall be decreed by the court to be free.

Clause 13th. To prevent protracted investigations, as well as to protect masters from vindictive prosecutions, it is enacted, that no master shall be required to account for any sum that may be carried to the credit of a plaintiff under the provisions of the preceding clause, in excess of the amount to which the said master shall, in the judgment of the court, be held to be entitled; and that no suit shall be entertained that may be instituted by a liberated slave or bondsman for an amount alleged to be due to him on account of labour performed during the term of his servitude or bondage.

Clause 14th. It shall be essential to the validity of every transaction, by which a slave or bondsman may be acquired or transferred, that the same be effected by a written instrument; and no such written instrument shall be received in evidence in any court of justice, unless it has, within one month from the date of its execution, been duly registered in the office of the assistant in charge of the district in which the party to whom the transfer or sale or engagement is made may reside.

Clause 15th. Any sale, transfer or engagement of a slave or bondsman not so registered, is to be in future held to be null and void.

Appendix VI. ^f EXTRACT from Enclosures of a Letter,* dated 14th April 1836, from Captain *F. Jenkins*,
Correspondence. Commissioner, to Sudder Dewanny and Nizamut Adawlut, viz. Opinions of Captain
Matthie and Ensign *Brodie* on the said Original Draft Rules.

No. 10.

OPINION of Captain *Matthie*.

Para. 5. WITH reference to clause 7th of section 10, on slavery, that even under the Assam government the sale of male children was strictly prohibited, and is so at present; and as our object is to gradually abrogate the system, and to prevent any misinterpretation of the enactment, I would suggest the clause be modified by inserting "female" before the word "children."

OPINION of Ensign *T. Brodie*.

Section 10, clause 7. THIS clause seems to be founded on the supposition that parents have already the power to sell their children; but this is not the fact with respect to the male offspring of freemen. These owed their service to the state under the Assam government, and could not be sold; and if the power be now given to parents to dispose of the services of their male offspring, till they reach the age of 18 years, I beg to submit that they be prohibited altogether from disposing of the females of their families. Apprenticing females till 18 years of age, in a country such as India, appears to me to be open to many objections which will readily suggest themselves to any one upon reflection. I should also beg to suggest, that the female children of slaves born after the date of the proclamation enjoined in the 1st clause, be declared free on attaining the age of 10 or 12 years, instead of 18, as specified in the 4th clause, which would enable the parents to bestow them in marriage according to their own inclinations.

No. 11. EXTRACT of a Minute by Mr. *T. C. Robertson*, Judge of the Sudder Dewanny Adawlut, dated 24th June 1836.

IN the rules for the civil department, several important alterations have been made, in pursuance of their suggestions, upon the draft as originally submitted to the consideration of the officers in Assam.

Of these, the most important are those connected with the different questions of slavery. In this section, I have, in deference chiefly to the opinion of Captain Jenkins, struck out the 2d, 9th and 10th clauses of the original draft, modified the 6th and 7th clauses, and added a clause providing for the punishment of parties convicted of harbouring runaway slaves.

I have some slight doubt as to the modification of the 8th clause of the original draft (which in the draft† now submitted is the 7th), and have marked with inverted commas a passage upon which I am anxious to have the opinion of my colleagues. I have, it will be observed, retained the clause No. 6 of the original, and No. 5 of the amended draft, notwithstanding Captain Jenkins's opinion recorded against it; my reason for retaining it is, that Captain Rutherford, whose knowledge of the people of Assam is more minute and extensive than that of any officer who has ever been employed in the province, was, I well remember, strongly in favour of such a provision being inserted in any rule that might be passed on the subject of slavery.

It is not without reluctance that I have struck out clauses 9 and 10, from the operation of which, I was inclined to hope for much being effected towards the gradual extinction of slavery. There is, however, I must admit, much force in Captain Jenkins's argument on this point, though I hope that, if the other provisions of this section are found to work beneficially, these two clauses may at some future period be added to the rule.

No. 12. EXTRACT of a Letter‡ from Secretary to the Government of Bengal to the Register of the Sudder Dewanny and Nizamut Adawlut, dated 25th October 1836.

Para. 19. CAPTAIN JENKINS will consider the requisition conveyed by para. 4 of my letter of the 4th June 1835 to be still in force. The court will be pleased to hand up with an expression of their sentiments any drafts of "enactments for the gradual emancipation of slaves and bondsmen" which he may submit.

* This letter of Captain Jenkins also gave cover to the remarks of Captain A. Bogle and those of himself. Both will be found in page 346-7 of the volume of papers on Slavery in India, 1838.

† This amended draft will be found in page 347, Slavery in India papers, published by order of the House of Commons, in 1828.

‡ Paragraph 11 of this letter is printed in the volume of "Slavery in India, 1838," p. 348, No. 35.

FROM *J. F. Hawkins, Esq., Register, Sudder Dewanny and Nizamut Adawlut, Fort William, to Officiating Secretary to Government of Bengal, Judicial Department, dated 14th April 1838.*

No 13.

HAVING laid your letter No. 385, together with its enclosures, before the court, I am directed to request, that you will submit the following observations for the consideration of his honor the Deputy Governor.

Sudder Dewanny
and
Nizamut Adawlut

2. The principles recognized and the objects kept in view in the provisions of the 10th section of the proposed rules for the civil and criminal administration of Assam, submitted for the consideration of government, with my predecessor's letter, No. 1,648, dated the 29th July 1836, were the amelioration of the actual condition of the slave population of Assam, and the present restriction, with a view to the ultimate extinction of slavery in that province.

PRESENT
R. H. Battray, W.
Braddon, and N. J.
Halhed, Esqrs., Judges;
W. Money and J. R.
Hutchinson, Esqrs.,
Temporary Judges.

3. In reply, it was observed, at the 11th paragraph of Mr. Secretary Mangles's letter, No. 1,855, dated the 25th October 1836, "His Lordship is not prepared to pass this section. The subject is one of great and general importance, and must be taken up, as a whole, by the supreme government. But he considers it to be within his competence to declare, that all sales of persons as slaves shall be illegal and void from the date on which these rules of practice shall come into operation in Assam." The section, therefore, will stand as on the margin.

Section 10. "From the date on which these Rules of Practice shall come into operation in Assam, all courts of justice shall hold all sales of persons as slaves to be illegal and void; and no suit to reclaim the services, as a bondsman or woman, of the person so sold, shall be received in any court, on the plaint of any party."

4. With reference to a minute recorded by Mr. Robertson on the subject of section 10, as above amended, the court were induced to suggest to government in their letter, No. 2,648, dated 11th November 1836, the expediency of a reference to the local authorities, ere proceeding to promulgate it as the law for future observance.

5. Mr. Secretary Mangles, in his letter, No. 2,080, of the 22d idem, forwarded to the court a further amendment of section 10, as per margin, with instructions to the court, if they saw no objections to such a step, to print and promulgate the whole of the rules without further delay.

9. "From and after the date on which these Rules of Practice shall be promulgated in Assam, all sales of persons as slaves, not being transactions whereby an individual of mature age voluntarily binds himself or herself, in return for value received, to render personal service to another, shall be deemed illegal and void; and no suit to reclaim the services of a slave, or bondsman or bondswoman, so sold, after the date above specified, shall be received in any court, on the plaint of any person: provided, however, that nothing in this section

contained shall be held to relate to voluntary obligations of personal service of the nature above indicated, otherwise than to render the transfer of such service to a third party, after the date of the promulgation aforesaid, illegal and void. provided also, that this prohibition shall not be construed to extend to any sale that may have been regularly executed, according to the law of the province or established usage, previously to the promulgation aforesaid; and the several courts of justice are empowered and directed to entertain such suits as heretofore; and in deciding the same, the courts are to be governed by the law and usage under which the said sales were made."

6. The court, however, were still of opinion (see their register's letter, No. 2,781, dated 2d December 1836), that the sentiments of the local authorities should be taken ere proceeding to the adoption of the amendment. They at the same time expressed a doubt as to the legality of legislating on the question of slavery without a previous reference to the home authorities.

7. The government, in the secretary's reply, No. 2,142, dated 6th December 1836, directed the proposed reference to be made to the local authorities, which was accordingly done.

8. With his letter, No. 87, dated the 24th May 1837, the commissioner of Assam submitted his own sentiments and those of his subordinates,* on the subject of reference. For the reason stated in the 6th paragraph of his letter, Captain Jenkins is adverse to the adoption of the amendment proposed in Mr. Mangles's letter of the 22d November 1836. The several officers under the commissioner are of opinion, that the rules of section 10, as they originally stood, might have been safely enacted; and Ensign Brodie, under the impression that Government had finally decided against them, considers that the section as modified in Mr. Secretary Mangles's letter of the 22d November can be productive of no mischief, and that it is expedient to promulgate it for the reasons therein stated: on the receipt of these opinions, Captain Jenkins was requested to prepare and submit a draft of the rules which he would propose for enactment. To this call he replied in his letter, No. 129,† dated 22d July last, in which he referred the court to certain rules already submitted by him. As these rules appear to have been forwarded direct to government, the court deemed it advisable to request Captain Jenkins to prepare and submit a draft for the consideration of the court. This was done, and the draft was received with the commissioner's letter, No. 169, dated the 25th November last, accompanied by the correspondence which had passed between himself and his subordinates in the year 1835, and which was submitted direct to government with his letter of the 22d August 1835.

9. The rules of which the commissioner has forwarded a draft have mainly the same objects in view as those formerly submitted to government by the court, viz. the present mitigation and general abolition of slavery. And in the event of legislation on the subject, irrespective of the previous sanction of the home authorities to the particular rules proposed for adoption being considered within the competence of the local government, the court, with reference to the sentiments of the authorities in Assam, which are entitled to the fullest consideration, and the reasons stated by Mr. Robertson in the minute above mentioned, in which the court concur, are still of opinion, that those objects should be strictly kept in view, in legislating on so important a subject with regard to a country in which it is stated, that

* Copies herewith submitted.

† Copy sent.

Appendix VI. that the greater portion of the property of the wealthier classes consists of slaves, and in
Correspondence. which a declaration of immediate emancipation, or an absolute prospective interdiction of
slavery and bondage, must be attended with serious detriment and loss.

10. In submitting the rules forwarded by Captain Jenkins, the court desires me to add, that they are not prepared to coincide in all the minor details of the provisions contained in them. Some of them (such as those which relate to the subject of corporal punishment) they consider may be advantageously altered, and the wording in parts may be considerably improved. They direct me, however, to forward them just as they were received for the consideration of his Honor; and on the determination by his Honor of the principles to be observed in legislating on the subject, and in the event of the approval generally of the rules submitted, they can be altered and corrected under the instructions of the court, on their being returned to the court for that purpose.

FROM Captain *F. Jenkins*, Commissioner of Circuit, Assam, to Register of the Sudder Dewanny Adawlut, Fort William, dated 24th May 1837.

IN obedience to the instructions contained in the second paragraph of your letter, No. 3,086, of the 30th December last, I have now the honour to forward the letters as below,* submitting the opinions of my assistants on the 10th section of the original rules.

2. Captain Bogle, referring to his letter of the 5th April, which was forwarded to the court, with my letter, No. 52, of the 14th April 1836, is of opinion, that with the amendments then suggested, the proposed rules might be easily enacted; but at the same time he expresses himself in the strongest manner against the policy and propriety of the government interference except by prospective and very gradual measures. Captain Bogle further recommends, that the original clauses regarding bondsmen should be maintained.

3. Ensign Brodie, under the supposition that his opinion was only required upon the clauses proposed and modified in Mr. Secretary Mangles's letters of the 25th October and 22d November 1836, merely expresses his entire approval of the clause as altered in the latter letter.

4. Lieutenant Vetch considers it proper, that rules to the effect of those proposed should be promulgated, but suggests several amendments thereof, and details his reasons for suggesting the alterations he recommends.

5. Captain Davidson also advocates the enactment of the rules, with some alteration proposed by himself.

6. I have attentively reconsidered the originally proposed rules, and the observations I had the honour to submit in my letter of the 14th April, and I am of opinion that, with the alterations and additions suggested by me, it would be preferable to enact those rules rather than the revised section in Mr. Secretary Mangles's letter of the 22d November, as this makes no provision for the eventual release of any persons now held or who may be born in slavery, and prohibits all sales in future of children under any circumstances. Such an enactment might, I fear, be attended with baneful effects in times of famine, and to the families of some of the miserable and degraded classes which are to be found in all communities.

7. On the whole, I am very much inclined to recommend that only the enactments regarding bondsmen should be promulgated, leaving the subject of slavery to be taken up whenever the legislature is prepared to issue any general regulations for the empire. I consider that the government, by withholding a regulation making it legal to have recourse to the criminal courts for the apprehension and restitution of slaves, have virtually abolished slavery. The means of escape from their owners being so easy, and the difficulty and expense of recovery, through the civil court, being so great, that no slaves, above the age of childhood, need be detained in bondage, except with their own free will.

FROM Lieutenant *Hamilton Vetch*, Junior Assistant, in Civil Charge of Durung, to Captain *F. Jenkins*, Commissioner of Assam, dated 29th April 1837.

IN reply to the 2d paragraph of your letter, No. 100, under date the 5th instant, desiring me to state my opinion on the whole of the provisions contained in the 10th section of the rules for the administration of civil justice that were forwarded from your office with your circular, No. 326, under date 28th November 1835, and on section 9 in Mr. Secretary Mangles's letter to be substituted for it, I beg to submit as follows:

SECTION X. OF ABOVE-QUOTED RULES.—SLAVERY.

Clause 1. I entirely concur with the provisions contained in this clause.

Clause 2. I object to this clause, because the sale of slaves appears to have been sanctioned under certain provisions by the late Mr. Scott, agent to the Governor-general; and I think, sales contracted under these should be held valid, as all others effected previously, if agreeable to the usages of Assam.

Clause 3d. The same objections apply here as to clause 2d.

Clause

* Captain Bogle's, 20th April; Ensign Brodie's, 27th do.; Lieutenant Vetch's, 29th do.; Captain Davidson's, 1st May.

Clause 4. In the provision of this clause, I entirely concur, adding as per margin.

And in case of a female, her offspring, by whatever father, before she has attained the age of 18 years, to be declared free born

Clause 5. I entirely concur with the provisions made in this clause.

Clause 6. With the provisions made in this clause I also entirely concur.

Clause 7. Change the words, "the sale of children," and substitute as per margin; the rest to stand. This clause is called for in Assam as a provision for destitute children to save them from starvation in event of famine, or the parents not being able to support them.

The bonding of children.

Clause 8. For this clause substitute as per margin. I conceive this only the criterion to judge by in Assam, where to prove the father of a child begotten of a female slave would be difficult indeed.

The condition of the mother to decide that of the offspring.

Clause 9. Substitute as per margin. The object here gained will be putting an end to traffic in slaves. While every transfer will change a slave into a bondsman or woman, at the same time the owner will be accommodated, should poverty or other causes make a transfer desirable. The condition of the person so transferred is also likely to be improved during his or her bondage; as, if poverty be the object of the transfer, and no provision of this kind be made, the slave would have to share it with his master.

The sale of slaves to be illegal from the passing of these rules; but a slave may be disposed of as a bondsman or woman for a limited period, not exceeding 12 years, at the expiration of which he or she shall be declared free.

Clause 10. I concur with the provisions in this clause.

Clause 11. For seven years, in this clause, substitute as per margin. The rest to stand. As provision is made that the contracting parties should be of sufficient age to know their own interest, I see no objection to extending the limit to twelve years. The annexed translation of a bond put in for registry will show how far it is attempted to carry the system of bonding, without rendering the transaction contrary to a rule of the late commissioners, which required a limit to be specified in the bond to make it legal.

Twelve years.

Clause 12. Substitute as per margin. It appears absolutely necessary to fix some limit to the period of bondage, otherwise it almost assumes the form of slavery, which it had nearly, if not altogether reached, before the promulgation of Mr. Robertson's rules on the redemption of bonds; at which time the child or brother of a bondsman was considered by the custom of the country bound to service, in the event of the death of the father or brother, or until the sum bonded was restored. As the unexpected redemption of a bondsman, at the time of sowing or harvest, may be attended with much loss to the owner, I consider a short warning to be necessary. Although I highly approve of the provision proposed in this clause for the liquidation of the bond-money, I think it would be simplified still further, if a limit was taken as now proposed instead, as this would prevent the institution of suits where the bondsman is, after inquiry, found not to be entitled to release, and such suits may be made a handle for vexatiously bringing the bondholder into court, or to evade labour while the suit is pending.

Any bondsman or woman, wishing to obtain his or her freedom, may institute a suit in the summary court for the same, and on proving that he or she has served as bondsman or woman for 12 years after attaining the age of six years, or if from infancy, up to the age of 18 years, the said service shall be considered an equivalent for the bond-money, and he or she shall be declared free, but nothing in this is to hinder the bondsman or woman redeeming his or her freedom, on tendering the sum originally borrowed, at any period of the said service, always provided two months' notice is previously given to the bondholder, and provided no term has been fixed in the bond for the release of the bondsman or woman, and which term shall not exceed 12 years.

Clause 13. The change now recommended to be introduced into clause 12 will render this clause unnecessary.

Clause 14. With this clause I entirely concur.

Clause 15. I concur entirely with this clause.

My remarks on clauses 9, 11 and 12, are applicable to section 9 in Mr. Secretary Mangles's letter, and with the modifications therein proposed, it might, I think, be adopted in Assam, without proving very injurious to the interest of the slave-holder, and would run nearly as follows:—

Section 9. The sale of slaves to be illegal from the promulgation of these rules; but a slave may be transferred for value, as bondsman or woman, for a limited period, not exceeding 12 years, at the expiration of which he or she shall be declared free.

All engagements executed by an individual of mature age voluntarily bonding himself or herself in return for value received, to render personal service to another, for a period not exceeding 12 years, shall be legal and binding, but for a longer period such contract shall be illegal. Nevertheless, any parent may enter into a contract and bind his or her child for a period not extending beyond the age of 18 years, on the part of the person so bonded. But no transfer of service to be legal without the consent of all the contracting parties. Suits for breach of such contracts shall be entertained in the courts of justice competent to decide suits for breach of contract in other matters.

TRANSLATED BOND above referred to, viz. Obligation of *Palone Kottah*, the son of *Thoolye*, to *Bryjonath Burrah Bundar*, *Boroowah*, &c.

I, *Palone Kottah*, of Mahaul Nadooar, Mowzah Cheelabhandah, do, in this document write, in the 1243 year A. S., for this purpose, that *Dyahram*, sepoy of Mowzah Morahdull, residing in Daoree Gaw, having obtained a decree of court on me, and my elder brother, *Boodoo*, and *Peonah*, and *Kattee*, for the sum of 19 rupees, and being much harassed for the same, in consequence of our not being able to pay the amount decreed against us, I, with my own free will, and at the request of my three relatives above mentioned, to liquidate the aforesaid sum, have taken a loan from you of 19 rupees, and in lieu of repayment, I bind myself as a bondsman for 41 years to you under the following conditions:—That you will feed and yearly clothe me with two arreeh dhooties, one jol gamasah and chalong; for this I promise, as customary, to instantly obey all the orders you may from time to time give me, when I shall, after the expiration of the 41 years above stated, be entitled to my release. The money for which I have now bonded myself shall be considered as liquidated

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by my services. But in the event of my dying before the expiration of the 41 years above stated, then, one of three above-mentioned relatives who may survive me, answerable with me for the same debt, and against whom the decree of court for the same 19 rupees is in force, shall become your bondsman, and work out the unexpired term of years. In event of issue by me and any of your female slaves, I disclaim all right to them, and they shall all be your property.

In confirmation, I hereby write and give this document, this 18th day of Falgoon.

WITNESSES.

RESIDENCE.

Rapooram Sirmah, son of Halee Sirmah	- Sakomatha.
Monooram Patghra, son of Modhooram	- Mahal Chardooar Mowzah Mudphee.
Sumboo Hazaree, son of Koosoom	- Mowzah Sutteeah.
Sadee Burrah, son of Chaw Seegah	- Mowzah Cheelahbaundah.
Jattee Bhogah Burrah, son of Jewram	- Mowzah Borabhogeeah.
"Kaguttee," or writer, Locknath Sirmah, son of Seebnath.	

The above I have written willingly. Also my elder brother, Boodoo, and my brother Katteram are both of them willing.

(signed) *Peonah Koltah.*

(A translation.)

(signed) *H. Vetch, Assistant-Commissioner.*

FROM Lieutenant *T. Brodie*, Junior Assistant, in Civil Charge, Nowgong, to Captain *F. Jenkins*, Commissioner of Circuit, Assam, dated 27th April 1837.

I HAVE the honour to acknowledge the receipt of your letter No. 100, dated the 5th instant, giving cover to a new code of rules for the administration of civil and criminal justice in Assam, to come in force from the first proximo.

2. In the second paragraph, I am directed to give a report of my views and opinions on the whole of the provisions contained in the 10th section of the rules for the administration of civil justice, as forwarded from your office with your circular No. 326, under date the 28th November 1835, and the modifications proposed in Mr. Secretary Mangles's letter.

3. It appears from the eleventh paragraph of the secretary's letter to the address of the register of the Sudder Dewanny and Nizamut Adawlut, No. 1,855, under date the 25th of October last, that the Right honourable the Governor of Bengal is not prepared to pass the section in question regarding slavery and bondage as it originally stood, in consequence of the great and general importance of the subject, which in his lordship's opinion should be taken up as a whole by the supreme government, but it is proposed to prohibit in future the transfer of slaves and bondsmen to third parties.

4. If I understand the matter rightly, it is as to the expediency of this latter proposition only that my opinion is required, but otherwise I need only say that the provisions of the section as it originally stood seemed to be generally well adapted to put a gradual but complete end to slavery in Assam.

5. With respect to the question now mooted, as far as I have the means of knowing, I believe that it is not a very common occurrence in this part of the country for slaves or bondsmen to be transferred from their owners to third parties; and as the Right honourable the Governor has not thought it expedient at present to touch the general question whereby slavery was to have been extinguished, I am of opinion, that the section as modified in Mr. Secretary Mangles's letter, No. 2,080, dated 22d November last, can be productive of no mischief, and that it is expedient to promulgate it for the reasons stated in the second paragraph of the letter last quoted, namely, to discountenance the system of slavery in general, and to deprive that already existing of one of its worst features by disallowing the transfer by sale of property in persons.

6. It may perhaps be useful to refer to the rules now in force regarding the transfer of slave property. Mr. Robertson's letter of the 28th July 1833, to the address of the then officiating magistrate of Central Assam, authorizes the issue of a proclamation prohibiting the sale or mortgage of any individual, a native of Assam, to a foreigner, under pain of being punished by a fine not exceeding 100 rupees, or, in the event of the person so sold or mortgaged having been removed from his or her residence in progress to another country, by imprisonment for a period not exceeding six months.

7. Under orders of government of date the 25th August 1834, communicated in your circular of the 12th September following, a proclamation was directed to be issued notifying that government have prohibited the sale of slaves, by any court in Assam, in satisfaction of decrees, or for any other purpose or transaction that might originate subsequent to the date of such proclamation, and that henceforth no slaves should be sold in satisfaction of government revenue.

8. Besides these restrictions on the sale of slaves, I believe there are others to be found among the native proceedings of the late Mr. Scott; but I have not got them by me to refer to. But whether this be the case or not, I conceive that as government have already gone the length of prohibiting the sale of slave property in satisfaction of a slave-owner's lawful debts, it is neither unreasonable nor unjust that the same rule should be extended to prohibit the sale by the slave-owner himself for his own private benefit.

FROM

FROM *A. Davidson*, Esquire, Officiating Magistrate, Zillah Gawalparah, to Captain *F. Jenkins*, Commissioner 17th Division, Gowahattee, dated 16th May 1837.

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Section 10.

After duly perusing section 10 of the rules for the administration of civil and criminal justice in Assam, I beg to submit the following remarks as required by government :—

Clause 1. I would add, that the mere fact of registering a person as a bondsman or slave should not be considered evidence in my court, as proof of the fact, and further, that when parties wish to register others as slaves or bondsmen, the said slaves or bondsmen should be produced in court, and proof given of their identity, as I have known instances when one man has been produced in court in place of another to confess himself a slave.

Clause 2. The concurrence of the slave or bondsman ought to be made in open court, before a European officer, and registered. Also proof of identity should be given.

Clause 3. No remark.

Clause 4. Ditto.

Clause 5. Ditto.

Clause 6. By this clause, which is essential, all women who are now compelled by their owners to prostitution will become free, as ninety-nine out of the hundred are slave-girls or bondswomen, both in Gawalparah and Assam.

Clause 7. It would, in my opinion, be better if the age were limited to fifteen, as most women become mothers before they reach the age of eighteen.

Clause 8. No remark.

Clause 9. The concurrence of slaves or bondsmen to be made in court and registered; and there it might then be proved how many years of servitude was unexpired.

Clause 10. No remark.

Clause 11. Such contracts to be acknowledged in open court and registered.

Clause 12. In cases where the bondsmen or slaves were longer than seven years with the party claiming them, the said party to pay all expenses of suit.

Clause 13. I am of opinion that the government should fix a certain sum per month as credit against the sum advanced to the bondsman or slave. Beyond this he would be entitled to food and clothing.

Clause 14. No remark.

Clause 15. Ditto.

FROM Captain *A. Bogle*, Assistant Commissioner, Zillah Kamroop, to Captain *F. Jenkins*, Commissioner of Circut, Gowahattee, dated 26th April 1838.

In reply to your letter of the 5th instant, requiring my opinion on the slavery clauses of the proposed Rules of Practice received with your letter of the 28th November 1835, and the modifications now suggested, I beg leave to refer you to my sentiments on section 10, as it formerly stood in my letter of 5th April 1836, paragraphs 24, 25, 26, 27, 28 and 29, wherein I remarked that, with a few amendments, the rules might be safely enacted.

2. By this; however, I would not have it supposed that I am an advocate for immediate emancipation; and I take this opportunity of observing, that I greatly doubt both the policy and propriety of any government interfering with property of which its subjects have been in the full enjoyment for a long series of years, even although the property in question be human beings, and the acts of the British Legislature afford a precedent, always provided that the possession has been legally obtained. At the same time, the province of Assam having been annexed to British India by conquest, the right of government to make any enactments it pleases will scarcely admit of dispute.

3. It must, however, be borne in mind, that the chief wealth of all the respectable people in Assam consists in the slaves they possess. Land is abundant, but it is only of value in proportion to the means of cultivating it; and although the inconvenience attending the emancipation of all the slaves in this province would ultimately create its own remedy, in the meantime the change would cause much embarrassment to the greater part of the better classes. The first families in the country would be reduced to poverty, and it is probable that the condition of the slaves would not be materially improved.

4. I must further observe, that the question in no way presses upon the government, so as to render it necessary to introduce any such sweeping measure as emancipation. On the contrary, so far from Assam standing particularly in need of such an alteration in the established customs of the country, there is perhaps no part of India where greater care has been taken, at the government expense, to reduce the number of persons in slavery to just and legal bounds. I allude to the investigation respecting slaves which took place some years ago, in which, although great roguery was practised, and the humane intentions of government were less conspicuous than the attempt to make the proceeding a source of revenue, some good was effected.

5. Should government, notwithstanding that this is the case, be desirous of enforcing a general measure of emancipation, I have only to say, that there is no fear of the peace of the country being disturbed; and of course it follows, that the restrictions on the sale of slaves proposed in Mr. Mangles's letter of the 22d November may be enacted without danger. But I think they had better be confined to the case of registered slaves born since the treaty of Yandaboo; and a rule prohibiting the forcible separation of members of a family, whether born before or after the above date, such separation being most revolting to the feelings, should be passed and strictly enforced. The entire abolition of sales might be attended with inconveniences which it seems scarcely necessary to encounter.

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6. The case of bondsmen, however, is entirely different; and I regret to observe that in the new rules no provisions regarding it have been inserted, which I think calls for immediate remedy; for the civil courts have long been employed in investigating such cases upon the authority of a rule passed by Mr. Robertson, of which I annex a copy, and I find that 211 cases have been decided, and there are now on the file, and nearly ready, 355 more.

7. Soon after I came to this district, I found that the practice of entering into engagements to serve either for a period of years, or until a certain sum of money should be repaid, had very generally obtained (and it still exists), and where money had thus been given in advance for services to be rendered, that the descendants of the person pledging him or herself were detained in bondage even to the third or fourth generation, which appeared to me so very unfair, that I addressed the commissioner on the subject. Copy of my letter is appended, and I have always considered it as a most fortunate event that I was instrumental in procuring, amongst other improvements, the enactment of a rule so favourable to persons in the above predicament, by which their services could be weighed in the scale against the money advanced for them.

I beg to draw attention to the fact, that amongst the advantages which I contemplated, was the inducing all persons engaging with bondsmen to execute written engagements with them, which should clearly specify the nature of the transaction; and another was to cause the masters to treat the bondsmen so kindly, that they should not be tempted to come into court. I have reason to believe that both these objects have been very fully attained, and I have now strongly to recommend that clauses 11, 12, 13, 14 and 15 of the original rules be maintained. Otherwise, the courts will be placed in a very awkward position, and there will be no restraint upon the illegal proceedings of parties employing bondsmen, which have frequently been of such a character, that they have not even attempted to defend them when once brought under investigation, but have resigned all claims to further servitude.

ENCLOSURE of above, being Letter from Captain A. Bogle, Officiating Collector, Lower Assam, to Mr. T. C. Robertson, Commissioner of Revenue, Gowahattee, dated 28th January 1834.

IN submitting the accompanying arzee from the punchaits, together with my remarks respecting the rules of practice received from your office, I think it proper to draw your notice to the following points:—

2. First to decrees on the raj. It has been the custom to entertain complaints of the most indefinite nature, with no further specification of the defendants than the insertion of a few names, "and Ghairo raj." On this the merits of the case have been tried, and decrees passed in the same indefinite manner, and levied by a burgoonee or mahtoot on the whole pergunnah. Where the pergunnah lay, became a second subject of consideration: and when we bear in mind, that it was probably composed of thirty or forty detached mouzahs, scattered all over the country from Durrung to Gowaiparah, a large portion of the population of which may have been entirely changed since the transaction took place, or from other causes quite ignorant of the affair, further remark on this head seems unnecessary to show the ruinous consequences that must ensue by attempting to levy decrees of this nature. The first of them is to require payment from those who never borrowed.

3. For the future it is easy to provide; but respecting the past there are some obvious difficulties. I would, however, recommend, that in no instance whatever shall any person be called on to pay, whose name is neither in the plaint nor decree, and who has consequently never been served with a notice of the suit. Should this throw a sum borrowed by the raj on the shoulders of only a part of the borrowers, they have the power to sue for the remainder of their proper shares.

4. The next point is the legal rate of interest, at present 48 per cent. This, I am of opinion, may be safely reduced to one-half.

5. The third is one of even more importance; it relates to banda mattee, or mortgaged lands.

6. The pykes having all had certain quantities of land assigned to them by the former government, under the denomination of "gao" and "jumma mattee," it often happened that they borrowed money and placed their lands in pawn, generally engaging to pay the revenue, although the lender reaped all the fruits of the soil. The revenue they considered as, in fact, the interest of the loan.

7. As respects the question of right, involved in a case of this kind, it is simple. The land was, in a manner, the pykes's; for, although it was considered the property of the state, yet, from long occupation, it had, in fact, become a fixed possession, which it was optional with the pyke to place for a time in charge of another. If provident, he would, of course, have made an agreement as to the number of years his creditor was to enjoy it. Generally speaking, however, this was entirely omitted, and the land passed away for ever, or, at least, until the money was repaid. These lands are now often claimed, and it seems but right that the courts should have the power to estimate the value of the annual crops, according to the average produce of similar lands in the same neighbourhood; and whenever it may be proved that the creditor has held them long enough to have repaid himself the amount lent with all costs, to set the lands free.

8. In a revenue point of view, the necessity for a fixed rule, as to who is to pay the tax on mortgaged lands, is urgently required. If the poor pyke, who has given up his birthright to the rich man, is still obliged to pay the revenue for lands in the possession of another, it is clear that he must often fail and abscond; and when this is the case, the deficiency

deficiency in the chowdree's collections will be made up by a burgoonee on the rest of the village, he himself probably holding the lands rent free, which leads to the usual ruinous results; and in whichever way we look at the matter, it is evident the government revenues and the prosperity of the country must alike suffer to a dreadful extent.

9. The only argument I have ever heard against demanding the land-tax from the actual cultivator or mortgagor, is, that the revenue which the debtor engaged to pay was in lieu of interest, and that the money was lent on an understanding that the land should not be burthened with revenue. But to make an agreement for any thing except the proceeds of the lands itself, was clearly beyond the legal power of the pyke; for on the land alone can the government dues be collected; and he had no right to detach the assessment from it. Any man may privately agree to pay his neighbour's tax; but if he fails, the possessor of the property taxed must make it good.

10. The natural result of crying down the system of detaching the revenue from the soil is, that the creditor will reimburse himself for its amount by retaining the land a longer period. It does not appear to me that he will be a loser. I therefore propose that the collector shall henceforth merely look to the person in possession of the land for the revenue, and be authorized to levy from him, leaving it to the parties concerned to settle the difference amongst themselves. Without this, I see not how the tax is to be collected.

11. I next beg to notice the case of bondsmen; with respect to whom I venture to hope that powers to set them free may in certain cases be vested in the civil courts.

12. I have known instances in which not only men and women were retained in a state of slavery for their lifetime for a very small sum, but their children also, unless a fortunate chance placed it within their power to pay off the original loan with interest; which, considering the high rate of interest in Assam, can but rarely happen.

13. This is a lamentable state of things, and it does not appear to me inconsistent with justice that the courts should have the power to set off the value of the bondsman's labour against the amount of defendant's claim, and when the balance is in his favour to liberate him.

14. The value of labour is about two sicca rupees a month. The price of maintenance and clothing about one rupee. Thus, if the general rule were to value the bondsman's services at one rupee a month, a prospect of his eventual liberation would be opened to him.

15. No rule could of course affect cases in which it might be proved that a man had agreed to serve a specific time for the loan of a certain sum. The above would only have reference to those instances in which no such agreement had been made. It might increase the difficulty of borrowing money, but would cause greater honesty and industry, and could not, I think, diminish the happiness of the people.

16. The subject of slavery is one that has so often occupied the deepest attention of wiser heads, that I shall not touch upon it; although I am inclined to think that a small tax upon slaves (say two rupees a head) would not only draw some revenue from the higher classes, but if it did not lead to the voluntary liberation of a few, it might at least check its extension.

The master having to
pay for the slave.
A. Bogle.

17. The points I have more particularly adverted to are of so much importance, that if time permitted of it, I should be glad that you took the opinion of your other assistants upon them.

(Circular.)

FROM T. C. Robertson, Esquire, Commissioner, Assam Division, Gowahattee, to Captain A. Bogle, Officiating Assistant Commissioner, Lower Assam, dated 11th February 1834.

It appearing that cases frequently arise in Assam, involving the reciprocal rights of masters and bondsmen, which originate in deeds of mortgage executed by the latter, the following rules are enacted for the future guidance of the civil courts in deciding upon such transactions:

1st. If any individual has become or shall hereafter become bound to serve another, in return for a certain sum of money during any clearly-specified term of years, such a transaction shall be accounted legal, and be upheld accordingly.

2d. If, however, any individual has become or shall become bound to serve in like manner for an unlimited term of years, under a general condition that his or her bondage is to continue until a certain sum of money be repaid, then on a suit being instituted by a person so situated, for his or her release, the court before which it may be tried shall, after fixing the price of the plaintiff's labour, and deducting therefrom what may be esteemed a fair equivalent for maintenance, carry the balance to the credit of the plaintiff. Whenever the sum total thus credited shall suffice to extinguish the original debt, with legal interest, or whenever a plaintiff shall pay up whatever may be wanting in the amount thus carried to his or her credit, to effect such extinction of the said debt, in either case the court shall award to such plaintiff an entire discharge and liberation from his or her bondage.

3d. To prevent protracted investigation, as well as to protect masters from vindictive prosecutions, it is further enacted, that no master shall be required to account for any sum that may be carried to the credit of a plaintiff under the provisions of this rule, in excess of the amount of the original debt, with legal interest, and that no suit be entertained that may be instituted by a liberated bondsman for an amount alleged to be due to him on account of labour performed during the time of his bondage.

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FROM Captain F. Jenkins, Commissioner of Circuit, Assam, to Mr. Pierce Taylor, Deputy Register of the Sudder Dewanny Adawlut, Fort William, dated 22d July 1837.

I HAVE the honour to acknowledge your letter, No. 1864, of the 30th ultimo, and in reply beg to refer the court to the rules which accompanied my letters of the 14th April 1836, (to the court,) and 22d August 1835, No. 121, (to Mr. Secretary Mangles,) as those which I still would propose for adoption, if the government should deem it fit to make any partial enactment.

2. I beg to repeat, that I consider any regulation which was to be attended with the immediate release of all slaves would be attended with very distressing consequences both to the slaves and their owners: and if no remuneration was given by the state for the services of the slaves, I should consider the measure as fraught with such serious injustice, that the effects might be very serious to government.

3. It seems to me, however, that this government may, ere long, be compelled by the British Parliament to legislate hastily on slavery, if the government delays much longer to originate some enactment on this most important subject: and, under this apprehension, I should be glad to see the government begin with some measures for the progressive extinction of slavery, as this I think would prevent the evils that may otherwise be anticipated; and with this view I should recommend a regulation to the effect of my proposed rules for Assam. I have no doubt they may be safely introduced here, and they would in some measure prepare the minds of our subjects for their adoption elsewhere, should the government not be prepared to make the regulation general to Bengal.

FROM Captain F. Jenkins, Commissioner of Circuit, Assam, to Mr. Pierce Taylor, Deputy Register of the Sudder Dewanny Adawlut, Fort William, dated 25th November 1837.

I HAVE the honour to submit a copy of the rules required in your letter, No. 2,497, of the 18th August last, and regret the delay which has occurred in complying with the court's requisition.

2. I have annexed to the rules a copy of the correspondence which was forwarded therewith to government.

Rules proposed to be enacted in the Province of Assam, for the gradual Mitigation of Slavery and Bondage.

1. All children born after the date of the proclamation to be declared exempt from servitude for life.

2. That all such children born after that date shall be bound to serve their parents or owners until they have attained the age of 18 years, on the condition of being fed, clothed and well treated.

3. The children born to the above bond servants during their servitude shall be emancipated, at its expiration, by the state, for the sum of 10 rupees each, receivable by the master from the magistrate, in compensation for the support of the child during infancy.

4. All slaves and their children to be registered, within six months, before the putwarris of villages, and chowdries of pergunnahs; the registries so made to be returned to the magistrate of the division. No person not so registered within six months after the date of the proclamation shall be holden to be a slave, and the non-entry of the name of any person in such register shall thereafter be received in any court of justice as a sufficient proof of freedom.

5. The importation of any slaves from countries not under British rule shall be prohibited. The slaves so imported shall be released by the magistrate, and returned to their own country by the magistrate, if they wish it, and if not capable of maintaining themselves, shall be bound out by the magistrate for a term not exceeding seven years.

6. The above prohibition shall extend to the importation of slaves from the other provinces of British India, including the subjected Kassiah states, Cachar and Bengal (N. E. Rungpore inclusive).

7. Any person importing such slaves for sale shall be liable to a fine for each slave not exceeding 200 rupees, or six months' imprisonment, at the discretion of the magistrate.

8. The exportation of slaves from this province, for sale at foreign countries or the other provinces of British jurisdiction as above pointed out, shall likewise be prohibited.

9. The slaves so attempted to be exported for sale shall be declared free, and be allowed to settle or remove to where they choose, or be bound out as above directed, if children and their parents be not known or not capable of providing for them.

10. Any person so attempting to export slaves in breach of these rules shall also be liable to a fine for each slave not exceeding 200 rupees, or six months' imprisonment.

11. Nothing in the above regulations shall be construed to prohibit male or female slaves born in slavery, or domesticated for the period of five years, or if females who are pregnant or have borne children to their owners, from going out or coming into the province, together with their children; provided the slaves are brought before a magistrate, and declare that they are willing to accompany their owner, who shall then receive a passport for them, stating to the above effect.

12. The sale of children to servitude for life shall, after the proclamation of these rules, be declared illegal; but it shall be lawful to parents to sell their children in times of distress, for a term of servitude not exceeding the period in which they will attain their 21st year, after which they shall be declared free; and such sale shall be duly witnessed by three

three or more respectable witnesses, in the presence of the village officer, who shall also authenticate the deed; and it shall be by him copied and transmitted, through the chowdry of the pergunnah, to the magistrate, for registry. On failure of executing such a deed, the sale shall be declared invalid.

13. Every person owning slaves shall register all children born of such slaves, in the manner described in Rule 3, within six months of their birth, under the penalty of losing all right and title to every such child.

14. The children of female slaves to be considered as coming under the provision of Rule 2. The children of freewomen by slaves to be considered free.

15. In like manner, the children of bondsmen and bondswomen, under Rule 12, to be emancipated as in Rule 3.

16. The transfer of all slaves and bond servants within the province, by sale or gift, to be registered as aforesaid. But it shall not be legal to transfer the services of the children of slaves, so as to separate them from their parents, under the age of six years; nor shall it be lawful to separate the husband from the wife: and any breach of this regulation shall be punishable by the forfeiture of any right to the service of the husband, wife or child, which shall be emancipated, and by the infliction of a fine not exceeding 50 rupees, or three months' imprisonment.

17. It shall not be lawful for any adult person (that is, above 18) to bind him or herself for a longer period than seven years for any sum of money; and after that term he shall be unconditionally released. But a minor above the age of 12 years shall be allowed to bind him or herself for so many years in addition to seven years as he or she may be under the age of 18 years; viz. if 17 years of age, for 8 years; 16 years of age, for 9 years, and so forth. All bond servants shall be entitled to the same allowance of food and clothing as is now customary in the province.

18. The bond by which any person pledges his or her services shall be executed before, and authenticated by the village officer, and attested by at least three witnesses; and the village officer shall transmit a copy of the bond, through his chowdry, to the magistrate, for registry.

19. It shall not be lawful to transfer any such bond servant to another against his consent; and the transfer shall be authenticated as before directed with regard to the bond.

20. All bond servants after the proclamation of these rules, whose engagements have not been made for any definite period, shall obtain their release, after proving they have served seven years, on payment of his or her debt, in the liquidation of which his services shall be calculated at the value of four annas a month over and above the cost of his food and clothing; but if the four annas so calculated shall exceed the amount of his debt, the bondsman shall have no claim against his master for the excess, but only be entitled to his liberty.

21. Bond servants shall at any time obtain release by the payment of the sums for which they are bound.

22. The death of bond servants shall cancel the engagements entered into by them. The wife shall not be bound to serve for her husband, nor the husband for the wife, nor children for their parents.

23. The provincial customs relative to the marriage of slaves, and to their right to hold property, shall continue as heretofore.

24. All slaves or bond servants shall have a right to emancipate themselves, their wives or children, at a sum to be settled by a panchaet directed by the magistrate.

25. The ill-treatment of slaves or bond servants shall be cognizable by the magistrate as at present.

26. Slaves or bond servants for misconduct shall be liable to moderate correction by their owners, masters or mistresses, and be punishable by the magistrates, by flogging, not exceeding thirty-five stripes, for absenting themselves from their owners, continued contumacious behaviour or other gross misconduct.

27. Any persons harbouring runaway slaves or bond servants shall be liable to a fine not exceeding 200 rupees, or imprisonment for six months, on conviction before a magistrate; and such runaway slaves and bond servants shall be returned to their owners or masters and mistresses by the magistrate, who shall inflict such punishment as laid down in Rule 26, as he thinks the case may deserve.

28. Any complaints from slaves of being detained improperly, contrary to these regulations, or of owners, &c. against their slaves, &c. for absenting themselves, shall be heard and decided on summarily by the magistrate, leaving either party at liberty to enter a suit in a civil court, if the party considers itself aggrieved by the decision of the magistrate.*

FROM Mr. J. F. Hawkins, Officiating Register, Sudder Dewanny Adawlut, Calcutta, to Mr. F. J. Halliday, Officiating Secretary to Government of Bengal, in the Judicial Department, dated 22d December 1837.

No. 14.

I AM directed by the court to request that you will lay before the honourable the Deputy-governor of Bengal the accompanying copy of a letter from the commissioner of Assam, relating to the case of a sepoy of the Assam Sebundy corps, whom the civil courts have adjudged to slavery in the event of his being unable to pay 90 rupees for his release.

Sudder Dewanny
Adawlut.

PRESENT:
R. H. Rattray, W
Braddon, and N. J.

2. The

* These rules, as well as the correspondence referred to in Captain Jenkins's letter to the Sudder Dewanny Adawlut of the 25th November 1837, were forwarded to the Bengal government in his letter dated 22d August 1835. The whole has already been published on Slavery in India papers, 1838, p. 361-367.

Halhed, Esqrs., Judges;
W. Money, Esq., Temporary Judge;
J. R. Hutchinson and
C. Harding, Esqrs., Officiating Judges; and
J. F. M. Reid, Esq., Officiating Temporary Judge.

2. The court are not aware of any reference such as that to which Captain Jenkins alludes in the fourth paragraph. Such a case of the kind having been before the government, the present one may be disposed of on the principle established at the time. But if no precedent can be found, the case may be referred to the military authorities, who would probably ransom the sepoy, and realize the money paid on his account by stoppages from his pay.

FROM Captain Francis Jenkins, Commissioner of Circuit, Assam, to Mr. Pierce Taylor, Deputy Register of the Sudder Dewanny Adawlut, Fort William, dated 25th November 1837, enclosed in above.

A CASE has occurred (particulars as below *), on which I have to request the instructions of the Sudder Dewanny.

2. The defendant, whilst the trial was pending, entered himself as a sepoy in the Assam Sebundy corps under another name, and was lost sight of until lately, when he was immediately claimed as a slave, being entirely unable to pay the amount as decreed, entitling him to his release.

3. I beg to know how I am to proceed, and whether the sepoy must be surrendered as a slave, or whether he can be retained in his regiment as a sepoy, on payment of any portion of his pay to his master.

4. I rather think a similar case was referred to government, or the Sudder Dewanny, some time ago, with regard to sepoys of the Arracan local corps; many of the sepoys in which regiment were to my knowledge slaves; but I am not aware of the decision that was given.

No. 15. FROM the Secretary to Government of Bengal, Judicial Department, to the Register of Sudder Dewanny Adawlut, dated 13th February 1838.

I AM directed by the honourable the Deputy-governor of Bengal to acknowledge the receipt of your letter of the 22d December last, No. 3,819, with its enclosure to your address from the commissioner of Assam, relating to the case of a sepoy of the Assam Sebundy corps adjudged to slavery by the civil courts, in the event of his being unable to pay 90 rupees for his release, and in reply to communicate the following observations and instructions.

2. From the correspondence below,† copies of which, to the extent not forthcoming on the records of the court, are herewith forwarded, his Honor observes, that Mr. Robertson, when commissioner of Assam, submitted a rule, regarding the sale of slaves in satisfaction of decrees of court, for the consideration of government, in principle very similar to that propounded in the 2d paragraph of your letter under reply. In respect to this rule, Secretary Mr. Macsween observed, "The subject of the state of slavery will be taken into consideration hereafter. In the meantime, the Vice-president in Council desires that the courts will abstain from selling slaves in satisfaction of decrees, or for any other object."

3. The subject was again considered, when the court submitted to government drafts of the Rules of Practice proposed by them for the guidance of the officers employed in Assam, in the administration of civil and criminal justice.

4. After some correspondence with the court, the government authorized them to print those rules, omitting section 9, relating to slavery, on which subject, at the suggestion of the court, the sentiments of the local officers were first to be taken. To the government letter of the 6th December 1836 No. 2,142, to the above purport, no reply has been received from the court, conveying the opinions of the local authorities and their own.

5. As the matter now rests there, it is clear that the sale of slaves by the courts for any object whatever is prohibited. But adverting to the delay which has occurred in bringing to an issue the consideration of the subject contemplated in Secretary Mr. Macsween's letter of 25th August 1834, No. 1,705, his Honor is inclined to think, that the shortest course in the case under reference will be to pay the amount of the value of the slave (90 rupees) to the decree-holder, a portion of his monthly pay being credited to the government, until the sum disbursed shall be liquidated.

6. The court are accordingly requested to provide for the disposal of the case in the above manner, if the military authorities, to whom a reference has this day been made, and of whose decision the court will be apprized hereafter, should not object; and in the meantime to submit a reply with the least practicable delay to Secretary Mr. Mangles's letter of the 6th December 1836, No. 2,142, before quoted, that no further time may be lost in laying down some definite rule on the important subject of slavery.

FROM

* *Girish Surmah versus Kurrikinah*—Claimed as a slave at the value of 64 rupees. Suit instituted 28th November 1833, in the court of the sudder munsif, of Gawalparah. Decree for plaintiff. The defendant to pay 90 rupees for his release, or become a slave. Kurrikinah appealed to sudder munsif, who upheld the judgment of the munsif, and the appellant has now applied for the execution of the decree.

† Rule regarding the sale of slaves in satisfaction of decrees of court, received from Mr. Robertson, late commissioner of Assam, in 1834. Rule regarding bondsmen. Extract from a letter written to the commissioner of Assam (Captain Jenkins), dated the 25th August 1834, para. 9.

FROM Captain *F. Jenkins*, Commissioner of Circuit, Assam, to Mr. *J. F. M. Reid*, Register, Sudder Dewanny and Nizamut Adawlut, Fort William, dated 5th January 1836.

Appendix VI,
Correspondence,

I HAVE the honour to acknowledge the receipt this day of your letter, No. 2,273, of 13th November 1835, and its accompaniment, from the secretary to the law commissioners under date the 10th October last.

No. 16.

2. In reply, I beg to observe, that in the absence of any defined regulations regarding the rights of masters and slaves, the courts under me would require on disputed points the opinions of respectable inhabitants of the province. There are, I conceive, cases in these districts, in which slaves can acquire and inherit property; but, under other circumstances, any property they may acquire would be considered to belong to their owners. The relative rights of masters and slaves are, however, I believe, in this province more dependent upon local customs than on Mahomedan or Hindoo law; for neither system of law has had more than a partial prevalence in Assam, nor been introduced in a large portion of the province, but of late years; and a considerable part of the inhabitants are neither Mahomedans nor Hindoos.

3. In regard to criminal cases, I consider the courts would take the same notice of maltreatment of slaves by their owners, as of servants by their masters; and in certain cases of gross ill-treatment, would release the slave, under the precedent of the decision of the Nizamut Adawlut in the trial, No. 67, 1805, quoted by the law commissioners, though I am not aware of any case in question.

4. When slaves leave their masters, their recovery by their owners is very difficult, the slaves in such instances mostly appealing to the magistrate, and affirming that they have been detained unjustly in slavery, or denying that they ever have been slaves; on which the magistrate frequently refers the owner to a civil suit to establish his right to the person he claims as a slave.

5. This appears inequitable, as long as slavery is acknowledged by the law; and I conceive the magistrate ought to be empowered to take evidence and decide summarily, on the mere fact of previous possession. But where he had great reason to suppose that the slave was unjustly detained, the magistrate might be allowed to order the claim of the slave to be sued in the civil courts, at the expense of government; for otherwise he may be detained in perpetual servitude from the want of means to support his claim. The only other alternative seems to be to adopt the practice as described, and throw the burden of commencing a civil suit on the owner. But in many instances this procedure may be tantamount to emancipating the slave, from the inability also of the owner to prosecute his suit; for often the slave is the sole support of the owner.

6. The enactments of Regulations X. of 1811, and III. of 1832, against the importation by sea or by land, are in full force in Assam.

FROM Captain *F. Jenkins*, Governor-general's Agent, North-east Frontier, to the Secretary to Government of India in the Political Department, Fort William, dated 19th February 1840.

No. 17.

I HAVE the honour to forward for the consideration and orders of his Excellency the honourable the President in Council, the accompanying copy of a letter from the political agent in Eastern Assam, No. 271, of the 10th instant.

2. Captain Vetch appears to me to be mistaken in his construction of Regulation X. of 1811, to which I suppose he refers in his 3d paragraph. That regulation does not, in my opinion, extend to settlers or travellers coming into the British territory with their domestic slaves, but only to persons importing slaves for sale, as the regulation refers expressly to "such traffic" being against the principles of our administration. If I am right in this supposition, Captain Vetch would be at liberty to deal with runaway slaves in the same manner as is done by other magistrates.

3. If, however, his Excellency is of opinion that the regulation will not bear the construction I put upon it, it will be a subject for his Excellency's determination, whether Captain Vetch is at liberty to entertain petitions for runaway slaves, on the ground of the regulations not having been extended to the districts beyond the Booree Dehing.

LETTER from Captain *H. Vetch*, Political Agent Dibrooghur, Assam, to Captain *F. Jenkins*, Governor-general's Agent, dated 10th February 1840, enclosed in the above.

I BEG to acquaint you, that it is a matter of very frequent occurrence that whole families of Singphoos remove from the Burmese to the Assam territory, bringing with them all their household, including Assamese slaves, either of those originally taken from Assam or their descendants.

These Assamese for a time remain contentedly with their former masters, perhaps for years, when they either desert themselves, or are instigated to do so by persons having some object to gain with them.

2. I now solicit the favour of your instructions with respect to these, whether they are to be restored or not to their masters, who are resident in our jurisdiction, on the Singphoo chief establishing his right as master, when these resided on the Burmese side of the boundary.

Appendix VI.
Correspondence.

3. The circumstance of slaves coming from a foreign state would render their rights to freedom a matter of course in a regulation district. But the question seems considerably altered on this rude frontier, where the whole family shifts ground, and thereby affords the only opportunity the Assamese may ever have of re-crossing the frontier, and where dependents, not lands, constitute its respectability, which is destroyed by the loss of these, and reduced to poverty; and it is this cause of irritation that frequently renders the Singphoos on our frontier discontented and rebellious.

Enclosed I have the honour to submit a copy of petition from PUNCHOO GAUM, a very respectable Singphoo, who came over from Hookum some years ago, with all his household, and is now ruined by the desertion of all his followers, in the manner described in the foregoing paragraphs.

I solicit the favour of your early reply, as there are a large number of such deserters, with their women and children, claimed by the Singphoo chiefs, and who must either have a location assigned them, or be restored to the Singphoos from whom they have deserted, to save them from starving.

No. 18. LETTER from Secretary to Government of India, Political Department, to Captain *F. Jenkins*, Governor-general's Agent, North-east Frontier, dated Fort William, 9th March 1840.

I AM directed by the Right honourable the Governor-general of India in Council to acknowledge the receipt of your letter, dated the 19th ult., submitting, with your opinion, copy of one from the political agent in Upper Assam, soliciting instructions regarding runaway Assamese slaves.

2. In reply, I am desired to inform you that, before passing any orders on this reference his Lordship in Council would wish to be furnished with further particulars regarding the class of persons to which Captain Vetch refers; as to their numbers; the mode in which they have been reduced to slavery; the manner of their treatment by their masters; whether the children of slaves are, like their parents, regarded as slaves; and whether they have, under any circumstances, a right to claim emancipation; with any other particulars that can be learned relating to them.

No. 19. LETTER, in reply, from Captain *F. Jenkins*, Governor-general's Agent, to *T. H. Maddock*, Esq., Secretary to Government of India, in the Political Department, dated Fort William, 20th May 1840.

Political Department.

WITH reference to letters, as below,* I have the honour to forward the further report by Captain Vetch, of the 8th instant, No. 114, on the classes of persons referred to by him as being slaves, and the modes in which they have been reduced to slavery, as directed in your letter above quoted.

2. Captain Vetch states, that the persons to whom he alluded are Assamese by birth or descent, originally carried off from this province, previous to our occupation of it, and have been obtained by their present masters, either by purchase or from having been born in their families.

3. Captain Vetch further mentions, he has been informed that 31 of the runaway slaves have voluntarily returned to their old masters since he wrote his first letter.

LETTER (enclosed in above) from Captain *Vetch*, Political Agent, Upper Assam, to Captain *F. Jenkins*, Governor-general's Agent, Assam, dated 8th May 1840.

I HAVE the honour to acknowledge the receipt of your letter, No. 237, of the 26th March, and in reply beg to say that the number of runaways on the late occasion claimed as slaves by the Singphoos amount to 60 souls, of whom 21 are men, 28 women, and 11 children.

2. All these are either the captives formerly taken away from Assam by the Singphoos or Burmese, previous to our occupation of the province, or their descendants, either by Assamese parents on both sides, or by Assamese mothers and Singphoo fathers, and they are claimed by the chiefs, as either obtained by purchase or descent; but there are cases where the persons claimed as slaves are so by an after capture, by intercepting the runaways in attempting to get back to Assam, on the Burmah frontier; the claim to these I consider totally inadmissible. There are others who, after effecting their escape, took up their abode at the first Singphoo village that could feed and protect them on this side of the frontier, and became the servants of those who had received and sheltered them; the claim to the restoration of these should also, I think, be rejected. Those, again, who have made no attempt to regain their freedom since the occupation of Assam are those to whose cases I could solicit notice, and I should not think of recommending the restoration of any individual, until this case had undergone a separate investigation.

3. The Singphoo slaves are generally well treated by their masters; their descendants are considered slaves; most of them can speak Assamese, but some only Singphoo; among themselves, the Singphoo language is most used.

4. There can be no doubt but that all these persons or their parents were, in the first instance, captives carried off from Assam.

5. The Singphoos are, in a great measure, dependent on them for labour, and in some villages they much out-number their masters.

6. Since my former letter, I have received information that 31 of the runaways have gone back to their old masters of their free-will.

7. I beg to enclose the copy of my former letter, as required by you.

* My letter to Mr. Prinsep, No. 35, of the 19th February, and your reply of the 9th March 1840. (*Vide supra*, Nos. 17 and 18.)

APPENDIX VII.

ARRACAN and TENASSERIM PROVINCES.

ARRACAN.

1. Letter from Captain A. Bogle, Commissioner of Arracan, to the Secretary to the Law Commission, Calcutta, dated 21st December 1839, forwarding sundry papers relative to the abolition of slavery in Arracan; viz. Nos. 8 and 10.
2. Letter from Mr. H. Walters, Commissioner of Arracan and Chittagong, to Captain Dickinson, Superintendent of Arracan, dated 4th April 1833.
3. Letter, in reply, from Captain T. Dickinson, Superintendent of Arracan, to Mr. H. Walters, dated 3d September 1833.
4. Circular addressed by Mr. H. Walters to the Assistant-Superintendents of Ramree, Aeng Akyab and Sandoway, dated 11th September 1833.
5. Return to the above Circular, by Mr. J. L. Browne, Officiating Magistrate, Akyab, dated 28th September 1833.
6. Return to the above Circular, by Captain D. Williams, Senior Assistant-Superintendent, Ramree, dated 1st September 1833.
7. Return to the above Circular, by Captain M. G. White, Assistant-Superintendent, Sandoway, dated 1st October 1833.
8. Return to the above Circular, by Lieutenant H. Mackintosh, Junior Assistant-Superintendent, dated 9th October 1833.
9. Proclamation from the Foudary Office of the Superintendent of Arracan, dated 1st October 1831, issued by Captain T. Dickinson.
10. Proclamation issued from the Court of Zillah Arracan, by Captain Williams, Senior Assistant-Superintendent, 29th April 1833.

TENASSERIM.

11. Letter from Mr. E. A. Blundell, Commissioner in the Tenasserim Provinces, to the Register to the Court of Sudder Dewanny Adawlut, Fort William, dated 11th July 1836, in reply to that of the 30th May last, on the subject of servitude in those provinces.
12. Regulation regarding Debtor Servants, enclosed in above, dated 10th February 1831.
13. Paper of Remarks by the Commissioner, in regard to the above, dated 11th July 1836.

FROM Captain A. Bogle, Commissioner of Arracan, to the Secretary to the Law Commission, dated 21st December 1839.

Appendix VII.

Arracan.

No. 1.

HEREWITH I have the honour to transmit copies of all the letters and native proceedings, to be found amongst the records of this office, relating to the abolition of slavery in Arracan.

2. I regret that so great a time has elapsed since my return to this province without my being able to submit these papers; but, under the impression that there were other documents bearing on the subject, I have caused all the departments to be strictly searched, in hopes of finding them. This search has occupied much time, and has, I am sorry to say, ended unsatisfactorily; for, nowhere can we find any thing more definite than the accompanying papers.

FROM Mr. H. Walters, Officiating Commissioner of Akyab, to Captain T. Dickinson, Superintendent of Arracan, dated 4th April 1833.

No. 2.

WITH reference to the state of slavery in this province, and the regulations and humane intentions of the government on the subject, I would request your sentiments as to the best mode of putting a stop to the practice in this province.

2. To prohibit the sale and purchase of slaves imported from other districts and countries, the law gives you ample discretion, and also to punish severely all parties guilty of such crimes; but with a view to check domestic slavery, it might be sufficient at present, perhaps, to interdict the recovery of the persons of slaves, or any money or consideration claimed on account of the sale, purchase, transfer or mortgage of slaves in our civil courts. A circular to the assistants ordering plaintiffs in all such cases invariably to be nonsuited would suffice, without issuing any proclamation on the subject.

3. On the other hand, any persons petitioning the criminal court for release from restraint imposed upon them on the pretence of their being slaves, should have their remedy, by an order being passed to the effect, that they are at liberty to go where they please, and that any persons illegally restraining them will render themselves liable to punishment, a copy of such order being given to the petitioner to produce to whomsoever it may concern.

4. Should you see no objection to the above suggestions, you are desired to give them effect.

Appendix VII.

Arracan.

FROM Captain *Dickinson*, Superintendent of Arracan, to Officiating Commissioner *H. Walters*, dated 3d September 1833.

No. 3.

WITH reference to the subject of your letter, No. 248, of the 4th April last, it does not occur to me how we can fairly and justly, and without creating a considerable sensation among the more influential classes, interdict the recovery of any money or consideration claimed on account of the purchase, transfer or mortgage of slaves in our civil courts, though I am fully agreed with you in the measure of interdicting the recovery of the persons of slaves, and the humanity of granting release from restraint on petition in our criminal courts. This will go far towards abolishing the practice, gradually introduce that order of things which we desire, and obviate the evils to which too sudden innovations on ancient customs and practices are liable.

All transactions of the above nature, subsequent to the conquest of the province, and by our Ramoo Mughes, after the promulgation of Regulation X. of 1811, are of course null and void. I shall be happy to have your further sentiments on this subject.

No. 4.

CIRCULAR, addressed by Mr. *H. Walters*, Officiating Commissioner of Arracan, dated 11th September 1833, to Captain *Browne*, Captain *Williams*, Captain *White* and Lieutenant *Mackintosh*, Assistant Superintendents of Ramree, Aeng, Akyab and Sandoway.

You will herewith receive copy of a letter from Captain *Dickinson*, No. 109, dated 3d September; and you are requested to report the actual state of slavery in the part of the province under your authority, and the means you would recommend for putting a stop to the practice.

2. You are also requested to state your sentiments on the point noted by Captain *Dickinson*, as to the degree of "sensation" which would probably be created by enforcing the interdiction referred to by him.

3. A copy of my letter on the subject, No. 248, dated 4th April, is annexed for your information.

No. 5.

RETURN to the above Circular, by Captain *J. L. Browne*, Officiating Magistrate, Akyab, dated 28th September 1833.

I HAVE the honour to acknowledge your letter, No. 2, in the judicial department, with annexed copies of letters, No. 248, to the address of Captain *Dickinson*, and his reply thereto, regarding slavery, and recommending measures for its total extinction.

There is hardly an individual, let his condition be what it may, that does not possess one or more of the following three classes of slaves:

1st, Phobyng, perpetual and hereditary; 2d, Appang, manumission to be obtained on paying the purchase-money, which is on an average 40 rupees; 3d, Monhe-tolling, a woman sells herself for, say 20 rupees; she is obliged to serve the person to whom she mancipates herself for 20 years; she also receives, at the expiration of each year, one rupee, so that at the end of her servitude she will have been paid 40.

Among the Kyengs, slaves are allowed half the profits of their own labour.

The Mughes, generally speaking, treat their slaves well, at least as well as their wives, which inclines me to think that few would avail themselves of their liberty; for it is only when a woman is cruelly beaten and ill-treated that she flies to the court for protection, and release from thralldom. The defendant's loss in that case would not be unmerited if non-suited. But so few are these cases, that contentment is manifest.

The plan proposed by you in your letter, No. 248, to Captain *Dickinson*, I highly approve of, as most effectual, and gladly will I adopt it; indeed I have acted hitherto on the same principle, nor do I dread any thing from its general adoption. But from Captain *Dickinson*'s long residence in this province, and from his thorough knowledge of the Mugh character, I am induced to offer the following; viz. that each slave-owner be compelled to give one or two rupees per month to each slave, which would enable her to free herself, if frugal, in two or three years. A proclamation to that effect was once issued by Mr. Paton, so I understand.

The slave-owner failing to pay the stipulated sum (for some fixed period, the same elapsing), the slave, on petitioning, to be manumised. Any dispute concerning the price of a slave of the first class could be settled by arbitration.

RETURN to the above Circular, by Captain *D. Williams*, Senior Assistant Superintendent, Ramree, dated 1st September 1833.

I HAVE the honour to acknowledge the receipt of your circular, No. 2, and its accompanying correspondence.

On my first assuming charge of Ramree, I liberated three slave-girls (Munnypoories), the property of the most respectable man in this district, the soogree of this town. I must, however, in justice to this man, mention his cheerfully submitting to the order, and presenting the girls with presents. I have since given general circulation to the prohibition of selling and purchasing slaves, or introducing them from other countries, and have emancipated several

several others, and in one instance, the owner sued the emancipated slave for her price; a decree was given in his favour, and consequent incarceration of the defendant; but she was soon released again, no subsistence being provided. A short time ago I nonsuited a plaintiff who had sued a woman for the price of her infant. The plaintiff was a serang of one of the military boats, and I would have punished him to the extent sanctioned by the regulations had it not appeared that he felt justified by his intention of bringing up the child as a follower of Islamism, and thereby doing a meritorious act. However, that appeared doubtful, as he kept a Mugh woman, whose slave the child would have become on her separation from the serang.

There is a practice amongst the Mughs of pledging their wives or children for the payment of a debt, which they maintain is not slavery. I have, however, most peremptorily prohibited it, allowing only the debtor to pledge his own body.

It is the policy of the owners to keep their slaves as poor as possible, to prevent any chance of their manumitting themselves. I do not, therefore, see from whence the money or consideration for the purchase, transfer or mortgage of a slave is to come. However, to remove all cause for complaint by owners of slaves manumitted, I would permit their suing for the purchase or transfer money in the civil court, and the court might, in all aggravated cases, nonsuit.

Appendix VII.

Arracan.

RETURN to the above Circular, by Captain *M. G. White*, Assistant Superintendent, Sandoway, dated 1st October 1833.

No. 7.

I HAVE the honour to acknowledge the receipt of your letter, No. 2, of 11th ultimo, with copies of your letter, No. 248, dated 4th April last, to address of the superintendent of Arracan, with that officer's reply thereto, No. 109, of 3d ultimo, and I have to acquaint you, that there is little or no slavery in this district, most of the slaves having been released on petition, and the few that remain continue in their state voluntarily, they being aware that they may be released on application; and I do not fail to make the people acquainted with the humane intentions of the government on the subject, by frequently questioning the soagrees and roagongs, and directing them, as also the police, to promulgate the same.

2. I am of opinion that slavery or domestic slavery throughout this province might be entirely checked by the enforcement of the suggestions contained in the second and third paragraphs of your letter to the superintendent of Arracan; and I should not apprehend therefrom any ill consequences as imagined by Captain Dickinson.

3. I would, however, respectfully suggest, that a proclamation from yourself be issued, declaring that the magistrates are authorized to grant the release from slavery of any person whatever, on petition, on unstamped paper, and that any persons restraining another from preferring such plaint will render themselves liable to fine or imprisonment; that the present owners of slaves are at liberty, within six months of date of proclamation, to file a civil suit for the *bonâ fide* purchase-money of a slave against the actual receiver of the purchase-money, if in existence, but that he be prohibited from prosecuting the heirs or the slave in the event of the demise of the actual receiver of the purchase-money.

4. I do not myself see that it would be unfair or unjust to interdict altogether the recovery of any purchase-money by owners of slaves, as suggested in the latter part of the 2d paragraph of your letter, No. 248,* as such transaction must necessarily have taken place before the date of the treaty of Yandaboo, viz., 24th of February 1826, nearly eight years ago, for during this period the owner of the slave must have recovered the full value of his purchase-money by the labour of the slave; and such purchase-money, viewed even as a loan of cash, could not now be recovered in a civil court in this province, as, by Rule 3, for the administration of civil justice in the province of Arracan, framed by the honourable Mr. Blunt, when special commissioner, and sanctioned by government and duly promulgated, no civil suit is cognizable in any court in the province in which the cause of action originated three years antecedent to the institution of the suit; and although a limitation of 12 years antecedent to the date of treaty of Yandaboo was allowed for cause of action, all such suits ought to have been filed within three years after promulgation of Mr. Blunt's code. Consequently, at the present date, I do not see why the purchasers of slaves should be allowed to recover their purchase-money in a civil suit, when, by Mr. Blunt's rule above quoted, no civil suit could now be cognizable in our courts, however honest or honourable the transaction, should the cause of action have originated upwards of three years from the present date. At any rate it would be legal to nonsuit the plaintiff; therefore there would be no illegality in nonsuiting a slave-dealer, whose cause of action must have originated upwards of eight years from the present date.

RETURN to the above Circular by Lieutenant *H. Mackintosh*, Junior Assistant Superintendent, Sandoway, dated 9th October 1833.

No. 8.

I HAVE the honour to acknowledge the receipt of your circular letter, No. 2, in the judicial department, under date the 13th ultimo, on "slavery."

2. That the system of holding the person in bondage is one of common practice in the province would seem not to admit of doubt. I do not, however, learn that it is of more general occurrence in this than in the adjacent districts. And although the term and practice

* *Fide supra*, No. 2 of this Appendix.

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tice of slavery is daily becoming more and more offensive to all civilized nations, its operation, as we find it established among this people, is so mild, that apart from those general considerations which the contemplation of the subject presents to the mind of the philanthropist, there appears to be nothing in the system to awaken those intense feelings of sympathy, which the horrors of African slavery must ever give rise to. Yet it must be admitted that its suppression even here becomes desirable.

3. I will endeavour briefly to sketch its state, as in existence here, and

1st. *Of Children.*—It is found that the general cause of their being led into captivity is, where the parents, either from pecuniary losses or from advancing old age incapacitating them from labour, place their child in bondage for a sum which is to relieve them in the one case from the unfortunate demands of a creditor, or, as may be, actual starvation arising from a reduction to that state, possibly from unsuccessful efforts in trade. In the other case, it would seem to be adopted distinctly with a view to secure a retirement free from labour! that acmé of Mugh desire, which the parents thus enjoy at the expense of the freedom of their child.

2d. *Of Adults.*—In all these cases the parties have pledged their persons on failure of restitution of a sum borrowed.

3d.—*Of Female Children* sold and bought, to be maintained in a state of concubinage.

4th. *Of Wives.*—A husband embarking in an adventure requiring a sum which he happens not to possess, he pledges his wife as a bondmaid to the individual from whom he borrows.

4. The above form the chief cases occurring; and the restraint imposed upon a bondsman or bondmaid is greatly alleviated by rules apparently well understood by the people themselves, and which, if only acted upon, must reduce their system of slavery to that of ordinary servitude. For example, if a child is ill-used or dissatisfied in the family in which the parents have placed him or her, the parents endeavour to find out another family, who by an advance of money enable them to remove the child under the care of these new contractors for its labour; in the case of adults, they look out for another place if unhappy in their first selection, and if they can find another willing to advance the sum, they are held in bondage; for they immediately with the money transfer themselves from the one to the other. Old parents making over young children for an advance, and dying, a child may work out its own freedom, and if a female child, marriage would seem not impossible, if the future husband has no objections to buy his wife. From 20 or 30 rupees, up to 80 rupees, is advanced here for one child. These slaves, if they may so be termed, generally perform the work of, and are fed and clothed by, the family they are in. If misfortune befall the family, and they are unable any longer to keep the child, they demand from the parents the sum advanced, who borrow it from another, and the child is removed as the security.

5. I doubt not that I shall carry you along with me in opinion, that it is difficult to determine, where we find slavery so gentle in its operation, what steps would in any way render the system of holding the person in bondage less nugatory than it really is; for it does not deserve the appellation of slavery. And as this people are yet an immeasurable way off from that point in the scale of civilization where any unnatural or unlawful restraint imposed upon the active energies of the individual is held to be a loss to the commonalty, can we advocate manumission on the score that they would employ themselves better in labouring of their own free will, and for self advantage, than as they are now obliged in a measure to do for another? In the face of knowing the Mughls in general to be the very laziest of the lazy, I am inclined to think, that was it possible to put a stop to the system as in vogue here at present, the people would be little bettered in condition by the humane intent of any legislative Act on the subject.

6. The evil here is purely a moral one. If the parent's love for his child is not strong enough to prevent his delivering it over in charge to another, instead of cherishing and protecting it himself, and if that child, when arrived at a certain age, does not see or feel any degradation in his position in society, or, more properly, among the community, I fear no enactment that we could enforce would bring them within the influence of that bright ray which emanates from reason's light, and through the cheering influence of which we are enabled not only to distinguish but to appreciate the difference betwixt freedom and restraint. So long as the indolence and want of feeling on the part of the parent remain manifest, as they are found to be, the one in excess, the other in diminution, so long, I apprehend, will this system continue.

7. The foregoing remarks have reference only to the system which exists around me here. It is far otherwise in the Akyab district. There slavery does really exist, for there they are bought and sold (I am told), and the children born to slavery; in which case it will last from generation to generation, if the law is not made to put a stop to it.

8. With advertence to the degree of sensation which any decisive declaration of abrogation might create, I must bend, of course, to the lengthened local experience which no doubt suggested the remark to the superintendent. Yet, at the same time, I beg permission to say, that I have in vain looked around me during my stay hitherto in Arracan for that influential class alluded to. There are individuals, no doubt, who exercise a certain influence over their fellows, but, as to the existence of a distinct influential body having a place in the community, I think it will generally be admitted that it is a *desideratum* in this province.

9. In conclusion, I should suggest, that the court here should be open to grant unconditional liberty to all who should petition for it, and who may at the time be under any unnatural or unlawful restraint; and further, that all transactions connected with the system, as we find it established in this part of the province, should be so far discountenanced, as to render sums given or received not recoverable by a civil suit.

10. A father

10. A father borrows money to game with, (not an uncommon case). His child becomes the bondsman of another. Is it just or proper that that child should be compelled to labour for a series of years on account of the worthlessness of the parent?

Appendix VII.

Arracan

PROCLAMATION from the Foujdary Office of the Superintendent of Arracan, dated 1st October 1831, issued by Captain *T. Dickinson*.

No. 9.

"THE inhabitants of this country advance money to men and women, and retain them as slaves. For the sake of getting money, these people then may be slaves to all. Seeking subsistence, they do not give their lives. This practice is the bane of the country; nor is it usual with all the Mughhs. It is requisite that all should promptly release persons, men and females, refunding the price of their bodies. If any person, contrary to this proclamation, should not receive price tendered, and retain another as a slave, on complaint and proof, the person so retained, together with price, will be discharged."

N.B.—The original of the above is written in such an unintelligible jargon, probably by a Mugh attempting to use a foreign dialect (Hindoostanee), that a translation is not possible. A paraphrase can only be given.—*J. C. C. S.*, Secretary.

PROCLAMATION issued from the Court of Zillah Arracan, by Captain *D. Williams*, Senior Assistant Superintendent, 29th April 1832.

No. 10.

"FROM the date of the accession of the English Government, under Regulation X. of 1811, all slaves imported for purposes of traffic into this province are at once absolutely released and free, whether from a foreign country, from the English country, or the territories of rajahs and others. Therefore, this proclamation is published for general information. The date of the conquest of this province, that is, of the treaty of Yandaboo, is 24th February 1826. Since that date, all slaves purchased from a foreign country (and brought into this), or sold from that province into any other place in the Company's territory, shall have their liberty. If hereafter any person shall act contrary to this notice, and shall, from a foreign state, import into this province and sell any human being, or shall export into and sell a human being in the English territory, on apprehension and proof, the offender will be imprisoned six months and fined two hundred rupees; and if he do not pay the fine, will be imprisoned a further period of six months."

Tenasserim.

LETTER from Mr. *E. A. Blundell*, Commissioner in the Tenasserim Provinces, to the Register of the Sudder Dewanny Adawlut, Fort William, dated 11th July 1836.

No. 11.

1. I HAVE the honour to acknowledge the receipt of your letter of the 20th May last, conveying the court's desire to be furnished with information on the subject of the modified system of slavery existing in this country.

2. Though the terms "slavery and slave" be applied to certain classes of individuals in these provinces, yet, in reality, no such state as that of slavery exists here. The regulation on the subject that was issued very shortly after our obtaining possession of the country (copy of which is herewith forwarded) so far modified the state of debtor-slavery, as it existed under the Burmese rule, as to reduce it to mere domestic service paid for in advance.

3. The description of debtor-slavery, under Burmese rule, will be found in the accompanying paper.

4. Even the modified system of debtor-service introduced by us is now fast disappearing; and though I am in possession of the sanction of government for doing away with it altogether, yet I think it preferable to allow it to die a natural death, as the people are fast evincing a sense of its inapplicability to their improved state under our government.

DEBTOR-SERVANTS' REGULATION, enclosed in above, signed by Mr. *A. D. Maingy*, Commissioner in the Tenasserim Provinces, and dated Moulmein, 10th February 1831.

No. 12.

1. NOTICE is hereby given, that from and after this date no contract or agreement, binding persons to serve in the capacity of debtor-servant in consideration of a sum advanced for their labour and services, shall be valid, unless such contracts or agreements shall be acknowledged by the contracting parties before the commissioner, his deputy or assistants. These contracts shall be regularly drawn out and entered in a register to be kept at the yom; and the debtor servant furnished with a copy of his contract, signed by the commissioner, his deputy or assistants.

2. The contracts so registered shall specify as far as possible the nature and degree of the service to be performed by the debtor, and always fix a definite term of servitude, with the sum which shall tend towards the monthly liquidation of the money advanced to him or her, and which sum shall on no occasion be less than two pice per day. No youth of either sex, under the age of sixteen years, shall be deemed competent to enter into a contract for future services.

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Tonassery.

3. No parent or parents shall be allowed to mortgage the labour or services of his or her or their children; and no children of debtor-servants shall be liable for the debts contracted by his, her or their parents, for the mortgage of his, her or their labour or services. The children of all debtor-servants are free; but if the father and mother be unable to support their offspring, the master or mistress shall be entitled to the gratuitous services of the children so supported, until they attain the age of sixteen years, as a recompense for the expense incurred in their maintenance. But no master or mistress shall transfer or mortgage the labour or services of such children.

4. In case of the death of the master or mistress, the debtor shall have the option of repaying to the estate such sum as the commissioner, his deputy or assistants, may conceive equitable for unexpired services, or serve out the remaining period with the legal representative.

5. No debtor-servant shall, on any occasion, be transferred to another person by his or her master or mistress, unless the terms of his or her contract included such provisions.

6. In the case of females mortgaging their labour or services, their debt shall be cancelled by the commissioner, his deputy or assistants, in every instance of its being proved, that the master has cohabited with her, or that her master or mistress has been in any manner accessory to her prostitution.

7. Whenever it shall be proved, to the satisfaction of the commissioner, his deputy or assistants, that any debtor-servant has not been provided with proper food, clothing or habitation by the master or mistress, or has been otherwise treated with inhumanity or cruelty by him or her, the contract or debt of such servant shall be cancelled, in addition to such other punishment as the commissioner, his deputy or assistants, may deem necessary on the master or mistress.

8. If a debtor-servant fails to serve with fidelity, or has been neglectful from improper or vicious habits, the commissioner, his deputy or assistants, on such being proved, shall punish the party in the same manner as in the case of a common servant so offending.

9. No contract or agreement, binding persons to serve in the capacity of a debtor-servant in consideration of a sum of money advanced for their labour or services, shall be valid, unless the amount so advanced be paid in the presence of a magistrate to the persons mortgaging their services.

No. 13.

PAPER of Remarks by Mr. E. A. Blundell, the Commissioner, in regard to the above, dated Moulemein, 11th July 1836.

THOUGH the system of slavery under the Burmese rule be nominally mere bond-service, yet, owing to the but little limited authority of the master, to the impoverished state of the country, and to the small chance of a debtor-slave obtaining justice against his creditors in the courts, it may be looked upon as real "slavery." The chief alleviation of such a state is derived from the slave having it in his power to transfer his services to another creditor, should he find one willing to pay the amount of his debt.

The nature of the slave-bond is very diversified—for general service, for house service, agricultural service, &c. Many are mere engagements to pay some enormous rate of interest by daily or monthly payments; and those of the former description are often changed into the latter, the slave engaging, on being permitted to follow his own business, to pay so much a day out of his earnings. All these bonds are mere acknowledgments of certain debts, on repayment of which the slave again becomes free. These debts, augmented by the expenses incurred by the master on account of the slave for clothes and other items (not including food, however), descend to the children, whether born in slavery or not, and must be discharged by them either by payment or the substitution of one of them for the deceased parent. Children born in slavery become the slaves of the creditor, and are not released by the payment of the original debt of the parents. If grown up, the amount to be paid for such born slaves is 30 ticals (rupees nearly) for a male, and 25 for a female.

In satisfaction of a debt, parents can sell their children, husbands their wives, heads of families their dependent relatives. The amount for which they are sold is considered their debt, for which they alone are answerable, and until it be paid to the creditor, they and their posterity are his bond-servants. On becoming a slave for a certain amount, it is a usual custom to provide security; and such security is answerable, not only in case of the slave absconding, but even on his death. These securities are generally relations of the slave.

In Burman law the price of a male is fixed at 30 ticals, and that of a female 25. These sums are constantly decreed in their courts, in numerous cases. For such sums the children born in slavery can redeem themselves. A master having connexion with his female slave against her consent, forfeits 25 ticals from the amount of her debt. These sums are also made use of in apportioning the children of slaves, where the parents belong to different creditors.

In stating, however, what the law may be in the several cases relating to slaves, or indeed to any other subject, we are too much in the habit of attaching our own ideas of legal rights, of persons. Slaves may be looked upon in Burmah as the property of their masters, as much as the cattle in their fields; and though, generally, their condition is far from being one of hardship, or looked upon as a disgrace, yet, once slaves, they have but a slender chance of ever manumitting themselves.

APPENDIX VIII.

HINDOO and MAHOMEDAN LAWS OF SLAVERY.

1. Hindoo Law of Slavery. Paper by the Secretary.
2. Addenda to the above, in which three questions are investigated by the Secretary, by desire of the Indian Law Commission, viz. I. Parental power to sell a child; II. Power of the master over the person of his female slave; and III., Power of the master to correct his hired servant.
3. Opinion of Vydia Nath Misr, Pundit of, the Sudder Dewanny Adawlut, on the power of parents to sell their children into slavery.
4. Opinion of Vydia Nath Misr, Pundit of the Sudder Dewanny Adawlut, as to the power of the master to correct his adult free servant for misconduct.
5. Muslim Law of Slavery. Paper by the Secretary.
6. Opinion of Ghulam Subhan, Kazi-ul-kuzat of the Sudder Dewanny Adawlut, as to the power of the master to correct his adult free servant for misconduct.

Appendix VIII.

HINDOO LAW OF SLAVERY.

IN the technical language of Hindoo law, the *susrushaka*, or person owing service (*susrusha*), is five-fold. The pupil (*sishya*), the apprentice (*antevasi*), the hireling (*bhrittaka*), the overseer (*adhikarmakrit*), and the slave (*dasa*). Breach of obedience due is one of the eighteen titles of law. The four first are denominated servants (*karmakara*), and are liable to pure work.

2. There are fifteen descriptions of slaves enumerated by Narada, who are said to be liable to impure works. 1st. The house-born (*grihajata*), one born in the house of a female slave; 2d, the bought (*kirta*); 3d, the obtained (*labdha*); 4th, the inherited (*daya-dupagata*); 5th, the self-sold; 6th, the captive in war; 7th, the apostate from religious mendicancy or asceticism; 8th, the maintained in a famine (*anakala bhritta*); 9th, the pledged by his owner; 10th, the slave for a debt, who submits to slavery for discharge from debt; 11th, the won in a stake (*panejita*), one who is overcome in a contest, who had agreed to submit to slavery in that event; 12th, the self-offered with the words "I am thine;" 13th, the constituted (*kirta*) for a stipulated time; 14th, the slave for his food (*bhakta das*); 15th, the slave for his bride (*badavahrita*).

3. The *labdha*, or obtained slave, is described in the *Mitakshara*, as obtained by acceptance and the like. Mr. Colebrooke has rendered the term "received by donation;" the author of the Digest, in his comment, says, "by acceptance of donation and the like." If not included in this denomination, the female slave, acquired by her marriage to a man's slave, is a 16th class. According to a text of *Katyayana*, and its comment in the *Vivada Chintamani*, she may be either a free woman or slave of another, if he has assented to her marriage. Another instance, which may perhaps be included in the *labdha*, is below noticed (para. 9).

4. The freeman in the last eight instances must consent to slavery. The maintained in a famine is described by the author of the *Mitakshara*, as "preserved from death for slavery." The apostate becomes the king's slave, if he fail in performing atonement. The author of the Digest says, that the captive in war must also assent to slavery to save his life; but in the *Mitakshara* this assent is not implied.

5. *Menu* enumerates seven slaves. The captive; the slave for his food; the bought; the house-born; the given; the paternal; and the penal (*danda dasa*), explained to be one consenting to slavery to discharge a fine and the like. The author of the *Mitakshara* says, that this enumeration is not exclusive of other descriptions of slaves; which opinion the author of the Digest adopts.

6. Any person bound to obedience is only bound to render service suitable to his class; according to which also is he to be treated. In the Digest, b. 3, cap. 1, s. v., 7, the verse of Narada which implies this position is not rendered according to the comment, and the more obvious sense of the text. But it is said, generally, that all slaves are to perform the lowest offices.

7. By the old law in the direct order of the classes, a Brahmin might have a wife of each of the three classes inferior to himself. A *kshatriya*, one or both of his two inferior classes; and a *vaisya*, a *sudra* wife. On the same principle servitude is said to be in the direct order of the classes. The superior cannot be the slave of the inferior, but an equal may be of an equal.

8. But the Brahmin is not liable to slavery. The apostate is stated generally to be the slave of the king in the *Mitakshara*; which does not cite the text of *Katyayana*, in which it is said the apostate Brahmin is to be banished. The rule of slavery in the direct order of the classes does not apply to the apostate slave. According to the author of the Digest, a *kshatriya* or *vaisya* apostate may, if he assents, serve an inferior Hindoo slave.

9. In treatises of adoption an extract imputed to the *Kahka Purana* (though of doubtful authenticity) is prominently cited. See translation of the *Dattaka Mimansa*, s. iv., sec. 22; and *Mitakshara*, on Inheritance, cap. 11, s. 1, sec. 13. It has a passage, which declares, that adopted sons duly initiated may be considered as sons, "else they are termed slaves."

The

* The volumes of the 8vo., a London edition, are referred to.

Book 3, c. 1, Comment on v. 27.

The author of the Digest, commenting on the words "bought" and "received" in Narada's description of slaves, observes, that they may mean also boys purchased or received for adoption; but who have become slaves through some failure in the form; and he adds, that they become slaves independent of consent; and he is not shaken in his position, though it should be urged that thus a Brahmin might become a slave.

10. Sir T. Strange, in his Appendix to the 5th Chapter of his Hindoo Law, quotes a letter of Mr. Colebrooke on Hindoo slavery generally, in which he discusses the peculiar point just referred to. Mr. Colebrooke quotes the elaborate exposition of the author of the Dattaka Mimansa (s. iv., sec. 40, 41, 46,) which is in effect, that the informally adopted falls to the condition of slave, if the adoption fail from three causes: 1, excess of age; 2, rights omitted; 3, impossible from their prior performance. Mr. Colebrooke does not treat the construction of the author of the Digest with much respect; and adds, that but for the commentary of the author of the Dattaka Mimansa, he should consider the words in the passage of the Kalika Purana as figurative, and merely intended to declare the adoption void.

11. The author of the Mitakshara, in his comment of the labdha, or obtained slave, as already noticed, says "By acceptance (parigraha) and the like." Parigraha means also adoption; but if he contemplated the case of the informally adopted, he would probably have been more explicit.

12. I think the first impression of Mr. Colebrooke, that the passage in the extract imputed to the Kalika Purana is not to be construed literally, is correct; nor does the comment of Nanda Pundit appear to me opposed to this. He merely deduces from the text three predicaments, in which in an informal adoption the adopted are said "to be slaves," that is, do not acquire the filial relation.

Digest. Idem, v. 11. (Half verse omitted.)

Sir William Jones has used "servant" in his translation of this text; so also elsewhere, v. 415, in particular. But Mr. Colebrooke here substitutes "slave." Vide Dig., b. 3, c. 1, v. 33.

13. The power of moderate chastisement of slaves seems a necessary condition of the relation of master and slave. Menu (cap. 8, v. 229 and 300) declares that a wife, a son, a slave (dasa), a pupil, and a younger brother, may be chastised with a rope, or a slip of bamboo (venudala); they are to be beaten on the back part of their bodies. The person chastising contrary to this rule incurs the penalty of theft. The commentator, Kulluka Bhatta, says the chastisement is "for the sake of instruction," and that the venudala is a light sulaka-slip or lath. A text of Katyayana, cited in the Ratnakara, is this: "Corporal punishment (tadana) and binding, so also vexation (vidambana). These are in the penalties of a slave. Pecuniary fine is not ordained." The author of the Ratnakara explains, that by corporal punishment is meant flagellation with a whip, and the like; by vexation, tansure, exposure on an ass, and so forth.

Digest, v. 19. Idem, v. 12.

14. Narada declares, that the pupil deserting his master may be corporally punished and confined; and Gotama says, that for ignorance and incapacity he may be corrected "with a small rope or cane." The Ratnakara, commenting on another text of Narada, enjoining the duty of the pupil, says, that he is thus declared to be a servant.

Idem, v. 10.

15. By another text of law (smṛiti), the mutual litigation between husband and wife, teacher and pupil, father and son, master and servant, is not legal. The author of the Digest remarks, that this does not exclude special cases, and that the text implies that the teacher and the rest have the power of correction; and adds, that if the pupil or the son violate his duty, and the teacher or father be weak and unable to correct him, it is consistent with common sense that "he should then apply to the king."

Idem, v. 19.

16. Narada, in his text, has the words "badha and bandha" (binding). The former might mean death; and the author of the Mitakshara obviates that sense by declaring that corporal punishment (tadana) is meant, "on account of the slightness of the fault." It is not important whether the mode of punishment indicated by "a rope" is tying up or stripes. It appears clear that the Hindoo law recognizes the power of the master to inflict moderate chastisement on his slave. He is, however, liable to punishment for abuse of that power.

Digest, b. 3, c. 1, v. 51 and 52.

Idem, v. 54.

17. Can a slave own or earn property independent of his master? There are two nearly identical passages of Narada and Menu (chap. 7, 416) on this subject, which declare that a wife, a slave (dasa), and a son can have no exclusive property, and that their gains belong to their owner. A passage of Katyayana declares the dominion of the master over the slave's goods. "But the master has no right to the goods acquired by his favour or sale." According to one reading, "by public sale." Another reading rejects the negative. The passage quoted is as it occurs in the printed copy of the Chintamani, the author of which says, whatever property is obtained by a slave by the favour of his master, and by self-sale, is the slave's property. The master is not entitled to it.

18. Kulluka Bhatta, commenting on the above text of Menu, says, that it is to declare the dependence of the wife and the rest; and he illustrates the case of Stridhan as an instance of property in the wife. The author of the Digest, in his comment on these passages, seems of opinion, that the slave may have exclusive property; and in a prior passage he combats the objection, that a slave maintained, having no property, cannot repay his food, by asserting that he may, through affection, possess property.

Idem, v. 43.

19. As a general position, it appears, however, to me correct to say, that the goods and earnings of a slave belong to his master; the exceptions being, the case in which the master has assured the slave's ownership, the proceeds of a self-sale, or any thing analogous.

Idem, v. 42.

20. By the preservation of his master's life from imminent danger, a slave is not only emancipated, but entitled to inherit as a son; and if a female slave bear a master a son, according to a text of Katyayana, both are entitled to liberty. But according to the explanation of the Prakasa Paryata, and other Marthila books, as noticed in the Chintamani and

and Digest, this must be only considered in the case where the master has no legitimate or adopted son.

21. Except by the preservation of his master's life and his will (and in the case of the female slave, by bearing him a son), there is no emancipation of the first five slaves enumerated in par. 2. This is distinctly stated by the author of the *Matakshara*, who does not even allude to the text of *Gatama* favourable to the female slaves in the case premised. Digest, b. 3, c. 1, v. 35.

22. According to the comment of *Vijñaneswara*, on a very obscure text of *Yajnyawalkya* (which he declares applicable to the apprentice as well as slave), the slave, maintained in a famine, and the slave for his food, are emancipated by relinquishing their support, and replacing what they have consumed from the commencement of their slavery. But the words of this text do not suggest this latter position. Idem, v. 44.

23. *Narada* says, the first is released by giving a pair of oxen; for what he consumed in a famine is not discharged by labour; and he adds, that the second is released immediately on relinquishing his food. The author of the *Ratnakara* holds, that the slave fed in a famine obtains his liberty by relinquishment of food and gift of a pair of oxen. In this, the more obvious sense of the text, the author of the *Digest* concurs, noticing, however, that the author of the *Vivada Chintamani* holds that he must give the oxen in addition to what he has consumed. Idem, v. 43.

24. According to the *Chintamani* and *Digest*, the slave for his food is released by relinquishing the same; and this appears the most reasonable doctrine. It does not seem unreasonable, that he whose life was saved in famine should make some return besides his labour; but that he should give both a pair of oxen and the value for his support is hardly just, and probably not intended.

25. The debtor-slave is released by liquidation of his debt, with interest, according to *Narada*. The comment in the *Mitakshara* on the obscure text of *Yajnyawalkya* already noticed, says, that the debtor-slave is discharged on repaying with interest his present creditor what he paid to redeem him from a former creditor. This seems the mention of a special instance by way of illustration. Idem, v. 46.

26. The pledged slave reverts, of course, to his master who pledged him, if he redeem him from the mortgagee. This is declared by *Narada*. But an involved and obscure comment on the above obscure text of *Yajnyawalkya* in the *Mitakshara* bears this construction, that the pledged slave is released on his paying the amount for which his master pledged him, with interest. It, however, hardly can have been meant, that an owner pledging his slave at an under valuation should give the slave the right of redemption at that under price. Idem, v. 45.

27. The slave for his bride (literally attracted by a female slave) is emancipated by separation, "because (says the author of the *Mitakshara*) it is prohibited to cohabit with a slave." Cited in Dig. b. 3, c. 1, comment on v. 46.

28. The slave for a term is, of course, emancipated by the lapse of the period. The captive, the stake-won, and the self-offered, are emancipated, according to *Narada*, cited in the *Mitakshara*, by finding a substitute equally capable of labour, that is, according to the *Vivada Chintamani*, another slave. For the apostate, the only release is death. He is the slave of the king. Texts of Hindoo law specially provide for the release of those enslaved by force, or by fraud of kidnappers, and the interference of the king is required. Idem, v. 46.
Idem, v. 47.
Narada, cited in the
Vivada Chintamani and
Yajnyawalkya, in the
Mitakshara.
Digest, 40; 41.

29. It thus appears, that for the mass of slaves which fall within the first five classes, the law has given little hope of emancipation.

30. There are two texts of *Menu*, which, if taken literally, abridge that hope. A Brahmin may compel any Sudra, though unbought, to render service of a slave (*dasa*) to him; for he was created to serve the Brahmin; and even the emancipated is not released from his servile state, which is natural and indelible. (Chap. 8, v. 413 and 414.) Digest, b. 3, c. 1, v. 36 and 38.

31. The commentator adds, "For spiritual purposes it is necessary that obedience be paid by a Sudra to the Brahmin, or other twice-born man. This is what is meant, else the subsequent enumeration of slaves would be nugatory;" that is, if a Sudra can never escape from servitude. The author of the *Chintamani*, commenting on the last of the two texts, states it is meant to express contempt of slaves; otherwise purchase and other causes of slavery would not be pertinent in regard to Sudras, nor would they be capable of manumission. It is mentioned by him as a passage of the Markandeya Purana.

32. The author of the *Digest* has a long, and, as usual, unsatisfactory comment on the above terrific texts. He denies that the Sudra is born a slave to all men, or becomes the slave of any one who takes him; but intimates that the relation of master and slave is indissoluble. Regarding the text as applicable to the slave licensed, not enfranchised, he supposes the case where such slave undertakes the service of a second master. In that case he belongs to him, and may be coerced to do servile work, without penalty incurred by the second master.

33. In one instance the power of the master to sell seems limited. According to a text of *Katyayana*, cited in the *Chintamani*, a man, not urged by distress, who attempts to sell his female slave who is obedient, and objects, is to be fined two panas. The text implies that the sale would be illegal. Digest, b. 3, c. 1, v. 60.

34. The issue of a slave is a slave. This is implied by the definition of the house-born, and the position that the free woman who marries a slave becomes a slave of her husband's master. If a man, without stipulation to the contrary, allowed his slave-girl to marry a free-man, it should follow that she would be released from her master. But if his assent were wanting, his property in her would remain undisturbed, and the offspring, on the general principle of the greater right of the owner of the soil, would be his. This principle is distinctly laid down in *Menu*, chap. 9, v. 48 and 55. But if some of the natives examined by

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by the law commission are accurate, this rule on defect of stipulation does not seem always to be the local usage. One witness, a resident of Cuttack, says, the local usage is the converse of the legal rule; and others have stated that in the absence of special agreement, the masters of slaves who have intermarried share the progeny.

35. The eighth of Mr. Macnaghten's Collection of Precedents on slavery has a construction of Hindoo law resting on reasoning. If A. would sell his slave B. to C. for a fixed price, and by such sale a great grievance would be inflicted on B., as for instance, his removal to a distant country, then in that case, if another purchaser at the same price offer, whether designated by B. or not, A. must sell to such other purchaser. The reason assigned is, that the master would suffer no loss. The present pundit of the Sudder Dewanny Adawlut, Vaidya Nath Misr, who gave this opinion, has been examined by the law commission, and states, that it would be considered as oppressive to sell a slave, so as to place him beyond the reach of communication with people of his own class, or to separate families. The courts ought to interfere to prevent such sales. There does not appear to be any legal authorities manifesting such tenderness for the slave; and if the pundit's doctrine is to be taken for law, it must be considered as resting on popular usage and feeling, to which is opposed any oppressive exercise of his power over his slave by a master.

Calcutta, February 1, 1839.

J. C. C. Sutherland, Secretary.

No. 2.

ADDENDA to the above.

SINCE my first paper on this subject, dated 1st February, annexed to the Report of the Law Commission, I have investigated three points, by the desire of the commission, which I proceed to notice.

I. Does the legal krita, or "slave-bought," include the child sold by his parents; that is, have they legal authority to sell their child?

Digest, b. 3, c. 1,
v. 29 and 33.

The "krita," or bought-slave, of the texts of Narada and Menu is merely explained, in the Commentaries, as "bought by price." It is necessary, therefore, first to consider the texts which exist most akin to the subject proposed, viz. the parental power to dispose of a child by gift, in which sale is, of course, implied.

Dig. b. 2, c. 4, v. 4.
Dig. b. 2, c. 4, v. 5.
Dig. b. 2, c. 4, v. 16.
Dattaka Mimansa,
s. iv., s. 5, p. 43.

Dig. b. 2, c. 4, v. 9.
Dig. b. 2, c. 5, v. 6.
Dig. b. 2, c. 5, v. 8.

There are, a text of Narada which enumerates son and wife amongst things not to be given even in calamity; a text of Vrihaspati prohibitory of such gift; a text of Yajnyawalkya allowing, in distress, gift of property for support of family, except a wife and a son; an anonymous text which declares "the father is not absolute over a son in respect to gift and sale;" a text of Data which enumerates a wife (but not a son) as not to be given, even in distress. The giver is said to be a fool, and must expiate his sin by penance. There is also a text of Katyayana prohibiting gift or sale of a wife and son, without their assent, except in extreme necessity. Some verses likewise of Vasishtha occur prefatory to the subject of adoption. These declare, in very extensive terms, the power of parents to give and desert their son, because authors of his existence.

Dattaka Mimansa,
s. iv., s. 5 and 6.

We have then three positions; 1st, the general prohibition; 2d, the exception to it in Katyayana's text; and 3d, the absolute power implied by Vasishtha's text.

The Mitakshara on the subject of things not to be given, cites the texts of Yajnyawalkya and Narada. The comment notices, that a wife and son are not to be given. The Vyavahar Mayukha cites the same texts with the same gloss. The Vivada Chintamani of Vachaspati Misra (a Tirhut work) on this topic, first cites the text of Narada. Commenting on it, the author says that against the assent of a wife and son, even in a calamity, they are not to be given. He then cites the text of Katyayana, to show, that if they be willing they may be given, and directs his comment to this point. The exception, apparently made in case of extreme distress, the author does not notice, and leaves us to infer that assent even then is wanted, according to his doctrine. He then proceeds to quote Vasishtha's text, which he says contemplates assent.

The texts of Narada and Yajnyawalkya are alluded to by the author of the Dattaka Mimansa (a treatise on adoption), who cites the text of Vasishtha. He says that the prohibition of the gift of a son, contained in the texts of Yajnyawalkya and Narada, and in the anonymous text, refer to the case of a single son, to make them square with the texts of Vasishtha and Saunaka. He alludes to the sequel of Vasishtha's text and a parallel text of Saunaka, forbidding the gift of an only son with reference to adoption. It is a violent effort of construction to attempt to reconcile these texts which regard distinct subjects, and I think the authority of Nanda Pandita, the author of the Dattaka Mimansa, may be disregarded as irrelevant.

The author of the Digest, in quoting Katyayana's text, says, that in the exceptive clause, "with assent," must be understood to obviate collision with Narada's text.

He adopts what seems the opinion of the Vivada Chintamani, and gets out of the difficulty by a strained construction.

Comment on
Narada text, v. 7.

The author of the Digest justifies the gift of a child in adoption, on the principle of the distress of the adopter who has no son; and not on the principle of "silence gives consent."

sent." Therefore, if assent be required, according to him, it must be the assent of a boy or wife arrived at, or approaching to, the adult age. The power to give or sell with assent only, is not irreconcilable with the general prohibition.

The text of Vasishtha, as already noticed, is introductory to adoption, and the Vivada Chintamani construes it as regarding the case of assent. Unless qualified or explained, it is at variance with the other authorities.

It might be also objected, that the text of Katyayana, or any of the other texts, cannot refer to reduction to slavery under any circumstances, because they are general, and would apply to a Brahmin who is not liable to slavery. I am not disposed to avail myself of this argument, because a Brahmin, though he would not become a slave, might be given as a pupil or dependent to be brought up, assisting his fosterer in any suitable mode. If a Brahmin would prostitute his willing wife to a Brahmin (at least), I fear the Hindoo law regards the immorality with no great indignation: though, perhaps, the rajah, under his general power to preserve his subjects in the right path, might interfere, as it would be his duty to do, if a Brahmin were inclined to degrade his son.

The author of the Digest, in commenting on the bought and given slaves of Menu's text, says, "sold or given by parents, or self-sold or self-given." But in the comment on the parallel text of Narada, before cited by him, he only gave this usual gloss, "bought by price." In his comment on Menu's text on slaves, the author of the Digest may have forgotten the text of Katyayana which he had before construed, or he may have considered assent of the son to being sold or given as understood; or most likely he only adverted to local usage, with which the late famine had made him familiar.

Mr. Colebrooke, in his paper cited in Harington's Analysis, declares that the Hindoo law recognizes sale and gift of children into slavery by parents; and Mr. Macnaghten has quoted that paper without questioning the position. But Sir Thomas Strange cites a letter from Mr. Colebrooke, in which he mentions the slave bought of his master, as an instance of the "krita," or bought-slave. But the omission of the child sold by a parent is not conclusive that Mr. Colebrooke questioned the parent's power.

Translation of the vyavastha of the pundits of the Sudder Dewanny Adawlut, taken on the reference in 1808, made by Mr. Richardson, forms part of Slavery in India papers, printed in 1828. It is made from the Persian translation, which is always subjoined to the original Sanscrit of those expositions. These versions are generally slovenly made; but they sometimes contain words of illustration introduced by the pundits who aid in the translation. Thus in the English version noticed, the "krita" slave is described as one bought from his parents or former masters. On reference to the original Sanscrit, I do not find these words of illustration. Mr. Macnaghten has also in his work given (apparently from the English version) an abstract of the vyavastha. In this he has retained the illustration of the slave sold by his master, but omitted the instance of purchase from parents. As in his section on slavery, he has not questioned the parent's power (mentioned by Mr. Colebrooke, whom he quotes), it may be presumed, that the omission did not proceed from doubt in his mind. I consider it as almost certain that the words of illustration found in the Persian version (from which the English version was made), were inserted on the explanation of the pundits. We may conclude, therefore, that they entertained no doubt generally as to the legal power of the parents to sell their children; though, probably, they had not investigated the origin of such power, whether resting on texts of law or popular usage and recognition.

Of the subsidiary sons legal under the old law, the son bought of his parents is now reprobated; but Menu, and other inspired writers, recognize the power of the parents to sell their sons for adoption. But it would be a stretch of construction to argue therefrom that they recognize the power to sell their children into slavery. I have not, therefore, taken them into account.

If a father, without assent, could in necessity by the Hindoo law give or sell his son, it would follow, *a fortiori*, he could give or sell his daughter. But do the texts prohibitory of a gift of a son bar that of a daughter? I am inclined to think they do; the words "wife" and "son" being only illustrations. If they do not, what scriptural authority is there that a man may sell his female children, unless it be the verses of Vasishtha, which we have seen, in the instance of the son, are contradicted and construed (though with little show of reason) as implying assent?

On the whole, it appears to me, that it would be difficult on direct scriptural authority to establish the legal right of the parents to sell their children into slavery under any circumstances. That power, exercised as it always has been by particular classes, seems to me to rest rather on popular recognition and usage, and is subject to those limits and restraints which varying local institutions may impose.

A Brahmin cannot, as already observed, legally be a slave. If, then, a Brahmin were to sell his child into slavery, the contract would be hardly valid, and the ruling power, on Hindoo principles, ought to restrain a Brahmin who would dispose of his child so as to degrade it. The same observations would apply to the Xatriya, who cannot be the slave of an inferior. Those, therefore, who buy children as slaves should be prepared to show that they belong to classes liable to slavery according to local usage, which the evidence taken by the law commission shows to vary considerably.

II.—Power of the Master over the person of his female Slave.

The opinion of the pundits of the Sudder Dewanny Adawlut, taken in 1809, has already been mentioned. The 4th question put to them was not sufficiently searching so as to

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draw out an exposition of the whole law on this topic. It was limited to the case of the unadult. The pundits, therefore, answering only what was asked, declare, that if the master violate his unadult female slave, or allow another to have connexion with her, the court cannot adjudge emancipation, but may impose a fine of 50 pans. As the answer stands, it may be understood as implying the power to violate an adult female slave.

On reference to the original opinion, I find, that this answer rests on a text of Yajnyawalkya, cited in the Mitakshara in the chapter on the intercourse of the sexes, a topic of Hindoo criminal law which does not appear to have been investigated, and to which for the present occasion reference must be had.

Penalties are prescribed by Hindoo law for connexion with married women and girls, and for their violation. The penalties for the four classes vary according to circumstances, the caste of the parties, the guarded or unguarded condition of the females. Thus, for adultery with a guarded Brahmini, or rape on any Brahmini, a Sudra is to suffer death; but a Brahmin for rape on a Sudra woman is only fined 1,000 pans; except when the male offender is inferior in caste, the penalty for adultery is fine.

For rape the penalty seems to be death when the parties are equal, and when the male is inferior. But when the male is superior, this penalty is not prescribed. What the prescribed penalty may be, is not, indeed, clear. There is a text of Menu, which would imply death to be the penalty of adultery in all cases; but this is explained away either to apply to a particular case, or to the case of the Brahmini offending with an inferior man.

After noticing penalties for offences against wives and unmarried women, the author of the Mitakshara passes on to penalty for connexion with common women. The text quoted by the pundits of the sudder is here adduced. It is to the effect, that the male, who has connexion with female slaves interdicted from going abroad or kept as concubines, is to be fined 50 pans, although otherwise intercourse with them had not been illegal. It is explained, that they are approachable by all, inasmuch as they are common; that is, neither wives nor protected daughters. The principle of this penalty is, that such slave-girls are *quasi* wives as appropriated women. Narada, who is cited, says, that with the wanton woman, not being a Brahmini, the courtesan, the unrestrained slave-girl, intercourse is allowed if not superior in tribe. A long moral argument now ensues, in which it is discussed, whether there be any class of women with whom casual intercourse is allowable. The result is, that, though it is an immorality to be expiated, it is not a temporal offence for which penalty is awarded. After some words on the subject of atonements, which may be omitted, the author passes on to an exception as contained in this section of Yajnyawalkya. Ten pans are prescribed as the penalty for connexion with a female slave by force. The penalty for several who coerce her is 24, payable by each. The gloss says, that the fine is payable by him who, with force, has connexion with female slaves living by prostitution, wanton women and the like, without paying them their hire.

The further analysis of this section cannot be decently pursued. It is curious, as showing the lax morality of Hindoo legislation, which even provides rules in regard to the hire of prostitutes. The comment cited implies, also, that the text does not refer to the slave of the man himself, since mention of hire is made. It shows, also, however, that it applies to any prostitute; and therefore the smallness of the fine does not necessarily suggest impunity of the master who commits violence on his female slave. It is obvious that the text cited by the pundits of the Sudder Dewanny Adawlut is quite irrelevant to the point in support of which it is adduced.

If the master's violence on the person of his unwilling female slave, adult or unadult, be illegal under the Hindoo law, other argument or proof must be sought. If lawful, it can only be so from the plenitude of the dominical power; and on the same principle it might be contended, that the master might kill or mutilate his slave. But these are the offences which the Hindoo *rajah*, in exercise of his discretionary power, is competent to restrain and punish; and so also for the sake of good government to keep his subjects in the right path, the *rajah* must be held by the Hindoo law as competent to restrain and punish the violence of the master on his female slave. Sexual intercourse with his willing female slave is immoral. The violence is doubly so.

The Hindoo criminal code does not define every offence; nor even where penalties (as in the case of adultery and rape) may vary according to the class of the parties do the provisions of the Hindoo law meet all instances. Thus, texts of law define the penalty, if a Xatriya ravish a Sudra female, the wife of another man, but not if he ravish a Sudra unmarried girl. Again, there are express texts which give the king power to extend the mulct for adultery, when inadequate from the wealth of offenders. On the whole, then, it appears reasonable to me to hold, that it is not by Hindoo law lawful for the master to violate his female slave. But the offence, when at least the female is adult, is not in the eye of Hindoo legislation very grave; for the aggravation of the master's inferiority of class is of course wanting.

III.—The power of the Master to correct his hired Servant under the Hindoo law.

A doubt in this regard arose with reference to the text cited as anonymous by the author of the Digest in his notice of slaves. It is noticed in the 15th para. of my first paper.

The author of the Mitakshara has cited this text in his chapter treating on actions not receivable. He explains that it is not meant to exclude litigation in extreme cases between the correlatives referred to in the text. For instance, if the pupil be corrected beyond the legal sanction, the king shall take cognizance. So also if the born slave (here designated "garbh

"garbh das") save his master's life, he should have his action for the benefit to which he is entitled. The author adds, "The instance of the case of the slave for his food will be given." He refers to the text of Yajnyawalkya, cited in the section on slavery, which says, that such slave is released on relinquishing his food. Therefore, if detained, he has his remedy. His conclusion is, that the pupil and other inferior, shall at first be checked and prohibited by the king and assessors. The word "bhritya," translated in the Digest as "servant," means any person supported, a slave or hired person. The author of the Mitakshara, in his copious illustration of the text, has not adduced the instance in which the action of the bhritya in the sense of a hired person shall be received. It perhaps may be, that he considered the word as used in the sense of slave. Swami, "rendered master," in its primitive sense, is "owner."

Vide Dig. b. 3, c. 1, v. 44.

Dig. b. 3, c. 1, s. 3. v. 68.

Passing on to the subject of wages and hire, the author of the Digest cites a text of Apastamba, which provides that the agricultural servant and herdsman may be beaten (and moreover the cattle of the latter be detained) if they abandon their work, and if the work be lost. The latter condition is omitted in the translation.

The Chintamani explains the default meant to be that of running away. This renders consistent the detention of the cattle of the runaway. This text, extended as it reasonably may be, and connected with the declared illegality of litigation between certain correlatives, may be construed as supporting the master's power of moderately correcting a hired servant.

The 290th verse of the 8th chapter of Menu provides that "a wife, son, pupil, dasa and younger brother may be corrected, if they commit a fault, with a rope or small shoot of cane." This seems to include the same correlative as the anonymous text, the bhritya and dasa being considered as synonymous, and so in fact they are; for both may denote a servant generally, and a slave specially; though "das" is most generally used to denote the latter.

If the contempt in which the Hindoo law in its primitive rigour regards the servile class be considered, it does not seem unreasonable to recognize, as contemplated by it, the master's power moderately to chastise the hired servant of the servile class.

Against, however, this conclusion, there may be adduced an argument, drawn from the texts of other inspired writers, which are silent as to the master's power to punish and indicate other recourse. For instance, the recusant servant is to be coerced and fined.

These texts, however, seem to regard the case of recusancy, and not that of neglect and fault falling short of refusal. Menu's text has the word "bhritya," which is necessarily rendered by Sir William Jones "hired servant," because the text has relation to wages.

*Vrihaspati Dig. b. 3, c. 1, s. 3 v. 71 and 75
Yajnyawalkya, Id. 72.
Narada - Id. 73.
Katyayana - Id. 74.
Menu - Id. 76.*

OPINION of *Vydia Nath Misr*, Pundit of the Sudder Dewanny Adawlut, on the power of Parents to sell their Children into Slavery.

No.

FOR the sake of obviating calamity, the father is competent to sell, as slave to another, his son or daughter, who is incapable of giving assent, that is, who is not adult; and according to usage the buyer becomes master of the slave, male or female, so bought. But by the Shaster, the father is not competent to sell into slavery his son or daughter without their assent, even though it be to obviate a calamity. The assent of his son or daughter being obtained, the father may sell them into slavery whether calamity exist or not.

Proofs.

1. Vishnu,* cited in the *Veira Mitra Daya* and other books: "Man, produced from virile seed and uterine blood, proceeds from his father and mother as an effect from its cause; therefore his father and mother have power to give, to sell or to abandon their son."

2. Text of Katyayana, cited in the *Vivada Chintamani*, and other books: "A wife, or a son, or the whole of a man's estate shall not be given away or sold without the assent of the persons interested. He must keep them himself. But, in extreme necessity, he may give or sell them with their assent; otherwise he must attempt no such thing: this has been settled in codes of law."

Answer to the second question.

In every class, the father or mother, with his leave, or both, have the power to sell their children to obviate calamity, their assent existing; for this is shown in the cases of sons given and bought. But slavery of a Brahmin is universally prohibited. The prohibition, therefore, of sale of his children into slavery by a Brahmin is established by inference. Thus the Brahmin's power to sell his children into slavery is barred in law.

Proofs.

Text of Menu, cited in the *Mitakshara*, and other books: "He is called a son given (datrima) whom his father or mother affectionately gives as a son, being alike (by class) and in a time of distress; confirming the gift with water."

Text of Yajnyawalkya, cited in the same and other works: "The son bought is one who was sold by his father and mother."

Text

* Elsewhere cited as *Vasishthas* text.

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Text of Yajnyawalkya, cited in the same and other works: "In the direct order of the four classes slavery is legal. Not in the inverse."

Text of Katyayana, cited in the Vivada Chintamani, and other works: "The law permits the servitude of men of the military, commercial and servile classes, to one of an equal class, on some account. But on no account let a man compel a Brahmini to perform servile acts."

Answer to the third question.

For the sake of obviating calamity, the mother, with their assent, is competent to sell her children, whether the father be alive or dead; his authority or assent (implied by non-opposition) existing. Otherwise she is not competent. The sale cannot be made by a near kinsman or a guardian.

Proofs.

Two authorities in support of answer to first question.

Text of Vasishtha, cited in the Dattaka Mimansa, and other works: "Let not a woman either give or receive a son in adoption, unless with the assent of her husband."

Passage in the Dattaka Chandrika comment: "If there be no prohibition, even there is assent, on account of the maxim: 'The intention of another, not prohibited, is sanctioned.'"

27 February 1840.

No. 4. OPINION of *Vaidya Nath Mistr*, Pundit of the Sudder Dewanny Adawlut, as to the power of the Master to correct his adult free Servant for misconduct, dated 31st March 1840.

PUNISHMENT, consisting of corporal chastisement, and so forth, is to be inflicted by the king. On account of any fault of his hired adult servant, who receives wages, the master cannot inflict it. He can only dismiss his servant; for there is not any text of any Muni ordaining this.

No. 5.

MUSLIM LAW OF SLAVERY.

Preface to Hamilton's translation of the Hidayah, page 43

Do. b. 9, c. 1 and 2, p. 140 and 145. v. 2.

Do. c. 4, p. 159, and opinion of the Muftis of the Sudder Dewanny Adawlut, being 28th precedent Macnaghten's Mahomedan Law.

See Slavery in India papers, printed in 1828, and Macnaghten's Mahomedan Law, "Slavery," adprecedent. This opinion was given in 1808, in consequence of a general reference by Mr. Richardson, magistrate of Bundelkund.

Vide Macnaghten's Mahomedan Law and Precedent of Slavery, Case 4.

B. 16, c. 5, vol. 2, p. 428.

Vide Appeal of Shekh Khawaj and others, case 21, printed Reports, Sudder Dewanny Adawlut for 1830.

1. BEFORE the power of Mahomed, slaves (captives in war or their issue) formed an important part of the wealth of his countrymen. The wars, by which his faith was spread, must have added greatly to the slave property of the conquerors.

2. The Koran enjoins the slaughter of idolaters and war with infidels, until they confess the unity of God. Such confession, or submission to the Jaziyat or capitation tax, entitles them to protection; otherwise the imaum is to direct the army of the faithful against the refractory infidels, and if he prevail, he may either slay them or reduce them to slavery. They are to be distributed amongst the conquerors. Proselytism, after capture, did not save the captive from slavery; nor is it a legal exception to servitude.

3. The muftis of the Sudder Dewanny and Nizamut Adawlut have laid down, that only capture in a holy war, or descent from such a captive, constitutes the slave legal to a Muslim master. Though the Hidayah does not allude to any other source of slavery, yet it does not seem to restrict its legality to these conditions, which, in fact, would exclude descendants of a large mass of slaves existing before the holy wars. According to the Kaduri, Muhit, Inayah and Zakhirah, self-sale may be a legal origin of slavery: but it is qualified with the condition of extreme distress; for instance, to preserve life, or to satisfy a debt when compulsory measures are threatened. The Hidayah (though not alluding to self-sale) says, that the sale of a freeman is null, because he cannot be property, and sale is the exchange of property for property.

4. Hamilton's English translation of the Persian version of the Arabic Hidayah was published in 1791. Both were undertaken under the authority of the Governor-general. The author of the Arabic compilation was the celebrated lawyer, Burhan-ud-din-ali, a native of Marghinan, who wrote in the sixth century of Islam. His compilation embodies the doctrines of Abu Hanifah, and his disciples Yusuf and Muhammad. The former, the founder of the orthodox school, was a native Kufa, and flourished in the 2d century of Islam, having been born A.H. 80. The Kaduri is the surname of Ahmud ben Muhammad, the author of the Adab-ul-Kazi. He expounds the doctrines of Hanifah. He died A.H. 438. The Muhit is the work of Raza-ud-din Muhammad, of Sarakhs, in Syria. He was principal of the college of Aleppo, and died A.H. 571. There are three legal compilations under the name of Zakhirah.

The author of the Inayah was Akmal-ud-din, the son of Mahmud, the son of Ahmad Al Hanifi, or orthodox. He died in A.H. 789, particulars of his birthplace and life are not known. He was probably a native of Syria.

5. The Sudder Dewanny Adawlut in 1830, in an appeal, adopted the opinion of its muftis just noticed, and imposed on the claiming master the burthen of proving, that the slavery of his claimed slaves was derived from the narrow legal origin defined by the muftis. The effect of this decision in this part of India is, that no Muslim can ever make good his title to the services of a recusant slave.

6. After this virtual extinction of Muslim slave-ownership, a very minute investigation of the civil law of the Arabs applicable to the relation of master and slave is not required. But the knowledge of adjudged points slowly spreads amongst our native subjects; and since the notions of the Indian Muslims as to the reciprocal rights and obligations of master and slave

slave must always be strongly influenced by the Muslim law, as laid down in standard works, it is, on the present occasion, an object of some importance to inquire into the state of that law, and collect from such works the leading principles and rules affecting the rights and obligations premised. But perhaps, in India, Muslim slave-ownership may have more relation to local usage than the civil law of the Arabs.

7. In the preface to his translation of the *Hidayah*, Mr. Hamilton remarks, that the discussion concerning slaves occupies one-third of the whole work,—a strong proof of their importance as property in the early centuries of the Arab empire. Many of the rules and usages which are there collected are in India unknown and unpractised, even though sanctioned by the Koran; whence it may be inferred, that the slaves owned by Indian Muslims are comparatively fewer and less regarded as property.

8. The absolute slave (*abd*) is said to be (*mahur*) interdict, and (the case of divorce excepted) his act, unsanctioned by his master, is not binding so long as his slavery continues.

9. But if the master license his slave to trade, he constitutes him "*mazun*" or licensed; and the acts of such a slave in the way of traffic are binding, until interdiction be revived by the master. His person, and the effects of his business, are liable to be sold for the benefit of his creditors; and if his master has appropriated out of his gains more than a suitable equivalent (*ghalla misla*) for the slave's labour, he must refund to the creditors. Excess of sale proceeds belongs to the master.

10. Manumission of a Muslim slave is enjoined by the Koran as a pious act, and the law has provided for several modifications of bondage and prospective freedom.

11. The slave to whom liberty after his master's death is promised, is technically called a "*mudabbbar*." This *post obit* manumission (*tadbir*) existed as a usage at the time of Mahomed. *Tadbir* was sometimes restricted (*mukayad*) by the condition of the master's death, within a defined time, or from a particular illness. It did not confer the privileges of the absolute *mudabbbar*. The promise of *post obit* freedom is essentially a bequest, and the slave is said to be enfranchised out of the bequeathable one-third of his master's estate. Thus, in case of exhausting claims of creditors or of deficiency of assets, the expectant slave might owe emancipatory labour (*saat*), for the whole or part of his value, to the creditors or heirs of the deceased.

12. On a *dictum* of the Prophet, the female slave, who has borne a child to her master, establishes her freedom, and she is absolutely entitled to it on his death, provided the master acknowledge the child. Could she claim it before, concubinage with her would be illicit. She is technically called *Umm-ul-vald*.

13. The Koran also exhorts the master to grant a covenant (*kitabab*) to his slave, in whom he finds "*good*," that is, to his Muslim slave; this, also, probably, was a pre-existing usage. The covenanted slave, after acceptance, becomes a *mukatab*. A deed, as is implied by the words, was usual, but not indispensable; in this transaction the master assures to his slave liberty for a consideration (*badal*) in return to be paid by him, usually a sum in instalments. The slave acquired his freedom, defeasible in case of default in the payment of the consideration; but annulment of the covenant must be judicially awarded, and a short grace is allowed after inquiry.

14. Covenanted enfranchisement is distinct from manumission in exchange for property (*itak b'ivazul jaal*). The distinction is one of those ingenious subtleties in which Arabian jurists delight. If a slave accept the proposal of his master, that he shall be free for 1,000 dirams, he is free at once before payment, and owes the money, for which bail may be taken. This is said to be a contract of exchange of property for what is not property, the slave not being owner of his own person, and the effect of the contract (his freedom) is established on acceptance by the slave of the stipulation; but the stipulated consideration in *kitabab* is not considered as a debt, nor is it cautionable. It is allowed to exist, from necessity, together with what is repugnant, viz. the duration of servitude, though in a suspended state.

15. If a master were to propose to his slave that he should be free when he shall have paid him a sum of money, and the slave accept, *kitabab* would not be constituted thereby, for the freedom would only begin from the payment of the money; whereas, in the case of *kitabab*, freedom, though defeasible, begins from the time of the bargain. But in the case now put, the slave becomes licensed, because the master excites him to earn; and the master may be compelled to take the stipulated exchange.

16. The *mukatab* slave, till, in consequence of default, he is brought back into slavery, is practically free, and the master cannot exercise over him any act of dominion; nor can he alienate by sale or gift, nor pledge his *umm-ul-vald* or *mudabbbar*. He may let out to hire these latter two; other classes of slaves he may sell, or dispose of as he pleases.

17. A slave is considered as property, and often denominated "*mamluk*," or owned. The theft of an infant slave is punishable as such. The acquisitions of a slave belong to the master, except when made under the contract of *kitabab* and during its continuance.

18. A slave, even though covenanted, cannot marry without the assent of his master, and (except the *mukatab*) may be contracted in marriage against his will. Married with assent of his master, a male slave may be sold for his wife's dower; but if he be *mukatab* or *mudabbbar*, he must work it out by labour.

19. The state of the child follows that of the mother. If she be slave, her children are the slaves of her master of the same quality and in the same degree as she was at the time of their births respectively.

20. A slave cannot be the spouse of his or her owner. If, then, one spouse become the owner of the other (a slave), the latter is emancipated; and a wife, married when a slave, may dissolve the contract when free.

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Muslim Law.

Hidayah, b. 35, c. 4, vol. 3, p. 469.

Idem, p. 472.

Hidayah, b. 36,

vol. 3, p. 493.

Idem, v. 3, p. 504.

Hidayah, b. 50, c. 1, vol. 1, p. 420.

Mudabbbar.

B. 6, c. 6, vol. 1,

p. 475, *et seq*

Preface of Translation, p. 68.

B. 6, c. 6, vol. 1,

p. 477.

Idem, 475.

Umm-ul-vald.

Hidayah, b. 5, c. 7,

vol. 1, p. 479.

Mukatab.

Vide Hidayah, b. 32,

c. 1, vol. 3, p. 377.

Hidayah, b. 18, c. 3,

vol. 2, p. 604.

Hidayah, b. 5,

c. 5, vol. 1, p. 468.

B. 18, c. 3, vol. 2, p. 604.

Hidayah, b. 5, c. 5, vol. 1, p. 469.

Idem.

B. 5, c. 6, vol. 1, p. 479.

Idem, 475.

B. 8, c. 2, vol. 2, p. 91.

Hidayah, b. 2, c. 4, vol. 1, p. 161.

Idem, p. 162.

B. 5, c. 7, vol. 1,

p. 481.

Idem, p. 477.

B. 32, c. 3, vol. 3,

p. 400.

B. 4, c. 2, vol. 1,

p. 225.

B. 2, c. 3, vol. 1,

p. 168.

B. 5, c. 1, vol. 1,
p. 432.

B. 44, sect. 4, vol. 4,
p. 102.

B. 7, c. 5, vol. 2,
p. 70.

B. 32, c. 1, vol. 3,
p. 381.

B. 50, c. 4, vol. 4,
p. 385.

B. 7, c. 1, vol. 2,
p. 13.

B. 100, c. 6, p. 75.

B. 16, c. 4, vol. 2,
p. 413.

21. The relation of master and slave cannot obtain between those related within the prohibited degrees.

22. The dominical power seems under the law to be most extensive. The master may use and abuse the person of his female slave, who is neither a mukatab, nor married with his assent to another.

23. The embrace of his pagan slave is illicit; and if the master enjoys his mukatab, he is liable to pay her an akar or portion.

24. His liability,—to lose his slave guilty of an offence, involving fine to the injured party, or to pay the fine,—may have been supposed to justify an extensive power of restraint and coercion. Shafi,* a celebrated jurist, contends that his power is absolute and greater than that of the kazi; whence he argues his right to inflict the defined penalty of fornication on his offending slave. The jurists of the Kufa school, though they deny his power in this case, admit his power to chastise. It is exercised in vindication of an individual right.

25. There seems indeed reason to believe, that, according to the doctrine of the lawyers of the early centuries of Islam, the master might put his slave to death with impunity. In the Hidayah there are no less than four cases propounded, in which, as if it were a matter of course, the master is supposed to have exercised this authority.

26. One case deserves particular notice. It occurs in the chapter which treats of the option which arises to the buyer in case the object of the sale prove defective. I translate it from the Arabic text: "Should the buyer have killed the slave bought, or (if the article were food) have eaten it, he has no recourse against the seller according to Abu Hapifah. The first instance is mentioned in the Zahirul Rawayut. But, according to Abu Yusaf, he has such recourse; for no worldly sentence attaches to the murder of a slave by his master, and the case becomes the same as if the slave had died a natural death, and the transaction therefore becomes concluded. The reasoning of the zahir is this. By murder, responsibility is always incurred, which, in the case propounded, only fails in respect of proprietary right, and the master gets as it were a *quid pro quo*, contrary to the case of enfranchisement; for, certainly, that is not the cause of responsibility, any more than the manumission by a pauper of a slave owned in partnership."

27. The legal penalty of murder is retaliation, which is considered a private right, demandable or componible, at the discretion of the legal representatives of the slain. It follows, therefore, that, in the case premised, this penalty cannot be enforced, and it may be argued that this is what is meant, and that it does not follow that the murderer would be necessarily unpunished; for the ruling power, on the principle of good government, is held by Mahomedan jurists to be invested with a discretionary power to punish crimes and misdemeanors when there may be no specific penalty or no private vindicator. This may be the case; but the strict jurists of the early schools of Mahomedan law took little account of the possible exercise by the sovereign of a power beyond the letter of the law. In another passage in the Hidayah it is distinctly laid down as a general principle that the master is not liable to punishment (akubat) on account of his slave.

28. The futwah of the muftis of the Sudder Dewanny Adawlut already mentioned, however, distinctly lays down that the master can only inflict moderate correction on his slave, and that any cruelty or ill-usage inflicted on his slave legally exposes him to a discretionary punishment (akubat or tazeer) by the ruling power; and such discretionary punishment extends to death.

29. If, for the sake of good government, the ruling power may visit with discretionary punishment the murder of a slave by his master, it should follow also that, on the same principle, it can punish instances of cruel treatment. The Hidayah says, "It is abominable to affix an iron collar on the neck of a slave, whereby he may be unable to move his head. Such is the custom of tyrants, for this is the punishment of the damned. It is therefore abominable,† like burning with fire." The author adds, however, that a Mussulman may imprison his slave, whereby he may not abscond, and the master's property may be preserved. This is said to be analogous to the custom which prevails amongst Muslims, of confining insane and mischievous persons. According to Abu Hanifah and Abu Yusaf, what is abominable approaches in its character to what is unlawful without actually being so.

30. It is necessary to notice here a passage in the Persian version of the Hidayah (book 50, c. 4, v. 4, p. 399). By it, it is imputed to the elders, Hanifah and Abu Yusaf, as their doctrine, that the master is always responsible if he maim his slave or take his property. Such a position would imply that protection is extended by the law to the ill-used slave. The passage, however, is an explanatory interpolation of the Indian moulvis who made the Persian translation, and seems inconsistent with the reasoning of the disputants in the case put, as it also is with the case above cited. Hamilton's version of the Persian paraphrase of this case is loose and careless. For this reason and the importance of the question, I subjoin a translation of the Arabic text.†

31. Defined penalties, under the denomination of "hudud," are ordained for fornication and adultery (zina), the slanderous imputation of this offence, and for drinking intoxicating liquor. The slave is only liable to half the flagellation ordained for these offences, and is exempt from the penalty prescribed for adultery. To the amputation, single or double, ordained for theft and highway robbery, and to the punishment of death in the right of God, when

* Shafi is founder of one of the four orthodox sects, and descended from Mahomed's maternal grandfather. He was a native of Palestine. He died A. H. 204.

† Hamilton has here substituted "unlawful" for "abominable," which occurs in the text.

‡ See "Case," in pp. 439, 440.

B. 49, c. 2, vol. 4,
p. 279.
Idem, 299.

Hidayah, b. 7, c. 5,
vol. 2, p. 63.

Hidayah, b. 44, s. 7,
vol. 4, p. 125.

Hidayah, b. 44,
vol. 4, p. 86.

B. 7, c. 1, vol. 2,
p. 12.

when murder is committed in the attempt or perpetration of robbery, the slave and freeman are equally liable.

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32. Offences against the person (*janayat*) are atoned for by retaliation or price (*diyut*), according to circumstances. The right to exact retaliation and fine is a private right remittable and composable.

Muslim Law.

33. Retaliation of murder obtains between the slave and freeman, but is barred if the murderer be master or father of the master of the slave. It does not take place in matters short of life, if either the offender or offended be a slave. But Shafei contends that the offended freeman might exact it against the slave. In this class of offences by a slave the general rule is, the surrender of the slave to the offended party, in slavery or redemption. In case of several offences, the single surrender or redemption is a satisfaction of all; but a renewed offence involves novation of liability.

B. 49, c. 2, vol. 4, p. 279.
Idem, 282.
Idem, 295.
B. 50, c. 4, vol. 4, p. 388.

34. But the *mudabbar* and *umm-ul-vald* (who are not transferable) are not liable to surrender by their master. He is to pay the value of the offender or the fine of the offence, whichever may be least, and no fine is incurred for numerous offences beyond one value.

B. 50, c. 4, vol. 4, p. 416.

35. A *mukatab* is not liable to surrender during the continuance of his covenant; but in case of offence (other than murder) sentence of fine may be awarded against him. If, after sentence, from his insolvency, the covenant become annulled, he may be sold in satisfaction. If the covenant be annulled, he reverts to slavery; and, for any offence then committed, is in the predicament of any other slave.

36. Offences (short of murder) against a slave's person render the offender liable to pay to his master the value of the slave, or a consideration for the injury, according to circumstances. The extreme value of a slave is 9,990 dirhams, 10 less than the extreme fine applicable to homicide, not amounting to murder when the slave is free. If the hand of a slave be cut off, half of his value is incurred, not exceeding, however, the half of the extreme value when an entire faculty is destroyed. It is doubtful whether the master, in case he does not abandon (when he is entitled to a full value), shall not forego all remedy, or may not obtain compensation for the injury.

B. 50, c. 4, vol. 4, p. 405.

37. The evidence of a slave is not admissible, nor will his confession in questions of property bind his master. A sentence of a fine, for instance, or of surrender of his offending slave, cannot be awarded against the master on the confession of his slave. But the slave may undergo a defined penalty or retaliation for murder on his confession.

B. 20, c. 3, vol. 2, p. 683.

38. A partial emancipation entitles a slave to work out the completion of his freedom. If the owner of a slave emancipates him entirely, the slave is free at once, unless the emancipator be unable to satisfy his partner; in which case the slave works out the rest of his freedom. He has also a legal right to maintenance. The separation of slaves nearly related, if one be an infant, is declared to be abominable; but this does not apply to husband and wife.

B. 8, c. 14, p. 120.
B. 35, c. 3, vol. 3, p. 472.
B. 4, c. 4, vol. 4, p. 419.
B. 16, c. 5, vol. 2, p. 462.

39. A remarkable result of emancipation is the relation of "*wala*," whereby the emancipator becomes, as it were, the agnate kinsman of his freedman. He may also become liable to pay the fine of an offence of his freedman under some circumstances, as his *akila*.

B. 33, vol. 3, p. 436.

40. The relation of *wala* confers on the emancipator the right of succession to the residue of the freedman's estate, on failure of the agnate kin of the latter. The emancipator is thus preferred to the freedman's cognate kin. By the residue is meant what was left after satisfying the ordained portions of particular relatives. The right of *wala* rests on passages of the Koran. This right of inheritance descends to the agnate heirs of the emancipator, and not his heirs general. It extended, in the case of a male emancipator, to the children of the freedman; but a female emancipator has only the right of *wala* in regard to her slave enfranchised.

41. It is not clearly laid down that ownership in a Muslim slave is illegal to the infidel. In one case it is stated that if the *umm-ul-vald* of a Christian become Muslim, and the master cited refuse to embrace the faith, she becomes virtually his *mukatab*, and is to work out her value by labour. *Zaffr* contends that she becomes immediately free, because it is no longer lawful for her to continue the slave of a Christian. The other jurists argue that the degradation is removed by making her *mukatab*. It seems implied by this case, though not very clearly, that ownership of a Muslim slave is not legal to the Christian.

B. 5, c. 7, vol. 1, p. 483.

42. The Mahomedan civil law seems to regard the slave as a degraded being, and scarcely entitled to protection, except as the property of his master, whose power over his slave is absolute. The Koran has some ordinances and several exhortations for the amelioration of the condition and prospects of slaves, and in conformity with these the early Mahomedan jurists have laid down some salutary provisions, but insufficient to meet the severities or supply the defects of the strict law, the administration of which, unmitigated by regulation and construction, would be impossible to a civilized government.

J. C. C. Sutherland, Secretary.

CASE.

"A. emancipated B., his female slave. Subsequently he said to B. that he had cut off her hand when she was his slave, to which she replied that he had so done when she was free. In such case her assertion prevails, and so also in regard to every thing which he may have taken from her; the enjoyment of her person and her earnings being excepted on a liberal construction. This is the doctrine of the two elders. Muhammad maintained that the master was only liable for an article of which specific restoration might be awarded against him

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according to the opinion of all jurists; for he denied his liability, inasmuch as he referred the act to a state which is opposed to such obligation, just as in the case first put and the cases of sexual intercourse and earnings. In regard to an extant object, he has acknowledged the possession in admitting the abstraction from her. Subsequent to this he asserted his proprietary dominion over her, which she denied. Hence her word, as that of negator, prevails, and the award of restoration passes. But, according to the elders, he admitted a cause of responsibility, and then pleaded ground of exoneration. Therefore his assertion does not prevail."

No. 6. OPINION of *Ghulam Subhan*, Kazi-ul-kuzat of the Sudder Dewanny Adawlut, as to the power of the Master to correct his adult free Servant for misconduct; dated 26th March 1840.

Question.—Under the Mahomedan law, may a master, for fault and neglect, correct and chastise his free adult servant?

Answer.—No; for correction and chastisement are a species of punishment. Now, to inflict this, according to all the imams, belongs to the ruling power. Therefore, the master who hired the servant cannot legally in any way punish the servant or the party hired on the ground of fault or neglect. He can only cancel the contract of hire; that is, discharge him.*

APPENDIX IX.

OFFICIAL RETURNS as to SLAVERY in the Provinces included in the Presidency of Fort St. George, Madras.

1. LETTER from the Law Commission to the Register to the Sudder and Foudary Adawlut, Madras, dated 10th October 1835.
2. Reply thereto from the Register of the Madras Sudder and Foudary Adawlut, dated 10th September 1836.

Answers of the Judges of the Provincial Court, Subordinate Judges and Magistrates.

NORTHERN DIVISION.

3. Provincial Court.
4. Mr. E. Newberry, Acting Assistant Judge, Auxiliary Court, Masulipatam.
5. Mr. J. Rohde, Acting Assistant Judge, Auxiliary Court, Vizagapatam.
6. Mr. C. Dumergue, Head Assistant Magistrate in charge, Rajahmundry.
7. Mr. R. Grant, Judge, Nellore.
8. Mr. F. H. Crozier, Acting Head Assistant Magistrate in charge, Masulipatam.
9. Mr. A. Freeze, Magistrate, Vizagapatam.
10. Mr. A. Crawley, Judge, Chicacole.
11. Mr. A. Mathison, Head Assistant Magistrate in charge, Guntoor.
12. Mr. J. Stephenson, Magistrate, Ganjam.
13. Mr. T. V. Stonehouse, Magistrate, Nellore.
14. Mr. H. D. Phillips, Acting Assistant Judge, Auxiliary Court, Guntoor.
15. Mr. J. Rohde, Acting Register, in charge of the Zillah Court, Rajahmundry.

CENTRE DIVISION.

16. Provincial Court.
17. Mr. F. Lascelles, Judge, Chittoor.
18. Mr. P. H. Stromboli, Judge, Cuddapah.
19. Juckeey-ood-din Mahammud Khan, Native Judge, Zillah Cuddapah at Cumburn.
20. Mr. A. E. Angelo, Judge, Bellary.
21. Mr. H. Bushby, Acting Judge, Chingleput.
22. Mr. W. Morehead, Assistant Judge, Auxiliary Court, Cuddalore.
23. Mr. G. M. Ogilvie, Magistrate, North Division, Arcot.
24. Mr. G. J. Casamajor, Magistrate, Cuddapah.
25. Mr. F. W. Robertson, Magistrate, Bellary.
26. Mr. A. Maclean, Magistrate, Chingleput.
27. Mr. J. Dent, Magistrate, Southern Division, Arcot.
- 28 to 30. Copies of Decrees and Judgments in criminal cases forwarded by the Judge of Chingleput.

SOUTHERN DIVISION.

31. Provincial Court.
32. Mr. G. S. Hooper, Judge, Madura.
33. Mr. T. Pendergast, Assistant Judge, Auxiliary Court, Tinnevely.

34. Mr.

* Nos. 3, 4 and 6 were translated by the secretary.

34. Mr. F. M. Lewin, Judge, Combaconum (Tanjore).
35. Mr. J. Goldingham, Acting Judge and Criminal Judge, Salem.
36. Mr. J. D. Bourdillon, Acting Assistant Judge, Auxiliary Court, Coimbatore.
37. Mr. J. Blackburne, Magistrate, Madura.
38. Mr. J. Bishop, Joint Magistrate, Tinnevely.
39. Mr. H. M. Blair, Magistrate, Trichinopoly.
40. Mr. N. W. Kindersley, Magistrate, Tanjore.
41. Mr. John Orr, Magistrate, Salem.
42. Mr. W. C. Ogilvie, Joint Magistrate, Salem.
43. Mr. W. Elliot, Assistant Magistrate, Salem.
44. Mr. G. D. Drury, Magistrate, Coimbatore.
45. Mr. T. A. Anstruther, Joint Magistrate, Coimbatore.
- 46 to 54. Copies of sundry Decrees referred to in Report of the Provincial Court.

WESTERN DIVISION.

Reports of the Judges of the Provincial Court and Subordinate Judges and Magistrates, in answer to a Letter from the Deputy Register to the Foujdary Adawlut, dated 3d March 1826.

55. Provincial Court.
56. Mr. J. Vaughan, Judge of Canara.
57. Mr. F. Holland, Judge of Malabar.
58. Mr. J. Babington, Magistrate of Canara.
59. Mr. W. Sheffield, Magistrate of Malabar.

Answers of the Judges of the Provincial Court, and Subordinate Judges and Magistrates, to the Letter from the Law Commission, dated 10th October 1835.

60. Provincial Court.
61. Mr. C. R. Cotton, Magistrate of Canara.
62. Mr. F. Clementson, Magistrate of Malabar.
63. Mr. E. P. Thompson, Judge of Canara.
64. Mr. R. Nelson, Judge of Malabar.
65. Mr. T. L. Strange, Assistant Judge of the Auxiliary Court, Malabar.
66. Syud Zeeza-uddin, Native Judge, Canara.
67. Shanteya, Native Judge, Honore, Canara.
68. Pundit Soobramany Shastry, Provincial Court.
69. Sherishtadar and Malabar Munshi, Provincial Court.
- 70 to 142. Abstracts of Decrees in Suits concerning Slaves, and Documents recognized in Civil Causes, used for transferring Slaves.

MADRAS.

FROM the Secretary to the Indian Law Commission to the Register of the Sudder and Foujdary Adawlut, Madras, dated 10th October 1835.

THE Indian Law Commissioners having under their consideration, as connected with the preparation of a criminal code, the system of slavery prevailing in India, I am directed to request that the courts of Sudder and Foujdary Adawlut will favour them with information on the following points:—

1. What are the legal rights of masters over their slaves, with regard both to their persons and property, which are practically recognized by the Company's courts and magistrates under the Madras presidency?

2. And, as more immediately connected with the criminal code, to what extent is it the practice of the courts and magistrates to recognize the relation of master and slave, as justifying acts which otherwise would be punishable, or as constituting a ground for mitigation of the punishment? What protection are they in the habit of extending to slaves on complaints preferred by them of cruelty or hard usage by their masters? And how far do they continue to Mussulman slaves the indulgences which in criminal matters are granted them by the Mahomedan law?

3. Whether there are any cases in which the courts and magistrates afford less protection to slaves than to free persons against other wrong-doers than their masters?

With the exception of Regulation II. of 1826, which merely rescinds, as being unnecessary and inconsistent with the Act of the 51 Geo. 3, c. 23, a clause in a former regulation prohibiting, under a specific penalty, the exportation of slaves from Malabar, clause 2, sect. 15, Regulation VII. of 1802, and sect. 15, Regulation VIII. of 1802, annulling the exemption from capital punishment in cases of murder, where the person murdered is a slave, the commissioners do not observe in the Madras code of regulations any specific provision on the subject; and they are therefore desirous of being informed by what law or principle the civil

Appendix IX. and criminal courts and the magistrates have regulated their proceedings in cases of the nature indicated in the preceding inquiries,

Returns.

If the rule contained in clause 1, section 18, Regulation III. of 1802, for observing the Mahomedan and Hindoo laws in suits regarding succession, inheritance, marriage, caste, and all religious usages and institutions, has been considered to embrace cases of slavery, though not mentioned in it, and the courts have guided themselves accordingly, the commissioners would wish to know what course would be pursued in cases where the claimant was a Mussulman, and the party claimed as the slave a Hindoo; and when according to the Hindoo law the slavery would be legal, but according to the Mahomedan law, illegal; and how a case, the conditions of which were the converse of the above, would be dealt with. Also, slavery not being sanctioned by any system of law which is recognized and administered by the British Government, except the Mahomedan and Hindoo laws, they are desirous of being informed whether the courts would admit and enforce any claim to property, possession or service of a slave, except on behalf of a Mussulman or Hindoo claimant, and against any other than a Mussulman or Hindoo defendant; and if so, on what specific law or principle the courts would ground their proceedings. The commissioners are aware that very different kinds of slavery exist in different parts of the Madras territories, and they are desirous of obtaining the information now applied for with respect to all, but especially in regard to the slaves in Malabar.

No. 2. REGISTER of the Sudder and Foujdary Adawlut, Madras, in reply to the Secretary of the Indian Law Commission.

10 Sept. 1836. I AM directed by the judges of the courts of Sudder and Foujdary Adawlut to acknowledge the receipt of your letter, dated the 10th October 1835, requesting information on certain points connected with the system of slavery in India.

The first point on which information is required is, as to "What are the legal rights of masters over their slaves, with regard both to their persons and property, which are practically recognized by the Company's courts and magistrates under the Madras presidency?"

The right of the master to sell or mortgage his Hindoo agrestic slave, with or without the lands to which they are attached, appears to have been recognized generally on the western coast; but in the rest of the provinces under the Madras government, where agrestic slavery exists, it is believed that the transfer of such slaves separately from the land is contrary to local usage, and not generally acknowledged by the courts or the officers of government, though in one instance it seems to have occurred in Tinnevely; and it appears equally clear that slaves are every where capable of acquiring property independent of their masters, though they possess none in their own offspring who belong to their masters.

Secondly, the law commissioners require to be informed, "To what extent is it the practice of the courts and magistrates to recognize the relation of master and slave, as justifying acts which otherwise would be punishable, or as constituting a ground for mitigation of the punishment? What protection are they in the habit of extending to slaves on complaints preferred by them of cruelty or hard usage by their masters? And how far do they continue to Mussulman slaves the indulgences which in criminal matters are granted them by the Mahomedan law?"

It is not the practice of the courts to make any distinction whatever in cases which come before them. The magistrate may, under the circular order of this court of the 27th November 1820, copy of which is understood to be with the Indian Law Commission, recognize the right of a master to inflict tazeer on his slave in certain cases therein specified; though in practice it would appear that no distinction is made. Such cases, whether before the courts or magistracy, appear to have been of very rare occurrence.

And, in reply to the third question, the judges would observe, that neither the magistrates nor criminal courts would, in any case contemplated therein coming before them, afford less protection to slaves than to free persons.

In the second paragraph of your letter it is observed, that "with the exception of Regulation II. of 1826, which merely rescinds, as being unnecessary and inconsistent with the Act of the 51 Geo. 3, cap. 23, a clause in a former regulation prohibiting, under a specific penalty, the exportation of slaves from Malabar, clause 2, section 15, Regulation VII. of 1802, and section 15, Regulation VIII. of 1802, annulling the exemption from capital punishment in cases of murder, where the person murdered is a slave, the commissioners do not observe in the Madras code of regulations any specific provision on the subject; and they are therefore desirous of being informed by what law or principle the civil and criminal courts and the magistrates have regulated their proceedings in cases of the nature indicated in the preceding inquiries."

The criminal courts and the magistracy have had for their guidance, since 1820, the circular order of this court under date the 27th of November of that year, before referred to.

The civil courts have been guided in their decisions by the local customs of the country, and there is no enactment other than section 17, Regulation II. of 1802 available as a rule in such cases:

And with reference to the question as to "What course would be pursued" by the courts "in cases where the claimant was a Mussulman, and the party claimed as the slave a Hindoo; and when according to the Hindoo law the slavery would be legal, but according to the Mahomedan law, illegal; and how a case, the conditions of which were the converse of the

the

the above, would be dealt with?" the court would observe, that as neither of the questions stated has been judicially determined by this court, the judges are not prepared to state how it would be dealt with. It is probable that local custom would be taken into consideration in deciding either question.

With respect also to the question "Whether the courts would admit and enforce any claim to property, possession or service of a slave, except on behalf of a Mussulman or Hindoo claimant, and against any other than a Mussulman or Hindoo defendant, and if so, on what specific law or principle the courts would ground their proceedings?" there are no decisions of the courts to elucidate the question; but from the concluding paragraph of the letter from the assistant judge of Tellicherry, dated the 6th instant, and its enclosures, it will be perceived, that the government in former days were both the sellers and purchasers of slaves in the province of Malabar.

In order that the Indian Law Commissioners may have before them every information connected with the system of slavery prevailing in the provinces subject to this presidency, the provincial courts were directed to call upon the several zillah assistants and native judges to submit copies of any final decrees, whereby property in slaves has been recognized or rejected, or which determine any question respecting slavery, together with all information in their power on the various points enumerated in your letter of the 10th October last; and copies of their replies, and of such decrees on the subject as have been forwarded to this office, I am directed to transmit to you for the purpose of being laid before the Indian Law Commission.

The records of the Sudder and Foujdary Adawlut do not contain any information on the several points noticed in your letter which is not contained in these returns, and in the papers on Slavery in India printed by order of the House of Commons in 1828, copy of which the court conclude is already in possession of the Indian Law Commissioners.

The judges, however, direct me to transmit to you, together with these returns, a copy of the reports received in this office on 10th December 1826, from the criminal judges and magistrates of Canara* and Malabar, on the system of slavery prevailing in those provinces, because it is expressly quoted by the acting judge of Canara as containing information which is therefore not repeated by him on the present occasion.

The acting judge of this court, whose attention has been specially directed to the consideration of slavery in India, begs to refer for his sentiments on this subject to the 10 enactments in modification of it, which he continues to advocate, as recapitulated in para. 17 of his reply to the queries of the India Board in 1832, given at page 576 to the Appendix in the Public Department to the Report of the Select Committee of the House of Commons in 1832 on India Affairs, which no doubt is in the possession of the Indian Law Commission.

RETURNS of the Judges of the Provincial Court, subordinate Judges and Magistrates.

NORTHERN DIVISION:

RETURN by the Provincial Court.

4. THE judges of the Sudder and Foujdary Adawlut will understand from the papers now placed before them, that, in the provinces subject to the jurisdiction of this court, slavery is but a name, and that the law is available to such as by usage fall under its denomination, in common and in equal degree as to all other classes.

5. They will also understand that neither decree nor document has been met with calculated in anywise to cast a doubt on the perfect claim to freedom possessed by individuals choosing to adhere to a condition which subjects them to the appellation of slaves, and but one opinion exists among the officers whose returns are now submitted.

6. Slavery in the provinces subject to the jurisdiction of this court may be considered a voluntary submission to the loss of liberty for the assurance of a certain but undefined subsistence comprehended in the general term "livelihood." It is an irregular system of servitude involving no loss of social rights, nor exposing the individual within its denomination to any other restraint than ordinary service imposes, where the agreement between the party who serves and him who is served is more clearly defined, or rather where an individual sets a fixed price on his labour.

7. The court have consulted its own records, and met with a decree in which a girl is sued for (*in propria persona*), the suit arising out of a sale by the mother. The girl is sued for under the denomination of "slave," and for the recovery of certain "joys" which it is alleged she carried off from the house of the plaintiff, who had purchased her for the purpose of instructing her, and profiting by her as a dancing girl. The suit being directed against the girl, is of itself a virtual denial of her possessing that character. The court refused to investigate whether the girl had been bought on the grounds that her mother had no right to sell in the case. The decree does not bear on the general question of slavery, and therefore is not forwarded.

8. The court refrain from discussing the subject before them at greater length, as they think the doing so would be profitless.

Appendix IX.

Returns.

No. 3.

Masulipatam,
10th March 1836.

* See No. 62, *infra*.

No. 4. *E. Newberry*, Acting Assistant Judge, Auxiliary Court, Masulipatam.
 11 Feb. 1836. WITH the exception of a few domestic slaves maintained in the houses of some of the richer Mussulmans in this town, I am not aware of the existence of any slavery in this part of the country. Even these can scarcely be called slaves, as they are never sold, and are merely domestic servants without pay. There is no civil decree on this subject in the records of this court.

In the year 1833, one Ruzza Mahammud was tried and sentenced by the court of Foujdary Adawlut to three years' hard labour without irons, for having purchased or otherwise procured children for the purposes of slavery; and this is, I believe, the only case of this nature that has been tried in this court.

No. 5. *J. Rohde*, Acting Assistant Judge, Auxiliary Court, Vizagapatam.
 18 Feb. 1836. I BEG to state, that my experience does not permit me to state any instance in which the system of slavery has been recognized; on the contrary, though I cannot quote the particular instances, I remember that, in some cases, where the complainant had purchased children during the famine, and had complained to the police of their having absconded, the right of the master was not acknowledged by the magistrates; and though I have made every inquiry, I can hear of no one instance of the relation between master and slave having been brought before this court, or that any distinction is made in a criminal court between slaves and other subjects.

No. 6. *C. Dumergue*, Head Assistant Magistrate in charge, Rajahmundry.
 20 Feb. 1836. 2. THE term "slavery" cannot be applied, in the sense contemplated by the commissioners, to the service performed by those persons in this district usually denominated "slaves;" it exists simply in the designation. The rights of this class of people, both as to their persons and property, are recognized by the magistracy equally with those of all others living under the laws. Their servitude is perfectly voluntary, and cannot be coerced beyond the limitation of regular service with impunity. This applies equally to all descriptions of slaves in this district, Hindoos or otherwise.

3. It may be here remarked, that the slaves form a distinct class by themselves; they cannot be admitted by marriage into any caste without conveying a stigma of dishonour upon the family with which they become connected, owing to their degraded state as the offspring of notorious prostitution among themselves.

4. The condition of the men is, however, by no means fixed or stationary; in some zemindaries and estates, particularly in the zillah of Guntoor, instances may be found of several, who, by their fidelity and merit, have been advanced to situations of consideration and respectability, as killadars and superintendents of villages.

No. 7. *R. Grant*, Judge and Criminal Judge, Nellore.
 22 Feb. 1836. 2. I BEG leave to state in reply, that no decrees on the subject of slavery are to be found on the records of this court; and as it appears, from all the inquiries I have made, that no slavery of any description has existed in this zillah, it is out of my power to furnish any information upon the subject required.
 3. I understand that some few Mahomedans in this part of the country have persons residing in their houses as family domestics, who were formerly purchased by them from their parents when young. But as these domestics are at liberty to leave the service of their masters whenever they think proper, they cannot be considered in the light of slaves.

No. 8. *T. H. Crozier*, Acting Head Assistant Magistrate in charge, Masulipatam.
 23 Feb. 1836. IN reply to your communication received in the beginning of February 1836, I have the honour to inform you, that slavery, in the usual acceptation of the word, does not exist in this district. It would appear that there are three descriptions of persons who commonly fall under the designation of "slaves;" but the term does not apply to them in the sense in which it is understood in the other parts of the world.

1st class are attached to zemindars, &c.; these slaves are called (the males) "khasauloo," and (the females) "danseeloo."

2d class are attached to cultivators. These are called "paulailoo."

3d class are in the service of Mussulmans; the males are called "goolams," and the females "baundees."

2. To these persons, however, although they live in a state of perpetual servitude to their masters, the term of "hereditary servants" might be more properly applied, as they are neither saleable, nor is the authority of the master legally recognized.

3. I believe the following is the only case on the records of this office in which a slave or master was complainant or defendant:—

4. In the year 1833, during the late famine, two moor-men purchased some children in the frontier talooks, with the intention of taking them to the nizam's dominions for slavery; but

but they were apprehended and brought to trial, and the case was committed to the criminal judge at Masulipatam.

A. Freeze, Magistrate, Vizagapatam.

IN reply to your letter under date the 30th November, I have the honour to state, that although instances do often occur, during a famine, of parents selling their children as slaves, the magistrates of this province do not recognize such sales as conferring any legal rights either over the persons or property of the individuals purchased. Nor do the people of the province seem to consider that they have any real or just claim consequent to such purchases; for in various instances that have been brought before us, the purchasers have immediately consented to restore the children to their parents.

A. Crawley, Judge, Chicacole,

I CANNOT find, with reference to these questions, that the legal right of masters over their slaves and property has ever been brought before the civil or criminal courts of this zillah; and I understand that the right of Mussulmans to slaves has never been recognized in this part of India.

The right of a master over his slaves, male and female, is defined by the Hindoo laws; but no cases respecting such right have ever been brought before the court. In case such should occur, as the law now stands, I conceive the court must, under section 16, Regulation II. of 1802, be entirely guided by those laws. The case of a Hindoo having a Mussulman slave or claiming such, is, I conceive, out of the question, from the nature of the Hindoo religious tenets.

A. Mathison, Head Assistant Magistrate in charge, Guntoor,

1. I HAVE the honour to acknowledge the receipt of your letter under date the 30th November last, and in reply beg to state, that slavery in the strict sense of the word cannot be said to exist in this district, which must account for my not forwarding specific answers to the questions proposed by the law commissioners.

2. The only class of individuals whose situation at all approaches to slavery are the male and female servants attached to the zemindars, and who are certainly designated as "slaves." They have been for the most part attached to their families for several generations, and their children look forward to continuing in the same employment. Whatever might have been the case formerly, the engagement has been for many years voluntary, and can be said to exist only as long as the zemindar is willing to pay for their subsistence, and they have no wish to change their condition. In default of either of these reasons for its continuance, the connexion would be most probably dissolved.

3. These individuals are certainly as fully within the protection of the law as any other class of the community; and while the fact of their being slaves would not in any way exonerate the master from punishment for any offence committed against them, no measure would be taken to enforce the right of the master to their services against their own consent.

4. Though, from my inability to discover among the records of my office any trace of such a case having ever been mooted, I am unable to speak with certainty on this point; still I think it may be inferred, that slavery is considered to be practically illegal in this district, and that no claim of ownership would in any way be recognized by the magistrate; nor do I think that it would be expected by any party that such a recognition should take place. This idea may probably have arisen from the knowledge that slavery is forbidden by our laws, and that its existence is at variance with the wishes of the government.

J. Stevenson, Magistrate, Ganjam.

I HAVE the honour, in reply to the court's letter, and its enclosures, on the subject of the system of slavery prevailing in this district, to report, that, from personal experience, I can afford no information. No case involving the right of master and slave has ever come before me in my official capacity.

Excepting amongst zemindars, I believe the several systems of slavery here existing to be of the mildest nature, and not likely to give cause for complaint; where disputes have arisen, the magistrate has never, as far as my inquiries go, recognized the master's right.

The zemindars exert over their slaves the most despotic power, not because it is allowed by, but because they are out of the reach of, the law. In one or two instances where slaves have succeeded in escaping out of the zemindars' territories, they have been protected, and the right of the rajahs to the person of the slave denied.

T. V. Stonehouse, Magistrate, Nellore,

STATES, that he has no information to afford on the subject, there being no system of slavery prevailing in his collectorate.

Appendix IX.

Returns,

No. 9.

1 March 1836.

No. 10.

2 March 1836.

No. 11.

6 March 1836.

No. 12.

4 March 1836.

No. 13.

16 March 1836.

H. D. Philips,

No. 14. *H. D. Philips*, Acting Assistant Judge, Auxiliary Court, Guutoor,
19 March 1836. STATES, that his inquiries lead him to believe that slavery is not known in this zillah.

No. 15. *J. Rohde*, Acting Register in charge of the Zillah Court, at Rajahmundry.
21 March 1836. I HAVE the honour, in reply to your letter of the 29th November 1835, to state, that I am unable to add any thing to the information contained in my letter on the same subject which I had the honour to address to you while in charge of the auxiliary court at Vizagapatam, further than that I am informed that the same rule of practice exists in this as in that court on the subject of the rights of masters and slaves, and also with regard to the relations of the latter in respect to the law.
I have received information of only one case which has in any way been brought to the notice of the court for many years, where it appears the magistrate in charge, Mr. Cazalet, admitted a rauzeenamah; but it does not appear that any civil suit has ever been brought.

CENTRE DIVISION.

- No. 16. Provincial Court.
4 May 1836.
2. THE zillah judge of Chittoor states, that there are no materials whatever in his office to throw any light on the subject, or which will enable the higher court to decide by what law or principle the civil or criminal courts have regulated their proceedings in cases of the nature under consideration, and explains, that, as slavery is not sanctioned by any system of law which is recognized and administered by the British Government, excepting the Mahomedan and Hindoo law, his court would dismiss all claims made by a Mussulman to the compulsory or involuntary services of a Hindoo, such being illegal according to the Mahomedan law, and that the criminal court has no power by which, under any circumstances, it could enforce obedience on the part of a slave, on the ground that imprisonment would effectually for the time deprive the complainant of the labour of the person complained against, and that the court would not sanction the master's resorting to corporal punishment to obtain obedience, while the civil court would not recognize any right to the property of a slave grounded merely upon his being the slave of the complainant.
 3. The zillah judge of Cuddapah and native judge of Cumbum state, that no information on the subject of slavery can be gleaned from the records of their courts.
 4. The officiating judge of Bellary declares, that his records are likewise barren of information on the subject of slavery, but explains the course which he would pursue in the cases stated in the secretary's letter.
 5. The acting judge of Chingleput states, that the cultivators of the Vellala caste in his district possess Pariah slaves, who serve them from generation to generation, and that they are kept in a very abject and low condition; but that complaints of ill-treatment are seldom if ever preferred by slaves against their masters, although such complaints are cognizable by the criminal courts under the circular order of the Foujdary Adawlut court of 27th November 1820.
 6. He also explains the respective ownership of the master and father in the progeny of a female slave married to a freeman, the manner in which children of both sexes generally become enslaved, and the right of their owners to the profits of their labour; and has submitted copies* of two decrees, and two decisions of the criminal court of Chingleput, in cases of contested claims to slaves, which are herewith forwarded.
 7. The assistant judge in the zillah of Cudallore declares his inability to afford the information required by the higher court, no cases of slavery having ever been brought before his court.
 8. The acting magistrate of the northern division of Arcot states, that it is quite out of his power to reply to the several points relative to the system of slavery in his district, no case of that description having ever been brought before him, or appearing, from a reference to the records in his kutcherry, to have ever occurred in any part of the country under his control.
 9. The acting magistrate of Cuddapah states, that the records in his office do not contain any materials to enable him to give any information respecting slavery.
 10. The magistrate in the zillah of Bellary reports, that after examination of his records, he has not been able to discover that any case connected with slavery has ever been brought before his office.
 11. The magistrate of Chingleput states, that the systematic slavery does not prevail in his district, but that the people, however, purchase individuals, generally of the Pariah caste, for the purpose of assisting them in carrying on their agriculture, and maintain them at their own expense, mortgaging their services, selling and giving them away according to their necessities or pleasure,—a practice he observes admitted and recognized both by the courts and magistrates; that no instances in which slaves have been punished by their masters, by

virtue

* *Vide* No. 28, *infra*.

virtue of their supposed right over them, or where such a proceeding has been admitted by the courts as justifiable, can be discovered; but that when the slaves are found to be remiss or negligent in their labours, the master contents himself with threatening, cautioning or suspending the payment of their wages; that no complaints of cruelty or any other maltreatment have ever been brought by the slaves against their masters before the courts or magistrates, nor are there any instances in which cases of that sort have been looked upon differently than those preferred by other individuals, nor do the masters of slaves consider themselves entitled to any mitigation of punishment to which they have subjected themselves by ill-using their slaves; that all complaints preferred by Mussulman slaves against their masters, on account of cruelty or hard usage, would be disposed of, under the Mahomedan law, without showing any leniency to the latter, and that cases brought by either class of slaves are inquired into and disposed of by the authorities according to the laws peculiar to each class.

12. The magistrate of the southern division of Arcot observes, that two species of slavery, one agricultural and the other domestic, prevail, the former to a considerable extent among Hindoos in South Arcot, but more particularly in the two southern talooks bordering on Tanjore, and the latter among Mussulmans in the large towns of Cuddalore, Portonova, and Chelimbarrum, especially in Portonova, where the population is nearly two-thirds Mahomedan, whose domestics are generally of this description; but in both these cases, though the parties are termed slaves, their labour may be said to be voluntary; that the only cases that have been brought before him have referred, 1st, to the detention of parties against their will; 2d, to one ryot having enticed the agricultural slave of another from his land; and 3d, to the purchase and forcible detention of children, male and female; that in the first case, upon the detention being proved, the parties have been instantly set free; but if the slave had incurred any pecuniary obligation, it has been the practice to ascertain by means of a punchayet what period he should have to work out his obligation, although, it is apprehended, were the complainant to insist upon his right to be set at liberty immediately, that the magistrate must concede it, leaving the owner to recover the sum he had paid by civil process; that in the second cases, when no pecuniary obligation has existed, the slave had either been declared at liberty, or an endeavour was made to settle the cases amicably, according to the custom of the country; and that in the third cases, which happen principally in seasons of famine and distress, no child, male or female, is permitted to be retained by the purchaser if the parents appear to claim and can prove their relationship, or if the child desire to return to its parents. In conclusion, he observes, that his practice is to make no distinction in a case of this kind between slave and freeman, and that on proof thereof, of cruelty by a master towards his slave, he would be visited with the same degree of punishment as if it had been committed on a servant wholly free.

13. In reply to the 1st query in the letter from the secretary to the Indian Law Commission, the judges beg to state, that they are of opinion that, where Puller or Pariah slaves attached to the soil from very remote periods exist under the Madras presidency, the criminal courts and magistracy have occasionally, though very rarely, interfered upon complaints brought by masters against these slaves for having struck work without any sufficient reasonable cause for so doing, and compelled them to resume their work; but few, if any, of the Puller slaves, which is the most degraded and miserable class in Southern India, are to be found within the centre division.

14. These agricultural slaves are sold and mortgaged, sometimes without, but generally with, the land; and it sometimes happens, that the husband and wife and children belong to different masters. But no legal rights of the owners either to their persons or property, beyond those of masters over their servants, appear to have been recognized by the courts or magistrates.

15. The judges are well aware that it frequently happens, in seasons of dearth and famine, that persons sell themselves, and parents their children, in order to escape starvation, and preserve the lives of their offspring; but these persons do not thereby become slaves in the strict sense of the term, nor do they entail bondage on their children, and are only bound by the gentle tie of gratitude, the purchasers seldom if ever claiming even compensation when such ingrates desert them.

16. In reply to the 2d query, they beg to state, that it is, practically, almost a mooted question in their division; but that they are of opinion, that all complaints of masters against slaves, or *vice versa*, would be treated by the criminal courts and magistrates in their division in the same manner as those between master and servant, or master and apprentice, and, consequently, that the relation of master and slave would not be recognized or considered in deciding upon such complaints.

17. And in reply to the 3d query, they have no hesitation in declaring, that, with exception of the distinction explained in their reply to the 1st query, they cannot conceive it possible that there can be any case in which equal protection in person and property will not be afforded to slaves so called, as to all other native subjects of the government; slavery, although existing in the territories under the Madras presidency to the extent above described, never having been distinctly recognized or sanctioned by our government, either in law or practice, and being directly repugnant to the first principles of British law and justice, and natural justice.

F. Lascelles, Judge, Chittoor.

No. 17.

The zillah judge has the honour respectfully to state, that after a careful examination of the records of his office, he has not been able to discover any civil decrees whereby property

12 February 1836.

Appendix IX.

Returns.

in slaves has been recognized or rejected by the court, or which have determined any question respecting slavery. It therefore does not appear that the civil court has ever practically recognized any legal right of masters over slaves with regard either to their persons or property; nor do the proceedings on the criminal side of the court furnish any information relative to the practice in cases where a slave is a party concerned. As, therefore, no materials whatever exist in this office to enable the zillah judge to throw any light on the subject, or which will enable the higher court to decide by what law or principle the civil or criminal courts have regulated their proceedings in cases of the nature under consideration, it only remains for the judge to explain what course would be pursued by the court in cases where a claimant was a Mussulman and the party claimed as the slave a Hindoo, when, according to the Hindoo law, the slavery would be legal, but according to the Mahomedan law, illegal; and also how a case, the conditions of which were the converse of the above, would be dealt with.

2. As slavery is not sanctioned by any system of law which is recognized and administered by the British Government, except the Mahomedan and Hindoo law, the court would dismiss all claims made by a Mussulman to the compulsory or involuntary services of a Hindoo, such being illegal according to Mahomedan law. The court has no power by which, under any circumstance, it could enforce obedience on the part of a slave. Imprisonment would effectually, for the time, deprive the complainant of the labour of the individual complained against, and this would be sufficient of itself to prevent any action being brought. Necessity would therefore oblige the master to resort to corporal punishment to obtain obedience, and this the court would not sanction.

3. The next point is, whether the civil court would admit and enforce any claim to property, possession or service of a slave, except on behalf of a Mussulman or Hindoo claimant, and against any other than a Mussulman or Hindoo defendant; and if so, on what specific law or principle the court would ground its proceedings. The court would not recognize any right which was made against the property of a slave, which was grounded merely upon his being the slave of the complainant; and the judge has already shown that the criminal court does not possess, under any circumstance, the power of securing obedience to the services of a slave.

No. 18.

P. H. Strombom, Judge, Cuddapah.

28 December 1835. No acts of slavery have been brought to the notice of the court, or have formed part of any suit filed before it.

No. 19.

Juckeeyooden Mahammud Khan, Native Judge, Zillah Cuddapah, at Cumbum.

23 January 1836.

No cause connected with slavery has ever come before him in the civil or criminal department.

No. 20.

A. E. Angelo, Judge, Bellary.

15 January 1836.

No materials whatever exist in this department for forming any judgment or throwing any light upon any part of the subject under review. It only remains, therefore, to state the mode of proceeding which he would adopt under either of the hypothetical cases in question. It may be clearer to premise, that he would not deem the term "slavery" applicable to any case in which the bondsman has sold his services, on whatever terms, to a master. Such would be treated as a sort of apprenticeship to be held binding, provided it involved no cruel or immoral condition. But the claim of a Mussulman to the services of a Hindoo slave, that is, of one who had come under his bondage without being personally consulted, and *vice versa* of a Hindoo to a Mussulman slave, would be at once rejected, as it is impossible that the legislators of one race of people could have provided for bondage to another race; and, as regards people of all other countries, the claim of the master to the involuntary and not self-conditioned services of a bondsman would be dismissed as unsupported by the enactments and inconsistent with the principles of the power now in rule.

No. 21.

H. Bushby, Acting Judge, Chingleput.

26 December 1835.

THE acting judge has the honour to forward copies of the only decrees* and cases to be found on the records of this office either on the civil or criminal file.

2. With reference to the various points enumerated in the letter from the secretary to the Indian Law Commissioners, dated 10th October last, the acting judge will confine his observations to the extent of slavery carried on in this zillah.

3. Cultivators of the Vellala caste in this zillah keep Pariah slaves, and they by reason of this bondage are obliged to obey whatever orders they may receive from their masters, provided such orders are not repugnant to law, justice and reason.

4. The

* Two Civil and two Criminal, *vide infra*, No. 23, *et seq.*

4. The masters merely feed and clothe them for the work performed by the slaves, and they generally are kept in a very abject and low condition.

5. The master considers himself justified in inflicting moderate chastisement upon his slave for disobedience of orders, and it seldom, if ever, occurs of a slave complaining to the constituted authorities of the ill-treatment he may receive from his master. But the courts do not recognize his right to punish the slave in an unlawful manner, without any just or good cause of provocation.

6. Under the Mahomedan law, a master is competent to inflict correction (tazeer) upon his own slave. If, therefore, the master should in a lawful manner correct his slave for committing an act by which tazeer is incurred, he is not liable to punishment; but if a master should chastise his slave without his having been guilty of any offence incurring tazeer, or in the event of the slave having committed such an offence, if the master should not correct him in a lawful manner, but treat him with violence and cruelty, the master would be liable to tazeer. (*Vide* extract from the proceedings of the Foujdary Adawlut, dated 27th November 1820.)

7. Slaves in this zillah serve the master from one generation to another.

8. If a female slave marries a free person, and has issue, the master can claim the female progeny, and the husband the male progeny, and the husband cannot carry his wife away without the consent of the master. And when it happens that the husband, who is a free person, consents to become also slave to the master, the master can in that case claim the services of both the male and female progeny.

9. If the master should turn poor, the slaves can be employed to work for hire, in order to procure the common necessities of life for their masters, and the earnings of the slave are made available for the use of the masters. And so it is the case with dancing-girls purchased for the use of the pagoda or for other native ceremonies. The purchasers derive the whole benefit of the earnings of the purchased.

10. Children are generally sold as slaves by poor parents whenever a famine happens.

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Returns.

W. Morehead, Assistant Judge and Joint Criminal Judge, Auxiliary Court, Cuddalore,

No. 22.

STATES, that, regarding slavery, no civil and criminal cases have ever been filed in his court. He is therefore unable to submit copies of decrees in cases of this nature; nor can he furnish any information on the various points enumerated in the copy of the letter from the secretary to the Indian Law Commission.

16 January 1836.

G. M. Ogilvie, Acting Magistrate, Northern Division, Arcot,

No. 23.

STATES, that it is quite out of his power to reply to the several points relative to the system of slavery prevailing in this district, as called for by the judges of the centre provincial court, slavery not existing in any part of the northern division of Arcot, to the best of his belief, nor is there on record any decision by the magistrates of this zillah, nor has there ever come before him a case to determine any question respecting slavery.

15 April 1836.

G. J. Casamajor, Acting Magistrate, Cuddapah.

No. 24.

THERE are native officers now in the kutcherry who have known all the business of the magistrate's office at different periods almost from its first establishment; and they all say, after consulting and referring to the records, that they contain nothing upon the subject.

12 March 1836.

F. W. Robertson, Magistrate, Bellary.

No. 25.

AFTER an examination of his records, he has not been able to discover that any case connected with slavery has ever been brought before the magistrate.

3 March 1836.

A. Maclean, Magistrate, Chingleput.

No. 26.

2. SYSTEMATIC slavery does not prevail in the district of Chingleput. People, however, are in the habit of purchasing individuals, and maintaining them at their own expense. When a person thus purchased abandoned his master against the latter's consent, the former is considered to have a priority of claim to any property which he may have. Masters also mortgage the services of, and sell and give away, their slaves, according to their necessities or pleasure; and the practice of doing so is admitted and recognized by the courts and magistrates.

21 April 1836.

3. No instance in which slaves have been punished by their masters by virtue of their supposed right over them, or where such a proceeding has been admitted by the courts as justifiable, is forthcoming.

4. Slaves are generally of the Pariah caste, and, when found remiss or negligent in their agricultural labours, the master contents himself with threatening, cautioning or suspending the payment of their wages.

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5. No

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5. No cases of cruelty, wounding, flogging, putting in the stocks, &c., are ever brought by the slaves against their masters before the courts or magistrates; nor are there any instances in which cases of this sort have been looked upon differently than those preferred by other individuals. Masters of slaves do not consider themselves entitled to any mitigation of punishment to which they may have subjected themselves by ill-treating their slaves.
6. All complaints preferred by Mussulman slaves against their masters on account of cruelty or hard usage are disposed of under the Mahomedan law. No leniency, as far as the magistrate has been informed, is ever shown to the latter.
7. Cases brought by either class of slaves are inquired into and disposed of by the authorities according to the laws peculiar to each class. Few Hindoo slaves are employed under Mahomedan masters, and those who are, are generally converted to the Mahomedan religion.
8. No decrees are procurable in this district regarding the disposal of cases of slavery.

No. 27.

J. Dent, Magistrate, Southern Division, Arcot.

28 February 1836.

SLAVERY, in the sense in which it is understood, as applying to the servitude in our colonies, is unknown in South Arcot, because neither the regulations of government nor the practice of the magistrate recognize the right of any individual to detain another in his service contrary to his will.

There are, however, two species of slavery, if such they can be called; one agricultural, where the cultivators are in a manner attached to the soil, and this is chiefly among Hindoos; the other domestic, where the slaves act as household servants,—this is chiefly confined to Mussulmans. But in both these cases, though the parties are termed slaves, their labour may be said to be voluntary, as they are at liberty to quit their service at pleasure, provided they are under no pecuniary obligation to their master.

Since the magistrate's appointment to the southern division of Arcot, the only cases that have been brought before him have referred,—1st, to the detention of parties against their will; 2d, to one ryot having enticed the agricultural slaves of another from his land; and 3d, to the purchase and forcible detention of children, male and female.

In the first cases, upon the forcible detention being proved, and no pecuniary obligation existing, the parties have been instantly set free, with full liberty to go where they pleased; but in some instances it has occurred that the slave had incurred a heavy pecuniary obligation in the shape of an advance for marriage or other ceremony, &c.; and when this has been made out, it has been the practice to ascertain by means of a punchayet what period the slave should serve to work out his obligation. Although, it is apprehended, were the complainant to insist upon his right to be set at liberty unconditionally, that the magistrate must concede, leaving the owner to recover his advance by civil process.

In the second cases, when no pecuniary obligation has existed, the slave has either been declared at liberty to serve whomsoever he pleased, or an endeavour was made to settle the cases amicably, according to the custom of the country,—a course that has been generally successful.

In the third cases, no child, male or female, having been purchased, is permitted to be retained by the purchaser, if the parents of the child appear to claim and can prove their relationship, or if the child desire to return to its parents.

Agricultural slavery of the description here described, it is believed, prevails to a considerable extent in South Arcot, but more particularly in the two southern talooks of Munnargoody and Chellumbrum, bordering on Tanjore. Domestic slavery is confined almost entirely to Mussulmans, whose domestics, male and female, are generally of this description; but it is chiefly to be found in the large towns of Cuddalore, Portonova and Chellumbrum, particularly Portonova, where the population is nearly two-thirds Mussulman (lubbies). Regarding female slavery, little is known; they are commonly domestics, sometimes concubines, and they may not have the facility to complain that the males have; but it is not believed that ill-treatment is exercised towards them.

The practice of purchasing children, it is believed, is not carried to any great extent, except in seasons of famine and distress.

Such, then, is a general description of the species of slavery prevailing in the southern division of Arcot; and though such is tolerated and winked at, as being the custom of the country, neither the regulations of the government nor the practice of the magistrate recognize any rights of the masters of slaves over the property or persons of such slaves different from what they have over any other of their servants who are absolutely free. A complaint preferred before the magistrate of cruelty by a master towards his slave would be visited with the same degree of punishment as if it had been committed on a servant wholly free. The practice of the magistrate makes no distinction in a case of this kind between slave and freeman, and the circular order of the Foudary Adawlut, referred to in the margin, especially provides for the punishment of ill-treatment by the master of slaves.

Neither the regulations nor the practice of the magistrate's court recognize any distinction whether an injury be committed upon a slave by his own master or by an indifferer person. By "injury" is here meant some grievous harm, in opposition to that wholesome correction which a master of slaves is acknowledged to have the right to exercise over them, as a master over his servants.

The magistrate having no jurisdiction in civil cases, he cannot state whether the courts would admit a slave to sue on the same terms as an undisputed free person; but he believes that no distinction whatever would be made.

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Were a Mussulman to prefer a claim before the magistrate to a slave that was a Hindoo by birth, or a Hindoo prefer a claim to a slave that was a Mahomedan by birth, the same decision would be given in both cases, viz. that neither party had any recognized right to the slave according to the regulations, and the case would be dismissed, and the slave permitted to go where he pleased.

The magistrate, in this return, has endeavoured to state as briefly as possible what the practice is regarding the system of slavery prevailing in South Arcot; and though in some instances he has been obliged to wink at it, his endeavours have been used, as far as legitimate means were in his reach, to put a stop to it.

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DECREES* forwarded by the Acting Judge of Chingleput, with his Report, dated 26th December 1835.

DECREE of the Register of the Zillah Court of Chingleput, dated 15th December 1826.

No. 28.

Case No. 45 of 1825.

THE plaintiff brings this action to recover 686 rupees, compensation for loss sustained by him for a period of 15 months from the 3d Audhy of Taurana to 29th Pooratausy of Parthepah, or from 16th July 1824 to 13th October 1825, at the rate of $\frac{7}{8}$ pagoda a day, owing to the defendants having failed to conform to an engagement they entered into with his grandfather, Gnjah Chetty, to work his boats, cattamarans, and drag his nets, which they continued to do up to the day they withdrew their labours as mentioned above:

In support of the claim to the services of the defendants, the plaintiff has filed two agreements, and states that it is customary in every other fishing village, as well as that of Woorrocoopum, near St. Thomé, where the parties reside, for families in succession to work under the same employer.

As the seventh and eighth defendants, who are the sons of the sixth, named Casee Covil Yagapen (who died during the pending of this suit), have entered into an engagement with the plaintiff to work for him, or on failure to pay 285 rupees as their portion of the claim and costs, which they admitted before the court, the court proceeds to determine how far the rest of the party sued are to be made answerable. The fourth and fifth defendants are connected with the prosecution, as being the persons who withdrew the plaintiff's labourers, and the witnesses for the plaintiff prove that they occasionally worked for them; but, as this is not sufficient to show that they were the means of creating any injury to the complainant, as the same evidence does not state precisely which of the defendants or how long they were with them, the court exonerates them from this decree.

It is mentioned on behalf of the first, second and third defendants, that the plaintiff's business was never interrupted during the time he mentions; that they are not his labourers; and that they only mutually assist each other in their occupation as fishermen, because the first defendant's mother and the grandfather of the plaintiff were sister and brother; but they were not bound to serve him. They deny any engagement to have been executed to that effect, and mention that the one marked No. 11 was forcibly obtained.

The witnesses for the complainant depose, that the three first defendants left the plaintiff's employ at the beginning of Audhy of Taurana, or in July 1824; that they worked till now, sometimes with fourth and fifth defendants, but most usually on their own account, and that thereby the plaintiff sustains a daily loss of about 20 fanams. They also mention that there was no undue means used to obtain the document marked No. 11; which, after noticing that the first defendant and his ancestors worked at the plaintiff's nets, &c. to that period, conditions, that, whereas the first defendant (by whom it was given) "having obtained permission of plaintiff to keep a separate net, he will cause his son, Moottappun, the second defendant, to work at the plaintiff's large net; on failure he will pay a penalty of 24 rupees to his caste people."

The other document is one which was given to the grandfather of the plaintiff by the first defendant and his father, and another person, engaging "on the receipt of 9 $\frac{3}{4}$ pagodas to work his boats and cattamarans and drag his nets, and binding not only themselves to fulfil their contract, but imposing the same obligation on their successional generations, to the end of time; if they do not act accordingly, they consent to be brought by force to their work."

It is strange that the plaintiff did not through the magistrate compel these defendants to work in his service, but allow so many months to pass without taking any earlier steps to cause their return. But as their own witnesses declare that they work for themselves, whilst they are under an engagement to serve under the plaintiff, the court decrees that they shall return to the plaintiff's employ, and repay him the sum of 200 rupees with costs, for preventing him, in their absence, from procuring the usual profits for his livelihood.

The court does not intend that this decree shall extend to any of the issue of these three defendants, because no man has any right to dispose of the service of his heirs in anticipation, or to bind them to the performance of manual labour to a particular individual or his family, because he has himself disposed of his own services to him. The father may have this

* See No. 21, *supra*.

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this control over his sons whilst they are depending upon him for maintenance, and as in this case the agreement was passed by the first defendant as the father of the second and third, they must all keep to it.

Half the costs of suit to be paid by the three first defendants. The other portion as agreed by the seventh and eighth.

No. 29.

DECREE of the Judge of Chingleput, dated 17th July 1828.

Case No. 299 of 1826.

IN the plaint the plaintiffs state, that the defendants had one share of all the three shares of Puttoor village, and the grounds and gardens attached thereto, of which share, Auroomy Pillay, the father of the first and second defendants, enjoyed a moiety, and the third defendant the other moiety; that the said third defendant sold his one-half of his one-third share, consisting of 16 nunjah cawnies and 4 poonjah cawnies, ground, garden and male and female slaves attached thereto, to Auroomy Pillay, the father of the said first and second defendants, for 25 pagodas, on the 25th Audee of the year Doondoobhee, 1802, and delivered over the lands under the bill of sale executed by him, from which time the said Auroomy Pillay enjoyed the said lands, as well as his own share, being altogether one of the shares, and died about the year Verama, 1820; that the first and second defendants subsequently enjoyed the said lands, but having occasion for money they sold to the first plaintiff garden land consisting of $2\frac{1}{2}$ cawnies, poonjah cawnies $10\frac{1}{2}$, and nunjah cawnies $33\frac{1}{2}$, making altogether 44 cawnies, as well as the ground, garden and appurtenances thereunto belonging, together with the place of residence in the village, and the place where the Pariahs reside, and nine male and female slaves, for 630 rupees, on the 29th Aunoy of the year Chittrabhanoo, 1822, and executed a bill of sale in the name of the said first plaintiff, received the said money and gave an acknowledgment for the same; that the said first and second defendants likewise delivered the bill of sale executed to their father by the third defendant, and at the same time put the nunjah and poonjah lands, the garden lands and the male and female slaves, into the possession of the first plaintiff; that having taken possession of the same, the first plaintiff endeavoured to carry on the cultivation for the present year, when, at the request of the second plaintiff, he sold to him the said lands for 300 rupees, on the 20th Audee of the said year, and executed to him a deed of sale and received the said amount; that he also sold the nine male and ten female slaves for 330 rupees, on the same date, and received the said amount, and executed to him a bill of sale to that effect, and delivered to the second plaintiff the said lands, as well as the said male and female slaves; that having taken charge of the same, the second plaintiff ploughed 33 nunjah cawnies of the said lands, and was cultivating the same, when the first, second and third defendants, attending to the instigations of Mattoo Pannumbra Pillay, lodged a fraudulent complaint with the tahsildar of the said tookhdy, brought a peon, and took possession of 13 cawnies of the land, and the said male and female slaves; that the second plaintiff presented a complaint to the collector, who sent his takeed, dated 30 August 1822, to the tahsildar, to inquire and make his report, who made his report to the collector according to his pleasure, stating that the money had not been paid for the said bill of sale, on which the collector directed that the lands be cultivated by the persons who had cultivated them the last year, and referred the second plaintiff to the civil court; that the second plaintiff paid the teervak to the sircar on the 20 cawnies cultivated by him, and enjoyed the produce in that year; that in the month Audee of the year Swabhanoo, 1823, the said second plaintiff attempted to plough the said lands, when the defendants combined and took possession of them and cultivated the same; that in the year Tauranah, 1824, when they were about to institute their suit against the defendants for the recovery of the lands and the slaves, &c. the first and second defendants satisfied them, and promised to restore the lands and the slaves mentioned in the bill of sale on the 1st Audee of the year Partewah, 1825, and also agreed to pay them (plaintiffs) 200 rupees on the same date, in consequence of their having enjoyed the lands up to that period, to which effect they (first and second defendants) executed an agreement on the 36th Tye of the year Tauranah; that the defendants enjoyed the produce for the said Tauranah year, and instead of conforming to their agreement in the year Partewah, they enjoyed the lands and did not restore the male and female slaves, nor pay the rupees mentioned in the agreement; that the third and fourth defendants continue cultivating the said lands; that the suit is in consequence instituted against all of them. The plaintiffs therefore sue to recover from the defendants the restoration of the malgoozary, nunjah, poonjah and garden land, and two nevashanums, of which the particulars are stated in the plaint, and the 19 male and female slaves, and 200 rupees, agreeably to the above-mentioned agreement.

In their answer, the defendants deny the correctness of the plaintiff's claim, and the first defendant moreover states, that he was mad from Eswarah, 1817, to Tauranah, 1824, and his hands and feet were chained for one year; that he was also wandering about some days without fetters, according to his pleasure; that whilst it was thus, the second plaintiff, thinking to assume to himself the lands and male and female labourers, &c., attached to his and the other three defendants one share, in addition to the lands attached to his own two shares, and to enjoy the said village as his exclusive right, carried him (defendant), who was afflicted with insanity, to his house, about 12 o'clock at night of the 29th Aunoy of the year Chittrabhanoo, and wrote a deed of sale in the name of the first plaintiff, his elder sister's son,

son, as if this defendant had sold the lands and other property in dispute, and obtained the signature of this defendant, and also his signature for the second defendant to the said deed, and procured it also to be witnessed by persons on friendly terms with him; that he was not aware of what the said plaintiff wrote in the said deed of sale; that the first or the second plaintiff did not pay as cash to him on account of the said deed, nor did he give his receipt for the same; that the first plaintiff was not in the place where the said deed of sale was written, but was then at Munnargoody; that the second plaintiff having ploughed some of the lands in dispute, the third and the second defendants complained of it to Cooppoo Row, late a tahsildar of the above tookoody, who ordered the second plaintiff not to plough the said lands; yet the second plaintiff again collected together about 100 labourers and 64 plough-oxen, ploughed some of the lands in dispute, on which the second and third defendants again made their complaints to the said tahsildar, who sent two peons to bring the persons before him; that the second plaintiff then lodged his complaint before the collector of the said soobah, and the third defendant also made his complaint to the said gentleman, who directed the tahsildar to inquire and report upon the case, who accordingly inquired and reported, informing, that the deed of sale in dispute was fraudulently written, and signature obtained from this defendant, when he was of unsound mind, at 12 o'clock at night; that it was not proved that money had been paid on the said deed of sale, and some other circumstances; on which the collector directed the tahsildar to cause the defendant to pay to the second plaintiff the expenses of the cultivation of such land as had been illegally ploughed and cultivated by him, and to cause the defendants to enjoy the said land with the produce thereon, and to grant a pottah in the name of this defendant; that the tahsildar sent for the second plaintiff, who objected to receive the expenses of the cultivation from the defendant, and to restore the produce; that after the crops had suffered great damage, the said tahsildar appointed the sircar servants, thrashed and laid the produce in heaps, and then wrote to the collector that the produce would not equal the payment of the teerwah due on those lands, and that that produce should be given to the second plaintiff, and the sircar teerwah be collected from him; on this the collector sent his takeed, directing him to put the produce of the said land in the possession of the second plaintiff, and collect from him the sircar money, and to enter the sist collection, jumma-bundee and puttah, in the name of this first defendant for that year, and not to allow the said plaintiff to interfere with the land in dispute for the next year (the present one), from which time the orders for cultivation, jumma-bundee and puttah, &c. are entered in his (this defendant's) name, and he and the other defendants cultivate the said land.

This defendant observes, that while the deed of sale written in the name of the first plaintiff was in dispute between the second plaintiff and the defendants, and the lands and the slaves, &c. mentioned in the said deed of sale had not fallen into the possession of the first plaintiff, how could the first plaintiff sell the said lands, &c. to the second plaintiff? that the labours, &c. are also valued at 330 rupees, but it has not been explained by what means the value of 330 rupees was ascertained; that the statement that the defendant has agreed to pay 200 rupees in consequence of his enjoyment of the disputed lands, and that the first and second defendants executed an agreement in the name of the two plaintiffs on the 26th Tye of the year Tauranah, engaging to deliver over the disputed lands on the 1st Audee of the year Tauranah, is not true; that while it is asserted in the plaint that the deed of sale was executed in the name of the first plaintiff, there was no reason to obtain the agreement from this defendant in the name of the second plaintiff conjointly; that if the first plaintiff had the land sold to the second plaintiff, there was no necessity for him to obtain the agreement, in his name also, for lands to which his right was lost. In regard to the statement that the third defendant sold the lands attached to his half share to the father of the first defendant, and executed a deed to him, and that deed was also given to the first plaintiff by the first defendant, he states, that the third defendant, or the father of the first defendant, never enjoyed the lands, &c. separately; that the father of this defendant did not purchase the same; that the first defendant did not give it to the first plaintiff.

The second defendant, in his answer, denies having been present when the alleged deed of sale was given, or having signed it, and he accedes to the answer given by the first defendant, he being his elder brother.

The third defendant, in his answer, states, that of the land mentioned in the plaint, half belongs to him and the fourth defendant, and the other half to the first and second defendants; and he denies the truth of the statement that he executed a deed of sale, for the half share which belongs to himself and the fourth defendant, to the father of the first and second defendants, on the 25th Audee of the Doondoobhee; and that on the deed of sale in dispute being executed, the first defendant gave the first-mentioned deed of sale to the first plaintiff, and states, that while the fourth defendant, his younger brother, is alive, he has no right to execute alone a deed of sale to the father of the first defendant; and that in the plaint it is stated, that the joint share of these four defendants is 44 nunjah and poonjah cawnies, of which 22 cawnies will then be the share of this and the fourth defendant; but the plaintiffs have stated that this defendant executed a deed of sale for the 20 cawnies of his share to the father of the first defendant.

The fourth defendant, being the younger brother of the third defendant, acknowledges the answer of the latter on his part also, and states that it is not true that the third defendant sold the lands, &c. attached to the half share belonging to him and this defendant; and that if it be true, there must be his signature in that deed of sale.

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In the reply, the plaintiff denies the truth of the statement contained in the answer; and in respect to the first defendant's statement that he was mad, and that the land in question was from the year Chittrabhanoo, 1822, to the present period, entered in his name in different vouchers, viz. the account called sungooovadee dittum, puttah and tundull, and that he paid money to the sircar; they asked, how could the sircar give pottah to a madman? and how can a madman pay money to the sircar? and how can they declare him to be a madman while he cultivates the land and pays money to the sircar? and will any person in the world receive a bill of sale from a madman? that these circumstances are not stated in arzees addressed by the tahsildar to the collector, nor in the takeed issued by him to the tahsildar; that merely, that the second plaintiff should sue in the civil court; and in respect to the observation contained in the answer, that while the third defendant is entitled to 22 cawnies of land out of the 44 cawnies of land alluded to in the plaint, how could he sell 20 cawnies? he replied, that at the time when the third defendant cultivated the same, he had 20 cawnies of land in his charge, and after he sold his share of land to the first defendant's father, he (first defendant's father) cultivated the same, and improved and cultivated certain waste land, by which the said four cawnies of land was increased in the pymash, or measurement, made by the sircar; and a puttah was granted for 44 cawnies to him (first defendant's father), and subsequently to himself. They further state, that when the land was sold by the third defendant, the fourth defendant was quite young, and was under his guardianship, and they from that time lived a joint family without dividing.

The rejoinder contains merely a denial of the statement set forth in the plaint, but no new argument is brought forward in it. It is, however, asserted, that at the time of the alleged sale of the land by the third defendant to the father of the first and second defendants, the fourth defendant was then 21 years of age.

The evidence adduced in this case is very contradictory; and the depositions of the witnesses examined in it are so much at variance with each other, that the court has no hesitation in, declaring some of them have deposed falsely. It may perhaps be difficult to determine on which side the truth lies, but the court inclined to give credit to the testimony of those witnesses who have deposed to the sale of land to the first plaintiff by the first and second defendants. The court considers this fact to be established by the evidence of the witnesses Jyavier, Mamemootoo Pillay, Moodookistna Pillay, Rumalinga Pillay, and Paroomah Pillay, who, with exception of the latter person, have also deposed to the amount of the purchase of the land having been paid to them.

The story of the first defendant, that he was mad for four years, and that the bill of sale regarding the lands in question was extorted from him in the night, appears to the court altogether unworthy of credit; and the court cannot believe the testimony of the witnesses Soobroya Pillay (fourth witness), Mootta Pillay, and Soobroya Pillay (first witness), that they saw this deed drawn out in the hall of the second plaintiff's house at about midnight, from another apartment in the same house, by the light of the moon. These witnesses also do not agree in regard to the time when this document is said to have been executed. The witness, Soobroya Pillay (fourth witness), represents that it took place on the 29th Anny, in the year Eswarrah; whereas the witnesses Soobroya Pillay (first witness), and Mootta Pillay, state that it was in Anny of Chittrabhanoo.

But of the land purporting to have been sold by the first and second defendants to the first plaintiff, there is not evidence to the third defendant having sold the share of the land belonging to him and the fourth defendant to Aroomy Pillay, the father of those defendants. The court therefore cannot confirm the sale of this portion of the land to the first plaintiff.

In regard to the slaves said to have been sold at the same time, the bill of sale does not specify the number attached to each share of the land transferred; nor indeed have the defendants shown their right to make over this body of people to the plaintiff. The court cannot therefore admit this part of the claim. The court also disallows the plaintiff's claim to the sum of 200 rupees, claimed under the agreement, exhibit No. 22. As their right to the whole of the land referred to in that document has not been admitted, there can be no reason why the defendant should pay a penalty for preventing their enjoyment of the same.

On a consideration of the foregoing, the court decrees that the half-share of one-third of the village belonging to the first and second defendants be delivered to the first plaintiff, and dismissed the rest of the plaintiff's claim.

30.—CRIMINAL CASES forwarded by Acting Judge of Chingleput, 26th December 1835.

No.	Names.	Abstract of the Crime or Charge.	Date of			Released, or if allowed a Fine.
			Apprehension.	Leaving the Talook.	Arrival.	
24	Alley Mercoyen and Ebram Saeb Magapale.	-- The prisoners charged with having received, purchased and caused to be stolen, by so receiving 29 children, for the purpose of making them slaves.	-- 4 January 1825.	-- 7 January 1825.	-- 17 January 1825.	-- The prisoners do not deny having received the children, but account for it during the late famine; and by the statement of many of the children before the magistrate, it would appear, that, when destitute of food, some of them had spontaneously placed themselves under their protection, and others were sold by their parents or left with the prisoners by them. There is no evidence that they forcibly abducted them from their parents, or purchased them surreptitiously; they are therefore acquitted of the charge. But as it appears suspicious that men with such large families should add so considerably to their numbers without any assignable reasons, and as they are both residents of Cuddalore, where the practice prevails of transporting children, and the first prisoner being a shipowner, the assistant criminal judge has required of Alley Mercoyen and Ebram Saeb to give a penalty bond in the sum of 200 rupees each, that they shall not make traffic of the children they have or may have in their possession, or export any at any time. 23d March 1825. (True copy) (signed) H. Bushby, Actg. Criminal Judge.
171	Ammanee -	-- Forcibly taking away one day (date unknown), Parnatty, alias Lutchemy, daughter of the prosecutor, Vennoomalery Moodelly, and having a false deed executed as if the girl had been sold to her.	-- 5 September 1826.	-- 13 November 1826.	-- 27 November 1826.	-- The assistant-criminal judge acquits the prisoner of the abduction of the child, or of having obtained her by any undue means. The proceedings held before him go to confirm her statement of having purchased the girl from the parents, who are the complaining party, during the dearth of 1824, when they are said to have executed the bill of sale produced by the accused, as she has consented to give up their daughter. The court directs that she be restored, and the prisoner released. 29th November 1826. (True copy) (signed) H. Bushby, Actg. Criminal Judge.

SOUTHERN DIVISION.

Provincial Court.

No. 31.

3. ALTHOUGH slavery is shown by the reports, which are now submitted, to prevail in several parts of the division, there is no doubt but that slaves are treated by their masters with much kindness, and that they are looked upon more as being members of their families than as their bond servants.

4. No instance has ever come to the knowledge of the judges in which a master was accused of treating his slave with undue harshness. On the whole, the court are led to believe that the state of slavery is, in this part of India, a condition of contentment and happiness to those living under it.*

G. S. Hooper, Judge, Madura.

No. 32.

2. I AM unable to afford any information on this subject, grounded on observation and experience in the performance of my duties as judge and criminal judge of this zillah. Not a single case either of a civil or criminal nature has hitherto come under my cognizance in any way involving the question of property in slaves. The little I have to offer on the subject has therefore been solely derived from occasional conversation with the natives, and inquiries instituted through the most intelligent of my court servants, and others, since my attention was more particularly directed to it by the papers before me.

3. The

* For copies of two decrees which accompanied this report, see Nos. 45 and 46 of this Appendix.
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3. The principal collector and magistrate of the district must be infinitely better qualified than myself to furnish information regarding the customs prevailing among the inhabitants, as his duties necessarily bring him more immediately in contact with them, and his report will, I dare say, have rendered all I have to submit, on that point of the subject, almost superfluous. The following, however, is the substance of the information I have collected relating to the various forms of slavery (so called) now prevailing in this part of the country:—

1st. An inhabitant proprietor of land purchases a slave (called Adema) of the Pariah or Puller castes, to assist in the cultivation of his land, and perform whatever work he may require of him. In this case the master is bound to maintain the slave, get him married at his own expense, and protect him and his family; exercising the authority of a master over him, and over his property too; if he should become possessed of any, which sometimes happens by thieving or other means. This, however, would appear to be rather with the consent of the slave than in virtue of any right vested in the master, as slaves of this description are not incapacitated from possessing property independent of their masters, and leaving it to their heirs; but should the slave die, the master generally, it is believed, takes possession of it himself. The master is said to have an absolute claim to the person and services of his slave, but this is merely nominal in effect, for should the latter, in consequence of ill-usage, or for any other reason, choose to desert his master, he is at liberty to go where he likes, and even to attach himself to a new master; in which case, the former master would lose the purchase-money he originally paid for the slave, unless (as is said to be sometimes the case) the new master chooses to pay it; but the other neither insists upon the restoration of the slave nor for the payment of the money; and should the master, from poverty or other cause, cease to afford maintenance to his slave, the latter seeks it elsewhere by transferring his services to some other master, or by labouring as a freeman for hire. The master may dispose of his slave to another person, but not without his (the slave's) consent. But, I believe, the connexion between a master and his slave is very seldom broken in any way, as their mutual interests so much depend upon its continuance. Should disputes arise, they are probably settled amongst themselves by punchayet, or by the native revenue and police authorities in the talooks, for they never come before the European authorities.

2d. Rich natives, principally in seasons of scarcity or famine, buy children of both sexes, and train them up as domestic servants in their families, or they purchase the services of grown-up persons, who voluntarily sell themselves as bondsmen in times of difficulty, sometimes for life, sometimes for a term of years. These slaves are fed and clothed, and sometimes married at their master's expense. Should they afterwards prove thieves and rogues, they are turned adrift; and, on the other hand, should they dislike their master's service, they leave it and seek shelter and service elsewhere; yet no appeal to the authorities is even made by the master, in such a case, for the recovery of the slave.

3d. Mussulmans also purchase Hindoo children from their parents and others. This also most frequently happens in times of scarcity, when their parents are starving themselves and unable to support them, but sometimes the children are stolen or kidnapped and sold to them; such slaves sometimes rise to so much consequence in the family in which they are brought up, that they are no longer regarded as slaves, but become as members of the family. They almost always become converts to or are brought up from infancy in the Mahomedan religion, and married to females of the same faith, but of a lower grade. After three generations, however, their descendants are considered true Mussulmans, and are admitted to all rights and privileges as such.

4th. Dancing women are in the habit of purchasing female children of the better castes, as slaves, whom they bring up in all the accomplishments peculiar to their own profession. But these girls, after they grow up, claim equal right to the property of their mistresses as if they were their own daughters, and, after their mistresses' death, perform their funeral rites, and become heir to their property, after which they become entirely free. They are, in fact, to all intents and purposes, on the same footing as adopted children.

4. The relations above described (except, perhaps, those of the 1st class) certainly cannot be said to constitute true slavery according to the general acceptance of the term; such, however, I am assured by my informants, is the real state of things in this part of the country at present. If so, it is a mere nominal slavery, divested of all its worst features, and assuming the mildest aspect and form imaginable, often proving a blessing rather than a curse.

5. On the Malabar coast it is far different; there slavery exists in its most degrading form; there, as I know from personal experience and observation, it is the cause of constant litigation in the courts. Slaves are bought and sold, and transferred from one owner to another, just like cattle or any other kind of property; and in almost every suit regarding land, they are included as its natural and inseparable appurtenances, and are sold like other property in satisfaction of decrees. The rights of masters and slaves are there, of course, accurately defined and fully recognized and adjudicated by the courts.

6. I am told, indeed, that in former times slaves in this province were flogged and tyrannized over by their owners, who then exercised much greater power over them than they do now, but that since the commencement of our rule, in consequence of the equal protection afforded to all ranks and classes of people, such practices have almost entirely ceased, and masters no longer exercise or pretend to possess such absolute right over the persons and actions of their slaves as they used formerly. It is not to be supposed, however, that slavery ever existed in this part of the country as it does now in Malabar: that it has, at any rate, undergone a great change, is manifest from the fact that it neither leads to the institution of civil suits, nor is apparently the cause of criminal prosecutions in the court.

7. But

7. But what tends more than any thing else to prove that slaves are not really regarded here in the light of property is, that no slave was ever yet sold in satisfaction of a decree of court, nor has it ever been attempted to make them available for that purpose. Nothing, I think, can be more conclusive than this.

8. After a most careful search of the records, I can only find one final decree, "whereby property in slaves has been recognized or rejected, or which determined any question respecting slavery;" and this is a decree passed in 1823,* by an acting register of this court, which has never been executed to this day; there is only one other suit to be found which at all refers to the subject under discussion, and that is O. S. No. 218 of 1824, in which the plaintiff sued for the recovery of a slave (third defendant) valued at 14 rupees, alleged to have been taken from him by the first defendant and his younger brother the second defendant, and for an award to secure to him (plaintiff) the services of the third defendant for ever. A razeenamah was filed in this case before the pundit sudder ameen, in which it was stipulated, that first and second defendants should give up the third defendant to plaintiff, receiving from him three cully poons; and so the matter ended.

9. I can discover nothing in the criminal records at all bearing upon this subject, except four cases noted below† in which the prisoners, chiefly females, were charged with having kidnapped children for the purpose of selling them as slaves; in one of which the prisoner was sentenced by the court of circuit to three years' imprisonment with hard labour.

10. As no precedent other than the salutary decision above mentioned (too insignificant in all respects to have much weight) is to be found on my records to show what the former practice of this court has been, and as I have had no opportunities myself, since I have presided in it, of deciding questions of a similar nature, I am of course unprepared to state "what are the legal rights of masters over their slaves," with regard both to their persons and property, which are practically recognized by this court, as required by the first question proposed by Mr. Millett.

11. But I presume that in civil cases the court must be guided by clause 1st, section 16, Regulation III. of 1802, and by what might appear in evidence to be the usage and custom of the country in such matters; what would be the course pursued in the particular cases, the conditions of which are specified by Mr. Millett, I cannot pretend to say, as nothing of the kind has ever come before me. But I have no hesitation in declaring, that no claim to property, possession or service of a slave would be admitted or enforced except in behalf of a Mussulman or Hindoo claimant, and against any other than a Mussulman or Hindoo defendant.

12. I am equally unable, for the same reasons, to give any definite answers to the second and third questions founded upon any course hitherto pursued in this court, further than to state, that I would make no distinction of persons in the administration of criminal justice in any case whatever; that I would not recognize the relation of master and slave as justifying acts otherwise deserving of punishment; nor even as constituting a ground for mitigation of it; that I would extend to slaves complaining against their masters the same protection as to any other description of persons; and that I would in no case afford less protection to a slave than to a free person.

T. Prendergast, Assistant Judge, Auxiliary Court, Tinnivelly.

No. 33.

In reply to your letter of the 30th November last, I have the honour to forward translation of a decree passed by the sudder ameen of the auxiliary court, recognizing property in slaves. There do not appear in the records any decrees of this description passed by my predecessors; and those cases which have come before me are either still undecided, or the time for appeal against any decisions thereupon has not elapsed. Many others exist of a similar description to that now forwarded; but no different principle is involved in them, and no question as to the respective rights of masters and slaves is determined by them. The latter is claimed in similar form with goods and chattels, and with equal indifference awarded to the party whose right is proved. The document B.‡ shows, that so lately as January 1834, four slaves were sold openly before the auxiliary court, in satisfaction of a decree passed by a district moonsif. The following is a summary of the information which I have gathered regarding the state and condition of slaves. In this zillah, slaves are to be found among all the tribes of the Sudra caste. The Vellala, Vadakar, and other corresponding tribes are not required to perform the drudgery which is exacted from the Pariahs, &c. but are employed chiefly about the house and in the lighter duties of cultivation. They have also great advantage in point of recompense for their labour; for, while the Pariahs get only two and a half measures of paddy per day, and their women two measures, the former receive four, and their women two. It is remarkable that variations in the price of grain are declared not to affect this allowance; but the truth of this assertion may be fairly doubted. Among the higher classes of slaves, the daughters are always reserved, if of pure blood, for the harems of their masters or his relations; and from the offspring of these alliances are taken wives for the male slaves. From this system of connexion probably

* See No. 48, *infra*.

† Calendar case, No. 8, 1st sessions, 1835; criminal case, No. 76 of 1832; ditto, No. 63 of 1833; ditto, No. 66 of 1831.

‡ No. 50. A decree of the sudder ameen of this court, also transmitted, will be found *infra*, No. 49.

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arises the confidence which is reposed in the female slave by a master of her own caste. She is employed in washing, bringing water to the house, and attending his children, and is exempt from all laborious duties. Her employment, in short, is the same as that of a wife in a family where no slaves are kept. The expenses of their marriages and funerals are borne exclusively by their masters; each male, whether married or not, is provided with a house for himself, and he is permitted to amass whatever by his diligence he may acquire. Such acquisitions, however, are very rare, although in executing a prescribed task no want of zeal on the part of the slave is discernible. He works with alacrity, and his labour is more valuable than that of a hired day-labourer, while his wages are little more than half the hire of the latter. This alacrity, however, is confined to task-work; in the field they require to be constantly watched, and the cane in constant use. They generally labour from eight till four; but when occasion requires it, their whole time, day and night, must be spent in the field. When not required by their masters, they are permitted to work for hire, and by this means some have attained the means of purchasing their freedom, though they can seldom procure it for less than double their own value. The price of a well-bred, strong young man very seldom exceeds 20 rupees; yet there are few candidates for the honour of being free at the sacrifice of a comfortable and certain provision. Many attain to a very great age (a proof that they are not worked beyond their strength); and when they become infirm and useless, they are still fed by their masters. It is the prospect of this, above all things, that reconciles them to serve a hard master. With one who is mild and indulgent, their life is easier than that of a man who earns a precarious subsistence as a day-labourer. Many instances have occurred of men in adversity being supported by the gratuitous labour of their slaves; and one landholder in this zillah is at this time in the daily receipt of half a measure of grain from each of his 500 slaves.

When property in slaves is acquired by purchase, it is customary to take a bond from each male, whereby he engages himself and his posterity to serve his master and his heirs for ever. Such purchases are seldom made, except when the land also is bought, for slaves are for the most part attached to the land as part and parcel thereof. When an estate is divided, the slaves are indiscriminately awarded to each shareholder without reference to their castes. The Vellala is not valued at a higher rate than the Pariah, although their respective prices in the market may be 20 rupees for the former, and only four or five rupees for the latter. The females are always allowed to live with their husbands, whether the latter belong to their masters or to strangers. The stranger in such case has the benefit of the work she performs, but she still continues to be the property of her master, and her children, as soon as they are able, are obliged to work for him. The women appear to be of little value as respects the labour they perform, yet their price is generally higher than that of men of equal age and qualifications, owing, of course, to the arrangement I have just mentioned.

Among the Mussulmans in this zillah the system of slavery differs in no respect from that prevailing generally throughout India. There are very few Mussulman slaves in Tinnivelly and the inland talooks; but the Lubbays, on the coast, circumcise every slave whom they purchase, whether of high or low degrees, and they are thenceforth treated as Mussulmans. In Tinnivelly, Pettah, Mailapalliam and Palamcottah, where the Hindoos greatly preponderate over the Mussulmans, the better classes of slaves are alone subjected to the aforesaid operation. Pariahs and Pullers are held, out of complaisance to the Hindoos, too vile to be brought within the pale. As the circumcised cannot be sold to a Hindoo, the value of a well-born slave is very materially affected by his circumcision; for a Mussulman purchaser considers him to be of no greater worth than a circumcised Pariah, and a Hindoo would have a feeling of horror at the idea of taking him into his service.

The records of this court do not show that any legal right of masters over their slaves has been recognized hitherto, save that of transferring them by sale or gift to other persons. No cases have occurred wherein the relation of master and slave has been introduced as a plea either in justification of a criminal act, or in mitigation of punishment. No complaints of ill-usage have ever come before this court wherein a slave and his master were the parties concerned; neither have any Mussulman slaves ever been placed in a situation to require the indulgences granted to them by the Mahomedan law. There are no instances on record of slaves having sought for protection, whether against their masters or other wrong-doers.

The rule contained in clause 1, section 16, Regulation III. of 1802, appears to me to apply with propriety to cases involving questions regarding slavery. As it is decidedly contrary to the spirit both of the Hindoo and Mahomedan laws to permit slavery in such a form, I conceive that no claim can stand if opposed to any direct enactment in either code. But it will be found that immemorial custom has sanctioned the purchase and possession of Hindoo slaves by Mussulmans, and I have already remarked, that (with one local exception) slaves bought by Mussulmans are circumcised, and thus cease to be Hindoos; I am therefore of opinion, that many cases may arise wherein Mussulmans may be decreed to be legal owners of slaves of Hindoo origin. The converse, however, does not hold, for it would be difficult, or perhaps impossible, to find any Hindoos with Mussulman slaves in their possession, their law having produced a general repugnance in their feelings to the reception of slaves of that class, and proselytism being unknown to them. In conclusion, I would observe, that there is one form of slavery which should supersede all considerations of caste and religion between Hindoo and Mussulman, and that is, when a man offers himself as a slave, voluntarily resigning his liberty with a view to obtain the paltry sum which another may consider to be the value of his labour. Under all circumstances I should consider

sider an Englishman or any other alien debarred from the right of holding slaves by the hostility which the English law displays to that brutalizing practice.

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Return.

F. M. Lewin, Judge, Combaconum (Tanjore).

No. 34.

20 January 1836.

I HAVE the honour to forward copies of four decrees passed; one by the southern provincial court of appeal; two by the judge, and one by the moofy sudder ameen of the late zillah court of Trichinopoly, which are all that can be discovered after due search in the records of this court, although it is probable there are others, if there was any clue to find them by.

The plaintiff in this suit* was master, and the defendants his slaves, on whom the plaintiff advanced 18 rupees, and purchased them as his Pullers or menials from their uncle. The defendants having absconded from the plaintiff, this suit was brought. The moofy sudder ameen, who tried this suit, decreed to plaintiff his legal right over the slaves, the defendants, who were ordered by the decree to serve the plaintiff as his punnials.

The decree in this suit † recognizes the right of transferring Pullers together with lands.

Original suit, No. 90 on the file of the late zillah court of Trichinopoly, 16th April 1807:— In the plaint filed in this suit ‡ the plaintiff sued to recover from the defendant certain lands and also Pullers, on mortgage of which he advanced a certain sum of money on condition of redeeming it at a certain stipulated period, and on failure thereof the property to be considered as sold. The decree in this suit was passed awarding to the plaintiff the sum he advanced, together with interest.

In this suit § the plaintiff sued to recover certain land and Pullers attached thereto, which had been sold to him on a bill of sale. The suit was dismissed by the failure of the plaintiff to attend at the appointed time.

These claims show that the Pullers or menials have been sued for in decrees as transferable from one individual to another, together with the lands sued for, and this is customary in these provinces.

But legal rights of masters over slaves appear latterly to have been less and less recognized as such by the Company's courts; and as far as my experience goes, I am inclined to believe that the authorities have all along endeavoured to reconcile the disputes of these people upon the same principle as those between master and servant in other countries are settled.

The Pullers are not like slaves; there is no slavery in their treatment; their transfer with lands resembles the transfer of ryots on an estate alienated by government as *yanam*, *shotriem*, &c. &c.

In the criminal courts there does not appear reason to believe, that any distinction whatever is ever made between a slave and any other menial servant, equal protection being afforded to all.

Generally speaking, it may be said that the authorities have managed as well as they could without any fixed rule, guided by the principle of justice and right, and adopting their decisions, as much as possible, to the manners and customs of the people.

J. Goldingham, Acting Judge and Criminal Judge, Salem.

No. 35.

In reply to the letter dated 30th ultimo, with accompaniments from the acting second judge for the register, relative to the system of slavery prevailing in the provinces, I have the honour to state, that it does not appear that the subject has ever been before this court, which precludes my offering any remarks thereon. 17 December 1835.

J. D. Bourdillon, Acting Assistant Judge, Auxiliary Court, Coimbatore.

No. 36.

It has happened in one or two instances that a certain number of slaves have been included in a mortgage of land, but no question has been raised on that point, and no mention made of it in the decree. 19 February 1836.

J. Blackburne, Magistrate, Madura.

No. 37.

2. THE records of my office do not afford the slightest information on the subject (slavery); after premising that only one instance, easily and unofficially adjusted by me, has come to my notice, in my two years' experience of this district, to show how little the subject calls for consideration, as applicable to this district alone, I proceed to lay before you its extent and particulars. 21 January 1836.

3. Slavery is tolerated amongst three classes of people, but to an exceeding trifling extent when compared to the whole population.

1st. The allodial slaves are confined entirely to the two castes of Pullers and Pariahs, the former having existed from length of years, the latter more recently introduced, and their value greater than that of the former. The master's right in them is positive, and they are disposed

* No. 1747 of 1812; 15th January 1812; zillah court, Trichinopoly. See No. 52, *infra*.

† Southern provincial court; appeal No. 39, 13th June 1809. No. 51, *infra*.

‡ See No. 53, *infra*.

§ No. 223, 7th June 1808. See No. 54, *infra*.

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disposed of both with and also separately from the land. The master has right to the slave, to his wife, and to the male issue, the female issue being at liberty to marry and go where they please; but slaves are not incapacitated from holding property, which descends on their death, not to the master, but to the son or widow, or heir-at-law. The claims of individuals to the same slave are settled promptly on the spot by punchayet or by the tahsildar; but such cases never come before the European authority. The slave is entitled to protection and maintenance from his master; and it is understood that in seasons of calamity and scarcity this protection has been generally afforded, whilst free cultivators were perishing from want.

The second class consists of domestic slaves or bondsmen, become such by their own act, selling themselves in times of difficulty for present preservation and hope of future maintenance. These are chiefly from the same two castes, and perform menial offices in the houses of their Mussulman masters, becoming willing converts to their faith, or brought up in the Moslim religion from their infancy; and these slaves can hold no property.

The third class is confined to the public dancing-girls; their ranks are recruited by purchase of infants, who generally become dependent and attached to their profession. They are tended with care, taught the accomplishments indispensable to their profession, and after their early childhood, which is passed more as a state of pupilage than slavery, all the property they acquire belongs in fact to the female by whom they were originally purchased, and by whom they are originally considered as children, often becoming their heirs; and on her death they are to all intents and purposes free, following their own desires, and disposing by gift or will of any property they acquire.

4. If called upon to act as a magistrate, a slave would meet with precisely the same protection from me that I should afford to a free servant against his master; and such, I believe, is understood generally to be their right.

5. Since a proclamation of the late magistrate in 1829, prohibiting the purchase of slaves, they are supposed to have decreased amongst the two last classes; but in no way has it affected the degree of allodial slavery. As far as this district is concerned, no new law is particularly required. The power of bondage is more generally a blessing than a curse, and a simple discountenance of the practice by the public authorities in particular cases seems to be all at present required here.

No. 38.

J. Bishop, Joint Magistrate, Tinnevely.

21 December 1835.

2. In reply to para. 1 of Mr. Secretary Millett's letter, the right of masters over their slaves, in this district, is not acknowledged. The castes of cultivators called "Pullers," are bought, sold and mortgaged with the lands of their masters, as has been the custom for very many years. Their employment is solely for cultivation, and during its continuance they receive a daily allowance. They are afterwards at liberty to hire themselves out to any one requiring their services, appropriating what they may thus gain to their own use. It would appear, that the Pullers submit to their being bought and sold in the present day, more from its having been the custom of the country than any thing else, and from their being equally well off, or perhaps better, from the certainty of subsistence during the greater part of the year than the common labourers of the village. A Puller, running away from his master, is not interfered with by the magistracy, should any complaint be given on the subject. Besides the slaves above mentioned, there are what are termed domestic slaves, possessed generally by Mussulmans, the wealthy Hindoos and Palligars. All the general duties of the house are performed by this class, who are considered as belonging to the family. They are purchased when young, and seldom afterwards sold.

3. In reply to the 2d and 3d paras. of the letter under reply, any complaints made by slaves, of cruelty on the part of their masters, are considered in the same light as those of any other person; and no difference with regard to the punishment of the offender is made, whether he be the master of the slave or any other person doing him wrong.

No. 39.

H. M. Blair, Magistrate, Trichinopoly.

5 January 1836.

2. In reply, I have the honour to state, for the information of the court of Sudder and Foujdary Adawlut, that there are in this district a class of slaves denominated "Pullers," who are the cultivators of the soil, and belong chiefly to the proprietors of the wet or paddy lands. They are commonly sold or mortgaged by their owners with or without the land, but are never removed from their usual place of residence without their own consent.

3. Proprietors can scarcely be said to have any legal right over the persons of their slaves in these provinces.

4. As magistrate, I have always declined interfering on a complaint being preferred to me of a slave having absconded from his master; and during nearly four years I have been in this district, I have never heard an instance of a civil action having been brought for the recovery of a slave.

5. It is very rarely, however, that the Pullers do quit their masters; which is a certain sign that they are generally well treated.

6. The right of a master to punish his slave is not recognized by the magistrate; and on a complaint being preferred by the slave against his master for ill-treatment, the latter would be punished according to the provisions of the general regulations, without reference to the relation existing between the parties.

7. Besides

7. Besides the slaves above mentioned, there are, in some of the Hindoo pagodas, dancing-girls, who have been purchased from indigent parents in time of scarcity. Their numbers, however, in this district are not great; and it may readily be supposed from their mode of life that their state of slavery is not a harsh one.

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N. W. Kindersley, Magistrate, Tanjore.

No. 40.

1st. No legal rights of masters over their slaves, with regard to their persons or property, are recognized by the magistracy in this province, although the slave population is very numerous. 11 December 1836.

2dly. The magistracy does not, in the smallest degree, recognize the relation of master and slave as justifying acts which otherwise would be punishable, or as constituting a ground for mitigation of punishment. The same protection is extended to slaves preferring complaints of cruelty or hard usage against their masters as if no such relation existed between them. There is no distinction between Mussulman and other slaves.

3dly. The 3d point is answered in the reply to the second.

2. Upon the whole, slavery in Tanjore may be said (though it be a paradox) to be strictly voluntary. So long as the slave chooses to remain with his master, he does so, and leaves him for a better, at pleasure. Nothing but a civil suit, which would cost more than ten years of his labour, can recover him; and, being recovered, there is nothing to prevent his walking about his own business, as soon as he has left the court which has pronounced him to be the property of another.

John Orr, Magistrate, Salem.

No. 41.

In reply, I beg to acquaint you, that slavery does not exist in this zillah, and to submit, for the information of the court, copy of communications received on the subject from the joint and assistant magistrates. 2 March 1836.

W. C. Ogilvie, Joint Magistrate, Salem.

No. 42.

I HAVE the honour to state, that the system of slavery therein alluded to does not exist in any part of the four talooks under my charge. 18 January 1836.

W. Elliot, Assistant Magistrate, Salem.

No. 43.

I BEG to state that slavery is altogether unknown in the talooks of Darumpoory and Womalore. 22 February 1836.

There is a custom, however, existing amongst the natives, both male and female, to purchase little children. But this is very seldom or ever done, except during a famine, and then only in consideration of the indigent circumstances of their parents.

Men purchase little girls for wives, and women purchase them for servants. In the latter case, they are at liberty to abandon that protection whenever they may think proper. The parents in both cases cease to have any control over their children from the time of their changing homes; and in both instances the laws are, *ceteris paribus*, the same as those laid down for the observance of every member of the community.

G. D. Drury, Magistrate, Coimbatore.

No. 44.

1. THE customary right to the labour of a slave amounts, in the villages in which it is acknowledged, to little more than the usual rights of masters of families. The master is obliged to provide a slave with a residence, and to furnish him with food and raiment; when a slave refuses to perform the work which he consented to do, he may be compelled by forcible means, such as threats, accompanied with slight correction; but any compulsion attended with violence and cruelty is punishable as an heinous offence under the rule laid down by the court of Foujdary Adawlut, dated 27th November 1820. The general opinion, with respect to the property of a slave, is, that whatever belongs to a slave belongs to his master; but without the consent of a slave, the master would refrain from taking any of his effects, even the cattle he might possess for agricultural purposes. Nor could he take effects which the slave himself had purchased or received by free gift from the master. The property of a slave is derived from the master. The master pays the expenses of his slave's marriage, and makes donations of cloths and of money on the birth of his child. All the children of slaves become slaves. Female slaves become free only by marriage with a party who is not a slave. The slave receives either a share of the produce, or an allotment of land, which he cultivates for his support. A slave may be sold with or without the land, and he may refuse, with the consent of his master, to serve another landholder.

2. In the relation of masters, slaves or Pullers are entitled to the same protection from the magistracy as any other class of the inhabitants; and all personal injuries done to that particular class, to whose labour, by the custom of the country, there is an acknowledged right, are personal wrongs, punishable in the same manner, on conviction, as on the occurrence of offences committed upon any other party.

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3. Slaves in this district are agrestic only. No slaves are acknowledged as belonging to the Mussulman classes, who may be compelled by them to perform servile duties. A Mussulman may hold lands in which slaves perform agrestic services; and in all suits regarding property, possession or service of a slave, on behalf of a Mussulman or Hindoo claimant, there can be no distinction, because the usage of slavery, as appertaining to the land, continues the same whoever may be the owner of it.

4. I regret the delay, with reference to your letters dated 3d May and 10th June last, which has occurred in complying with your requisition, and which has arisen from the information on the subject not having been received from the acting joint magistrate within whose division only the system of agrestic slavery prevails; copy of his letter, dated 11th instant, is herewith forwarded. In all cases of personal wrongs done to a party being a slave, he will be referred to the orders of the Foudary Adawlut for his guidance.

No. 45.

T. A. Anstruther, Joint Magistrate, Coimbatore.

11 June 1836.

SLAVERY prevails only in two villages, Neroo and Vamgul, in the talook of Caroor.

The rights of the masters and slaves are as follows: Sons of slaves inherit their parents' property, and remain slaves; daughters do not, and are free.

The master may, in moderation, correct his slaves; and the latter, by their own statement, have no right to complain. If the slaves run away, the right of the master to call on the police for aid in their re-apprehension was recognized, it is said, by Mr. Hurdis, in one instance, the circumstances of which I have no means of ascertaining. But in later instances, in fuslies 1228, 1232 and 1234, the masters peaceably persuaded their slaves to return.

There are no cases on record in this office or in this division of complaints by slaves against their masters, or *vice versa*; but I think it right to state, that, in any case which might arise, I should recognize the relation as authorizing acts otherwise illegal.

Neither are there any cases on record, wherein slaves have met with less protection than free persons against wrong-doers not their masters. But I should, in certain cases, give to them less protection than I should to free persons. In cases, for instance, of abuse, so as the character of the slave is not injured in his master's eyes, he has not suffered as a freeman would, and in cases of assault, causing disability to work, the slave suffers the assault, while the master suffers the loss of work; also in cases where the wrong-doer is a fellow slave, punishing him by imprisonment would be directly punishing his master.

COPIES of Decrees* which accompanied the Report of the Provincial Court, dated
29th June 1836.

No. 46.

COPY of the Decree on the Appeal from the Decision of the Zillah Court at Ramnaud,
No. 363.

Zemindar of Shevagungah, Appellant, versus Meennumaul, Respondent.

Southern Provincial
Court of Appeal.
No. of Register 9.
Trichinopoly,
17 March 1806.

THE provincial court having attentively perused and considered the petition of appeal, the record of proceedings in the zillah court on this suit, the proclamation published by government under date the 6th July 1801, declaring the district of Shevagungah under martial law the proclamation published by government under date the 1st December 1801, extending a pardon to the inhabitants of the southern provinces, who had been seduced from their allegiance to the British Government, and the opinion of the Hindoo law officer on two questions put to him by the court, are of opinion that the two matters of complaint preferred by the plaintiff in the zillah court (namely, the recovery of jewels, valued at 1,542 star pagodas, and again for the recovery of jewels, valued at 1,100 star pagodas), are not cognizable by any civil court of judicature, and ought not to have been investigated by the zillah judge, as the property appears to have been taken by the zemindar during the operation of military law in the district where the cause of action originated, namely, in the months of Arpashy and Margaly, in the year Doormatty, corresponding with October and December 1801.

Respecting the 3d matter of plaint (viz., for the recovery of jewels, valued at 350 star pagodas), which appears to have originated subsequent to the promulgation of the general amnesty,—that is, in the month of Chittray, in the year Roodraucaury (April 1803),—the provincial court observing, that the plaintiff, Meennumaul, in her reply delivered to the zillah court, acknowledged to have placed these jewels under the care of her servant, Alago, in the month of Pretausy, in the year Doormatty (September 1801), at a moment when her husband, Sevagayanum, a son of Murdoo Sherogar, was conducting a flagrant and dangerous rebellion against the British Government; and the provincial court, referring to the

* See No. 31, *supra*.

the 6th paragraph of the aforesaid proclamation, dated the 6th July 1801, which declares the family of Murdoo Sherogar the slaves of the house of Nalacooty, put two questions to the Hindoo law officer to the following purport: 1st, If the wife of the slave, originally free-born, became a slave on her marriage; and 2dly, if a slave had title to property acquired by an usurpation of the rights of his master?—and the answer of the Hindoo law officer to the first of these questions being, “The wife of a slave is also the slave of the master,” which he corroborates by a verse from the Jaggonadyen, “The husband and wife are one and the same,” and by a verse from the Smirteechundicky, in the chapter concerning slaves, “The husband is master to the wife, if that husband be a slave; although his wife be born of free parents, she is also a slave;” and the answer to the second of these questions being, “Any riches acquired by a slave, in consequence of the assumption of his master’s property, belong not to the slave, but to the master,”—the provincial court are thence of opinion that Meennumaul, being a slave, can have no right to the above jewels, which she claims, and valued at 350 star pagodas.

The fourth matter of plaint respecting a claim to land in the village of Calengoody, and arrears of rent thereon, decided on by the zillah court, does not come under review of the provincial court, the zemindar not having appealed against this part of the decree.

Therefore the provincial court declare, that, excepting such part of the decision of the zillah court which relates to the said land in the village of Calengoody, with arrears of rent thereon for three years, the decree passed by the zillah judge on the 30th May 1805 on this suit be annulled; that the claim preferred by the plaintiff, Meennumaul, to the recovery of jewels said to be taken by the defendant, the zemindar of Shevagungah, in the months of Arpashy and Margaly, in the year Doormatty (October and December 1801), and in the month of Chitray, in the year Roodraucaury (April 1803), amounting in all to 2,992 star pagodas, be declared void; that the appellant do recover from the securities of the respondent the amount paid to him for costs of suit in the zillah court, viz., 185 star pagodas, 28 fs., 29 cash; that the securities of the respondent do further pay the costs of appeal, viz., 369 Arcot rupees and 5 fs., pleader’s fees; and 3 fanams, 17 cash, the retainer,—in all 369 Arcot rupees, 8 fs., and 17 cash,—within one month from this date; and that the zillah judge be directed by precept to enforce the exigence of this decree within three calendar months from the date hereof.

Copy of the Decree* on the Appeal from the Decision of the Zillah Court of Ramnaud,
No. 630.

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No. 47.

Zemindar of Shevagungah, Appellant, versus Veerojee Attal, Respondent.

THE provincial court,—having attentively perused and considered the petition of appeal, the record of proceedings in the zillah court on this suit, the proclamation published by government under date the 6th July 1801, declaring the district of Shevagungah under martial law, the proclamation published by government under date 1st December 1801, extending a pardon to the inhabitants of the southern provinces, who had been seduced from their allegiance to the British Government, and the opinion of the Hindoo law officer on the following points put to him by the court, “Does the wife of a slave originally free-born become a slave on her marriage?” to which the pundit answered, “The wife of a slave is also the slave of the master,” and corroborated this opinion by a verse from the Jaggonadyen, “The husband and wife are one and the same,” and by a verse from the Smirteechundicky, in the chapter concerning slaves, “The husband is master of the wife, if that husband be a slave; although his wife be born of free parents, she is also a slave;” and again, “Has a slave title to property acquired by an usurpation of the rights of his master?” to which the pundit answered, “Any riches acquired by slaves, in consequence of the assumption of his master’s property, belong not to the slave but to the master,”—are of opinion, that the claim of Veerojee Attal to the recovery of jewels, valued at 4,125 star pagodas, from the zemindar of Shevagungah, is inadmissible, because the plaintiff, in his petition delivered to the zillah court, states, that she secreted the above jewels in the month of Pretausy in the year Doormatty (September 1801), at a moment when her husband Murdoo Sherogar was the principal conductor of flagrant and dangerous rebellion against the British Government; and although the above jewels were taken by the zemindar subsequent to the promulgation of the general amnesty, yet the answers of the Hindoo law officer to the two points of law put to him by the court, as above noticed, disallows her right to the possession of any property; for the 6th paragraph of the promulgation, dated 6th July 1801, declares Murdoo Sherogar the slave to the house of Nelcooty; and Veerojee Attal, the plaintiff, although free-born, becomes, by her marriage with a slave, a slave also.

And further, the provincial court can only view Veerojee Attal, the wife of Murdoo Sherogar, in the light of a pensioner on the bounty of the zemindar of Shevagungah, and not entitled to the possession of property, which becomes forfeited by the crimes of her husband against the state.

Therefore the provincial court decree, that the decision passed by the zillah judge on the 1st November 1805 on this suit, be annulled; that the claim of the plaintiff, Veerojee Attal, for the recovery of the jewels, valued at 4,125 star pagodas, from the zemindar of Shevagungah, be declared void; that the appellant do recover from the securities of the respondent the

Southern Provincial
Court of Appeal.
No. of Register 13.
Trichinopoly,
17 March 1806.

* See No. 31, *supra*.

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the costs of suit paid by him in the zillah court, amounting to 222 star pagodas, 15 fs. and 36 cash; that the securities of the respondent do pay the cost of appeal, amounting to 448 Arcot rupees, 19 fs. 40 cash, the fees of pleader, and 3 fs. 17 cash, the retainer,—in all amounting to 448 Arcot rupees, 12 fs. 57 cash,—within one month from this date, and that the zillah judge be directed by precept to enforce the exigence of this decree within three calendar months from the date hereof.

COPY of a Decree which accompanied the Report of the Judge of Madura,* dated 30th April 1836.

No. 48.

DECREE passed by A. T. Bruce, Esq., Acting Register to the Zillah Court of Madura, in O. S., No. 3 of 1823.

Soobryen of Madura, Plaintiff, versus *Allamelloomangy, Muttooretum and Allagamuttoo*, Dancing-women of Madura, Defendants.

20 September 1823. PLAINTIFF states, his father Nagapen, on the 5th of the month Viasy, in the year Sadarana, purchased the daughter of Naranamah, Palaneeyajee by name, *alias* Kanakabeshegum, for 4 Parengy pagodas, and 16 Chukra fanams, and her issue for ever, and then took a bond of servitude in acknowledgment from her mother: and on the 22d of the month Tye, in the year Sadarana, Nagapen purchased Allamelloomangy, and the issue of her body for ever, for 2½ Parengy pagodas, and 16 Chukra fanams, and took a bond of servitude in acknowledgment, as before. These two, with plaintiff's father, sisters, daughter Nagamal, having† instructed in singing and dancing, devoted them to the service of the idol in the pagoda, and, by means of them he procured jewels, purchased ground and built thereon. Plaintiff's father bought for Palaneeyajee *alias* Kanakabeshegum, Allagamuttoo, and having taught her singing and dancing, placed her at the disposal of the pagoda; all these, besides others, subsequently purchased by plaintiff's father, were actually dependent upon him for subsistence.

The above-mentioned deeds of slavery were registered in conformity with the provisions of Regulation XVII. of 1802, on 13th April 1809; certificates to that effect were granted.

Plaintiff's sister, Nagamal, died in the course of the year Angrasha; plaintiff's brother, Menachynadum, and Palaneeyajee *alias* Kanakabeshegum died. In the year Dadoa plaintiff's father died also. Plaintiff's other brothers, Palamaudy and Ramasamy died respectively in the years Ishewarah and Chittrabanoo, when plaintiff was left sole heir of all the property, personal and real; defendants were, however, instigated wickedly to raise possession of the land and building thereon, with the jewels, &c. The plaintiff now claims the restoration of his right to a house situated at Madura, valued at 149 rupees, together with jewels, valued at 651 rupees, altogether 800 rupees.

Filed 2d January 1823.

Defendants state in answer a denial to the truth of plaintiff's plaint, that the ground mentioned in it does not belong to plaintiff, nor do the jewels, &c. All girls born belong to the mothers, not to the fathers, according to established custom.

Plaintiff's father's sister, Nagamal, a dancing-girl, in the Menauchee covil, purchased a piece of ground with her own earnings, and, being childless, adopted the sister of plaintiff, and placed her in the aforesaid pagoda; Nagamal the elder afterwards died, when Nagamal the younger, being also childless, purchased in Nagapen's name Palaneeyajee *alias* Kanakabeshegum and Allamelloomangy, and subsequently in her own name Maunickum and Kalimootoo; these four, instructed in singing and dancing, were placed in the Menauchee covil. Kalimootoo is gone into a foreign country.

On the west side of the disputed ground, Nagamal having built a house, died, then the funeral rites were performed by Allamelloomangy, Maunickum and Kanakabeshegum; and to this day the usual ceremonies are continued by Allamelloomangy. Kanakabeshegum, being barren, purchased third defendant, Allagamuttoo. Nagapen by his will particularizes and confirms the statement of the defendants. Joyamoganom, disappointed at a decision against her, had falsely set on foot this complaint.

Filed 18th February 1823.

Plaintiff in his reply affirms the truth of his plaint, and denies that of defendants, asserts the will to be a forgery, and offers to submit the question to the test of an oath.

Filed 22d February 1823.

Defendants in their rejoinder maintain the correctness of their answer, and claim to prove it by the testimony of witnesses and documents, not simply upon an oath.

Filed 29th February 1823.

Plaintiff's documents, two bonds of servitude or slave deeds; the one dated 5th Viasy of the year Sadarana, the other 22d Tye of the year Sardana.

Defendant's documents, first, an attaché from all the dancing-girls, dated 15th November 1822; second, a will said to be by Nagapen, dated 29th Pungooni in the year Joah.

Plaintiff's

* See No. 32, para. 8, *supra*.

† This unintelligible sentence occurs thus in the copy received by the law commission.

Plaintiff's witnesses, Muttocaroopen, Soobarayapillay, Catty and Marimootoo; defendant's witnesses, Camauchy, Maurimootoo, Amachellum and Vyraven.

The court having perused the plaint, answer, reply and rejoinder, plaintiff's motion, considered the documents and heard the evidence on both sides, is of opinion, that the two bonds of servitude or slave-deeds filed by plaintiff, prove plaintiff's claim upon the three defendants in right of his father, Nagapen, deceased, as sole surviving heir. The first deed is dated on the 5th of the month Viasy, in the year Sadarana; the second on the 22d of the month Tye, in the year Sadarana, setting forth respectively the purchase by plaintiff's father, Nagapen, of Palaneeyajee *alias* Kanakabeshegum and Allamelloomangy, with their issue for ever. The second defendant, Muttooretum, as daughter to the first defendant, Allamelloomangy, and third defendant, Allagamuttoo, says she was purchased by Kanakabeshegum, deceased, which is a contradiction; her slavery, according to the terms of the first of the aforesaid bonds, makes her incapable of acquiring property for herself, and raises a presumption very strong in Allagamuttoo's being the property of plaintiffs. The court is also of opinion, that the documents filed by defendants, and said to be the will of plaintiff's father, Nagapen, is not credible for the following reasons:—first, because the testator therein is said to acknowledge himself devoid of all right and titles to any part of the property in litigation, and calls himself in effect a servant to the defendants; secondly, because it makes the testator say, that the three slaves called Allamelloomangy, Manickum and Anallagmootoo are co-heiresses to the property of Nagamal the younger (said by defendant to be the adopted daughter of Nagamal the elder, plaintiff's father's sister), without showing that Nagamal the younger had adopted or otherwise constituted these three slaves aforesaid to be her true and lawful heiresses to her property; thirdly, because of the improbability of the testators, four years subsequent to the death of Nagamal the younger, and while the above-mentioned slave deeds were in the testator's possession, against Palaneeyajee *alias* Kanakabeshegum and Allamelloomangy, having disannulled these said deeds to the prejudice and loss of his own sons, by affirming, in his last will and testament, that the two slaves already mentioned were purchased for the said Nagamal the younger, in his name.

The court is further of opinion, that the adoption of Nagamal the younger by Nagamal the elder is not proved, nor is it proved that the first-mentioned Nagamal purchased the two slaves in her own name called Manickum and Kalimootoo; and if it had been proved, how would the assertion of defendants be proved as to this Nagamal having purchased in plaintiff's father's name, Palaneeyajee *alias* Kanakabeshegum and Allamelloomangy. This assertion rests only upon the documents termed Nagapen's will, which the court for the foregoing reasons disbelieves plaintiff's claim upon defendants; consequently in the judgment of the court plaintiff's claim is proved, with the exception of the jewels. Plaintiff's motion for submitting the question of the will's legality to the Hindoo law officer is, by the court's disbelief of that instrument's validity, obviated. The court considers plaintiff's claim to the persons and services of the three slaves, Allamelloomangy, Muttooretum and Allagamuttoo established, together with his claim to the house situated in the fort of Madura, in the street of Kavelcoodom, bounded on the north by the house of Maradanaigapillay and Shevasangarampillay, on the south by the house of Gaparattoomeena, on the east by the house of Marimootoo, and on the west by Terooyanasammanda Pandaroom's muddaun.

Plaintiff, having decreed to him the persons of defendants, is considered by court amenable to all court charges, both of prosecution and defence, and the court therefore adjudges plaintiff to pay the same.

DECREE translated by the Assistant Judge* of the Auxiliary Court of Zillah Tinnivelly, with his Report, dated 15th May 1836.

No. 49.

NELLANYUMBALLAM, District Moonsif's, No. 334 of 1832, Auxiliary Court's Original Suit, No. 59, of ditto.

Tinnivelly,
Auxiliary Court

Mootturvilupillay, Aurumugumpillay alias Nynapillay, Cootalalingumpillay, Lechumey widow of Chedambrampillay, and her minor son Sunmugavalayndom of Palamcottah (the first plaintiff since being dead, the suit is conducted by the rest as his heirs), Plaintiffs, versus Moottachee, Soboomoneyapillay, Caruppapillay, Chokalingumpillay, and Gunabady Karcumpermaulpillay of Randapurom, Defendants.

It is set forth in the plaint instituted by plaintiff's vakeel, in the moonsif's kutcherry, that on the 9th Vyasee 1000 Aundoo, Chedambranadapillay, husband of the 1st uncle of the 2d and 3d elder brother of the 4th, and grandfather of the 5th defendants, received 50 cully chuckrums from Chedambrampillay, and executed a bond on plain cadjaun, mortgaging 1½ cottah seed of Nunjah, and 10 mercauls and 2¾ measures seed of Nunjamailpunja, and 27 chains of Poonja lands, and 101 Palmira trees, &c., situated at Paupanculom and Anen-davalenthoolavady, as per ayakut account, and two men and three women slaves, and engaging

* See No. 33, *supra*.

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engaging to pay the principal and interest at 12 per cent. on the 30th Maasy 1007 Aundoo, or in failure thereof, the plaintiffs might take possession of the above said lands, &c., as if they were sold to them for 93 chuckrums, which becomes due until the term limited in the mortgage bond; that the mortgagee, Chedambrampillay, and the mortgagor, Chedambrana-dapillay, died before the expiration of the term stated in the mortgage bond, and that plaintiffs and defendants, being heirs of the mortgagee and mortgagor, plaintiffs sue the defendants for obtaining possession of 1½ cottah seed of Mulgoozarry Nunja, and 27½ chains of Poonja lands, paying an annual kist of 75 rupees to sircar, and 101 Palmira trees, valued at 12 rupees 8 annas, and all samadayams, situated at Pappauculom, together with 10 mercauls, and 2½ measures of Nunjamailpunja lands, and all samadayams appertaining thereto, at Anendavalenthoolavady, as well as a man slave, worth 10 rupees; a woman slave, worth 7 rupees; her son, worth 4 rupees; Para Poodeyavan, worth 19 rupees; Parachy Par-bady, worth 7 rupees; and damages, rupees 67-7-1-9.

The 5th defendant filed an answer in the moonsif's kutcherry on the 13th November 1832, in behalf of himself, and as vakeel to 1st and 4th defendants, acknowledging fully the claim set forth in the plaint.

The 2d and 3d defendants filed an answer in the sudder ameen's court, on the 20th February 1833, stating that plaintiffs had promised to remit the sum sued for as damages, and confessing all other particulars set forth in the plaint.

Reply was filed on the 18th March 1832, but no rejoinder was given.

The defendants having acknowledged the truth of the plaint, the examination of witnesses was dispensed with as unnecessary, and the plaintiffs were ordered to produce only their documents.

The sudder ameen, having attentively perused the whole record held in this case, is of opinion, that defendants are answerable for plaintiffs' claim, because they (the defendants) confess the bond marked (B.) to have been executed by the mortgagor, Chedambrana-dapillay, to the mortgagee, Chedambrampillay. But plaintiffs' claim for damages on the property, which became as valid as a sale in failure of redeeming it at the fixed term, is over-rated; and as it is declared by the regulations, that interest exceeding 12 per cent. on money transactions, &c. is illegal, and the general custom of the provinces gives sanction to the above regulation, a mortgage which becomes a sale on failure of compliance with its terms cannot be held to be a legal act.

Under these circumstances the sudder ameen decrees, that defendants should either pay the plaintiffs rupees 206-6-3-13, both principal and interest (as prescribed in the regulations) on the land, &c., claimed by plaintiffs, together with the costs of the suit, within 30 days from the date of the decree, as well as paying their own costs of the suit,

(signed) *Budder Allum*, Sudder Ameen.

No. 50. DOCUMENT (B.)* transmitted with the Report of the Assistant Judge of Zillah Tinnivelly, dated 15th May 1836.

To the Nazir of the Auxiliary Court.

As defendant has not paid the sum of rupees 18-15-7-82, being the remainder of the amount due under the decree passed in this suit, an order was issued to dispose of his property (already attached) by public auction. But no offer having been made for the above property, you are hereby directed to affix one of the two proclamations accompanying on the wall of the court-house, and the other in some conspicuous part of the village in which the Pariah slaves reside. You will also give notice of the same in the talook Cusbah, and other villages, and sell the property by auction before this court within the specified time, and collect the amount and deposit it in the court's treasury, in order that it may be paid to plaintiff, and make return to this precept on or before the 27th of this month.

RETURN.

According to the tenor of the foregoing precept, Palany, court peon, has collected 11 rupees 6 annas, being the amount of the within-described property disposed of by public auction before the court, and it has been deposited in the court treasury in due form.

One of the two proclamations was affixed on the wall of the court-house, and the other on the front wall of Pulliarcovil, at Seethapurpanullor, in the Sharunmadavy talook. On the 22d January, the garden, ground and man slaves were put up before the court, and sold to the highest bidder, namely, Nelacunda Moodliar, who purchased the slaves for 10 rupees 12 annas, and the ground and garden for 10 annas, and the total amount of 11 rupees 6 annas has been duly paid into the treasury of the court, and the shroff's signature in this precept taken in attestation.

(signed) *Ramasamy Naig*, Nazir's Gomashita.

* See No. 33, *supra*.

TRANSLATED Extract of Proceedings of Auxiliary Court at Tinnivelly, dated
7th February 1834.

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READ return made by nazir of the court, stating that 11 rupees 6 annas, being the amount of the property sold by public auction before the court, has been paid into the treasury of the court.

Ordered, that the said return and attachés be filed.

(signed) *G. Sparkes*, Acting Assistant Judge.

FOUR DECREES transmitted by Judge of Combaconum, dated 20th January 1836.

Nos. 51 to 54.

COPY of the Decree* on the Appeal from the Decision of the Zillah Court of Trichinopoly,
No. 23.

No. 51.
Southern Provincial
Court of Appeal.
No. of Register 39,
or No. 3 in the
New Register for
1809.

Arnachellum Pillay, Appellant, versus *Maroodanaigom*, Respondent.

THE provincial court having attentively perused and considered the record of the proceedings in this suit in the zillah court, as well as the petition of appeal, answer, reply and rejoinder, are of opinion, that the decree passed in favour of Maroodanaigom ought to be reversed.

The court, on referring to the petition of the plaintiff to the zillah judge, observe, that according to his own statement, the amount of his disbursements for the original advance on the 15½ cawnies of land, and for his advance for the four Pullers, and for the expenses incurred by him for putting the land into a productive state of cultivation, did not exceed the sum of 563 rupees.

The court are at a loss to conceive under what plea of justice Maroodanaigom has a claim to other compensation than that of receiving back the full amount advanced by him on a temporary mortgage, together with such interest as may be due on the advances so made by him; and in this view of the case the court do therefore direct, that the decree passed by the zillah judge be annulled, and Aroonachellum Pillay be put in possession of the aforementioned land and Pullers; and that the appellant do recover from the respondent the costs of suit paid by him in the zillah court, amounting to 47 star pagodas 40 fanams and 35 cash, together with 94½ rupees, being the government fees paid by the appellant in the provincial court, under the Regulation XVII. of A. D. 1808; and half rupee, being the government fees paid by the appellant for a reply: in all, government fees 95 rupees; and that the respondent do pay the costs of appeal.

TRANSLATION of a Decree* passed in Suit No. 1,747 on the File of the Zillah Court of
Trichinopoly, by the Moofly Sudder Amin attached to it.

No 52.

THE petition of plaintiff presented by Mokaideen Saib against Pulla Mootuveerun, on the 29th of August 1811, stating that the defendant and his wife, valued at 18½ rupees, and his son and daughter, valued at 6 rupees, in all 24½ rupees, should be mancipated to him, the plaintiff, as slaves, and perform his rural labour, was admitted in the adawlut court of the zillah of Trichinopoly, on the 13th of November of the same year.

16 April 1807.

The defendant having failed to attend pursuant to the requisition of the notice, the cause has been tried under section 13, Regulation III. of 1802.

Upon a consideration of the plaint, the bond executed by the defendant's father-in-law, named Venitetan, on the 26th of Audy, year Ratchasa, or 7th August 1795, mancipating to the plaintiff the defendant and his wife, for a sum of 18½ rupees, and the testimony of the plaintiff's witnesses, Jyemermalpillay, Moottoo Caroopen, and Pulla Pujarree Moopen, the sudder amin is of opinion, from the depositions, that, conformably to the usage of the country and of the caste of Pullers, the defendant's father-in-law had delivered to the plaintiff the defendant and his wife as slaves for 18½ rupees, and received the money; that ever since, both the defendant and his wife performed their duties under him as agrestical labourers, but that some time ago they deserted him, and thereby impeded his agricultural business.

Wherefore it is adjudged, that the defendant and his wife should be the plaintiff's slaves as well as their posterity, perform his agricultural labours, and receive the allowances due to them; and it is further adjudged, that the defendant should pay 7 fanams and 70 cash, a moiety of the fees due to the pleader, Vencata Row; 3 rupees 6 annas 34 gundas, the amount paid by the plaintiff into the zillah court; retaining fee, 3 fanams and 17 cash; batta on summons for the plaintiff's witnesses, fanams 6 and 60. The costs should be immediately paid under Regulation X. of 1802, and Regulations IV. and V. of 1808.

Given under my hand and the seal of the sudder amin's court, on the 15th January 1812.

(signed) *Noor Allee*, Sudder Amin.

(A true copy.)

(signed) *F. M. Lewin*, Judge.

* See No. 34, *supra*.

No. 53. TRANSLATION of a Decree passed in Suit No. 90* on the Register of the Zillah Court of Trichinopoly by the Zillah Judge.

A PETITION of plaint was preferred to the court, on the 26th February 1807, by Mauruppa Moodely against Rungien, claiming star pagodas 52-27-66, due upon three bonds, including interest.

The court, having considered the plaint, answer, and the documents dated 3d Viasy year Krodana, or 14th May 1805, 29th of the same month, or 9th June 1805, and 23d Viasy year Ructachy, or 3d June 1804, as well as a motion presented by the defendant, deems it proper to refrain from enforcing the conditions of the first document, because the court think that the plaintiff's recovering the principal and interest due thereon will suffice.

It is therefore awarded that the plaintiff should recover from the defendant star pagodas 53-43-40, being the amount of the first two items, including interest at 12 per cent., from 3d and 9th Viasy year Krodana, or 14th May and 9th June 1805; that as the plaintiff failed to specify the date on which he paid Soobary Moodely Portnovo 30 pagodas, and that on which he received 47 chuckrums from the defendant, he the defendant should pay him 26 chuckrums without interest. It is likewise adjudged, that the defendant should pay the pleader, Ramasawmy Naick, his fee, star pagoda 1-25-40, under clause 2, section 8, Regulation X. of A.D. 1802; and under section 12 of the same regulation, retaining fee paid by the plaintiff, fanams 3-17; and batta for the process peon, 2 fanams and 36 cash: in all, star pagodas 64-14-53. This should be immediately paid.

Given under my hand and the seal of the court, in the court-house at Trichinopoly, on the 16th April 1807.

(signed) R. H. Lathom, Judge.

No. 54. DECREE passed by the late Zillah Court of Trichinopoly, in O. S., No. 223.*
7 June 1808. The plaintiff, Vydelingien, presented a petition to the court on the 23d May 1807, claiming 110 pagodas as damages from Soondraswara Deetchater, on account of the loss of 87½ in the village of Nungapoorem.

On the 6th of August last, the plaintiff expressed his desire of withdrawing the suit, for the reasons assigned in his motion. In consideration of this motion, and of the negligence unaccounted for on the part of the plaintiff to conduct the suit, notwithstanding his having been allowed a space of time on that account, on a motion presented by him on the 27th October last, the court deem it proper to strike off the suit from the file under the provisions of section 12, Regulation III. of A.D. 1802. The fees due to the plaintiff's pleader, Ramasawmy Jeyengar, namely, 2 pagodas 33 fanams and 40 cash, for the amount claimed, namely, 385 rupees, under the provisions of clauses 2d and 12th, section 8, Regulation X. of 1802, are payable by the plaintiff. He is also to pay the defendant's pleader's fees, 3 fanams and 17 cash.

Given under my hand and the seal of the court, at Trichinopoly, on the 7th June 1808.

(signed) R. H. Lathom, Judge.

WESTERN DIVISION.

No. 55. REPORT of the First and Third Judges of the Provincial Court, Western Division, dated 4th December 1826, in answer to a Letter of the Register to the Foujdary Adawlut, Fort St. George, dated 3d March 1826.

Provincial Court.

Tellicherry.

WITH reference to the deputy register's letter of the 3d of March 1826, the judges have the honour to submit reports received from the criminal judges and magistrates in the zillahs of Canara and Malabar, but, previous to recording their sentiments, propose entering into a short detail on the customs prevailing having reference to slavery in those provinces.

2. In these provinces there exist at present 18 different castes of slaves, 13 of which, viz. 1, Kulladee Kunnakun; 2, Yarlun; 3, Punniar; 4, Parayen; 5, Numboo Vettoowan; 6, Konyalun Koorumar; 7, Nattalan; 8, Malayan; 9, Koorumbar; 10, Panni Malayen; 11, Adian; 12, Moopen; and 13, Naiken, observe the makatayam or inheritance by sons to the rights of their fathers, whereas the remaining five, 14, Poleyan; 15, Waloooven; 16, Ooradee; 17, Karimballen; and 18, Mavilan, observe the maroomakatayam or inheritance by sons to the rights of their mothers; but in all castes, excepting the Poleyan, the female on her marriage accompanies her husband, with whom she continues to reside; neither can her master demand her return, unless she be repudiated from her husband; and as regards the Poleyan, the prevailing customs in the talooks of Chowghaut, Kootnaad, Ernaad and Betutnaad are, that the husband should reside in the house of his wife.

Temalpoiam.

No compensation is demanded from the master of the male slave in this district; the castes are Kunnakun and Parayen, and with this exception females are purchased and given in wedlock by the masters of the male slave; but this custom does not appear to exist in other districts, where it is usual for the male slave to present to the owner of the female a few

* These two decrees are mentioned by the judge of Combaconum in his report (*vide supra*, No. 34). This shows their relevancy to slavery not obvious from the decrees.

few fanams and some trifling articles, in value from two to three fanams, and obtain his permission, when the female after her marriage works for her husband's master, all issue going to the male master's slave. The male Polean, although he resides at the house of his wife, goes daily to work for his own master, neither can the owner of the wife in any way command his services.

In these talooks, however, the female slaves are allowed to go and live with their husbands, and work for their masters.

In this talook, the male merely presents the owner of the female slave with two fanams, and obtains permission to marry. The first-born goes to the male's master; but should there be no more, a valuation is put upon the one and the amount divided.

In this district, the male presents two fanams, as Bettapanam, and five as Tambooran, when the owner allows of her going and living with her husband.

Here no sanction is requisite; the male merely makes the accustomed present to the female's master, when the female removes as his wife, and all the issue go to the owner of the male.

In this district there are three castes of slaves, the Kunnakan, Yarian, and Polean; the custom observed by the two former is for the male, after marriage, to bring his wife to the estates of his master, who has a right to her services until she be divorced; no compensation being made to the owner of the female, and all the issue to go to the master of the male slaves; and it is the custom of the latter caste to form a connexion or marry the female of another master, and frequent her house, when the issue (if there be any) by such contract goes to the owner of the female.

Here slaves, with the exception of the Polean, present the owner of the female with a bundle of beetle leaves and four sooparee nuts, observing the rules of maroomakatayam, bringing their wives to their master's estates, and to which the owners of females have not the power to object; those of the Polean reside at the house of his wife.

In this talook there are five different castes of slaves, the Kunnakan, Yarian, Parayen, Numboo Vettowan and Polean; the four first marry females of different masters, giving him a present of two fanams, and bring away their wives to their masters' estates, the issue going to the master of the male slave; but not so with the latter, who is only allowed to frequent the house of the female slave, his wife.

Here there are four castes, the Kunnakan, Yarian, Parayen and Polean, where the same customs are observed as in Chowghaut.

In these talooks it is not necessary to obtain previous sanction from the owner of the female. In the two first talooks the issue goes to the master of the male slave, but in the latter, a valuation is put upon the offspring, and the amount divided between the owners of the male and female slaves.

It is not in this talook necessary to obtain permission; all children begotten after marriage go to the owner of the male; those born before as also after the husband's death go to the owner of the female. The Polean, who observes the rule of maroomakatayam, is not in the habit of marrying.

3. The offspring of a female slave, who observes the makatayam, begotten before marriage, becomes the property of her owner, but those born in wedlock belong to the husband's master, but the mother after the death of her husband becomes the property of her former owner, and there is nothing prohibiting her marrying a second time; but if any disputes arise, such are adjusted by the relatives of her first husband. Neither is it in the power of the relatives of a male or female to prevent a second marriage; and, again, the issue of a slave who observes the maroomakatayam becomes the property of the female's owner.

4. There can therefore scarcely exist a doubt but that a custom so generally acknowledged, understood and mutually sanctioned, is by usage considered, and has amongst themselves, from habit, become, in a great measure obligatory; custom and not right appear to regulate or define the treatment of slaves as tolerated within the provinces of Malabar and Canara. Hence, to legislate on the subject would perhaps prove neither beneficial to the master, the slave or the state. The judges would therefore beg leave to suggest, that the magistrates be directed to issue a proclamation in each talook, enjoining the owners of slaves invariably to conform to the established rules at present observable with respect to their slaves, and which is all that would appear to be necessary whilst slavery is any way tolerated, and with which, perhaps, it would be impolitic to interfere, pointing out the protection which the existing laws afford in the redress of all well-founded complaints for acts amounting to cruelty, at all times obtainable by application to the authorities intrusted with the due administration of impartial justice.

REPORTS of Judges and Magistrates of Western Division upon the same subject, transmitted by the Provincial Court, 4th December 1826.

J. Vaughan, Judge of Canara.

No. 56.

AGREEABLY to the request made in the letter from your office under date the 8th ultimo, 14 April 1826. I have the honour to state the information which I have been able to collect on the subject of the usages regarding slaves therein referred to.

262.

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The

Appendix IX.
Returns.

Cavay, Cherucub,
Cotiote and
Coartenaad.
Koorumbranaud.

Calicut.

Shernaud.

Ernaad.

Betutnaad.

Chowghaut.

Kootnaad.

Nuddooganaad.
Palghaut and
Wynaad.

Waloowanaad.

Appendix IX.
Returns.

The male and female married slaves are always allowed to live together by their respective masters. The custom of the females living at the houses of their respective husbands is general; that of the males living at the houses of their wives is not so frequent.

The females living at the houses of their husbands are employed to work by the masters of the latter, and the usual allowance on that account is paid by them to the masters of the female slaves, and *vice versâ*, when the male slaves are employed by the masters of the female slaves. In some parts of the country, where the houses of the husband and wife happen to be in the same village, the wife and husband work at the houses of their respective masters, and after the work is over, the female goes to the house of her husband, or the husband to her house. The masters of the female or male slaves cannot object to their living together, and the former has no reason to do so, since the children which she produces are the property of her master. The people questioned on this subject have stated the above, not as being known right, but as the prevailing custom.

F. Holland, Judge, Malabar.

No. 57.

3 July 1826.

I HAVE the honour of acknowledging the receipt of your letter of the 26th ultimo, calling for an answer to that of the 18th March last, in which my sentiments were requested as to the existence or non-existence of an obligation on the part of owners of slaves to allow the married males and females to live together.

The situation of a zillah criminal judge affords inadequate means for the extended inquiry requisite for grounding a certain opinion to the above point. I, however, enclose copy of a paper of answers given to questions proposed to four persons bearing the highest character in the neighbourhood of Calicut for knowledge in the customs of the country and in matters of caste.

Their statement would lead to the conclusion that slave-owners are obliged to allow their married slaves to live together, if present established custom can be considered to have the force of obligation.

I have reason to believe, from what fell under my observation while employed in the revenue and police departments, that the customs appertaining to the state of slavery, as well as the condition and value of slaves, vary considerably in various parts of the province; and that probably no one person, European or native, is at present competent to give a full and accurate account of them.

I have heard it said, that the females of the Kanaka and Erala castes of Chermas were, previously to our acquisition of Malabar, considered as exempted from the bondage in which their male caste fellows were and are held. I doubt that this usage is allowed by slave-owners to exist at present any where in South Malabar; but as it bears materially on the point now under discussion, I allude to it as matter for inquiry, if any general interference at all by government be considered expedient, in view to the prevention of any aggravation of the evils of slavery in the province, while subject to the English dominion.

No. 58.

J. Babington, Magistrate, Canara.

1 June 1826.

2. I HAVE done every thing in my power to ascertain what has been and is the custom of Canara in respect to the treatment of slaves by their masters, and the respective rights of each, and shall now state the result of my inquiries into this subject, premising it by some general observations on the nature of slavery in the district, and the origin of some of this race of men in Canara.

3. Besides the Dhers or slaves by birth and caste, there are others in Canara who have become slaves from various causes, such as being sold as slaves by the former government, the gooroos or parents being born as slaves so sold, captives taken in war, persons selling themselves in payment of debts, or disposing of themselves to others as a stake at play, or for food to support life in a time of scarcity, for love for the female slave of another, and for various other reasons, being sold or selling themselves as slaves, either permanently or for a stipulated time. Of this description of bondmen there are about 4,500 in Canara. They seldom or never marry according to the strict meaning of the term. No ceremony takes place, either religious or civil. They live in a state of concubinage, and are generally faithful to each other.

4. When a male and female of this class agree to live together, they inform their masters of the agreement, and solicit their sanction to it. If the latter consent, the owner of the man agrees, in some cases, with the master of the woman for her purchase, or, *vice versâ*, the master of the female agrees to purchase the male; in others they are allowed to live together without a change of property in either. In the former case, both the slaves live together in the house of the purchaser, and their offspring becomes his slaves likewise. Where no purchase of either party is made, and the two slaves live together by the permission of their masters, if the man live at the house of the woman's master, it is usual for him to make his master some compensation for the loss of his services; when the woman lives in the

the house of the man's owner, she makes a similar compensation* as a token of her subjection to her master. This arrangement is not of frequent occurrence, and only takes place when their masters live at a distance from each other; when this is not the case, they visit each other at leisure hours, and are ready at their respective masters' house at the usual time to begin their daily labour.

5. In the first case I have noticed, that is, where both parties belong to the same owner, by his purchasing one or the other, the offspring of the connexion is the property of the owner; in the other, where the male and female belong to different masters, the children universally go to the owner of the woman. In both cases, the parents and children are the absolute property of the master, who can sell or dispose of them as he pleases.

6. The Dhers, or slaves by birth and caste, are labourers on the soil, and the custom of the country with respect to them differs a little from that of the class of slaves I have just noticed. There are 12 different denominations of Dhers, viz., 1, Bhak Kadroo; 2, Kurry Meyaroo; 3, Meyaroo; 4, Buttadroo; 5, Maury Holleeroo; 6, Holleeroo; 7, Hussulleroo; 8, Goddy Nuneeroo; 9, Corrageroo; 10, Byr Holleroo; 11, Ky Pudderoo; and 12, Myleroo.

The different classes of slaves do not intermarry; in other respects, their customs, rights and privileges are the same. Of these different denominations of slaves, there are about 60,000 in Canara, making with the former a total slave population of 64,500. About one-half of the Dhers are the property of individuals, and can be sold with or without the estate on which they are living. The remainder are not in actual bondage; they work as day-labourers on estates, and are at liberty to take service where they please. They are, however, in the habit of selling their children as slaves, and the latter become the absolute property of the purchaser from the day of sale.

7. The following are the rates at which slaves are generally sold in Canara, viz.: a strong young man at 12 rupees; a strong young woman at 16 rupees; a boy or girl at 4 rupees.

8. When a Dher is sold or mortgaged to another, a bill of sale or mortgage bond is passed by his original master to the purchaser or mortgagee as a proof of the payment of the money, and a short ceremony takes place, at which the slave acknowledges his new master by exclaiming aloud, "I am your slave for ever."

9. By the customs of the country, the master builds his slaves a hut, and supplies all their wants. He is not, however, liable for debts contracted by the slave without his knowledge.

10. The daily subsistence and annual clothing of the slaves vary in some talooks, but the following appears to be the average allowance granted to them by their owners throughout the zillah.

To a man 1½ seer coarse rice per day, and one piece of cloth or cumblee per annum, not exceeding the value of three quarter rupees. To a woman 1½ seer of rice, 1 cloth per annum, of the same value. To a boy or girl of an age to rear cattle (generally above eight years, none being granted to those under this age) three quarter seer of rice and one cloth of four cubits, worth about ½ rupee.

11. Besides the above subsistence and clothing, the master sometimes gives to his slave, on reaping the crops, the produce of a bett land, yielding from 1 to 1½ morah of paddy, and sometimes allows him at the same season to take home as much paddy as he can carry to his house at one time; and an indulgent master of a hard-working slave occasionally gives him from one-eighth to half a rupee as a free gift. On occasions of festivals, also, when the slaves go and prostrate themselves before their masters, it is customary for the latter to give them one cocoa-nut, half seer oil, one seer jagree, and one seer coarse rice. This indulgence, however, is entirely discretionary with the master.

12. When a master does not give his slave the regulated daily subsistence, it is usual for the latter to remonstrate with him; where this is not attended to, he gets the friends of his master or his fellow-bondmen to intercede for him; and where this proves ineffectual, he generally applies to the sircar servants, who in such case send for the master, remonstrate with him, and get him to satisfy the slave; others desert their master's service, and remain absent, until the master consents to their reasonable demands.

13. When slaves commit an offence against the customs of their own caste, the master has no right of interference; the case is decided amongst themselves. When a slave-girl connects herself improperly with a male slave, she is punished by an assembly of her own people and restored to her caste.

14. The slave never had any land that he could call his own; latterly, some have rented lands from individuals, but no wurgs appear in their names in the sircar accounts. Where the slave has planted any cocoa-nut, sooparee, or other trees of his own, in the master's compound, the master and slave possess equal right to their produce; in some cases where the slave wishes to have the whole, the master's share in the trees is rented to him. The slave cannot either mortgage or sell these trees to others, and when he dies, his heirs enjoy this right in the same way; where there are no heirs, the right of inheritance of the trees goes to the master.

15. By the existing custom of the country, when a slave is absent from work, or attends late at duty, becomes petulant and refractory, slanders his master, quarrels and fights, steals

* The extent of these compensations is not defined by custom. It is considered to be a voluntary offering, and consists either of money, fruit or vegetables, according to the ability or inclination of the donor.

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Returns.

Foujdary Adawlut
Circular, 27 No-
vember 1820. (See
No. 2, *supra*.)

steals cocoa-nuts, paddy or vegetable,* casts a devil on another through animosity, feigns sickness to avoid work with his master, and hires himself elsewhere, absconds for a time, is drunk and riotous, permits his master's cattle to trespass on another's fields or garden, becomes lazy in his work, does not stand or walk at a respectful distance from Brahmans, or is guilty of other trifling faults; the master punishes him by threatening and abusing, tying his hands behind him, flogging him with switches of trees, pulling the arms backwards and knocking him with the knee in the middle of the back (called *gand-goody*), confining in a room, and hand-cuffing; but no severer punishment than these are permitted; in cases where they inflict any other more cruel punishment on any account whatever, the slave applies for redress to the *sircar*. Formerly the practice in this respect was different; masters treated their slaves as they thought proper, and punished them frequently with great cruelty. But in consequence of a precept from the provincial court, dated 11th December 1820, their authority was restricted, and they were declared liable to be called to account for any barbarous treatment of their slaves, and punished as if they had committed these acts of violence on a freeman.

16. When two Dheirs belonging to different masters agree to marry, they carry offerings to their respective owners, consisting of pumpkins, cucumbers, calabashes and other vegetables, and thus intimate their intentions to them. When the marriage takes place, the owner of the male gives him two rupees and one *morah* of rice, and that of the female slave gives her one rupee and one *morah* of rice, and in some cases something more is granted; but no kind of grant whatever is made by the owners to each other. After the conclusion of the marriage, the wife lives at her husband's house, in whose owner's temporary service she is now considered to be, and is supported by him, but he has no right either to sell her, mortgage, or lend her out to others, although he may do these with the husband; she still belongs to her former master, and is obliged by the customs of the country to attend at his house twice in the year, at the time of transplanting and reaping the crops, for which, however, she is paid the usual daily allowance for the number of days she may work there; and in the event of non-attendance, she must indemnify him in the payment of from half to one rupee, or from a quarter to one *morah* of rice; if she is unable to pay this, it is given by the owner of her husband. In case of childbirth or sickness, her former master generally defrays the expense attending it; when he cannot afford it, it is done by her new master.

17. The children born of this marriage go to the proprietor of the woman, who can sell, mortgage, or otherwise dispose of them. The female slave continues to live at the house of her husband till she becomes old, or till his death, when she returns to spend the remainder of her life in her original owner's bondage. When one of the party is bought on the occasion of marriage, the rights of the respective owners on the parties themselves, and on the children, are determined by the specific conditions made at the time of purchase. The master is at liberty to sell the husband to one person, and the wife to another, but in most cases they are not thereby considered to be separated, because the masters to whom they are sold generally allow their living together, especially the owner of the female, who permits it more readily, because he has a right to the children she produces. The objection, when any is made, is on the part of the owner of the husband, because he is deprived of his services without any commensurate advantage. The master can also lend out his slaves and their children on hire, called "*hallmunddy hunna*," which he receives, but the daily allowance of $1\frac{1}{2}$ seer of rice per man, $1\frac{1}{4}$ seer per woman, and three-quarters for each boy or girl, which is also given by the person hiring them, is taken by the slaves themselves.

18. Unlike the other inhabitants, the slaves have no priests or churches. They sacrifice to and worship the devil only. On the day of their marriage, the bridegroom gives to his bride a new cloth, which she puts on, and is formally delivered into the bridegroom's hands by the elders of the caste, in the presence of the rest of the assembly (which is the most essential part of the nuptial ceremony), after which they move out in procession, accompanied by the heads of their caste, and tomtoms, to visit their respective masters and their parents. They then partake of the marriage feast at their own houses.

19. When a male slave connects himself with a woman of another caste of slaves, he is taken by the heads of the caste to the sea-shore or river-side, where a *cudjan* shed, having seven doors, is built for the purpose; after setting fire to the shed, and when it is in a blaze, the delinquent is made to pass through all the doors in expiation of the sin, after which he is considered cleansed, and is restored to his caste.

20. The Bhak-kadroo and Buttadroo classes are prohibited by their customs from carrying quadrupeds of any description, or any article having four supporters as a burden on their heads (it being considered derogatory to the caste), under penalty of being instantly expelled, though they may carry viler loads, such as dung, turf, &c. When necessity, however, obliges a person of either of these two castes to break through this custom, and carry any thing having four legs, such as a cot, couch, table, chair, &c., one leg of it must be removed to enable him to take it up on his head with impunity.

21. With respect to the immediate point referred for my consideration, I am constrained to observe, that, by the custom and usages of this province, there is no positive obligation imposed

* This is a very common charge against a slave, and, strange as it may appear, the power of committing it is not only believed to be possessed by the slave by others, but he has himself a firm belief that he can exercise it. Nothing is more common than for a person accused of letting loose a *shytan* upon another to admit the fact and promise to remove the devil from the person possessed. They even execute bonds upon stamp paper promising to do so, under a penalty of from 5 to 15 rupees.

imposed upon the owners of married slaves to allow them to live together when the male and female belong to different masters; it is very generally done; and the master who keeps them from either living together, or visiting each other at reasonable times, is considered to act harshly, but not illegally or unjustly, as he is admitted to have a right to make the most of his slaves' time.

22. The custom noticed by the second judge, late on circuit in Canara, of the payment of half a morah of rice by a female slave annually, as an indemnification to the master for the loss of her services, must be that alluded to in the 16th paragraph of this letter, where the female does not attend her first master at the sowing or reaping of the crops according to mamool. I have not been able to ascertain the existence of the other obligation, alluded to by Mr. Warden, of employing the husband also when a female resides in her master's house, and of the master of the latter indemnifying the owner of the former by the payment of one morah of rice annually. The practice exists, but it is not obligatory by the customs of the country. I do not, however, see any objections to its being made compulsory instead of optional, and I hardly think that the formality of enacting a regulation for that purpose can be necessary; any act of the legislature in this country recognizing slavery would be very unpalatable in quarters where the necessity for its toleration is not admitted, because the nature, origin and customs of slaves are but imperfectly known. It would also tend to induce the owners to stick up for supposed rights over the slave which are not clearly defined as matters now stand, and are exercised by sufferance as being founded on custom; the system appears to me to be dying a natural death (in Canara at least), and the enactment of a regulation on the subject would only, I think, tend to resuscitate and perpetuate it. If legislation be necessary now, it was equally requisite in December 1820, when the provincial court directed the master who treated his slave cruelly to be punished as if the latter were free; for that, although perfectly reasonable and just, was as great an infringement of the master's right, and as much unsanctioned by the custom of the country, as requiring the master to allow his married slave to live at the house of another, and the latter would be neither more opposed nor considered more oppressive than the former, which has now been silently acquiesced in for nearly six years by the whole of Canara. If the magistrate were simply instructed by an order from the provincial court to require the owner of a male slave to allow him to live with his wife's master, on the former receiving the usual indemnification, it would be sufficient, I think, to establish the custom permanently, which would be another and a material step towards placing this race of beings in that situation in society which every man of common humanity must be desirous of seeing them occupy; little more, in fact, would be necessary, as the local authority, by the exercise of a sound judgment and discretion, would soon remedy the few remaining evils of their situation, without any violent rupture of the existing bond between the master and slave; the former finds it for his own advantage to treat his slave well, since he has discovered that the latter will not be forced back into his service when he only leaves it on account of maltreatment. I have always refused interference as magistrate on such occasions, after ascertaining the fact of oppression or ill-usage by the master, and the latter has been forced in consequence by conciliation to induce his slave to return, the loss of his services in the meantime acting as a wholesome lesson to teach him the policy of kindness to his bondman; on the other hand, when a slave has quitted his master's service from any other motive than to escape violence and oppression, I have directed that he should be restored to his owner, and continue to give him the advantage of his services; there is no regulation that requires this mode of proceeding in either case, but it is consistent with the spirit of the orders of the provincial courts of 11th December 1820, and with humanity, and it is not, as far as I am aware, in opposition to any order of government or other authority.

23. The civil courts every day decree slaves to a suitor like cattle, grain or any other kind of property; but this must be the case wherever slavery is tolerated, and the slave is the absolute property of the master; and provided the husband and wife and children are sold to the same person, it matters little to whom they are transferred; few instances occur of the families of slaves being separated by a sale, and in these few the new masters almost always live near, and the slaves can visit each other at leisure hours. The impolicy of separating them to a great distance has evinced itself in the very few cases where a separation has taken place to any great distance, by the slaves absconding from their masters repeatedly, and depriving them of their services, for a time at least; and I do not think, therefore, that there is much probability of the practice becoming more frequent; on the contrary, I think it is much on the decline, and will soon be altogether abandoned without the interference of the legislature to put it down.

24. In concluding this subject, I have much pleasure in stating my opinion, that the present condition of the slaves in Canara is better than in any part of the world where slavery is tolerated. It is in fact as good, if not better, than that of many of the free labourers, for sick or well the slave is supported by his master, and has always a hut to cover his head in the inclement season; his food also is wholesome, and generally sufficiently abundant. The punishment to which he is liable is not severe, or, according to his ideas, disgraceful, and his work is not oppressive or beyond his strength. Instances of cruelty on the part of the master do occur, but they are only sufficiently numerous to form an exception to the general practice; and as they are now punished by the police, they are likely in future to be of still more rare occurrence.

25. The length of this address and the delay which has attended its transmission call for some apology; they have been caused by an anxious desire to put the government in possession

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session of the fullest information on a subject of considerable importance in itself, and not otherwise likely to come before it in an authentic form.

W. Sheffield, Acting Magistrate, Malabar.

No. 59.
21 April 1826.

2. In reply, I beg to state, that, after a particular inquiry, I have ascertained beyond a doubt that in every part of this province the usage of the country decidedly imposes upon the masters the obligation to allow their married slaves to live together.

3. There are 18 castes of slaves, of which 13* observe the muckataye; or inheritance by sons to the rights of their fathers; in the remaining 5,† the murroomuckataye, or inheritance by sons to the rights of their mothers, obtains.

4. In all the families of the 18 castes, with the exception of the Poolyars, the female slave, on her marriage, leaves her own estate, and accompanies her husband, with whom she resides; and her master cannot oblige her to return to his estate unless she should survive, or be divorced from her husband.

5. With regard to the Poolyars, who all observe the murroomuckataye, the prevailing custom in the Chowghut, Kootnaad, Ernaad and Betutnaad districts, is for the husband to reside in the house of his wife; in the remaining talooks, the wife invariably resides in her husband's house.

6. In Zemalapooram, with the exception of the Parrayen and Kunnakun castes, females are purchased and given in marriage to the male slaves by their masters; but this custom does not exist any where else.

7. It is usual for the male slave to present the owner of the female on the occasion of their marriage with a few fanams and some articles of trifling value, with which he is supplied for the purpose by his own master; but nothing more is given to the owner of the female slave.

8. The female slave, while living with her husband, works for the latter's master, from whom it is not customary for the owner of the former to demand compensation, nor is any thing paid to him by the master of the husband for the loss of her services; the latter is, however, obliged to maintain the wife as long as she resides with her husband; after his death she is sent back to her own master. The male Poleyan slave, who resides at the house of his wife, goes daily to work for his own master; the owner of his wife cannot in any manner command his services.‡

No. 60.

ANSWERS of the Judges of the Provincial Court, and subordinate Judges and Magistrates, to the Letter from the Law Commission, dated 10th October 1835.

Provincial Court.

22 July 1836.
Native Judge of
Sirsee, dated
9 December 1835,
(see No. 66.)
Magistrate of
Canara, 14th ditto,
(see No. 61.)
Magistrate of Ma-
labar, 19th ditto,
(see No. 62.)
Acting Native
Judge of Honoie,
21st ditto, (see
No. 67.)
Judge of Canara,
27 February (see
No. 63.) and 12
March 1836, (not
printed, see marginal
note of No. 63.)
Judge of Malabar,
12 May 1836,
(see No. 64.)

I AM directed to forward copies of the answers received from the several officers noted in the margin on the subject of slavery, as required by your letter of the 26th November last, to which are added translations of answers given by the pundit and two of the principal ministerial servants (Hindoos) of the provincial court.

2. With reference to the first question in Mr. Millett's letter, the judges of the provincial court are not aware that the civil courts in this division have ever recognized in the masters of slaves any legal rights with regard to their (the slaves') property; though, as respects their persons, the competency of the master to transfer the slave by sale, mortgage or lease, according to the ancient laws and customs of the country, has, it is believed, never been disputed or doubted in these provinces.

3. To the second question there can be but one answer, viz., that in our criminal courts any distinction between freeman and slave is unknown; and, as respects the third, the judges know of no cases in which the courts and magistrates afford less protection to slaves than to free persons against other wrong-doers than their masters.

4. With regard to the cases propounded in the last paragraph of Mr. Millett's letter, the judges of the provincial court find it difficult to give any other than the general answer, that whenever a case shall occur for which no specific rule may exist, and to which neither the Hindoo nor the Mahomedan law would be applicable, the court would, by the regulations, be bound to "act according to justice, equity and good conscience."

5. It does not appear that in the provincial court any final decree has ever been passed whereby property exclusively in slaves (that is, without reference to the land to which they belong) has been recognized or rejected, or which determined any question respecting slavery.

No. 61.

14 Dec. 1835.

C. R. Cotton, Magistrate of Canara.

3. In the absence of all regulations defining the privileges and rights of masters and slaves, the magistrates of this district appear to have acted according to their own judgment in upholding

* 1, Kulladee Kunnakun; 2, Yerlin Allur; 3, Punniur; 4, Parrayen; 5, Numbou Vattooven; 6, Kungulun Koodummar; 7, Natalum; 8, Malayen; 9, Koorumbur; 10, Punnee Malayen; 11, Adian; 12, Moopun; 13, Nauken.

† 1, Poleyan; 2, Walooowan; 3, Ooratu; 4, Koorimpallen; 5, Mavillent.

‡ In this letter, were forwarded the replies of the tehsildars to questions put to them by Mr. Sheffield. They have not been sent, but their substance seems to be embodied in the letter of the provincial court, No. 55. Mr. Sheffield likewise forwarded (extract paras. 40 and 41) from Mr. Græme's report, dated 14th January 1822 (*vide* Slavery in India, 1828, page 926), and extract (paras. 10, 11 and 12) from report of the principal collector of Malabar to the board of revenue, dated 20th July 1819. (*Vide* *ibid.*, page 845.)

upholding or depressing the system ; and, though the general tendency of their proceedings has inclined somewhat more towards the latter than the former result, the state of slavery seems to be very little altered. It appears to be very much the same now that it was under the Hindoo and Mahomedan governments. Slaves are still sold and mortgaged, with or without the estate to which they may be attached ; and the present relative rights, privileges and customs of owners and slaves remain in the state so fully detailed in one of my predecessor's letters to your court, dated 1st June 1826.*

4. With respect to the "protection extended to slaves against cruelty or hard usage by their masters," the magistracy of this district appears to have made very little exception, admitting the right of slave-owners to inflict punishment. The right has been allowed, but only to a very small extent. How far it may have constituted a ground for mitigation of punishment in cases brought before the higher criminal courts your own records and proceedings will show.

5. The other points alluded to in Mr. Millett's letter have reference to the civil law and the proceedings of the civil courts, on which, of course, I am not called upon to give any opinion.

F. Clementson, Magistrate, Malabar.

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No. 62.

19 Dec. 1835.

2. THE information called for in the first question of Mr. Millett's letter being one entirely of a civil nature, the zillah and assistant judges will doubtless report thereon. I would, however, beg to state, that in the revenue branch of the service the right of the slave to possess and hold land and other property is recognized equally with that of the freeman. There are about 377 slaves who at present hold land on different tenures, paying revenue direct to government, the sum payable by each varying from 1 to 92 rupees per annum. Any complaint of the master taking forcible possession would receive the same attention, and meet with the same redress, as the complaint of a freeman.

3. In reply to the second question, I beg to state, that as far as the magistrate's jurisdiction goes, the relation of a master and slave has never been recognized as justifying acts which would otherwise be punishable, or as constituting a ground for mitigation of the punishment. Slaves, complaining against their masters for acts of violence, receive equal protection with all other castes ; they now readily resort to the magistrate's kutcherry, when prompt attention is given to their complaint, and the parties offending against them immediately punished, without any reference to their relative situations in life. A case in point occurred no later than the 26th of October last, when I sentenced an individual to 15 days' imprisonment in the gaol on the complaint of a female slave for illegal detention and confinement.

4. During my residence in Malabar, now upwards of three years, I have never had occasion to interfere as regards the master against the slave. Complaints have occasionally been made of the slave having deserted to a neighbouring estate, when I have invariably pointed out that the only sure and safe way of proceeding and preventing a repetition was kind and considerate treatment, which has always satisfied the parties.

5. The foregoing replies answer the third question, and show that no distinction is made with reference to the wrong-doer being other than the master, both being alike subject to the same amount of punishment.

6. The points embraced in the fourth question being unconnected with the magistrate's department, no answer thereto is, I believe, expected from me ; but with reference to the wish expressed by the Indian Law Commission of obtaining information "especially in regard to the slaves in Malabar," I think I cannot do better than submit herewith an extract from that part of Mr. Græme's † report which relates to the subject, as it contains the most faithful and full account of the slavery of this district ever written or published.

E. P. Thompson, Judge, Canara.

No. 63.

2. AFTER having collected the necessary materials to answer in detail the several questions, I found so much had already been written on the subject, that it would hardly be possible to add to the information already available. I beg particularly to refer to the reports of the Honouable Mr. Harris, dated 31st May 1819, and Mr. Babington's of the 1st June 1826.

3. The first question proposed by Mr. Millett has been clearly explained in these letters.

4. With regard to the first part of the second question, namely, to what extent is it the practice of the courts and magistrates to recognize the relation of a master and slave, as justifying acts which otherwise would be punishable, or as constituting a ground for the mitigation of the punishment, I am not aware of any definite rule having been laid down for observance. It would be difficult to frame rules to meet all cases, and it must generally be left in a great measure to the discretion of the presiding officer, whose judgment in regulating the punishment would be advantageously exercised on such occasions. In some instances it may be clearly shown that a breach of the peace has been committed by slaves by their masters' orders, and in such cases the prisoners would be fairly entitled to some consideration ; but to declare that all slaves were free from punishment when they obeyed their masters' orders,

27 Feb. 1836.
Note by the Provincial Court.—
Mr. Harris's letter is not on the records of this court. Mr. Babington's letter was forwarded to the Foudary Adawlut in a letter from the Provincial Court, dated 4 December 1826. (See No. 58, *supra*, for Mr. Babington's return.)

* See No. 58, Mr. Babington, *supra*.

† Omitted being printed in the volume of papers on Slavery in India, 1828.

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orders, would be to give the latter a band of licensed depredators. The remaining part of the second question is fully answered by Mr. Babington.

5. With respect to the third question, no case has ever come under my knowledge in which less protection has been afforded to slaves than to free persons against other wrong-doers than their masters. All classes are treated the same, whether bond or free.

6. I beg to enclose copies of four * decrees regarding the purchase and sale of slaves. There are others of the same kind, which, if necessary, I will also forward.

R. Nelson, Judge of Malabar.

No. 64.
12 May 1836.

1. IN accordance with your letter of the 2d December 1835, I have the honour to transmit herewith copies or translations of 14 † final decrees relative to slaves passed by this court and its subordinate authorities. More will be submitted if required.

I have also the honour to submit the following information:—

2. The civil courts recognize a title in the master to transfer the person of the slave by sale, mortgage, pledge or lease. With respect to their property, I am unable to refer to any precedent, having never known the question agitated; but I am informed that slaves are capable of holding property, and that it descends to their heirs as with other castes.

3. In the criminal court, any distinction between freeman and slave is unknown, one law being applicable to all.

4. In cases not provided for by the regulations, and where section 17, Regulation II. of 1802; does not sufficiently indicate the course to be pursued, it is usual to refer points of Mussulman or Hindoo law for the opinion of the mufti or the pundit, according to section 17, Regulation III. of 1802. Should doubts still arise, reference is made to the higher court.

5. In regard to the cases propounded in the latter part of para. 4, it must be observed, that it is not customary to make any distinction as to the proprietary title, in consequence of the caste of the master or the slave. Were a claim to be brought for the service of a slave by any other than a Mussulman or Hindoo, the legality of such title would probably become the subject of reference to the Sudder Adawlut.

6. My opportunities for acquiring a knowledge of the slavery of Malabar are very confined, and my information is consequently small. I feel, moreover, much reluctance to incur the responsibility of asserting what is the law or usage on any particular point, lest the rights of either class should be compromised through my ignorance.

7. Civil suits are rarely decided solely upon principle, and any principle to be permanent or generally operative must come from the Sudder Adawlut. The features of all trials vary much; the amount of evidence is different in each; and thus it may happen that two suits, wherein the same principle was involved, might be decided contrary to one another.

8. Further, precedents are not binding on the courts. The decrees of one judge may be framed upon a different principle from those of his predecessor. An injunction of the provincial court may change the course of procedure; which again may be set aside virtually by a subsequent order on another case; and, again, the course is liable to alteration by the sudder court.

9. It is therefore inapplicable to call any thing a principle of law in the courts which is not laid down by the legislature or the higher judicial authority.

10. Beyond the passages quoted by the commissioners, I know of nothing contained in the regulations referring to the subject.

27 Nov. 1820.

11. There is a circular order of the foudary court respecting the treatment of slaves, and this is, I believe, the only circular order on the subject.

12. On the civil side there is an order ‡ of the Sudder Adawlut, dated 12th July 1830, regarding the mode of suing for slaves.

T. L. Strange, Assistant Judge and Joint Criminal Judge, Auxiliary Court, Malabar.

No. 65.
6 Aug. 1836.

2. I HAVE now the honour to transmit abstracts selected from 242 decrees § on record, whereby rights in slaves have been decided on, as also copies of several exhibits recognized in judgments of the courts, showing the description of documents in use for the conveyance of such rights, and to submit my answers on the different points of inquiry contained in the letter of the secretary to the law commissioners.

1st. The slaves of Malabar are such by birth and caste; they are altogether employed in agricultural pursuits; their owners possess the same right to dispose of them by sale, mortgage, pledge or lease as held in real property. Slaves may and do acquire property over which their title is as absolute as that of the free classes over their property; on failure of heirs, the property of slaves escheats to their masters. These rights are secured to the people by the law of the country, which is based upon the Hindoo law, and are practically recognized by the established courts.

2d. By

* Mr. Thompson subsequently sent other decrees, which will be found in Nos. 70 to 88, *infra*.

† See No. 89, *et seq.*, *infra*.

‡ N.B.—This order appears to be that entered in page 405, Slavery in India, 1838.

§ See No. 103, *et seq.*, *infra*.

2d. By the Hindoo law, owners may inflict moderate corporal punishment upon their slaves for petty offences. Slaves submit to such chastisement without making complaint, the authority to decide on which, if made, would be the magistrate, and not the criminal court. In cases of serious ill-usage, masters have been punished in the criminal courts, on the prosecution of their slaves, in the same manner as if no such connexion had subsisted between them. Slaves have been punished for lawless acts committed by them in obedience to their owners; but of course in these, as in all other instances, the motives of the offender and the degree of free-will exercised by him have formed legitimate grounds for consideration towards mitigating the sentence. No instance within my knowledge has occurred of a Mussulman slave being brought to trial in Malabar, their number being very limited. The allowing to such slaves the advantages granted them by the Mahomedan law in criminal matters would, I conceive, be refused by the Company's courts under the general principles of equity which govern them in limiting their adoption of this law as their rule of guidance.

3d. There are no cases in which the courts afford less protection to slaves than to free persons.

4th. From what has been said above, it will be seen, that the criminal courts make no distinction between slaves and freemen founded on their individual or relative situations. In the civil courts, the law recognized in Malabar is that of the country, called "kana" (mortgage), "jenma" (proprietary right), "mariada" (custom or rule), before adverted to, which, although founded upon the Hindoo law, is appealed to both by Hindoos and Mahomedans, and regulates all questions of property, whether real, personal or in slaves. It is not possible that the cases supposed, wherein the Mahomedan and Hindoo laws may be brought into collision, should arise in malabar. Hindoos in this district possess no other description of slaves but such as have been born from parents who are slaves by caste, and these the Mahomedan law would recognize to be in a state of slavery; and the three conditions under which persons become slaves among Mahomedans, that of descent, of capture in war (of unbelievers), and of voluntary sale in times of famine, are common to the Hindoo code.

5th. The courts in Malabar, beyond a doubt, would be bound to admit and enforce claims to property in slaves (being such by the law of the country, and not imported from foreign parts) on behalf of others than Mussulman or Hindoo claimants, and against others than Mussulman or Hindoo defendants, upon the grounds, that such property has been acquired, not only with the tacit consent but through the direct means and assistance of the British Government in India; in proof whereof, I submit copies of official correspondence from the Bombay government, and the commissioners of Malabar, received from Mr. F. C. Brown,* of Tellicherry and Anjarakundy, who has succeeded to property in slaves purchased by his father from the government.

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Suyud Zeeo-oo-deen, Native Judge, Sirsee (Canara).

No. 66.

YOUR letter of the 2d instant, requesting me to submit copies of any final decrees whereby property in slaves has been recognized or rejected, or which determine any question respecting slavery, was received to-day. Since the institution of this court, no suit of this nature has been filed, nor any decree passed; but in 1832 a complaint on this subject was preferred in the criminal court, No. 59, and a sentence passed, a copy of which is herewith forwarded.

(No. 59 of 1832, on the Criminal File.)

Ecreeyapa, Prosecutor, versus *Purdud Timah* and *Doss Timah*, Prisoners.

THE charge is this: The prisoners, who are descendants of his (the prosecutor's) slaves, will not stay in his house, nor attend to what he says, but are very refractory. The prisoners have admitted that they are descendants of slaves, and state that they are willing to live with him (the prosecutor), and that they will not be refractory. They are therefore admonished, and being ordered to live with the prosecutor, are released.

(signed) *Meer Mahamud Ulee*, Native Criminal Judge.

Zillah Canara, 23d August 1832.

Shantea, Native Judge, Honore, Zillah Canara.

No. 67.

THE native judge of the court at Honore, in Canara, appears to have transmitted to the provincial court six decrees respecting Dher slaves; two by the former assistant-judge, and four by the sudder ameen.

But

* Omitted being printed in volume of papers on Slavery in India, 1828.

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But the judges deemed it unnecessary to forward five of these decrees, one of them being a dismissal for want of proof, two founded (by agreement of the plaintiffs) on the oaths of the defendants, and in the remaining two cases, landed property to which slaves were attached having been adjudged without determining any question regarding the slaves exclusively.*

No. 68.

4 June 1836.

ANSWER of the Pundit *Soobramany Shastry*, of the Provincial Court, Western Division.

THE books, entitled *Munnoo Smrith*, *Puransharoyom Smrith*, and *Vignhaneshwaryom Smrith*, treat about slaves. Fifteen descriptions of slaves are mentioned in the last book, and they are as follows: 1st, the offspring of a female slave (*Dhansee*) living in the house; 2d, those who have been purchased; 3d, those who have been made over as a gift; 4th, those falling to one's share on a division of the family property; 5th, those who have applied in time of famine to be provided with food and raiment, and who are supported accordingly; 6th, those who mortgage their persons for money borrowed by them; 7th, those who have been purchased by a liquidation of considerable debts due by them; 8th, those who have been captured in war; 9th, those who have lost a wager; 10th, those who have consented to live as slaves; 11th, those who have been degraded from their tribe; 12th, those who have agreed to live as slaves for a given period; 13th, those who have consented to live as slaves on being provided with food; 14th, those who are enamoured with female slaves; and 15th, those who sell their persons: the slaves in Malabar are of the 1st, 2d, and 4th descriptions above alluded to. It is stated in the aforesaid books, that the owners have a claim on the property of their slaves; that should the slaves commit any fault, they can inflict a few stripes on their backs either with a rope or a thin branch, but they cannot strike them on the forepart of their bodies; and if they do, they should be visited with the same punishment as that inflicted on thieves.

2. In Malabar, the owners dispose of their *Chermars* or slaves by sale or mortgage, in the same manner as they do their landed property. These two descriptions of owners let out their slaves on rent. The renters not having any pecuniary claim on them, it is not usual for their rights to be transferred to others. Should the slaves misbehave themselves, the three descriptions of owners above referred to inflict trivial punishments on them, on which account the slaves would not prefer any complaint; but should they be subjected to a severe punishment, and should the *sircar* come to know of it, due notice of it would be taken. The aforesaid three descriptions of owners provide their slaves under their charge with food and raiment. Should any other person, besides the said owners, ill-treat any slaves, they or their masters are in the habit of representing it to the *sircar*. Previously to the acquisition of the country by the honourable Company, and during the government of the *rajahs*, the owners used to inflict lenient punishment on their slaves, but if they practised any cruelty towards them, and if the ruling authority came to know of it, they used to investigate into it, and afford redress to the injured party. In case any other person ill-treated the slaves, their masters used to represent the matter to the then authority, and obtain redress for the injury. Neither before nor after the acquisition of the country by the honourable Company, has any change taken place with respect to the rules observed in the disposal of slaves by sale or otherwise.

3. The Hindoo *Shasters* make no mention as to what persons may and what persons may not acquire slaves; but as the *Shasters* treat of slaves, it is to be inferred that Hindoos can possess them. As several Mahomedans in Malabar are in the habit of keeping slaves, it is to be concluded that their law does not prohibit the practice.

4. As the proprietors have a right on the persons of their slaves, and the mortgagees on money advanced by them, it is usual for their respective rights to be transferred to that extent. It is stated in the above-mentioned books, that masters should love their slaves as fathers do their children.

5. I possess, in *Kanoomund Jenm*, 37 slaves, inclusive of their families.

Dated 4th June 1836, or 24th *Eddavom* 1011.

(signed) *Soobramany Shuistry*, Pundit.

No. 69.

ANSWER of the Sheristadar and Malabar Moonshee of the Provincial Court, Western Division.

20 May 1836.

Transmitted by
Provincial Court,
dated 22 July 1836.

1. THE proprietors in Malabar deal with their slaves in three different ways, as they do with their landed property, namely, by sale, mortgage, or lease. Those that are attached to lands are transferred with the lands, but not so those that are not. Slaves are attached to the land when the title-deed as well for the land as the slaves is one and the same; but where there is a distinct title-deed regarding a slave, then such slave is not attached to the land. Of the three descriptions of proprietors of slaves above noticed, the renter or lessee not having any pecuniary right in them, it is not usual for his right to be transferred. Mortgagees only transfer their slaves to their neighbours, not to strangers. Proprietors sell them in their own districts, and occasionally in other districts, to the distance of about a day's journey.

* The remaining decree, which would appear to have been transmitted to the *Sudder Adawlut*, was not forwarded to the Indian Law Commission.

journey from their own. We have never known any instance of their having sold them in more distant places. This custom of not selling slaves in distant places has arisen from a consideration of the hardships to which they would be exposed by being parted from their relatives; but if such a sale were to be effected to meet a pressing exigency, there is nothing to invalidate it (*i. e.* it would not be illegal). The proprietors consider their slaves like any other property. It is doubtful whether among the total number of slaves in Malabar there are even eight or ten who possess any property. Should, however, a slave possess any property, his master can have no claim to it during the lifetime of himself and family if he has any; but such slaves cannot dissipate or dispose of their property without their master's consent. The master becomes entitled to the property of a slave only when the slave has no heir. We are not aware of any instance of a master having ever instituted a suit to recover the individual acquisition of a slave.

2. We have seen acts of masters towards their slaves, if criminally punishable, punished by the magistrates and criminal courts, in the same manner as those of other people, without any distinction being made as to their relative situations; and such slaves do subsequently return to and live with their masters. Further than punishing their slaves for refusing to remain under them, or neglecting to perform the duties expected of them, or for misconduct, masters do not maliciously ill-treat them, though instances have occurred of corporal punishment inflicted on slaves for such purposes as those above-mentioned, having occasioned injuries extending even to death. We have never seen any instance of a slave having prosecuted his master, where the punishment inflicted as above was trivial. Although by the Mahomedan law some indulgence is shown towards slaves, as regards punishment in criminal matters, still as the regulations make no distinction, they are dealt with according to those regulations, without any distinction being made; consequently they do not enjoy the privileges allowed by the Mahomedan law.

3. With the exception of the three descriptions of proprietors alluded to in the first paragraph, no other persons ill-treat slaves; but if they do, redress is afforded to them by the *sircar* in the manner noticed in the said paragraph.

4. In criminal matters regarding slaves, the magistrates and criminal courts follow the usual course indicated in the second paragraph. But in civil suits concerning them, the courts proceed according to the rules observed in suits regarding landed property. As in Malabar, slaves are disposed of by sale or otherwise, agreeably to the rules laid down for the transfer of landed property, &c. as stated in the first paragraph. And as decrees in suits regarding landed property are passed according to the Mahomedan or Hindoo law, as the case may be, as prescribed by clause 1st, sec. 16, Reg. III. of 1802, the same rule is observed as regarding suits respecting slaves. Further than the proprietor, mortgagee or renter suing each other regarding their rights in slaves, the latter are never parties in such suits. Although no mention is made of slaves in clause 1st, sec. 16 of the said regulation, wherein is specified the nature of suits, which should be determined agreeably to the Mahomedan or Hindoo law, still, as in Malabar, all suits regarding slaves are for the rights which the owners possess over them; and as their rights are or may be involved in one or other of the various grounds of action specified in the regulation above quoted, suits regarding slaves are disposed of in the same way. All slaves in Malabar are Hindoos, and they are always slaves; and we are not aware of any question having hitherto arisen in any suit as to the legality or otherwise of a slave, with reference to either the Mahomedan or the Hindoo law. There are but few Mahomedan slaves in Malabar, who live as servants in the houses of Mahomedans, and we have never known any instance of any of them having been publicly disposed of, by sale or otherwise, or of any suit having been instituted on that account.

DECREES* which accompanied Mr. Thompson's Return to the Provincial Court of the Western Division.

(Appeal, No. 41 of 1829.)

DECREE of Ghoolam Mahomed, Acting Sudder Ameen of the Auxiliary Court of Canara.

No. 70.

Ganaisha Bhutt, by Vakeel *Manjuya*, versus *Hallaipyke Sannana Soobba*.

APPELLANT, as plaintiff, sued respondent for the recovery of a Dher slave, named Maroo, valued at 16 rupees, whom the respondent took into his employ on the 5th Cartika, Shoodha of Partheva, after having agreed to pay him a rupee per mensem, exclusive of expenses; as also for the recovery of 36 rupees, being principal and interest of his hire.

Respondent in answer states, that previous to the plaintiff's purchasing Kumboo, the father of the slave in litigation, Hengadey Vencutiya, purchased the latter from his proprietor; that according to a letter written by him, he served at the respondent's, and that therefore nothing is due to the appellant on account of his wages.

Appellant cited 13 witnesses and filed five documents, viz., one decree passed in cause No. 264 of 1826, filed by the respondent against the appellant for the recovery of the wages of Kumboo and his wife, Soorabby, being two slaves purchased by him, and which were

* See No. 63, *supra*.

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were let to the appellant for hire; second, another decree passed in cause No. 169 of 1827, filed by the appellant against the respondent; third, a kurraur executed by Maroo, the slave in litigation, in favour of the appellant, authorizing him to receive the 33 rupees of his wages, with interest; fourth, a kurraur executed by the respondent's son, Nagoo, in favour of Nawna Bhutt; fifth, a letter written by Vencutaisha Bhutt to the respondent's son, Nagoo. Respondent cited five witnesses and produced two documents, a letter written to the respondent by Vencuta, a witness in this case, authorizing him to employ his slave, Maroo, and a deed of sale executed by Naura Hegudey's son, Mahabula, to the respondent's witness, Vencuta, on the 3d Vyeshaka Bahoola of Pramoda, purporting that he had sold to him, Maroo, the eldest son of his slave, Kumboo. The district moonsif examined one witness for the appellant, two for the respondent, and four for both parties, and dismissed the plaintiff's claim. Plaintiff has appealed from his decision, and the respondent made his answer.

On consideration of all the proceedings held in this case, the following judgment is recorded: The respondent's suit against the appellant under No. 264, for the recovery of the wages of Kumboo, the father of the slave in litigation, as well as Soorabby, who (both) had been let to the appellant at five fanams per male, and two and a half per female, was dismissed, it having been proved in evidence that the said Kumboo had been sold to the appellant by a deed of sale under date the 10th Shrivuna Bahoola of Sreemooka. Appellant represented in that cause, that as Maroo, the slave in litigation, belonged to him agreeably to the custom of hory minchoo (a pact regarding the marriage of a slave), he paid the expense of his breeding, and got possession of him; and it was deposed on oath in that suit by Soobbiya, son of Nariyna Hegadey, the owner of the slave, that his father executed a deed of sale in favour of the appellant for the slave, Kumboo, in the year Sreemooka. The statement of the second witness, Vencuta, that he obtained a deed of sale for the slave from the said Nariyna Hegadey's son, Soobba, three years prior to Sreemooka, is, it is to be extremely doubted, far from being a correct one; for if he had actually purchased the slave, he would have continued in possession of him ever since. There are therefore sufficient reasons to believe, that the second witness has given false evidence, with the expectation of acquiring a right to the slave while the parties are disputing between themselves. It has been clearly established by evidence, that the first-born of the above description of slaves goes to the proprietor of the male, and the children next born go to that of the female, agreeably to the custom of hory minchoo (a pact regarding the marriage of a slave). It may be inferred from the tenor of the deed of sale, viz., that the slave was to be enjoyed in perpetuity of the family, and that the sale in litigation comes within the scope of that clause, as the under-mentioned circumstances will show. Both the appellant and respondent admit, that at the period when the deed of sale was executed to the appellant for Kumboo, his son, the slave in litigation, was a young lad. It appears from the evidence of Hareappa Hegadey, that children born of a female after her purchase belong to the purchaser, with the exception of one born before purchase. In support of this the first witness states, that subsequent to the execution of the deed of sale for the slave, the appellant paid the expense attending the breeding of the slave sued for, and obtained possession of him; and thus it appears that the respondent has no right whatever to him. There does not appear sufficient reason from the evidence of the second and third witnesses, who were called to prove the custom, to set aside the appellant's right. There is sufficient ground to conclude, that, at least from the appellants having paid the expense of breeding on the ground of the deed of sale, he has acquired a right to the slave. He should therefore enjoy him agreeably to his right and the consent of the slave; the respondent's claim to him does not appear to be just. Moreover, the respondent does not deny that the slave claimed was in his house. Under these circumstances it was proper to adjudge respondent to pay appellant two rupees per annum, exclusive of expenses, as claimed in suit No. 264. The moonsif's decision, therefore, in favour of the respondent does not appear to be correct. It is accordingly reversed, and it is decreed that the respondent do pay to the appellant hoon 1-3-7 for two years eight months and five days, for which the slave served him, exclusive of expenses, and also interest, 1 fanam; total hoon 1-4-7, or 5 rupees 12 annas; costs to be borne by the respondent, those on sum disallowed being borne by the appellant himself.

(True translation.)

W. Henderson,

Third Judge for Register.

No. 71.

Zillah Court of Canara.

(Original suit, No. 132 of 1827.)

Nandappa Shetty versus Somaya Shetty.

Abstract of Plaintiff and Decree.

PLAINTIFF sued to recover a land yielding rupees 345-1-80, rupees 43-1-80, net produce, slaves valued at 60 rupees, together with certain other property, agreeably to a deed of sale.

The defendant admitted the plaintiff's claim.

The register, on the 16th February 1830, decreed that the defendant do make over to the plaintiff the property claimed, on the ground of his having owned that the deed of sale was really and truly executed.

(signed)

George Sprakes, Register.

Court

Court of Adawlut, Zillah Canara.

No. 72.

(Original, No. 6,244 of 1812.—Appeal, No. 25 of 1815.)

Padma Cottary versus Marriapah and (since his decease) his brother, *Chenna Veeraiah*.

THE plaintiff sued for the recovery of 45 pagodas advanced to defendant (since dead) on the mortgage of 19 slaves. Abstract of Plaintiff and Decree.

The supplemental defendant denied the plaintiff's claim.

The register nonsuited the plaintiff as it was proved that the deceased defendant and the supplemental one lived separately, and consequently the latter could not be answerable for agreement entered into by the former.

The plaintiff appealed.

The judge, on the 14th May 1817, confirmed the register's decree for the same reasons.

(signed) *William Sheffield*, Judge.

Court of Adawlut, Zillah Canara.

No. 73.

(Original, No. 163 of 1814.—Appeal, No. 5 of 1816.)

Narraina versus Nama Bundary.

THE plaintiff sued for the recovery of 62 rupees, amount of six slaves, and 100 rupees damages. Abstract of Plaintiff and Decree.

The defendant denied the plaintiff's claim.

The register decreed to plaintiff the six slaves and 50 rupees damages, on the ground of the plaintiff's claim being substantiated by oral and documentary proof.

The defendant appealed.

The judge, on the 22d May 1817, fully coinciding in the justice of the register's decree, confirmed the same.

(signed) *William Sheffield*, Judge.

Zillah Court of Canara.

No. 74.

(Original suit, No. 292 of 1825.)

Kairla Warma Rajah versus Mulavoor Rama and Kailoo.

THE plaintiff sued for the recovery of two houses, together with lands, gardens, and coomeries of b. ps. 28-5-0, and 50 slaves thereunto attaching, valued at 585 rupees, due on a mortgage-bond executed in his favour by the first defendant. Abstract of Plaintiff and Decree.

The first defendant admitted the plaintiff's claim in part.

The second defendant denied it.

The court, on the 15th May 1833, adjudged that all the property specified in the mortgage-bond be transferred to the plaintiff, on the ground of the same having been proved.

(signed) *P. Grant*, Judge.

Zillah Court of Canara.

No. 75.

(Original suit, No. 326 of 1828.)

Vencuppa Shetty versus Goondaul Moowasamunny.

PLAINTIFF claims from defendant a land of hoons 27-0-9 beriz, yielding annually rupees 191-2-0, and forming part of an estate, called Goondaul, of hoons 54-1-2 beriz, rupees 1,165-2-60, value of the net produce thereof, slaves and cattle valued at 68 rupees, and a house, cow-house and cottighay, valued at 100 rupees. Abstract of Plaintiff and Decree.

Defendant, in his answer, admits the justice of the plaintiff's claim.

The court, on the 4th July 1829, directed that the defendant do relinquish to the plaintiff the land, slaves, cattle, house, cow-house and cottighay sued for, and pay to him the value of the net produce, being rupees 1,165-2-60, and also all costs of suit.

(signed) *J. Vaughan*, Judge.

Zillah Court of Canara.

No. 76.

(Original suit, No. 139 of 1827.)

Tommappa versus Munjanna.

THE plaintiff claimed an estate, producing rupees 540-3-0; a garden, jungle, &c., valued at 70 rupees; a house and out-houses, valued at 380 rupees; eight male and eight female slaves, Abstract of Plaintiff and Decree.

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slaves,

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Appendix IX. slaves, with their children, valued at 160 rupees; 30 paid to the sircar for kist; and sundry
Returns. articles, valued at rupees 419-1-0.
The defendant denied the plaintiff's claim.
The assistant judge, on the 31st December 1830, dismissed the suit as groundless.
(signed) J. Walker, Assistant Judge.

No. 77. Zillah Court of Canara.

(Original suit, No. 17 of 1831.)

Soobbanna versus Munjoonatha Shanbhogue and Suntumma.

Abstract of Plaintiff and Decree. THE plaintiff sues for 468 rupees, being expenses incurred for three years and three months, a period during which she has been living separately from the defendants; a house worth 100 rupees; for slaves, &c., 175 rupees; and property yielding an annual income of 144 rupees, for her future subsistence.
The defendants denied the plaintiff's claim, but made no objection to the plaintiff's living with them.
The register, therefore, on the ground of the defendants admitting that they are responsible for the plaintiff's maintenance, decreed to the plaintiff, on the 30th November 1833, property yielding 60 rupees per annum, and a house valued at 50 rupees, or 50 rupees for building one, together with 100 rupees for utensils, &c., and disallowed the sums claimed on account of the expenses and the slaves.
(signed) F. N. Malby, Register.

No. 78. Zillah Court of Canara.

(No. 171 of 1824, on original file.)

Doogan Chouta versus Shumkra Puddawauilla and Pommoo.

Abstract of Plaintiff and Decree. PLAINTIFF sued defendants for the recovery of land, producing rupees 370-3-30; 20 slaves, valued at 200 rupees; 25 cattle, valued at 140 rupees; and certain other property, to which the plaintiff succeeded on account of adoption.
Defendants answered that the plaintiff was not adopted.
The court, being of opinion that the right to the property on the ground of adoption was not established, dismissed the suit with all costs, on the 25th July 1828.
(signed) J. Vaughan, Judge.

No. 79. Zillah Court of Canara.

(Original suit, No. 22 of 1822.)

Coomara Hegaday versus Appiya and Sunkoo Mully.

(Appeal suit, No. 121 of 1824.)

Abstract of Plaintiff and Decree. The same (Appellant) versus the same (Respondents), and on demise of *Sunkoo Mully, Unta Shetty and Munjunna Shetty.*
THE appellant sued, in the original suit, for 37 slaves forcibly taken from him in Eeashwarra by the defendants, and 520 rupees for damages consequent on that proceeding.
The register decreed that the defendants should pay him 230 rupees as the value of the slaves, and 12 mooras of rice as hire for three slaves for four years.
Against that decree this appeal was made, on the ground that the slaves should have been ordered to be delivered to him, and not their value, and that 100 rupees per annum should have been awarded for the loss sustained by him as proved by his witnesses.
The judge seeing no ground for altering the register's decree as it concerns the appellant, dismissed the appeal with costs on the 30th December 1826.
(signed) J. Vaughan, Judge.

No. 80. Zillah Court of Canara.

(Original suit, No. 418 of 1829.)

Cherryumma versus Toolloocherry Rama, Canan and Oommacha.

Abstract of Plaintiff and Decree. PLAINTIFF (female) sued defendants for a cumeri land producing 654 rupees, paddy land producing rupees 17-1-20, gardens valued at 30 rupees, pepper plantations valued at 250 rupees, and slaves valued at 500 rupees, being half the estate acquired by the ancestors of herself and the 2d and 3d defendants.

The

The 1st defendant admits the plaintiff's right in the ancestral estate, and contends for her liability to bear her share of the debt.

The 2d and 3d defendants did not answer the plaint.

The assistant judge, on the 3d February 1832, decreed the 1st defendant to give up to the plaintiff the property claimed, or the value of it, on the ground of his (1st defendant's) averment respecting the debt standing not proved.

(signed) *John Walker*, Assistant Judge.

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Zillah Court of Canara.

No. 81.

(Original suit, No. 1,045 of 1825.)

Puddooma Cottary versus Timmappa Cottary.

THE plaintiff sued for the recovery of 1,188 rupees, principal and interest of an Illadarwar deed given to his uncle by the defendant, mortgaging his land of hoons 32-7-2 beriz, with slaves, cattle, &c. for 150 hoons, or 600 rupees. Abstract of Plaint and Decree.

Defendant denied the plaintiff's claim.

A razeenama was tendered by the defendant, and accepted by the plaintiff, in which it was stated, that the dispute has been amicably arranged between them, and the defendant has taken back the bond, and that in lieu of the amount sued for and costs, the defendant is to pay plaintiff 530 rupees by 11 instalments, to which effect a decree was prayed for.

The court, accordingly, on the 9th September 1828, directed the defendant to pay plaintiff 530 rupees, the instalments stipulated in the razeenama.

(signed) *J. Vaughan*, Judge.

Zillah Court of Canara.

No. 82.

(Original suit, No. 117 of 1826.)

Devo Cawa versus Doogganna Deyee, Uchoo Shetty, Sunkamma, Timmappa Shetty and Chendya Nenda.

PLAINTIFF sued defendants for a land with jungle, producing 252 rupees, net produce rupees 484-0-80; 250 rupees, half the value of a house, cow-house, &c. sundry cattle valued at 132 rupees, 8 slaves valued at 50 rupees, and also certain other property, and certain privileges. Abstract of Plaint and Decree.

The 5th defendant alone answered that plaint, stating the plaintiff's right in the litigated property is equal to his.

The assistant judge, on the 3d March 1832, decreed that the defendants do surrender up to plaintiff the land and other property claimed, on the ground of the plaintiff's right not being denied.

(signed) *John Walker*, Assistant Judge.

Court of Adawlut, Zillah Canara.

No. 83.

(No. 196 of 1820, on Canara file.)

Bomaya Hegade versus Veeraynair Hegade.

THE plaintiff sued for the recovery of a land producing rupees 625-10, slaves valued at 100 rupees, and certain other property. Abstract of Plaint and Decree.

The defendant allowed judgment to go by default.

The court, finding the suit not tenable against the defendant alone, dismissed it with costs, on the 22d June 1824, leaving plaintiff at liberty to prefer his claim *de novo* against defendant, conjointly with three others.

(signed) *Wm. Sheffield*, Judge.

Zillah Court of Canara.

No. 84.

(No. 370 of 1825, on original file.)

Moottukky and Ramarya versus Cauma Bhundary, Ogggu Bhundary, Bugga Chouta, Darvo Shetty, Deya Udyautiya, Moondy and Timmappa.

THE plaintiffs sued defendants for the recovery of several lands in their possession, as well as for 12 slaves, and rupees 3,142-2-58, being produce of the lands. Abstract of Plaint and Decree.

It appeared to the court that this suit ought not to have been admitted, for it was in fact an accumulation of several distinct suits against distinct persons. The court, therefore, on the

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the 28th June 1829, dismissed it, and directed that the plaintiffs, if they think proper, do file separate suits accordingly.

(signed) J. Vaughan, Judge.

Zillah Court of Canara.

No. 85.

(Original suit, No. 269 of 1830.)

Putnada Boodna Saiba, inhabitant of Karkoll, in the Buntwall Talook, at present residing in the town of Mangalore, versus *Golaum Mahomed Saiba*, his son *Ally Saiba*, and his mother *Jainubby*, residing at Karkoll, in the Buntwall Talook.

(Appeal suit, No. 114 of 1831.)

Golaum Mahomed Saiba versus Boodna Saiba.

THIS was a suit brought for the recovery of two slaves, and 17½ rupees, the balance of the value of a ring pledged on account of 2½ rupees due in part for the said slaves.

The plaintiff, respondent, stated, that the proprietors of these slaves had mortgaged them to him for 10 rupees; that the second and third defendants afterwards purchased them, together with some others, from the proprietors, after which he applied to the defendants to pay him the mortgage money, when they agreed that if he would pay 2½ rupees, in addition to the amount of the mortgage money, they would sell him the slaves. He accordingly made over to them the mortgage bond which he held, and deposited on account of the money due a gold ring valued at 20 rupees. The first defendant wrote him a deed of sale for the slaves, and the usual ceremony of transfer was performed. They remained in his house for one year, after which the defendants took them away again, and he sued accordingly for the slaves and the balance due on the ring deposited, as well as the average amount of loss occasioned by his being deprived of their services.

The defendants denied that the slaves had been mortgaged before they purchased them, or that the plaintiff had deposited a ring with them, and they objected to the validity of a deed of sale executed by the first defendant alone.

The reply affirmed the truth of the plaint.

The rejoinder denied that the slaves had ever lived in the plaintiff's house.

The plaintiff filed, 1st, copy of a decree in original suit 72, instituted on the same subject as the present, which the sudder amin dismissed on the grounds that the plaintiff sued for the value of the slaves instead of the slaves themselves; 2d, a deed of sale executed by the first defendant to the plaintiff, selling two slaves for 12½ rupees, dated 1st Maugha Bahoola of Vishoo.

The defendant's vakeel filed a stamp wallah, purporting to be a deed of sale for 10 slaves for 15 boons, by the former proprietors, dated 7th Shruwunna Bahoola of Vishoo.

The sudder amin, considering that the defendants were responsible under the deed of sale, which the first defendant admits that he executed, and that the plaintiff had proved his statement that he had deposited the ring, passed a decree awarding the slaves, and 17½ rupees, but disallowing the compensation sued for.

The first defendant appealed from the decision, repeating his statement that he had no authority to dispose of the slaves purchased by the second defendant, and objecting to the award of the decree.

The plaintiff filed an answer.

On a perusal of the papers in the case, the court fully coincides in the opinion of the sudder amin, that the defendants ought to be bound by the deed of sale executed by the first defendant. The vakeel employed by all of the defendants has admitted that they lived together in the same house, and the very fact of their filing a joint answer and intrusting their case to one vakeel is sufficient to render their objection null and void. The subsequent objection made by the vakeel, that he only answered in behalf of one defendant, is inadmissible; had the interests of his clients been different, he should not have taken a joint vakalut, nor is it credible that the defendants under such circumstances would have executed such a vakalutnamah. The court, therefore, laying aside this portion of the appeal, proceeds to the next objection, namely, that although the deed of sale was executed by the appellant, the money was not paid by the respondent. The amount of the deed of sale the respondent alleges was paid in two ways, 1st, by making over to the 1st defendant the mortgage bond for 10 rupees; and, 2d, by pledging a jewel valued at 20 rupees.

With reference to the first of these payments, the execution of the deed of sale by the first defendant affords reason to believe that some equivalent was given for the slaves; but, on the other hand, the existence of such a mortgage is not alluded to, either in the bond produced by the defendants as having been executed to them by the Moolgars, nor, what is important, in that produced by the plaintiff as having been given to him by the 1st defendant. The plaintiff has not shown why the defendants should be answerable for a mortgage due by the Moolgars; and the only witness who deposes to having been present at the execution of the bond contradicts the plaintiff's own statement, both as to the mortgage bond and the deposit.

With reference to the second, namely, the deposits of the ring on account of 2½ rupees, the probabilities are all against the truth of the plaintiff's statement. No allusion to it is made

made in the bond, and the circumstance in itself is incredible, that while a document was written between the parties for slaves valued at 12½ rupees, none should be written for a ring valued at 20 rupees. The evidence, too, to this point is unsatisfactory, resting only on alleged admissions and conversations, not on any positive knowledge of the transaction; and the plaintiff's statement, as above shown, is contradicted by his own witness.

On mature consideration of the whole case, the court is of opinion, that the evidence to the plaintiff's statement is too insufficient to warrant an award in favour of the plaintiff, and the decree of the pundit is reversed; but the plaintiff holding a deed of sale, which the 1st defendant admits, the court does not see proper to award the defendants their costs, and decrees that they be borne by the parties respectively.

Given under my hand and the seal of the court, at Mangalore, this 11th day of March, A.D. 1834.

(signed) F. N. Maltby.

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Zillah Court of Canara.

No. 86.

(Original suit, No. 248 of 1830.)

Golla Munjea, residing at Serrataudy, *Konnada Mogany*, in the Buntwal Talook, by Vakeel *Sheik Uhmud*, versus *Rama Bullipa*, residing at Sandaly, *Poottigay Mogany*, in the said Talook, and *Munjoo Puddivala*, residing at Moondookur, in the Mangalore Talook, by Vakeel *Lingapa*.

(Appeal Suit, No. 89 of 1832.)

Munjea versus *Rama Bullipa* and *Munjoo Puddivala*, and, on the demise of the first Respondent, his younger brother *Daijoo Bullipa*, and nephews *Antuppa* and *Devoo*, and on the demise of the second Respondent, his younger brother *Tyempa Puddivala*. The first Respondent by Vakeel *Anuntea*.

THE plaintiff stated, that in the year Vibhava, his grandfather purchased four slaves, of whose offspring two females, *Kalay* and *Kuckay*, were married to two slaves belonging to the first defendant's uncle, *Pudmabaleepa*, the said *Pudmabaleepa* paying to his uncle one moora of rice annually as their hire. The first defendant, as manager of the house, paid the hire up to *Tharana*, but having since ceased to pay it, the plaintiff made a complaint before the magistrate, and some of his slaves were delivered up to him. He sued for the remainder, namely, *Eyetay* and her two children, valued at 20 rupees, together with 12 rupees, value of nine mooras of rice, their hire since the year *Parthwa*.

The first and second defendants filed a joint answer, in which they denied that the tahsildar had given the order alleged, but stated that on the contrary the plaintiff had taken forcible possession, and had evaded giving them up, though ordered by the magisterial authorities so to do. They added, that *Eyetay* was descended from a slave belonging to the first defendant's ancestor, and that the second defendant paid wages for her services to the first defendant.

A reply was filed by the plaintiff denying the truth of the answer.

No rejoinder was filed.

The plaintiff summoned ten, the first defendant six witnesses; of whom for the plaintiff five, for the defendant three, were examined. The plaintiff's vakeel filed a document purporting to be a deed of sale for two male and two female Dhers, under date 9th Vyeshak Bahoola of Vibhawa (1808).

The sudder amin moofy dismissed the plaintiff's claim, considering that the plaintiff had failed to prove that *Kalay* and *Kuckay* had been lent to the first defendant on hire, or that such hire had ever been paid, and that the Dher's evidence was of no avail to the plaintiff, as they had admitted that it was given at the plaintiff's suggestion.

The plaintiff appealed, that his witnesses had proved the points which the sudder amin considered they had not proved, and alleged that the Dhers had been induced by the questions put to them to state that they had been induced to depose in favour of the plaintiff. He objected to the sudder amin moofy having dispensed with the evidence of certain witnesses whom he considered necessary, and proposed a decision on oath.

He further stated that the sudder amin asserted that he had dispensed with the evidence of two witnesses, contrary to the fact.

An answer was filed by the first defendant.

Before proceeding to pass a decision in the suit, the register has to observe, that there appears to be no foundation for one of the statements made in the appeal, namely, that the plaintiff had not dispensed with the evidence of certain witnesses as stated in the decree; the plaintiff's statement to that effect bears both his own and his vakeel's signature.

On perusal of the proceedings in the case and on questioning the plaintiff, it appears that the right to the Dhers now in litigation depends upon the title to the Dher *Kalay*, the mother of *Eyetay*; that the said *Kalay* is in the possession of the plaintiff, while *Eyetay* and her children are in the possession of the first defendant. The plaintiff states that *Kalay* was made over to him by the magistrate, while the defendant declares that he obtained forcible possession. But neither party has proved his statement; nor has the defendant shown that

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he has brought any complaint against the plaintiff for forcibly possessing himself of the said Kalay. Under these circumstances, the register considers that it is indispensable that the Dhers should be placed in the possession of one and the same party, and that the plaintiff, being in possession of the mother of Kalay, is *prima facie* entitled to possession of her progeny; that it was incumbent upon the defendant to disprove the plaintiff's title to Kalay, not upon the plaintiff to prove his title to her children when their mother was in his possession; and were the register to confirm the sudder amin moofy's decree, dismissing the plaintiff's suit, the defendant would still have to bring an action for recovery of the slaves now in the plaintiff's possession.

Upon due consideration of this point, the register considers it necessary to amend the decree of the sudder amin, which, while it dismisses the plaintiff's claim to the Dhers in the possession of the defendant, does not prove the defendant's title to recover those detained, whether legally or otherwise, by the plaintiff, and to decree that the defendants do make over to the plaintiff the Dhers sued for; but that the present decree do not prevent the defendants from proving their title to those at issue, and those formerly detained by the plaintiff. The decree of the sudder amin is therefore cancelled; the parties are assessed with their respective costs.

No. 87.

Zillah Court of Canara.

(Original suit, No. 231 of 1826.)

Marlmanay Annappa Shetty, residing at Shereare, village Kalanand Mogany, in Barcoor Talook, versus *Anuggoppa Shetty's* nephew, *Somaya Shetty*, residing at the said place.

THIS suit was brought by the plaintiff, Annappa Shetty, against the defendant, Somaya Shetty, for the recovery of a land, rupees 305-0-70; rupees, 58 2-70, net produce; garden, 50 rupees; houses, 50 rupees; and slaves, 100 rupees; total rupees, 563-3-40.

The plaintiff stated, that the defendant had sold him the above property, and executed to him a deed for the same; that he refuses to give him possession.

The defendant owned the execution of the bond, but said that he had committed a fraud upon his uncle by writing it; that although his uncle had formerly made over to him the whole of the property, yet that before the execution of the bond he delivered it all back to his uncle.

The court, having perused the pleadings, recorded that the defendant must prove that he ever delivered the land back to his uncle.

The defendant called no witnesses and adduced no evidence to that effect.

The court do therefore decree, that the defendant do forthwith give up the land and other property claimed to the plaintiff, and do pay all costs.

Given under my hand and the seal of the court at Mangalore, this 4th day of February, A.D. 1830.

(signed) *George Sparkes*, Register.

No. 88.

Court of Adawlut, Zillah Canara.

(No. 365 of 1820, on Canara file.)

Paukee Tumbaratee and *Akoo Tumbaratee*, of Nelashawar, in the Talook of Bekul, Plaintiffs, versus *Nonankal Kristna Wurma Arsoo*, of the same place, Defendant.

THIS suit was instituted for the recovery of lands and gardens yielding rupees 803-0-61 annually, and rupees 1,334-0-36, being the value of the produce thereof; as also rupees 10-1-64, on account of Achoo Pulsay; rupees 34-1-60, being value of paddy due for the hire of slaves; rupees 26-2-93, being the emoluments of Mellame Calapene; and cattle and slaves valued at rupees 141-0-66.

The answer, reply and rejoinder were filed.

The following exhibits were filed by defendant.—(Details omitted.)

The under-mentioned witnesses were examined.—(List of names omitted.)

In this stage of the business the vakeels of the parties filed the razinama marked (X.), stating that their clients have fully concurred in the whole of the terms therein specified, and prayed that a decision might be passed accordingly. The razinama is to this effect: that plaintiffs, Paukee Tumbaratee, of taliakool Pudkekoot, and Akoo Tumbaratee, having instituted a suit, in No. 365 of 1820, against Monankal Kristna Wurma Rajah, claiming rupees 1,334-0-36, being the amount due for their maintenance, also one-third share of certain lands, Achoo Palsy, Dhers and cattle, altogether to the value of rupees 1,015-3-44, have (after the examination of the whole of the witnesses was gone through) adjusted together the matter at issue amicably, as follows: out of the maintenance claimed, deducting what defendant supplied to plaintiffs up to this period, the balance due to plaintiffs was 9,500 hanes of paddy, which quantity the defendant has also delivered to the plaintiffs. And defendant has made over to plaintiffs a share of three-tenths of the under-mentioned lands, gardens, coombrees and slaves, the produce whereof they are entitled to realize for the present and every succeeding year in perpetuity, viz.—(The account of particulars omitted.)

The court, conformably with the joint solicitation of the parties, do hereby confirm the decision and allotment of the property in question, agreeably to the terms agreed to by them and expressed in the above razinama, and decree, that the lands, gardens, coombrees, Achoo

Achoo Palsy, Mellame Calapene and slaves, which have been allotted to plaintiffs, shall accordingly be possessed, enjoyed and made over to them in perpetuity. The parties are assessed with their own respective costs.—(Statement of costs and list of exhibits omitted.)

Given under my hand and the seal of the court, at Mangalore, this 28th day of February A. D. 1824. (signed) W. Sheffield, Judge.

Appendix IX.
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DECREE of the Court of Adawlut, in Zillah Malabar.

No. 89.

No. on the File of the District Moonsif of Polghaut.	No. in Appeal before the Sudder Amin Pundit.	No. in Special Appeal.
No. 838 of 1825. Teroovamarata Shoolapany Variar versus 1. Valiakootate Valia Nair. 2. Vadakekootata Koonjoo Nair. 3. Koonata Vataparambil Patty Teyen. 4. Kochen. 5. Pawkatatodngakavil Mallen. 6. Kooravetty Teya Vellen. 7. Chataukandata Ramy. 8. Koneta Nagoo. 9. Choongata Itten.	No. 231 of 1826. 1. Edatarekootate Kaunel, styled the Valia Nair. 2. Vadakekootole Koonjoo Nair. 3. Koonata Valaparambil Patty Teyen. 4. Kochen. 5. Panekatody, Malen's son, Chamy. 6. Kooravetty Teyen Vellen. 7. Chataukandata Ramy. 8. Koneta Nagoo. 9. Choongata Itten, by Vakeel Chatoo Panikar, versus Teroovamarata Shoolapany Variar.	No. 2 of 1828. 1. Edatarekootate Kaunel Valia Nair. 2. Vadakekootate Koonjoo Nair. 3. Koonata Valaparambil Patty Teyen. 4. Kochen. 5. Panekatody, Malem's son, Chamy. 6. Kooravetty Teyen Vellen. 7. Chataukandata Ramy. 8. Koneta Nagoo. 9. Choongata Itten, by Vakeel Meer Josnoodeen, versus Teroovamarata Shoolapany Variar.

THIS suit was instituted on the 27th Tulam 1001 (17th November 1825), for the recovery of three male and three female slaves of the Canara caste, held by plaintiff, from the Shoo-gapoorata Detechinammoorty pagoda, on a kanom of 300 fans., and patam of one year (1000) 36 fans., from the defendants, who have taken possession of and detained in their employ the Chermers in question.

The 1st defendant in his answer denies having seized the slaves sued for, or that they belong to the Detechinammoorty pagoda, and states, that the slaves being sent for and examined, it will be known whether defendants seized them, or they went to them (defendants) of their own accord, on plaintiff annoying them; and further, that they are the jeum of Chingatoor Agappew pagoda; that 1st defendant, Karanavew, delivered them to certain Terans, adeans of the pagoda, to work for them, who were to pay one fanam for each family a year; and that they ultimately left them, and entered plaintiff's service as they do for others.

The 3d, 4th, 5th, 6th, 7th, and 9th defendants answered, that the slaves aforesaid are the jeum of the Chengatoor Agappew devasom; that they are entitled to any profit derivable from their labour by permission of the devasom; and also assert that they served plaintiff as they did other Kodians, and that it was on account of plaintiffs oppressing them that they came and lived with defendants.

The 2d defendant filed no answer.

Plaintiff filed four documents and cited five witnesses, viz. Oolat Govinda Menon, Kondeaporata Ponasha Menon, Mooleddata Kristna Menon, Madamparata Pongau Nair, and Patamaly Kristna Namby, all of whom were examined.

DOCUMENTS.

1. A Cherma Pattenno deed, dated Tulem 980.
2. The Detechinammoorty pagoda manager's receipt for Cherma Patom, dated in Koombam 998.
3. The Detechinammoorty pagoda manager's receipt for Cherma Patom, dated in Meenom 999.
4. Ditto, in Magoram 1000.

First defendant cited eight, and 3d, 4th, 6th, 7th, 8th and 9th defendants nine witnesses, of whom, Velutatil Keloo Nair, Mootedata Illerachen Nair, Madashery Paugoo Nair, and Vatone Koonjoony Menon were examined.

The moonsif received three ancient documents, having reference to the litigated slaves, from one Kristna Namby, plaintiff's 5th witness, and filed them of record.

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The moonsif then decided, that it was proved the Chengatoor Agappew devasom had no claim to the Chermers held by plaintiff on kanom from the Detechinamoorthy devasom, and that, on the contrary, it appeared, that the defendants do forthwith restore to plaintiff the six slaves sued for, and that the 1st and 2d defendants do pay him 10 rupees 1 qr. 14 reas, as patom, with costs of suit 6 rupees; total 16 rupees 1 qr. 14 reas.

Defendants appealed from this decree, urging, that the jenmkar should have preferred the suit in consequence of the jemom right of the slaves in dispute, and not the plaintiff, who is a mere kanomkar; and that on Mondredata Nambodrepaad being sent for and examined, it will be proved that the three documents produced by plaintiff's 5th witness were never in the hands of the said Nambodrepaad, the former kariesten of the pagoda.

Respondent (plaintiff) denied that there was any truth in the appeal petition, or that the Agappew devasom, or appellants, have any right to the Chermers; and that having for a long time held possession of them without any dispute about their proprietary right, he (plaintiff) preferred the suit grounded on his kanom right.

The sudder ameen, seeing no grounds for reversing the moonsif's decision, accordingly confirmed it, dismissing the appeal, with all costs payable by appellants.

From the latter decision the appellants preferred a special appeal, and state that it is prescribed in clause 5, section 11, Regulation VI. of 1816, that when a suit is preferred in the moonsif's kutcherry for personal property, the value thereof should be specified, the omission of which must be fatal to this suit; and that the passing of favourable decisions in the original and appeal suits are contrary to the regulation quoted above.

Special respondent filed an answer, recapitulating what is already recorded.

Having maturely considered the merits of this suit, the judge finds that the only point for consideration is, whether or not females of the description of slaves here contended for, viz. the Canaka caste, are, like the males, liable to be sold or mortgaged.

The late judge, Mr. Holland, who was particularly well acquainted with the local usages of South Malabar, recorded a written opinion on the occasion of admitting the special appeal, that it is notorious Canaka Cherma females were not, before the assumption of the country by the English, subject to slavery like their male relations; and in this opinion the Hindoo law officer of this court, who is a native of Palghaut, concurs in his reply to certain questions put to him on the 28th October last.

Several other respectable witnesses were also examined on the 25th ultimo on the same point, and although their answers to the questions put to them go to prove that female as well as male Canaka Chermas are liable to slavery, still the judge does not attach much importance to their evidence, because, being large landed proprietors, they have an interest in condemning the females of the Canaka caste to slavery, and because parts of it (their evidence) are inconsistent with each other, and in other respects not decisive of the question in the affirmative.

It is admitted, on all hands, that the Canaka caste do not follow the usual Malayalam practice of maremakatayom, which of itself is obviously a reason why the jenmi of the male slaves should not have a separate and alienable right of sale or transfer over their wives or females.

Under these circumstances the judge nonsuits the special respondent with all costs of suit payable to the special appellants (defendants); with leave to institute a new suit if he pleases for the recovery of the male slaves alone.

COSTS.

	Rupees.
Stamp duty on institution under section 13, Regulation XIII. of 1816 -	9 - -
Fees of special appellants' pleader under section 14, Regulation XXV. of 1816 - - - - -	4 12 10
Value of stamped paper filed by special appellants - - - - -	- 8 -
Value of stamped paper filed by special respondent - - - - -	1 - -
Expenses for serving processes on the part of special appellants - -	2 4 -
	17 8 10
Appellants' costs in the appeal - - - - -	17 8 10
Respondents' ditto - - - - -	8 - -
	18 - 10
Plaintiff's cost in the original suit - - - - -	6 - -
TOTAL - - Rs.	41 9 8

Given under my hand and the seal of the court this 3d November 1831.

(L. s.)

(signed) A. Maclean, Judge.

(Nos. 231 and 232 of 1826.—Special Appeals.)

Admitted, because the decrees specially appealed from adjudge the possession in slavery of Kunaka Cherma females, who it is notorious were not before the time of the English Government in Malabar subject to the slavery which their male relations suffer, and no subsequent law authorizes the aggravation of slavery in any way.

DECREET

DECREE of the Court of Adawlut in Zillah Malabar.

No. 90.

Original Suit, No. 312 of 1827.	Appeal Suit, No. 33 of 1827.	Special Appeal, No. 4 of 1832.
1. Kowookil Edatil, Amboo Nambiar.	1. Erootan Kannan.	1. Erootan Kannan, by Vakeel Amboo Podwal.
2. His Anantawaren Chatapen ditto, by Vakeel Kondy Menom,	2. Ramen, by Vakeel Ramen Nair,	2. Ramen,
<i>versus</i>	<i>versus</i>	<i>versus</i>
1. Erootan Kannan, by Vakeel Amboo Podwal.	1. Kowookil Amboo Nambiar.	1. Unnamen Nambiar.
2. Ramen, younger brother of Peringaila Manyany.	2. Chatapen Nambiar, by Vakeel Putalata Ramen Nair.	2. Chatapen Nambiar.

THIS suit was filed for the recovery of three Vettoovar slaves of the value of 60 rupees.

The plaint sets forth, that three Kerry class Peringaila Vettoovars, by name Pacha Neelan, Naryan Palan and Tonden Palen, the jenmom of the plaintiffs, as also another, called Koon-ganen, mortgaged by the 2d defendant's karnaven to the 1st defendant, but that plaintiff's late karnaven, Ramen Nambiar, having taken forcible possession of them in 989, a suit was instituted by 1st defendant (No. 482 of 1814) against 1st plaintiff, his karnaven, Ramen Nambiar, and the 2d defendant's ditto, for the recovery of 91½ rupees, the sum for which they were mortgaged, on which a decree was passed in his favour; and Ramen Nambiar, and 2d defendant's karnaven, directed to litigate their claim; that 1st defendant, having moved for execution of the decree, this suit was therefore brought with a view of establishing the plaintiff's proprietary right to the slaves Tonden, Pacha Neelan and Naryan.

The 1st defendant in his answer stated, that all Peringaila Vettoovars were the jenmom of Peringaila Manjany, who of late years had either mortgaged or sold them to others; that two of those mentioned in the plaint, viz. Naryan Palan and Koonganen, with some others, were mortgaged by the 2d defendant's karnaven to one Teanjerry Ramen, from whom they were redeemed through his means, and afterwards made over to him with the former deeds and a fresh kanom bond, and Pacha Neelan mortgaged to his younger brother, and that Tonden Palen and some more were at first mortgaged and afterwards sold to him; that a decree was passed in his favour, as stated in the plaint, on account of the four therein mentioned, when, had the plaintiffs any proprietary right to them, they should immediately have litigated the same, and not waited till so protracted a period. That Tonden Palen's elder brother, by name Kooty Naryan, and four other Peringaila Vettoovars, who were at first mortgaged to the plaintiff's family, were afterwards transferred by their karnaven to one Coonjoor Chinden, with a yennuck to Manayany, as jenmoka, and who was still in possession of them, and through whom it could be proved that they were the jenmom of the 2d defendant's tarward.

The 2d defendant neither signed the notice nor appeared to defend the suit, though the required proclamation was issued.

The plaintiffs put in no reply.

The 2d plaintiff filed two exhibits and cited seven witnesses, of whom three were examined, viz. Moorikolly Kilapen, Ittoley Vishnoo Embrandery, and Teanjerry Ramen.

(A.) Avari Ollah, in a mutilated state, dated 11th Dhanoo 977, bearing no signature, but purporting to be a memorandum passed by Peringela Komaren to Ramen Nambiar, and in which were the names of Pacha Neelan and Nariyan Pelanare as the jenmom of Koyeekiladatil.

(B.) A chit, dated 13th Toolam 987, written by Peringaila Manjany to Teanjerry Ramen, stating that he had written him, Edatil Ramen was disputing about the Vettoovar Naryan Palen, and requesting that he should either be exchanged or the mortgage amount returned; that he would meet the nambiar, and, after referring to the memorandum he had given him, see whether or not he had made any mistake, upon which he had some doubt.

The 1st defendant filed one exhibit and cited four witnesses, none of whom were examined.

(C.) Copy of the sudder ameen's decree in case No. 482 of 1814, dated 30th December 1815.

The pundit sudder ameen decided that the plaintiffs had clearly proved, both by oral and documentary evidence, that the slaves sued for were jenmom, which, as neither the 2d defendant nor his karnaven had ever disputed, the 1st defendant, who was merely the mortgagee, had no business to do. We therefore adjudged, that the three Vettoovars should continue in their possession, and that the 1st defendant should either receive from the 2d the amount for which they were mortgaged, with interest, or take other slaves in exchange.

2 a

Against

Appendix IX.

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Against this decision both defendants appealed, recapitulating the first former assertions, declaring that the Vettoovars were born whilst their mothers were held in mortgage by the 1st appellant, and that sickness had prevented his moving execution of the former decree at an early period; that the 2d appellant's house and property were situated in the Canara district, through the judge of which zillah a notice ought to have been served on him in the original suit, which was not done, and accounted for his non-appearance; denied the validity of exhibit (B.), which was not written by 2d appellant's karnaven, and prayed that their witnesses and documents might be received to establish the second jenmom right to the Vettoovars.

The 1st respondent having died, the 2d alone replied in support of the plaint; admitted that the Vettoovars in dispute were born whilst their parents were in the 1st appellant's service, but asserted that the mothers belonged to him, and had been married to the Vettoovars held in mortgage by the 1st appellant, and their offspring were therefore, agreeably to the maramakatyum rules, his property; that Pacha Neelan had been mortgaged in 975 to one Pacha Suban Putter, who, if summoned, would prove it; and that if the 2d appellant had no lands or property in this zillah, he could not lay claim to these Vettoovars; and concluded by affirming, that he was ignorant of the existence of exhibit (B.) when the former suit was investigated, or he would have produced it.

The assistant judge confirmed the pundit sudder ameen's decree, considering the Vettoovars to have been proved the ancient property of the respondents' family, in whose possession they had remained undisputed until the institution of this suit, either by the 2d appellant or his karnaven.

That any document they might wish to file ought to have been so in the former suit, but their not having done so, or appealed from that decree, left it to be inferred that they were satisfied. He further considered the first appellant entitled to receive back the mortgage amount given on three Vettoovars to second appellant's karnaven, and dismissed the appeal, with costs, to be borne by appellants.

The appellants preferred a further appeal, asserting the Vettoovars were never in the special respondents' possession before they took such forcibly from them, and that they have merely remained so, because the former decree has not been executed; that in 976, Pacha Neelan was given on verumpattom to one Yeddaparty Chenden, which chit they were able to produce.

They further declared, that it was Teanjerry Ramen who instigated the special respondents to prefer this suit, and fabricated the document (B.), the Vettoovars having been made over to him.

Notices were issued to both special respondents: the first signed it, but did not appear to file an answer, and a proclamation was issued for the attendance of the second; but he also failed to attend.

On a review of these proceedings, the court considers that the special respondents have entirely failed to make good their claim to the Vettoovars, as the whole of their proof rests on the authenticity of the exhibit (B.), of which there is great room for entertaining doubt; as, had such been really executed in 987 as asserted, no good cause is shown why it was not produced on the former trial; whilst the omission to do so affords strong presumptive proof of its having been since fabricated to give validity to the voucher (A.), which is otherwise null and void. Allowing their validity, however, for the sake of argument, such alone could not be regarded as sufficient for the establishment of a jenmom right, more especially as no evidence has been adduced to prove that the Vettoovars were ever in the special respondents' possession until they took such forcibly from them; whilst it is admitted by the second, in his appeal answer, that they were born when their mothers were in the first special appellant's service. But he advances no proof of his right to these females; or why and by whom they were alienated to the first special appellant. In fact, the whole claim totally hinges on the right to the women, and for which there is only the bare assertion of the second respondent.

The great delay on the part of the first special appellant, in moving for execution of the former award, which he so unsatisfactorily explains, has laid his cause open to great suspicion; but the special respondents having failed to establish their claim to the Vettoovars, and it being admitted on all hands that they were in their possession on mortgage until violently removed, the court considers them fully entitled to a verdict in their favour, and reverses the decrees of the lower courts, adjudging their immediate restoration, with all costs of suit, to be borne by the special respondents, leaving the proprietary right of the second appellant, which has been by no means clearly proved, to be settled between him and the first.

Given under my hand and the seal of the court, this 29th June 1833.

(signed) *Henry Morris*, Acting Judge.

DECREE

DECREE of the Court of Adawlut in Zillah Malabar.

No. 91.

(Original suit, 557 of 1833, Calicut District Moonsif.)

Cheravata Koya versus *Arippaporata Oonnee Coomaran Nair, Manasherry Chatoo Cooropoo, and Amyun Mannacherry Cheru Nair*;

For 20½ fanams, being hire of a Cheroomun, and to recover possession of him, or to obtain his value, 65 fanams.

(Appeal suit, No. 59 of 1834, Judge's Court.)

Arippaporata Oonnee Coomaran Nair versus *Cheravata Koya*;

For the reversal of the district moonsif's decree, awarding rupees 5-8-10 as hire, and the Cheroomun, with costs.

PLAINTIFF stated, "That in Vrichiga 1001, three defendants granted on ottee of 45 fanams, the Cheroomun Areeyan, the son of Tanneyaye, and he continued to live with plaintiff and work for him until Vrichiga 1003. In Dhanoo, first defendant took him away, and while the Cheroomun was working for him, plaintiff remonstrated, and was told by first defendant, that he had taken him from second defendant, the anantraven of third defendant; wherefore he sues for rent at 3½ fanams a year, from 1003 to 1009, and further as above."

First defendant answered, "That in Magara 999, he took on ottee of 120 fanams, second defendant, the Cheroomun Areeyan, and his brother, Veroogun, in the name of Curnagara Cooropoo; at which time also he obtained a quittance from Curnagara Cooropoo. The Cheroomun has continued to work for him till the present time."

Second and third defendants answered: "The Cheroomun Areeyan is third defendant's jennum, and was granted in Vrichiga 1001 to plaintiff, on ottee of 45 fanams; and that second defendant has no concern therewith, nor has he granted to any one a title thereon."

Plaintiff filed No. 10, ottee deed, from third defendant to plaintiff, and cited four witnesses. Three were examined; one he declined.

Defendants adduced no evidence.

First defendant presented M. P. 17.

Plaintiff, second and third defendants were interrogated.

The district moonsif considered, that third defendant having admitted the grant to plaintiff, any transfer by his anantravun of second defendant to first defendant, would not be valid; and second defendant denies that he ever granted any title. By first defendant's answer it may be seen he is in fault; wherefore, he is to deliver up the Cheroomun to plaintiff. Plaintiff declares that first defendant took away the Cheroomun, and first defendant admits him to be in his possession; wherefore he is to pay rent and further interest to date of decree, total rupees 5-8-10 and costs.

The appellant states, that he did not take away the Cheroomun from plaintiff's premises, but from second defendant, who has other Chermers belonging to his mother; urges the inconsistency of making him deliver up only one of the two Cheroomuns he has taken in mortgage, and that if the plaint were just, there would have been a police complaint.

An answer is filed.

Appellant presented M.P. 1770 of 1834.

Appellant, respondent, second and third defendants, were interrogated; and the court took the evidence of Odio Onnee Kotte Nair, and Vaddakun Paramba Ittee Comarun Nair, the respondent having cited these and two others, whom he afterwards declined, in support of the point; proof whereof was required by the court—the jennum title of the third defendant's family to the Cheroomun Areeyan.

The court, observing that in the original trial no evidence was forthcoming of the proprietary right of either of the parties in the Cheroomun Areeyan, about the disposal of whose person they were contending, and deeming that though a horse or an ox may in a civilized and settled country be properly looked upon as the property of some person or other, and of the person in whose possession they are found, unless the contrary appear, yet that the same rule cannot extend to a human being, considered it requisite to obtain proof on this head as indispensable to the issue. The original second and third defendants, through whom the appellant and respondent deduce their mortgage titles, differ from one another in their statements of the family title to Areeyan, his mother Tanneeaye and family; the second defendant stating that he himself purchased the mother from Chellaporatha Oonnee Comarun Nair; and third defendant, that the said Nair, who was his own father, gave Tanneeaye to his (second defendant's) mother. The third defendant, on being questioned, declared that he has the deed of sale from the said Nair, and that he would produce it on the 2d instant, but has failed to do so to the present time. The two witnesses examined for the respondent prove nothing respecting the proprietary right, and this point remains entirely unsubstantiated. The court, reflecting that a confirmation of the district moonsif's decree would have the effect of condemning Areeyan to a state of perpetual slavery, whereas, for all that appears in evidence to the contrary, he may be entirely a freeman, considers that the decree cannot stand, reverses it accordingly, and directs that under the circumstances each party do pay their own costs in all stages.

(signed) *Robert Nelson*, Judge.

Calicut, 14th February 1835.

Appendix IX.

Returns.

Register's Court, Zillah Malabar.

(Original suit, 207 of 1833.)

No. 92. *Kathigamandragata Verran Cooty versus Vadakuddevell Agata Ayestra Ooma, her brother Kamao Caoty, ditto Mamoo, Koonji Mordeen, Mordeen Caoty, and Koojaly.*

PLAINTIFF stated that in Magarom 1008, the first defendant sold to him seven Chermars for 140 rupees, but did not make over possession; that plaintiff subsequently sold them to another person for 145 rupees; but the defendants having refused to give up the Chermars, the bargain was broken off, whereby plaintiff has been endamaged 5 rupees, which he claims with the original purchase-money; total, 145 rupees.

Defendants gave no answer.

Plaintiff filed the deed of sale, and substantiated its execution by five witnesses, Orekar Kondu Menon, Mopila Bava, Valiagata Sawken Adjér, Kalarekel Mordeen, and Allingal Issopu. He also showed that the defendants had refused to make over the Chermars, and that he had been obliged to repay the 145 rupees, for which the Chermars had been resold.

Upon a perusal of the proceedings, the court see two objections to passing a decree according to the plaint. In the first place, the deed, though clearly conveying the proprietary right in the slaves to the plaintiff, does not state the sum for which this right is sold. No sum of hard cash was ever paid by plaintiff, for these Chermars were made over to be rated at such price as might appear just to a punchayet, in order to satisfy part of another claim, which plaintiff had against first defendant. Had the price been ever formally settled, another document should have been executed. When a money claim is founded on a deed, that deed should be expressive of the sum so claimed. But the plaintiff might, if he liked, have filed a suit upon the present one for a lac of rupees; and if the correctness of the claim be admitted in one instance, it must be in the other also. It is further to be observed, that receiving the Chermars can be no loss to the plaintiff, if, as he pretends, they are saleable for 5 rupees more than the sum at which he bought them.

The second objection is to the 5 rupees profit. Plaintiff should not have sold that which he was not in possession of, and passing a decree for loss accruing thereby would open a door to fraud and abuse. In the present case, indeed, 5 rupees is no exorbitant sum; but if this was allowed, any sum might be claimed, by simply writing a deed of sale to another person, and taking it back. The case of passing a decree for damages for grain, &c., not delivered, is very different, because then the damages are not laid upon what any individual would have given for the article, but upon the current price of the day.

Wherefore the court do decree, that the defendants do forthwith make over to the plaintiff the seven Chermars mentioned in the plaint, and pay all costs of suit. But if any one of the Chermars shall not be forthcoming at the time of the execution of this decree, then no Chermars shall be made over, but 140 rupees paid in lieu of the same.

Given under my hand and the seal of the court, this 8th July 1833.

(signed) *Georgé Sparkes*, Acting Register.

No. 93.

Court of Adawlut, Zillah Malabar.

(Original suit, No. 64 of 1832, on the file.)

Mooragan, son of Eeyoooen Chokolathaporakel Naraguparambil Coopa Velen, versus Tayathepadiarveetil Caroppen Nair; Comoo Nair, his heir; and Manarakat Valia Nair, vakeel Vikirisha Menon.

DECREE of the Pundit Sudder Ameen.

THIS suit was instituted for the recovery of four Chermers, named Ekkama, daughter of Roonjiaken; Malayen, his son; Kaka, Velaken's daughter; and Vella Kadia; of Erala caste, valued at 400 fanams, or their value. The Chermers, after having been sold to plaintiff in Koombom 1006, by the first and second defendants' karnaven, Shangara Nair, who died in Vrischigom 1007, left him and went and entered into the service of the third defendant, who has detained them.

First defendant, after signing the notice, did not attend and represent any thing.

Second defendant in his answer states, that the Chermers, his jenmon property, were sold to plaintiff for 320 fanams, transferring the former deeds relating to them; that if there is any contention about them, the plaintiff should settle it; instead of which plaintiff and third defendant colluded together, brought the present action, overvaluing the Chermers; that he is ready to make oath or abide by it.

Third defendant, by vakeel, states, that the Chermers sued for were his ancient jenmon property; that his karnaven, Shangara, carried and sold them to the plaintiff; that he in consequence preferred a suit against them (in what number not specified), before the Paulghaut district moonsif; that before a decision was passed thereon, the present suit could not have been preferred, nor is it customary to sell the jenmon right of the Chermers of the Erala caste.

Plaintiff replied to second defendant's answer, and second defendant rejoined. But plaintiff filed no reply to the third defendant's answer. Plaintiff presented a list of four witnesses,

witnesses, and a document upon stamped olla, being a title-deed executed in Koombom 1006 to prove his claim.

Second defendant presented a list of two witnesses, and the third defendant's vakeel filed a list of four witnesses, and a kanoun deed on plain cadjan, executed in favour of Ambat Kristnen by Coonathatil Madambil Chatoo Oonamen, dated in Kany 989, Chinga Veayam. The plaintiff's document having been marked (A.), and the third defendant's (B.), they were filed of record.

The plaintiff and third defendant's vakeel were examined, as were the plaintiff's witnesses, Rekappen, Payanee Andy, Andy, Payanee. Second defendant's witnesses, Camben Nair and Ittiraracha Panikar; and third defendant's witnesses, Shangara Panikar, Coonjoo Nair, Ramen Nair, and Chermee Ekkee, were also examined; and the proceedings closed.

On consideration of the above proceedings and documents, it appears proved by the evidence adduced by the plaintiff, that the first and second defendants' karnaven, the afore-said Shangara Nair, had sold the Chermers to him; that they afterwards went and remained with the third defendant, and that Shangara Nair agreed to return their value. Independent of this, the third defendant admitted in his answer the fact of the sale, which has been further corroborated by witnesses. The second defendant alleges, that the Chermers were his jenmon slaves, and sold to the plaintiff, transferring the former deed, from whom the sum of 320 fanams were only received; while his witnesses state, that, when the Chermers were sold, the former deed was not transferred, it not being customary to do so; but that they afterwards heard from Shangara Nair, that the deed was subsequently given up. Their evidence is therefore not entitled to credit.

The third defendant's witnesses depose to the Chermers being the jenmon of the third defendant, as pleaded by him, yet in the deed produced by the third defendant's vakeel, as the one granted in 989, mortgaging these Chermers to Ambat Koonjen Nair by the third defendant, for 200 fanams, and redeemed by paying off the mortgage, the signature of it is not cut off, nor is the leaf so old as to make it believe that it was written in 989. The Chermers cannot therefore be considered the third defendant's jenmon right, grounded on the evidence of his witnesses and document. For the above reasons, and adverting to the second defendant's admission, there is no proof or means in this suit to pass a decision as regards the disputed jenmon right, unless the third defendant, with the first and second defendants, bring an action after paying plaintiff's money. It is therefore decreed, that the first and second defendants do pay to the plaintiff the amount sued for, with interest up to the date of this decree, and costs as hereunder specified, defendants bearing their own costs.

26th June 1832.

(Signature of Pundit Sudder Ameen.)

Court of Adawlut, Zillah Malabar.

No. 94.

(Original suit, 161 of 1831, on the file.)

Shangally Teyoony Nair, and ditto *Rarappen Nair*, versus *Palacoonatha Makanachery Nambi Porambatha Ooneree Nair*, ditto *Ookanden Nair*, *Tirootil Ramen Nair*, ditto *Comen Nair*, and *Cheroocomen Nair*. First defendant by Vakeel *Vekeresha Menon*.

DECREE of the Pundit Sudder Ameen.

PLAINTIFF states, that in Magaram 1005, Chermer Nularay, with her brother Cherappen, children of Chermer Kandothy, were bought in the name of the second plaintiff; and at the Onom festival in Chingom, as the said Chermers were being brought to be put in his possession, the third, fourth and fifth defendants seized the Chermers and carried them off; that the second plaintiff preferred a suit in No. 181, before the Calicut moonsif, but it was dismissed on the grounds that the second plaintiff was not of age to conduct the suit, and that he should litigate it jointly with his karnaven (elder). The suit is therefore to recover possession of the said Chermers, valued at 20 rupees.

First defendant in his answer states, that he with second defendant having sold the jenmon right of the Chermers adverted to in the plaint, they were being carried to be delivered up, when the third, fourth and fifth defendants would not allow it. In such case it is clear the suit should have been preferred against those defendants and not against them (first and second defendants); that when his property was attached on account of a debt, the third defendant presented a petition, declaring that he had claim upon Chermer Kundothy; but it was dismissed.

Second defendant failed to appear and file answer, pursuant to notice and proclamation issued.

Third, fourth and fifth defendants in their joint answer state, that previous to the year 950, their karnaven, Chenen Nair, deceased, had purchased the jenmon right of Kundothy, the grandmother of the plaint Chermers, and of her father Choolen, and they worked for them; the second and third defendants consequently have no claim upon them; that when the suit 181, instituted before the Calicut moonsif, has been dismissed, the present action is contrary to regulation.

Plaintiffs filed no reply.

Plaintiffs filed a list of two witnesses and copy on stamp paper of the Yadast, recorded by the Calicut moonsif, in No. 344 of 1829, and an attupar deed on stamped olla, to the pur-

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port, that the plaintiffs had purchased the two Chermers mentioned in the plaint, in Maga-ram 1005. First defendant's vakeel presented a list for two witnesses, and second defendant a list of four witnesses, and filed a deed in a mutilated state, purporting that Terootit Chenen Nair had taken Cheroomen Choolen and Cheroony Kundothy on otto tenure from Perody Chatoo Nair, dated in Chingom 947, Meenom Veyaom. The copy of the Yadast filed by plaintiff has been marked (A.), and the deed (B.); third defendant's documents have been marked (C.), (D.), and filed of record.

The plaintiffs and the third defendant were examined, and the plaintiff's witnesses, Onny Coomaren Nair, and Charoodala Ramen Nair, and the first defendant's witnesses, Palaeononatha Coonangary Oony Caoty Nair, Tataracondil Conaren Nair, and the third, fourth and fifth defendants' witnesses, Kalaparatha Ittoony Rama Coorpa, Vekira Adeody were examined. The examination of the two remaining witnesses not being deemed necessary, the proceedings have been closed, and it has been resolved to decide the suit. On a careful consideration of the above proceedings and documents, it appears that the third, fourth and fifth defendants plead that Chermer Kundothy was their jemom slave, and that she begat the Chermers alluded to in the plaint; and they produced a title-deed in support of their plea. But when a proclamation was stuck up to sell by auction Chermer Kundothy, grandmother of the Chermers sued for, to the extent of first defendant's jemom right, the third defendant preferred a claim, alleging that she was his, and the fourth and fifth defendants' jemom slave; which claim was dismissed, as is proved by copy of the Yadast produced by the plaintiffs.

If she was the third, fourth and fifth defendants' jemom slave, they should have, during the investigation of the claim advanced by the third defendant, produced the jemom deed filed in this suit, and established his jemom right to her. This they have not done. The court cannot, therefore, grounded upon the title-deed now filed, conclude that the above Chermers are the third, fourth and fifth defendants' jemom slaves. It has been proved by plaintiff's and first defendant's documents and evidence, that the Chermers sued for were brought forth by Kundothy's daughter, while in the first defendant's possession; under whom they have continued from that time up to 1005, when the first defendant sold them to the second plaintiff; and while being carried to be delivered up to the plaintiffs, the third, fourth and fifth defendants seized and carried them off; and by the Yadast filed by plaintiffs, it is established, that the third defendant has no right to the Chermers specified in the plaint. It is therefore decreed, that the third, fourth and fifth defendants do give up the Chermers sued for, and pay costs as follows.

23d August 1832.

(Signature of the Pundit Sudder Ameen.)

No. 95.

DECREE of the District Moonsif of Calicut in the Zillah South Malabar, dated the 7th Edavom 992, or 18th May 1817.

(No. 221 of 1817.)

Karooparrappatte Namboodree, by vakeel *Meparambil Chakruvania Variar* and *Kallatel Ramen Menon*, versus *Pallikoonata Chappoo Nair* and *Alangaden Hydroop*.

THIS action is brought for the recovery of certain Chermers valued at 105 old gold fanams, on payment of the mortgage 32 fanams.

The plaint sets forth, that plaintiff's two jenmom Cherma boys, named Revèy and Maren, having, by the second marriage of their mother, grown up in the first defendant's service, on the 20th Meenom 983, plaintiff assigned over to him the younger of the said two Cherma boys for 32 fanams, being the amount of expenses incurred by him (first defendant) for bringing them up, and obtained a mooree (note) acknowledging the receipt of the amount in the name of plaintiff's accountant, Rama Variar, while he (plaintiff) took the elder boy into his service; but the boy not being of sufficient age to live separate from his mother, plaintiff left him again under the care of the first defendant, contributing the usual allowances during the Onon and Vishu festivals, and taking occasionally notice of him; that in the meantime, having seen him in the service of the second defendant, he inquired of, and was told by him, that the first defendant had mortgaged the Cherma to him. This suit is therefore instituted against the first and second defendants for the recovery of the aforesaid two Chermers, valued at 705 fanams, on payment of the mortgage fanams 32.

The defendants signed the notice issued on the 14th April 1817, but having failed to attend, either personally or by vakeel, the witnesses cited by the plaintiff's vakeel, viz. Chatangat Krishna Menon and Pootanveetil Ramen Nair, were sworn and examined, in order to pass a decision, pursuant to clause 1, section 26, Regulation VI. of 1816. When the first witness stated in his deposition that the plaintiff's jenmom, the two Cherma boys alluded to in the plaint, having been, by the second marriage of their mother, brought up by the first defendant, in Meenom 982, plaintiff assigned over the younger of them to the first defendant on Kanom (mortgage), for 32 fanams, being the amount of expenses incurred by him for bringing them up, and obtained from him a note acknowledging the receipt of that sum, while he took the eldest boy into his employment, but the boy being too young to live separate from his mother, he went and remained in the first defendant's service; that in the meantime the plaintiff, having come to know that the first defendant had mortgaged both the Cherma boys to the second defendant for one hundred and odd fanams,

fanams, he called on the first defendant, when he promised to give up the Chermers on payment of the 32 fanams which he owed him; that subsequently thereto, on the 15th Meenom 992, by desire of the plaintiff, witness and Pootenveetil Ramen sent for the first and second defendants, and demanded restoration of the Chermers, when the former said, that he was prevented from restoring them, owing to his not having been able to discharge the amount he owes the second defendant; that he would, however, try to discharge the amount and give up the Chermers on the 20th; and that the mooree produced in court was the identical one which was granted by the first defendant. The second witness's deposition is to the same effect as that of the first.

On a careful consideration of the above-mentioned circumstances, and inspection of the documents produced by the plaintiff's vakeel, it appears, that it has been satisfactorily proved by the plaintiff's witnesses, that the Chermers alluded to in the plaint are the plaintiff's jenmom property; that they having been, by the second marriage of their mother with a Cheroomen belonging to the first defendant, brought up by the first defendant, the younger of them was mortgaged to the first defendant for 32 fanams, being the amount of expenses incurred by him for bringing them up; that subsequently the first defendant mortgaged both the Chermers to the second defendant, and promised to restore them on payment of the 32 fanams, for which the younger of them was mortgaged to him; and the plaintiff's vakeel having produced the mooree granted by the first defendant, acknowledging the receipt of 32 fanams, being the amount of expenses incurred by him for bringing them up, and owing to the defendant's default to attend and defend the suit agreeably to order, the court being unable to ascertain whether their mortgage claim exceeds the amount adverted to, or whether they have any other title to the Chermers in question, it is, as prescribed in the aforesaid section, decreed, that the first defendant do restore to the plaintiff his aforesaid jenmom Chermers, named Revey and Maren, on the receipt of the 32 fanams alluded to in the plaint, and pay costs, rupees 1-2-52.

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DECREE of the District Moonsif of Calcut in Zillah South Malabar, dated 15th Edavom 992, or 26th May 1817.

No. 96.

(No. 212 of 1817.)

Kupadichrudragatha Oomachakootty, by vakeel *Abaderan Kootty*, versus *Kayatesherry Pame-too Kelloo Pamker* and *Chenoo Pamker*, by vakeel *Kelloo Pamker*;

For the recovery of five Chermers of the jenmom, value of 120 fanams.

It was stated in the plaint, that plaintiff's father Srangumdragatha Koonjalen had, in the year 948, purchased Poola Chermer Poolaly Vempeon, Chermers Olpooram, Cherook-anakee, Cheekie and Kandatee, as well as Chermen Kannen, from Tekoompostoo Kootoossa, native of Chermanoor, and possessed them up to the year 978, when the said Koonjalen having died, she possessed the said Chermers until 991, at which time the said Cheekie having had three daughters, named Chermer Cheekie, Cheroo Kanaky and Ayah, and the latter had two children, four of them were, in 987, assigned over to Cherekandy Achamoo, on kanom tenure; that afterwards, in Chngom 991, as the defendants took possession of those four Chermers, as well as the remaining one, the said Achamoo preferred a suit in No. 223 of 1816, in Koondoovatty Moonsif's court against the defendants; that it appearing during the trial that there was a dispute respecting the jenmom right, a decree was proposed, adjudging that the jemomkar should prefer another suit, and prove his right; plaintiff therefore prays, that the defendants may be sent for and caused to give up the said five Chermers.

A notice was issued to the defendants, and which having been received back without the defendants signing it, a proclamation was stuck up on their house and kutcherry, allowing them a period of 15 days. The defendants made their appearance and filed an answer, stating, that their (defendants') karnaven, Rarecha Panikar, had, in the year 948, purchased Paola Chermer Chaker from the aforesaid Srangumdragatha Koonjalen, and which Chermer he married to his (defendant's) Cherman, named Kanen, and while in their employ, the said Chermer had three and the latter had two children, who till now work for him, and for the owner of the Chermans who married them; that when the aforesaid Achamoo preferred a suit in No. 223, regarding the said Chermers, it having been proved that they were the defendants' jenmom, a decree was passed accordingly, that the jenmom deed of the aforesaid Chermer, as well as several other deeds and property, were consumed by fire, when their (defendants') house was burnt down, and which fact they will prove by witnesses.

The plaintiff's vakeel was interrogated. He states, that previous to the Chermers being taken in jenmom, they were held on ottee for 101 fanams; the deed thereof, and an attipar deed of the Chermers are in the plaintiff's possession; that, with the exception of Chermer Paollaly Veerapeen, who died, the remaining five Chermers, with two Parambas, were assigned over by plaintiff's father to defendant's karnaven, Ooney Kooty Panikar, on quit rent, in the year 956; valee (hire in paddy) was given to Chermer Chaker with the defendants' own Chermer, that until 962, she worked for the defendant, and during that time she had three children, and from the said year up to 973, the aforesaid Chermers worked for the defendants, and Pattatel Choyer; and from 973 to 978, the aforesaid Srangumdragatha Achamoo detained the above-mentioned Chermers in his possession; that in 978, after the death of plaintiff's father, the plaintiff assigned the said Chermers on kanom tenure to Srangumdragatha Shayeree for 50 fanams; that of the Chermers which were purchased,

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five died; that from the year 978 to 983, the Chermers in question were in the said Shayeree's service, and in the latter year, the plaintiff paid off the said Shayeree's claim in the said Chermers, and assigned four of them over to the aforesaid Achooma for 101 fanams; and that whilst they were in his service, until 991, they having gone to Chermen Kānen, who worked for the defendant, he would not let them return.

It appears by the examination taken from the defendants, that they have witnesses to prove the statements made in their answer.

The plaintiff's vakeel cited eight witnesses, of whom, Cherekandy Achamoo, Srangumdragatha Achamoo, and Tekoomportoo Moodeen Kootty, having been sworn, the first deposed, that the said Chermers were assigned over to the plaintiff in 978, on patom tenure, and continued in her service until 981, when she assigned them over to the aforesaid Shayeree on kanom for 51 fanams; that afterwards she held them in 987, on kanom for 101 fanams; and that while they were in her service, up to 991, they went to the defendant's house to see their father. The second witness deposed, that on his maternal uncle, the aforesaid Koonjalen, being informed, that one Oony Kadavata Oony Kaya had brought the aforesaid Chermer Chaker and her daughters, Chaker and Nyah Kooty, from Ramanatkaree to Cheroomanoor, he (Koonjalen) desired him (witness) to bring and keep them; that he brought and kept them with him, at which time, the defendants' karnaven, Ramootty Paniker, said that the said Chermers belonged to him; that he (witness) kept them for two years, and afterwards assigned the aforesaid four Chermers over to Cherekandy Kooty; and that in 977 until 987, they were in his service, and that the aforesaid Koonjalen bought the jemnom right of the above-mentioned Chermers in 948. Third witness deposed, that his uncle told him that he had in 948 sold six Chermers to the aforesaid Koonjalen, and that he (witness) knows nothing relative to the transaction between the plaintiff and defendant.

The defendant cited four witnesses, of whom, Neykoonatoo Cherookootty Nair, Palakant Koren, and Panachekel Ramen, having been sworn, the first witness deposed, that he was present when the defendants' karnaven, Raroo Pamkar, purchased a Poola Chermer, named Chaker, from Srangumdragatha Koonjalen, in 948, and which Chermer died in 980, while in the defendants' possession, and that she had three children, named Chakey, Ayah and Cheroo Kanakey, of whom Ayah had a daughter, named Chaker Kootty, and Chaker a son, named Koonjee Kanmen; that the said Chermer Chaker went to her husband in the service of Palakut Kanda Nair, as did Cheroo Kanakey, in the service of Chatretoo Achamootty Markar, and Chermer Ayah, in Panikat Ramen Menon's service; that as their children could not live separately, they remain where their mothers are; that the said Chermers were taken in jemnom in Pollikaut Karoo Menon's house; that an ottee and attipar deeds were executed; that Panikat Tachen Menon had drawn them out; that a value of 65 old fanams was fixed for the aforesaid Chermer, and that he (witness) saw the said sum being paid to Koonjalen, and he affixed his signature to the deed, and gave neer (water given to the purchaser to drink); that when the defendants' house was in 980 burnt down, the box containing deeds was also burnt, and that he does not know whether the Chermers' deeds were also then burnt or not. The second and fourth witnesses deposed to the same effect as the first witness.

On a full consideration of the circumstances, the documents produced by the plaintiff's vakeel, and copy of the decree in No. 223, finds that the defendants have failed to produce the deed by which his karnaven had purchased the aforesaid Chermers from the plaintiff's father, nor has he proved that they were destroyed by fire; and as the plaintiff produced the ottee and attipar deed of the Chermers, which her father had purchased in 948, and, it appearing by the above-mentioned decree that the plaintiff should institute a suit respecting the Chermers, it is decreed that the defendants do give up the Chermers alluded to in the plaint to plaintiff, and pay institution fees, 1 rupee 3 qr. 50 reas.

(Signature of the District Moonsif.)

No. 97. DECREE of the District Moonsif of Calicut, in Zillah South Malabar, dated the 10th Dhanoo-994, or 23d December 1818.

(No. 167 of 1818.)

Kapudechundragatha Moodeen Kootty versus Vattikant Emoo Nair;

For the recovery of two Chermers of the value of 20 rupees and 2 patom rupees.

It is stated in the plaint that Achamparambata Koonjee Patoomah, Viatoomah Kooty and Oomaya Oomah having, in the month of Midom 992, sold the Chermers named Janier and Vellen to the plaintiff, according to custom he sent people to bring the said Chermers, when the defendant objected and detained them. Plaintiff therefore sues for the recovery of 2 rupees, being patom (rent) for 10 months, together with the two Chermers, of the value of 20 rupees.

The defendant filed an answer, stating that he purchased the Chermers alluded to in the plaint from Achamparambata Avran Kootty, and that he has no reason to give them up or pay patom.

It appears by the evidence, taken on oath, of the plaintiff's witnesses, Valiapedegail Amootty, Poodia Cherrekel, Kaya Keyaportoo, Koonyer Rayen and Kalady Chatoo, that the

the aforesaid women had, in the month of Medom 992, sold the Chermers alluded to in the plaint to the plaintiff for 20 rupees, having come into their possession as shares of their father's property; that no one else has any claim on them, and that they heard that the defendant detained them.

The defendant's witness, Vadakepadasherry Ittikoomaren Chekoo, having been sworn, deposed, that he heard that one Chervavatoo Avooderan Kootty sold the aforesaid Chermers to the defendant; that of the aforesaid Chermers, the one named Tanien was the jenmom of the said women, who sold him to the plaintiff; and that the other, named Vellen, belonged to Avooderan Kootty.

On a full consideration of the above circumstances and the evidence of witnesses, it seems clear that the aforesaid females had sold the two Chermers alluded to in the plaint to the plaintiff; that they were his exclusive property; and that Avooderan Kootty, who sold them to the defendant, has no right to them.

The defendant's witness deposes, that he heard that Chermer Tanien was the jenmom of the aforesaid females, and Vellen that of Avooderan Kootty; beyond which it not having been proved that the latter, who sold the Chermers to the defendant, had any right to them, the defendant could not have bought them from him; and therefore the assertion, that the Chermers were purchased from the said Avooderan Kootty, not being of any avail, it is decreed that the defendant do give up possession of the two Chermers alluded to in the plaint, of the value of 20 rupees to plaintiff, and pay patom 2 rupees, together with the institution fee, rupees 1-1-50.

(Signature of District Moonsif.)

DECREE of the Calicut District Moonsif, in Zillah Malabar, No. 19 on the file of 1825.

Paodeacherrakel Oossen Cooty versus Kanaken Kerran, residing in Edamana Tayata.

No. 98.

PLAINT sets forth, that in Edavom 997, plaintiff delivered to the defendant a white-coloured bullock to be broken in for the plough, which defendant not having returned, the suit is for the recovery of the bullock or its value, rupees 8-3 qr.

Defendant in his answer states, that in 997 the plaintiff's elder brother, Kaya, delivered to him (defendant) a red young bullock, which was vicious, to be broken in for the plough; that another young bullock belonging to himself having been stolen from him (defendant), he told Kaya to take away his bullock, lest it should also be stolen; that he replied that no one would steal it, adding, that it might be tied every evening in his stall; that notwithstanding this precaution the bullock was stolen; and that Kaya said, that if it could not be discovered who had stolen the bullock he did not mind for the loss.

Neither the plaintiff nor defendant filed any document in this case.

Chernata Amod and Culpaye Chundoo Cooty were examined as witnesses for the plaintiff; the examination of another, the remaining witness, was not considered necessary.

The defendant cited no witness; the proceedings were therefore closed.

On a consideration of this suit, the court finds the defendant has fully admitted having received the bullock adverted to in the plaint, for the purpose of having it inured to the plough; his allegation that it was stolen is not proved; even if the bullock were stolen, it must have been through the defendant's carelessness, and he must consequently be answerable for it, and pay its value; but the price demanded for the bullock appears to be high, nor has the plaintiff proved its actual value; and as it cannot exceed three rupees, it is adjudged that the defendant do either restore to the plaintiff the plaint bullock or pay him three rupees, its value.

Given under my hand and the seal of the court, this 17th Medom 1000, or 28th April 1825.

(Signature of the Moonsif.)

DECREE passed by the Calicut Moonsif, in Zillah Malabar, on the 4th Wreschigom 1001, or 17th November 1825.

No. 99.

(No. 404 of 1825.)

Koloor Rarechen, by Vakeel his son *Kelloo*, versus *Pelakatmoolampully Kelen*, alias *Koonjen*.

THE plaint sets forth, that in Medom 999, defendant executed a bond in plaintiff's favour for 14 rupees, pledging his four jenmom Chermers to him, viz., Cherroomen Ikkachen, Chermer Kanaye, Chermer girl, Teraree, and Chermer girl, Payaokaye. He therefore claims the principal, with interest up to the date of the institution of the suit, in Chingam 1000, rupees 2-1-52; total, rupees 16-1-52; or to cause defendant to make over to him the aforesaid Chermers, valued at 25 rupees, as set down in the bond, by receiving from him rupees 8-1-48, being the balance due to him after deducting his debt.

The defendant signed the notice issued on the 23d August 1825, but, not appearing, the cause was tried *ex-parte*, according to section 20, Regulation VI. of 1816.

The bond produced by plaintiff was filed and marked (A.); and the witnesses, Kandil Peragan, Kandil Chundoo Cooty, Illumbarambie Vappoo and Sepoy Karoo, were examined for the plaintiff.

On a consideration of this case, the court finds that it has been proved, both by oral and documentary evidence, that the defendant had, as set forth in the plaint, executed the bond in plaintiff's favour, pledging the Chermers to him; and the defendant not having attended

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and stated any thing in opposition thereto, and it appearing that further than his having still retained possession of the pledged Chermers he has not in the least fulfilled his engagement, the court considers the defendant liable to pay the amount sued for. For these reasons, the defendant is adjudged to pay plaintiff the amount sued for, rupees 16-1-52, and costs, rupees 2-9-4.

(signed) *Kamaren Nair*, Moonsif.

No. 100. DECREE passed in the Calicut District Moonsif's Court, in Zillah Malabar, on the 17th Dhanoo 1002, or 30th December 1826.

(No. 387 of 1826.)

Poolikellayata Caya Moodeen versus *Tailatatil Coonjolen* and *Oony Aihen*;

For the recovery of Chermer Parecher, valued at 31 fanams.

THE plaint sets forth, that the defendants having fixed 35 fanams as the price of a Chermer girl, named Parecher, their jemom (slave), on the 29th Chingam 999, they received 25 fanams, and executed a deed binding themselves to pay the amount in 1001 kanee, and, on failure, to receive the remaining 10 fanams, and give up the Chermer in jemmom to plaintiff; that as defendants have not fulfilled their engagement, plaintiff begs that they be caused to receive the balance, and transfer the Chermer in jemmom.

The defendants signed the notice issued to them, on the 25th August 1826; but they did not attend nor file answer. The deed produced by the plaintiff, as executed by the defendants, having been marked (A.), is filed of record, and the plaintiff's witnesses, Chenas Nair, Coonjy Camod, and Coonjaly Cooty, were examined.

On a consideration of this case, the receipt of 25 fanams by the defendants, after fixing the value of the Chermer, and the execution of the deed in plaintiff's favour, are found to be fully proved by witnesses; and, as defendants have not attended to point out any difference in their evidence, the case must be considered a true one. It does not, however, appear that the Chermer was actually given in jemmom, but only a promise made in writing to do so; the Chermer cannot, therefore, be caused to be given up as claimed. On the above grounds it is decreed that the defendants do pay to plaintiff 25 fanams mentioned in the deed, with 7 fanams interest thereon to the date of this decree, and also pay institution fees 11 annas and 3 pice.

(signed) *Kamaren Nair*, Moonsif.

No. 101. DECREE passed in the Calicut District Moonsif's Court, in Zillah Malabar, on the 9th Magarem 1002, or 30th January 1827.

(No. 360 of 1826.)

Manatoor Imbechoony Nair, by Vakeel *Ooni Chaten*, his heir, versus *Moolamangalata Keloo*, and *Tatacooyel Camoo*;

For the recovery of a Cheroomen, valued at 40 fanams.

IT is set forth in the plaint, that in Medom 997, plaintiff purchased from second defendant the jemom right of the Poola Cheroomen Tamen, of Poolayi Coodiar caste; but the first defendant refuses to give him up by receiving the 21 fanams otte claim he has upon the Cheroomen; he therefore sues for the said Cheroomen, valued at 40 fanams, on the payment of 21 fanams.

First defendant in his answer states, that there is no reason for giving up the Cherman to plaintiff; that after he had received the Cheroomen on otte tenure for 21 fanams from the second defendant, Permgot Imbichy Nair, a distant relation of second defendant, opposed the Cheroomen being taken possession of; that he mentioned the circumstance to the second defendant, and by his permission paid 15 fanams to Imbichy Nair, and obtained a deed of ottekomporom; that the second defendant offering to give the Cheroomen in jemmom, he purchased the jemmom right of that Cheroomen and two others, in the name of plaintiff, his karnaven retaining the former in his own service, while the two others were employed on the works of his and plaintiff's family; and that the suit has been preferred with the fraudulent intention of breaking off his connexion with regard to the family property.

Second defendant signed the notice, but did not appear and file answer; but as he attended at the time of the trial, he was interrogated, it being desirable to have his answer in this case. He admits that he had sold the jemmom right of the Cheroomen to the plaintiff, and of his having given him on otte to the first defendant; adding, that he and Imbichy Nair are not relations by blood, but only related in that degree as to observe mourning for a short time; that Imbichy Nair has therefore no right to transfer the Cheroomen for debt, and that he was not aware of such a transfer.

Plaintiff filed an enuck (transfer writing). First defendant filed a deed of otte, and a debt bond; and they were marked (A.), (B.) and (C.); and Rama Putter, Ramen Nair, Comoo Nair and Itterarappen Fair, were examined as witnesses for plaintiff; and Chatoo Nair and Caroo Nair were examined as witnesses for first defendant.

Second defendant adduced no evidence.

On a consideration of this case, it appears clear from the plaintiff's and defendants' own statements, that the plaintiff bought the jemmom right of the Cheroomen sued for, and that the

the first defendant has an *otte* claim on him. But his declaration, that he had taken the Cheroomen on jemom, in plaintiff's name, is not at all proved; and his allegation that he had paid 15 fanams to Imbichy, an ananteraven (heir) of first defendant, as a separate debt on the Cheroomen, is denied by the second defendant, who was the jemom owner of the Cheroomen. Nor is it proved that the said Imbichy has any right to receive money or make transfer. If he has any claim on the family property, he must bring an action for it. The first defendant's assertion cannot therefore be accredited. For these reasons it is decreed, that on the plaintiff paying to first defendant 21 fanams *otte* claim, he is to give up the plant Cheroomen to plaintiff, and pay institution fees, 11 annas and 3 pice. The second defendant is not to pay any thing.

(signed) *Camaren Nair*, Moonsif.

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Returns.

DECREE of the Calicut District Moonsif, in the Zillah of Malabar, passed in the 6th Koombhom 1002, M. S., or 16th February 1827.

No. 102.

(No. 419 of 1826.)

Paddelodayil Nainama versus. *Chemalacherry Oomchen Koorpoo*, *Cherookomen Koorpoo*, *Kanara Koorpoo* and *Chopah Koorpoo*;

For the recovery of Cheroomers, of the Jenmom, value of 125 fanams.

THE plant states, that of the plaintiff's jenmom Cheroomars, a Poalah Cheroomer, named Rayi, was given in marriage to a Poalah Cheroomer, named Ikul, the jenmom of the defendants, and after the usual sum was paid to the plaintiff's father, the Cherooman took away his wife, and the Cheroomer bore five children; that, by the right plaintiff has to the mother, he is entitled to three of her children, viz. a Cheroomer, named Parrachy, and two Cheroomars, named Chatoo and Arathan, valued at 125 fanams, which he begs may be recovered.

All the defendants jointly answered, but admitted nothing stated in the plaint. They contend that, as the Cheroomer was not taken away, the plaintiff can claim no right to the Cheromers sued for; that the Chermer, named Rayi, stated in the plaint, was married by one of the Cheromers, Kelly, and according to custom a certain sum was paid to Avelery Karen, and the Chermer was brought away, and she bore the Cheromers sued for; the plaintiff has no right on them; that he made a representation in the Calicut talook kutcherry respecting them.

The parties in this suit filed no documents. The plaintiff's witnesses, Kaonomel Echoo Nair, Nanagan Konnokur, Taykandy Chandoo Nair, Cherooman Mootoran Chaten and Kandil Chandoo Caotty, have been examined. The defendants adduced no evidence, nor attended at the trial of this suit.

Having considered the proceedings held in this suit, it appears in the examination held, that the plaintiff has right on the Cheroomars and their mother; but on the other hand it appears, in the defendant's answer, that Kanden, who is therein alluded to, has right to the said Cheromers, and that it also appears that there is a dispute with him regarding them; to decide which, unless he is admitted as a defendant, a final decision cannot be passed; this suit is therefore dismissed, and the plaintiff is to pay the institution fee, 1 rupee 15 annas and 3 pice.

(signed) *Camaren Nair*, Moonsif.

ABSTRACTS of Decrees transmitted by the Assistant Judge and Joint Criminal Judge of Malabar, with his Report dated 6th August 1836, selected from 242 decrees* on record, whereby rights in Slaves have been decided on.

No. 103.

DECISIONS by the Judge, Zillah North Malabar.

1. Original Suit, No. 452 on the Old File;

For recovery of 230 rupees 4 annas and 2 pie, being balance, principal and interest due on 147 rupees and 8 annas advanced on the security of four slaves.

THE defendant admitted the transaction, but pleaded that he had paid more than had been allowed in the plaint.

A decree was passed, adjudging the plaintiff 171 rupees 3 annas and 2 pie, being the balance shown to be due after giving defendant credit for the sums which he proved he had paid.

12th January 1807.

2. Original Suit, No. 653 of 1815;

For recovery of cattle, copper-pots and fields, valued at 576 rupees; and of 6 slaves, at 90 rupees.

No. 104.

THE defendants pleaded that the property sued for was personally acquired by them. The plaint was dismissed for want of proof.

12th December 1816.

3. Appeal

* See No. 63, *infra*.

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Appendix IX.

Reports.

No. 105.

3. Appeal Cause, No. 15 of 1818 ;
For recovery of rupees 5-3-2, being rent due on two slaves, and for possession of the said slaves.
THE defendant pleaded that the slaves were his ancestral property.
The moonsif on examination decreed for the plaintiffs, which judgment was reversed on appeal, on the appellant (defendant) taking his oath to the truth of the plea.
25th July 1820.

By the Assistant Judge, Auxiliary Court, Malabar.

No. 106.

4. Appeal Cause, No. 56 of 1827 ;
For possession of six slaves, received first in mortgage, and afterwards purchased outright by plaintiff from the head of the family of the first and second defendants, which, together with two children, the offspring thereof, had been stealthily appropriated by third defendant; the value of the above eight slaves being stated at 150 rupees.
THE first defendant failed to appear to defend the suit. The second defendant answered in support of the plaint. The third defendant contested it by declaring the slaves to be his ancestral property.
The sudder ameen pundit, after hearing evidence on both sides, decided in favour of the plaintiff, and this decree was confirmed on appeal.
30th December 1829.

By the Register of the Zillah North Malabar.

No. 107.

5. Original Suit, No. 3,803 on the Old File ;
For recovery of eight slaves, of the value of 120 rupees, forcibly taken possession of by the defendant, and of that of their labour for two years, being 10 rupees 4 annas and 10 pie.
THE defendant pleaded that the slaves were his own property.
The plaintiff having failed to afford sufficient proof of his proprietary right to the slaves, the suit was dismissed.
7th September 1808.

No. 108.

6. Original Suit, No. 285 of 1817 ;
For possession of fields and slaves attached thereto, on payment of 602 rupees advanced on mortgage thereof by first defendant, and of 600 similarly advanced by second defendant.
FIRST defendant pleaded, that, beyond the amount of his mortgage, he had paid a further sum, and thus became vested with the proprietary right of certain fields and slaves by purchase outright.
Second defendant failed to appear.
The first defendant's plea having been disproved, possession of the lands and slaves was decreed to be made over to plaintiff, on his making good the sum sunk thereon by the defendants in mortgage.
17th January 1818.

No. 109.

7. Original Suit, No. 35 of 1814 ;
For recovery of four slaves of the value of 80 rupees, and rent thereof, for three years, 21 rupees 9 annas 7 pie, the said slaves having been retained by the late senior in defendant's family, after the sum of 50 rupees, raised on them by mortgage, had been repaid.
THE defendant denied that the amount of the mortgage had been received back, and claimed that the slaves should remain in his possession.
On proof that the amount of the mortgage had been repaid, possession of the slaves was decreed to plaintiff.
15th May 1818.

By the Sudder Ameen.

No. 110.

8. Original Suit, No. 70 of 1814 ;
For recovery of eight slaves of the value of 64 rupees, the property of a pagoda, seized and sold by first defendant to second defendant.
THE first defendant did not appear.
The second defendant pleaded that the slave had been lodged in his possession by an individual, to whom he had been sold by first defendant.
The

The plaintiff having proved the slaves to be the property of the pagoda, of whose concerns he was the manager, possession was decreed to him.
30th April 1816.

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Returns.

9. Original Suit, No. 503 of 1815;

No. 111.

For recovery of four slaves of the value of 40 rupees, being the issue of a female slave, the property of the plaintiff, married to a male slave belonging to the defendants, and taken forcibly by defendants from the person to whom they had been rented by plaintiff.

DEFENDANTS denied the truth of the plaint, and pleaded that the slaves were their ancestral property, and had been long in their possession.

The plaintiff having established his title, and that he had been in the enjoyment of the produce of their labour, possession of the slaves was decreed to him.

24th June 1816.

10. Appeal Cause, No. 144 of 1825;

No. 112.

For recovery of 25 rupees, being the amount sunk on the mortgage of a slave who had died while in the possession of the plaintiff (mortgagee), and of 26 rupees 6 annas, the equivalent of his labour lost since the time of his death.

DEFENDANT declared that he had repaid the mortgage-money.

The defendant not having made good his plea in opposition to the evidence for plaintiff, a decree was passed by the moonsif according to the plaint. This was reversed on appeal from discrepancies being apparent in the evidence for the prosecution.

29th August 1825.

11. Appeal Cause, No. 284 of 1825;

No. 113.

For recovery of two slaves valued at 45 rupees, rented to defendant, and for arrears of rent at rupees 1-3-2 per annum, amounting with interest to rupees 17-11-2.

DEFENDANT denied plaintiff's title, and pleaded purchase of the slaves from a third party.

The moonsif, considering the evidence advanced by plaintiff to have established his title, passed a decree in his favour, which was reversed on appeal, owing to contradictions apparent in the statements of the witnesses for the prosecution.

26th January 1826.

By the Commissioner of Bekal.

12. No. 15,012 on the Old File;

No. 114.

For recovery of 10 rupees, with interest, rupees 5-3-2, advanced on the security of a slave.

THE defendant having admitted the debt, a decree was passed for the amount sued for.

27th March 1811.

By the Commissioner of Caye.

13. No. 12,614 on the Old File;

No. 115.

For recovery of rupees 20-2-7, due on the rent of two slaves for six years.

THE defendant denied the plaintiff's title, and pleaded that he had purchased the slaves from a third person. On proof of the plaintiff's right, the sum sued for was decreed to him.

23th October 1810.

14. No. 1,163 of 1813;

No. 116.

For recovery of rupees 38-6-5, advanced on the mortgage of a slave; of rupees 12-9-7, expended for his food and clothing; interest thereon, rupees 9-13-8; and of rupees 3-12, due on simple debt.

THE defendant did not appear.

A decree was passed in favour of plaintiff, on the proof adduced by him.

27th February 1814.

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By the Commissioner of Cherricul.

No. 117.

15. No. 774 of 1813;

For recovery of five slaves, and the deeds connected therewith, on repayment of 16 rupees, sunk by defendant on the mortgage thereof.

THE defendant pleaded that the amount advanced on the mortgage was 44 rupees.

A decree was passed, that the slaves and deeds should be made over to plaintiff, on his making oath that he had received no more than 16 rupees on the mortgage thereof, and paying that sum to defendant.

3d May 1813.

By the Commissioner of Catteyom.

No. 118.

16. No. 10,987, Old File;

For recovery of two slaves of the value of 30 rupees, whom the defendant had forcibly detained, and of 21 rupees, being value of their labour for seven years.

DEFENDANT pleaded that he had received the slaves on mortgage from another person for 6 rupees.

Proof having been adduced of the slaves being the property of the plaintiff, a decree was passed in his favour.

19th March 1810.

By the Commissioner of Wynaad.

No. 119.

17. No. 9,756, Old File;

For recovery of a slave who had absconded to the defendant, and on whom the plaintiff had a mortgage right of 20 rupees.

DEFENDANT pleaded that he had purchased the slave from a third person.

The defendant's plea having been proved, the plaint was dismissed.

19th July 1809.

No. 120.

18. No. 11,461, Old File;

For recovery of four slaves of the value of 80 rupees, whom the defendant had taken forcible possession of.

THE defendant pleaded that the slaves were his own property.

The plaintiff having established his right, a decree was passed in his favour.

27th February 1810.

By the Caye Moonsif.

No. 121.

19. No. 79 of 1823;

For recovery of rupees 1-3-2, and interest thereon, 14 annas 9 pie, due as the rent of a slave for one year.

DEFENDANT pleaded that no rent was due, as possession of the slave had been immediately resumed by plaintiff.

It being proved that defendant had the use of the slave for one year, the amount sued for was decreed to plaintiff.

24th March 1824.

No. 122.

20. No. 215 of 1823;

For recovery of rupees 160-3-2, advanced on the security of four slaves, and of 8 rupees, being interest thereon for one year.

THE defendant put in no answer, and a decree was passed for plaintiff on the proof of his claim.

29th May 1824.

No. 123.

21. No. 375 of 1831;

For possession of four slaves purchased from the seventh defendant, for 60 rupees.

THE defendants, from first to fifth, pleaded that they held possession of the slaves as ancestral property, and that seventh defendant had no title therein.

The

The sixth defendant pleaded that he had a mortgage upon one of the slaves of 581 dungalies of paddy (17 rupees and 8 annas), derived from first defendant.

The seventh defendant answered in support of the plaintiff.

The suit was dismissed, the plaintiff not having adduced sufficient evidence of the seventh defendant's title to sell him the slaves.

31st March 1832.

By the Wynaad Moonsif.

22. No. 58 of 1831;

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No. 124.

For recovery of three slaves purchased by plaintiff from third defendant for 50 rupees, who had absconded to the first and second defendants, and of 48 rupees, being the equivalent of their labour for two years.

THE first defendant denied the truth of plaintiff's claim, and pleaded that he had received the slaves from third defendant, on mortgage, for rupees 40-3-2, and had subsequently purchased them outright for rupees 2-12-10 additional.

The second defendant failed to appear.

The third defendant stated, that he had mortgaged the slaves to first defendant for rupees 40-3-2; that, to provide for the satisfaction of a decree, he had passed a deed of sale of the same slaves to the plaintiff, but that an acquittance for the decree not having been produced, the transaction had become null, and he had sold them outright to first defendant.

The sale made to plaintiff was declared to be void, as it had been effected by third defendant without the concurrence of his heirs, and as the mortgagee (first defendant) had not been apprized thereof. The plaintiff having proved that the purchase-money had been paid by him, the sum thereof, 50 rupees, and the further sum of 48 rupees, sued for, were decreed to be made good to him by third defendant.

21st October 1831.

No. 42 of 1834;

No. 125.

For recovery of 30 rupees, on account of the rent of two slaves for five years.

THE defendants pleaded that the slaves were their ancestral property. The plaint was dismissed, as the plaintiff had failed to produce a counterpart of the lease of the slaves, said to have been granted to first defendant.

(True abstracts.)

(signed) T. L. Strange,

23d May 1834.

Assistant Judge.

DOCUMENT concerning Slaves recognized in different Civil Causes.

No. 1. DEED OF SALE,

No. 126.

EXECUTED on the 14th Meddam 992, by Namboory Narayanan Eshwaren, of Pallytarra Vayil, to Padamoolata Ponan Padoonal Killoo Kanen, certifying having sold to the latter his proprietary right in the Polayun slaves, Viroondan, Virootan, Pattyan, Paravatty Vellachy (a female), her daughter Vita Carichy (a female), and her daughter, also Vellachy, the mother of the above, being nine in number, for full value received.

Witnesses :—

Pootondil Poodia Veettil Collangara Eshwaran Cammaren.
Cherroowatoor, Padamoolata Mawiddel, Ramen Coran.

Written by Cherroowatoor Cariparambelly Kewalat Cambycanan Namby Oocaren.

No. 2. DEED OF MORTGAGE,

No. 127.

WRITTEN in the month of Dhanoo 990 (January 1815), as follows :—Padamoolata Ponan Killo Kanen, of the village of Cherroowatoor, having paid the sum in full of Cannanore Vera Rayea, 535 new fanams (107 rupees), and Caddama Para Pallytara Vyalil Namboodry Madhawan Narayanan having received the said sum of 535 fanams, the latter has made over in mortgage the nine following Polayan slaves of the Orimoori tribe, out of those he holds in his proprietary right; viz. Viroondan, Maratan, Vattyan, who has attained the age for having his ears bored, Vattacaty, a child, Vellachy, a female, a daughter born of her, Carichy, a female, her daughter, being in number eight slaves; as also Vellachy, the mother of the aforesaid eight slaves, making in all nine persons mortgaged by Madhawan Narayanan. Kelloo Cannan has paid in full the said sum of 535 new Cannanore fanams (107 rupees), and has received in mortgage the aforesaid nine slaves, consisting of males,

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females

Appendix IX. females and children. The witnesses hereto are, Cheerapally Eeswaren Keshawen, and
Returns. Cayoor Cheruennadatha Vengail Cannen Ramen. Written by Abbily Tekullatta Kishawen
Shangaren.

(Signature.)

No. 128.

No. 3. LEASE,

WRITTEN by Cananjairy Ryrapan, of Canote, to Narycoddan Chatoo, inhabitant of Canote. You have rented out to me in the year 1003, the slave named Cayama, whom you received under proprietary right from Perar Veettil Chindan. The rent of this slave is two podies of paddy annually, which I will pay and take a receipt for the same.

2d Coombhoom 1003.
12th February 1828.

(Signature.)

No. 129.

No. 4. ACCOUNT,

WRITTEN on the 24th Meenom 987 (4th April 1812.) Kandakye Kellote Coottyatoor Anandan has borrowed from and owes to Cattambally Moocanan Pookar 623 standard, sealed seer dangalies of paddy. The price of which, 623 seers of paddy, being 112½ fanams, rupees 22-7-34, is to be repaid in (the month of) Tulam 988, by 800 seers of paddy, being at the rate of 28 rupees (per 1,000 seers). It is agreed that these 800 seers of paddy are to be conveyed by Pookar's boat, and delivered, by measurement, at the Candakey ferry. In security for this, Ananden has pledged his Polayam slaves, Parotty, Vichadem (males), and Chingarri and Oorootty (females). In case the above-mentioned paddy be not delivered, the slaves aforesaid are to be sent for, and to be made to work on account of the interest of the paddy.

(Signature of Ananden.)

Witnessed by Arakee Pally Anandan, the writer hereof.

No. 130.

No. 5. DEED OF TRANSFER,

By Parrangol Illatta Narraynan, Numbiddy Atchen Poodyettalla Cowillambaron Ramen Nambayar.

The Nambayar owes me 75 silver fanams (15 rupees), on a deed executed on the 29th Meenom 1006 (10th April 1831), for which he mortgaged his Pannyan slave, Caroomaten, the amount of which deed, with interest, has not been paid to this day. Therefore the above sum being 75 fanams, bearing interest up to this day 9½ fanams, together 84½ fanams, deducting wherefrom 4 rupees (20 fanams), paid in the month of Meenom, on account of the Nambiar, by Koordypraven Kellapen, the balance due to me by the Nambiar, on account of principal and interest, is 64½ fanams, which, together with the deed, executed to me by the Nambiar and this writing, I have made over to Taliyil Padingara Veettil Krishnan of Koottiyady, in discharge of my debt to him, for payment of which he has been pressing me. If that deed and this writing are received from Krishnan, and the sum of 64½ fanams, is paid to him, I shall be satisfied.

29th Edavom 1007.
9th June 1832.

(Signature.)

No. 131.

No. 6. L. S. SUNNOD,

GRANTED by the district moonsif of Wynaad to Metile Madatil Soorgaun Putter of Vaingattery Gramom, in the Nallonaad Deeshom.

On the sale by auction of the property of the defendant, Colly Kooa Cooppatodda Chandoo, attached in execution of the decree in cause No. 117 of 1833, on the file of this court, passed against him in favour of the plaintiff, Devesha Nurrana Putter, three slaves, named Onnan, aged about 45 years, Coodhookan, aged 40 years, and Carroopan, aged 18 years, being in the proprietary right of the defendant, were purchased by you, on the 27th Tulam 1011 (11th November 1835). The deposit of 15 per cent. of the purchase money, rupees 11-11-2, having been delivered by you to the ameen, on the 13th November, and the balance, rupees 66-4-10, having been paid by you into this court, on the 23d December, making together 78 rupees, this sunnud is granted to you under the seal and signature of this court, in order that you may from henceforth have the same possession and use of the said slaves as has been enjoyed hitherto by the defendant.

12th Cumbhom 1011.
22d February 1836.

(signed)

Ramayan, Moonsif.

No. 132.

From the Secretary to the Indian Law Commission to the Acting Register Sudder Adawlut, Madras, dated the 10th August 1839.

THE attention of the law commission has been drawn to a case which, it appears, was under the consideration of the court of Sudder Adawlut in their proceedings, under date 31st March 1837, in which, according to the note printed in Mr. G. L. Prendergast's compilation of

of the court's orders, "the Sudder Adawlut informed the zillah judge that he may properly refuse to do more than has been already done by the courts, viz., authorize a sale of slaves with the estate or land to which they belong;" and being desirous to obtain all the information they can bearing on the question, whether or not the agrestic slave is liable to be sold separately from the land to which he has been attached from birth, they request that, with the permission of the judges, you will furnish them with a copy of the court's proceedings in the case referred to, and a copy of the proceedings of the provincial court, and the reference from the zillah judge, which the court had under consideration, and that you will be so good as to transmit them to this office as soon as possible.

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FROM Mr. G. Bird, Judge, Zillah Court, Canara, to the Register to the Provincial Court of Appeal, Western Division, Tellicherry, dated 17th January 1837. (This was forwarded in the letter of the Register, Madras Sudder Adawlut, dated 26th August 1840, in consequence of the foregoing. It had been obtained through the Provincial Court of the Western Division.)

No 133.

I HAVE the honour to request that the accompanying copy of an original and appeal decree, the application for special appeal, together with my reasons for admitting that special appeal, may be forwarded for the opinion of the judges of the court of Sudder Adawlut, inasmuch as I consider it doubtful whether I should be justified in allowing the award to be carried into execution.

DECREE passed by the Barcoor Moonsif, in Original Cause, No. 126 of 1835, on the 29th July 1835.

No. 134.

Hossamunay Manddawanna Shetty, residing in the Hondady Village, and *Brumawhar Mogany*, in the Barcoor Talook, versus *Seevy Shetty*, his younger brother, *Honniya*, both nephews of *Hossamunay Pomma Shetty*, and younger brothers of *Soobbiya Shetty*, residing in the said Hondady Village, and *Bennaycoodra Krooshna Shetty*.

THE plaintiff in his plaint states, that the first and second defendants' elder brother, *Soobbiya Shetty*, on the 8th Ashweeja Bahoola of the year Veya, mortgaged to him, for 2½ hoons, his two slaves, viz. a female Dher, named *Honnoo*, and a male *Pardeshey*, together with their offspring, and made them over to him; that while they were in his possession, *Soobba Shetty* died, and the first and the second defendants succeeding to his (*Soobba Shetty's*) property, they further executed a document to him for hoons 4-8-12, on account of a balance against themselves of rice, &c., making a total mortgage on the slaves of hoons 7-3-12; that the third defendant attached the aforesaid slaves, as also their children, which are his (plaintiff's) mortgage right, for an alleged amount of a decree obtained by him against the above-mentioned *Soobbiya Shetty*; that as the mortgage amount of 2½ hoons was alone admitted, and the hoons 4-8-12 received by the first and second defendants executing the above document were denied, he (plaintiff) was ordered to institute a suit; that he therefore brought this for the release from attachment of the following slaves, being his mortgage right, viz. a female Dher, named *Honnoo*, valued at ten rupees, a male *Pardeshey*, valued at six rupees, together with two little children born of the aforesaid *Honnoo*, and worth four rupees, viz. *Sanuyaroo* and the other *Panchoo*.

The first and second defendants, in their answer, admit that their elder brother, *Soobba Shetty*, mortgaged to the plaintiff the aforesaid slaves for 2½ hoons, but deny their having executed the documents to the plaintiff for a further sum of hoons 4-8-12 on the mortgage of the said slaves, or having received from him any thing, and assert that there was no reason to mortgage slaves of less value for a high amount; that the plaintiff, in the month Kartingul of the year Jaya, preferred a magisterial complaint against the second defendant regarding the slaves, in which complaint he (plaintiff) only mentioned the circumstance of *Soobba Shetty's* mortgage bond, but made no mention of the document said to have been executed by them; that if they had really executed such a document, the plaintiff would have, of course, mentioned it in the complaint, and that nothing is therefore due from them to the plaintiff.

The third defendant in his answer states, that as the slaves attached by him were really mortgaged to the plaintiff for 2½ hoons, he admitted it in the arzee presented by him for attaching the property; that the plaintiff has fabricated a document as being executed by the first and second defendants for a further sum of hoons 4-8-12, but that it is not a real one; that therefore the said slaves should be put up to sale in satisfaction of the amount of his decree, and the amount decreed paid to him from the remaining amount of proceeds, after paying to the plaintiff the sum of 10 rupees due on account of the first and second defendants' ancestor *Soobbiya Shetty's* mortgage.

The plaintiff filed the following document, viz. one, a document on plain paper, purporting to have been executed to the plaintiff by the first and second defendants, under their signatures, on the 2d Shrawuna Bahoola of the year Veya, in the handwriting of *Anna Shetty*, and under the attestation of *Chickiya Shetty*, *Antaya Shetty* and *Seevoy Bhundary*, stating that "accounts having been adjusted this day, of the rice and cash formerly received by us from you, four hoons are due; this amount, as also hoon 0-7-8, the value of two mooras of rice received by us this day, together with ready cash hoon 0-1-4, total hoons

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4-8-12,

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4-8-12, we engage to pay you by the 30th Mauga Bhol of this year, together with interest thereon, and if we should fail to make good the amount by that period, we again bind ourselves to pay the said sum of hoon 4-8-12, with interest thereon, by the 8th Aswuja Bahoola of the year Veya, when we would redeem the mortgage bond executed to you by my elder brother, Soobba Shetty, for the slaves, and to get back this document and redeem the slaves."

The plaintiff cited the aforesaid four witnesses to prove that the said document was executed by the first and second defendants.

The defendants represented that they had no evidence to adduce to disprove the document.

Subsequently, the first and second defendants presented an arzee, stating, that if the plaintiff should take the oath called "aghera prumuna" before the Mudkarry Somanatha Idol of Barcoor, to the effect that the document in question was really executed by them and not fabricated, they were ready to pay the whole amount, or that they would take their own oath at the place appointed by the plaintiff, to the effect that the document was not executed by them, or that if the plaintiff should refuse to the decision of the suit on the oath of either party, his (plaintiff's) witnesses might be examined on the oath "aghera prumuna" before the said idol, with their examinations before them.

Regarding this proposal, the plaintiff and the third defendant being questioned, the latter stated, that he was unwilling to abide by the plaintiff's oath, and the plaintiff said that as he had documental and oral proof, it was unnecessary for him to take such an oath as the one proposed by the first and second defendants, and that he was unwilling to get the suit decided by their (first and second defendants') oath. The plaintiff's witnesses in attendance, viz. Anna Shetty, Suvoy Bhundary *alias* Seevoy Shetty, Antoy Shetty, and Chuckyia Shetty, being informed of the proposal of oath made by the first and second defendants, they declared that they would depose to the circumstances within their knowledge, taking their oath in the kutcherry itself, but that it was unnecessary for them to go and take their oath at the dewusthan. For this reason, an oath was administered to the said four persons in the kutcherry, as usual, and they were examined.

On consideration of the proceedings of the case, the moonsif proceeds to give the following decision:—

The first witness, the writer of the document in question, and the second, third and fourth, the attesting witnesses thereof, depose on oath, that on the date of the document, the first and second defendants made a verbal adjustment of accounts at the house of Chinniya Shetty, before them, with the plaintiff, and with their own free will executed to him (plaintiff) the document in question, on the pledge of the aforesaid slaves for four hoon, that appeared against them, as also for three rupees, the value of two mooras of rice, which they said they would receive that day, together with half a rupee, total hoon 4-8-12; that the first and second defendants said they intended to receive the two mooras of rice and the half rupee mentioned in the document, and the plaintiff that he would give the same on going home; and that the plaintiff accordingly went to the house along with the first and second defendants. Therefore the execution of the document in question by the first and second defendants to the plaintiff appeared to have been satisfactorily proved by their evidence. The fourth witness alone deposes to his having seen the plaintiff give to the first and second defendants, from his house, the two mooras of rice, and ready cash hoon 0-1-4, mentioned in the document; but as the remaining three witnesses did not see the same, the evidence of the fourth witness alone is not to be admitted. Yet the said four witnesses having deposed consistently to the defendants' having admitted the four hoon mentioned in the document in question as being due on former dealings, and executed the document, there appeared no reason why the item of the said four hoon should be disbelieved, merely in consequence of there being no satisfactory proof to the payment of the two mooras of rice and half rupee. As the third defendant who attached the slaves, the subject of this plaint, refused to the proposal of oath, and failed to make any representation as to the plaintiff's witnesses being caused to take their oath in the pagoda, and as all the three defendants stated that they had neither documental or oral proof to disprove the document in question, the plaintiff's claim appeared valid. With regard to the statement made by the defendants in their answer, that it was not usual to obtain on mortgage slaves of less value for a high sum of money, the plaintiff and the said defendants being examined, the former stated, that as the first and second defendants have no property, and as all the children which would be born of them would remain as a pledge for his mortgage amount, he obtained on mortgage the slaves, though of low value, for a high sum. The defendants admit that all the children the slaves under mortgage may bear remain as a pledge for the mortgage amount, and that the first and second defendants have no property; therefore, the fact of the plaintiff's having obtained on mortgage the slaves of low value for a higher amount does not appear improper. With regard to the statement made by the defendants, that the plaintiff did not mention the document in question in the magisterial complaint, the plaintiff being questioned, he represented that the said complaint was on account of an assault; that the aforesaid first and second defendants having admitted the mortgage before the magistrate, the slaves were ordered to be returned to him by the magistrate, and that he did not think it necessary to make any particular mention of the document in question in that complaint, which was preferred for his being forcibly dispossessed then of the slaves. With regard to this statement, the first and second defendants themselves admit that the said complaint was preferred for an assault; therefore, the assertion made by them, that the document in question was not mentioned in the magisterial complaint can be of no advantage to the defendants in this suit.

suit. Under all the above-mentioned circumstances, it having been fully proved that the plaintiff has enjoyed the slaves in question as mortgage for two and a half hoons, for which the aforesaid Soobbiya Shetty executed a mortgage bond, as also for four hoons out of the amount of the document in question, total hoons six and a half, and the fact of the said slaves being attached before the said amount was repaid to the plaintiff appearing improper, it is decreed, that the third defendant, Kooshnappa Shetty, do relinquish, from attachment, the four slaves valued at 20 rupees, as prayed in the plaint, and pay to the plaintiff, Manddawanna Shetty, the costs of suit.

Appendix IX.
Return.

Grounds of the Appeal Decree passed by the Moofly Sudder Amin in Cause No. 149 of 1835, on the 26th June 1836.

No. 135.

The third Defendant of the original suit, *Krooshna Shetty*, residing in the Hondady Village, Brumawhar Magany, in the Barcoor Talook, Appellant, *versus* the Plaintiff of the original suit, *Manddawanna Shetty*, residing in the said village, Respondent.

THE appeal petition as well as the original proceedings were perused, and the appellant and the respondent's vakeel examined.

On consideration of the circumstances of the case, the sudder amin moofly is of opinion, that, as the witnesses examined in the original suit regarding the disputed document on behalf of the respondent differ so materially in their evidence, and as Antoy Shetty and Seeroy Bhundary, the attesting witnesses of the said document, are both related to the respondent, their evidence could not be held credible; consequently, thinking the moonsif's decree, making the slaves in question responsible for the amount of both documents, to be unjust, the moofly sudder amin reverses it accordingly, and decrees that the four slaves in question under attachment shall be put up for sale, and the 10 rupees due on the first document deducted from the proceeds of sale, according to the appellant's admission, and the remaining amount of proceeds paid to him (appellant) on account of the amount of the decree obtained by him against the first and second defendants' ancestor, Soobbiya.

Costs to be paid by the parties respectively.

(signed) *Syed Abood Kassim*,
Sudder Amin Moofly of the Zillah of Canara.

SPECIAL Appeal Petition preferred by *Manddawanna Shetty*, residing at Hondady Village, in the Barcoor Talook, dated the 15th July 1836.

No. 136.

THE document in question executed by the first and second defendants for 19½ rupees, on the pledge of the slaves in dispute, is satisfactorily proved by the witnesses examined in the original suit in my behalf, as appears from the original decree itself. Of the said witnesses, Seeroy Bhundary alone is a distant relation of mine, but the remaining three witnesses are not related; such being the case, and notwithstanding the said witnesses deposed consistently to the material points in the suit, the moofly sudder amin has considered that the witness, Antoy Shetty, is related to me, that they fell into discrepancies in giving evidence; such is not the case, and his decree is inconsistent with justice and equity. I therefore pray that the aforesaid circumstances, as well as the original and appeal proceedings, may be perused, the appeal decree reversed, and the original confirmed.

(signed) *Manddawanna Shetty*.

SPECIAL Appeal Petition, No. 641.

No. 137.

THE special appeal is admitted, not to question the degree of credit that should or should not be attached to the evidence adduced, but to ascertain from the superior courts whether the existing regulations authorize a transaction of the kind awarded by the sudder amin moofly.

22d September 1836.

(True copies.) (signed) *G. Bird*, Judge.

(signed) *George Bird*, Judge.

FROM Mr. W. Douglas, Register, Sudder Adawlut, to the Provincial Court in the Western Division, dated 6th February 1837.

No. 138.

I AM directed by the judges of the court of Sudder Adawlut to acknowledge the receipt of your letter, dated the 20th ultimo, forwarding for their orders copy of a letter from the judge in the zillah of Canara, dated the 17th of the same month, and the original enclosure which accompanied it, in which the question proposed for the determination of the court would appear to be, whether or not a sale of slaves can be legally awarded by a court of judicature.

Appendix IX. The sentiments of the provincial court not having been recorded on the question, the judges desire you will submit your opinion on the point propounded with as little delay as possible.
Returns.

No. 139. FROM Mr. *W. B. Anderson*, Third Judge for Register Provincial Court, Western Division, to the Register to the Court of Sudder Adawlut, Fort St. George, dated 24th February 1837.

1. WITH reference to your letter of the 6th instant, I am directed to forward, to be laid before the judges of the Sudder Adawlut, copies of a further correspondence with the judge of Canara on the same subject.

2. It will be observed, that the point that officer wishes to be referred is, "whether an award of slaves is authorized by a British court of judicature; and whether, as in the case in question, they can be legally ordered by him, as a subject of his Majesty's government, to be brought to the bazaar and sold."

3. It will be observed, also, that the zillah judge requests he "may not be required to give an opinion upon a point on which he believes considerable doubts may be entertained."

4. The judges of the provincial court feel some difficulty in submitting their opinion on the point propounded by the zillah judge; indeed, they have great doubts as to the expediency of the question, as that officer has put it, being answered at all, without more full and satisfactory information on the subject than, it is believed, the courts possess at present. It appears to them, that until the subject is set at rest by an express legislative enactment, the less it is mooted in this way the better. And the judges will take this opportunity of observing, that they know of no subject on which a local inquiry by the law commissioners, as contemplated in the opening part of section 54 * of the Act of Parliament, commonly called "The Charter," would be more urgently necessary than that of slavery in Malabar and Canara.

5. The judges believe they are warranted in asserting, that in the provinces of Malabar and Canara the sale of slaves, except with the estate or land to which they may belong, has never been authorized by the courts. There is, however, no doubt that the custom is common in both districts of transferring slaves by mortgage or sale, independently of the land, by private contract, though it is understood that such transactions are generally between neighbouring landholders, and that the slaves are seldom removed to a greater distance than a day's journey, and then only with their own consent.

6. It occurs to the provincial court, that the best mode of disposing of the zillah judge's reference will be, to direct him to confine himself to the actual circumstances of the case which has given rise to it. He may then perhaps find, that the decree of the moofy sudder amin in appeal, No. 148 of 1835, from which the zillah judge has admitted a special appeal, is irregular in adjudging the slaves to be sold, for a reason on which a doubt can hardly arise, viz., that their sale had not been sued for; on the contrary, the original action, in which a decree was given by the moonsif in the plaintiff's favour, was brought, in order to remove the attachment of the slaves, on the ground that the plaintiff held a mortgage claim on them. When, therefore, in disposing of the appeal, the sudder amin considered the plaintiff to have failed in establishing his claim, he should have confined himself to dismissing that claim. He had clearly no right to go beyond that, and to decree, as he did, that the slaves should be sold.

No. 140. FROM Mr. *W. B. Anderson*, Third Judge for Register Provincial Court, Western Division, to the Judge of Canara, dated 13th February 1837.

WITH reference to your letter and accompaniments of the 17th ultimo, and to the annexed copy of one from the register to the Sudder Adawlut, dated the 6th instant, I am directed by the judges of the provincial court to request, that you will state more particularly the point you wish to be referred, as also your own opinion thereon.

No. 141. FROM Mr. *G. Bird*, Judge, Zillah Court, Canara, to the Register to the Provincial Court of Appeal, Western Division, Tellicherry, dated 17th February 1837.

I HAVE the honour to acknowledge the receipt of your letter of the 13th instant (annexing copy of a communication from the register to the Sudder Adawlut), with a request from the judges of the provincial court that I should state more particularly the point which I required a reference upon in my letter and accompaniments of the 17th ultimo, and in reply to state, that the point I solicit the opinion of the superior courts upon is, whether an award of slaves is authorized by a British court of judicature, and whether, as in the case in question, they can be legally ordered by me, as a subject of his Majesty's Government, to be brought to the bazaar and sold.

2. Prior

* "And be it enacted, that the said (Indian Law) Commissioners shall follow such instructions, with regard to the researches and inquiries to be made, and the places to be revisited by them," &c.

2. Prior to making the present reference, I examined several decrees amongst the records of the court, to see if an award similar to the one under discussion could be found; but I observed in most claims for slaves there was a claim for land, and that slaves apparently went with the land, but had never been ordered to be sold in the way specified in this decree.

3. Under these circumstances, and in the absence of all "specific rule" for my guidance, and with the provisions of the 88th section of the late Act before me, I considered it preferable to solicit instructions from the superior courts, and, having done so, to request that I may not be required to give an opinion upon a point on which I believe considerable doubts may be entertained.

Appendix IX.

Returns.

EXTRACT from the Proceedings of the Sudder Adawlut, under date the 31st March 1837.

No. 142.

"READ letter dated the 24th ultimo, from the provincial court of appeal in the western division, submitting, with reference to the letter from this court, dated the 6th February 1837, copies of a further correspondence with the judge of Canara, in which the point referred is 'whether an award of slaves is authorized by a British court of judicature, and whether, as in the case in question, they can be legally ordered by him, as a subject of his Majesty's Government, to be brought to the bazaar and sold.'

"1. The provincial court state, that 'they feel some difficulty in submitting their opinion on the point propounded by the zillah judge, and that they have great doubts as to the expediency of the question, as that officer has put it, being answered at all without more full and satisfactory information on the subject than it is believed the courts possess at present;' that 'the provincial court believe they are warranted in asserting, that, in the provinces of Malabar and Canara, the sale of slaves, except with the estate or land to which they may belong, has never been authorized by the courts. There is, however, no doubt that the custom is common in both districts of transferring slaves by mortgage or sale, independently of the land, by private contract, though it is understood that such transactions are generally between neighbouring landholders, and that the slaves are seldom removed to a greater distance than a day's journey, and then only with their own consent;' but that, 'it occurs to them, that the best mode of disposing of the zillah judge's reference will be, to direct him to confine himself to the actual circumstances of the case which has given rise to it. He may then perhaps find the decree of the moofly sudder amin in appeal, No. 148 of 1835, from which the zillah judge has admitted a special appeal, is irregular in adjudging the slaves to be sold, for a reason on which a doubt can hardly arise, viz., that their sale had not been sued for; on the contrary, the original action, in which a decree was given by the moonsif in the plaintiff's favour, was brought, in order to remove the attachment of the slaves, on the ground that the plaintiff held a mortgage claim on them;' that 'when, therefore, in disposing of the appeal, the sudder amin considered the plaintiff to have failed in establishing his claim, he should have confined himself to dismissing that claim;' that 'he had clearly no right to go beyond that, and to decree, as he did, that the slaves should be sold.'

"2. The court of Sudder Adawlut are of opinion that the course proposed by the provincial court should be followed.

"3. The zillah judge may properly refuse to do more than has already been done 'by the courts,' as stated in para. 5 of the provincial court's letter, namely, authorize a sale of slaves with the estate or land to which they belong.

"4. And as it is known that legislation on the subject of slaves is contemplated, the court would on that ground advise the zillah judge to confine his sanction at present to such orders as he finds to have been passed on former occasions by the zillah court, and refuse compliance with any novel application on the subject.

"5. Ordered, that extracts from these proceedings be forwarded to the provincial court of appeal in the western division for their information."

APPENDIX X.

EMANCIPATION of SLAVES on Government Estates in Malabar.

1. From Secretary Board of Revenue to Chief Secretary to the Government of Madras, dated 24th October 1836.
2. From Principal Collector of Malabar to Secretary to Board of Revenue, Madras, dated 11th July 1836.
3. From Secretary Board of Revenue to the Principal Collector of Malabar, dated 12th September 1836.
4. From Principal Collector of Malabar to Secretary to Board of Revenue, dated 20th September 1836.
5. Resolution of Government, dated 15th November 1836,

Appendix X.

Emancipation of Government Slaves.

FROM Secretary Board of Revenue to Chief Secretary to Government of Madras,
dated 24th October 1836.

No. 1.

From the principal collector, 11th in Cons
28 July 1836.
To ditto, 12 Sept. 1836.
From ditto, 20 " "
In Cons 6 Oct " "
Para 1,356 of Mr.
Grame's report to go-
vernment, dated 14th
January 1822

- From the principal collector, 11th in Cons 28 July 1836.
To ditto, 12 Sept. 1836.
From ditto, 20 " "
In Cons 6 Oct - "
Para 1,356 of Mr. Græme's report to government, dated 14th January 1822
1. I AM directed by the board of revenue to request that you will submit, for the orders of the Governor in Council, the correspondence noted in the margin, upon the subject of emancipating the slaves on the government lands in the district of Malabar.
2. The lands in question are those which escheated to government, and are treated of in Mr. Græme's report noted in the margin; and from the slaves attached to them the government have yearly derived a revenue, which Mr. Clementson requests permission to exclude from his accounts, proclaiming to the slaves their freedom.
3. Adverting to the observation contained in the 9th paragraph of a letter from the government of India to the commissioner of Coorg, dated the 12th October 1835, transmitted to the board with the extract from the minutes of consultation, dated the 24th November, that "the legislature has already laid down the humane principle, that the extinction of slavery in India is to be effected as soon as it may be practicable and safe to do so," the board have no hesitation in recommending that Mr. Clementson's request be complied with.
4. The amount of annual revenue which will be lost to government, in the event of the slaves being manumitted, is rupees 92-71-30, and may appear as a deduction in the jum-mabundee accounts.
- In Cons. 7th December 1835.

In Cons. 7th December 1835.

(No. 47.)

No. 2.

FROM Principal Collector of Malabar to the Secretary to the Board of Revenue,
Fort St. George, dated 11th July 1836.

WITH reference to the 34th paragraph of my letter, under date the 18th March last, I have now the honour to forward the statement therein alluded to, and to request that the sanction of government may be obtained for my excluding from the accounts the sum of rupees 168-9-2, the puttom received from the occupants of the government lands on account of the slaves attached thereto, and of proclaiming to these poor people the order of government that they are freemen.

2. It will be necessary to grant remissions to the extent of rupees 759-3-10,* on account of the rent paid for slaves, which is at present blended with the rent of lands leased out to several ryots, for which also I beg to request sanction.

* The account in col. 16 of statement, rs. 927-13-0; deduct amount in col. 13, rs. 168-9-2; difference, rs. 759-3-10.

LIST* of Slaves of the Soil attached to the Lands belonging to Government in Malabar.

TALOOKS.	Total Number of Slaves.					Deduct Old and Young, not able to work.			Remainder fit for work.			Rent at present received by the Sircar on account of part of the Slaves in Col. 12.	Annual Rent of each Slave, according to the use of the Country.		Total Amount of the Annual Rent of the Slaves in Col. 12, according to the Rates in Col. 14 and in Col. 15.	Average Price of each Slave, according to the usage of the Country.		Total Value of the Slaves according to the Rates in Cols. 17 and 18.	Number of Slaves on whom there are Kanout claims.	Number of Slaves in Jeannom right	REMARKS.
	Adults.		Children.		TOTAL.	Male.	Female.	TOTAL.	Male.	Female.	TOTAL.		For each Male.	For each Female.		For each Male.	For each Female.				
	Male.	Female.	Male.	Female.																	
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.
Calicut - - -	-	-	-	-	-	-	-	-	-	-	-	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	-	-	The Total Number of Slaves in Col. 6 may be divided as follows: Slaves attached to lands belonging to Government - 171 Ditto, to lands escheated to Government - 1,718 Ditto, to lands lapsed to Government for want of heirs 120 TOTAL - - 2,009 The rent entered in Col. 13 is for part of the slaves only. The rent recoverable for the others (forming a greater portion) is blended with the amount payable by each lessee, the proportions for lands and slaves not being distinctly shown in the lease. Calculating the rent, according to the usage of the country, it will, as shown in Col. 16, amount to rupees - 927 13 - This list includes the 122 slaves alluded to in the 31st paragraph of the Report, dated the 18th March 1836.
Cormenaad - - -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Ernaad - - -	455	427	262	146	1,290	293	192	485	424	381	805	-	12	8	517 10	20	15	13,110	-	1,290	
Sheernaad - - -	16	12	8	6	42	12	6	20	12	10	22	-	12	8	14	12 8	20	212 8	-	42	
Betutnaad - - -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Chowghaut - - -	69	60	20	22	171	27	25	52	62	57	119	16 8 7	11 5	9 2	76 13 9	21 6 10	28 9 2	4,250	-	171	
Kootnaad - - -	1	-	-	-	1	-	-	-	1	-	1	-	9 2	-	9 2	22 13 9	-	17 2 3	1	-	
Nedinganaad - - -	3	3	1	1	8	1	1	2	3	3	6	2 2 3	6 1	5 4	3 9 3	28 9 2	30 11 3	180	-	8 5	
Wallowannaad - - -	11	11	6	3	33	9	5	14	10	9	19	3 9 3	6 10	1 7	9 11 5	28 9 2	-	271 6 11	14	19	
Paulghaut - - -	26	24	18	14	82	19	14	33	25	24	49	10 - -	1 11 5	1 11 5	63 6 10	21 6 11	42 13 9	1,000 11 6	23	59	
Temalpootam - - -	20	23	16	14	73	18	18	36	18	19	37	11 6 10	1 6 10	13 9	37 2 4	28 9 2	34 2 3	973 13 9	24	49	
Wynaad - - -	54	60	32	30	186	34	33	69	62	56	117	124 14 3	1 15 2	-	124 14 3	25 - -	-	1,328	-	186	
Kavey - - -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Chericul - - -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Cotiate - - -	45	40	20	18	123	25	19	44	40	39	79	-	2	-	80	20	10	1,190	-	123	
Kartennaad - - -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Cochin - - -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Neigherry - - -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
TOTAL - - -	710	660	385	254	2,009	438	317	755	637	597	1,234	168 9 2	-	-	927 13	- 9	-	22,833 10 5	65	1,944	

* See preceding number, para. 1

(Errors excepted.)

(signed) F. Clementson, Principal Collector.

RELATING TO SLAVERY IN THE EAST INDIES.

Appendix X.

Emancipation of
Government
Slaves.FROM Secretary Board of Revenue to the Principal Collector of Malabar,
dated 12th September 1836.

- No. 3. 1. THE statement which accompanied your letter noted below* having been mislaid, I am directed by the board of revenue to request that you will submit a duplicate copy of it.
2. I am also directed to request that you will explain the difference between the nature of the remissions noticed in the 1st and 2d paragraphs of your letter.

No. 4. FROM Principal Collector of Malabar to the Secretary to Board of Revenue,
dated 20th September 1836.

2. IN reply to the 2d paragraph, I beg to explain, that in leasing out the lands belonging to government, together with the slaves attached thereto, the relative proportion of the rent payable for the lands and slaves has, but in very few instances, been distinctly specified in the deeds; the majority of them only mention the total annual amount payable by the lessees both for the lands and slaves. The amount entered in column 16 of the statement, viz. rupees 927-13-0, is the proportion of rent payable to government on account of the slaves, calculated according to the usages of the country. Of this rupees 168-9-2 is specifically mentioned in the deeds, the residue, rupees 759-3-10 is an estimated amount, both forming part of the gross jumma. It will be necessary to strike off the same therefrom, as the lessees will be entitled to remissions to that extent in the event of the slaves, for whose services they now pay, being emancipated as recommended.

No. 5. RESOLUTION of Government, dated 15th November 1836.

1. THE Right honourable the Governor in Council is pleased to accede to the recommendation conveyed in the foregoing letter in favour of emancipating the slaves on the government lands in Malabar. The amount of annual revenue to be relinquished on this account is stated to be rupees 927-13-0, which, as suggested by the board, may appear as a deduction in the jumma bundee accounts.

2. The board of revenue will instruct the principal collector of Malabar relative to the mode of conveying this resolution to the parties concerned. It seems to be unnecessary to "proclaim" the freedom of these slaves, as proposed by the principal collector; but, on the contrary, it is considered very desirable that the measure should be carried into effect in such manner as not to create any unnecessary alarm or aversion to it on the part of other proprietors, or premature hopes of emancipation on that of other slaves.

APPENDIX XI.

CRIMES committed by Cherma Slaves in Malabar; their moral state; means of improving them and ameliorating their condition.

1. Extract Proceedings of Foujdary Adawlut, 14th October 1837.
2. Extract Report of First Judge, late on Circuit, Western Division, 16th August 1837.
3. Extract Orders of Government, 24th October 1837.
4. Secretary Board of Revenue to Secretary to Government, dated 15th October 1838.
5. Principal Collector of Malabar to Secretary to Board of Revenue, dated 24th April 1838.
6. Extract Minute of Consultations, 30th November 1838.
7. Secretary to Board of Revenue to Chief Secretary to Government, 21st February 1839.
8. Principal Collector of Malabar to Secretary to Board of Revenue, 7th January 1839.
9. Extract Minutes of Consultation, 12th March 1839.

Appendix XI.

Crimes by Cherma
Slaves.

No. 1.

EXTRACT from the Proceedings of the Foujdary Adawlut, dated the 14th October 1837.

THE court of Foujdary Adawlut have observed, and they think it worthy of the notice of government, the remarkable fact stated in the fourth paragraph of the above* report, "that out of 31 murders perpetrated and tried during the last and present sessions, 13 were committed by that degraded class of people the Chermars." The Foujdary Adawlut beg to

* 11th Cons. 28th July 1836.

† *Vide infra*, from First Judge of Circuit, dated 16th August 1837, No. 2

to recommend to government that the local officers be called upon to report, whether measures cannot be devised for improving the condition and morals of this most degraded race, possessing of humanity little else than its outward form.

Appendix XI.

Crimes by Chermars Slaves.

EXTRACT from a Report from the First Judge, late on Circuit in the Western Division, dated the 16th August 1837.

No. 2.

4. IN this case* the prisoners were all Chermars, and it may perhaps be worthy of remark, that out of 31 murders perpetrated and tried during the last and present sessions, 13 were committed by this degraded and low class of people, who, in the commission of such deeds, appear to have been void of all feeling, and perhaps will remain so till some measures be devised for the improvement of their morals and present lamentable low condition in society.

5. It would nevertheless be needless to expect that any material or essential change can possibly be brought about, except step by step, and at a period when they may have attained a greater degree of civilization calculated to extend their mental faculties, and open their eyes as to their present situation. This accomplished, and the pleasing prospect will begin to brighten, of being able to ameliorate the present condition of this unfortunate and no less ill-treated race of fellow-creatures. Whereas any steps prematurely adopted with the view of affording them relief before they are in a fit state to benefit by or duly estimate emancipation from slavery, may irrecoverably tend to frustrate the grand object sought for in the relapse of a great portion to their former state of bondage, even if once liberated; for it is not quite clear, if, and to what extent, they are discontented with their present state of servitude assigned by birth, and inculcated on them from infancy by local usages.

EXTRACT from Orders of Government, dated 24th October 1837, No. 986.

No. 3.

1. THE board of revenue, to whom a copy of para. 1, of the foregoing proceedings,† and of paras. 4 and 5 of the circuit judge's report will be transmitted, will be requested to consider, in communication with the local officers, and report as to the measures it will be advisable to adopt, with the view of ameliorating the condition and improving the morals of the unfortunate class of people adverted to therein.

FROM the Secretary to Board of Revenue to the Chief Secretary to Government, dated 15th October 1838.

No. 4.

THE board of revenue having furnished the principal collector of Malabar with copy of an extract from the minutes of consultation of the 24th October last, with transcript of extracts from the proceedings of the foudary court, and of the first judge on circuit in the western division, relative to the persons denominated Chermars in Malabar, I am now directed to request you will lay before government the accompanying letter from Mr. Clementson, submitting his sentiments on the practicability of improving the condition of this class. 24 April, in Con. 7 May 1838

2. The present reference originated on a consideration of the very large number of charges of murder in which this class of persons were concerned; 13 of 31 cases of murder having been stated to have been committed by this degraded race, who were represented to be devoid of all feeling, and to possess little of humanity but its outward form. It will be seen, however, from Mr. Clementson's letter, that low and degraded though their condition is acknowledged to be, the number of atrocious crimes in which the Chermars were concerned does not in the course of 10 years exceed the proportion of their own numbers in reference to the free population of the district. The late census, it is said, gives their numbers at 144,371, or about one-seventh of the population of the entire province.

3. The board regret that they are unable, with the information now before them, to suggest any well-digested scheme for the permanent improvement of this servile class. The immediate introduction of schools does not appear to them calculated to ameliorate their condition; for the physical improvement of the Chermars must precede, they are inclined to think, any extended efforts for their mental culture. The question of slave emancipation in the western province is one attended with much difficulty; for it is observed by the first judge on circuit himself, that it is uncertain how far the Chermars are themselves discontented with their present state of servitude assigned by birth, and inculcated by local usage; and it is obvious that no step should be prematurely taken to afford them relief until they are in a fit state to benefit by the change. However much, then, their present state of bondage is to be lamented, the measures taken for its amelioration must be gradual, and carried out with

* No. 5, *infra*.

† Of Foudary Adawlut.

Appendix XI. Crimes by Chermars. Slaves. with discretion, and in concurrence with the landholders on whose estates they are located; any hasty legislation on this subject would otherwise occasion much discontent, and be considered as an invasion of private rights.

No. 5. FROM the Principal Collector of Malabar, to the Secretary to Board of Revenue, dated 24th April 1838.

I do myself the honour to acknowledge the receipt of the board's proceedings, under date the 2d November last, conveying copy of an extract from the minutes of consultation, dated the 24th of the preceding month, on the subject of the best measures to be adopted with the view of ameliorating the condition and improving the morals of the unfortunate class known generally by the name of Chermars.

2. However desirable the consummation of such an object may be, I confess I am at a loss to suggest any plan which may not involve a violation of the rights of private property, and consequently give rise to much discontent.

3. The only way of improving the morals of the predial or rustic slaves of Malabar would be by ameliorating their condition, and by establishing schools. This has, I understand, been attained to a very satisfactory extent, as regards the slaves attached to Mr. Brown's estate at Anjeracandy; and it appears very evident to me, that any permanent improvement in their condition and morals must emanate from the master of the slave; and this can alone be done by bettering his condition, and thus enabling him to increase the comforts of the slave, to treat him with greater indulgence, and to dispense partially with his services,—a measure that can only be effected, I apprehend, by a relinquishment of revenue, and the establishment of schools throughout the district.

4. It is satisfactory to remark, to the credit of this degraded race, that on reference to the accounts for the last ten years, the murders committed by them do not exceed the number annually committed by the free castes; the average number of murders committed by Chermars being less than five cases, and ten persons per annum. This from a population of 144,371 (the number of slaves of all descriptions, according to the last census), is not perhaps more than occurs amongst the more civilized parts of the population of other districts.

5. The proportion which the aggregate number of slaves bears to the general population (1,140,916) of the district is a fraction above one-seventh, which corresponds with the share of murders that falls to them; for out of 36 cases (the average of the total number of murders), five only were, as already noticed, committed by Chermars.

No. 6. EXTRACT from the Minutes of Consultation, under date the 30th November 1838, upon Letter from Board of Revenue, dated 15th October 1838.

THE improvement of the condition of the Chermars or rustic slaves of Malabar is a subject of such manifest importance, that no measures should be left untried to effect it. The Right honourable the Governor in Council does not consider a legislative enactment to be expedient at this moment in furtherance of the object in view, but presumes that endeavours may be made to have them better fed and clothed by offering rewards and encouragement to such landlords as may be able to show that the condition of their slaves has been bettered. This would be a first step, and, when physically improved, schools might be opened with advantage. He desires, therefore, that the principal collector may be called upon to report how the Chermars are fed, clothed and lodged as compared with the free classes, and what description of reward he would recommend to be given to landlords for the improved condition of their slaves.

His Lordship in Council observes, that the honourable the Court of Directors have, in paragraph 17 of their despatch dated the 17th August last, approved of the measures adopted by this government for the emancipation of the slaves on the government lands of this district, and have directed that means may be devised for extending a similar benefit to the slaves on the estates of private individuals. He resolves accordingly to transmit a copy of the above paragraph to the board of revenue, in view to the subject receiving their consideration in connexion with the present reference.

His Lordship in Council is also desirous of knowing whether the ancient tenures upon which slave property was held in Malabar are still maintained, viz., whether the proprietor of slaves has still the power of mortgaging them and of letting them out for hire, as well as of selling them; whether they can be separated from the land and sold, and whether children can be sold separate from their parents.

FROM

FROM Secretary to Board of Revenue to the Chief Secretary to Government, dated
21st February 1839.

No. 7.

WITH reference to the observations recorded in the minutes of consultation of the 30th November last, I am directed by the board of revenue to request you will lay before government the accompanying further letter from the principal collector of Malabar, reporting upon the condition of the Chermars or rustic slaves of Malabar, and replying to the various points noticed by government in the proceedings under acknowledgment.

7th Jan. 1839.

2. It will be seen from this letter, that although no material change in the clothing and food of this class has been made since 1822, a decided improvement in their treatment by their masters has taken place. Mr. Clementson adds that the Chermars are by no means in a worse condition than many of the free field labourers in North Malabar, where there are few or no slaves. The principal collector also reports, that though the power of selling the slaves without the land and children without the parent is claimed by the landlords, in practice the proceeding is seldom or never adopted.

3. The principal collector suggests the expediency of offering a remission of land revenue to slave-owners, on satisfactory proof of the improved condition of each slave, and of the owner being in the habit of treating them with kindness; and the board will not lose sight of the proposition, although at present the suggestion is not before them in a shape sufficiently explicit to enable them to recommend its adoption by government.

FROM Principal Collector of Malabar to Secretary to Board of Revenue, dated
7th January 1839.

No. 8.

I HAVE the honour to acknowledge, on the 24th, the receipt of the extract from the board's proceedings, under date the 6th ultimo, forwarding copy of the board's letter to the chief secretary to government under date the 15th October, together with a transcript of an extract from the minutes of consultation thereon, under date the 30th November last, calling for further information as to the present state of the Chermars at Malabar.

2. In reply, I do myself the honour to state, for the information of the board, that no alteration has taken place in the tenures upon which slave property is held since the report made by Mr. Commissioner Græme in 1822, an account of which is given in detail from paragraphs 32 to 55; little or no amelioration likewise has taken place in respect to their food and clothing; as regards the treatment, however, a decided improvement, from all I can learn, has taken place; and it may be said, generally, that the slaves of South Malabar, as noticed in my letter to the chief secretary to government, under date the 29th November 1833, are by no means in a worse condition than many of the free field labourers in North Malabar, where there are few or no slaves.

3. Though the landlords and proprietors of slaves still retain the power of mortgaging and letting them out for hire, as well as of selling them with or without the land, and the children without the parent, still I have reason to believe that the latter proceeding is seldom or never adopted, inasmuch as the purchaser would find it an unprofitable speculation; for, in the event of the Chermars running away, which they invariably do, if taken even to the adjoining talook, they get no assistance from the local authorities. In further elucidation of this subject, I would take the liberty of submitting a copy of a report made by me to the provincial court, under date the 19th December 1835.

4. The only means that suggests itself to me of inducing and ensuring kind and considerate treatment on the part of the landlords and owners of slaves, is to offer a remission of land revenue to all owners in double the amount for which slaves are now rented,* on satisfactory proof of the improved condition of each slave, and of the owner being in the habit of treating them with kindness.

EXTRACT from Minutes of Consultation, under date 12th March 1839.

No. 9.

THE Right honourable the Governor in Council observes, that no remission of land revenue can be granted without the authority of the Government of India; but his Lordship in Council will be prepared to give consideration to the measure when submitted in a proper form.

The Right honourable the Governor in Council is satisfied the board will watch the subject of the improvement of the condition of the Chermars with that interest which it eminently merits, and leave no available means untried for effecting that object.

* See statement in the 34th paragraph of Mr. Græme's report.

APPENDIX XII.

TRAVANCORE and ANJENGO SLAVERY.

ACCOUNT of Slavery in Travancore.

1. Extract from the Manuscript Memoir of the Geographical and Statistical Survey of Travancore, under the superintendence of Lieutenants Ward and Connor.

CORRESPONDENCE as to Slavery in Anjengo.

2. From Mr. H. Chamier, Chief Secretary to the Government of Madras, to the Secretary to the Government of India, Judicial Department, dated 6th June 1837.
3. From Mr. J. S. Fraser, Resident of Travancore and Cochin, Trevandrum, to the Chief Secretary to Government, Fort St. George, dated 4th May 1837, relative to the system of Slavery existing among the Portuguese inhabitants of Anjengo, within the limits of the British territories, enclosed in No. 2.
4. From Mr. T. A. Philipsz, Superintendent of Police, Anjengo, to Colonel J. S. Fraser, Resident of Travancore and Cochin, Trevandrum, dated 28th April 1837, regarding treatment of Slaves, enclosed in No. 3.
5. From Mr. J. S. Fraser, Resident of Travancore and Cochin, Trevandrum, to the Superintendent of Police at Anjengo, dated 29th April 1837.
6. From Mr. T. A. Philipsz, Superintendent of Police, Anjengo, to Colonel J. S. Fraser, Resident of Travancore and Cochin, Trevandrum, dated 1st May 1837, forwarding list of Slaves.
7. List of Slaves belonging to the Inhabitants of Anjengo, enclosed in the above

Appendix XII.

ACCOUNT of Slavery in Travancore.

Travancore
Slavery.

EXTRACT from the Manuscript Memoir of the Geographical and Statistical Survey of Travancore, under the superintendence of Lieutenants Ward and Connor.

No. 1.
Predial Slavery.

PREDIAL slavery* is common to a considerable portion of the western coast; but its extent throughout this principality is comparatively greater, and the prejudices of the people render the degradation it entails more complete. Those subject to predial bondage are known under the general term of "Shurramukhul" (children of slavery). Their name is connected with every thing revolting. Shunned, as if infected with the plague, the higher classes view their presence with a mixture of alarm and indignation; and even towns and markets would be considered as defiled by their approach. The Shurramukhul are attached to the glebe, but are real property; in absolute market value they are not much above the cattle united with them in the same bondage, and greatly below them in estimation. But though a slavery deserving commiseration, it is by no means the most rigid form of that wretched state. They are treated with a capricious indifference, and rather rigorously. Much of this arises from the prejudices of the Nairs. The Christians have no such excuse, but, though divided in caste, they agree in oppression. Personal chastisement is not often inflicted, but they experience little sympathy. In sickness they are wholly left to nature, perhaps dismissed; in poverty and in age often abandoned. Manumission is rarely practised or even desired. Indeed, as the Polayen never possesses property of any kind, his freedom could only be productive of starvation or a change of servitude, which occurs when he is presented to a temple, in compliance with some superstitious vow. The Shurramukhul are held by various tenures, and the reluctance of their masters finally to dispose of them is so great, that the most pressing necessity can alone induce them to it. They are most frequently mortgaged, or held in punniem; that is, the owner receives the full value, but retains the power of recalling the purchase,—tenures but little adapted to improve the situation of the slave, whose service, being received as equivalent to the interest of the debt, holds out an inducement to urge his labours and diminish his comforts. They are not sold out of the country.

A very considerable number of predial slaves belong to government, to whom they escheat as other property on the failure of heirs. They are partly employed on sircar lands, partly rented out to the ryots; a male being rated at about eight purras of paddy annually (not quite two rupees), the females less than this amount. If, however, hired from a junmee (owner), the demand would be much greater. The value of a male Polayen varies from 6 to 10 pagodas; that of a female may reach perhaps to 12, but (amongst some of the caste of Shurramukhul) they are very rarely subject to sale.

In

* It is nearly unknown in Nunjaynaad.

In early times, the murder of a slave was scarcely considered as a crime. The deed of transfer goes to say, "You may sell or kill him or her;" the latter privilege has now, of course, ceased. The Shurramukhuls are only employed in agriculture. They live in hovels situated on the banks of the fields, or nestle on the trees along their borders to watch the crop after the toils of the day, and are discouraged from erecting better accommodation, under the idea that, if more comfortable, they would be less disposed to move as the culture required. Their labours are repaid (if such can be called the compensation) in grain. Three measures of paddy to a man, two to a woman, and one to a child, is their daily pittance. This is not regularly given, being reduced to half on days on which they do not work, and withheld entirely on symptoms of refractoriness. Harvest is a period of comparative plenty; but their meagre, squalid appearance betrays the insufficiency of their diet, and the extreme hardships to which both sexes are equally doomed.

They have no idea beyond their occupations, are never guilty of violence to their masters, are said to be obedient, perhaps from the sluggish apathy of their character, which renders them unmindful of their lot. The external distinctions of the predial slaves are subject to great varieties. They are sometimes remarkable for an extreme darkness of complexion, whose jetty hue (which cannot be the effect of exposure) approaches that of an African; but they are invariably stamped with the Hindoo features, nor bear any traces of a distinct race. The bark (spatha) of the areca often furnishes their whole clothing, which at best never exceeds a bit of cloth sufficient for the purpose of decency. The hair, allowed to grow wild, forms in time an immense mass, whose impurities cannot be imagined without shrinking. They are divided into several distinct classes, marked by some peculiarities:—

The Vaituwans (literally hunters) or Konakens, are ranked high, and prized for their superior fidelity and tractability. They are expert boatmen, and often employed in the manufacture of salt. Their women, as an article of sale, are not much valued; the children of this class being the property of the father's master. Vaituwans.

The Polayens constitute much the largest number of the predial servants. They are split into three classes; Vullava, Kunnaka, Moomy Polayen; each baser than the other. Husband and wife sometimes serve different persons, but more frequently the same. The females of this class are given in usufruct, scarcely ever in complete possession. The eldest male child belongs to the master of the father, the rest of the family remain with the mother while young, but, being the property of her owner, revert to him when of an age to be useful, and she follows in the event of her becoming a widow. Polayens.

The Parriars also form a very considerable number of the slaves. The caste is divided into, Perroom Parriar, north of Kodungaloor, and Moonay Parriar, south of that place. They are inferior to those of the other caste, and reckoned so very vile that their contact would entail the most alarming contamination. Their taste for carrion has doubtless caused this prejudice, which goes so far as to suppose they inhale a fetid odour. The death of a cow or bullock is with the Parriars the season of jubilee; never stopping to inquire its cause, they indulge the horror of the higher classes in the feast it affords. Unlike some of the other caste of Shurramukhuls, they do not connect themselves with their kindred, but, as with the Vaituwans, the children are the property of the father's master. They are ingenious in wicker-work, and are capable of great labour, but in point of value and character are greatly below the Polayens. They pretend to be great necromancers, and their masters respect their powers or fear their spells; nor shall we regret the credulity that puts at least one check on the caprice of their owners. Parriars.

The Vaiduns and Ooladurs are the least domesticated of the predial slaves. They are employed in cutting timber, making fences, guarding crops, declining or being prohibited from giving any aid in the other rural labours. The former claims a superiority; but the existence and subsistence of both is indescribably miserable: they are not insensible to the vanity of ornaments, the neck being hung round with shells, but they use no cloth, a verdant fringe of leaves strung round their loins being their only covering. A dark complexion, restless glance and exuberance of hair give them a wild appearance; but they are extremely gentle, and so timid, that on the least sound of approach the shock-headed savage flies into the woods. Though reduced to a low state of debasement, they are yet superior to the Nai-ades, who, in the opinion of all, are at the very last step of vileness. This wretched race is only found in the northern parts of Cochin; they are banished the villages, and live on the low hills near the cultivated lands, a bush or rock being their only shelter. The Nai-ades present a state of society not seen in any other part of India. Wild, amidst civilized inhabitants, starving amongst cultivation, nearly naked, they wander about in search of a few roots, but depend more on charity, which the traveller is surprised at their clamorous impetuosity in soliciting. Ascending the little slopes that overlook the village or road, they vociferate their supplications. Whatever charity they receive is placed on the ground, near where they stand; but on observing their petitions are heard, they retire from the spot, that they may not defile, by their presence, those coming to their relief. Vaiduns and Ooladurs.
Nai-ades.

Appendix XII.

CORRESPONDENCE as to Slavery at Anjengo.

Anjengo Slavery.

No. 2. FROM Mr. *H. Chamier*, Chief Secretary to the Government of Madras, to the Secretary to the Government of India, dated 6th June 1837.

Judicial Department.

I AM directed by the Right honourable the Governor in Council to transmit to you, for the consideration and orders of the Right honourable the Governor-general of India in Council the accompanying copy of a letter (dated 4th May 1837), from the resident in Travancore and Cochin, relative to the system of slavery lately discovered to exist among the Portuguese inhabitants of Anjengo, within the limits of the British territories. As the draft Act for prohibiting the importation of slaves by land, transmitted with my letter of the 17th November 1835, has been referred for the consideration of the law commissioners, whose attention in the course of their labours must necessarily have been drawn to the subject generally, it would seem advisable also to refer to them the papers now forwarded. And with the view of placing those gentlemen in possession of every information on this important subject, I am further directed to transmit the accompanying letters and their enclosures, received at different periods from the court of Sudder Adawlut and the board of revenue, relative to the subject of slavery generally, as it exists in the various provinces subject to the presidency of Fort St. George.

No. 3. FROM Colonel *J. S. Fraser*, Resident, to the Chief Secretary to Government, Fort St. George, dated 4th May 1837.

The superintendent of police at Anjengo to the resident, dated 28th April 1837.
The resident to the superintendent of police, dated 29th ditto.
The superintendent of police to the resident, dated 1st May.

1. I REQUEST you will be so good as to submit to government the correspondence noted in the margin, and to acquaint me whether it will not be considered right, since the territory of Anjengo belongs to the honourable Company, that the system of slavery, which appears to have immemorially prevailed there, should be now discontinued, and positively prohibited in future.

2. In this case, it may be proper, also, that the whole of the present slaves should be emancipated, reimbursing their owners for the amount they originally paid for them.

No. 4. FROM Mr. *T. A. Philipsz*, Superintendent of Police, Anjengo, to Colonel *J. S. Fraser*, Resident of Travancore and Cochin, Trevandrum, dated 28th April 1837.

I BEG leave to bring to your notice that a practice infringing the laws appears to be in existence amongst the inhabitants of Anjengo, of buying human beings, and making them their slaves. And this kind of purchase, I find, is effected from the utmost poverty of the lowest class of individuals, who readily offer to sell their offspring for the sake of money.

The inhabitants treat their slaves inhumanly, and consider themselves to have a control over them and over their issues, even while they do not give them the means of living, and while such slaves maintain themselves without depending upon their purchasers. It is my intention, therefore, to issue a proclamation forbidding all the irregularities above described, provided it would meet with your approval.

No. 5. FROM Colonel *J. S. Fraser*, Resident of Travancore and Cochin, Trevandrum, to the Superintendent of Police at Anjengo, dated 29th April 1837.

IN reply to your letter, No. 3, under date the 28th instant, I request that you will, with the least practicable delay, give me further information in regard to the subject on which you have addressed me; and with this view I transmit a form which you will be so good as to fill up.

2. As it is of great importance, and that the case involves, as you yourself observe, an infringement of the laws, you are directed to state why you have not earlier reported it to me, or whether you ever did so to any former resident.

No. 6. FROM Mr. *T. A. Philipsz*, Superintendent of Police, Anjengo, to Colonel *J. S. Fraser*, Resident of Travancore and Cochin, Trevandrum, dated 1st May 1837.

AGREEABLY to the first paragraph of your letter, No. 715, of the 29th ultimo, I beg leave to forward herewith a list of the slaves at Anjengo.

With reference to the 2d paragraph of your above said letter, I beg leave to state that, with the exception of the reports I have made to you and Mr. Casamajor, through my letters of the 13th September 1835 and 31st March 1836, I have had nothing further to report relative to the purchase of slaves, as it appears the inhabitants of Anjengo have kept the matter rather secret; and it is only now that I have come to understand the case, by the few complaints received from certain slaves as to the bad treatment they have suffered from their purchasers.

No. 7.

No. 7.—LIST of the SLAVES belonging to the Inhabitants of Anjengo.

Names of Persons who have purchased or still possess Slaves.	Of what Description, whether Portuguese, Country born, or Hindoos; and, in the latter case, of what particular Caste.	Names of each individual Slave.	Whether Male or Female.	Age.	Caste.	When purchased.	From whom purchased.	For what Sum purchased.	In what Description of Labour employed.	If any Slaves purchased at Anjengo, or purchased elsewhere, and brought into that place, have ever been sold, to whom they were sold, and to what place they have been carried.	Remarks of the Superintendent of Police.
Mr. Francis Rodrigues	native Portuguese	Francisco	male	14 years	Moocoovah	1832	from his father	100 gully fanams*	as a servant	his father bought him at Anjengo from Pootentope, near Vellie, and sold to Mr. Rodrigues.	
Ditto	ditto	Silvestrah	female	60 "	Ecloovurs	about the year 1802.	from Coochoo Cooty Chanam.	unknown	live upon their own labours.	purchased at Venniacoodoo, in the Sherriengul district.	
Ditto	ditto	Restah	"	50 "							
Ditto	ditto	George	male	46 "							
Mr. Domingo Rodrigues, deceased, and now possessed by his nephew, Mr. Noe.	the former ditto, and the latter French extraction.	Shavareeah	female	60 "	Moocoovah	unknown	from her late mother, Magdalena.	ditto	avah	purchased at Poothoocoorchy, ditto.	
Mrs. Magdalena Fernandes, deceased, and now possessed by her son, Mr. F. Anthony Fernandes.	native Portuguese.	Domunga	"	70 "	Ecloovatee	ditto	from a person who eloped with her from a far country.	ditto	a maid of the house	purchased at Vezoonellair	
Padre Salvador Remedios, deceased, and now possessed by his cousin, Mr. E. Anthony Fernandes	ditto	Nathawadeah	"	20 "	Moocoovah	1822	from her uncle	70 gully fanams	ditto	purchased at Padpanabapoorum.	
Diogo Francisco Fernandes	Thoiraycar	Shavareeah	"	8 "	"	1836	from her parents	35 ditto	ditto	purchased at Anjengo.	
Segaum Hoominee Miranda	ditto	Pedro	male	15 "	"	17 Oct. 1831	from his parents	45 ditto	a servant boy	purchased at ditto.	
Mr. Philip Wesp	country born	Basteenah	female	10 "	"	1832	from her mother	40 ditto	a maid of the house	purchased at Tootoor.	
Mr. Miguel Fernandes, deceased, and now possessed by his relation, Padre Laurence Shr, Lopez.	both native Portuguese.	Marcelino	male	45 "	Tandan	unknown	from his late mother	unknown	labourer	purchased at Badaicavoor, in the Sherriengul district.	
Ditto	ditto	Martha	female	35 "	Chunambo Paratie.	ditto	from Pedro Anthony Kanaken.	35 fanams	lives with her husband.	mortgaged by the said Pedro Anthony Kanaken, the person who had bought her mother, a woman of Diya-tooritee, in the Sherriengul district.	
Ditto	ditto	Roza	"	60 "	Ecloovatee	about the year 1792.	from her late mother	100 ditto	cook-maid	purchased at Cullatoor, in the Tri-vandroem district.	
Ditto	ditto	Luiza	"	25 "	Chunambo Peretee.	about the year 1819.	ditto	unknown	a maid of the house	purchased at Poolloomdooritee, in the Sherriengul district.	
Ditto	ditto	Thomasiah	"	30 "	Cavarrachee	unknown	ditto	ditto	water-woman.		
Ditto	ditto	Jacob	male	25 "	Chunambo Paravam.	about the year 1819.	ditto	ditto	servant	purchased at Poolloomdooritee, in ditto.	

* At 7½th to a rupee.

(continued.)

LIST OF SLAVES belonging to the Inhabitants of Anjengo—continued.

Names of Persons who have purchased or still possess Slaves.	Of what Description, whether Portuguese, Country born, or Hindoos; and, in the latter case, of what particular Caste.	Names of each individual Slave.	Whether Male or Female.	Age.	Caste.	When purchased.	From whom purchased.	For what Sum purchased.	In what Description of Labour employed.	If any Slaves purchased at Anjengo, or purchased elsewhere, and brought into that place, have ever been sold, to whom they were sold, and to what place they have been carried.	Remarks of the Superintendent of Police.
Francisco Xavier Fernandes	Parathar -	Anna -	female -	12 years -	Ecloovatee -	1 July 1831 -	from her mother -	31 fanams -	a maid of the house -	purchased at Anjengo.	
Mr. Salvador Brandebourg -	country born -	Maria -	" -	7 " -	Shavallacar -	1834 -	- ditto -	25 ditto -	- ditto -	purchased at Caroomgollum.	
Anthony Miranda -	Thorrayer -	Dominga -	" -	11 " -	Moocoovah -	23 July 1832 -	from her parents -	32½ ditto -	- ditto -	mortgaged by her parents at Anjengo.	
Francisco Xavier Lobo -	Parathar -	Eguacina -	" -	35 " -	Pannuchanatee -	1810 -	- from a man called Nanapoo.	25 ditto -	cook-maid -	purchased at Oodiagherry.	
Messear Salvador de Cruz -	- ditto -	Therezia -	" -	21 " -	- Chunambo Paratee.	1806 -	her late mother -	unknown -	- ditto -	- given with the portion of dowry by her late owner, Pandaran Pires of Anjengo.	
Shavarimootoo, deceased, and now possessed by his relations.	- ditto -	Thomasia -	" -	40 " -	Ecloovatee -	1804 -	- from a woman called Antonia.	30 fanams -	now a beggar -	- this woman was first bought by Antonia of Thivandrum, who re-sold her at Anjengo.	- this woman is allowed monthly three fanams from the poor fund at Anjengo.
Mariano Cruz -	Thorrayer -	Bastianah -	" -	35 " -	Cavarachee -	17 April 1810	from Andra Joze -	150 ditto -	- ditto -	purchased at Anjengo -	- this woman is allowed monthly six fanams from the poor fund.
Sagayum Maracan, deceased, and now possessed by his family.	- ditto -	Martha -	" -	40 " -	Moocoovah -	1800 -	from her parents -	80 ditto -	- lives by her own labour.	- ditto.	
Pichay Canaquen, deceased, and now possessed by his son.	- ditto -	Famacarree -	" -	60 " -	" -	1785 -	from her late father -	125 ditto -	- lives with her husband.	- ditto.	
Andray, deceased, and now possessed by his daughter.	- ditto -	Maria -	" -	40 " -	Ecloovatee -	1801 -	from her late mother -	unknown -	a maid of the house -	purchased at Attunguerray.	
Ditto -	- ditto -	Alleixo -	male -	31 " -	Ecloovan -	1805 -	from his late uncle -	- ditto -	labourer -	purchased at Corinadah.	
Joseph Crenning -	Parathar -	Famacarree -	female -	9 " -	Moocoovah -	5 Jan. 1835 -	from her mother -	30 fanams -	a maid of the house -	- mortgaged for the amount by her mother at Anjengo.	
Cochoo Shavareeah -	Thorrayer -	Shavareeah -	" -	25 " -	Ecloovatee -	1 July 1832 -	- from her former owner.	55 ditto -	- ditto -	- bought, at Anjengo, first by Salvador, whose brother afterwards sold her to the said Cochoo Shavareeah.	
Mr. J. Z. Lopez -	country born -	Sharscar -	male -	15 " -	Moocoovah -	1834 -	from his father -	40 ditto -	servant -	purchased at Anjengo.	
S. Famacarren Fernandez -	Thorrayer -	Anna -	female -	9 " -	" -	1833 -	from her father -	35 ditto -	a maid of the house -	- ditto.	
Madavadean Davido -	- ditto -	Salavador -	male -	7 " -	" -	1831 -	from his father -	40 ditto -	a servant -	- purchased at Anjengo, but his father since paid Madavadean Davido the 40 fanams, and took the boy back, and sold him for a few fanams more to a Catanar, who carried him to Cochin.	

(A true copy.)

(signed) J. S. Fraser, Resident.

(signed) H. Chamier, Chief Secretary.

APPENDIX XIII.

COORG.

1. From the Junior Secretary to the Government of India, Legislative Department, to the Secretary to the Indian Law Commission, dated 27th July 1840.
2. From Lieutenant-Colonel M. Cubbon, Coorg Commissioner, Bangalore, to the Officiating Secretary to the Government of India, Political Department, Fort William, dated 13th June 1840.
3. From Captain C. F. Le Hardy, Superintendent of Coorg, to the Officiating Secretary to Commissioner for the Affairs of Coorg, dated 15th May 1840.
4. From Mr. H. M. Blair, Magistrate, Mangalore, to the Superintendent of Coorg, dated 10th March 1840.
5. From Lieutenant Colonel M. Cubbon, Coorg Commissioner, Bangalore, to the Superintendent of Coorg, dated 19th May 1840.
6. From *idem* to the Superintendent of Coorg, Mercara, dated 20th May 1840.
7. From Captain C. F. Le Hardy, Superintendent of Coorg, to the Officiating Secretary to the Commissioner for the Affairs of Coorg, Bangalore, dated 6th June 1840.
8. Extracts from Correspondence connected with the question of Slavery in Coorg.

Appendix XIII.

FROM Junior Secretary to the Government of India, Legislative Department, to the Secretary to the Indian Law Commission, dated 27th July 1840.

Coorg.

No. 1.

I AM directed by the Right honourable the Governor-general in Council to transmit to you for the information of the law commissioners the accompanying copies of papers noted on the margin relating to the restoration of certain slaves who fled from the district of Canara into Coorg.

Letter from commissioner for Coorg, No. 153, dated 13th June 1840, with enclosures, to the officiating secretary to government of India, in the political department

FROM Lieutenant-Colonel M. Cubbon, Coorg Commissioner, Bangalore, to the Officiating Secretary to the Government of India, Political Department, Fort William, dated 13th June 1840.

No. 2.

I HAVE the honour to transmit for submission to the Right honourable the Governor-general of India in Council copy of a correspondence with the superintendent of Coorg on the subject of an application made by the principal collector of Canara for the restoration of certain Dhers (slaves) who had fled from that district into Coorg, and to express my hope that I shall not be considered to have erred in refusing to interfere in the matter, pending a reference for the orders of his Lordship in Council.

Enclosure (A.)

2. In the districts skirting the Western Ghauts, where alone in the Mysore territory pre-dial slavery prevails, and there to no great extent, it is generally understood that the authority of government will in no case be exercised to compel the return of a runaway slave to his owner; therefore the power which a slave possesses of freeing himself whenever his servitude becomes insupportable, not only tends to ameliorate his present condition, but to discourage the investment of capital in so precarious a description of property.

3. Although Coorg is not yet prepared for the formal introduction of this practice into its internal management, it has nevertheless been invariably observed with regard to all slaves who have escaped across the frontier into Mysore, excepting on one occasion under peculiar circumstances; and Captain Le Hardy would seem, from his letter of the 6th instant, to anticipate no particular inconvenience from the continuance of that course.

4. The present being the first application which I have received for the restoration of slaves who had fled from the British possessions, I have deemed it my duty to submit the same to his Lordship in Council, and respectfully to solicit instructions for my guidance in the present case, as well as on the general question arising out of it; as the orders of the Honourable the Court of Directors, under date the 12th of February 1834, forbidding the surrender of revenue defaulters, may not have been intended to apply to the case of slaves, and I am not aware of there being any specific enactment or orders of government on the subject.

5. The question of the manumission of the private slaves in Coorg having been under the consideration of the Government of India, and fully discussed in the correspondence between Mr. Secretary Macnaghten and the late commissioner, extracts from which I beg to forward for the convenience of reference, I took advantage of the present application so far to revive the subject as to request Captain Le Hardy's opinion of the probable consequences of liberating such slaves only as had fled from Coorg, paying, as proposed, by Mr. Macnaghten, the full value of each slave to his proprietor; but that officer's reply, while it bears satisfactory testimony to the general good conduct of the public slaves set at liberty under the orders of government, dated the 8th of February 1836, and to the general humane treatment of the slave population in Coorg, would seem to afford little encouragement even to this small attempt towards emancipation, which he thinks would be productive of alarm and discontent by encouraging desertion, while it may likewise be apprehended that the public recognition of a right on the part of the owner to compensation for the loss of his slave might,

Enclosure (B.)

Appendix XIII.
Coorg.

through their mutual collusion, give rise to many unfounded claims for ransom, and that, even without such collusion, many of the slaves who might be redeemed under the proposed arrangement would, after the example of their brethren in Coorg, grow tired of their freedom, and ultimately defeat the beneficent views of the government by returning voluntarily into bondage.

(A.)

- No. 3. FROM Captain *C. F. Le Hardy*, Superintendent of Coorg, to the Officiating Secretary to the Commissioner for the Affairs of Coorg, dated 15th May 1840.

I HAVE the honour to forward copy of a letter addressed to me by the principal collector of Canara, requesting me, should no objection exist to the measure, to order a number of Dhers, who have taken refuge in Coorg, to be made over to a person named Nursing Rao, their owner, and to request that you will be so good as to favour me with the instructions of the Commissioner on the subject.

2. Partial assistance has occasionally been accorded to inhabitants of Canara in recovering slaves who have taken refuge in this country, and the like assistance has, on one or two occasions, been received by Coorgs who have proceeded in pursuit of their slaves to Canara; but I am now induced to solicit instructions on this point, in consequence of the very severe inconvenience which many ryots have suffered of late, owing to the greater part of their slaves having fled to Mysore; * and if objections exist to assist them in the recovery of these, it would hardly be fair, I think, to compel them to part with such slaves as may abscond from neighbouring districts, and voluntarily take service with them.

- No. 4. FROM Mr. *H. M. Blair*, Magistrate, Mangalore, to the Superintendent of Coorg, dated 10th March 1840.

I HAVE the honour to enclose copy of a report from the peishcar of Mpinangady, from which you will observe that a number of Dhers belonging to one Nursing Rao, have taken refuge in your district. I request that, should they be found there, and no objection exist to the measure, you will be so good as to order them to be made over to the agent of the claimant who accompanies this letter.

- No. 5. FROM Lieutenant-Colonel *M. Cubbon*, Coorg Commissioner, Bangalore, to the Superintendent of Coorg, dated 19th May 1840.

I HAVE the honour to acknowledge the receipt of your letter of the 15th instant, with its accompaniment, being copy of one to your address from the principal collector of Canara, informing you that a number of slaves from that district had taken refuge in Coorg, and requesting, if no objection should exist to the measure, that you order them to be made over to the agent of their owner.

2. In reply, I would suggest that you inform the principal collector of Canara, that no impediment will be offered to the voluntary return of these slaves to their owner; but that you do not feel yourself at liberty to interpose your authority to enforce their compulsory restoration without the sanction of the Government of India, to which the question will be referred.

- No. 6. FROM Lieutenant-Colonel *M. Cubbon*, Coorg Commissioner, Bangalore, to the Superintendent of Coorg, Mercara, dated 20th May 1840.

WITH reference to your letter of the 15th instant, and to your report on the jumabundy, under date the 14th August 1837, in which you state that you have not heard a single instance of any of the Punnah slaves emancipated in that year having misconducted themselves; that you have every reason to believe that they are a remarkably quiet, well behaved, industrious people; that a number of them have continued in the service of the ryots to whom they were formerly attached; that 383 families of them have during the past season established themselves as independent labourers; and finally, that between 50 and 60 families cultivate on their own account small patches of land; I have the honour to request you will have the goodness to make a further report on the circumstances of these individuals from the period referred to up to the present time, as it would be exceedingly interesting, in its bearing on the general question connected with the amelioration of slavery in India, to learn in what way they have employed themselves; whether they have persevered in orderly and industrious habits; whether they have preferred to remain in Coorg rather than seek for a livelihood in the adjacent countries; and whether their condition on the whole is so prosperous as to occasion a feeling of discontent amongst the remaining slave population of Coorg.

I should also be obliged by your furnishing me with such information as you may possess with respect to the causes which have contributed to such an extensive migration of slaves from Coorg into Mysore, as is reported in your letter of the 15th; whether there be any ground

* It is stated that upwards of 500 slaves (including women and children) have fled from Kiggutnaad alone, since the beginning of this year.

ground to believe that they have forsaken their masters chiefly to escape from oppressive and cruel treatment, or simply from their desire to obtain the privileges of freemen, and in what degree this desire has arisen from the emancipation of the public slaves; whether the rates of wages current in Mysore are such as to offer encouragement to desertion from Coorg; whether the condition of the slaves (apart from their personal freedom) is supposed to be improved by the change of country; and whether, if the freedom of fugitive slaves were purchased by government from their owners, the former would return and establish themselves in Coorg, as so many of the emancipated slaves have done; or whether the Coorgs would, under present circumstances, be able to draw labourers from the adjoining countries for the cultivation of their lands.

I should also be glad if you would favour me with your opinion as to the probable consequence which would result from the officers of government affording no assistance to the owners in recovering such slaves as may fly from Coorg into Mysore, and from Malabar and Canara into Coorg.

FROM Captain C. F. Le Hardy, Superintendent of Coorg, to the Officiating Secretary to the Commissioner for the Affairs of Coorg, Bangalore, dated 6th June 1840.

No. 7.

I HAVE the honour to acknowledge the receipt of the commissioner's letter of the 20th ultimo, requesting me to report further on the condition of the Punnah slaves who were emancipated in 1836; also requesting information as to the causes which have contributed to the extensive migration of slaves into Mysore, brought to notice in my letter of the 15th ultimo, and on different other points connected with the general question of slavery in Coorg.

2. In reply, I have the honour to state, that I have not, up to the present period, heard a single instance of any of the Punnah slaves having misconducted themselves; but on the contrary, all accounts which I have received of their pursuits and habits have only tended to confirm the favourable opinion which is expressed of them in my letter of the 14th August 1837. A few of those who had undertaken the cultivation of lands on their own account have thrown them up, but there are still between 30 and 40 families so engaged; about a fifth of the whole have established themselves as independent labourers, and the remainder have either returned to their former masters, or have attached themselves to other ryots as domestic servants. No one that I have questioned can speak positively as to any having left the country; but it is supposed that a few of the Yerrwanroo caste, who had come from Wynaad, have returned thither, and have entered the service of ryots to whom their relatives are attached. The number of these must, however, be very small.

3. Such of the emancipated slaves as have taken lands for cultivation have congregated in small villages in the neighbourhood of the Punnahs to which they formerly belonged. The sizes of their farms vary from 50 to about 200 butties of land, assessed on sagoo tenure, at from 5 to 20 rupees. They are better clothed than they were; their dwellings are for the most part substantially built, and their condition appears, on the whole, decidedly improved.

4. Those who have re-entered the service of their former masters, or who have attached themselves to ryots as domestic servants, are maintained very nearly, if not precisely, on the same footing as they formerly were. They live with the slaves of the establishments to which they belong, are allowed the same rations, and are required to work the same number of hours, but instead of receiving the clothing to which slaves are entitled once in six months, some have stipulated for a payment in money of from two to four rupees a year. I am told, however, that the greater number receive the same allowances, and are otherwise treated exactly as if they continued slaves; indeed, that many of them have destroyed the certificates of freedom which were given them, and have bound themselves to continue for life in the service of their masters, on condition of being maintained as slaves in their old age, or when unable to work from illness; and that others have done the same in order to procure the means of getting married, or to obtain the consent of masters to their marrying female slaves of their establishments. The condition of this class cannot, therefore, be regarded as being in any way improved, nor can I say that I perceive any difference in the circumstances of those who have established themselves as independent labourers; the rates of hire differing so very little from what they formerly received, that the freedom which they now enjoy may be regarded as almost the only advantage which they have derived from their emancipation.

5. The present condition of the Punnah slaves is not, therefore, on the whole such as to occasion any feelings of discontent amongst the remaining slave population; nor have I ever heard that the emancipation had had that effect, although, previous to its taking place, this was the principal objection which was urged against the measure. On the contrary, many persons whom I have since questioned on the subject have assured me that, with a very few exceptions, the liberation of the Punnah slaves had been regarded by the rest with perfect indifference, and that it had not, to their knowledge, produced the slightest alteration in the conduct of any.

6. On making more particular inquiries regarding the desertion of the slaves from Kiggutnaad, brought to notice in my letter of the 15th ultimo, I find that I was misinformed as to the number who have proceeded to Mysore. Upwards of 500, including women and children, are still stated to have left Kiggutnaad since the beginning of the year; but it now appears that nearly the whole of these have proceeded to Wynaad, the number who have gone to Mysore not exceeding 50 or 60 at the utmost. Had I been

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Coorg.

aware of this fact when I despatched my letter of the 15th ultimo, I should not have considered it necessary to advert to the loss sustained by those whose slaves have absconded, as they have no cause of complaint, there being an old understanding between the Coorgs and the ryots of Wynaad, according to which slaves absconding from either district are not claimable by the masters whom they have left after having crossed the frontier. For some years past this custom has operated much to the advantage of the Coorgs, the desertions from Kiggutnaad being very few, whilst the number of slaves who have come from Wynaad has sometimes amounted to 200 or 300 in the course of a season. This year, however, owing, it is said, to the Wynaad proprietors having increased the allowance to their slaves, and put them, in respect to food and clothing, on an equality with the slaves of Coorg, several of those who had come from Wynaad have returned to their former masters, and have, moreover, induced a number of the slaves of this country, with whom they were associated, to accompany them. This is one reason offered for the large migration which has taken place. Another reason given is, that these slaves are of unsettled migratory habits, and remain seldom more than four or five years in the same place, leaving their masters on the slightest grounds, and very frequently without any apparent cause at all. Moreover, it is said that the labour in Wynaad is much lighter than that which is exacted in Coorg, and that the slaves, when put upon an equality in point of food and clothing, would of course prefer the former district.

7. Desertions in this manner, from one district to the other, appear to have been of constant occurrence for many years past. Most of the slaves, on crossing into Coorg, are claimed by ryots to whom they were formerly attached; and the same is, I believe, the case in regard to those who abscond from this country into Wynaad; so that many of the slaves on either side of the frontier are considered as having masters in both districts; and I am told that they have changed so often from one to the other, that it would now be almost impossible to say to which they properly belong.

8. The slaves who have proceeded to Mysore are generally supposed to have left their masters in consequence of inducements held out to them, by inhabitants of the adjacent talooks, to enter their service, as well as from a desire to obtain the privileges of freemen. I have been unable to ascertain, with any degree of certainty, whether the wages current in the villages bordering on Coorg are such as to offer any particular encouragement to the desertion of slaves, but, from all I can collect, I rather think they are not, and that the condition of fugitive slaves (apart from their own personal freedom) is not in most cases improved by the change of country, as many, after an absence of some months, occasionally of some years, return to Coorg of their own accord. The only satisfactory cause I can find, therefore, for the migration of those who have proceeded thither, is that which is assigned by the proprietors themselves, or more probably a desire to settle in the neighbourhood of their own caste people residing in the adjoining talooks of Mysore.

9. I hardly think that they can have been driven by cruelty to leave the country. Instances of ill-usage must of course occasionally occur; but I have every reason to believe that such are very rare. Judging from my own observation, as well as from all I have heard on the subject, I should say that the slaves of Coorg are generally treated with much kindness, and that the greatest attention is paid to their wants and comfort. Indeed, when it is considered that they have at all times the means of escaping from ill-treatment, and that they are in the habit of absconding on receiving the slightest cause of annoyance, it may readily be supposed that the conduct of the master towards his slave cannot differ much from what it would be, were the latter a free domestic servant.

10. A number of the ryots of Kiggutnaad and Yedaynacknaad living near the frontier of Mysore possess slaves whose families originally came from Periatam and other talooks adjoining Coorg. Many of these slaves would most likely take the first opportunity of leaving their masters, with the view of settling amongst their relatives or caste people, if they were quite sure of not being sent back. But, excepting the loss which the proprietors of this class might sustain, I do not believe that any serious inconvenience would result from the officers of government affording no assistance to the owners in recovering such slaves as may fly from Coorg into Mysore; nor am I aware of any that is likely to arise from the same course being pursued in regard to such as may fly from Malabar or Canara into Coorg. The slaves of all other castes in Coorg, on leaving their masters, either proceed to other parts of this country or to Wynaad, but never for any length of time to the open country, to which their aversion is said to be so great that no temptation would induce them to settle there. It may be concluded, therefore, when slaves of the latter classes desert to Mysore, that nothing but ill-treatment has driven them to do so, and the same may be inferred in the case of such as desert from Malabar or Canara into Coorg, as the slaves (as well as all other inhabitants of the coast) entertain the greatest dread of the climate above the Ghauts, and are very unlikely to select Coorg as a place of abode, unless it be to escape from the tyranny of a master.

11. In either case, therefore, it appears highly advisable that the owners should be left to their own resources in recovering their fugitive slaves, after they have left the district to which they belong. Perhaps it would be as well that no exceptions were made to this rule, although the case of those castes of slaves who have connexions residing in the adjoining talooks of Mysore is somewhat different. Their desertion in most instances may be supposed to proceed from a desire to settle in the neighbourhood of their own caste people; and if there be no check to their leaving their masters, the latter, however kind and considerate may be their conduct, will always be liable to suffer serious losses.

12. The

12. The number of these slaves probably amounts to 200 or 300 families, or, supposing all whose families originally came from Mysore still to have ties there, the number may possibly amount to 200 or 300 more. They belong to the Bulgi Hollieroo, Buddugen, Yerrwanroo, and Jain Carrooburoo castes. There were between 300 and 400 of them attached to the Punnahs, and they form the only portion of these slaves who have established themselves independently; they are indeed the only castes amongst the slaves of Coorg who appear to attach any value to the enjoyment of personal freedom, as I cannot find that any of the emancipated slaves belonging to these castes have left the country, although many must still have connexions in Mysore; I am led to believe, that if government were to purchase the freedom of such as may take refuge in Mysore, many of those, who have absconded during the last three or four years would return to Coorg, although it is probable, that, rather than re-enter the service of their former masters, they would settle in the country as independent labourers; I fear, however, that a measure of this kind would give rise to much alarm, and I rather think that the majority of slave-owners, if consulted, would prefer receiving no remuneration than risk the loss of more slaves by the encouragement which the system of purchasing the freedom of fugitive ones would offer to further desertions.

13. The cultivation of wet lands in Coorg begins just as the rains set in; and the most important operation, the transplanting of the paddy, which occupies in most farms a month or six weeks, takes place during the very heaviest part of the monsoon; the slaves or labourers employed by the ryots are, consequently, obliged to undergo a degree of exposure, such as none but persons who have long been inured to the climate are willing to endure, or, indeed, are capable of bearing. From this cause, as well as from the aversion which the natives of the adjoining districts have to the climate of Coorg, even in the most favourable seasons of the year, it will always be difficult to procure labourers; and were any large number of slaves to leave the country, great distress would no doubt be the result, as the owners would be under the necessity of abandoning most of the lands which were cultivated by them.

14. But, as I have already stated, the migration of any large number of slaves from Coorg is a contingency which I see no cause to apprehend, from the officers of government refusing to recognize the rights of owners to such slaves as abscond beyond the frontier; nor, indeed, do I believe that any serious inconvenience would result to the owners were the district authorities even prohibited from taking any active part in restoring runaway slaves who may remain in Coorg (the masters being left to depend entirely on their own resources for their recovery); but this latter is a course which it would hardly be expedient to adopt. At present, applications for assistance of this nature are of extremely rare occurrence, and any change in what has hitherto been customary in this respect would no doubt be regarded by many of the most respectable inhabitants as an encouragement to insubordination amongst their slaves, and as leading to innovations which, in their opinion, could not fail in the end to cause the utter ruin of these families. In short, I know of no change which would be likely to give rise to so much alarm and bad feeling as the adoption of any measure tending to weaken the right which masters now possess to the services of their slaves, or, indeed, of any important alteration in what has hitherto been the custom of the country in regard to this description of property.

(B.)

EXTRACTS from Correspondence connected with the question of Slavery in Coorg.

Para. 10. THERE are about 1,500 slaves attached to the estates of the late rajah, described in my letter of the 1st instant. These might have been emancipated had there been no others in the country, but there are several thousands more, as I find that slavery prevails here generally. I have therefore deemed it inexpedient to attempt any change in the existing system, and have merely directed that correct and detailed returns of the slaves be made to me, with a view of immediately liberating the Coorgs or other inhabitants of the country who have been condemned of late years to perpetual slavery by the capricious tyranny of the ex-rajah, but of allowing the original bondsmen, who have been attached to the soil from time immemorial, to remain there as at present, until a more intimate acquaintance with the subject in general shall enable me to report it to government.

No. 8.

Colonel Fraser's
letter to Mr. Mac-
naghten, dated the
3d May 1834.

MEMORANDUM respecting the Condition of the Slaves in Coorg, transmitted with Colonel Fraser's Letter to Mr. Secretary Macnaghten, dated 14th July 1834.

SLAVES in the Coorg country are termed Jummed Aloo, a compound term signifying labourers attached to jumma lands, and their number is estimated at 6,089. It seems that slavery has existed in this country from time immemorial. It is supposed that half of the agricultural labourers here are in a state of bondage, the nature of which does not seem to differ in any material degree from that which exists in other parts of Hindoostan.

There are two descriptions of slaves in the Coorg country, one called Boomee Jummed Aloo, signifying those who are attached to the soil, and liable to be transferred from one proprietor to another, but not removable from the land to which they belong; and the other called Vuccaloo Jummed Aloo, meaning those who are the personal slaves of cultivators, and

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Betta Koorabaroo.
 Jauoo Koorabaroo.
 Pancayara.
 Badaga Taraba.
 Punjay Taraba.
 Paulay.
 Koodeah.
 Adeah.
 Kembutta Holeyaroo.
 Badaya Holeyaroo.
 Rookla Holeyaroo.
 Kapaul.
 Mudegaroo.
 Maduroo.
 Maree Holayur.
 Murtha Holayur.

who may be either sold or mortgaged by them; they always remain attached to their masters, and move with them wherever they go; they are indeed the movable property of the cultivators, from whom they never separate under any circumstances.

The slaves here are of the castes mentioned in the margin. It seems to be the opinion of the most intelligent persons here, that their bondage must either have been originally derived from a voluntary submission on their part to become the slaves of cultivators, in order to obtain a livelihood, or that the cultivators purchased free persons for the purpose of assisting them in their cultivation at the cheapest rate. The rajahs of Coorg had always a considerable number of slaves belonging to them, who were employed in cultivating the punniums or royal farms. When land was given to a ryot for the purpose of cultivation, one or two slaves were occasionally made over to him from those belonging to the sircar. The ex-rajah had about 1,757 slaves. They were not only employed in the cultivation of the royal lands, but also in the performance of other mean labour. The rajah used to employ them in the conveyance of his arms whenever he went on hunting excursions. The ex-rajah called not only upon the slaves attached to the royal lands, but also upon those, the property of cultivators, to afford military aid in the late war, their masters having been directed to supply them with arms.

The proprietors of the Vuccaloo Jummed Aloo, in Coorg, have the power of selling them, but not to a person who will carry them out of the country, unless the slaves themselves consent. The rights of slaves consist in receiving subsistence and protection for themselves and their families, from their masters, who are bound to observe the custom of the country with respect to the quantity of food and clothing given to them. Three seers of rice for a male slave, two seers for a female, and one and a half to a boy or girl, are given by their masters, independently of salt and curry stuff, which are supplied by them, sometimes monthly, and at other times daily. The slaves are likewise entitled to a load of grain once a year, at the time when the crops are reaped. This quantity is called "horay," which varies in different naads. The slaves reside in houses provided for them by their masters in the small village, and a piece of land is appropriated to their use, on which they usually grow vegetables or tobacco. Besides the subsistence given to the slaves, and the allowance above mentioned at the time of harvest, they are supplied by their masters with clothing twice a year; first, when the seed is sown, and, secondly, when the crops are reaped. It appears that some ryots in Coorg provide their slaves with subsistence at those times only when they work for them, but that at others they are obliged to seek a livelihood elsewhere, being bound, however, to return to their master at the commencement of the season of cultivation. If the master become either from poverty or any other cause unable to protect his slave, he obtains an employment as labourer under any other person, and earns his livelihood; but when his master is again in circumstances to support his slave, he returns and attends as before to the business of his master.

In regard to the treatment of slaves by their masters, it is said that the cultivators in Coorg, actuated by self-interest, if not a better motive, pay much attention to their comfort. Aware as they are that any act of severity on their part will induce their slaves to abscond, a circumstance which would subject them to much trouble and inconvenience, they protect and treat them with kindness, as forming a part of their family. The proprietors in Coorg possess no power to inflict severe punishment upon their slaves, but they have authority to chastise them moderately for any faults they may commit. In the time of the rajahs, no instances appear to have occurred of slaves having complained of severity or ill-usage on the part of their masters, a circumstance which indicates that they have experienced good treatment from them. The wealth of a cultivator is generally estimated by the number of his slaves, as in proportion to the number he has lands under cultivation.

It does not appear that any attempt to emancipate slaves should be accomplished without a violation of the rights of private property, and it would unavoidably produce much serious inconvenience, and cause a considerable quantity of land to be abandoned, as the proprietors would be unable to incur the expense of employing free labourers. The slaves who are now in Coorg have been slaves from their birth, and are the descendants of slaves. Marriage contracts among them are sometimes made by the parents of the parties, with, and at other times without, the interference of their masters. The marriage tie is dissolved by the parties at their pleasure, each being at liberty to form a new connexion. The children, it is said, always remain attached to their fathers, according to the custom of the country.

During the late war, half of the number of slaves attached to the royal lands escaped from the country, and the other half, amounting to about 860, have been or will be transferred to those ryots to whom the lands in question have now been rented, or are in the course of being so.

Mr. Macnaghten's
 letter to Colonel
 Fraser, dated the
 25th July 1834.

Para. 12. The account furnished by you of the state of slavery in Coorg is circumstantial, but deficient in one important particular. You do not state what is the average selling price of a slave; and as this is a most material point to be considered in all endeavours for ameliorating the condition of this class, you are requested to supply me with any information you may be able to procure with regard to it.

Colonel Fraser's
 letter to Mr. Mac-
 naghten, dated the
 15th August 1834.

Para. 52. There is scarcely any point on which I have found it more difficult to obtain information than that which regards the state of slavery in Coorg, and it is this circumstance which has delayed for some days the transmission of the present despatch. I have thought that I perceived a reluctance to speak on this subject since I first came into the district, and this may perhaps be attributed in some measure to an apprehension on the part of the people that the inquiry was a preliminary to the emancipation or other change in the condition of the slaves.

53. With regard to the selling price of the slaves, of which his Lordship in Council desires to be informed, the following memorandum conveys all that I am able to state on this subject; and the persons from whom I have received it having somewhat differed in their accounts, I am not prepared to vouch for its perfect accuracy, though I am disposed to think that it is not far removed from the truth.

54. There are about 16 tribes of slaves in Coorg, which are classed under their general denominations, viz. Holeyaroo, Yewaroo and Paleroo. The average price of slaves of the above three denominations is as follows:—

	Males. Rs.	Females. Rs.
Holeyaroo, comprising Kimbutty Holeyer, Madegaroo, Madaroo, Mare Holeyer - - - - -	18	18
Yewaroo, comprising Betta Koolearoo, Janoo Koolearoo, Panay Yewaroo, Badagay, Yewaroo, Panjay Yewaroo - - - - -	10	10
Paleroo, comprising Rookka Holeyaroo, Palaroo, Adeah, Murtha, Holeyur, Rupla - - - - -	12	12
Total - - - - -	40	40
Average - - - - -	13½	13½

55. It is said that, of the above-mentioned tribes, the Kimbutty Holeyer, and Madaroo, are natives of Coorg, and that the rest are originally purchased in Canara, and brought from thence into Coorg. The Holeyaroo are more valuable than the Yewaroo, because they are more faithful to their masters, and work harder. The Yewaroo are prone to desertion, and to the commission of theft and other offences, from which cause they are considered of inferior value. The laws of kindred among these classes, excepting the Mare Holeyaroo, are the same as those of the slaves in other parts of India, where the offspring is considered as belonging to the parents; but the laws of the Mare Holeyer are similar to those of Nairs, among whom the inheritance goes to the sister's son. The female slaves of the Paleroo caste do not remain in bondage after the death of their husbands, as they are then free and return to their father's house. It is said that the female children of these slaves are not considered the property of the masters, unless they are purchased; but that they are sent by their parents to the house of their maternal grandmother, and there brought up.

Para. 9. You are aware that the question of slavery in India has deeply engaged the attention of the British Legislature. The subject is one of considerable delicacy, and the Governor-general in Council thinks it exceedingly fortunate that an officer of your approved judgment and discretion should at this juncture reside in a district where slavery is so prevalent.

Mr. Macnaghten's
letter to Colonel
Fraser, dated the
29th August 1834.

10. From the information which you have been able to collect, it would appear that the average price of a slave in Coorg is between 13 and 14 rupees. From this it is evident that the British Government might effect the emancipation of the entire district at a pecuniary sacrifice too trifling to be mentioned in comparison with the object of conferring personal freedom on so many hundreds of human beings.

11. But the Governor-general in Council is fully aware that in the execution of this beneficent scheme too much caution cannot be exercised. It is desirable that the best possible information should be obtained, both as to the feeling with which the scheme would be received by the masters, and the effect which its execution would have upon the condition of the emancipated slave. To the former it might be palatable by the temptation of a large pecuniary payment; and to the latter it could hardly fail to be advantageous by its securing to him his personal freedom and the fruits of his own industry. It is hardly possible, indeed, to imagine a state of society in which the acquisition of personal freedom would not prove an incalculable blessing to those on whom it was conferred, though the degree in which the benefit would in the first instance be felt may doubtless be affected by peculiar circumstances. On the other hand, it is easy to suppose that they who have been accustomed immemorially to dominate over certain classes of their fellow-creatures, might be unwilling to part with this privilege for any reasonable compensation. The degree of unwillingness which might be felt would be a material point for consideration.

12. The Governor-general in Council would not consider himself justified, even for the attainment of so benevolent an object, in risking the tranquillity of any portion of the country. If, therefore, there was ground to believe that serious disaffection to our rule would be the consequence of proposing any plan of emancipation, his Lordship in Council would be inclined to recommend that the attempt at its introduction should be deferred until a more general diffusion of knowledge among the people should hold out a better prospect of success.

13. There cannot, however, the Governor-general in Council conceives, be the slightest objection to intrusting an officer of your well-known prudence and intimate knowledge of the native character with the duty of endeavouring to ascertain the feeling of the community of Coorg on this important subject. It is not intended that you should institute any formal inquiries with regard to it; but, in the intercourse which you continually have with the more respectable and intelligent persons of the country, opportunities will doubtless present themselves of enabling you to ascertain the feeling with which a proposition would be received, having for its object the emancipation of all the slaves in Coorg, the full value of each being paid to their respective proprietors.

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14. The Governor-general in Council is well aware that predial slavery is not peculiar to Coorg, and that it prevails extensively in other parts of India, especially on the western coast; but he is unwilling to communicate his sentiments on a question of so much delicacy to any officer in whom he has not entire confidence. Should your report satisfy his Lordship in Council that there is not that decided repugnance to the proposition which might be anticipated, similar inquiries may subsequently be instituted in other quarters. But no steps can be taken in the country for carrying the scheme of emancipation even partially into effect until a reference shall have been made to the home authorities.

Mr. Macnaghten's
letter to Colonel
Fraser, dated the
9th September
1834.

Para. 9. After the words "corporal punishment" in the 92d rule may be inserted the words "by the officers of government." This will probably remove the scruples adverted to in the 25th paragraph of your letter now acknowledged, though his Lordship in Council is of opinion that any direct recognition of the power of individuals to inflict corporal chastisement on their slaves or others, however moderate, might be attended with very prejudicial consequences.

Colonel Fraser's
letter to Mr. Mac-
naghten, dated the
31st August 1835.

Para. 4. In paragraphs 9 to 15 of your letter to me, under date the 29th August 1834, you desired my opinion in regard to the state of the slaves in Coorg, and the practicability of emancipating them. My views were then opposed to this proceeding as unnecessary and inexpedient, and the dewan Ponnappah, in a private and confidential memorandum furnished to me at the same time, participated in the sentiments I entertained respecting the impolicy of the measure, and the mischiefs by which it would be followed.

5. I have, however, abstained from addressing any official report to you on the subject until time and a further acquaintance with the condition of the people generally in Coorg should enable me to do so with less chance of error.

6. The opinions I then entertained on this point are now more fully confirmed. I think that the emancipation of slaves ought not to be contemplated in the present condition of Coorg, under any circumstance, even of proposed pecuniary compensation to their owners; and that such a measure, if practicable at all, would be fraught with much evil to the slaves themselves, as well as prove a source of great inconvenience and deep discontent to their proprietors.

7. I have frequently conversed upon this subject with Captain Le Hardy, and the Honourable the Governor-general will find it discussed in paragraphs 138 to 149 of that officer's report.

8. I would not recommend the adoption of any further proceeding at present in this respect than that which is suggested in paragraphs 141 to 149; and this only as an experiment, of which the progress and consequences should be carefully observed and hereafter reported upon.

9. Nothing can be more satisfactory than the state of Coorg. Its inhabitants are a simple, hardy and industrious race, and I entertain the fullest conviction that we may continue to rely upon their allegiance and good-will towards us as long as we treat them with justice and kindness, and that we abstain from any speculative experiments on the institutions and administration of the country as at present established.

Captain Le Hardy's
report, dated the
30th July 1835.

Para. 138. The state of slavery is a subject upon which I have received your instructions to report; and I have accordingly omitted no opportunity that has been offered me in conversation with the inhabitants of putting questions, in order to obtain information regarding the condition and character of these classes, and the treatment which they experience from their masters, as well as to ascertain the feelings and opinion of the ryots in respect to their emancipation.

139. I have heard only one sentiment expressed, and it accords in every particular with the opinion offered by the dewan Ponnappah, as stated in the memorandum forwarded to me with your letter of the 18th Nov. last. All my informants concur in predicting that, in the event of their being suddenly emancipated, their habits of idleness and improvidence are such, that they are more likely to retire to the jungles and seek a subsistence by plunder, than to have recourse to manual labour as a means of livelihood. This may admit of a doubt; but an unanswerable objection offered to their sudden manumission is the utter impossibility of finding substitutes for performing the agricultural operations of this country, owing to the absence of superfluous labourers, and the difficulty and expense of procuring any from Mysore or Malabar, should the slaves, on obtaining their freedom, proceed elsewhere or refuse to work. Indeed, the strongest possible objection appears at present to exist on the part of the people to any measure amounting to an abrogation of slavery.

140. I doubt, therefore, the practicability of accomplishing the purchase of the whole or of any considerable number of the slave population with the consent of the proprietors; but I think, at the same time, that there are many individuals, who, although unwilling to part with their slaves, might be induced, by the offer of favourable terms, to allow them some of the most essential privileges of freedom, and also to give up all claims to their progeny.

141. My attention has accordingly been divided to the consideration of some measure by which emancipation might be gradually accomplished, without alarming the prejudices of the people; and a most favourable opportunity of discussing this delicate question has been afforded me from the necessity of devising some immediate arrangement for the disposal of the slaves attached to the Punnahs.

142. I found the dewans at first obstinately opposed to any plan which had for its object the emancipation of these slaves, on the principle that a measure tending to improve the condition of a portion would occasion a feeling of discontent amongst the whole of the remaining slave population of Coorg. After reconsideration, however, and on my pointing out to them the improbability of government sanctioning the sale of the Punnah slaves, they have furnished me with a memorandum which provides what appears to me a simple and perfectly feasible

feasible means of meliorating the condition of the present generation, and at the same time of emancipating their progeny without the risk of danger or inconvenience.

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143. They propose that the Punnah slaves should continue to be considered the property of government, with the view of preventing any feeling of discontent which their sudden emancipation would occasion amongst the remainder of the slave population; but that, instead of continuing to be employed on their present footing, they be intrusted to the care of respectable ryots, who shall be required to maintain them on the same terms as ordinary labourers, paying them the same rate of hire, demanding their attendance only during working hours, and especially allowing them the entire management and control of their family affairs, and the settlement of their children's marriages.

144. The rising generation are also to be considered the property of government, but to be in reality perfectly free; except, first, in their being placed under the surveillance of the potails of the villages which they may select as their place of residence; and, secondly, in their being obliged to apply for the permission of the sircar when desirous of removing from one part of the country to the other. In other respects they are to be on the same footing as all other ryots, to be allowed to cultivate land on their own account, or to work as labourers for whomsoever they choose.

145. Thus the condition of the present Punnah slaves will be very materially improved, while the rising generation are to be allowed almost perfect freedom, unless their conduct is such as to render it necessary to place them under guardianship, in the same manner as their fathers were.

146. This appears as much as can be wished for as a first step towards their entire emancipation, and I perceive no serious impediments to the plan being carried into effect, although it is possible that there may at first be some difficulty in placing the slaves on their new footing, and in securing to their posterity the privilege of freemen. These difficulties may, however, I think, be overcome by a little attention to their comforts on the part of the district officers, and by the assistance of a trifling advance from government, on their first establishing themselves as free labourers, under the surveillance of the potails of villages.

147. The apprehension at first expressed that the sudden emancipation of the Punnah slaves would occasion a feeling of discontent among the whole of the slave population of Coorg, may not be unfounded, but I conceive it exceedingly improbable that any inconvenience or danger will result from the plan now proposed, viz., their being allowed to assume the privileges of freemen by degrees. Indeed, I feel satisfied that the dewans, who are themselves extensive proprietors of slaves, would never have recommended the measure, were there the slightest grounds for entertaining any doubt on the subject.

148. I have, therefore, no hesitation in recommending the adoption of the plan which they have proposed, and I feel peculiar satisfaction in submitting their memorandum on the subject for consideration, as it appears to me to open a safe and easy road for carrying into effect a more extensive measure of emancipation hereafter, should the present plan be found, in practice, liable to no serious objections.

149. The dewans also recommend that the slaves of which individuals were deprived by the ex-rajah be returned to their former owners; but I see no reason why these should be made an exception to the rest, should the foregoing plan meet with approval.

Para. 8. The 11th and 12th propositions require distinct notice. The Governor-general in Council is not aware of any objection to the rule of assessment proposed for the Punnah lands, supposing that question to be altogether distinct from the plan suggested for the disposal of the slaves attached to those lands.

Mr. Macnaghten's
letter to Colonel
Fraser, dated the
12th October 1835.

9. But with regard to this last suggestion, I am desired to observe, that the Governor-general in Council cannot bring himself to concur in it, notwithstanding the very great confidence he reposes in the general accuracy of your views and opinions. The legislature has already laid down the humane principle that the extinction of slavery in India is to be effected as soon as it may be practicable and safe to do so. No opportunity would appear to be more favourable than the present for making an effort to promote this benevolent object. The slaves are the unquestioned property of government, with whom it undoubtedly rests to dispose of them as it may seem proper, and the number is not so large as to create any apprehension of extensive disturbances, should they abuse the freedom which may be conceded to them.

10. The Governor-general in Council, however, sees no reason to apprehend that such would be the case; judging from the experience of other countries and other times, there is every reason to suppose that the emancipated slaves of Coorg would willingly work to obtain their livelihood, and that those for whose benefit they have hitherto been tasked would willingly employ them as hired labourers. The objection alluded to by Lieutenant Le Hardy, in the 142d paragraph of this report, cannot be allowed any weight in the consideration of this question. That the British Government should be prevented from performing an act of justice and humanity, "on the principle that a measure tending to improve the condition of a portion would occasion a feeling of discontent amongst the whole of the remaining slave population of Coorg," is a doctrine which, with every disposition to consult the wishes and even to respect the prejudices of our newly-acquired subjects, the Governor-general in Council cannot for a moment entertain.

11. You will accordingly understand that it is the settled determination of government to emancipate those slaves, whose persons, as belonging to the State, it has the undoubted right to set at liberty; and you are requested to state your opinion as to the best course of

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proceeding, for the purpose of securing an employment and livelihood for the individuals so liberated, whether by locating them on the Punnahs, on the footing of ordinary ryots, or by any other means.

(Here follows in the Manuscript the Correspondence printed in Slavery in India Papers, 1838:—

Page 72, No. 125, Lieutenant-Colonel J. S. Fraser to Mr. W. H. Macnaghten, 1836, January 18th.

Idem, No. 126, Captain C. F. Le Hardy to Lieutenant-Colonel J. S. Fraser, 1835, November 23d.

Page 74, No. 127, Mr. Secretary W. H. Macnaghten to Lieutenant-Colonel M. Cubbon, 1836, February 8th.

Page 79, No. 85, Captain Le Hardy to the Commissioner of Coorg, 1836, April 26th.

Page 78, No. 83, Lieutenant-Colonel M. Cubbon to Mr. Secretary W. H. Macnaghten, 1836, June 3d.

Page 79, No. 86, Mr. Secretary W. H. Macnaghten to Lieutenant-Colonel M. Cubbon, 1836, June 27th.)

Captain Le Hardy's
letter to Colonel
Cubbon, dated the
14th August 1837.

I have much pleasure in stating that I have not heard a single instance of any of the individuals who were emancipated from slavery at the beginning of last year having mis-conducted themselves as it was at first apprehended they would do. Indeed, as far as I can judge from what has fallen under my own observation, I have every reason to believe that they are a remarkably quiet, well-behaved, industrious people; a number have continued in the service of the rajahs to whom they were formerly attached; but it will be observed, under the head of "House Tax," in the accompanying memorandum, that 383 families of them have during the past season established themselves as independent labourers. Between 50 and 60 families cultivate on their own account small patches of land.

APPENDIX XIV.

BRIG MOYDEEN BUX.

1. LETTER from Secretary to Indian Law Commission to the Chief Secretary to the Government of Fort Saint George, Madras, dated 11th March 1840.
2. Reply from the Secretary to Government of Fort Saint George to Secretary to the Indian Law Commission, dated Neilgherries, Ootacamund, 2d April 1840.
3. From Mr. Advocate-general George Norton to the Secretary to Government, in the Marine Department, Fort Saint George, dated 5th November 1839.
4. From Captain Christopher Biden, Beach Magistrate, to the Secretary to Government, dated Madras, 4th November 1839.
5. From idem to Mr. A. Rowlandson, dated idem.
6. From idem to the Secretary to Government, Madras, dated 4th December 1839.
7. From Mr. R. A. Bannerman, Magistrate, Purlah Kemedey, Ganjam, to the Master-Attendant and Beach Magistrate, Madras, dated 27th November 1839.
8. From Mr. T. Conway, Head Assistant Magistrate, Calingapatam, to Mr. R. A. Bannerman, Magistrate of Ganjam, dated 21st November 1839.
9. From Captain Christopher Biden, Beach Magistrate, to the Secretary to Government of Madras, dated 3d January 1840.
10. From Mr. W. U. Arbuthnot, Magistrate, Vizagapatam, to Captain C. Biden, Beach Magistrate of Madras, dated 24th December 1839.
11. From Sir H. C. Montgomery, Acting Principal Collector, Tanjore, to the Collector of Vizagapatam, dated 24th December 1839.
12. Extract from the Proceedings of the Foujdary Adawlut, under date 17th September 1839.

Appendix XIV.

Brig Moydeen Bux.
No. 1.

FROM Secretary to Indian Law Commission to the Chief Secretary to Government of Fort St. George, Madras, dated 11th March 1840.

THE attention of the law commission has been attracted to the recent trial at Madras, under the statute 5 Geo. 4, c. 113, of the nacodah of the brig Moydeen Bux, and 15 other persons, for dealing in slaves contrary to the said Act, and to an opinion which they understand has been expressed by the advocate-general in a report to government upon this case, that the forfeitures under the Act must be condemned in some admiralty court. The law commission direct me to request that the Right honourable the Governor in Council will be pleased to cause them to be furnished with copy of the opinion of the advocate-general and an account of the proceedings on the case, both before the magistrate and before the supreme court.

FROM

FROM the Secretary to Government, Madras, to Secretary to the Indian Law Commission, No. 2.
dated 2d April 1840.

I AM directed by the Right honourable the Governor in Council to acknowledge the receipt of your secretary's letter of the 11th instant, and in transmitting to you copies of the papers* noted below, which contain the opinion of the advocate-general and the reports of the beach magistrate relative to the case of the nacodah of the brig Moydeen Bux, and others, charged with slave-dealing, to state that the parties were acquitted on the trial before the supreme court, on a point of law, in consequence of a verbal omission in the indictment. Neilherries, Oota-camund.

FROM Mr. Advocate-General *George Norton* to the Secretary to Government, in the Marine Department, Madras, dated 5th November 1839.

I HAVE the honour to report, for the information of the Right honourable the Governor in Council, that an inquiry is now proceeding at the police office into a case of extensive slave-dealing carried on by sea and at various ports of this side of India by a vessel now in the roads, owned and navigated by Mussulmans. The slaves discovered on board are all of very tender age, none being above seven or eight years old, and some apparently no more than four years old.

Upon learning the matter from a personal communication of the magistrate, the master-attendant (who is conducting this inquiry), I judged it expedient, without loss of time, to instruct Mr. Rowlandson, the solicitor, who is the partner of the Honourable Company's acting solicitor, at present confined to his bed by serious illness, to wait on the magistrates and offer his professional assistance (in the place of the Honourable Company's solicitor) in the investigation now proceeding, and subject to the sanction of government. I conceive it a very fit case (should there appear eventually ground for committing any of the parties charged for trial in the supreme court) for a public prosecution by the law officers of government.

At the same time it appears fit that I should recal to the consideration of the Right honourable the Governor in Council, that under the instructions of the supreme government of India, communicated to the chief secretary in the letter of the secretary to that government of 9th September last, for the information of this government (and which were forwarded to me under the minutes of consultation of 10th ultimo, No. 807), the Government of India has directed, "that it should rest entirely with the honourable judges on perusal of the depositions to determine in what cases of those sent up by the magistrates, in which no counsel has been retained for the prosecution, the services of the government officers should be employed on the part of the Crown."

If this rule should be strictly enforced, I should be premature in thus anticipating the opinion of the honourable judges. But I conceive it must be obvious, on consideration, that, not only in this but in all other cases, the professional assistance, which is chiefly valuable towards conducting the investigation, seeking the available evidence, and maturing the case for counsel's instruction, will be lost, and that any direction which may come from the honourable judges, after they shall have considered of the depositions, will generally come too late for the law officers conducting the prosecution with due efficiency. Moreover, as neither they nor the judges themselves will have had any opportunity whatever of learning the real merits of the case, save as far as may appear from the depositions, the duty of counsel will, as I apprehend, be confined merely to the tenor of those depositions, and the law as arising therefrom, both as regards addressing the jury or the court, and the examination of the witnesses at the trial.

With regard to the only other occasions in which the law officers of government under the above instructions are to interfere in aid of the prosecution, namely, "when counsel for the defence happen to be retained," I would crave to submit for consideration that the effect of this rule will assuredly be, that the law officers will never know of such retaining of counsel for the defence until the very eve of the trial being called on, when these officers who are to conduct the prosecution will never know more of the merits of the case than the depositions disclose, and hardly have time indeed to ascertain the purport of the depositions themselves.

I trust I shall be held excused if I have been led out of my proper course in noticing thus much; but it seemed to me, at all events, necessary, that I should explain to government some grounds for my deviating in the present instance from the instructions forwarded to me.

P. S.—The above was written previous to the receipt of your letter of yesterday's date. I now beg to add, that upon subsequent communication with the beach magistrate, there appears much reason to suspect that other vessels are engaged in slave-trafficking along the coast, and particularly at Calingapatam, Vizagapatam, Bimlipatam and Nagore; at the first of which ports children are now believed to be kept in waiting for another vessel which is bound to Nagore. I beg therefore to suggest, that all the authorities on the coast should be immediately apprized of this, and directed to take measures accordingly.

Under the Slave-dealing Act, 5 Geo. 4, c. 113, this vessel and her cargo will (in case the slave-dealing shall be established) be forfeited, and she may possibly be so also under the Registry

* From the advocate-general, 5th November 1839. From the beach magistrate, 4th November 1839. Ditto, 4th December 1839. Ditto, 3d January 1840. See Nos. 3, 4, 6 and 7, seq.

Appendix XIV. Registry Acts. But there are none but the governors of Her Majesty's colonies, or their deputed officers, or Her Majesty's naval or military officers, who are competent to seize such forfeitures, and they must be condemned in some vice-admiralty court. That jurisdiction, it has been decided by the court here, does not exist at this presidency, for want of renewal of the commission to the chief justice. Under these circumstances it appears to me expedient that prompt notice should be sent to some naval officer nearest to Madras, and also to the admiral of the station. In the meantime I have under my consideration by what course the vessel may legally be detained here or elsewhere.

6th November 1839.

No. 4. FROM Captain C. Biden, Beach Magistrate, Madras, to the Secretary to Government, dated Madras, 4th November 1839.

I HAVE the honour to enclose the copy of a letter which I have addressed to the Company's solicitor.

The subject is of such vast importance, and requires such immediate attention, that I have considered it my duty to adopt this course of proceeding without loss of time.

The detention of a vessel at this season of the year can only be justified under such extraordinary circumstances as those detailed in my letter to the Company's solicitor; and I shall suggest to him the expediency of permitting the brig to depart after an examination of her crew, if consistent with the ends of justice.

Under all these circumstances, I am most anxious to be relieved from the responsibility I have undertaken, by receiving the orders of the Right honourable the Governor in Council for my guidance.

No. 5. FROM Captain C. Biden, Beach Magistrate, Madras, to Mr. A. Rowlandson, dated 4th November 1839.

As Mr. Rose, the Company's solicitor, is prevented by severe illness from attending at his office, I have the honour to acquaint you, that I have taken and detained in custody the nacodah, of the native brig Moydeen Bux, and several other persons implicated with him, on suspicion of their being concerned in kidnapping children under 10 years of age, probably with an intent of dealing with them as slaves.

By the evidence adduced before me in support of these charges, I am of opinion that they are well grounded; and I feel it my duty to solicit your advice and assistance in a case of such vast importance to the public interest.

Since the last examination of witnesses on Saturday the 2d instant, at five P.M., when 10 children were taken by the marine police, and 12 by the general police, four more children have been found by the general police peons, and are identified with the same parties. I have, therefore, taken upon myself the responsibility of detaining the brig, although her port clearance has been obtained, because I consider further evidence can be obtained from her crew, and as the Moydeen Bux is sailing under British colours, it is probable that vessel may be liable to condemnation.

Under these circumstances I shall feel obliged if you will favour me with an interview, that we may adopt such immediate measures as may be deemed expedient, especially as the detention of the brig is of consequence during this unsettled weather.

No. 6. FROM Captain C. Biden, Beach Magistrate, to the Secretary to Government, Madras, dated 4th December 1839.

I HAVE the honour to forward, for the information of the Right honourable the Governor in Council, copy of a letter, with its enclosure, which I have this day received from the collector of Ganjam.

The information which these letters convey corroborates such material points of the evidence adduced before me against the owner, the nacodah and other persons, lately belonging to the Moydeen Bux, and now in custody under a charge of piracy and felony, that I consider these offences can be clearly proved against them.

I will forthwith communicate this further intelligence to the advocate-general, and lose no time in acquainting the collector of Ganjam, whether in his (the advocate-general's) opinion, it is necessary to have any of the witnesses alluded to in these reports brought to the presidency to give evidence in support of the prosecution.

No. 7. FROM Mr. R. A. Bannerman, Magistrate, Purlah Remedey, Ganjam, to the Master-Attendant and Beach Magistrate, Madras, dated 27th November 1839.

WITH reference to your letter of the 5th, and to my communication to your address dated the 18th instant, I have the honour to transmit, for your information, copy of a letter received from my head assistant, reporting the result of his inquiry into the circumstances connected with the recent shipment of children from the port of Calingapatam on board the native brig Moydeen Bux.

From

From Mr. Conway's letter you will observe, that the embarkation of the children on board that vessel, by the nacodah and others belonging to the brig, can be proved by a number of individuals who have been examined, and the substance of whose declarations is stated in Mr. Conway's letter; but the fact of the children having been conveyed away from thence with a view to their being introduced at Nagore or elsewhere as slaves, can, I presume, be sufficiently established by evidence already available at Madras. If further evidence on that head should be required, one or more of the persons mentioned in Mr. Conway's letter might be produced as witnesses. To support a charge of kidnapping, however, I conceive it would be necessary to adduce such evidence as would show that the possession of the children was improperly obtained, either by force or fraud, by the parties in whose custody they have been found. But as the children do not appear to have been procured in the neighbourhood of Calingapatam, or from any places within the limits of this district, it has not been practicable to ascertain under what circumstances they may have come into the possession of the Choolias. It seems probable that most of the children have been brought from the Vizagapatam district, where much distress was experienced during the past season; but if the names of the villages to which the parents of the children belong can be ascertained, as suggested in my letter of the 13th instant, the means would be afforded of prosecuting the inquiry with more effect.

It would be observed that the head assistant magistrate has communicated to the magistrate of the Vizagapatam district such part of the examinations taken by him as seemed calculated to assist Mr. Arbuthnot in the inquiries he may have instituted into the case, with the result of which I conclude he will acquaint you.

Measures have been adopted to prevent the embarkation on vessels touching at or sailing from the ports in this district of children or young persons not belonging to such vessels.

Appendix XIV.

Brig Moydeen Bux.

FROM Mr. T. Conway, Head Assistant Magistrate, Calingapatam, to Mr. R. A. Bannerman, Magistrate of Ganjam, dated 21st November 1839.

No. 8.

I HAD the honour to receive, on Friday last, at Chicacole, your letter of the 13th instant, forwarding for my information an original letter, with its enclosures, from the beach magistrate at Madras, and requesting me to institute an inquiry into the case of a number of young children having been shipped from Calingapatam, on board the native brig Moydeen Bux, which sailed from that port about the beginning of last month.

A number of paupers find relief at Chicacole, by the charitable exertions of the resident missionary, Mr. Dawson, who is assisted by subscriptions received from the European and native inhabitants at the station; and as I was aware that many of those unfortunate people had emigrated from the Vizagapatam district, in consequence of the scarcity, and as many of the children referred to have come from that neighbourhood, I thought that I might probably obtain, through their means, some information in respect to the transaction under notice, or that I might by chance find amongst them the parents of some of the children; with this view, I got the list containing the names of the children and of their parents taken to the place where they are fed. I failed in obtaining any information direct from them; but it happened that there was present a peon, who has been permitted to assist in distributing the alms to those people, who mentioned that an orphan child, by name Modena Saib, of Toonee Pikaroupett, in the Vizagapatam district, had been fed for some time at this asylum, and had been taken away by some Choolia people (name unknown): he saw a boy in the town of Chicacole, with his head shaved, in the company of the above-mentioned people, who had with them three or four other children, and on his asking the boy why he had ceased to come for his food at the charitable institution, he told him that the Choolia people had offered to take better care of him, and that he wished to go with them. The peon learnt from the Choolia people that they belonged to Nagore, and were proceeding at that time towards Berhampore; and he informed me that strangers of the Choolia caste, in passing through Chicacole, usually lodged in the house of a person named Meerah Saib. I accordingly sent for Meerah Saib, and he has stated that Tambeesham, the nacodah of the before-mentioned brig, lodged in his house for two months, he (the nacodah) having come to Chicacole for the purpose of disposing of part of the cargo of his vessel; that several of the crew, &c. had accompanied him, and some of them had gone to Bimlipatam for a short time, and returned, bringing with them four children, which the nacodah and crew, proceeded with to Calingapatam the day after they were brought into his house. He states he does not know how they were procured, but that they were not of his caste; and without hesitation informed me, that two Choolia people had that very morning brought with them from Bimlipatam two children of the same description.

On examining the two persons above alluded to, as to how they became possessed of the children in question, they state that their parents brought them to them at Bimlipatam, and begged them to take them, and in return they gave a few rupees. One of the children is a girl of about seven years and the other a boy of about five years of age. They have mentioned their own names and that of their relations and villages, and corroborate the statement made by the Choolia people. I have sent copies of the proceedings taken by me in the above matter to the magistrate of Vizagapatam for his information, and I have informed him that the parties will be detained at Chicacole pending his wishes in respect to their disposal.

On arriving at Calingapatam on Saturday morning, I sent for two Choolia people, whom I understood to be residing in the village, and I discovered that they had under their protection three children, which they had obtained under somewhat similar circumstances.

It is not improbable that the boy, the third in the second sheet of the list, is the one here alluded to, and that in giving Hassein Saib as his former and present name, he has not understood the question put to him. The age and height noticed in the list agree with that given by the peon.

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Two of these children are very young; but, from the inquiries I have made, I have no doubt that they have adopted them in consequence of their friendless and destitute state. One of the above children has been about a year and the other three or four months with them. The third is a lad about 14 or 15 years of age. His father and mother it appears belonged to the village of Calingapatam, and died when he was three years old, since which he has been adopted into the family of one of the Choolia people above mentioned, has never left the village, and has adopted their dress and caste.

The nacodah of the brig Moydeen Bux, during the period his vessel was detained at this port, rented an empty house from the Choolia people above mentioned, and his crew and some of the passengers rented houses from other parties here. These parties saw the children before they were shipped, and would seem to have been aware that they had been brought from Bimlipatam. The barber of the village states he shaved the heads of 10 or 15 children, of various castes, at the house rented by the nacodah, and if required would no doubt be able to recognize some of the children. The owner and tindals of six boats speak to having taken on board the whole party, and each boat carried from three to five children. One party mentions that, the day after the children were shipped, a person, by name Syud Sha, took about 10 children with him to Bimlipatam, which account corroborates what the boy Hassein Ally, alias Cessee Unna, has stated, viz. that there were 14 children left behind to be shipped by another opportunity; and I imagine they have been shipped from Bimlipatam, or are there still. This circumstance I have communicated to the magistrate of Vizagapatam.

I examined the two Choolia people, and the agent of the vessel, in the hope of obtaining some information from them as to the object these children are required for, but they answered very reluctantly and equivocally all the questions put to them, and I fancy the fact of their having been so intimately connected with the nacodah and his party is the cause of their being unwilling to communicate any information which they probably are possessed of. The sea custom gomastah states, that he saw the children, but that having been told by the nacodah and others that they were part of their families which they brought from Bimlipatam, he had no suspicion of there being any thing improper or requiring to be reported.

I am inclined to think that the children have not been procured in this neighbourhood, and were brought at intervals, and that they have been obtained by the exertions of the nacodah and his crew, unaided by residents in these parts; and if the above circumstances do not afford evidence of the nature required to bring the parties now at Madras to justice, that further evidence can only be obtained by the Vizagapatam magistrate. I understand that, during the famine which prevailed in the northern districts in 1832-33, a number of children, obtained under similar circumstances to the present, were discovered at Masulipatam, and the parties, who were Choolia people also, were brought to trial before the court in that zillah; but the Foujdary Adawlut, in their proceedings, under date the 17th September 1839, have declared that the sale of a child in the provinces, in a season of famine, is not punishable by the Mahomedan law; and judging by the account given by the children and the present appearance of the circumstance under which children come into their possession, I am of opinion it will be found that the poverty and distress which is prevailing has occasioned the unnatural disposal of the children by their parents, or, in other cases, that their orphan and destitute state have led children to accept the protection of these Choolia people, and under these circumstances that there will be a difficulty in bringing to punishment any parties we may apprehend who have the children of others in their possession. But if it is apprehended that advantage is taken by these Choolia people to procure children in times of scarcity, with a view of subjecting them in their country to slavery, I would venture to point out the facilities open to them for effecting their mercenary object, so long as the unfortunate parents or destitute children can find no other asylum.

There are now a number of miserable objects at Chicacole, which the charitable institution established there has been the means of drawing to that point; but on the removal of the court from Chicacole, the means now at the disposal of the missionary alluded to will be withdrawn; and unless these unfortunate people are relieved by the bounty of government, their state will be miserable. I would therefore take this opportunity of recommending some steps to be adopted for their relief.

I have issued the necessary orders to the officers at the several ports along the coast for preventing any children being shipped therefrom, and I request to be informed what you wish to be done with the children here and at Chicacole found in the possession of the Choolia people above mentioned, and also with any others who may be recovered from persons who have obtained them under similar circumstances.

No. 9. FROM Captain C. Biden, Beach Magistrate, to the Secretary to Government, Madras, dated 3d January 1840.

1. I HAVE the honour to enclose, for the information of the Right honourable the Governor in Council, copy of a letter I received yesterday from the collector of Vizagapatam, together with 43 original translated depositions referring to the pending investigation of the charges alleged against the owner, the nacodah, and other persons taken upon the 1st and 2d November last, on suspicion of being guilty of kidnapping children with intent to deal with them as slaves.

2. It appears from the evidence already obtained through the zealous exertions of Mr. Arbuthnot, and declared by the statements of long and experienced residents within the district

district of Vizagapatam, that the disgraceful practice of kidnapping and selling children has prevailed for a length of time, and the mart for this nefarious traffic has been between that portion of this presidency and Nagore.

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3. Famine and seasons of misery and distress may in some degree palliate the enormity of such offences, yet it is too obvious that these primary causes are frequently made the plea for a progressive and continual source of evil, whereby designing and mercenary offenders may pursue their object to any extent; the systematic schemes of the buyer and seller are evidently shown throughout this our first grand effort to subdue a practice which has been most fraudulent and extensive, and must have produced many instances of cruelty and oppression.

4. The advocate-general and I myself have had under our consideration the most conclusive evidence afforded by these depositions; and by his advice I shall now commit the party in custody for trial; they have hitherto been remanded from time to time in defiance of every attempt to obtain their release by a writ of *habeas corpus*.

5. We are of opinion that as nine of the depositions have positive reference to the parents and near relations of the children themselves, who were rescued from the brig Moydeen Bux, undoubted testimony can be made available to prove the criminal acts charged against the party in custody, by enforcing the attendance of those persons whose statements I have alluded to.

6. It is therefore of the utmost importance that ulterior proceedings against the offenders in question should be deferred until the arrival of those witnesses at the presidency. The evidence they have given before the collector and magistrate of Vizagapatam confirms so much of what has already transpired in the several examinations I have gone through with parties under my charge, that we have reason to believe the whole case against the prisoners can be clearly established.

7. The government have afforded the most liberal and ample means to pursue this most important investigation through all its bearings, and many apparent obstructions and difficulties in our proceedings have been overcome. It would, therefore, in my humble opinion, be most unjust and impolitic to allow any legal objections or technical opposition to impede the fair and upright course of obtaining the ends of justice, inasmuch as in this stage of our proceedings we can obtain the means required to insure an equitable result.

8. The enactments of law for the subjection of the slave trade are so severe and imperative that every person found on board a slave vessel is, in some degree, implicated in the crime. The owner, the nacadah, and those persons about to be finally committed under the Slave Act, are principally identified, and all are more or less involved by the evidence which has been adduced before me. I have therefore no apprehension as regards any legal attempts which may be made to thwart the process of conviction before the supreme court; but I am doubtful whether all the necessary witnesses can arrive by the 15th instant, when the sessions will commence.

9. To obviate any endeavour which may be made on the approaching sessions to foreclose this serious and important case, we have every confidence and assurance in the talented zeal and support of the Honourable Company's law officers; and the present opportunity is most favourable for the annihilation of a practice which has hitherto obtained apparent sanction under the rooted habits and customs of a needy portion of the natives themselves on one side, and the evil propensities of a domineering Mussulman caste on the other.

10. I have every reason to believe that the detection of the persons concerned in this transaction was chiefly owing to the number of children they brought from Calingapatam on board the Moydeen Bux. It appears that after her departure from Bimlipatam, on her intended voyage to this port and Nagore, she was driven in at Calingapatam by stress of weather, and remained there during the whole of the south-west monsoon. This unexpected deviation and detention afforded time to procure so many children; and I suppose the practice had hitherto escaped the vigilance of the officers of government, through the parties engaged in the traffic shipping off only a few at one time. But all attempts of the kind may be prevented hereafter by compelling the commanders or nacadahs of all native vessels to give in at every port they touch attested lists of their crew and passengers.

11. With reference to the 8th* paragraph contained in the enclosed letter, you will observe that the collector of Vizagapatam has applied to the magistrate of Tanjore for information respecting the disposal of the children transported from the northern ports to Nagore. Such a statement is much wanted, and may throw considerable light on the whole history of these transactions; he also states in the same para., that he wishes to know what steps he is to adopt regarding the disposal of a number of children he has discovered within his district who are in the possession of some Choolia people. The children he alludes to have declared their wish to remain where they were found; but it may be observed that they have been made converts to a new religion and caste, and cannot be considered as free agents.

FROM Mr. W. U. Arbuthnot, Magistrate, Vizagapatam, to Captain C. Biden, Beach Magistrate, Madras, dated 24th December 1839.

No. 10.

I HAVE now the honour to submit my proceedings, with translations, relative to the children supposed to have been taken on board vessels at the northern ports for the purpose of being disposed of as slaves.

2. In

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 —
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2. In this investigation my attention has been principally directed to two points: first, to ascertain, as far as practicable, the history of the children discovered on board the Moydeen Bux; secondly, to ascertain to what extent the practice of procuring children has been carried, and how long it has existed.

3. I have prepared a statement which briefly exhibits the information I have been able to procure relative to the children now under your charge. I have been unable to discover the relations of many of the children, although I have done every thing in my power to effect this object. In the first instance, I caused proclamations to be made throughout the district, calling on any persons who had lost their children during the famine to appear before me and represent their case, as there was a prospect of their children being restored to them. None of the relations of the children under your charge came forward on this invitation, but many others have appeared. Some have stated that their children have been lost, while others acknowledged that they sold them. Subsequently, on receiving the house names of the boys and the residing villages of their parents or relations, I issued orders to the different heads of police to cause the attendance of the latter before me. Many of them, particularly those who were stated to be residents of Vizagapatam, were not to be found. Nor is this surprising when the circumstances of the past season are taken into consideration. In consequence of the number of starving families who crowded into Vizagapatam, a subscription was raised, and a choultry established where rice and cony were distributed to such as from their age, debility or state of health were unable to work. This attracted numerous families from great distances, who for a time resided in Vizagapatam; but as the famine did not extend beyond the northern frontier of the district, many of them eventually emigrated to the Ganjam district, and even beyond it. Vizagapatam and the adjoining hamlets are mentioned as the residing villages of most of the children. I am inclined to think that some of them must have come there merely for the time, as their names are perfectly unknown.

4. In the accompanying proceedings* will be found the depositions of such of the relations as could be found.

5. I have seen no reason to suppose that the Choolias themselves have used violence to procure children, simply because I know that any number of them might have been procured for the merest trifle, or even by persons of respectability, for nothing at all. The practice of purchasing children is however a most objectionable one, and ought to be prohibited, because it serves as an inducement to unprincipled persons to kidnap children and dispose of them as their own. That this has been done in several instances, my present proceedings sufficiently prove. Indeed, there seems too much reason to suppose that the Choolias have not only neglected instituting any inquiries regarding the children brought for sale, but that they have, in some instances, purchased them from persons whom they must have known to be in the habit of trafficking in children.

6. You will not fail to observe that statements have been taken from all those suspected by you of being concerned in this transaction, as well as from several others who seem to have been concerned with them. The persons whose statements are marked from Nos. 14 to 20 are in custody, and will be detained till your wishes regarding them are made known to me.

7. I now pass to the second point to which my attention has been directed, viz. the extent to which the practice of procuring children has been carried, and how long it has existed.

8. Bimlipatam, which was formerly a Dutch settlement, has from time immemorial been the resort of Choolia merchants. The head quarters of these persons is Nagore; but some members of the family reside at Bimlipatam, and passing to and from their own country carry on a very extensive trade. The evidence, which I now forward, proves beyond a doubt, that these persons have ever been in the habit of procuring children and conveying them to their own country. They allege, and the people of the country evidently give credit to their assertions, that their object is to procure converts to their religion, lascars for their vessels, and slaves for domestic purposes. It is not in my power to ascertain what becomes of the children carried away from this part of the country. I have applied to the magistrate of Tanjore for information on this point, but have not yet received his answer. I have found 16 children in the houses of the different Choolias now residing at Bimlipatam. I have taken depositions from such of them as were old enough to make themselves understood, and they all expressed themselves perfectly satisfied with their situation. I should wish to be informed of the wish of government regarding them. On my instituting the present inquiry, the Choolias seemed disposed to turn them out of their houses; but as many of their parents were not to be found, I would not permit this to be done at present, but insisted on their supporting them till I could receive orders on the subject.

9. There has been some delay in disposing of this case, in consequence of my being unavoidably absent from Vizagapatam, on duty, when your first communication was received.

No. 11. FROM Mr. H. C. Montgomery, Acting Principal Collector, Tanjore, to the Collector of Vizagapatam, dated 24th December 1839.

IN reply to your letter of the 23d ultimo, I have the honour to state that the answers furnished by the officers in charge of the several ports, to questions put to them in consequence

* Not forwarded to the law commission.

quence of it, give no grounds to suppose that it is customary for native vessels to bring children to the ports in this district for the purpose of disposing of them for domestic or other description of slavery.

The attention of the sea custom department will be given to this subject.

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EXTRACT from the Proceedings of the Foujdary Adawlut, under date 17th September 1839.

No. 12.

(Circular order, No. 3.*)

DOUBTS having been entertained as to the course of proceeding it is legally competent to a magistrate to adopt in the case of the sale of a child by its parent in the provinces under this presidency, and the Mahomedan law officers of the Foujdary Adawlut having declared that according to the Mahomedan law the act is not punishable when committed in a season of famine, and that at all other times it is punishable by tazeer, the court of Foujdary Adawlut resolve to promulgate that opinion for the information and future guidance of the judicial officers subject to their control.

Ordered, that extract from these proceedings be sent to the four provincial courts of circuit, with instructions to communicate the same to the several criminal judges and magistrates within their respective divisions, by precept, returnable within 10 days from and after its receipt.

APPENDIX XV.

SALE of Children by Parents according to the Mahomedan Law.

1. FROM Acting Register, Foujdary Adawlut, Madras, to Chief Secretary to Government, 19th November 1839.
2. Opinion of Ghulam Subhan, Kazi-ul-Kuzat of the Nizamut Adawlut, Fort William, to whom the opinion of the Mufti of the Foujdary Adawlut of Madras was referred, at request of the Law Commission, for verification.

Appendix XV.

FROM Acting Register, Foujdary Adawlut, to Chief Secretary to Government of Fort Saint George, dated 19th November 1839.

Sale of Children by Parents.

No. 1.

Enclosed in a letter from the Indian Government to the Law Commission, dated 16 December 1839.

I AM directed by the judge of the Foujdary Adawlut to acknowledge the receipt of the order of government, dated 8th November 1839, No. 887, transmitting a communication under date the 21st ultimo, from the officiating secretary to the Government of India, and requiring the court to report the circumstances under which the issue of their circular order, No. 111,† regarding the sale of children by their parents was thought advisable, and to submit the following explanation on that point:—

2. During several years past, references have from time to time been made to the Foujdary Adawlut by the judicial officers in the provinces, for instructions in regard to the disposal of cases wherein persons were charged with the sale and purchase of children for different purposes.

3. On the 24th May 1817, the magistrate of Vizagapatam reported that a "Hindoo woman made a verbal complaint before him that a police peon of the same caste had failed in his engagement with her in the purchase as a slave of, her infant son, aged seven months. The child was sold for eight rupees, but the peon refusing the mother access to her infant, and not having procured her eldest son an employment as stipulated, the mother entreated permission to return the purchase-money and to receive her infant again."

4. "This most extraordinary purchase and sale," the magistrate observed, "was cancelled at his particular desire; for he could not satisfy himself as to the manner in which the complaint should be judicially determined, both parties being, in his opinion, equally culpable." But on being informed by the judge of the zillah that the case was cognizable only by the civil court, he referred the matter for the consideration of the Foujdary Adawlut, observing, that if the opinion of the zillah judge, that, under the existing regulations, the parties were not liable to a criminal prosecution, were correct, it was high time that "the defect in the law was rectified, and that slave-dealing was declared to be abolished in India."

5. In reply to this reference, the court of Foujdary Adawlut, in their proceedings under date the 20th June 1817, observed, that "the matter is connected with the religious usages and institutions of the native subjects of this government, and it is cognizable as a civil action under the provisions of section 16, Regulation III. of 1802," and that "the magistrate is not authorized to take cognizance of the matter in question."

6. On the 5th December 1825, the collector of Tinnivelly brought to the notice of the Foujdary Adawlut, through the provincial court for the southern division, "a custom," which the collector observed, "is, I believe, more or less prevalent throughout the Madras territories,

* See No. 1 of Appendix XV, *seq.*

† See No. 12 of Appendix XIV, *supra.*

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by Parents.

tories, and, as far as my own observation has gone, is more frequent in the district of Tinnivelly. The practice I allude to," continued the collector, "is the sale and purchase of female children by dancing-women for the avowed purpose of bringing them up to a life of immorality. The custom is so notorious, and its abominable tendency so evident, that no comment can be necessary; but I am apprehensive that unless it be specifically excepted from those purchases of children which are now (under some circumstances) legal, an opinion may be entertained that such dealings are countenanced by law. A prohibition of such transactions could not be complained of as an infringement of any acknowledged rights. It would serve as a check upon child-stealing, which is occasionally practised under the pretence of purchase, and the public expression of the will of the government could not but have a beneficial tendency to promote morality."

7. In conclusion, the collector recommended that the practice in question should be "prohibited by law."

8. The judges of the provincial court submitted their opinion, that there was "not any occasion for the interference of government, or for any special authority to be given to the magistracy to prevent the sale of children to persons described in the collector's letter. The sale of a child," the provincial court observed, "excepting under very particular circumstances, is punishable under the Mahomedan law; and if the magistrate is of opinion that the people are not aware of the fact, he has full authority, in virtue of his office, to issue a notification declaring that the crime of child-selling is punishable by law."

9. In laying the papers before government the Foujdary Adawlut recorded their concurrence in the opinion of the provincial court.

10. By a letter dated the 13th January 1826, from the secretary to government, the court of Foujdary Adawlut were informed that the Governor in Council entirely concurred with the judges in deeming any enactment unnecessary; and with reference "to its connexion with the ceremonies and observances, both civil and religious, of the great bulk of the people," remarks were added in regard to the necessity for caution in conducting any interference at all, with the view of preventing parents or guardians from assigning children in the customary modes, to be brought up to the profession of dancing-women.

11. On the 16th August 1839, the same provincial court (southern) submitted a communication from the magistrate of Trichinopoly, in which that officer requested to be informed "whether the sale of a child by its mother is considered, under the existing regulations, an offence cognizable by the magistrate, and whether he is in such a case to be content, as has hitherto been the practice in this district, with using his influence to annul the sale, or to send the case for final adjudication to the criminal court," and, on this occasion, the judges of the provincial court submitted their opinion, "that some specific penalty should be promulgated for the purpose of checking an offence so revolting to humanity, and that it should not be left at the discretion of the magistrate merely to use his influence to annul a sale of this description."

12. On receiving this reference, the court of Foujdary Adawlut called upon the Mahomedan law officers to state whether, under that law, the mother, in the case reported by the magistrate of Trichinopoly, would be liable to punishment; and in their answer those officers declared that she was liable to tazeer, or discretionary punishment.

13. It being found, on reference to the records of this court, that, in case No. 7 of the Malabar calendar for the fourth quarter sessions of 1819, the Mahomedan law officers had delivered in a futwah declaratory of the non-liability to punishment of a party selling his or her child, the court called upon their law officers to submit their reasons for dissenting from the futwah of their predecessors in the case above mentioned; and those officers then repeated the opinion already given; observing, that it was accordant with the decisions recorded in the books of Haneefah, that, at a time when scarcity does not prevail, the people of this country are forbidden to sell their children, and that to do so renders them liable to tazeer.

14. Of the correctness of this last opinion there can be no doubt; and the court of Foujdary Adawlut, adverting to the different references made to them on the subject, the discordant opinions which had been given, and the doubts generally entertained by the officers in the provinces, as to the course they were authorized to pursue in such cases, deemed it proper, as stated in the circular order* under consideration, to promulgate that opinion, with reference to the provisions of section 7, Regulation X. of 1816, for the information and future guidance of the judicial officers subject to their control.

No. 2. OPINION of *Ghulam Subhan Kazi-ul-Kuzat* of the Nizamut Adawlut, Calcutta, to whom the opinion of the Muftis of the Foujdary Adawlut, of Madras, was referred at request of the Law Commission, for verification.

As directed, I have considered the points contained in the opinion of the muftis of the Foujdary Adawlut, as set forth in the case referred to in regard to sale of their children by parents. I state my opinion under the Muslim law. The muftis write that "the father and mother who sell their children in times of scarcity and drought are not liable to punishment: but if at any other time they sell, they are liable to punishment (tazeer)." This opinion conforms to the reports of some jurisprudents who hold, that in need and the extremity

* See No. 12 of Appendix XIV.

extremity of want, the sale of a free person is legal. But this doctrine, on the basis of which exemption from tazeer rests, is only founded on the marginal annotation of our Lord, Allah Dad, who copied it from the Mahit and Zakhira. I have not found it in other books of recognized authority, and it is contrary to the principles of jurisprudence, for the contract of sale and purchase is limited and restricted to property: but the freeman is not held to be property by any person, that he should be the object of a sale. Therefore, the sale and purchase of a free person under all circumstances, according to the Muslim law and the doctrine to be observed in expositions, is radically illegal. In my opinion, therefore, the parents who sell their children in dearth or drought are liable to discretionary punishment (tazeer); though of course the degree of that punishment would depend on the existence or non-existence of the need and urgent want of the parents.

(True translation.)

J. C. C. Sutherland, Secretary.

Appendix XV.
Sale of Children
by Parents.

APPENDIX XVI.

BOMBAY.

OFFICIAL RETURNS as to Slavery in the Provinces included in the Presidency of Bombay.

1. LETTER from the Law Commission to the Register of the Courts of Sudder Dewanny and Foujdary Adawlut, Bombay, dated 10th October 1835.
2. Reply thereto, from the Register of the Bombay Sudder Foujdary Adawlut, dated 14th May 1836.
- ✓ 3. Return by Mr. G. Grant, Acting Judge and Session Judge of Surat, enclosed in No. 2.
4. Return by Mr. W. Richardson, Assistant Judge and Session Judge, Broach, enclosed in idem.
5. Return by Mr. P. W. Le Geyt, Acting Judge and Session Judge, Ahmedabad, enclosed in idem.
6. Return by Mr. J. A. Shaw, Judge and Session Judge, Conkan, enclosed in idem.
7. Enclosure of No. 6, from Mr. W. J. Hunter, Acting Senior Assistant Judge and Session Judge, Rutnagiree, dated 6th January 1836.
8. Return by Mr. A. Bell, Judge and Session Judge, Poonah, enclosed in No. 2.
9. Return by Mr. G. H. Pitt, Acting Assistant Judge, Sholapoor, enclosed in No. 8.
10. Return by Mr. R. D. Luard, Acting Joint Magistrate, enclosed in No. 9.
11. Return by Mr. B. Hutt, Acting Judge and Session Judge, Ahmednuggur, enclosed in No. 2.
12. Return by Mr. W. Birdwood, Assistant Judge and Session Judge, Khandeish, enclosed in No. 11.
13. Return by Mr. J. B. Simson, Judge and Session Judge, Dharwar, enclosed in No. 2.
- ✓ 14. Return by Mr. J. Vibart, Principal Collector, Surat, enclosed in idem.
15. Return by Mr. N. Kirkland, Acting Sub-Collector and Joint Magistrate, Broach, enclosed in idem.
16. Return by Mr. J. H. Jackson, Acting Magistrate, Ahmedabad, enclosed in idem.
17. Return by Mr. W. Stubbs, Magistrate of Kaira, enclosed in idem.
18. Return by Mr. W. Simson, Acting Magistrate, Tannah, enclosed in idem.
19. Return by Mr. A. Remington, Assistant Collector and Magistrate, Tannah, enclosed in No. 18.
20. Return by Mr. George Coles, Acting Assistant Magistrate, Tannah, enclosed in No. 18.
21. Return by Mr. J. M. Davies, Second Assistant Magistrate, Tannah, enclosed in No. 18.
22. Return by Mr. H. H. Glass, Collector and Magistrate of Rutnagiree, enclosed in No. 2.
23. Return by Mr. R. Mills, Magistrate, Poonah, enclosed in idem.
24. Return by Mr. R. D. Luard, Acting Joint Magistrate, Sholapoor, enclosed in No. 23.
25. Return by Mr. G. Malcolm, Acting First Assistant Magistrate, Poonah, enclosed in No. 23.
26. Return by Mr. H. P. Malet, Acting Second Assistant Magistrate, Poonah, enclosed in No. 23.
27. Return by Mr. H. E. Goldsmid, Assistant Magistrate at Kusba Indapoor, enclosed in No. 23.
28. Return by Mr. R. D. Luard, Acting Joint Magistrate, Sholapoor, enclosed in No. 2.
29. Return by Mr. H. A. Harrison, Magistrate of Ahmednuggur, enclosed in idem.
30. Return by Mr. W. S. Boyd, Magistrate, Khandeish, enclosed in idem.
31. Extract of Report from Mr. M. Larken, Assistant Magistrate, Khandeish, enclosed in No. 30.
32. Extract of Mr. John A. Dunlop, Acting Principal Collector and Magistrate, Belgaum, enclosed in No. 2.

540 APPENDIX TO REPORT FROM INDIAN LAW COMMISSIONERS

Appendix XVI. FROM *Frederick Millett*, Esquire, Secretary to the Indian Law Commission, to *Philip Le Geyt*, Esquire, Register of the Courts of Sudder Dewanny and Foujdary Adawlut, Bombay, dated 10th October 1835.

No. 1.

THE Indian Law Commissioners having under their consideration, as connected with the preparation of a criminal code, the system of slavery prevailing in India, I am directed to request that the courts of Sudder Dewanny and Foujdary Adawlut will favour them with information on the following points:—

1. What are the legal rights of masters over their slaves with regard both to their persons and property which are practically recognized by the Company's courts and magistrates under the Bombay presidency?

2. And, as more immediately connected with their criminal code, to what extent is it the practice of the courts and magistrates to recognize the relation of master and slave as justifying acts which otherwise would be punishable, or as constituting a ground for mitigation of punishment; and what protection are they in the habit of extending to slaves, on complaints preferred by them of cruelty or hard usage by their masters?

3. Whether there are any cases in which the courts and magistrates afford less protection to slaves than to free persons against other wrong-doers than their masters?

With the exception of sections 30, 31 and 32 of Regulation XIV. of 1827, the commissioners do not observe in the Bombay code of regulations any specific provisions on this subject; and with reference to the investigation directed in section 31 above mentioned, to be made by the magistrate previous to the registration of a slave, and the general rules prescribed by sections 26 and 27, Regulation IV. of 1827, as to the laws and usages to be observed by the civil courts in the trial of suits, they are desirous of being informed whether the courts or magistrates would admit and enforce any claim to property, possession or service of a slave, except on behalf of a Mussulman or Hindoo claimant, and against any other than a Mussulman or Hindoo defendant.

No. 2.

ANSWER of the Register, Bombay Sudder Foujdary Adawlut, dated 14th May 1836, to Letter of the Law Commission, dated 10th October 1835.

So little is slavery a subject of litigation, that but few cases are brought for final adjudication before the judges of the Sudder Adawlut on the criminal side of the court, and still fewer are submitted to the court in its civil capacity. This consideration was an additional reason for seeking for information from the provincial authorities on the several points propounded by the law commission. A circular call was accordingly made to the judges, session judges and magistrates, and I am now instructed to forward the result as exhibited in the reports annexed, and which I request you will lay before the law commission. I am directed by the judges of the Sudder Adawlut to observe, that in their opinion some of these papers appear to contain valuable matter, and treat the subject with great discrimination. Taken as a whole, they lead to the gratifying conclusion that the laws of 1827 are in successful operative force for the gradual extinction of a practice so abhorrent as is slavery to natural right, as well as to the real health of the social compact of civilized life. With reference to the 3d paragraph of your letter, I am instructed to state, that the Bombay code contains no further specific provisions on this subject than those cited by you; and in regard to the question whether the law is limited to Mussulman and Hindoo claimants and defendants in relation to slavery, I am directed to say that it is not, but would apply to all persons whom the law of England does not exclude from such relative positions.

✓ No. 3.

ENCLOSURE of Letter of Register, Sudder Foujdary Adawlut, dated 14th May 1836, being Return made by Mr. *G. Grant*, Acting Judge and Session Judge of Surat, dated 22d February 1836.

In the zillah of Surat there are two descriptions of persons who may be denominated slaves, Gholams and Halees; the former are slaves in the usual and full acceptance of the word, being persons or their offspring who have been purchased for a sum of money, or other consideration, whereby they become to all intents and purposes the property of the purchaser. The master, agreeably to both Mahomedan and Hindoo laws, has a right to the possession and services of his slave, save where by an act of his own free will he has relinquished such right either wholly or in part. With regard to their treatment, different customs prevail in different castes. In some they are looked on more as members of the family than slaves, and form connexions in the family. In all, the master is bound to feed, clothe and house them. They are generally married at their master's expense. The property of a gholam, however acquired, belongs to the master, except where alienated by his, the master's, own free act. By the Mahomedan and Hindoo laws, a master may sell his slave; and prostitution forms part of the services which he may exact from his female slave. By the Company's regulations no sale is permitted except in time of famine; and sale for the purpose of prostitution is strictly forbid. (The halees, so called from the word "hull,"

"hull," a plough, their chief employment being that of ploughmen, may more correctly be denominated bondsmen than slaves. They are persons, or their offspring, who have sold their labour for an advance of money, and who are bound to serve the lender and his heirs until they are able to repay the sum. They almost entirely consist of Dooblas, and other low castes of Hindoos. The master is bound to feed and clothe them, give them a piece of land, and to defray their marriage expenses, the sum laid out on the latter, however, being added to the original amount for which their services became his. Such property as a halee may acquire, either by gift, inheritance, or by work done when his services are not required by his master, is his own. The services of a halee cannot be transferred to another master against his will.

Appendix XVI.
Bombay.

The records of this office do not enable me satisfactorily to state what legal rights of masters over their slaves the court practically recognizes, different views of the subject appearing to have been taken by the different trying authorities. My own impression is, that a magistrate is bound to uphold and enforce, by every means falling short of violence or cruelty, the master's right to the possession and personal services of his slave, sanctioned both by Mahomedan and Hindoo laws and the usage of the country, so long as he (the master) fulfils the obligation which rests with him to feed, clothe, and in other respects well-treat his slave. The same principle would, in my opinion, apply to a halee, or bondsman, as to a gholam, or slave.

2. Personal restraint is, in my opinion, the only act otherwise punishable in which the court would recognize the relation of master and slave as justifying, or constituting a ground of mitigation. Cruelty or hard usage on the part of a master to his slave would meet with the same discountenance and punishment as where both parties were free; and any flagrant instance would cost the master, besides, the loss of his slave, and give the latter his liberty.

3. No case could, I imagine, occur in which a court would afford less protection to a slave than to a free person against other wrong-doers than their masters. The right to property, possession or service of a slave, would, I should imagine, be equally recognized by the court on behalf of others than Mahomedan and Hindoo claimants against Mahomedan and Hindoo defendants. The regulations are silent on this point, and, by Mahomedan and Hindoo laws and the usage of the country, there is no restriction as to caste.

RETURN of Mr. W. Richardson, Assistant Judge and Session Judge, Broach, dated
21st December 1835, enclosed in No. 3.

No. 4.

I beg to state that the master has a right to demand service from his slaves. He is entitled to any property which the slave may have amassed even during his lifetime. Should the slave, on his death, leave any property, the master is entitled to it.

2. It is not the practice of the courts or magistrates to recognize the relation of master and slave, either as justifying any illegal acts or as constituting ground for mitigation of punishment. The master, on the complaint of his slave being proved, would be punished by fine or imprisonment, as is usual in all cases of assault.

3. A case could not occur in which less protection would be afforded by the courts or magistrates to slaves than to free persons against other wrong-doers than their masters; neither would the courts or magistrates admit or enforce any claim to property, possession, or service of a slave, except in behalf of a Mussulman or Hindoo claimant against a Mussulman or Hindoo defendant.

RETURN of Mr. P. Le Geyt, Acting Judge and Session Judge, Ahmedabad, dated
8th January 1836.

No. 5.

3. IN reference to the first* query of the commissioners, there is not one case on record either in the Dewanny or Foujdary department in which the legal rights of masters and their slaves with regard to their persons or property has been brought before the court.

4. In reference to the second query, the information is equally deficient, as the session judge does not appear to have ever had any complaint before him in which either party has pleaded as a slave, nor is there any case on record of a complaint by a slave against a master for cruelty.

5. In reply to the first part of the third query, from the total absence of any record to the contrary, I believe I may safely state, that less protection has never been afforded by this court to slaves than to free persons against other wrong-doers than their masters.

6. With regard to the latter part of the third query, I regret I can find no precedent on record; but I am inclined to think that all persons to whom the possession of slaves is not forbidden by the established laws in force regarding them, such as British-born subjects, or others amenable to his Majesty's supreme court of judicature, would be equally entitled to be guided by the regulations of the country in respect to purchasing or selling slaves as Hindoos and Mussulmans. But as this is more properly an interpretation of the existing regulations, I have perhaps over-stepped my proper limits in mentioning it; and if such be the case, I trust the judges will pardon me, and perhaps, if wrong, be kind enough to set me to rights.

* See No. 1 of this Appendix.

- No. 6. RETURN of Mr. J. A. Shaw, Judge and Session Judge, Conkan, dated 12th January 1836, to Letter of the Acting Register of the Sudder Dewanny and Sudder Foujdary Adawlut, Bombay, dated 20th November 1835.

I CANNOT find that there have ever been any cases, civil or criminal, in this court, determining the rights of masters over slaves. During my own service, certainly none have occurred. I am aware, however, that some rights do exist in the common or unwritten law of the country, and I, as a magistrate (in former days), have, on more occasions than one, given up a claimed runaway slave to his or her master, not only, however, taking such precautions as I could against undue severity, but distinctly holding out the civil court as the court of ultimate resort in case parties were disposed to dispute my award. I have used the term "unwritten law" in the foregoing sentence, because the laws regarding slaves have accommodated themselves to the feelings of the present government, in a great measure, although founded, originally, on the now impracticable rules prescribed in the Koran and the Shasters. Notwithstanding that the present practices bear a certain degree of reference to the written codes, I doubt very much whether any written code is held in strict and general observance.

Under circumstances like these, it would seem to me that there could be no very material difference in the principles on which decisions were framed between the slaves belonging to Christians and those belonging to Mussulmans or Hindoos. Slavery having been recognized, and the written law rejected, cases in which the rights of masters over slaves were tried would be determined according to circumstances; and by these circumstances a distinction could only be sanctioned in the specification of the civil rights which custom has introduced in the class of the parties who were interested in the dispute.

With the exception of such generally admitted rights over the property and person of the slave in the civil courts, and perhaps some trifling indulgence in the criminal courts, I do not know that a slave would, on the whole, enter our courts under circumstances less favourable than freemen.

- No. 7. ENCLOSURE of above, from Mr. W. J. Hunter, Acting Senior Assistant Judge and Session Judge, Rutnagiree, dated 6th January 1836.

2. In reply, I beg to acquaint you, that there are no cases in which the rights of masters over their slaves have been made a subject of investigation in this Adawlut, neither have any complaints ever been preferred by slaves against their masters on account of ill-treatment or cruelty.

3. In all cases where slaves and persons (not being their masters) are concerned, the same protection is extended to them as to other subjects.

4. Mussulmans and Hindoos are the only persons, in my opinion, who could be admitted by our courts as claimants to the service or possession of a slave, and these only in cases where the defendants are also either Hindoos or Mussulmans.

- No. 8. ANSWER of Mr. A. Bell, Judge and Session Judge, Poonah, dated 9th March 1836, to the Acting Register to the Sudder Dewanny and Sudder Foujdary Adawlut, Bombay.

WITH respect to the principle of the system, I can most sincerely declare, that as far as my judgment, personal observation, and other means of information, enable me to offer an opinion, it appears to me that, even admitting the clamour so generally raised against possessors of slaves in other parts of the world to be well founded (which, however, I cannot actually do to the full extent asserted), it cannot, I conceive, apply in the slightest degree to the state of persons so designated in this country, either within the British territories or other powers, in which this class of people almost always forms part of the family to which they are attached, and are treated with the greatest possible kindness. Thus, it may be asserted, proceeds from selfish notions. Admitting such to be the case, that very circumstance ought certainly to be considered as the strongest guarantee of protection to what is termed the enslaved party.

Under the above view of the case, the law of "master and apprentice" may be considered the most applicable in all its bearings.

It may appear a paradoxical assertion, but it can be clearly proved, that slaves are far better treated in the Portuguese settlements in India, and amongst the Mahomedans and Hindoos, who are all deemed to possess arbitrary notions, than they are by the Dutch colonists, who were formerly republicans.

In regard to the third question, I am not aware of our courts having on any one occasion afforded less protection to slaves than to free persons against other wrong-doers than their masters, both the Mahomedan and Hindoo laws prescribing the same protection to a slave, when wrongfully molested by any other than his master, as to a free person.

And in respect to the last query, namely, whether the courts admit or enforce any claim to property, possession or service of a slave, except on behalf of a Mussulman or Hindoo claimant, and against any other than a Mussulman or Hindoo defendant, I most undoubtedly think

think our courts would be fully justified in so doing under the provisions of section 26, Regulation IV., A. D. 1827. Appendix XVI.

I have the honour herewith to submit the remarks of my detached assistant on this subject. Bombay.

ENCLOSURE of Mr. *Bell's* Letter from Mr. G. H. Pitt, Acting Assistant Judge, Sholapoor, dated 11th January 1836. No. 9.

HAVING been in communication with the joint magistrate of this place, as well as the law officers of the court and the commissioners of this division of the Poonah zillah, I have now the honour to submit copy of the reply from the acting joint magistrate, in which he states that the records of his office furnish no information on this subject, and the several commissioners also state that no case of slavery has ever come before them since 1823, when their courts were established.

Perhaps in no civilized country has there been so small a proportion of slaves as in India. No part of the field-labour is carried on by slaves, though they are made use of for domestic purposes. Yet the number of persons are very limited in proportion to the population.

The soil in this country is cultivated by a caste both numerous and respectable; and it is the system of castes which is one of the causes of the exemption of slavery in India; and also slaves being usually prisoners of war, and the Hindoo caste of cultivators being of a sacred order, therefore they could not possibly associate; and hence those prisoners were not detained as slaves.

ANSWER of Mr. R. D. Luard, Acting Joint Magistrate, Bhavée, dated 3d January 1836, enclosed in Mr. Pitt's Letter. No. 10.

I HAVE the honour to inform you that the records of this office afford no information upon the subject.

2. I myself have had no experience whatever upon the points referred, and can therefore give no practical information, which is, I should imagine, the only description required.

3. I have referred the case to the different mamlutdars, who all report that slavery has not existed in their districts since the British Government.

ANSWER of Mr. B. Hutt, Acting Judge and Session Judge, Ahmednugger, dated 17th December 1835, to the Acting Register of the Sudder Dewanny and Sudder Foujdary Adawlut, Bombay. No. 11.

THIS is a very comprehensive question;* for, in the civil court, we must admit whatever appears to be the usage of the country or the law of the parties; and in the criminal court, except in the few cases falling under sections 30, 31 and 32 of Regulation XIV. of 1827, the law of the parties must also be the great guide. I have never yet been called on to pass judgment either in the civil or criminal court in any case of this nature; nor do I find any on the records of this court, but such as come under the above quoted section and regulations. Slavery exists to a great extent in this country. There are few amongst the Hindoo or Mahomedan population who can afford it that have them not; and the fact of no cases coming before the courts is either a proof of the very mild character of it, or the excessive ignorance of the whole of the lower classes of the protection which the British Government affords them, or a combination of the two, which, indeed, I believe to be the truth. The usage of the country and laws of the Hindoo and Mahomedans give the master full power over the property of his slave, and he can dispose of his slave also in loan, gift, or devise—a mode of transfer not noticed in our regulation, and, therefore, not restricted.

There has been no practical experience in these matters;† but were I required to try an ordinary case of assault in the criminal court, I should admit somewhat the same right on the part of the master that the English law allows in a parent over his child, or a school-master over his pupil; and which is also that recognized by the custom of the country and the law of the Hindoos and Mahomedans, and that which the very right of property in the slaves recognized by the regulation makes necessary. And as the heinousness of all offences will much depend on the moral or religious feeling of the class to which the culprit belongs, all but cases of a very aggravated nature would be considered entitled to exemption from‡ or a mitigation of, punishment on this account.

I can conceive none,‡ except they be sanctioned by the custom of the country or laws of the parties. There are no rules for the guidance of our courts but those here cited, as the government regulations sanction slavery under certain limitations. I apprehend, all not immediately bound by English law could claim redress in the civil or criminal court against their slaves were they obliged to seek it.

* Answer to query 1st.

† Answer to query 2d.

‡ Answer to query 3d.

No. 12. ANSWER of Mr. W. Birdwood, Assistant Judge and Session Judge, Kandeish, 11th December 1835, enclosed in above.

FROM the very nature of slavery, the master from the time he becomes possessed of the slave, must *ipso facto* be entitled to his property. The rights of the masters are, I believe, recognized as long as they feed, clothe and treat their slaves well. As the master possesses the slave's person, he also possesses every thing that can relate to it, as the slave can have no property of his own without his master's consent.

Since the promulgation of the regulation respecting slavery, it has, I understand, decreased considerably, although they are still brought down from Berar and Nimar by banjarees; not so much, however, as formerly, as the risk run by the importer is much greater. As no case of the kind mentioned in the 1st paragraph*, has come before the court, I am unable to give the information I could wish on the subject. The magistrate would, I have no doubt, be able to give a more full and detailed statement, as he is the authority in whom is vested the power by the regulations of investigating all cases connected with slavery.

2.† The magistrate does not, I should imagine, recognize the relation of master and slave as justifying acts which otherwise would be punishable. The same protection is afforded to slaves as to any other class of individuals. A slave, if ill-treated by his master, would be manumitted. They are brought up as members of the family, and are married by their masters. If not treated well they would, in all human probability, complain to the magistrate, and this of itself would be one great reason to induce masters to treat them with kindness, as if any ill-usage against them were established, they would be set free, and of course the master would lose the services of his slave. The Kusbeens, I believe, are the principal purchasers of female slaves.

With regard to this paragraph,‡ I should most certainly say there were not; as slavery is allowed by the regulations under certain restrictions, I fancy that the magistrate would be obliged to enforce any claim to property on behalf of a person not being a Hindoo or Mussulman in the same manner as if the parties were Mussulmans or Hindoos.

No. 13. ANSWER of Mr. J. B. Simson, Judge and Session Judge, Dharwar, dated 23d February 1836, to the Register to the Court of Sudder Adawlut, Bombay.

2. IN respect to the 1st query,§ the rights of proprietors over the persons and property of their slaves recognized by our courts and magistrates, there are certain qualifications laid down by enactment, by which we are of course bound to abide; there are other occasions and occurrences in which few officers, I imagine, would not support the slaves, although it is possible that, antecedent to the introduction of the British Government, their owners, on application to the ruling powers, might have been more favoured; for instance, I much doubt if any tribunal would now compel a slave, especially a female, to return to his or her master if any ill-treatment was proved against him. Unquestionably some property in the person of the slave does exist, and it is, I think, highly expedient that for the present such should be recognized; we must bear in mind that the obligations are reciprocal; that the slave has a right to sustenance, if unable to obtain his own livelihood, so long as he has obeyed his master; we cannot enforce this claim unless we in some manner compel the former to perform his part of the engagements; hence we must admit the master's rights over him; were it otherwise, in sickness, dearth, or other misfortune, what would become of the slave? We should be conferring on him a nominal emancipation, and entailing a serious injury; we should be following up a theory at the price of a practical benefit; we should grasp the shadow and lose the substance.

3. From a cursory examination, which is all I have had leisure to make, I understand that, previous to our government, there were two species of slavery,—the one in a manner voluntarily entered into, the other a compulsory,—the rights and privileges of master and bondsman in both often varying, and in many points alike.

4. The voluntary slave was one who had incurred a debt and engaged his or her personal services in liquidation of the principal or interest of that demand; the period of service was sometimes for life, sometimes for a limited period, and often till the debt should be repaid; the master had no power to sell such slave; if the debt remained unpaid at the death of the bondsman, the proprietor had no right, as master, over the heirs. The terms of the agreement settled his claim as a creditor of the estate; for these slaves could possess property which would descend to their children or others, in like manner as if they were altogether free.

5. The compulsory bondsman was a public criminal, whose offence did not authorize a capital punishment. Captives by chance of war were not viewed as slaves. Adultery was a common cause of slavery to women; these slaves could be bought and sold, or otherwise disposed of to others; they were deemed incapable of acquiring property in any way; their gains were due to their masters.

6. The features in which both kinds of slavery resemble one another were, that all castes but Brahmins, including their widows, would be enslaved, but only to one of the same or of a superior caste. Nor did they lose caste by slavery; and their masters were not allowed to require

* Answer to query 1st.

† Answer to query 3d.

‡ Answer to query 2d.

§ See No. 1 of this Appendix.

require services at their hands which might endanger such a contingency. Children of slaves were never on that account slaves. Even if a master incurred the expense of his slave's wedding, this gave him no claim over his wife and offspring as slaves. It is unusual to give female slaves in marriage; but if it occurred, the master lost all property in her, even if espoused to his own man slave, and she was bound to live with the latter rather than her former master. Moderate and reasonable punishment was sanctioned enough to ensure the due discharge of legal service; but ill-treatment warranted complaint to the public authorities, who were empowered even to release slaves if they considered that they had expiated their offences, or made good the debt which occasioned their servitude. Manumission, particularly at the master's death-bed, was not unusual, and was binding on the heirs. A master could at any time discharge his slave, except when from age or disease the latter could not gain a livelihood; he was bound to support him as long as these causes operated. No lapse of time prevented a master claiming a runaway slave.

7. In respect to the sale of children by their parents, it would appear altogether forbidden and punishable by the Hindoo law. It was connived at by the state in times of famine and difficulties, when the guardians had not the means otherwise of supporting existence; and in practice these sales were much more numerous than the above causes could in any way warrant; nor does the right of redeeming the child appear to have been reserved, and the powers of the purchaser corresponded with those of a master of a slave who had been a public offender.

8. If I am right in the foregoing summary, compulsory slavery is now no more; and there appears very little in the servitude voluntarily entered into, in which I should not feel disposed to enforce the old practice, except perhaps compelling a slave to return to his master; for, viewing it as a civil compact, I should consider the latter had his remedy at law, by a civil suit, to recover damages.

9. In respect to slaves purchased as children, such being clearly contrary to the law of the land, I should only so far give way to the custom of the country, in opposition to that law, as to consider the slave in the light of one who had become so voluntarily; and where the rights of the master by prescription exceeded those powers he would have possessed over such a bondsman, I would not recognize them in any way; custom may have great weight, even beyond the law; but surely not in opposition to it, and in actual abrogation of it.

10. Applying these principles to the remaining queries* of the Indian Law Commissioners, I might view with leniency a moderate assault, committed by the master upon his servant, occasioned by remissness on the part of the latter; but such indulgence would in no degree whatever extend to cases of cruelty or hard usage; either of which, in a civil action, would justify me, in my own estimation, in reducing damages from a runaway bondsman to a very diminutive sum.

11. I should consider a slave, when a party in court, as in all respects a freeman, excepting in so far as his own acts had rendered him amenable to his master, in purse or person, his actual labour if refused being compensated for through his pocket. But even this slight exception would in no wise extend to other wrong-doers, the subject of the commissioner's third query. These slaves retain entire their civil rights, except where they have mortgaged them in part to their immediate masters. And in reference to the concluding part of Mr. Millett's letter, I certainly, speaking generally, should both admit and enforce a claim on behalf of any one and against any defendant, without reference to their religions, where the latter had bound himself, in a manner, an apprentice to the former, for value received, and where the claimant had faithfully abided by his part of the agreement.

ANSWER of Mr. J. Vibart, Principal Collector, Surat, dated 16th December 1835, to Acting Register of the Sudder Dewanny and Sudder Foujdary, Adawlut, Bombay.

No. 14.

2. With regard to the first point* submitted, I have to state, that almost the only description of slaves known in these districts are the halees or hereditary bondsmen, and usually employed in agricultural labour. The master's claim to these individuals is generally founded on expenses incurred in bringing them up from infancy, or for sums of money advanced to them for marriage expenses. During the time this money is owing, the individual and his family are held in bond. On repayment of these sums they all become free. By a letter from government, dated 19th April 1822, the magistrates are authorized to apprehend and return to his master any halee who may abscond, provided the complaint is laid within 12 months of the time of the absconding, and there appears no ground for supposing that he has suffered ill-treatment on the part of his master. In the event of a halee refusing to return, the Sudder Foujdary Adawlut have ruled, under date 13th December 1830, that, though a domestic slave, he can only be punished as an ordinary servant under the provisions of clause 3, section 18, Regulation XII. of 1827. The master possesses no right or title to any property that may be possessed by the halee under any circumstances whatever.

2. With regard to the second query, I have to state, that the relation of master to slave justifies no acts which would be punishable in the case of any ordinary individuals. I have already mentioned, that for misconduct the halees can only be punished as ordinary servants.

For

* See No. 1 of this Appendix.

Appendix XVI.
Bombay.

For any criminal acts they would, of course, be tried in the same way as any other offender under our criminal code. All complaints by slaves against their masters would be disposed of precisely in the same manner as if the acts complained of had been perpetrated by any ordinary party.

3. Slaves are afforded precisely the same protection against other wrong-doers as any other class of the Honourable Company's subjects. With regard to the concluding part of the third paragraph, I do not consider that I should be justified in enforcing any claim to property, possession or service of a slave, except on behalf of a Mussulman or Hindoo, and against any other than a Mussulman or Hindoo defendant. This is merely my view of the case, as I can find nothing on record bearing on the point.

4. I can find no cases whatever on these records regarding any other description of slaves than those above-mentioned, and as the law commissioners require to know the practice that exists, I conceive any opinion unsupported by facts is not required.

No. 15. ANSWER of Mr. N. Kirkland, Acting Sub-collector, and Joint Magistrate, Broach, dated 18th December 1835, to the Acting Register to the Sudder Dewanny and Sudder Foudary Adawlut, Bombay.

2. IN reply, I beg to report for the information of the judges of the Sudder Dewanny and Sudder Foudary Adawlut, that no legal rights of masters over their slaves, with regard both to their persons and property, are practically recognized by the Company's courts and magistrates in this sub-collectorate. The slaves may live with their masters as long as they please; and in the event of their being dissatisfied, they are at liberty to go where they please; and if the masters apply to the magistrate, they are ordered to file civil suits for such damage as they may suffer from the loss of their slaves; but no force or threats, during my experience, has ever been made use of by the court or magistrate to prevail upon the slaves to return to their masters.

3. The practice of the courts and magistrates to recognize the relations of master and slave is to the same extent as other individuals independent of each other. When a complaint is preferred by a slave for cruelty or hard usage from his or her master, and if the charge is proved, the latter is dealt with in the same way as other subjects, without regard to the relation of master and slave; and should it appear that the master would molest the slave, he is required to find security for his peaceable conduct towards the slave as a protection to the slave.

4. I am not aware of any case in which less protection is afforded to slaves than to free persons against other wrong-doers than their masters. Nor do I think the court or magistrate would admit or enforce any claim to possession or service of a slave; and with regard to property, if the master proves in the court that the property is *bonâ fide* his, he would obtain a decree in his favour.

5. In the town of Broach there are 62 slaves altogether, two of whom are males and the rest females. In the pergunnahs of this sub-collectorate there are no slaves among the government subjects; there may, however, be a very few with the Thakoores of Ahmode, Kairwara, and other respectable Grassias.

No. 16. ANSWER of Mr. J. H. Jackson, Acting Magistrate, Ahmedabad, dated 23d February 1836, to the Acting Register of the Sudder Foudary Adawlut, Bombay.

I BEG to state, that in cases of complaint of a criminal nature made by a slave against his master, the same measure of justice would be awarded by me in his case as I should give to any other complainant, as I find nothing in the criminal code which would warrant a partial decision either in favour of a master or of any other person.

With respect to the rights of masters over the property of slaves (derived from lands, which alone the collector is competent to try), I have been unable, in the records of this office, to find a single instance in which a case has arisen wherein the merits of either have been tried. I should be inclined to be guided, however, were a case to arise, by section 26, Regulation IV., and the exposition of the law by the law officers, referring to the Hindoo law officer when the master might be a Hindoo, and when a Mahomedan, to the law officer of the Mahomedan creed.

In cases where one or both of the parties might happen to be of the Christian religion, and more especially a British-born subject, I should feel it my duty to refer such case for the consideration of higher authorities, making their decision my guide.

No. 17. ANSWER of Mr. W. Stubbs, Magistrate of Karia, dated 14th January 1836, to the Acting Register to the Sudder Dewanny and Sudder Foudary Adawlut, Bombay.

I do myself the honour, in reply, to state, that as the questions * asked by the Commission are not relative to what should be the course pursued, but what is and has been the course pursued in this zillah with respect to slaves, the only correct answers would be
afforded

* See No. I of this Appendix.

afforded by a reference to past proceedings, and to cases wherein complaints have been made by slaves against their masters, and decided by the officers of this department.

2. Having, therefore, carefully examined the magisterial records for a space of 10 years, and having found only one case in which master and slave are concerned as complainant and defendant, I can hardly give a decided opinion as to what has been the practice with reference to such cases.

3. In this solitary instance, the master was convicted of keeping a female slave with irons on her legs, and beating her. He was sentenced to six months' imprisonment. So that here was evidently no "recognition of any relation between master and slave which would justify acts otherwise punishable and constituting a ground for mitigation."

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ANSWER of Mr. William Simson, Acting Magistrate, Tannah, dated 16th March 1836, to the Acting Register to the Sudder Foudary Adawlut, Bombay.

No. 18.

2. MESSRS. COLES & REMINGTON differ from Mr. Davies in considering the persons of slaves to be absolutely at the disposal of the master, as well as their property. Mr. Davies's analogy between the relation of master and slaves and a contract seems to want precision. The conclusion, however, to be inferred is, that in his opinion the slave is very much the master of his own person and services. All agree that slaves can hold no property independent of their master, and also, that in case of personal ill-usage, masters are subject to the ordinary rules applicable to violence and assault equally with indifferent persons, some slight consideration, perhaps, being allowed for the parental relation in which they are held to stand towards their slaves. Mr. Remington's instance of the slave by descent being returned to the patell by the magistrate is very striking.

3. All think that the caste of the slave-owner would make no difference whatever in the view to be taken by the authorities when cognizant of cases, such as are particularized at the conclusion of the secretary's letter.*

4. Applying my own impressions to the evidence now submitted, and answering the points referred in a general way, I would offer it as my opinion that, in this collectorate, the rights of masters over the property of their slaves are absolute,—over their persons and services very qualified, ceasing the moment the master by using any *duresse* becomes obnoxious to the ordinary law; that very little allowance is made for the sovereign or paternal character of the master; that slaves are commonly very well used, and that caste is of no consideration at all in practice.

ANSWER of Mr. A. Remington, Assistant-collector and Magistrate, Tannah, dated 11th December 1835, to Acting Collector and Magistrate of Tannah, enclosed in No. 18.

No. 19.

AND first, as to what are the legal rights of masters over their slaves with regard both to their persons and property. I have always understood it to be held, and such practices as have come under my own observation confirm the impression, that the services of persons sold into a state of slavery are of right due to their master, and not transferable to other persons without his consent; subject to these disabilities are their wives, children and subsequent generation, who lie under the force of the same obligation to serve in the family of the original purchaser. In proof thereof, I would cite a case which occurred a few months ago, where some slaves, the descendants of persons originally sold into slavery, and the property of a Hindoo patell, having decamped into another talooka, entered the service of government as seapoys,† but, being claimed, were restored to their owner by order of the magistrate, and their situation declared vacant. As these persons can acquire no property on their own account, supposing always they be retained in servitude, from which some masters release them, especially those who, exhibiting a talent for any particular handicraft, are enabled, from the profit derived from their industry, to purchase "a sootee putra" or manumission, what property they do possess must be derived from and belong to their masters; who again, according to the rules which guide the relation between the two, may withhold their claim to it, as, where a slave is working out his own emancipation, he is nevertheless in a state of slavery, though comparatively free from its effect.

Slavery being of a very mitigated nature in this country, persons unfortunately so situated differ in no other way from menial servants (who themselves, in most instances, are under obligations, contracted to defray the expense of their marriage, to serve for a limited time) than what such a predicament commonly expresses, namely, a continued state of slavery, and are subject to exactly the same treatment, any departure from which implying an act of a criminal nature would constitute most undoubtedly a case cognizable in the ordinary tribunals; and this applies, of course, with greater force to others than their masters.

A right to the possession of a slave is not, I apprehend, confined to caste and persons who formerly retained slaves in their household, and perhaps now do, though in a more limited way, and such would find equal favour with the court as either a Hindoo or Mussulman.

* See No. 1 of this Appendix.

† Vide note at page 165 of the Report.

No. 20. ANSWER of Mr. *George Coles*, Acting Magistrate of Tannah, dated 9th March 1836, to Mr. *William Simson*, Acting Magistrate of Tannah, enclosed in No. 18.

1. It has always been my impression that the persons of slaves, with all they are possessed of, are solely the property of their masters; and, acting upon this, I should not hesitate, upon an application from his owner, in restoring the person and property of a slave who might have absconded from his house.

2. Nothing further would be considered by me as justifying the master who had been guilty of an act towards his slave, which, had not this relation existed, would be punishable, nor further mitigation of punishment be extended to him than what would be allowed by me to the head of a family in preserving the good order of his house; and any ill-usage or cruelty on the part of a master to his slave would be visited by me with the punishment provided by the regulations for cases of assault; and if a repetition of ill-treatment was foreseen, the master would be called upon by me to give security for his future good conduct towards his slave.

3. The fact of an individual being a slave would make no difference in the protection which I should feel it my duty to extend to him as to any free person who has been injured.

4. I am not aware that the possession of slaves is restricted to caste: and any claims to the person's service or property of slaves from others would be attended to by me in the same manner as those made by Mussulmans and Hindoos.

No. 21. ANSWER of Mr. *J. M. Davies*, Second Assistant Magistrate, Tannah, dated 11th March 1836, to Mr. *William Simson*, Acting Magistrate, Tannah, enclosed in No. 18.

2. In the talook of Rygur, there are 75 slaves, chiefly African; in the Rajpooree district, there are 18; in Sankse, there are 28; and in the talooka of Salsette and Oorun, there are 32; being a total of 153 slaves to a population of about 200,000.

6. The persons of slaves are the property of their masters only so long as the former tacitly consent to remain in a state of slavery. There has not, however, occurred a single case, during the 19 years of the Honourable Company's jurisdiction, in which this point has been tried in court. Practically, however, the slaves are only such so long as they comply, either tacitly or expressly, with the conditions of their masters. Sooner, indeed, than degrade themselves by appearing in court with a slave in the character of either plaintiff or defendant, the Mussulman or Hindoo masters of this part of India would consent to relinquish all claim upon their services. With regard to property, the case is different. The slave enjoys property (whether obtained in free gift or acquired by labour) only as a usufruct. The master lays claim to it in cases of death or of alienation. If a master relinquish his right over a slave, all property held by the latter at the time, unless especially provided by agreement, belongs to the emancipated slave.

4. With regard to the relation recognized by the local courts between master and slave, as justifying any acts which would be termed illegal amongst freemen, the point has never been yet tried in a civil court that I can discover. But I for one should never construe Regulations IV. or XVI. of 1827 as warranting any invidious and unjust distinctions. I cannot, however, discover either a civil or criminal case of this nature on the records of my charge.

5. Slaves have never been registered in these districts.

6. In fact, the relation between master and slave, as practically found to exist, bears a much nearer analogy to a contract, either express or implied, than to any recognized right on the part of the master or of obligation on that of the slave against the will of either party.

7. Slaves were originally brought down from the interior by a caste of traders called "Lummun," and were sold to the natives of these talooks during the period of the native government. Rights and obligations were recognized as reciprocal, and were insisted upon accordingly; but during the British rule by far the greater number of slaves have emancipated themselves owing to the unwillingness of their masters to try their right before any competent authority.

8. Alienation or transfer on the part of the masters is seldom known to occur. The descendants of the first purchased slaves are usually to be found in the family who first took them. They are in general well off as to bodily comforts, and are evidently satisfied with their lot. The fact of there being no tried case on record proves the facility with which they can, if they choose, rid themselves of their yoke without the interference of the magistrate; while to suppose that for 19 years the masters have successfully prevented their slaves from complaining would be highly improbable.

No. 22. ANSWER of Mr. *H. H. Glass*, Collector and Magistrate of Rutnagiree, dated 1st March 1836, to the Acting Register to the Sudder Dewanny and Sudder Foujdary Adawlut, Bombay.

2. In reference to the first point* of inquiry, as to the legal right of masters over their slaves, in regard to their persons and property, recognized by the courts and magistrates, I beg to observe that sections 30, 31 and 32 of Regulation XIV. of 1827, recognize slavery and the sale of slaves under certain limitations; and, although there are no instances on record

* See No. 1 of this Appendix.

record in this office of complaints having been made by a master against his slave, or by a slave against his master, yet on the occurrence of such, the interference of the magistrate, I should consider, would be restricted to the prevention of violent assault or unjustifiable treatment. The right to property would be decided according to the law of the master, under sections 26 and 27 of Regulation IV. of 1827.

3. With regard to the second point, there is no part of the Bombay code which would authorize a magistrate, in meting out punishment for an offence committed by a master against his slave, to show a greater degree of leniency to him than to any other offender. But the degree of authority and chastisement usually conceded as the right of a master of a family would, I imagine, to the full extent be granted to the owner of a slave. No less protection would be afforded to the slaves on complaints being preferred by them against other wrong-doers than their masters than to any other individuals.

4. I have doubts if any class of persons besides Mussulmans and Hindoos possess slaves; certainly none within my jurisdiction. No right of this nature, that I am aware of, has ever formed matter of litigation in our civil courts. But as the regulations now in force make no exception in favour of any particular class or sect, I think if a claim were made by a Portuguese for the property, possession and service of a slave, our courts could not refuse to admit it.

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ANSWER of Mr. *Richard Mills*, Magistrate, Poonah, dated 28th January 1836, to the Register of the Sudder Foudary Adawlut, Bombay.

No. 23.

2. I CANNOT call to mind that any dispute has ever been brought before me, between masters and their slaves, which has brought the question of the legal rights of the former over the latter under discussion. But were any complaint to be made, the course I should adopt would be, to refer the question for the opinion of the law officer, and act, in deciding, according to the general principles of justice and equity. Whilst I would protect the slave from any harsh and severe measure which the master might adopt, I would recognize the right of the master to exact such duties from the slave as are consistent with the maintenance of domestic authority, and the usages of the caste and religious law of the parties.

3. Independent of the power of the master over his slave, I would protect the latter in every respect the same as any other individual of the community. Being a slave is no authority for any one to tyrannize over him; and I would punish on complaint any acts of violence, &c., committed towards a slave, in the same manner as towards a free person.

ANSWER of Mr. *R. D. Luard*, Acting Joint Magistrate, Sholapoor, dated 3d January 1836, to Mr. *R. Mills*, Magistrate of Poonah, enclosed in No. 23.

No. 24.

THE records of my office afford no information upon the subject of slavery.

2. I myself have had no experience whatever upon the points referred, and can therefore give no practical information, which is, I should imagine, the only description required.

3. I have referred the case to the different mamletdars, who all report that slavery has not existed in their districts since the British Government.

ANSWER of Mr. *George Malcolm*, Acting First Assistant Magistrate, dated 26th December 1836, to Mr. *R. Mills*, Magistrate of Poonah, enclosed in No. 23.

No. 25.

2. As I have never had a case to decide between a slave and his master, and do not know of any precedent showing how such cases are in the habit of being disposed of by others, the following opinions are given with considerable diffidence:—

3. I consider that slavery under the Bombay presidency is only nominal, inasmuch as a slave remaining in his master's house depends on his own free will and pleasure. If a master were to solicit my interference in the case of a runaway slave, I should send a search for the slave, and, when brought before me, try and ascertain the following points: how far he had acted on the impulse of the moment; whether he had been seduced or not by the persuasions and bribes of others; and lastly, if ill-treatment was the cause. I should be guided, of course, greatly by the result of this inquiry into the cause of his running away, but in general should try and persuade the slave to return to his master's house; yet if he was obstinate and refused, I should not force him.

4. If a master was accused of having beat a slave boy, and should it appear to be the same kind of correction as a father might use towards a child, I should consider the master justified in so doing. But, generally speaking, the relation of master and slave does not justify any act which otherwise would be punishable; and I should extend exactly the same protection to slaves, on complaints preferred by them of cruelty or hard usage by their masters, as to any other claimants for justice.

5. I am of opinion that there are no cases in which the courts and magistrates afford less protection to slaves than to free persons against other wrong-doers than their masters. I should think that a slave had no right to claim for service; instead of which, he has claims on his master for clothing and subsistence, this being almost the only difference

Appendix XVI. between him and a servant, but that the courts and magistrates would admit and enforce any claim to property of a slave, no matter who the defendant might be.
Bombay.

No. 26. ANSWER of Mr. *H. P. Malet*, Acting Second Assistant Magistrate, Poonah, dated 5th January 1836, to Mr. *R. Mills*, Magistrate of Poonah, enclosed in No. 23.

2. I HAVE the honour to inform you, that I never had a case before me as to the legal right of a master over his slave, with regard to his person and property. In the absence of any specific regulations on this point, I should be guided by the opinion of the law officers of the caste, or by that of persons conversant with the usages of the sect to which the case related.

3. I should see no reason for altering the law, which operates upon other persons, in regard to a slave complaining of hard usage or cruelty practised on him by his master.

4. I should afford the same protection to a slave against any other than his master, as to one against any other independent person.

5. I should not feel myself officially bound to enforce or admit any claim to property, possession or service from a master over his slave in any way, but would endeavour to induce the parties concerned to abide by the usages of their caste explained to them by persons acquainted with the same.

No. 27. ANSWER of Mr. *H. E. Goldsmid*, Assistant Magistrate at Kusba Indapoor, dated 2d January 1836, to the Magistrate of Poonah, enclosed in No. 23.

I BEG to state, that never having had complaints preferred before me by slaves against their masters, I am unable to speak from actual experience. But in event of a slave being ill-treated or abused, I should afford him as much protection as if he were a freeman, no regulation, of which I am aware, pointing out a contrary course. In event, however, of a person thinking that his property in the slave implied a power to ill-use him, I should always permit his ignorance to plead in mitigation of punishment for a first offence.

With regard to the 3d paragraph * of the letter from the secretary to the law commission, I have only to observe, that I cannot conceive a case in which a magistrate would afford less protection to slaves than to free persons against other wrong-doers than their masters. Were a claimant to be Mussulman, Hindoo, or of any other caste, to prefer a claim to property, possession or service of a slave, I should, before passing a decision, request the instruction of my superiors.

No. 28. ANSWER of Mr. *R. D. Luard*, Acting Joint Magistrate, Sholapoor, dated 3d January 1836, to the Register of the Sudder Foudary Adawlut, Bombay.

I HAVE the honour to inform you that the records of this office afford no information upon the subject.

2. I myself have had no experience whatever upon the points referred, and can therefore give no practical information, which is, I should imagine, the only description required.

3. I have referred the case to the different mamletdars, who all report that slavery has not existed in their districts since the British Government.

No. 29. ANSWER of Mr. *H. A. Harrison*, Magistrate of Ahmednuggur, dated 14th December 1835, to the Acting Register, Sudder Dewanny and Sudder Foudary Adawlut, Bombay.

2. IN reply, I beg you will acquaint the judges, that during the period I have acted as a magistrate I have never had occasion to consider what the legal rights of masters over their slaves are with regard to their person and property. A question respecting these rights never having arisen, they have been exercised, as heretofore, without inquiry or interference on the part of the magisterial authorities.

3. Cases to which the points noted in the 2d and 3d paragraphs * refer never having been brought before the magistrate, it remains to be determined what practice should be observed on each particular point.

4. Respecting the last subject of inquiry, it would seem to be very doubtful what course should be pursued, and the instructions of the judges would be required before the magistrate ventured to act in such a case as that supposed by the commissioners.

No. 30. ANSWER of Mr. *W. S. Boyd*, Magistrate, Khandeish, dated 18th February 1836, to the Register of the Sudder Foudary Adawlut, Bombay.

2. IN answer to the first question,* I should say that slaves legitimately acquired previous to the promulgation of the Regulations of 1827, are considered in our courts, in ordinary cases,

* See No. 1 of this Appendix.

cases, as subject to the same rules which the usages of the country formerly prescribed. What I mean by "ordinary cases," is simply with regard to the right to profit by their sale or labour; that is to say, our courts would sustain an action for the recovery of a slave or the price of one, provided neither cruelty nor the insufficiency of the claim did justify the manumission of the individual, or the dismissal of the suit.

3. With regard to their property, there is no doubt that the property of slaves dying without heirs is claimed by their owners. The property of slaves during their life-time was never taken from them unless in cases of bad behaviour; but of course when the person itself is the property of an individual, it appears but an empty privilege, the alleged right to hold property. I beg to be understood as speaking as a magistrate, not having for many years been employed in the civil branch of the judicial line.

4. Since 1827 no slave can, agreeably to the regulations, be sold without the sanction of the magistrate, and the instances are so few in which that sanction will be applied for, that I consider the present code as calculated to effect the total suppression of slavery. Only one application to purchase a slave has been made since 1827 in this province; but as many have been manumitted on the irregularity of the sale being shown, the feelings with which this traffic is received by the ruling power is so well known that its existence as a source of profit will soon cease, if it has not already ceased altogether.

5. With regard to the second query,* I beg to state, that I consider the right of a master over his slave to extend to a reasonable portion of labour, and that I would recognize the right of a master to chastise his slave only as far as I would that of a parent to punish his child, and that any assault or injury complained of by the slave, exceeding what I have described, would be listened to by me as if no connexion whatever existed between the parties.

6. In answer to query 3d, a slave is in all respects equally protected with all members of the community whatsoever; and with regard to the latter part of the query, I should consider it the duty of the courts to support just complaints of a native-born Christian or Jew against his slave, as well as that of either Mussulman or Hindoo. No European could, of course, possess a slave.

7. In conclusion, I beg to enclose an extract† from a report on this subject by a very intelligent assistant of my own, Mr. M. Larken, and I shall only add, in agreeing with that gentleman's remarks, so little is domestic slavery a source of tyranny and oppression, that in the course of six years I have been at the head of this province, I have myself only had three complaints.

8. Slaves for domestic purposes will now never be purchased in the Company's territories. The individuals who require and are permitted to purchase such costly additions to their establishments are all people of the better ranks, and too well aware of our strong prejudice against slavery, in any shape, to make themselves individually prominent, by applying for a formal permission to do that which, though not perhaps forbidden, they are conscious is disgusting.

EXTRACT of a Report from Mr. *Metcalf Larken*, Assistant Magistrate, to the Address of the Magistrate in the Province of Khandeish, dated 1st December 1833, enclosed in No. 30.

No. 31.

10. ON the subject of domestic slavery I must premise, that since the operation of the Regulations in this province, sales of slaves have, of course, become of very rare occurrence, owing to the various risks and insecurity attending all illegal transactions. Female slaves are, to a very great proportion; more numerous than males. The latter are always brought up from childhood in the house and with the family of the master; when they grow up they are treated rather as humble relatives than menial servants; and as the children are always purchased when very young, the attachment existing between them and the members of their master's family, who have "grown with their growth," is any thing but unnatural or surprising. Their condition is not one to be lamented, and (as was said of the slaves of others) is far preferable to the condition of free citizens in many of the other states.

11. Should a family fall into decay, the opportunity is not seized by the slave to break this thralldom; but in almost every instance his conduct has appeared uniformly faithful, and he has clung to the fallen fortunes of his master's house, induced to do so, not only from gratitude, but from the feeling that his affections and home are theirs.

12. Nor is this feeling entirely unreciprocal. No person of respectability, though in straitened circumstances, will sell his slave. An act of this kind militates alike against public opinion and private inclination.

13. The number of female slaves, as I have observed, is far greater than that of the males. They too are bought when very young, and are brought up with the women of the family in domestic employments. There is no doubt, however, but as they grow older, personal attractions are not without the effect of saving them from the more laborious parts of household drudgery. That their condition be enviable or otherwise, must, of course, depend upon circumstances. It is sufficient here to remark, that a complaint of ill-treatment from either male or female slave is of the very rarest occurrence.

14. There

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14. There is another kind of slavery which requires no illustration,—I allude to the male and female slaves of dancing-women. The most effectual way of recruiting a “typha” was by purchasing children and educating them to the profession. This class of people, under the old government, formed a constant market for the slave-dealers; but since the country came into the Honourable Company’s possession, for reasons before mentioned the practice has obviously decreased; and as it is now generally well known that no sale under these circumstances is legal, this abominable traffic will rapidly cease altogether.

No. 32. ANSWER of Mr. *John A. Dunlop*, Acting Principal Collector and Magistrate, Belgaum, dated 19th March 1836, to the Acting Register to the Court of Sudder Dewanny and Sudder Foudary Adawlut, Bombay.

2. THE only cases that appear to have been brought before the magistrate were as follows, from the Chuckores talooka, where it was discovered that seven female children had been purchased by dancing-women for the purpose of bringing them up to their degrading profession, but the purchases were found to have been made before that district was subjected to our regulations, so that the purchasers could not be punished, but the sale was declared illegal, and the slaves were set at liberty; though it may be doubtful if all of them availed themselves of their freedom to quit their mistresses.

3. There was also one case of the purchase of a girl by a dancing-girl or prostitute, all the parties concerned in which, to the number of ten, were committed, tried and condemned to various degrees of punishment; but it appeared on the trial that they were ignorant of the criminality of their act, and means were consequently taken to publish the law more generally; which, I trust, have been successful.

4. Domestic slavery prevails very extensively in the respectable families of this zillah, and among the petty states and jageerdars under the political agent, more especially among the Marattas, who have few other domestic servants.

5. These are principally females who perform the domestic drudgery of cleaning, plastering (with cow-dung) their floors and houses, grinding grain, carrying water, &c., and were formerly obtained, sometimes by purchase, but more commonly by condemnation to this state for various offences, to which the prospect of benefiting by their services offered strong temptations.

6. It has not unfrequently happened that these persons have fled from their owners, or, more properly, masters, generally in consequence of real or fancied ill-treatment. These persons have not been compelled to return, but a mutual agreement generally recommended, which both parties are usually well disposed to, for the sake of obtaining their services on one side, and on the other to secure at once a home and provision for old age.

7. The progeny of these slaves continue nominally in the same state, but are generally the most trusted and best treated of dependents; and from the general knowledge that slavery has been abolished by government being spread over the country, I am of opinion that any treatment sufficiently severe to induce slaves to forego the benefits of their situations, and to break the other ties that bind them to their master’s service, would be followed by desertion; and unless persuaded to return of their own free will there is now no means of compelling service, so that it seems in this respect to be placed on the best footing for both parties, and scarcely deserves the name of slavery.

8. The sources from which slaves used to be obtained are now entirely closed, and therefore the class of domestic slaves must in a great measure die out with the present generation; and unfortunately the class of persons able to afford the luxury within our own territories seem destined to an almost equally speedy extinction; the majority of both are, therefore, likely to escape from the operation of any law that could now be made on the subject.

9. The sale of females for prostitution, the most likely to continue, is already sufficiently provided against by our laws.

10. I am not aware of any distinction being ever made between slaves and free persons when brought before magistrates. Both would be equally listened to as witnesses or complainants, and both would have the same measure of punishment dealt to them for offences; and, with the exceptions allowed by the 30th, 31st and 32d sections of Regulation XIV. of 1827, both would be perfectly upon a par.

APPENDIX XVII.

GUICOWAR'S APPLICATION.

MAGISTERIAL Power of surrendering Slaves.

1. Translation of a Yad from his Highness the Guicowar to the Political Commissioner, dated 6th Zilkad 1238; A. D. 2d February 1838.
2. Letter from Mr. R. H. Arbuthnot, Joint Magistrate, Punpre, to the Magistrate of Ahmednugger, dated 2d March 1838.
3. Letter from Mr. H. A. Harrison, Magistrate, Ahmednugger, to the Secretary to the Government of Bombay, Judicial Department, dated 8th March 1838.
4. Translation of a Yad from his Highness the Guicowar, 17th Zihaj; A. D. 14th March 1838.
5. Minute by the Right honourable the Governor of Bombay, dated 8th April 1838.
6. Minute by the Honourable Mr. Farish, dated 10th April 1838.
7. Idem by the Honourable Mr. Anderson, dated 11th April 1838.
8. Idem by the Right honourable the Governor of Bombay, subscribed to by the Honourable Mr. Farish, dated 16th April 1838.
9. Minute by the Honourable Mr. Anderson, dated 17th April 1838.
10. Minute by the Right honourable the Governor of Bombay, dated 1st May 1838.
11. Minute by the Honourable Mr. Farish, dated 2d May 1838.
12. Minute by the Honourable Mr. Anderson, dated 3d May 1838.
13. Translation of a Yad from his Highness, dated 4th Suffer; A. D. 29th April 1838.
14. From the Political Commissioner and Resident, Baroda, to the Secretary to the Government, Bombay, dated 2d May 1838.
15. From idem to idem, dated 2d April 1838.
16. From Mr. W. B. Salmon, Acting Superintendent of Police, Poonah, to the Political Commissioner and Resident, Baroda, dated 21st March 1838.
17. Minute by the Right honourable the Governor of Bombay, dated 21st April 1838.
18. Minute by the Honourable Mr. Farish, dated 21st April 1838.
19. Minute by the Honourable Mr. Anderson, dated 23d April 1838.
20. Minute by the Right honourable the Governor of Bombay, subscribed to by the Board, dated 30th April 1838.
21. Letter from the Secretary to the Government of Bombay to the Political Commissioner for Guzerat, dated 18th May 1838.
22. Letter from Mr. James Erskine, Political Agent in Kattewar, to Mr. J. P. Willoughby, Secretary to the Government of Bombay, dated 31st December 1837.
23. Deposition of Seedee Moobaruck, Rajcote, dated 15th September 1837.
24. Minute by the Right honourable the Governor of Bombay, dated 26th January 1838.
25. Minute by the Honourable Mr. Farish, dated 27th January 1838.
26. Minute by the Right honourable the Governor of Bombay, dated 2d February 1838.
27. Minute by the Honourable Mr. Farish, dated 3d February 1838.
28. From the Secretary to the Government of Bombay to the First Assistant Political Agent in charge, Kattewar, dated 10th February 1838.
29. From Mr. James Erskine, Political Agent, Kattewar, to the former, dated 24th March 1838.
30. From the First Assistant Political Agent in charge, Dhorajee, to Colonel Pottinger, Resident in Cutch, dated 26th February 1838.
31. From the latter to the former, dated 19th March 1838.
32. From the Secretary to the Government of Bombay to the Political Agent, Kattewar, dated 9th June 1838.
33. From idem to the Accountant-General, dated 9th June 1838.
34. Letter from the Officiating Secretary to the Government, Judicial Department, to the Secretary to the Government of Bengal, dated 24th September 1838.
35. Letter from the Register of the Sudder Dewanny and Nizamut Adawlut, Fort William, to the Secretary to the Government of Bengal in the Judicial Department, dated 9th Nov. 1838.
36. From the Acting Chief Secretary to the Government of Bombay to the Secretary to the Right honourable the Governor-General of India, Camp, dated 12th September 1838.

TRANSLATION of a Yad from his Highness the Guicowar to the Political Commissioner, dated 6th Zilkad 1238; A. D. 2d February 1838.

My daughter, Eshada Bacc Ghoorporee, on her return from Poonah to Baroda, remained for a short time at Nassick. There two female slaves of hers, named Dhoondie and Parvattee, ran away from her service. These two were, in the presence of Mahadar Rao

262.

4 A

Sheraboode,

Appendix XVII.

No. 1.

554 APPENDIX TO REPORT FROM INDIAN LAW COMMISSIONERS

Appendix XVII. Sheraboode, given over to the Company's officer at Nassick. This sircar is about to send Gubbagee Seapoy to Nassick to bring them back. Let a letter, ordering them to be given to Gubbagee, be immediately written to the gentleman at Nassick, and sent to me for transmission.
Guicowar's Application.

No. 2. FROM Mr. R. H. Arbuthnot, Joint Magistrate, Punpree, to the Magistrate of Ahmednugger, dated 2d March 1838.

THE resident of Baroda having transmitted a yad from his highness the guicowar, requesting that two female slaves who had accompanied his daughter, Eshada Bae Ghoreeporee, from Poonah to Nassick, and had there left her, may be made over to a person sent by him to receive them, I beg you will do me the favour to represent to the Right honourable the Governor in Council, that both women object to proceed to Baroda along with the person sent for them, and that I have to request his instructions regarding the disposal of them under section 5, Regulation XI. of 1827.

2. One of the women, by name Dhoondee, states she accompanied Eshada Bae from Baroda on her journey to Poonah, about a year ago, and remained with her there, but subsequently left her at Nassick on her return to Gujerat, in consequence of ill-treatment.

3. The other, by name Parvattee, declares she is an inhabitant of Poonah, and has never been in Gujerat. She took service with Eshada Bae at Poonah, and left her at Nassick from the same reason.

No. 3. FROM Mr. H. A. Harrison, Magistrate, Dongurgaon, to the Secretary to Government of Bombay, dated 8th March 1838.

I HAVE the honour to transmit copy of a letter from the joint magistrate of Nassick, dated the 2d instant, requesting the instructions of government under section 5, Regulation XI. of 1827, respecting two female slaves, the delivery of whom has been demanded by his highness the guicowar, and request you will favour me with the instructions of government for the guidance of the joint magistrate.

No. 4. TRANSLATION of a Yad from his Highness the Guicowar, dated 17th Zihaj; A. D. 14th March 1838.

(After recapitulating the former yad.) The letter sent by you was forwarded by the hand of Gubbajee Seapoy to the gentleman at Nassick, but he, raising objections about their consent or non-consent, has not, up to this time, given up the slave-girls to Gubbajee. The slaves of this sircar have run away; and notwithstanding that they are actually in the possession of the gentleman at Nassick, he raises objections to giving them back. Let another letter, therefore, be written to that gentleman, directing him to give them up immediately, without any further objections, to Gubbajee Seapoy.

No. 5. MINUTE by the Right honourable the Governor of Bombay, dated 8th April 1838.

THERE is a good deal of difficulty in dealing with cases like this on principle.

Slavery, however, is not unlawful here, nor do I find that the regulations forbid the export of slaves for the purpose of sale or prostitution. Therefore, I am not aware that the guicowar calls on us to do any thing illegal, or to do any thing so palpably *contra bonos mores* as to be for that reason out of the question.

The slaves, however, plead ill-treatment as the cause of their having deserted their mistress. In an ordinary case, I think, this would impose on us the duty and confer on us the right of inquiring into the truth of such plea, and to resist the demand if the plea were established. But the high rank of the mistress seems to me to preclude our taking that course, and, under all the circumstances, I am inclined to say that we should redeem these slaves.

If this view is concurred in, we must call on the collector to state, as well as he can, the price of each. Possibly the sum given by the guicowar lady for the Poonah girl may be ascertained, and it is even possible that the slave may have relations willing to redeem her. This should be inquired into, and, to save time, the collector might be authorized to communicate directly with the Poonah authorities.

The collector should transmit to us such information as he can get, and also a translation of the guicowar's yad of 8th April.

No. 6. MINUTE by the Honourable Mr. Farish, dated 10th April 1838.

IN a recent case in Kattewar, the redemption of a runaway slave on the ground of ill-treatment was sanctioned, and there are perhaps stronger grounds in the present case for the same course. To avoid the embarrassment of not surrendering them, it seems the best course, and I concur in this as a special case.

MINUTE

MINUTE by the Honourable Mr. *Anderson*, dated 11th April 1838.

No. 7.

I THINK there are great objections to either course.

MINUTE by the Right honourable the Governor of Bombay, subscribed to by the Honourable Mr. *Farish*, dated 16th April 1838.

No. 8.

I HAVE nothing better to propose than the course stated in my minute of the 8th instant.

MINUTE by the Honourable Mr. *Anderson*, dated 17th April 1838.

No. 9.

Is there an obligation to give up the slaves? If such obligation exist, it must be complied with. I do not see how it is met or got over by redeeming the slaves. If there is not the obligation, then, I conceive, we must leave them alone to do as they please.

MINUTE by the Right honourable the Governor of Bombay, dated 1st May 1838.

No. 10.

I TRUST I shall not be thought to act disrespectfully towards the board if I do not prolong discussion in cases when the measures I take the liberty of proposing are objected to, but without any one specific proposition being made on the other side. I am aware that the case is a difficult one, and think it probable that a better adviser might devise some better mode of dealing with it than I have done; but none such has occurred to me.

MINUTE by the Honourable Mr. *Farish*, dated 2d May.

No. 11.

I REFER to my first minute, of the 10th April.

MINUTE by the Honourable Mr. *Anderson*, dated 3d May 1838.

No. 12.

1. I QUITE regret to have given so much trouble to the Right honourable the Governor. My object was not to prolong discussion, but that the determination the board might come to should be correct. The proposed course appearing to me doubtful, I so stated it, with an impression in my own mind, at the same time, that the subject would then form a matter to be brought up at the council board, when, after being considered, it could be disposed of.

2. I may be wrong in imagining this the usual mode in which the board would act in such a case; but I claim some indulgence, in not yet being quite aware of the usual mode in which business is transacted.

3. Upon the question itself, I would beg to refer to a minute I wrote a few days ago on a case of slaves being claimed. The present case differs, in the demand being made by his highness the guicowar, but in other respects, as far as relates to the practice of our magistrates on claims for delivering up slaves, it is the same.

The question I put in my last minute on the present reference is this: What is the obligation we are under to give up the slaves? If it is by any article of the treaty, let it be shown, and then if the treaty imposes the obligation, it must be complied with.

In regard to the course of redeeming the slaves, I do not think it an expedient course. It is not one that would be liked or be assented to by his highness, I should imagine; and if the treaty does not oblige us to cause the return of the slaves, it is not necessary.

Before, too, it could be done, I imagine the expenditure must be confirmed by the Government of India.

As it is a political question, and one of some general importance, it might possibly be wise to refer it to the Government of India to know how such a case would be dealt with by the magistrate there, on a similar demand by any foreign prince with whom we are in alliance. I hope I shall not be here thought as desiring to prolong discussion, but simply to do what is right, that the best conclusion may be come to.

TRANSLATION of a Yad from his Highness, dated 4th Suffer: A. D. 29th April 1838.

No. 13.

(After recapitulating the foregoing.) NOTWITHSTANDING my application for another letter to Nassick, the slave-girls have not been as yet given up. Let another letter, therefore, be given to me for that gentleman, according to the yad of the 17th Zihaj (14th March 1838), for this sircar's people have been detained three months at Nassick. Let a letter be written directing that immediately on its receipt the slave-girls be given up.

(True translation.)

(signed)

W. Courtney,

2d Asst. Pol. Comr.

(True copies.)

(signed)

L. R. Reid,

Actg. Chief Secy. to Govt.

No. 14. FROM the Political Commissioner and Resident, Baroda, to the Secretary to Government of Bombay, dated 2d May 1838.

I REQUEST you will do me the favour to represent to the Right honourable the Governor in Council, that his highness the guicowar is much dissatisfied at two female slaves of his daughter's having run away from her service, and that, although placed under the surveillance of the joint magistrate of Nassick, she is unable to recover them.

2. I received a communication from his highness on the 2d February last, and sent a copy of it to the joint magistrate of Nassick on the 6th, through his highness's people.

3. On the 14th March a second note was received, stating that the authority at Nassick, allowing objections to be raised of the slaves being unwilling to return, had not surrendered them, and again desired my interference. Consequently, on the 19th of that month, I forwarded a copy of the note to the joint magistrate, but to neither of these representations have I been favoured with any reply. I have been unable, therefore, to give any satisfactory explanation to his highness of the reasons that have prevented ready compliance with his wishes.

4. As his highness now complains of the detention of his people at Nassick, I have no other resource left than to address the Right honourable the Governor in Council, requesting that speedy measures be taken to remove the molestation, and the slave-girls be given up.

5. Natives of this country are tenacious of all matters connected with domestic arrangement; and as the high personage in question is dissatisfied, I am led to hope that a satisfactory disposal of the subject may soon take place.

6. I myself can offer no opinion on the reason for delay, not having been informed of any legal impediment to the delivery of the females. But adopting the facts as stated in his highness's notes to me, I should think that as domestic slavery is permitted by universal custom among natives of India and the laws of the Hindoos, which have never been abrogated by any legislative enactment in England or India, there can be no valid objections to mete out justice to his highness on this occasion; for I cannot persuade myself the Right honourable the Governor in Council would countenance the operation of private notions of right and wrong in supersession of written law, by which alone a magistrate should be guided in the discharge of his official duties.

No. 15. FROM the Political Commissioner and Resident, Baroda, to the Secretary to Government of Bombay, dated 2d April 1838.

1. I HAVE the honour to request you will submit the subject of this address for the consideration of the Right honourable the Governor in Council, that instruction may be issued placing the matter to which it relates on a proper footing.

2. A person at Baroda went to Poonah, accompanied by a male slave belonging to his father; this slave left him without permission, and would not return after every proper endeavour had been used on the spot. The father applied to me to afford him assistance. In consequence, I addressed a letter to the superintendent of bazars at Poonah, requesting his aid to obtain restoration, but without any proper effect, as will be seen from his reply, which I submit with this letter. In his reply he asserts, that no power is vested in him by which he can in any way interfere or enforce his return.

3. By this denial of justice the master of the slave is injured in his property, and I should think the superintendent is not justified in acting as he has done; for he possesses the same powers within military limits that a zillah magistrate does within his jurisdiction under general regulations.

4. On the introduction of our rule, we found slavery to exist, sanctioned by the laws of the country; and in India there has been no legislative enactment doing away with slavery, or making any distinction on the relative positions in which master and slave stand to each other. In fact, the property of the owner in a slave is as much respected by the constitution at this present time as it ever was.

5. The only enactment touching slavery is entirely distinct from this case, and pertains to the purchase and sale of slaves.

6. Magistrates restore runaway slaves. Indeed they are bound to yield their aid in so doing in the same way as in cases of master and servant, or in matters connected with the forcible detention of property, while there is no law, rule or recognized custom to the contrary that I am aware of.

7. Mr. Salmon is not singular in the opinion he has given; for many have erroneously acted on the same principle, emanating, I believe, from emancipation of slavery elsewhere by the British Parliament, but which does not extend to domestic slavery in India; and as judicial and magisterial officers are bound to administer the laws, they should regard those only that are prescribed for their guidance.

No. 16. FROM Mr. W. B. Salmon, Acting Superintendent of Police, Poonah, to the Political Commissioner and Resident, Baroda, dated 21st March 1838.

1. IN answer to your communication, No. 101, dated 14th February 1838, received through Sheik Umeeroodeen, I beg to inform you, that the slave alluded to is not detained here by me, but is at present residing in the sudder bazar, and objects to return to his master.

2. I beg further to state, for your information, that there is no power vested in the superintendent of police by which he can in any way interfere or enforce his return.

MINUTE

MINUTE by the Right honourable the Governor of Bombay, dated 21st April 1838.

No. 17.

1. THERE seem to me to be considerable difficulties in this case, though I quite agree with Mr. Sutherland that we are not to apply to it European standards of law or feeling. The *status* of domestic slavery is, in this country, a legitimate one, and while it subsists, there are obligations arising out of it which none can be justified in violating, and which the magistrate is on occasion bound to enforce.

2. In the present instance, a foreigner travelled into the Bombay territories, accompanied by a slave, who refused to attend him back on his departure. On that refusal taking place, the master might undoubtedly have applied to the magistrate, who would, I presume, have summoned the slave, and called on the master to prove his title. I see nothing in the regulations as to the nature of the proof required, and know not the practice; but I do suppose that the alleged slave would have been allowed a sufficient *locus standi* in the magistrate's court to dispute the claimant's title, either on the ground that he was not his slave, or that, having been such, the relation had, by subsequent consent, or some other cause, been dissolved, or, at all events, that the master by cruel treatment forfeited his right to enforce it.

3. All this would have been matter of regular inquiry and adjudication, the parties being confronted, and the witnesses being examined on oath in open court; and the decision would, I presume, have been examinable by a higher judicature.

4. It seems to me a very different case when a person residing at Baroda claims to be the master of a person residing in the heart of the Bombay territories, and through the British resident calls on the local Bombay magistrate to seize the person so claimed, and to deliver him up to the foreign master. The title here is made out, if made out at all, before an officer, who has, properly speaking, no judicial powers, and by an *ex-parte* proceeding, in the absence of the party who is to be so deeply affected by it; and it is to be enforced, if at all, by the local magistrate, on a mere intimation of it by letter, without going through any part of that judicial process which is necessary in all other cases of property claimed by a suit at law, and to which the master must have submitted had he preferred his claim personally, and without affording to the alleged slave any opportunity of appealing against the decision if unjust.

5. There can be no doubt that a foreigner may sue in our courts of civil justice for the restitution of property unjustly withheld from him, but there he must, I apprehend, proceed in one of two ways. He must appear before the court either personally or by an attorney lawfully constituted, and in either case he must establish his claim by sworn proofs, subjected to strict examination in the presence and on the part of the resisting party, and involving the penalties of perjury if found to be false.

6. I see not why the same principle does not hold in such an instance as the present. It would undoubtedly hold, I presume, if the property claimed were of any other kind. Let us suppose this Baroda inhabitant to inform the British resident that there was a horse or a bale of goods in the possession of a person at Poonah, which such person refused to give up, and then let us suppose the resident to write to the magistrate of Poonah, assuring him that he (the resident) had satisfied himself of the justice of the claim, and therefore requested the magistrate to seize such horse or bale of goods, and forthwith to send it by a careful person to Baroda. Would any magistrate listen to such an application? Or could he be censured for not listening to it? Yet it cannot be conceived that less care or ceremony is necessary when the property claimed is the person of human beings.

7. There is another class of cases which may be referred to on the present occasion. A foreign subject accused of crimes, or suspected of machinations against the state to which he belongs, flies into our territory, and, being reclaimed through the British resident at that state, is given up by order of this government. This, however, is confined in the cases of persons suspected of being criminals or traitors, and even in such cases a compliance with the demand is by no means a matter of course. It must be an act of the government done either on solemn consideration of the particular circumstances, or in fulfilment of some stipulation in a treaty which pre-supposes such consideration to have been given to the subject generally. No magistrate would give effect to such a demand, except under orders general or particular from his government. Nor would any government exercise on light grounds a power which implies, I would not say vigour beyond the law, but certainly a supersession of the ordinary forms of judicial procedure.

8. How far the case of a fugitive slave would fall within the class just described, I will not attempt to determine. It certainly would fall within that class if the fugitive were suspected of having robbed his master, or of some other crime; and possibly the very fact of his flight might be thought to afford *prima facie* ground for such suspicion. But to apply the rule where no crime is alleged or pretended to have been committed, would, as it appears to me, be a very hard proceeding. I know that in our slave colonies the simple refusal of a slave to follow his master would have subjected him to be handled very roughly; and this is, I conceive, still the case in several of the united states of America, but I am not prepared to act on those transatlantic precedents in this country.

9. The board will judge whether or not the above remarks sustain the proposition with which I set out, namely, that the question before us is one of difficulty. I am, however, in the present instance, peculiarly averse to proceed in a summary way, because the master, or at least the person whom the proper master allowed and directed the slave to attend as such, had the full opportunity of preferring his claim in the regular manner before the magistrate of Poonah or before the superintendent of bazars, and, as far as appears, voluntarily pretermitted such opportunity. He was at Poonah when the slave

Appendix XVII.

Guicowar's
Application.

refused to follow him. Why did he not at once summon him before the magistrate or the superintendent of bazars? For any thing that appears, he felt that he could not prove or could not press his title. Perhaps he had discharged the slave, perhaps he had treated him cruelly; and all this would have appeared had he gone before the magistrate. He therefore abstains from so inconvenient a course, assured that, on his return to Baroda, a short application to the resident will set all to rights, and restore him the slave in spite of all resistance.

10. On a recent occasion when the daughter of the guicowar preferred a claim nearly similar to the present, I was willing to evade the difficulty by redeeming the two slaves demanded; her rank seemed to me to render that course inconvenient, as it was both advisable and practicable; but it is planning a course to be followed only under special circumstances. In this instance we must face the difficulty; and, as at present advised, I should be apt to say that the claimant, if desirous of recovering his slave, must proceed either as an inhabitant of Poonah would have to proceed in a like case, or, if he chooses to remain at Baroda, as any other person residing out of the British jurisdiction must proceed for the recovery of any other property. How far it is open to him to appear before the magistrate by attorney, or what are the precise steps he should take, I am quite unable to say; but I do not think that, in the form in which the demand comes to us, it can be complied with. I quite agree with Mr. Sutherland that justice should be done; but what is asked could not, I think, be granted without injustice to another party.

11. After all, however, I mean here to state doubts rather than opinions, and I beg the advice of my colleagues. Mr. Anderson's knowledge and experience peculiarly qualify him to speak on the subject, and I shall feel greatly obliged by his giving it attention. I am told that several instances have occurred of a compliance with requisitions like the present; but I should not be apt to follow such examples, unless they can be supported by better reasons than I have been able to imagine. Precedent cannot sanctify injustice; and, without making any parade of anti-servile principle, or wishing to apply them to cases to which they do not belong, I certainly think that we ought to be cautious of acting on light grounds or loose authority in any manner affecting the personal liberty of mankind.

No. 18.

MINUTE by the Honourable Mr. *Farish*, dated 21st April 1838.

THE course pointed out by the Right honourable the Governor appears to me that which would be proper. Mr. Anderson's experience will, however, be more valuable than my opinion.

No. 19.

MINUTE by the Honourable Mr. *Anderson*, dated 23d April 1838.

HOWEVER right Mr. Sutherland's opinion may be upon the general question of slavery in this country, he was clearly wrong in conceiving that he had authority, as resident at Baroda, to require a magistrate at Poonah to apprehend or give up a slave claimed by an individual at Baroda. His experience will, I think, have furnished him with no precedent for this.

But the question is even more doubtful than this. It is doubtful if the magistrate, on the application of the owner himself, could compel the slave to return.

I say it is doubtful, because upon no question have the authorities in India given more opposite opinions than on this,—the duties required of magistrates in respect to slaves. I state this from the documents I saw when in the law commission.

The subject was amply discussed, and we had before us the written opinions of every authority in India, except, by the way, the *Sudder Adawlut* of Bombay. The note of the law commission on the chapter of Exceptions, page 22, fully shows the result.

If the Right honourable the Governor and Mr. *Farish* will for a moment turn to that note, they will at once see in how great a state of uncertainty the law at present stands throughout India.

That is, what is the power of a master over his slave; what the authority and practice of the magistrates in cases respecting slaves coming before them.

In respect to the immediate question before the government, I beg to point out that the Bombay code, in its criminal branch, no where excepted the slave from protection. It no where says, that if the slave be assaulted, that the person assaulting, be he his master or any other, shall be exempt from punishment. It no where says that if the slave is restrained, that he shall not be released. It no where says that if the slave refuses to return to the master, that the magistrate shall cause him to return.

The law our authorities administer thus leaves the subject undefined, untouched; hence the magistrates act upon their discretion; hence the diversity of opinion that is found to prevail.

There is no difficulty in showing Mr. Sutherland the great uncertainty of the law. There is no difficulty in showing him that he had not the power to require the magistrate to apprehend the slave. But there is difficulty in telling the master, that, if he wishes the magistrate to interfere, he must proceed to Poonah, and yet that it is uncertain if the magistrate will interfere when he gets there. It may be difficult, but I declare that I know no other course.

MINUTE

MINUTE by the Right honourable the Governor of Bombay, subscribed to by the Board,
dated 30th April 1838.

No. 20.

I AM glad to find that Mr. Anderson, in his minute of the 23d instant, confirms me as to the only course of proceeding open to the claimant, and differs from me only in thinking it very doubtful whether even that course will succeed. I subscribe to his observations on that point, and indeed on all others. Mr. Sutherland should be informed of our views, and should be left to communicate so much of them as he may think proper to the party concerned, informing him, at the same time, that he has no method of recovering his alleged slave but by regularly proving his claim before the local magistrate.

FROM the Secretary to Government of Bombay to the Political Commissioner for Guzerat,
dated 18th May 1838.

No. 21.

I AM directed to acknowledge the receipt of your letter, dated the 2d ultimo, No. 245, representing the non-compliance with your requisition by the superintendent of bazars at Poonah, to deliver up a slave (the property of a guicowar subject), who had taken refuge at that place, and in reply to communicate to you the following observations and instructions:—

2. It appears to the Right honourable the Governor in Council that there are considerable difficulties in this case; but government quite concur in your opinion that we are not to apply to it European standard of law or feeling. The *status* of domestic slavery is in this country a legitimate one, and, while it subsists, there are obligations arising out of it which none can be justified in violating, and which the magistrate is on occasion bound to enforce.

3. In the present instance a foreigner travelled into the Bombay territories, accompanied by a slave, who refused to attend him back on his departure. On that refusal taking place, the master might undoubtedly have applied to the magistrate, who would, it is presumed, have summoned the slave, and called on the master to prove his title. The regulations are silent as to the nature of the proof required; but it is to be inferred that the alleged slave would have been allowed a sufficient *locus standi* in the magistrate's court to dispute the claimant's title either on the ground that he was not his slave, or that, having been such, the relation had by subsequent consent, or some other course, been dissolved, or, at all events, that the master had by cruel treatment forfeited his right to enforce it.

4. All these would have been matters of regular inquiry and adjudication, the parties being confronted and the witnesses being examined on oath in open court, the decision being examinable by a higher judicature.

5. It appears to the Governor in Council a very different case when a person residing at Baroda claims to be the master of a person residing in the heart of the Bombay territories, and through the British resident calls on the Bombay local magistrate to seize the person so claimed and to deliver him up to the foreign master. The title here is made out, if made out at all, before an officer, who has, properly speaking, no judicial powers, and by an *ex-parte* proceeding in the absence of the party who is to be so deeply affected by it, and it is to be enforced, if at all, by the local magistrate, on a mere intimation of it by letter, without going through any part of that judicial process which is necessary in all other cases of property claimed by a suit at law, and to which the master must have submitted had he preferred his claim personally, and without affording to the alleged slave any opportunity of appealing against the decision if unjust.

6. There can be no doubt that a foreigner may sue in our courts of civil justice for the restitution of property unjustly withheld from him, but then he must proceed in one of two ways. He must appear before the court either personally or by an attorney lawfully constituted, and in either case he must establish his claim by sworn proofs, subjected to strict examination in the presence and on the part of the resisting party, and involving the penalties of perjury if found to be false.

7. Government do not see why the same principle does not hold in such an instance as the present. It would undoubtedly hold if the property claimed were of any other kind. For the sake of example, let it be supposed this Baroda inhabitant informing the British resident that there was a horse or any article of merchandize in the possession of a person at Poonah, which such person refused to give up, and then let it be supposed the resident writing to the magistrate of Poonah, assuring him that he (the resident) has satisfied himself of the justice of the claim, and therefore requesting the magistrate to seize such horse or merchandize, and forthwith to send it by a careful person to Baroda. It is clear that no magistrate could comply with such an application, yet it cannot be conceived that less care or ceremony is necessary when the property claimed is the person of a human being.

8. There is another class of cases, which may be instanced as applicable to the present subject. A foreign subject, accused of crimes, or suspected of machinations against the state to which he belongs, flies into our territory, and, being restrained through the British resident at that state, is given up by order of this government. This, however, is confined to the cases of persons suspected of being criminals or traitors, and even in such cases a compliance with the demand is by no means a matter of course. It must be an act of the government, done either on solemn consideration of the particular circumstances, or in fulfilment of some stipulation in a treaty which pre-supposes such consideration to have been given to the subject generally. No magistrate would give effect to such a demand,

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except under orders general or particular from his government, nor would any government exercise on light grounds a power which implies a supersession of the ordinary forms of judicial procedure.

9. How far the case of a fugitive slave would fall within the class just described, it is difficult to determine. It certainly would fall within that class if the fugitive were suspected of having robbed his master, or of some other crime, and possibly the very fact of the flight might be thought to afford *prima facie* ground for such suspicion. But to apply the rule where no crime is alleged or pretended to have been committed would be a very harsh proceeding.

10. Under the above exposition I am desired to remark, that however right your opinion on this subject may be upon the general question of slavery in this country, you labour under an error in conceiving that you possessed authority, as resident at Baroda, to require a magistrate at Poonah to apprehend or give up a slave claimed by an individual at Baroda.

11. But the question appears to government even more doubtful than this. It is doubtful if the magistrate on the application of the owner himself could have compelled the slave to return to his master.

12. It is here worthy of remark, that the Bombay code in its criminal branch no where excepts a slave from protection. It no where says, that if the slave be assaulted that the individual assaulting, be he his master or any other person, shall be exempt from punishment. It no where says, that if the slave is restrained he shall not be released, nor is it any where laid down that if the slave refuses to return to his master the magistrate shall cause him to return.

13. Upon no point is the law more undefined, and consequently more uncertain, than on the subject of slavery in India, and upon no question have the law authorities in India given more diversified opinions than of the duties required of magistrates in respect of slaves.

14. In consequence of the peculiar difficulties attending this question, government feel averse to proceed in a summary way. It appears that the master, or at least the person whom the proper master allowed and directed the slave to attend as such, had the full opportunity of preferring his claim in the regular manner before the magistrate of Poonah, or before the superintendent of bazars, and, as far as appears, voluntarily pretermitted such opportunity. He was at Poonah when the slave refused to follow him, and it cannot but be regarded as singular that he did not at once summon him before the magistrate or the superintendent of bazars. It is therefore inferrible that he felt that he could not prove or could not press his title. Perhaps he had discharged the slave, perhaps he had treated him cruelly; and all this would have appeared had he gone before the magistrate. He therefore abstained from so inconvenient a course, assured in his own mind that, on his return to Baroda, a short application to the British authority there would set all to rights, and restore him the slave in spite of all resistance.

15. In conclusion, I am directed to inform you, that government leave it to your discretion to communicate so much of the views of government on this subject to the party concerned as you may deem expedient, intimating to him at the same time that he possesses no method of recovering his alleged slave but by regularly proving his claim before the local magistrate.

No. 22. FROM Mr. James Erskine, Political Agent in Katteewar, to Mr. J. P. Willoughby, Secretary to Government of Bombay, dated 31st December 1837.

1. I HAVE the honour to solicit the instructions of the Right honourable the Governor in Council in the case of an African slave, who escaped from his master, a Scindian of Wagur, and who has sought my protection, but is now claimed by his owner.

2. Annexed is the deposition of the poor unfortunate, as also an account of the condition in which he presented himself at Rajcote when he first came in. His owner demands his restoration, or, if that is not permitted, the price which he paid for him. Considering that the lad was not imported by him, but purchased from another Scindian, who was not the importer also, I believe government will decide on obtaining his freedom by the payment of the purchase-money; for this reason I have retained the slave under my protection, and informed his owner that the orders of government have been applied for on the matter.

No. 23.

RAJCOTE, dated 15th September 1837.

No. 1.

DEPOSITION of Seedee Moobaruck (does not know his father's name), of the Moobaruck caste, originally inhabitant of Africa, lately that of a ness of Scindians about four miles from Shikarpoor, in the Cutch jurisdiction, aged about 17 years, taken before James Erskine, Esq., political agent in Katteewar.

I was first brought from my country to Muscat. I can't recollect when, but remained there for many years. After this I was brought to Mandwee from Arabia by an Arab named Daibman, about five years ago, who sold me to a Scindian named Munnace (I don't know for how much), who kept me for about three days, and then sold me to another Scindian named Kessar, of the ness above-mentioned; I have no knowledge for how much.

Cross-questioned.

Cross-questioned.—I was brought to Mandwee with nine other African slaves, six males, and three females. My comrades were sold to different people in Mandwee. I served my late master with fidelity, but was ill-treated, starved and severely beaten; and therefore, being unable to suffer such bad treatment, I effected my escape, and came to Rajcote. I am quite comfortable where I am, and would not like to go anywhere until I am turned off.

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No. 2.

An African lad, of about 16 or 17 years of age, was brought to me about three or four days before I started to Ballachree. He was in rags, and bruised all over his body, as he had been severely beaten by his owner, a Scindian of Hukarpoor, who had bought him at Mandwee about four years ago. Seeing the poor boy in such a state, I was moved with compassion, and gave him clothes and food, and cured him by applying ointment, &c.; at the same time I assured him that he was entirely at liberty and in a state of freedom, and that he should consider himself emancipated since he fell under the protection of the political agent at Rajcote.

(signed) *Lootfallee Khan, Moonshee.*

(A true translation and copy.)

Political Agent's Office.

(signed) *James Erskine, Political Agent.*

MINUTE by the Right honourable the Governor of Bombay, dated 26th January 1838.

No. 24.

I THINK the owner of this unfortunate youth should, as a special case, be paid by government the price for which he was purchased.

But before sanctioning this, Mr. Erskine, without informing the owner of our intentions, should ascertain from him what was the amount of the purchase.

MINUTE by the Honourable Mr. *Farish*, dated 27th January 1838:

No. 25.

It would not, I submit, be lawful to surrender him, nor to permit him to be seized as a slave within our jurisdiction. Would it not therefore be sufficient for the political agent fully to explain to the owner what are our laws against slavery in this respect, and to express regret that it would be a breach of those laws to comply with his application? And this course might have some effect in preventing the ill-treatment of their slaves by Scindians, which might be aggravated by a well-known case of full price obtained for an unruly slave, by his fleeing from his master's cruelty.

MINUTE by the Right honourable the Governor of Bombay, dated 2d February 1838.

No. 26.

SLAVERY within the dominion of British India is not unlawful, though the sale of slaves is so.

Still less can we say that our laws will not allow of our recognizing the existence of slavery in Katteewar.

We have very lately been compelled to admit the right of the Rao of Cutch to import slaves into his own dominions.

I dare say Mr. Erskine will take the opportunity to express to the Scindian slave-master his opinion of the great evil of treating his slave with cruelty.

On the whole, therefore, I would submit that we should act on my former minute.

MINUTE by the Honourable Mr. *Farish*, dated 3d February 1838.

No. 27.

IN reporting the amount stated to be the purchase-money of this slave, perhaps the political agent should also state whether that amount seems what would be reckoned a fair price for such a slave.

I should be much obliged to the secretary to point out the regulation (if there be any) under which, within the jurisdiction of our courts, a magistrate may interfere to punish a runaway slave, or to compel him to return to his master; or if there be not such regulation, and a master in using force to compel the return of such slave should do him a bodily injury, the regulation (if there be any such) under which such master would be relieved from the penalties of an unjustifiable assault.

I beg to apologize for giving this trouble, but I have not been able to trace any provisions on the subject.

FROM the Secretary to Government of Bombay to the First Assistant Political Agent in charge, Katteewar, dated 10th February 1838.

No. 28.

I AM directed to acknowledge the receipt of Mr. Erskine's letter, dated the 31st December last, with enclosure, soliciting instructions in the case of an African slave, who escaped from

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from his master, a Scindian of Wagur, and sought the protection of the British Government, but now claimed by his owner.

2. In reply, I am instructed to acquaint you, that the Governor in Council is of opinion, that the owner of this unfortunate youth should, as a special case, be paid by government the price for which he was purchased; but before sanctioning any sum, you will be pleased, without informing the owner of this intention, to ascertain from him what was the amount of the purchase, and to state whether that amount seems what would be reckoned a fair price for such a slave.

No. 29. FROM Mr. James Erskine, Political Agent, Katteewar, to the Secretary to Government of Bombay, dated 24th March 1838.

1. WITH reference to the 2d paragraph of your letter to my first assistant, No. 258, of the 10th ultimo, I have the honour herewith to transmit, for the information of the Right honourable the Governor in Council, copy of a correspondence between that officer and the resident in Cutch, from which it appears that the Seedee slave in question was obtained by his owner in exchange for a buffalo and milch cow, valuing 250 Kutch cories, or Company's rupees 65-15-5. This sum, Colonel Pottinger states, is not considered a high price for a slave, in which opinion I perfectly agree, since I find that the average price of a grown-up Seedee in this province has seldom or never fallen below 100 sicca rupees.

No. 30. FROM the First Assistant Political Agent in charge, Dhorajee, to Colonel Pottinger, Resident in Cutch, Bhooj, dated 26th February 1838.

I HAVE the honour to annex copy of a letter from Mr. Secretary Willoughby, of the 10th instant; and as the Seedee slave therein alluded to formerly belonged to Scindee Keshur, who is said to reside in a ness near Shikarpoor in Wagur, I shall feel obliged by your either procuring for me the information required in the second paragraph of the government letter, or sending that individual to me here. The Seedee slave further states that Scindee Keshur purchased him from an old man in Mandwee, of the name of Munace, to whom he was sold by the Arab dealer. He is not aware of the price paid by either of these parties, and it would therefore appear advisable to ascertain, if possible, from Scindee Munace likewise, the price for which he sold him. Moobaruck is the name of the Seedee, and he states that he was sold about five years ago at Mandwee, by Arab Dulliman, and transferred a few days afterwards to his late owner.

No. 31. FROM the Resident in Cutch, Bhooj, to Captain Lang, Assistant Political Agent in charge, Rajcote, dated 19th March 1838.

I HAVE the honour to acknowledge the receipt of your letter of the 26th ultimo, with its accompanying copy of one from Mr. Secretary Willoughby, and to acquaint you, that the Scindee Keshur states, that he gave a buffalo and a milch cow (which had been previously appraised by competent judges at 250 cories) for the Seedee boy, Moobaruck, to Munnac Toork of Dribbh, near Mandwee. I also find that 250 cories, or Company's rupees 65-15-5, is not considered a high price for a slave.

No. 32. FROM the Secretary to the Government of Bombay to the Political Agent, Katteewar, dated 9th June 1838.

I AM directed to acknowledge the receipt of your letter, dated the 24th March last, with its enclosure, regarding an African slave who escaped from his master and sought the protection of the British Government, and to acquaint you, that the Right honourable the Governor in Council is pleased, as a special case, to authorize your paying to the owner of the slave in question rupees 65-15-5 as compensation, and to set the slave at liberty.

No. 33. FROM the Secretary to the Government of Bombay to the Accountant-General, dated 9th June 1838.

I AM directed by the Right honourable the Governor in Council to transmit for your information copy of my letter of this date to the political agent at Katteewar, authorizing him to disburse the sum of rupees 65-15-5, on account of a slave who has been set at liberty, by order of government.

No. 34. FROM the Officiating Secretary to the Government, Judicial Department, to the Secretary to the Government of Bengal, dated 24th September 1838.

I AM directed by the Honourable the President in Council to forward to you the accompanying copy of an extract from the proceedings of the supreme government, in the political department, dated the 12th instant; and to request that you will, with the permission of the Honourable the Deputy-governor of Bengal, call upon the Sudder Dewanny Adawlut at the presidency, for a report of the nature therein alluded to.

FROM

FROM Register Sudder Dewanny and Nizamut Adawlut to the Secretary to Government of Bengal, in the Judicial Department, dated 9th November 1838.

No. 35.
Nizamut Adawlut.
PRESENT.
R. H. Rattray, W.
Braddon and W.
Money, Esquires,
Judges; and J. F.
M. Reid, Esq., Offi-
ciating Judge.

I AM directed by the court to acknowledge the receipt of your letter, No. 1,916, dated the 2d ultimo, with enclosures, requesting that the court will state the practice of the criminal courts under their control in regard to cases of a similar nature to that in which his highness the guicowar demanded, through the resident of Baroda, that the magistrate of Nassick should deliver up two female slaves belonging to his daughter, who had left her on her arrival at that place from Poonah.

2. In reply, I am desired to state, for the information of his Honor the Deputy-governor, that in ordinary cases the jurisdiction in matters regarding the property in slaves rests with the civil courts, and that a magistrate would not be justified in interfering in order to compel their return to persons claiming them. In the case under consideration the court are of opinion that a magistrate should have acted precisely as the magistrate of Nassick has done; that is, refuse to deliver up the slaves, and refer the question for the decision of government.

3. The court directs me to observe, that on a former occasion the government authorized the payment of the value of certain slaves claimed under somewhat similar circumstances. At the same time, however, it was remarked, that, "whatever reasons may exist for maintaining the existing laws respecting domestic slavery among the two great classes of the native subjects of this country, the Mahomedans and Hindoos, the Governor in Council is not aware of any principle of justice or policy which requires us to render our courts of judicature the instruments for compelling persons who may seek an asylum in the British territories to return in bondage to the countries from which they may have originated." The principle involved in this extract from the secretary's letter the court apprehend is applicable to the case of a slave seeking the protection of the Company's courts, though brought within their jurisdiction by the foreign proprietor himself.

See Mr. Secretary
Dowdeswell's Let-
ter to the Register
S. D. A., 6th June
1810.

4. The enclosures of your letter are herewith returned.

FROM the Acting Chief Secretary to the Government of Bombay to the Secretary to the Right honourable the Governor General of India, Camp, dated 12th September 1838.

No. 36.

I AM directed by the Right honourable the Governor in Council to transmit to you, for the purpose of being submitted to the Right honourable the Governor-general of India, copies of the accompanying two communications from the joint magistrate of Nassick and the political commissioner for Guzerat, dated the 8th March and 2d May last, regarding an application preferred by his highness the guicowar, for the surrender of two female slaves who had left the service of his daughter, and taken refuge at Nassick, on the plea of ill-treatment.

2. To put the Right honourable the Governor-general in possession of the sentiments of the several members of this government on the above subject, I am directed to transmit also copies of the minutes enumerated below,* from which his Lordship will perceive that the Right honourable the Governor, and the Honourable Mr. Farish were of opinion that the slaves in question should be redeemed by the British Government, instead of their being surrendered to his highness the guicowar or his daughter, and that the Honourable Mr. Anderson much doubted the expediency of either course.

3. The Governor in Council is therefore desirous of being informed how such a case would be dealt with by the magistrates under the Bengal Presidency, on a similar demand by any foreign prince with whom the British Government is in alliance, and to be favoured with the sentiments of the Right honourable the Governor-general of India as to the course which this government should follow in the present instance.

4. With reference to the case adverted to in Mr. Farish's minute,† No. 2, of the 10th April, and that alluded to in the third paragraph of Mr. Anderson's minute,‡ No. 8, of the 3d May, I am further instructed to transmit, for the information of his Lordship, the enclosed extracts from the proceedings of this government, showing the grounds on which they acted in those two cases. The one relates to a slave who took refuge at Poonah, and the other to a runaway slave in Kattcewar.

* 1. Minute by the Governor, dated 8th April 1838 (No. 5 of this Appendix); 2. Minute by Mr. Farish, dated 10th April 1838 (No. 6 of this Appendix); 3. Minute by Mr. Anderson, dated 11th April 1838 (No. 7 of this Appendix); 4. Minute by the Governor, dated 16th April 1838 (No. 8 of this Appendix); No. 5. Minute by Mr. Anderson, dated 17th April 1838 (No. 9 of this Appendix); 6. Minute by the Governor, dated 1st May 1838 (No. 10 of this Appendix); 7. Minute by Mr. Farish, dated 2d May 1838 (No. 11 of this Appendix); 8. Minute by Mr. Anderson, dated 3d May 1838 (No. 12 of this Appendix).

† See No. 6 of this Appendix.

‡ See No. 12 of this Appendix.

APPENDIX XVIII.

SLAVES carried and imported by Sea.

1. Report of the Special Commission, Bombay, dated 5th May 1837, to Secretary to Government.
2. From Mr. Advocate General A. S. Le Messurier, Bombay, dated 29th April 1837, to the Superintendent of the Indian Navy.
3. Regulation to be observed by all Arab Boats and Vessels arriving at or departing from Bombay who do not take Pilots, enclosed in above.
4. Extract of a Letter from the Chief Secretary to Government of Bombay to the Advocate General, dated 7th June 1837.
5. Extract of a Letter from the Advocate General to the Secretary to Government of Bombay, dated 27th June 1837.
6. Extract of a Letter from the Chief Secretary to Government of Bombay, dated 7th August 1837, to the Advocate General, in reply to the above.
7. From the Chief Secretary to the Government of Bombay, dated — August 1837, to the Acting Resident in the Persian Gulf.
8. From the Superintendent of the Indian Navy to the President and Governor in Council of Bombay, dated 3d April 1837.
9. From Acting Commander F. Rogers, of the Honourable Company's brig of war, Euphrates, to the Superintendent of the Indian Navy, Bombay, dated 10th March 1837.
10. The Statement of Salim, a boy taken out of the Futtel Kurreem.
11. The Statement of Singar, a boy taken out of the Futtel Kurreem.
12. The Statement of Commise, a boy taken out of the Francis Warden.
13. From the Secretary to Government of Bombay to the Superintendent of the Indian Navy, dated 29th April 1837.
14. From the Secretary to Government of Bombay to the Senior Magistrate of Police, dated 29th April 1837.
15. From the Superintendent of the Indian Navy to the President and Governor in Council, dated 9th May 1837.
16. From the Secretary to Government of Bombay to the Superintendent of the Indian Navy, dated 22d May 1837.
17. From the Acting Senior Magistrate of Police to the Secretary to Government, dated 27th May 1837.
18. From the Chief Secretary to Government of Bombay to the Superintendent of the Indian Navy, dated 12th June 1837.
19. From the Superintendent of the Indian Navy to the President and Governor in Council, dated 16th June 1837.
20. Memorandum by the Chief Secretary, dated 17th June 1837, approved by the Board.
21. From the Chief Secretary to Government of Bombay to the Superintendent of the Indian Navy, dated 17th July 1837.
22. From the Chief Secretary to Government of Bombay to the Acting Senior Magistrate of Police, dated 17th July 1837.
23. From the Acting Senior Magistrate of Police to the Chief Secretary to Government, dated 21st July 1837.
24. From the Chief Secretary to Government of Bombay to the Acting Senior Magistrate of Police, dated 9th August 1837.
25. From the Chief Secretary to Government of Bombay to the Advocate General, dated 9th August 1837.
26. From Mr. A. S. Le Messurier, Advocate General, Bombay, dated 16th August 1837, to the Chief Secretary to the Government of Bombay.
27. From the Chief Secretary to Government of Bombay to the Acting Assistant in charge of the Bushire Residency, dated 30th October 1837.
28. From the Chief Secretary to Government of Bombay to the Secretary to the Government of India, Fort William, dated 30th October 1837.
29. From the Superintendent of the Indian Navy to the President and Governor in Council, dated 30th September 1837.
30. From the Acting Commander Honourable Company's sloop of war, Amherst, to the Superintendent of the Indian Navy, dated 29th September 1837.
31. From the Chief Secretary to Government of Bombay to the Advocate General, dated 8th November 1837.
32. From Mr. Advocate General A. S. Le Messurier to the Secretary to Government of Bombay, dated 21st November 1837.
33. Minute by the Right honourable the Governor, subscribed to by the Honourable Mr. Farish.
34. From the Secretary to Government of Bombay to the Superintendent of the Indian Navy, dated 8th December 1837.

35. From

35. From the Secretary to the Government of Bombay to the Secretary to the Governor General of India, dated 26th December 1837.
36. From the Secretary to the Government of India to Mr. J. P. Willoughby, Secretary to Government of Bombay, dated 24th January 1838.
37. From the Secretary to Government of Bombay to the Secretary to Government of India, For William, dated 28th February 1838.
38. Letter from Mr. G. L. Elliot, Agent for the Governor of Bombay, at Surat, to the Secretary to the Government of Bombay, dated 4th December 1840, containing Report on the Slaves imported into the Portuguese Ports of Demau and Dien, such Report being called for by the Order of Government, dated 15th October 1840.
39. Letter from the Secretary to Government of Bombay to the Secretary to Government of India, dated 31st December 1840, forwarding above.

REPORT of the Special Commission, Bombay, dated 5th May 1837, to Secretary to Government.

Appendix XVIII.

Importation of Slaves.

No. 1.

WE have the honour to acknowledge the receipt of your letter of the 30th March last, appointing us a committee for the purpose of amending the rules framed in 1820, for the guidance of Arab boats and vessels entering or quitting the harbour of Bombay, with direction to include such arrangements as may in our opinion tend to a more efficient suppression of the slave trade, and intimating that one of the reasons of associating together the officers composing this committee arises from a hope that effectual arrangements may be devised, by means of existing establishments, without any additional expense being entailed upon government.

2. In reply, we have the honour to acquaint you, for the information of the Right honourable the Governor in Council, that in pursuance of these objects our first step was to address a letter to the advocate general,* to ascertain from that officer what the law is in regard to those foreign powers with whom we have no treaties for the suppression of the slave trade, as it appeared to us that severe penalties against all individuals in any way concerned in this detestable traffic, together with high rewards to informers, both being promulgated to the utmost, were the only means which promised to put an effectual stop to it; it will be seen, therefore, from his reply, which we have the honour to hand up in original, that these two preventives are already amply provided by the Act, 3 George 4, chap. 113, in regard to all foreign as well as British vessels and subjects within the limits of the British territories, since it enacts that all persons importing, &c. slaves shall be guilty of felony, punishable with transportation for a term not exceeding 14 years, or imprisonment with hard labour for a term not exceeding five nor less than three years, and shall forfeit 100*l.* for every slave imported, a moiety whereof shall go to the informer, and all property in the slave forfeited, and the vessel and her tackling, &c., and all goods belonging to the owner also forfeited; British subjects, or any persons on shore, purchasing or having such slaves in their possession with a criminal intent, for the purpose either of trade, or of their being used or dealt with as slaves, being likewise punishable as felons, with transportation or imprisonment, at the discretion of the court before which the offender shall be tried.

3. All that seems chiefly wanted is to make this highly penal statute sufficiently known throughout the British territories on this side of India and in Arabia,† and we would accordingly recommend, that the accompanying draft of a proclamation, embodying its provisions, be translated into the Persian, Arabic and vernacular languages of this presidency, and published from time to time in the Government Gazette; that copies of it be furnished to the *nacodahs*, or commanders, of all Arab vessels frequenting our ports; and that the other measures described in the paragraph of Mr. Le Messurier's letter, with respect to Regulation I. of 1813, to give it further publicity, and, as is therein stated, to prevent those who are the subjects of it incurring its penalties from ignorance of its enactments, be also resorted to.

4. Although placing our principal reliance upon rewards to informers as a measure of detecting violations of the statute in question, since the whole community are as it were led to watch and report the proceedings of offenders, we would not recommend that the whole of the existing rules in regard to Arab vessels entering or quitting the harbour of Bombay be set aside, as is proposed in the letter to government of the senior magistrate of police, dated the 30th November last, a copy of which he has laid before us; but that the 4th and 5th rules only be abrogated. Since we are of opinion that the other three rules, in conjunction with those which we have added, will be useful auxiliaries, should they have no other good effect than making known the state of the law to those (and there may be some) who, in spite of the measures we have adverted to for disseminating a knowledge of its penalties, may nevertheless visit this port in ignorance of them, and although they would not of course, under such circumstances, prevent Arab vessels having slaves on board, they may still have a salutary effect in deterring the owners from disposing of them by sale within the Honourable Company's territories.

5. A draft

* See No. 2, *infra*.

† See No. 3, *infra*.

Appendix XVIII.

Importation of
Slaves.

5. A draft of the rules which we propose to substitute for those prepared in 1820 is here-
with transmitted.

6. Although, also, laying no great stress upon the efficacy as a check of boarding such vessels on their entering and quitting the harbour, since the parties, who are implicated in such practices will then of course be on their guard, and their victims restored to silence, still, as some good may possibly arise from it, we would further propose, that they be made liable to such inspection, not however as suggested by the senior magistrate of the police, in the letter we have already noticed, by means of a bunder boat to be attached to the police department, under other arrangements therein specified (since, besides the expense of such a boat, it would involve that of a large floating establishment besides, under the control of the superintendent Indian navy, to give proper effect to it), but by the custom department; as we learn from the collector of customs that his floating establishment must, when the new custom tariff, shortly looked for, is introduced, be strengthened at all events, and will then be fully competent to undertake this duty.

No. 2. FROM Mr. Advocate General A. S. Le Messurier, Bombay, dated 29th April 1837, to the Superintendent of the Indian Navy.

I HAVE the honour to acknowledge the receipt of your letter of the 4th instant, written as president of committee appointed by government to inquire into the best means for the prevention of the slave trade at this presidency, and requesting my opinion on certain points referred to in your letter.

The law as regards foreign vessels bringing slaves into a British port in India is the same as is applicable to British vessels importing them; and it makes no difference whether the foreign vessels belong to nations with whom we have slave treaties, or are vessels under Arab colours, or sailing under the flag of independent native chiefs, not bound by any slave treaties. All are liable to the penalties of the Slave Abolition Act, the 5th George 4, chapter 113, a statute so universal in its language as to comprehend all persons whatsoever, foreigners as well as our own subjects; the jurisdiction over the former attaching from the locality of the offence, from the crime being committed by them within the local limits of the British territories, and within the local jurisdiction of the British laws.

So far back as the year 1789, long before the abolition of the African slave trade by the British Parliament, a Dane, Captain Hornbow, was tried and convicted by the supreme court of Calcutta for kidnapping a number of slaves, males and females, and transporting them from Chandernagore, a French settlement, to the Island of Ceylon, then under the Dutch, and there selling them, the slaves being originally intended for the Mauritius. The jurisdiction of the court was objected to on behalf of Captain Hornbow, not only on account of his being a foreigner, but from its "appearing that the slaves had been purchased at Chandernagore, that they were taken from thence without stopping at all in Calcutta, but went down on the opposite side of the river until they came near the new fort, where, on account of a sandbank, they were obliged to cross to the Calcutta side. It was contended, therefore, that the offence was not committed any where but at Chandernagore, and upon subjects of the French king, owing no allegiance to the king of Great Britain, and that therefore the court had no jurisdiction in the case." Sir Robert Chambers, the presiding judge, was of opinion, "that Captain Hornbow was subject to the jurisdiction of the court (as well by the peculiar ground stated by him, which made him, though a foreigner, amenable to the court, as) from the offence being actually committed in Calcutta, from the Budgerow," in which the natives were confined, having come within the limits of the jurisdiction of the court; and he was accordingly sentenced to be imprisoned for three months, to pay a fine of 500 rupees, and to give security for his future good behaviour for three years, himself in a bond of 10,000 rupees, and two securities in 500 rupees each. (E. L. Parliamentary Papers.)

This was a strong case, as there had been no intention originally of importing the slaves into Calcutta; but the Budgerow in its transit down the river, was from necessity, on account of the sandbank, obliged to enter the Calcutta limits.

In 1812, Sir John Newbolt, the recorder of Bombay at this time, in an address to the grand jury, in alluding to the Act which had then just come out, by which the slave trade was made punishable as a felony (the 51st George 3, chapter 23, passed in May 1811), commonly called the Felony Slave Trade Act (which, though repealed, yet its provisions are re-enacted in the latter Act of 5th George 4, c. 113, in stronger and more comprehensive terms), expressed his opinion of the application of the Act to foreigners as well as to British subjects. I have not been able to find a report of this address in any other Bombay publications than the Bombay Courier newspaper of 17th October 1812; but the address is noticed by the advocate-general of Madras, who was afterwards recorder of Bombay, Sir Alexander Anstruther, in an official correspondence with the Madras government. His attention having been called to it as published in the Government Gazette there, he remarked he had not ascertained its authenticity, that being immaterial to the present object, and proceeded to observe, "There seems to me to be no doubt of the correctness of the observation contained in the above publication, that under the strict interpretation of the statute of 1811 (the Slave Trade Felony Act), the commander of an Arab or other foreign Asiatic vessel carrying slaves for sale, or only even navigating partly by the slaves of the owner or commander, and entering any British port in India, becomes liable to the penalties of felony." (Letter dated 17th November 1812.)

His Majesty's attorney and solicitor-general in England, upon their opinions being required whether the Felony Slave Trade Act was to be considered applicable to Java and its dependencies,

dependencies, which at the time of the passing of it (May 1811) were not actually in the possession of the British authority, those crown officers, referring to the Act, by which they observed, that the carrying on the slave trade was prohibited under severe penalties by any person residing or living within any of the islands, colonies, dominions, &c. now or hereafter belonging to the United Kingdom, or being in his Majesty's occupation or possession, or under the government of the East India Company, the Act to be in force in the East India Seas, &c. the 1st January 1812, went on to remark, "that under these words, so much of the Island of Java as was in the occupation or possession of his Majesty would be comprehended, and the slave trade therein prohibited, unless there was any thing in the terms of the capitulation to produce a different result; such parts, however, of the island and its vicinities; the waters and seas adjoining, which were not in his Majesty's occupation or possession, and which did not belong to his Majesty or the East India Company, but to independent princes, were not affected by this or any other Act of the British Parliament, nor could their trade be restrained thereby, unless it was carried on in British vessels or by British subjects or persons resident or living in a British settlement." (Letter of Sir T. Plumer, Attorney-general, and Sir William Garrow, Solicitor-general, to Lord Bathurst, 3d March 1813, East India Parliamentary Papers.)

In the supreme court of Bombay, at the sessions, July 1835, a native of Scinde, who had merely come to Bombay for a few days, was tried and convicted for having caused some children to be exported as slaves from Bombay, and was sentenced to the house of correction for three years for the offence.

These authorities are sufficient to show the jurisdiction of our slave laws over foreigners carrying on the trade within our ports and territories.

With regard to the carrying on the trade without the limits of our ports and territories, the doing so on the high seas is an offence which, by the 5th George 4, is made piracy (thus being classed amongst the offences against the law of nations); though long before the year 1824, when this Act was passed, the practice had been declared in the British Parliament (in 1807) contrary to humanity and universal justice. But though made piracy, still the jurisdiction of our law over this offence—this particular kind of piracy—is not, as regards the offender, as extensive as in the ordinary cases of piracy, of depredations by sea-rovers, the universal enemies of the whole world, "*hostes humani generis*," enacting universal terror, whose hand is against every man, and every man's hand, therefore, against them, and whom the strong arm of the law of every country has a right to punish. But, to render a foreigner (as distinct from a British subject) liable to British jurisdiction as a slave pirate (under statute 10th of 5th George 4), he must be a person either "residing, being within any of the dominions, forts, settlements, fortresses or territories now or hereafter belonging to his Majesty, or being in his Majesty's occupation or possessions, or under the government of the East India Company."

Foreign vessels carrying on the slave trade without entering our ports and without the limits of our dominions, vessels of foreign independent states which allow their subjects to carry on the trade, are not amenable to our laws for so doing.

The *Diana*, a Swedish vessel, bound with a cargo of slaves from the coast of Africa to St. Bartholomew, a Swedish island, was seized by his Majesty's ship *Crocodile*, Captain Columbine, and by the vice-admiralty court at Sierra Leone was condemned; but the sentence on appeal was reversed, Sweden at the time of the capture (1810) not having abolished the slave trade. Sir William Scott, in reversing it, observed, that our own country claimed no right of enforcing the prohibition of the slave trade against the subjects of those states which had not adopted the same opinion with respect to the injustice and inhumanity of it. (Dodson's Admiralty Reports.)

In the case of the *Amedie*, however, an American vessel, which was condemned by the vice-admiralty court of Tortola, for carrying slaves from the coast of Africa to a Spanish colony, the condemnation on appeal was affirmed, America at the time having prohibited its own subjects from engaging in the traffic. Sir William Grant, in delivering the judgment of the supreme court, observed, "that our Legislature has pronounced the slave trade to be contrary to the principles of justice and humanity, and we can now assert that this trade cannot, abstractedly speaking, have a legitimate existence. When I say abstractedly speaking, I mean that this country has no right to control any foreign legislature that may think fit to dissent from this doctrine, and to permit to its own subjects the prosecution of this trade; but we have now a right to affirm that *prima facie* the trade is illegal, and thus to throw on claimants the burthen of proof that, in respect of them, by the authority of their own laws, it is otherwise. As the case now stands, we think we are entitled to say, that a claimant can have no right, upon principles of universal law, to claim the restitution, in a prize court, of human beings carried as his slaves. He must show some rights that have been violated by the capture, some property of which he has been dispossessed, and to which he ought to be restored. In this case the laws of the claimant's country allow of no right of property such as he claims. There can therefore be no right to restitution. The consequence is, that the judgment must be affirmed." (Actor's Report, cited also in 1 Dods.)

This case of the *Amedie* has been the leading authority for subsequent decisions, and Sir William Scott, in noticing it in the above case of the Swedish vessel *Diana*, made the following remarks: "The principle laid down by the supreme court in the case of the *Amedie* was, that where the municipal laws of the country to which the parties belonged have prohibited the trade, the tribunals of this country will hold it to be illegal, upon the general principles of justice and humanity, and refuse restitution to the property. But, on the other hand, though they consider the trade to be contrary to the general principles of justice and

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humanity, where not tolerated by the laws of the country, they will respect the property of persons engaged in it under the sanction of the laws of their own country. The lords of appeal did not mean to set themselves up as legislators for the whole world, or presume in any measure to interfere with the commercial regulations of other states, or to lay down general principles that were to overthrow their legislative provisions with respect to the conduct of their own subjects. It is highly fit that the judge of the court below should be corrected in the view which he has taken of this matter, since the doctrine laid down by him in this sentence, 'that the slave trade, from motives of humanity, hath been abolished by most civilized nations, and is not, at the present time, legally authorized by any,' is inconsistent with the peace of this country and the rights of other states.' (See also the cases of the *Fortuna* and *Donna Maria*, decided by Sir William Scott, Dodson's Admiralty Reports, on the authority of the *Amedie*.)

In the above-mentioned case of the *Diana*, the indorsement upon the pass signed by the Swedish governor (of St. Bartholomew) that the vessel was "bound to the coast of Guinea for slaves," was held by Sir William Scott to be sufficient proof that Sweden permitted the trade. It was not necessary, he said, that there should be an immediate act of the Swedish government itself on board, declaring what the precise state of the law may be.

There is one more case I would refer to, as it was determined, not by a prize court under the law of nations, but before our own municipal jurisdictions, and so late as 1820, in which the principles in the above cases were recognized. It was the case of *Madrigo versus Willis*, which was an action brought by the plaintiff, a Spanish merchant, against the defendant, Captain Willis of the royal navy, to recover damages for his having seized a Spanish brig, the property of the plaintiff, bound from the coast of Africa to Havannah, in the Island of Cuba, with a cargo of 300 slaves on board, and for which the jury gave him 21,160*l.* damages, being 3,000*l.* for the deterioration of the ship's stores and goods, and 18,120*l.* for the supposed profit of the cargo of slaves. It was, at first, thought, at the trial, that the plaintiff could not recover the value of the slaves in an English court of justice, but upon the question being brought into the King's Bench, the four judges held that he could, Spain not having prohibited her subjects from carrying on the slave trade. Sir William D. Best, in delivering his judgment, said, "The declaration of the British Legislature, that the slave trade is contrary to justice and humanity, cannot affect the subjects of other countries, or prevent them from carrying on this trade out of the limits of the British dominions." (Barnewall and Alderson's Reports, 358.)

With reference to those paragraphs of your letter requiring to know the punishment for the particular act of the slave-dealing specified in your letter: as the provisions of the Act in regard to them and for every kind and species of slave-dealing are so severe and in the highest degree penal, I beg to refer you to the Act itself (the 5th George 4, chapter 113), and will here only generally state, that the Act declares all persons importing, &c. slaves, shall be guilty of felony, punishable with transportation for a term not exceeding fourteen years, or imprisonment with hard labour for a term not exceeding five, nor less than three years (sec. 10), and shall forfeit 100*l.* for every slave imported, a moiety whereof shall go to the informer, and all property in the slave forfeited (sec. 3), and the vessel and her tackling, &c. and all goods on board belonging to the owner also forfeited. British subjects, or any persons on shore, purchasing or having such slaves in their possession with a criminal intent for the purpose either of trade or of their being used or dealt with as slaves, are punishable as felons, under the 10th section of the Act, with transportation or imprisonment, at the discretion of the court before which the offender shall be tried.

The same law, with its penalties, extends to the West Indies, where now it is well known not only the traffic has ceased, but under the twenty millions grant (3 & 4 W. 4, c. 73), slavery no longer in any shape exists; nor in any part of the British dominions except in India, where it is recognized and sanctioned by law; but which, by the late Charter Act, section 88, is to be extinguished as soon as practicable and safe.

Slavery in India has engaged the attention of the Indian Government from the time of Mr. Hastings, the first Governor-general; and in 1828 a volume of papers was ordered by the House of Commons to be printed, containing all the correspondence between the Court of Directors and the Indian Government on the state of slavery in India, with all orders and regulations that had been made in regard thereto from 1772 up to May 1827, a volume which, if the committee have not referred to on their present inquiries, I would beg to draw their attention to, as affording information of the measures which have from time to time been taken by the supreme government of India for the suppression of the slave trade throughout India and the Indian seas.

In 1811 the supreme government passed a regulation, intituled, "A Regulation for preventing the importation of Slaves from Foreign Countries, and the sale of such Slaves in the Territories immediately dependent on the Presidency of Fort William." I notice this regulation, as it was directed to be made, and was made the model of the Bombay Regulation I. of 1813, intituled, "A Regulation for the preventing the importation of Slaves from Foreign Countries, and the sale of such Slaves in the Territories immediately dependent on the Presidency of Bombay," differing from the Bengal one in a very slight degree; and which were passed with a view principally of preventing the importation of slaves by land into the Company's territories; the Act of the 51 Geo. 3 being generally supposed to be confined to the importation by sea.

The volume I have referred to will likewise show the measures adopted by the supreme government, consequent on the passing of the Felony Slave Act, for carrying its provisions into effect, and the publicity that was given to it, to prevent those who were the objects of it

it incurring its penalties from ignorance of its enactments, copies being distributed not only to magistrates and all the British authorities under the Company's government, but furnished likewise to political agents and residents, for the information of foreign states, and copies or extracts of the Act, with translation in the Arabic and Persian languages, forwarded to all the Arab merchants and other persons connected with Arab shipping, informing them at the same time that the magistrates would use their utmost vigilance in directing and bringing to public justice all offenders against the statute, and desiring them to take every opportunity of making known to their correspondents in the Red Sea, Persian Gulf, &c. the purport of such communication.

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REGULATION to be observed by all Arab Boats and Vessels arriving at or departing from Bombay, who do not take Pilots, enclosed in above.

No. 3.

1st. IMMEDIATELY after the arrival of any such vessels, the noqedah or chief person on board is to proceed to the office of the inspector of the port, and there give a true account of the port he belongs to, of all persons on board, and of the armament of his vessel, which is to be noted down in that officer's book and signed by the noqedah, or chief attending.

2d. A transcript of the account so given is to be made out by the inspector of the port's office, which is also to be signed by the noqedah, or chief, countersigned by the inspector of the port, who is to send the noqedah with the transcript to the senior magistrate of police, and that officer is then to cause the noqedah to attest the same upon oath, and keep it in his possession, strictly enjoining the noqedah not to discharge from his vessel or receive on board any person whatever, without the senior magistrate's particular permission.*

3d. Two days previous to the vessel's departure, the noqedah, or chief, is to proceed to the police office, where he is to state, upon oath, every casualty that has occurred during the vessel's stay in port.

4th. Every such Arab boat and vessel, shall, on entering or quitting the harbour of Bombay, or any port subordinate thereto be liable to be boarded by the boat or boats belonging to the custom department and department of the inspector of the port, and if any slaves be found therein they are to be taken out and the vessel seized, in order that the necessary measures may be taken for the offenders being prosecuted according to law.

5th. Copies of the annexed proclamation translated into the Persian, Arabic and other native languages, shall be kept at the offices of the senior magistrate of police and of the inspector of the port, and if at a subordinate port, the custom-house and every noqedah, or commander of the aforesaid vessel, on coming there for the purpose specified in rule 2d of the existing regulations, shall be furnished with one.

"PROCLAMATION."

"With a view to the more effectual suppression of slavery, which there is reason to believe is carried on to a considerable extent by Arab boats and vessels frequenting the port of Bombay, and the several ports subordinate to this presidency, it is hereby notified, for general information, and that no person may incur its severe penalties through ignorance, that by the Act 5 Geo. 4, c. 113, 'All persons, whether foreigners or British subjects, importing slaves from foreign countries into any British port, or disposing of such slaves by sale within the British territories, are punishable as felons, with transportation for a term not exceeding 14 years, or imprisonment with hard labour for a term not exceeding five nor less than three years, and shall besides forfeit 100*l.* for every slave imported, a moiety whereof shall go to the informers, and shall further forfeit all property in the slave, and of the vessel and her tackling. British subjects or any persons on shore purchasing or having such slaves in their possession, with a criminal intent, or for the purpose either of trade or of their being used or dealt with as slaves, are moreover also punishable as felons, with transportation or imprisonment, at the discretion of the court before which the offender shall be tried.'

(signed) "C. Malcolm.
"D. Ross.
"W. C. Bruce."

EXTRACT of a Letter from the Chief Secretary to Government of Bombay, to the Advocate General, dated 7th June 1837.

No. 4.

4. WITH respect to the proclamation submitted by the committee, the Governor in Council is of opinion that in one respect it is better than that proposed by government, and approved of in your letter of the 4th April last, namely, that it provides the penalty of 100 *l.* for each slave imported, and that a moiety thereof should go to the informer.

5. Before

* To this paragraph was added this clause not pertinent to slavery. The correspondence to which it gave rise is omitted as irrelevant: "Apprizing him at the same time that none of the people belonging to the vessel (except himself and his servants) can be on shore after sunset each day, without subjecting themselves to imprisonment and other punishment."

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5. Before adopting the committee's proclamation, however, the Governor in Council is desirous of being favoured with your opinion as to how government will be authorized to deal with persons importing slaves into ports out of the jurisdiction of the supreme court.

No. 5.

EXTRACT of a Letter from the Advocate General, dated 27th June 1837.

4. WITH respect to the proclamation submitted by the committee, I think the one proposed by government, and approved of by me, preferable, and would recommend, therefore, that the latter be adopted, with an additional clause, however, for rewards to informers. As to the reward of a moiety of the penalty held out by 5 George 4, of 100 l. for each slave, that reward, I would observe, cannot be realized to the informer without his suing and prosecuting for the same; and supposing him to succeed in obtaining a judgment for the penalty, the party so condemned to pay it might, perhaps, be an insolvent person, and the informer would thus be disappointed of his reward. The expense, too, of litigation to recover the moiety of the penalty might deter that class of persons to which informers generally belong from coming forward and informing; and as rewards to informers are the principal means to be relied on, as the committee say, for detecting violations of the statute, I beg to suggest for the consideration of government the propriety and expediency of the proclamation (besides the reward held out by the Act) containing also an offer of a reward by government of 50 rupees (or any other sum) for every slave discovered to have been imported in violation of the Act; and as all fines and forfeitures to the Crown are granted and belong to the Company, the reward might come out of such fines. If this suggestion should meet with the approbation of government, I shall be happy to add the necessary clause to the proclamation.

5. Besides copies of it being published, as proposed by the 2d regulation of the committee, I would advise the regulation being extended to include extracts from those parts of the Act (5th George 4) more peculiarly applicable to the *macodahs* and commanders of the Arab vessels, who, on being furnished with copies of the proclamation, might also be informed of the substance and purport of the Act, and the severe penalties attached to a violation of it.

6. With reference to the last paragraph of your letter, I beg to observe that all persons importing slaves into ports out of the jurisdiction of the supreme court must be dealt with in the same manner as those importing them within such jurisdiction, both agreeable to the enactments of the 5th George 4, and by which the local courts must be guided as well as the supreme court. The regulations of the Bombay code do not provide, as far as I see, for the seizure of slave vessels at subordinate ports, and seem to contemplate the import and export of slaves by land only, and not by sea; but in furtherance of the design of suppressing the slave trade entirely and every where within the Company's jurisdiction, it would be most advisable certainly were the powers of seizing slaves and vessels for a breach of the slave abolition laws more clearly defined.

No. 6.

EXTRACT from a Letter written by the Chief Secretary to Government of Bombay, dated 7th August 1837, to the Advocate General, in reply to the above.

3. GOVERNMENT are inclined to greatly doubt if they would be authorized in putting in motion the powers which Admiral Sir Charles Malcolm may, as a King's officer, possess, of seizing any vessel or vessels with slaves on board. A special enactment will therefore be applied for from the supreme government as recommended by you.

4. The Governor in Council approves of the suggestion contained in the latter part of your 4th paragraph relative to the expediency of the proclamation, in addition to the reward held out by the Act, containing the promise of a further reward from government for every slave discovered to have been imported in violation thereof, and requests that you will be pleased to add a clause to that effect to the proclamation submitted for your opinion on the 31st March last.

5. With regard to the remarks in your 5th paragraph, I am desired to request that you will have the goodness to add to the regulations proposed by the committee, such extracts of the Act 5 George 4, as you may deem expedient, prolixity, however, being as much as possible avoided, a point government consider highly important. The Governor in Council quite approves of your suggestion of the *noquedahs* and commanders of Arab vessels being distinctly apprized, on their being furnished with copies of the proclamation, of the substance and purport of the Act, and the severe penalties incurred by its violation.

6. Adverting to the last paragraph of your letter, stating your opinion as to the course which should be observed towards persons importing slaves into ports out of the jurisdiction of the supreme court of Bombay, I am directed to request that you will favour government, at as early a period as may be conveniently practicable, with a concise draft of the regulations you would recommend, in order that the same may be submitted for the sentiments of the Right honourable the Governor-general of India in Council.

7. As connected with this subject, I am directed to transmit to you the accompanying draft of a letter to the acting resident in the Persian Gulf (which embraces some points of law) and to request the favour of your making any alteration which may in your opinion be deemed necessary.

FROM

RELATING TO SLAVERY IN THE EAST INDIES.

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FROM the Chief Secretary to the Government of Bombay, dated August 1837, to the Acting Resident in the Persian Gulf.

No. 7.

1. It having been brought to the notice of government, that a practice of dealing in slaves is carried on by certain Arab merchants trading from Mocha to Bombay, I am directed by the Right honourable the Governor in Council to transmit to you, for the purpose of being widely circulated in the Persian Gulf, 50 copies of a proclamation in the English, Persian and Arabic languages, denouncing this traffic in human beings as illegal and punishable under severe penalties.
2. The Governor in Council requests that you will take the earliest and most efficacious means of making known to the merchants and authorities connected with the port at which you reside, both the nature of these penalties, and the firm intention of the British Government to use its most strenuous endeavours in discovering where they may be incurred, and to enforce them on such discovery with unsparing rigour.
3. I am directed on this occasion to transmit to you copy of the treaty concluded by Captain Moresby of his Majesty's ship Menai, with his highness the imaum of Muscat, on the 29th August 1822, prohibiting within certain limits the slave trade.
4. In forwarding this document, the Right honourable the Governor in Council instructs me to request that you will endeavour to prevail on his highness to extend the above treaty so as to include in its provisions the provinces of Cutch and Kuttwar. At present vessels engaged in the slave trade are only liable to seizure if found to the eastward of a line drawn from "Cape Delgado, passing east of Socotra, and on the Diu Head, the western point of the Gulf of Cambay."
5. The Governor in Council does not, however, think this sufficient. It might, he is of opinion, be very difficult for the British power to assume generally the right of detaining and searching on the high seas vessels which there is reason to suspect of being engaged in the slave trade; but there can be no objection, he conceives, to the exercise of this right over the vessels of foreign powers, where it is conceded by treaty. You are, therefore, requested to endeavour to obtain from the imaum the right of searching any vessels fitted out from his ports, and open to the suspicion above mentioned.
6. Government are also desirous that the same privilege should be obtained from other Arabian potentates to whom we have access; and accordingly desires me to instruct you to take every opportunity for that purpose.
7. The Governor in Council is not inclined to confine you to any particular instructions for the attainment of the object in view; but is rather disposed to leave the supplying of the requisite details to your own good sense and activity.

FROM the Superintendent of the Indian Navy to the President and Governor in Council of Bombay, dated 8d April 1837.

No. 8.

I HAVE the honour to lay before your right honourable board the accompanying letter from Acting Commander Rogers, of the Honourable Company's brig of war Euphrates, under date the 10th ultimo, reporting his having taken three slave-boys out of the vessels which he found lying in Juddah harbour, under English colours, the one named the Francis Warden, the other the Futtel Kurreem.

2. I have also to forward the deposition of the three slave-boys, with a copy of the registry of the ship Futtel Kurreem, which Commander Rogers reports has been since sold, but to whom he does not mention.

3. As it clearly appears that these vessels were found sailing under British colours with British registers, I trust that Acting Commander Rogers has acted correctly, and in conformity to law, in taking the slaves from on board, and sending them to Bombay. They have been brought by the Hugh Lindsay, and are still on board; I have therefore to request to be made acquainted with the pleasure of your right honourable board regarding their future disposal.

FROM Acting Commander F. Rogers to the Superintendent of the Indian Navy, Bombay, dated 10th March 1837.

No. 9.

I HAVE the honour to inform you that, having received information that there were slaves on board a ship, named the Francis Warden, lying in this harbour, which sails under British colours, is British registered, and is owned by Sheik Dyebin Ain, a resident in Bombay, I proceeded on board of the said ship, and there found an African boy, named Com-mise, who, on my asking him the question, told me he was a slave; but afterwards, in the presence of his master, the nakodah, Sheik Hawad, denied it. Conceiving his denying what he had before voluntarily stated to be the effect of restraint, I took him on board the Euphrates. The gunner of the vessel had pointed him out the day before to Lieutenant Porter as a slave; and on my desiring the nakodah to send his crew aft on the quarter-deck, all were sent but this boy, who was kept in the galley out of sight. This boy subsequently made the accompanying statement on board the Honourable Company's brig Euphrates, in the presence of the Rev. Mr. Wolff, R. Goff, Esq., and myself.

After this I visited the Futtel Kurreem, where I found two boys, one named Singar, the other Salim, who told me they were slaves, on which I sent them to the Euphrates.

I examined the other two British registered ships, but they had no slaves on board.

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You

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You will perceive by the accompanying statements that one of these boys was lately taken on board at Mocha, and according to his own account was to be sold at any place where a purchaser could be found.

I have not interfered in any way with the ships on board which these slaves were found further than taking the boys out. I was informed by the government agent at Mocha, Sheik Lyel, that many ships from India, under English colours, particularly those from the Malayan peninsula, brought slaves to the ports of the Red Sea.

I have been induced to seize these slave-boys, because the captains of the above named vessels have acted contrary to almost every section of the 5th George 4, chap. 113; but I have not seized the vessels, as I am not aware how far government might wish the matter prosecuted.

The Francis Warden, I am informed, sails from this to the Persian Gulf. The Futtel Kurreem returns to Penang; but I do not think either ship will quit this before the end of May.

With the permission of Commander Rowland, I have sent the three boys, Commise, Singar and Salim, to Bombay.

I beg leave to enclose the statements made by the boys, and also a copy of the pass of the Futtel Kurreem.

P. S.—I have since learnt that the ship Futtel Kurreem, out of which I took the boys Singar and Salim, has been sold.

No. 10.

THE Statement of *Salim*, a Boy taken out of the Futtel Kurreem.

"I AM a slave. I was brought from Sanar and Snakin, from thence to Mocha, and there sold to Hoorsie Joseph, who sent me on board the Futtel Kurreem, to be sold at this or any other place. I did not come with my own consent."

The above statement was made in our presence by the above-named boy, 2d March 1837.

(signed) *T. E. Rogers*, Acting Commander.
Joseph Wolff, Missionary.
Robert Goff.

No. 11.

THE Statement of *Singar*, a Boy taken out of the Futtel Kurreem.

"I AM a slave. My master, the nakodah, bought me at Mutra. I was taken to Java, Acheen, and Penang, but never allowed to quit the ship. I receive no wages. I did not come with my own consent. I was told to go with my master. I was originally from another country. People came and spread dates and fat; I was hungry, and took some to eat. Then they carried me away. I have neither father nor mother. I was sold for five dollars."

The above statement was made in our presence by the above-named boy, 2d March 1837.

(signed) *T. E. Rogers*, Acting Commander.
Joseph Wolff, Missionary.
Robert Goff.

No. 12.

THE Statement of *Commise*, a Boy taken out of the Francis Warden.

"I AM a slave. I was purchased by my master, the nakodah, out of the ship at Shaar. I was taken to Bombay and Bengal, and brought to this place. I do not get any wages, and I expect to be sold whenever my master wishes to part with me. I have neither father nor mother."

The above statement was made in our presence by the above-named boy, 2d March 1837.

(signed) *T. E. Rogers*, Acting Commander.
Joseph Wolff, Missionary.
Robert Goff.

No. 13.

FROM the Secretary to the Government of Bombay to the Superintendent of the Indian Navy, dated 29th April 1837.

I AM directed by the Right honourable the Governor in Council to acknowledge the receipt of your letter, dated the 3d instant, with its enclosures, regarding the three slave-boys taken out of two vessels at Juddah, under English colours, named the Francis Warden and Futtel Kurreem, by Acting Commander Rogers of the Honourable Company's brig of war Euphrates, and to request that you will make over the above children to the senior magistrate of police.

FROM

RELATING TO SLAVERY IN THE EAST INDIES. 573.

FROM the Secretary to the Government of Bombay to the Senior Magistrate of Police,
dated 29th April 1837. No. 14.

I AM directed by the Right honourable the Governor in Council to inform you, that the superintendent of the Indian navy has been requested to make over to your charge three slave-boys taken out of the ships Francis Warden and Futtel Kurreem, sailing under English colours, by the acting commander of the Honourable Company's brig of war Euphrates, at Juddah, and to request you will send to government a register of these children, stating at the same time how they can be disposed of.

FROM the Superintendent of the Indian Navy to the President and Governor in Council,
dated 9th May 1837. No. 15.

WITH reference to Mr. Secretary Willoughby's letter of the 29th ultimo, No. 767, I have the honour to report that the three slave children therein alluded to were at their own request, on their arrival from the Red Sea, permitted to remain on board the Hugh Lindsay, and that, in the hurry of despatching that vessel to the Persian Gulf, their removal was forgotten. They will, however, immediately on the return of the steamer, be made over to the senior magistrate of police, as directed by your right honourable board.

FROM the Secretary to Government of Bombay to the Superintendent of the Indian Navy,
dated 22d May 1837. No. 16.

I AM directed by the Right honourable the Governor in Council to acknowledge the receipt of your letter dated the 9th instant, and to inform you, that with their own free will the three boys therein alluded to may be entered as volunteers on board the Hugh Lindsay, on the usual pay and allowances.

FROM the Acting Senior Magistrate of Police to the Secretary to Government,
dated 27th May 1837. No. 17.

I HAVE the honour to acknowledge the receipt of your letter, No. 768, dated 29th of last month, and to acquaint you, for the information of his Excellency in Council, that, on my constable going to the marine-office to receive charge of the African children taken out of the ships Francis Warden and Futtel Kurreem, he was informed that they had been detained on board the Hugh Lindsay to form a part of her crew, and that the superintendent of the Indian navy had written to government, requesting to be permitted to retain them.

FROM the Chief Secretary to Government, Bombay, to the Superintendent, Indian Navy,
dated 12th June 1837. No. 18.

I AM directed by the Right honourable the Governor in Council to transmit to you copy of a letter from the acting senior magistrate of police, dated the 27th ultimo, and to request that you will state whether the African boys therein alluded to have of their own free will entered the service of government.

FROM the Superintendent of the Indian Navy to the President and Governor in Council,
dated 16th June 1837. No. 19.

IN acknowledging the receipt of Mr. Chief Secretary Wathen's letter, No. 1,148, of the 12th instant, with enclosure, I have the honour to state, that on the return of the Hugh Lindsay, finding the three slave-boys were not willing to remain longer on board, although the offer of pay was made to them, they were transferred to the charge of the senior magistrate of police, agreeably to the original instructions of your right honourable board, communicated in Mr. Secretary Willoughby's letter, No. 767, of the 29th April last.

MEMORANDUM by the Chief Secretary, dated 17th June 1837, approved by the Board. No. 20.

1. As the three slave boys alluded to in the letter from the superintendent of the Indian navy, dated the 16th instant, were not willing to remain on board ship, Sir Charles Malcolm did right to make them over to the police magistrate, as originally ordered by government.

2. Mr. Elliot should now be called upon to send in a register of these boys, as required in Mr. Secretary Willoughby's letter of the 29th April last, and to report how they can be disposed of.

3. When the above information is obtained, the advocate-general should (as before suggested by the Right honourable the Governor) be requested "to advise how government should act" in this case.

574 APPENDIX TO REPORT FROM INDIAN LAW COMMISSIONERS

No. 21. FROM the Chief Secretary to Government of Bombay to the Superintendent of the Indian Navy, dated 17th July 1837.

I AM directed to acknowledge the receipt of your letter, dated the 16th ultimo, reporting that the three slave boys taken out of the ships Francis Warden and Futtel Kurreem have refused to remain any longer on board ship, and that you have in consequence made them over to the senior magistrate of police, and to inform you that the Right honourable the Governor in Council approves of your proceedings on the occasion.

No. 22. FROM the Chief Secretary to Government of Bombay to the Acting Senior Magistrate of Police, dated 17th July 1837.

WITH reference to your letter, dated 27th May last, relative to the three African boys taken out of the ships Francis Warden and Futtel Kurreem, I am directed by the Right honourable the Governor in Council to request that you will forward a register of these boys as required in Mr. Secretary Willoughby's letter of the 9th April last, and to report how they can be disposed of.

No. 23. FROM the Acting Senior Magistrate of Police to the Chief Secretary to Government, dated 21st July 1837.

I HAVE the honour to acknowledge the receipt of your letter, No. 1,332, of the 17th inst., and to enclose the register roll of the African boys therein called for. They objected strongly to go into Christian families, and I therefore made over charge of them to two respectable Mussulmans, Fuzhydur Bare Maya and Hyder Ali Cassimjee, who each entered into an agreement to protect, feed and clothe them, and to assign them suitable wages for their labour.

REGISTER OF AFRICAN CHILDREN taken from the Ships Francis Warden and Futtel Kurreem.

No.	Names.	Age.	Sex.	Country.	To whom delivered.
1	Singar -	10	Male -	Dauzibar - - -	Fuzhydur Bare Maya.
2	Salim -	13	ditto -	ditto - - -	Hyder Ali Cassimjee.
3	Commise -	12	ditto -	ditto - - -	- - ditto.

No. 24. FROM the Chief Secretary to Government of Bombay to the Acting Senior Magistrate of Police, dated 9th August 1837.

I AM directed to acknowledge the receipt of your letter, dated the 12th ultimo, forwarding a register roll of the three African boys taken out from the ships Francis Warden and Futtel Kurreem, and stating that, in consequence of their refusing to go into Christian families, you have given them over to two respectable Mussulmans, who have entered into an agreement to protect, feed and clothe them, as also to assign suitable wages for their labour, and to inform you that, under the peculiar circumstances stated, the Right honourable the Governor in Council approves of the arrangement.

No. 25. FROM the Chief Secretary to the Government of Bombay to the Advocate General, dated 9th August 1837.

I AM directed by the Right honourable the Governor in Council to transmit to you the accompanying copy of a letter from the superintendent of the Indian navy, dated the 3d April last, and of its enclosure, regarding three African children taken out of two vessels at Juddah, under English colours, named Francis Warden and Futtel Kurreem, by Acting Commander Rogers of the Honourable Company's brig of war Euphrates, and to request that you will be pleased to inform government what course, in your opinion, should be pursued in this case.

No. 26. FROM Mr. A. S. Le Messurier, Advocate General, Bombay, dated 16th August 1837, to the Chief Secretary to the Government.

I HAVE the honour of acknowledging the receipt of your letter of the 7th instant,* communicating the sentiments of government on the rules and proclamations relating to the trade in slaves carried on in Arab boats and vessels therein alluded to, and also the receipt of your letter of the 9th instant,† regarding the three African children taken out of the Francis

* No. 6 of this Appendix.

† No. 25, *supra*.

Francis Warden and Futteel Kurreem, at Juddah, by Commander Rogers of the Honourable Company's brig of war Euphrates.

The two letters relating to the same subject, I will answer them together.

With reference to the 3d paragraph of the letter of the first date, I have herewith forwarded, for the approval of government, the draft of an Act to empower others than those mentioned in the 5 Geo. 4, c. 113, s. 43, to make seizures of vessels for a breach of the slave laws.

The draft proposes to give this power to the commander of the vessels of the Indian navy, which, if they possessed it, would do more, I think, to put an end to the traffic than any measures that have yet hitherto been adopted for the purpose. All vessels sailing under the British flag (though armed and navigated by foreigners), and which now are liable to seizure as being clothed with the British character, enjoying the privileges and benefit of British protection, and consequently subject to the inconveniences and penalties attaching to a breach of the British laws, would then, under the proposed enactment, be within the reach and power of the Company's vessels; and with the conjoint efforts of the imam of Muscat, and of the other chiefs in the Red Sea and Persian Gulf, co-operating in the measure, the ports and shores of those countries would in a very short time, I should think, be cleared of all its slaves.

With this power Captain Rogers might have seized the Francis Warden and Futteel Kurreem for piratically carrying slaves on the high seas, and have brought them to Bombay, and had them condemned in the vice-admiralty court.

From the omission in the Act, as the law now stands, if an Arab vessel were to come into Bombay harbour with a cargo of slaves for sale, the magistrate, it is true, might arrest the individuals on board for the crime of slave-dealing, with a view to their ultimate prosecution and punishment; but, unless there was a King's vessel here, there would be no authority in the place to seize and prosecute the vessel for the purpose of condemning her and her slaves.

The draft Act proposes to supply the defects of the Acts, and, besides the commanders of the Company's vessels, to invest every officer of customs in the service of the East India Company, and every person who may be deputed by government, with the power of making seizures, which will therefore enable seizures to be made at all subordinate ports and places, which now cannot be done by any local authority there.

Agreeably to the 4th paragraph of your letter of the 7th, I have altered the proclamation, and I have likewise inserted a clause (subject to the approval of government) to notify the seizure and condemnation that would take place of all vessels found engaged in the trade, —a notification calculated to alarm the slave merchants (from the prospect of a certain and immediate loss of property) more than the terrors of a distant prosecution and punishment of their persons, which in practice would be found could reach only to a very few.

With reference to the 5th paragraph of your letter of the 7th, it appears to me that, until the proposed Act is passed by the supreme government, the promulgation of any port regulations to be useful will be premature. They, as well as the proclamation, as far as regards the announcement of seizures, would be nugatory, and mere empty sounds and threats. I would therefore propose that the framing of any regulations should be delayed till after the passing of the Act, when a complete set may then be drawn up.

With respect to the 6th paragraph of your letter of the 7th, being of opinion, as already expressed in my last letter on this subject, that the local courts must be guided by the Act of Parliament in all cases of importation and exportation of slaves to and from the subordinate ports out of the jurisdiction of the supreme court, any regulations for their further guidance seem to me to be unnecessary. For slavery in the interior, within the zillahs, the regulations provide; but for the importation of slaves by sea into their ports, the local courts must adopt the provisions and regulations of the Act of Parliament, and punish according thereto. They cannot try the offences under the 10th sec. of the 5th Geo. 4, chap. 113 (slave piracies), for want of an admiralty jurisdiction; nor do I think they need ever try any case; for as there never can be an importation of slaves by sea into the subordinate ports without involving in it also the previous carrying off slaves on the high seas, no case could occur, as far as it strikes me, which the local courts could take cognizance of which could not be tried in Bombay in the supreme court under the admiralty jurisdiction for the higher offence of slave piracy. So that in practice the jurisdiction of the local courts might not be found necessary to be called into exercise, the minor offence, too, merging in the higher.

The power of seizing vessels and slaves at subordinate ports the local authorities do not possess, as already intimated; but the power, if given, proposed by the Act, will be the only really effectual method of suppressing the traffic; and that without the power all other attempts, I conceive, will be vain. Regulations and proclamations can only notify and make public the penalties incidental to it, and prosecutions reach and alarm only a few; but the seizing the property itself embarked in it will be cutting up the trade entirely.

With these observations, I would recommend that the letter to the address of the resident in the Persian Gulf, which has been sent for my perusal, and alteration if necessary, should not be forwarded till it is seen whether the proposed Act will be passed by the supreme government, when, in the event of its being passed, the letter (should it then be deemed requisite) may be sent to me for revision.

Adverting to your letter of the 9th date, requesting my opinion as to the course to be pursued with regard to the three African children brought to Juddah, had the vessels out of which these children were taken been seized under lawful authority, the course, conformably to the Act of Parliament, would in such case have been the condemnation of the vessels,

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—
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and three slave children as forfeitures of the Crown, and their enlistment either in the military or sea service, or their being bound out as apprentices. But the only course now I think is for government to employ them in such ways as shall be thought most beneficial for the children, without they are returned to their country. Being now on British ground they are free. I am not informed of their ages, but, if old enough, their consent will be necessary to any service in which it may be proposed to employ them.

DRAFT of a proposed Act, referred to in the preceding Letter, enclosed in above.

"BE it enacted, that all ships, vessels, boats, slaves, or persons treated, dealt with, carried, kept, or detained as slaves, and all goods and effects that may become forfeited under the Act of 6 Geo. 4, chap. 113, intituled, "An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade," shall and may, within the limits of the East India Company's charter, be seized by any officer of customs in the service of the said Company, or by the commanders or officers of any of the ships or vessels belonging to the said Company's Indian navy; and moreover it shall and may be lawful for all governors of any of the territories, settlements, forts, or factories in the East Indies, belonging to or under the government of the said Company, and for all persons deputed and authorized by any such governor, to seize and prosecute all ships, vessels, boats, slaves, or persons treated, dealt with, carried, kept or detained as slaves, and all goods and effects whatsoever that shall or may become forfeited for any offence under the said Act.

"And be it further enacted, that all persons authorized to make seizures under this Act shall, in making and prosecuting such seizures, have the like benefit and protection as are given by the said 5 Geo. 4 to all persons authorized to make seizures under that Act."

PROCLAMATION, enclosed in above.

"THE Governor in Council of Bombay, having reason to believe that the traffic in slaves is carried on to a considerable extent by persons in Arab boats and vessels, from the ports in the Red Sea and Persian Gulf, and other parts importing slaves of both sexes, and of various ages, into the port of Bombay, and other ports and places subordinate to the presidency of Bombay, and having determined to use every exertion to suppress the nefarious traffic so disgraceful to humanity, hereby notifies and proclaims, that all persons found guilty of such practices, or in any other manner offending against the laws for the abolition of the slave trade, shall be apprehended and prosecuted with the utmost rigour, and severely punished, as the law directs. And the boats or vessels employed in the trade, together with the slaves, and all the goods and property that may be found on board, shall be seized, and immediate steps taken for their condemnation and forfeiture, and the liberation of the slaves themselves. And to encourage the discovery of offenders, a reward is held out by the Act of Parliament of a moiety of the penalty of 100 £. sterling for each slave, to any person who shall inform and sue and prosecute for the same. But as a further encouragement to discovery, the Governor in Council of Bombay hereby notifies and proclaims, that a reward of rupees shall be paid by government to all persons who shall give information which shall lead to the apprehension and conviction of any offender, or to the seizure and condemnation of any vessel engaged in the trade."

No. 27. FROM the Chief Secretary to Government of Bombay to the Acting Assistant in charge of the Bushire Residency, dated 30th October 1837.

"I AM directed by the Right honourable the Governor in Council to transmit to you copy of the treaty concluded by Captain Moresby, of his Majesty's ship Menai, with his highness the imaum of Muscat, on the 29th August 1832, prohibiting within certain limits the slave trade.

2. In forwarding this document, the Governor in Council instructs me to request that you will endeavour to prevail on his highness to extend the above treaty, so as to include in its provision the provinces of Cutch and Kattywar. At present vessels engaged in the slave trade are only liable to seizure if found "to the eastward of a line drawn from Cape Delgado, passing east of Socotra, and on to Diu Head, the western point of the Gulf of Cambay."

3. The Governor in Council does not, however, think this sufficient. It might, he is of opinion, be very difficult for the British power to assume generally the right of detaining and searching on the high seas vessels which there is reason to suspect of being engaged in the slave trade; but there can be no objection, he conceives, to the exercise of this right over the vessels of foreign powers when it is conceded by treaty. You are therefore requested to endeavour to obtain from the imaum the right of searching any vessels fitted out from his ports, and open to the suspicion above mentioned.

4. Government are also desirous that the same privilege should be obtained from other Arabian potentates, to whom we have access, and accordingly direct me to instruct you to take every opportunity for that purpose.

5. The

5. The Governor in Council is not inclined to confine you to any particular instructions for the attainment of the object in view, but is rather disposed to leave the supplying of the requisite details to your own good sense and activity.

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FROM the Chief Secretary to Government of Bombay to the Secretary to the Government of India, Fort William, dated 30th October 1837.

No. 28.

I AM directed by the Right honourable the Governor in Council to transmit to you, for the purpose of being laid before the Right honourable the Governor-general of India, in Council, copy of the correspondence enumerated below,* relating to the traffic in slaves, supposed to be carried on to a considerable extent by persons in Arab boats and vessels from the ports in the Red Sea, Persian Gulf and other parts, importing slaves of both sexes, and of various ages, into Bombay and other ports and places subordinate thereto.

In submitting the above documents, I am instructed to express the hope of government that some Act, to the effect of the draft accompanying the advocate-general's letter of the 16th August last, will meet the concurrence of his Lordship in Council, and be passed into a law by the Government of India.

With reference to the proposed draft of a letter to the acting resident in the Persian Gulf, forwarded for the opinion of the advocate-general, with my communication of the 17th August last,† I am instructed to state, for the information of his Lordship in Council, that a letter, omitting the two first paragraphs, has been transmitted to that officer, a copy of which is enclosed.

In conclusion, I am directed to add, that the Right honourable the Governor in Council concurs in the opinion expressed by the advocate-general of withholding the promulgation of any proclamation until this government is advised of the nature of the Act which the supreme government may be pleased to pass into a law.

FROM the Superintendent of the Indian Navy to the President and Governor in Council, dated 30th September 1837.

No. 29.

I BEG to forward a letter from Acting Commander Rogers; and as I do not exactly understand the import of the letter of the advocate-general which accompanied Mr. Chief Secretary Wathen's letter under date the 28th of August last, I would beg to be informed how the commander of a vessel of war should act on falling in with ships under English colours which may have slaves on board.

FROM the Acting Commander Honourable Company's sloop of war Amherst to the Superintendent of the Indian Navy, dated 29th September 1837.

No. 30.

As the Honourable Company's sloop of war Amherst, under my command, is fitting out for the Persian Gulf, where she is likely to fall in with English vessels having persons on board similarly situated to those I thought it my duty to take out of the ships Francis Warden and Futtel Kurreem, and send to the presidency, whilst those vessels were lying in Juddah harbour, on the 28th of February last, as stated in my letter to your address, dated Juddah, March 10th, 1837, I respectfully solicit you will be pleased to inform me in what way I am to act should I again meet with vessels similarly situated to those named above.

FROM the Chief Secretary to the Government of Bombay to the Advocate General, dated 8th November 1837.

No. 31.

I AM directed by the Right honourable the Governor in Council to transmit to you copy of a letter from the superintendent of the Indian navy, dated the 30th September last, forwarding one from Acting Commander Rogers, and to request that you will favour government with your opinion as to how the commander of a vessel of war should act on falling in with ships under English colours which may have slaves on board.

FROM Mr. Advocate General A. S. Le Messurier to the Secretary to Government of Bombay, dated 21st November 1837.

No. 32

I HAVE the honour to acknowledge the receipt of your letter of the 8th instant, with its enclosures, requesting my opinion as to how the commander of a vessel of war (of the Company's

* 1. From the Committee, dated 5th May, with three enclosures (see No. 1, *supra*); 2. Reply to, dated 7th June (not printed); 3. To the Advocate-general (see No. 4, *supra*); 4. From the Committee, 13th June (not printed); 5. To the Advocate-general, 20th June (not printed); 6. From ditto, 27th June (see No. 5, *supra*); 7. To ditto, with three enclosures, 7th August (see No. 6, *supra*); 8. From ditto, with ditto, 16th August (see No. 26, *supra*).

† See No. 26, *supra*.

Appendix XVIII. pany's navy I presume) should act on falling in with ships under English colours which may have slaves on board.

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Referring to the opinion I formerly gave (letter dated 16th August last,)* on the subject of seizing slave vessels, I would observe, that if the supreme government pass the Act proposed for empowering the vessels of the Company's navy to make seizure of ships for a breach of the slave laws, no very long period can elapse before the power will be possessed, but that should it refuse to do so, it will, I conceive, be a virtual declaration on the part of the Government of India that the Company's vessels should not interfere in the matter; and I therefore would recommend, in the mean time, the commander of any of the Company's vessels not to act at all in the business. The British Legislature, by omitting to give the power of seizure to authorities in India under the Company, seems to have proceeded on some grounds of policy in so doing, especially as by the late Charter Act it has expressly recognized and sanctioned the existence and continuance of slavery within the British territories in India.

No. 33. MINUTE by the Right honourable the Governor, subscribed to by the Honourable Mr. Farish.

SIR CHARLES MALCOLM should be instructed agreeably to the advocate-general's opinion. I must, however, observe, though not for communication, that I do not concur in Mr. Le Messurier's concluding argument.

"Slavery" and a "trade in slaves" are two very distinct things, and the toleration which (for a season) the Charter Act extends to the two former, implies no sanction whatever of the latter.

I believe we have already pressed on the Government of India the passing of an Act to authorize the seizure of slave-trading vessels on the high seas.

MEMORANDUM of the Political Secretary, dated 7th December.

I RESPECTFULLY suggest that copy of the further proceedings on this subject be forwarded Government of India for consideration.

(signed) J. P. Willoughby, Sec. to Govt.

No. 34. FROM the Secretary to Government of Bombay to the Superintendent of the Indian Navy, dated 8th December 1837.

IN reply to your letter of the 30th September last,† with its enclosure, soliciting information as to how the commander of a Company's vessel of war should act on falling in with ships under English colours, which may have slaves on board, I am directed by the Right honourable the Governor in Council to transmit to you the accompanying copy of a communication from the advocate-general, dated the 21st ultimo, submitting his sentiments on the subject, and to request that you will be pleased forthwith to issue instructions in conformity with the opinion expressed by that officer.

No. 35. FROM the Secretary to Government of Bombay to the Secretary of the Governor General of India, dated 26th December 1837.

WITH reference to Mr. Chief Secretary Wathen's letter, dated 30th October last, relating to the traffic in slaves supposed to be carried on to a considerable extent by persons in Arab boats and vessels from the ports in the Red Sea and the Persian Gulf, I am directed by the Right honourable the Governor in Council to transmit to you, for the purpose of being submitted for the consideration of the Right honourable the Governor-general of India, extracts from the proceedings of this government regarding three slave-boys taken out of two vessels at Juddah under English colours, namely, the Francis Warden and Futtel Kurreem, by Acting Commander Rogers of the Honourable Company's brig of war Euphrates.

No. 36. FROM the Secretary to the Government of India, Fort William, to Mr. J. P. Willoughby, Secretary to Government of Bombay, dated 24th Jaarynu 1258.

THE Honourable the President in Council having observed in the duplicate copy of a communication made to the Governor-general, under date the 26th ultimo, No. 2,422, that three slave-boys, taken from ships sailing under British colours, were made over to Mahomedan families, under an engagement that they should be provided with food and clothing, I am directed to request information as to the nature of these engagements. The draft of Act forwarded from Bombay connected with this subject being now under consideration in the legislative council, it appears to be of importance that the government should be informed

* See No. 26 of this Appendix.

† See No. 29, *idem*.

formed of the means of providing for persons redeemed from slavery that may be available, and the manner of using them. Appendix XVIII.

2. The President in Council particularly desires to know whether there is any fixed limit to the period of the apprenticeship in which these boys have been bound, and what means have been taken to secure their freedom after its expiration, or when the boys may come of age. Importation of Slaves.

FROM the Secretary to Government of Bombay to the Secretary to the Government of India, Fort William, dated 28th February 1838. No. 37.

I AM directed by the Right Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 24th ultimo, requesting information as to the nature of engagement under which the three slave-boys taken out of the ships Francis Warden and Futtel Kurreem, sailing under British colours, were made over to Mahomedan families, and to transmit to you, for the purpose of being laid before the Honourable the President in Council, copies of the agreements entered into by the parties to whose charge the boys in question were made over.

FROM Mr. G. L. Elliot, Agent to the Governor of Bombay at Surat, to the Secretary to the Government of Bombay, dated 4th December 1840. No. 38.

I HAVE the honour to acknowledge the receipt of Mr. Chief Secretary Reid's letter, No. 2,244, dated the 15th of October last, requesting me to forward a statement showing the number of slaves imported into Demaun and Dieu during the last three years, and the average progressive increase or decrease in number during each year.

2. In reply, I beg to report, for the information of the Honourable the Governor in Council, that I have used my utmost endeavours to obtain the required information. Such as I have received I fear cannot be depended upon for its accuracy, and even if we were to apply to the Portuguese authorities, I very much doubt whether they would afford an account that could be implicitly relied upon.

3. The following information I have collected from an individual well acquainted with the resources of Demaun and Dieu, that for the last two or three years there have been very few slaves imported into these places (which is to be attributed in a great measure to the vigilance of the British Government), though in former years the number of slaves imported into the three Portuguese settlements of Goa, Demaun and Dieu averaged from 250 to 300 per annum.

4. There were some vessels last year, the property of one Momajee Wullejee, which were bringing slaves from Mozambique to Demaun and other Portuguese ports, but which were intercepted by Her Majesty's ships.

5. During this year no ship has arrived at Demaun from Mozambique. It appears that the number of slaves imported in the years 1837, 1838, 1839, into Demaun, were as follow:— In 1837, from 10 to 15; in 1838, from 8 to 10, and in 1839, from 5 to 7. Into Goa and Dieu during these years, from 15 to 20.

6. In reference to the 2d para. of the communication now under reply, I am not prepared to propose any measures beyond those already in operation for preventing the importation of slaves into the Portuguese territories.

FROM the Secretary to the Government of Bombay to the Secretary to the Government of India, Political Department, dated 31st December 1840. No. 39.

WITH reference to Mr. Chief Secretary Reid's letter, dated the 15th October last, regarding the measures adopted by this government for the suppression of the slave trade, I am directed to transmit to you, for the information of the Right honourable the Governor-general of India in Council, copy of a communication from the agent for the Governor at Surat, dated the 4th instant, reporting the number of slaves imported into the Portuguese settlements in India during the last three years.

2. In forwarding this communication, I am desired to observe, that although the Honourable the Governor in Council is not of opinion that the information therein contained can be entirely relied upon, still it is satisfactory to observe, that the number of slaves supposed to have been recently imported into the Portuguese settlements in India is considerably diminished.

APPENDIX XIX.

GULF SLAVERY.

1. LETTER (dated 24th September 1837) from Captain Hennell, Officiating Resident, Persian Gulf, to the Secretary to the Government, Bombay, enclosing Statement of Abdullah ben Iwuz, alleging an extensive Abduction of Females from the Barbarah Coast by the Joasmee Arabs.
2. Statement of Abdullah ben Iwuz, enclosed in the above.
3. Letter (dated the 9th of December 1837) from the Secretary Bombay Government to the Officiating Resident of the Persian Gulf.
4. Letter (dated the 10th of January 1838) from the Officiating Resident to the Secretary of the Bombay Government.
5. Letter (dated 6th of March 1838) from the Secretary to the Bombay Government to the Officiating Resident.
6. Letter (dated 28th February 1838) from Mr. T. Mackenzie, Acting Agent in charge of the Residency in the Persian Gulf.
7. Extract from a translated Letter of the Agent at Muscat to the Acting Assistant, enclosed in the above.
8. Extract from a translated Letter from the Agent at Shagur to the Acting Assistant, enclosed in No. 6.
9. Extract from a Letter from the Agent at Muscat to the same, enclosed in the same.
10. Letter (dated 16th April 1838) from the Secretary to Government to the Officiating Resident.
11. Letter (dated 28th April 1838) from the Officiating Resident to the Secretary to the Bombay Government.
12. Copy of a Treaty with Sheikh Sultan ben Suggur, enclosed in the above.
13. Letter (dated 11th July 1838) from the Secretary Bombay Government to the Officiating Resident.
14. Letter (dated 3d September 1838) from the Resident (Captain Hennell) to Secretary Bombay Government.
15. Letter (dated 12th December 1838) from the Secretary Bombay Government to the Resident.
16. Letter (dated 19th July 1839) from the Resident to the Secretary Bombay Government, enclosing Copy of Agreement entered into by the Arab Chiefs.
17. Letter (dated 21st October 1839) from the Secretary Bombay Government to the Resident.

Appendix XIX.

Gulf Slavery.

FROM Captain S. Hennell, Officiating Resident in the Persian Gulf, to the Secretary to Government, Bombay, dated 24th September 1837.

No. 1.

ENCLOSED I have the honour to forward, for the information of the Right honourable the Governor in Council, the copy of a statement made to me by an individual named Abdullah ben Iwuz, who professes to be a person of some rank, from the African coast, regarding the alleged outrageous proceedings of the crews of some Joasmee boats, in having carried off from Barbarah 233 young girls, under the pretence of marriage, and subsequently disposing of them as slaves, upon the return of their vessels to the gulf.

2. Upon receiving this declaration I sent for Mahomed ben Iwuz, the agent of Sheik Sultan ben Suggur, and having brought to his notice the 9th article of our treaty with the pacificated Arabs, inquired whether he could afford any explanation upon the subject of Sheik Abdullah's complaint. In reply, he denounced the whole statement, both with reference to the abduction of the girls and the robbery of the complainant on his voyage to Rasel Khymah, as an unqualified falsehood. He said he did not deny the fact of slaves having been brought up from the coast of Barbarah, but he declared that they had been regularly purchased from two tribes in that neighbourhood, at war with each other, who were in the habit of selling all the prisoners that fell into their hands. He concluded by saying that Abdullah ben Iwuz was an impostor, without any letters or credentials, and that had Sheik Sultan been willing to make him a small present, he would have taken his departure back to Muscat, and said nothing further upon the subject. He (the agent) was, however, quite sure that if the complainant's statement could be proved to be founded on fact, that his superior, the Joasmee chief, would do any thing that was just.

3. Although I do not think that the subjects and dependents of the Sheik of Rasel Khymah are likely to be very scrupulous as to the means by which they obtain their slaves, still the statement of Abdullah ben Iwuz appears to me in some respects exceedingly improbable. I am inclined to suspect that the unfortunate individuals mentioned in the 1st paragraph were made prisoners by one of the belligerent tribes before adverted to, and actually sold by the victors to the Joasmees; and that Abdullah ben Iwuz, being in some way connected with the defeated party, had been instructed by the friends of the captives to obtain, if possible, their liberation from bondage. This, however, is mere conjecture; but, upon receipt of replies to the communications I have addressed to the agent at Shaighah and Muscat, I trust that the real facts of the case may eventually be elicited. In the meanwhile, I have informed Abdullah

lah ben Iwuz that his statement would be laid before the government, and that in the event of the robbery alleged to have been committed by the crew of the boat which conveyed him from Muscat being satisfactorily traced to any of the subjects of Sheik Sultan ben Suggur, steps would be taken to obtain either the restitution of his property or the payment of its value.

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STATEMENT of Sheik Abdullah ben Iwuz, calling himself a Native of the Coast of Barbarah, made to the Officiating Resident in the Persian Gulf, 23d September 1837.

No. 2.

THAT about four months ago, while he was on a visit to Muscat, for the arrangement of some commercial affairs between his people and the imaum's subjects, he received letters from Barbarah complaining that the Joasmees had carried off from that place 233 unmarried girls, and having brought them up the gulf, had there disposed of them as slaves. These communications further directed him to proceed to Rasel Khymah, and in the event of Sheik Sultan ben Suggur not liberating the captives, he was to go on to Bushire, and lay the whole of the circumstances before the resident; that, in pursuance of these instructions, he had embarked in a Zaab boat, with a crew of seven men, commanded by a man named Khumees, said to be bound for Rasel Khymah. In the course of the voyage questions were put to him as to his object in visiting the Joasmees sheik, which he was imprudent enough to detail at length; the consequence was, that the crew at first proposed to put him to death, but at the recommendation of the nacodah they contented themselves with stripping him of his property and letters, and then putting him on shore in the neighbourhood of Ras Jebbl. The articles taken from him consisted of those mentioned below.* The deponent continued his statement by saying, that having procured a passage to Lingah, he proceeded over from that port to Rasel Khymah, and made his complaint to Sheik Sultan ben Suggur, who told him to have patience, and he would afford him redress. In the meanwhile two individuals belonging to Rasel Khymah and Shargah shipped off the greater part of the girls, who had been kidnapped on board a bugla and bateel, and sent them to Koweet, Bushire and Bussorah for sale; on this being reported to their chief, he immediately ordered a list to be made out of the individuals in whose possession these unfortunate persons had been, and, under the pretence of affording compensation for the irregular conduct of his people, he made them pay him a fine of ten dollars upon each slave, which he said was to be given to the complainant. This money, however, had no sooner been collected than the sheik offered the complainant 200 crowns to say nothing further on the subject, which offer was refused. The deponent further states, that not the slightest attention was paid to his complaint regarding the treatment he had experienced from the people of the boat from the Joasmees chief; at last, finding he could get no redress from Sheik Sultan, he proceeded on to Shargah, and laid his case before Moollah Hoossein, the agent there, who promised to write to the resident upon the subject.

Upon a cross-examination, the deponent at once acknowledged that the Joasmees had not carried off the girls from Barbarah by force, but that, having persuaded them to come on board under a promise of making them their wives, they had on their arrival in the gulf disposed of them as slaves. The deponent further stated, that the Joasmees had bribed a native of Barbarah, named Mutter, to write a letter to Sheik Sultan ben Suggur, to the effect that the girls carried away were all regularly purchased; but that when the inhabitants of the place found out that they had been deceived, and their relations made slaves, this person was immediately put to death by them for his treachery. The deponent concluded his statement by requesting that the resident would take measures for obtaining the liberation of the individuals who had been carried away from their native country in this treacherous and shameful manner.

FROM the Secretary to Government of Bombay to Captain S. Hennell, Acting Resident in the Persian Gulf, Bushire, dated 9th December 1837.

No. 3.

WITH reference to your letter, dated the 24th September last, No. 84, with enclosure, regarding the abduction of a number of girls from the coast of Barbarah by the Joasmees, and of their having been sold as slaves, I am directed to acquaint you, that the Right honourable the Governor in Council will await your further report on the subject. In the meantime, however, the Governor in Council requests that you will favour government with your opinion as to the practicability or otherwise of inducing his highness the imaum of Muscat and Arab chiefs in the gulf to prohibit the traffic in slaves altogether.

FROM Captain S. Hennell, Acting Resident in the Persian Gulf, to the Secretary to Government of Bombay, dated 10th January 1838.

No. 4.

I HAVE the honour to acknowledge the receipt of your letter, No. 2,303,† in this department, under date the 9th ultimo, upon the subject of the alleged abduction of a number of girls from the coast of Barbarah by the Joasmees (as reported by me in a former communication), and at the same time conveying the desire of the Right honourable the Governor in Council that I should submit my opinion as to the practicability or otherwise of inducing

* Matchlock, sword, dagger, one pistol, and a basket of clothes.
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† Vide No. 3, *supra*.

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inducing his highness the imaum of Muscat and the Arab chiefs in the gulf to prohibit the traffic in slaves altogether.

2. In reply, I have the honour to report, for the information of the Right honourable the Governor in Council, that not having yet received any answers to the inquiries I directed to be instituted by the agents at Shargah and Muscat into the truth or falsehood of the allegations made by Mahomed ben Iwuz (the professed Barbarah agent), regarding the proceedings of the Joasmees on the African coast, it is not in my power at present to afford the government satisfactory information upon that point. I trust, however, that upon my arrival at Muscat, when returning to Bushire, I shall be enabled to make a full report upon the subject.

3. With reference to the latter part of your communication, it is with much diffidence I state, for the information of the Right honourable the Governor in Council, that after much and deliberate consideration of the question, I am reluctantly led to the conclusion that, in the first place, it would be impracticable to induce his highness the imaum of Muscat and the Arab chiefs in the gulf to put an end to the traffic in slaves without such a large pecuniary sacrifice being made on the part of the British Government as would most likely be considered altogether inexpedient; and, in the second place, that, were such a sacrifice made, the humane and philanthropic objects of the Right honourable the Governor in Council would still be defeated by further impediments and difficulties, for which I fear no remedy could be found.

4. Of the chiefs in the Persian Gulf, with whom (unless as a matter of expediency alone) we could assume to ourselves any right to interfere directly in the question of the slave trade, the only ones are those who are members of the general treaty negotiated in 1820 by Major-general Sir W. G. Keir, namely, the Joasmees Bemyas and Uttoobee Sheiks. The ninth article in the document declares "the carrying off (literally, plundering) of slaves, men, women and children, from the coasts of Africa or elsewhere, and the transporting (literally, embarking) them in vessels, is plunder and piracy, and the friendly Arabs shall do nothing of this nature (literally, shall not agree to this thing)." This declaration, however strongly the English translation may appear expressed, was considered so ambiguous, that it was not acted upon by the British officer who was appointed to the superintendence of our political relations in the gulf, shortly after the treaty had been signed by the respective chiefs before referred to. Since that date, a period of 17 years has passed over without the question having been agitated, and thus the several parties concerned have acquired a sort of prescriptive right to consider that the ninth article was inserted solely with the view of guarding against the forcible carrying away of individuals for the purpose of selling them as slaves, and not meant to prohibit altogether a traffic which is not only in accordance with the letter and spirit of their religion, but which long continuance and custom have rendered almost indispensable to their domestic comfort.

5. Assuming, however, that the ninth article of the document before referred to bears the interpretation best suited to our views and policy, and that our right to act upon it, although allowed to lie so long in abeyance, is nevertheless liable to be called into operation whenever we may consider it expedient to do so, still it must be borne in recollection, that, even on the Arabian side of the Persian Gulf alone, neither his highness the imaum nor the chiefs of Sohar, Kateef or Kowlet are parties to this treaty, and therefore their consent to a total prohibition of the traffic in our fellow-creatures could only be obtained by means of negotiation, and the offer of such advantages as would, in their estimation, compensate for the loss they sustained in the surrender of a practice uniting both profit and convenience. I believe myself that a great proportion of the income of his highness the imaum is drawn from this source; and I understand he has declared, that, in consequence of his having allowed himself to enter into the agreement with Captain Moresby, of the royal navy, engaging to prohibit the slave trade with European powers within certain limits, he has sustained a diminution in his revenues to the extent of 100,000 crowns, and that he is resolute in his determination not to afford any further concessions upon this point. But even admitting that, either through our influence or the payment of an annual pecuniary compensation, the parties alluded to consented to enter into an engagement for the total suppression of the slave trade, I fear that the attainment of the humane objects contemplated by the government would be still as distant as before. My reason for entertaining this opinion is, that the effect of the prohibition, if it could be enforced in the ports on the Arabian side of the gulf, would be to throw the whole of this nefarious traffic into the hands of the inhabitants of Bussorah and Muhumrah (subjects of the Ottoman Porte), and those of Bushire, Congoon, Aseeloo and Singah, the principal seaports of Persia. It is unnecessary to observe, that, in the present state of our relations with both these governments, no interdiction of the traffic in question could be carried into effect, unless under the express sanction of their respective authorities. Taking, however, into consideration that the sale and purchase of slaves is not only permitted by the tenets of their faith, but that the discontinuance would greatly abridge what habit and custom have led their subjects to value as a domestic convenience, I venture to think that, for some time, at least, it is hopeless to look for such a sanction being afforded. In addition to these impediments, I may also advert to the probability, that, were the inhabitants in the gulf to relinquish the traffic at present carried on in slaves, the place of their vessels would be immediately occupied by those from the Red Sea, the coasts of Mekran, Scinde, &c. It may at the same time be reasonably anticipated, that even those powers, whose consent to our views may be exacted or purchased, will exhibit little more than a nominal adherence to their engagements, unless compelled to do so by our own maritime force. This, however, would involve the necessity of greatly augmenting the number of vessels of war employed in those seas, and, in all probability,

probability, be attended with the constant risk of entangling us in disputes with the local governments dependent upon Persia, Turkey and Egypt.

6. I cannot conclude my observations without adverting to the opinions held upon this subject by the late Captain Macleod, when resident in the Persian Gulf; and as these are in a great measure corroborative of my own views, I now respectfully submit an extract from a despatch addressed by that officer to the government, dated the 27th February 1823. After alluding to the wording of the ninth article of our treaty with the pacificated Arabs, Captain Macleod continues as follows:—

“But in whatever sense the words of the treaty may be understood by either party, I am convinced that our utmost endeavours to abolish the slave trade among the parties to the treaty will be ineffectual, as long as the other powers of the gulf persist in it. We may, perhaps, put a stop to the carrying off of slaves, but their purchase and transport we can never prevent. The slaves will be disguised and concealed in a thousand ways, so that it will be impossible for us to detect them: and I doubt whether more harm than good might not be done to the cause of humanity by stopping boats and searching them for slaves; because it would in all cases occasion such disgust and offence as would involve a great risk of a renewal of hostilities.

“I do not believe that any of the parties to the treaty do carry off slaves, all those* they possess being purchased at Muscat and other places. But, at all events, it would be difficult even in the former case to detect them, in the latter next to impossible: and with all our efforts we shall find it impracticable to put a stop to a traffic which is sanctioned by their religion and by immemorial custom, unless it were relinquished by the common consent of the whole of the chiefs of the gulf.

“Convinced as I am of the inefficacy of this article of the treaty, which has not yet been acted upon, and of the dangers of attempting to carry it into effect, I am compelled with much reluctance to recommend that it should not be enforced except in very glaring cases, or at least that its sense should be considered as confined to the carrying off of slaves, and not including their purchase or transport.

“It is gratifying to humanity to know, that slaves are not only extremely well treated and protected by their Arab masters, but that they even enjoy a very considerable degree of power and influence.† I remarked that they were every where the stoutest and best fed men, and that they seemed happy and comfortable. I must not, however, omit to mention an exception which occurred at Bahrein, where two slaves sought refuge on board the Ternate, from the cruelty, as they said, of their master. They were not, however, received, and we had no means of ascertaining the merits of the case. Much as it is to be desired that this horrid traffic should be abandoned throughout the world, we must, I fear, confess that the cruel treatment of slaves has been the reproach rather of European than of eastern nations.”

From the Secretary to Government of Bombay to the Resident in the Persian Gulf, dated 6th March 1838.

No. 5.

I AM directed to acknowledge the receipt of your letter, dated the 10th ultimo, on the subject of the alleged abduction of a number of girls from the coast of Barbarah by the Joasmees, and stating your sentiments as to the practicability of inducing his highness the imaum of Muscat and the Arab chiefs in the gulf to prohibit the traffic in slaves altogether, and to communicate to you the following observations and instructions thereon:—

2. Although the Governor in Council entertains little hope of putting an end to this execrable traffic in the gulf, yet he desires me to request that you will, as far as may be in your power, oppose any case of enormity that falls within your notice, and that you will on all occasions express to the Arab chiefs the detestation with which the British Government behold, in the slave trade, the unoffending inhabitants of any country forcibly taken from their homes, and separated for ever from parents, connexions and people, and carried off to be sold as slaves to strangers in a distant land.

3. The Governor in Council will await your further report on the subject, as stated in my letter of the 9th December last.

From the Acting Assistant in charge of the Residency in the Persian Gulf, to the Secretary to the Government of Bombay, dated 28th February 1838.

No. 6.

IN advertence to Captain Hennell's letter, dated 24th September, No. 84 of 1837, in this department, relative to a complaint by a person named Abdullah ben Iwuz, of a number of young women having been carried away from the coast of Barbarah by traders to that quarter of the Joasmees tribe, and of his having been robbed and maltreated himself while proceeding to recover, if possible, those unfortunate individuals, I have the honour to forward, for the information of the Right honourable the Governor in Council, the accompanying translated extracts of letters from the government agents at Muscat and Shargah.

2. The

* The slaves are frequently brought direct from the African coast.

† My own personal observation fully confirms this statement.—S. H.

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2. The accusation of Abdullah ben Iwuz is principally, if not entirely, directed against the Joasmees, both as regards the abduction of the young women and the mal-treatment of himself; but, as far as has yet been ascertained, that tribe either happens to be innocent of the offences with which it is charged, or means have been found of concealing the truth from the government agent.

3. From the documents now forwarded, however, it would appear evident that a disgraceful traffic in young females, probably both by stealth and purchase, is carried on from the Barbarah coast, not only to the territories of the Joasmees, but every port of consequence in the Persian Gulf.

4. In enclosure 3, evidence is adduced of an act, which, if its truth could be satisfactorily established, the 9th article of the treaty with the pacificated Arabs would, I conceive, warrant its being viewed and treated as an act of piracy. But the chief of Koweet, against whose subjects the information is furnished, is not a member of that treaty.

5. I am not well aware of the state of those unfortunate creatures previous to their becoming the subjects of this nefarious traffic; but the result of some inquiry inclines me to believe that the Soomalies, from whom a great part of the supply seems to be drawn, are a free people, and cannot become slaves without violence. Consequently those conveyed to the Persian Gulf must be either kidnapped or purchased while prisoners of war,—a practice to which, even in the eyes of the generality of Mahomedans, a degree of moral turpitude attaches, which, if insisted on, would tend considerably to diminish the evil; and I conceive that no means which can with propriety be used ought to be omitted of circumscribing, and, if possible, abolishing a traffic in itself most offensive, and probably rendered doubly grievous from its proving an incentive to war and all its concomitant miseries.

6. No communication has yet been addressed to any of the parties supposed to be implicated, as the subject appears to offer a favourable opportunity for introducing the question of abolishing all traffic in slaves on the part of the Arab chiefs, or those under their authority, as directed by Mr. Chief Secretary Wathen's letter of the 30th October last.

No. 7. TRANSLATED Extract* of a Letter from the Agent at Muscat to the Acting Assistant in charge of the Residency in the Persian Gulf, dated 1st Shabon, or 30th November 1837.

RELATIVE to the acts of the Joasmees, in the direction of Sowahil, on the coast of Barbarah, I have made much inquiry; and I have heard that the Joasmees, the past season, brought some young girls, Abyssinian and Soomalee; but it is reported that they purchased them with money. I made inquiries from some men from Singah, and they said that they did bring four or five young girls from Soomal. On the 26th Rijb, a bugarah, from Shargah, arrived, on board of which were some friends, of whom I made inquiry. They replied that they did bring some of those young girls to Shargah, Rasel Khymah, and Ajman, but that they purchased them. Also the sons of Ali ben Atek went as passengers in the bugla of Salimal Aweid, and there are with them four or five young girls from Soomal; but they did not sell them on the Oman coast. They proceeded to Bussorah, there to dispose of them. The batil of Ben Faraj was also in their fleet. So far as I have been able to learn, this affair is not unfounded, but is not true to the extent stated of 233 young girls,—apparently only 20 or 30.

No. 8. TRANSLATED Extract* of a Letter from the Agent of Shargah to the Acting Assistant in charge of the Residency in the Persian Gulf, dated 13th Ramazan, or 12th December 1837.

HE states, that during the last three months he has been endeavouring to procure information relative to the circumstances complained of by the person from Barbarah (Abdullah ben Iwuz), but that as yet he has not been able to learn any thing of the matter; that he is not aware of any one of the name of Khamis, a subject of Sultan ben Suggur, who trades in the direction of Muscat; that there is a person named Salmeen ben Khamis, but that he is not a man who would be guilty of such an act (plundering Abdullah ben Iwuz, as stated by himself); he expresses his surprise that such a statement should have been made by Abdullah ben Iwuz at Bushire, as he (the agent) was at Rasel Khymah at the time of his arrival, and invited him to make known his complaints, but that he made no mention of the treatment he had been subjected to by Khamis, only stating that during the last three years the subjects of Sultan ben Suggur, and others beside, from Batinah, &c., have been in the habit of trading in the direction of Barbarah, and stealing women under the pretence of marriage, and conveying them to their own country for sale; that it is true they are brought from that quarter for sale at Bussorah, coast of the province of Fars, &c., but that those who do bring them assert that they are all Abyssinians; that it is difficult to distinguish between the two, as the colour of the Abyssinian and Soomal is the same; that women are purchased at Barbarah, which country is not like other countries having forts, doors, &c. The chiefs of that quarter also do not have custom-houses, &c., nor know what may be imported or exported. About half a farsakh intervenes between their places (towns), and most of them are thieves and mischief-makers. When traders visit that quarter they arrive at night, and land their goods at night, so that no one knows what is brought by them. When they leave, in like manner they take their departure at night, and no one knows what they

* See No. 6, *supra*.

they carry along with them. It is stated that two women from Barbarah are now in Shargah, and the remainder have been sent to Koit and Bussorah.

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TRANSLATED Extract * of a Letter from the Agent at Muscat, to the Acting Assistant in charge of the Residency in the Persian Gulf, dated 28th Showal, or 25th January 1838.

No. 9.

RELATIVE to Abdullah ben Iwuz Soomalie: he arrived on board of a Barhein bugla on the 20th instant. He waited on me, and reported the incidents that had befallen him. He came a second time, and stated that some of the young women he is in search of were in Muscat, and requested permission to go and find them, which I granted him. In the course of a couple of days he returned, and said that he had discovered one of the young women. I desired him to bring her, that I might make inquiry relative to the affair, which being done, she stated that she was a Soomalie, and that she was from Barbarah; that one of the people of Soor, called Ali ben Seid ben Isa, stole her; that he was the navigator on board a vessel belonging to Koit, commanded by an Abyssinian, called Mahabool, who gave them permission to seize whomsoever they could; that she with seven others were carried away, and conveyed first to Soor and afterwards to Muscat; that she was taken to the sons of Seid ben Isa and Amber Thalet, who discovered that she was a Soomalie, and did not want her; afterwards that she was kept for some time at Sidab (a place near Muscat); that another is in possession of Ahmed ben Seif ben Hausel of Muttra, and is married to one of his servants; that a third is in the hands of the sister of Jawie, in Muttra, who has been seen by Abul Nebbie Beloochie; where the remainder are she does not know. Abdullah ben Iwuz having made inquiry regarding the one who was with the sister of Jawie, was informed that she had been sold. The one in the hands of Ahmed ben Seif still remains with him. I recommended Abdullah ben Iwuz to remain in Muscat until the arrival of the resident; but he said that the season would be over, and that between him and Captain Hennell there was an agreement. I myself made inquiry of people from Koit, and they stated that that boat was the property of Yacoub ben Ghanun Kaitee, and that she was commanded by his slave. Of those eight young women four were sold between Soor and Sohar, and the remaining four went to Koit, where they (the crew of the bugla) were questioned about the affair, and they replied that they had purchased them with money.

FROM the Secretary to Government of Bombay to the Officiating Resident in the Persian Gulf, dated 16th April 1838.

No. 10.

I AM directed to acknowledge the receipt of Mr. Mackenzie's letter, dated the 28th February † last, on the subject of the slave trade carried on at the ports in the Persian Gulf, and to inform you, that the Right honourable the Governor in Council very much fears that little can be done to effect the suppression of this nefarious traffic, but that as long as a hope remains, government are unwilling to abandon it. You are therefore requested to submit your opinion in detail on the points adverted to in the communication now acknowledged, and at the same time suggest any measures, which may occur to you as likely to mitigate the evil.

FROM Captain S. Hennell, Officiating Resident in the Persian Gulf, to the Secretary to the Government of Bombay, dated 28th April 1838.

No. 11.

WITH reference to my letters to your address, under date the 24th September 1837, ‡ and 10th January 1838, § both in this department, I have the honour to report, for the information of the Right honourable the Governor in Council, that the information which my inquiries have elicited during my recent visits to Muscat and the Arabian coast, touching the complaint of a person named Abdullah ben Iwuz of the abduction of a number of girls from the coast of Barbarah, all tends to confirm the opinion expressed by Mr. Mackenzie in the 2d, 3d, 4th and 5th paragraphs of his despatch, No. 6, Political Department, dated the 28th February 1838.

2. Although unable to bring any positive or direct proof against the subjects of Sheik Sultan ben Suggur, still I am inclined to concur in the general opinion entertained in the gulf, that instances of free persons being kidnapped and brought away for sale from the coast of Barbarah do sometimes occur among the Joasmees. I therefore considered it my duty to introduce the subject, on the occasion of the interview held with their chief on the 17th instant. After touching generally upon the complaint preferred against his subjects by Abdullah ben Iwuz last year, I expressed in the strongest possible terms the indignation felt by the government on learning that such an infamous and nefarious practice had been carried on, although so expressly forbidden by the 9th article of the treaty subscribed by the independent Arabian chieftains of the gulf. The sheik, after a general denial of the accusation, and affirming that the subjects of his highness the imaum and those of Koweet were the individuals principally concerned in this traffic, endeavoured to convince me that he was fully impressed with the wickedness and enormity of such proceedings, and went on to say that, to prevent the possibility of any of his people participating in them, he had despatched his confidential meerza to Zanzibar, for the purpose of entering into arrangements with

* See No. 6, *supra*.
262.

† See No. 6, *supra*.

‡ See No. 1, *supra*.

§ See No. 4, *supra*.

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with his highness the imaum of Muscat, to the effect that in future no vessels from the Joasmee ports should be permitted to visit the African coast without carrying a special written authority from himself; that upon the arrival of such vessels in any of the possessions of the imaum, his highness or his *locum tenens* should assign a fixed place for the residence of their crews during their stay; and further, that upon their return to the gulf, the nacodah of each boat would be required to produce a written document under the seal of his highness, certifying that his crew had conducted themselves with peace and quietness, and that none of his people had been guilty of stealing or surreptitiously carrying away slaves, either by force or fraud. The sheik added, that to enforce these propositions he had offered the imaum full authority to punish to the utmost extent every one of his subjects who might be guilty of their infraction. I replied, that this proof of the sincerity of his sentiments was satisfactory; and as it was now evident that we had both the same object in view, he could have no objection to afford his consent to any further arrangements which might tend to put an end to the atrocious practice complained of. I therefore recommended that he should concede to our cruisers the right of searching and detaining his vessels upon the high seas, in all cases, where their crews were open to the suspicion of being engaged in the kidnapping of slaves, and at the same time to admit the further right of seizing and confiscating them in case these suspicions proved to be well founded. Upon the sheik unhesitatingly expressing his acquiescence, I produced the agreement (of which the accompanying is a copy). After making his moonshee read it aloud, he affixed his seal to two copies, one of which he retained himself, and the other is now deposited in the records of the residency.

3. It will be observed by the Right honourable the Governor in Council, that the document above referred to does not in the slightest degree bind the government, or pledge it to any specific line of policy with reference to the slave trade, while it is something gained towards a check, and may at a future period form the basis of more general and comprehensive negotiations for the suppression of this detestable traffic.

4. In doing myself the honour to intimate that a similar agreement to the one above referred to has been signed by Sheik Rashid ben Humeed, Sheik Mukhtoom ben Butye, and Sheik Khuleefa ben Shackboot, the chiefs of Ejman, Debaye, and Aboothabee, and expressing a hope that the steps I have taken may be honoured by the approval of the Right honourable the Governor in Council, I have, &c.

- No. 12. ARTICLE of Agreement entered into by *Sheik Sultan ben Suggur*, dated Shargah, the 22d Muhurum, A. H. 1264, or 17th April A. D. 1838.

IN the event of vessels connected with my ports, or belonging to my subjects, coming under the suspicion of being employed in the carrying off (literally, stealing), and embarkation of slaves, men, women or children, I, Sultan ben Suggur, Sheik of the Joasmee tribe, do hereby agree to their being detained and searched, whenever and wherever they may be fallen in with on the seas by the cruisers of the British Government; and further, that upon its being ascertained that the crews have carried off (literally, stolen), and embarked slaves, their vessels shall be liable to seizure and confiscation by the aforesaid cruisers.

- No. 13. FROM the Acting Chief Secretary to Government to the Officiating Resident in the Persian Gulf, dated 11th July 1838.

I AM directed to acknowledge the receipt of your letter, dated the 28th April last,* No. 15, with its enclosure, on the subject of kidnapping slaves from the coast of Barbarah by the Joasmees, and to inform you that the Right honourable the Governor in Council highly approves of your having entered into an agreement with the chief of the tribe for permitting our cruisers to search and detain his vessels upon the high seas in all cases where their crews are open to the suspicion of being engaged in the kidnapping of slaves, and to confiscate such vessels in case such suspicions are proved to be well founded.

2. The Governor in Council further instructs me to request that you will still act according to the instructions of government conveyed to you in Mr. Secretary Willoughby's letter, dated the 16th of April last, on the subject of the slave trade carried on at the ports in the Persian Gulf.

- No. 14. FROM Captain *S. Hennell*, Resident in the Persian Gulf, to the Secretary to the Government of Bombay, dated 3d September 1838.

I HAVE had the honour to receive your letter, No. 1,346, in this department, under date the 11th July 1838, approving of the agreement entered into with Sultan ben Suggur, prohibiting the kidnapping of slaves from the coast of Barbarah, and further directing me to act according to the instructions of the government, conveyed in your letter of the 18th April last.

2. The

* See No. 11, *supra*.

2. The instructions thus referred to, I conclude, are those directing me to submit my opinion in detail on the points adverted to in Mr. Mackenzie's communication, dated the 28th February 1838, and at the same time to suggest any measures which might occur to me as likely to mitigate the evil of the slave trade carried on in these quarters.

3. For the convenience of reference, I shall proceed to notice the several subjects alluded to by Mr. Mackenzie, by drawing them up in one column, and making such remarks as they may appear to call for on the opposite side.

1st. Mr. Mackenzie states, that with reference to the accusation of Abdullah ben Iwuz against the Joasmees, regarding the abduction of a number of his country-women and their mal-treatment of himself, it would appear, either the tribe were innocent of the charge, or had found means of concealing the truth from the government agent at Shargah.

On this point I have already reported to the government, that in the absence of direct proof against the subjects of Sheik Sultan ben Suggur, I was of opinion that instances of free persons being stolen and brought away for sale, had sometimes occurred among the Joasmees, and it was this belief which led me to enter into the agreement with the members of the general treaty, prohibiting the stealing for purposes of traffic, not merely of free persons, but those coming under the denomination of slaves, whether men, women or children.

2d. That it would appear that a disgraceful traffic in young females, probably both by stealth and purchase, is carried on, not only in the territories of the Joasmees, but every port of consequence in the Persian Gulf.

Mr. Mackenzie is right in stating that this traffic in young women does exist in all the principal ports. But the greatest part of these females consists of negroes, with a few Abyssinians procured by purchase, and who are considered by the Mahomedan faith as legitimate bondswomen. Instances have, as stated before, taken place of Somalees being brought for sale, but they are rare; and, in some of the ports on the Persian coast, were the circumstance to come to the knowledge of the chief, they would be immediately set at liberty.

3d. That had the sheik of Koweet been a member of the general treaty entered into by Sir W. G. Kerr, with the pacificated Arabs, the conduct of some of his subjects in kidnapping Somalees would, by the 9th article of that agreement, have come under the denomination of piracy.

Unquestionably the proceedings of the subjects of the sheik of Koweet in stealing the seven Somalee girls from the coast of Barbarah, as reported by the native agent at Muscat, would come under the 9th article of the general treaty, and as such be considered as piracy. But the ruler of Koweet is not a member of the treaty in question, and moreover calls himself a dependent of the Turkish government. I propose, however, writing to him on the subject, and requesting him to exert his influence to put an end to such atrocities.

4th. That the Somalees, from whom a great part of the supply seems to be drawn, are a free people, and as they cannot become slaves without violence, consequently those conveyed to the Persian Gulf must be either kidnapped or purchased while prisoners of war, and that to this practice a degree of moral turpitude attaches, which if insisted upon would tend considerably to diminish the evil.

In making this observation, Mr. Mackenzie, I conclude, means, that a great part of the supply of those who were originally "hoor," or free, is taken from the Somalees, in contradistinction to the supply of negroes and Abyssinians who come under the denomination of "abeed," or bondsmen.

The proportion of the Somalee to the two latter is perhaps as 1 in 100, and these are, as Mr. M. observes, probably either kidnapped or purchased as prisoners of war. It is certainly true that, by the Mahomedan law, the sale of free persons as slaves is expressly forbidden; but I doubt whether, in actual fact, any great degree of moral guilt is considered to be incurred by Mussulmans who engage in this traffic. Those who profess to act up to the tenet of the Koran, will not purchase or sell an individual of this description; but the practice of disposing of prisoners of war as bondsmen is not confined to Africa. I am myself aware of two instances in this country in which Persian and Arab women and children, taken on the occasion of the capture of Bunder Dillum by the troops of the prince of Shiraz, and that of Mohumrah by the present pasha of Bagdad, were carried away and sold as slaves.

Appendix XIX.
—
Gulf Slavery.

5th. That the subject appears to offer a favourable opportunity for introducing the question of abolishing all traffic in slaves on the part of the Arabian chiefs, or those under their authority.

I have already, in my letter to government of the 10th of January last, fully recorded my opinion regarding the impracticability of abolishing the traffic in slaves on the part of the Arabian chiefs, without the payment of a large sum of money as an indemnification for the sacrifice made by them in surrendering a practice in no way opposed to their own faith; in compliance with the religious views and opinions of others. At the same time I expressed my belief, that, even were this indemnification afforded, causes beyond our control would prevent any benefit being derived from its payment.

4. The only measures I can suggest as likely to mitigate the evil of this nefarious traffic, independently of the agreement entered into this year by the Arabian chiefs, who are members of the general treaty, viz. that prohibiting the kidnapping of slaves under penalty of the seizure and confiscation of the vessels of those concerned, are, 1st, to endeavour to induce his highness the imaum to extend the treaty concluded by Captain Moresby of his Majesty's ship *Menai*, in 1822, so as to include in its provisions the provinces of Cutch and Kattywar,—an object which would be effected by extending the line without which his highness's vessels engaged in the slave trade are liable to seizure from Diu Head, its present limit, to Karachee; or, in the event of this not being attainable, to the mouths of the Indus: 2d, to obtain the consent of the Arabian chiefs, who are not subjects of Persia or Turkey, to the adoption of the same restrictive line: 3d, to have the right of search of all vessels found without the proscribed limits, and open to the suspicion of being engaged in the slave trade, conceded to us by treaty on the part of his highness the imaum, and the maritime Arabian chiefs: 4th, to endeavour to negotiate an agreement by which the purchase or sale of Somalees or such other inhabitants of the African coast as may come under the Mahomedan denomination of "hoor," or free, shall be considered as equivalent to an act of piracy, and punished accordingly.

No. 15.

FROM the Secretary to Government of Bombay to the Resident in the Persian Gulf, dated 12th December 1836.

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 3d September last,* submitting your opinion upon certain points adverted to by Mr. Mackenzie in his communication of the 28th February 1838, regarding the abduction of young females from the coast of Barbarah, and suggesting measures likely to mitigate the evil of the slave trade in those quarters.

2. With reference to that part of the 3d para. of your communication, noticing Mr Mackenzie's remark, that a disgraceful traffic in young women is carried on in every port of consequence in the Persian Gulf, I am desired to observe, that it appears to government highly improbable that the protection secured to the negroes of the coast of Barbarah under the treaty with Sir W. Grant Keir excludes the Abyssinians, many of whom are Christians, and have the strongest claim to the protection of the British Government; but upon this point, however, you are requested to favour government with your opinion.

3. Adverting to the remedial measures suggested by you in your letter, dated the 10th† January last, I am directed to inform you, that the Governor in Council is not at all inclined in favour of making pecuniary compensation to the Arab chiefs in the gulf, to induce them to renounce all participation in this revolting trade.

4. With reference to the last paragraph of your report, I am desired to inform you, that, in regard to those states who have not come under compact to abandon the slave trade, measures only of a persuasive nature, and not those of a compulsory kind, should be resorted to; and the Governor in Council sees no reason why, in any new engagements which may be made, the ports on the coast of Muckram should not be included.

5. I am, on this occasion, desired to request that you will never cease to use your utmost exertions to advance the important object of restricting and suppressing this hateful traffic, on every opening that may offer; and if you are still of opinion that nothing further can be done at present, in mitigation of the evil, than as suggested in the 4th paragraph of your letter, the Governor in Council directs that the measures proposed in this communication be attempted as soon as possible, and which, it is hoped, you will succeed in carrying into effect.

6. The African children, however, must be held to be "free," and should be included in the engagement, unless any obstacle may exist, not now within the knowledge of government; and should any such obstacle appear to exist, you are requested to exert every endeavour on your part to remove the same.

7. In conclusion, I am desired to intimate to you, that the Honourable the Governor in Council approves of your intention to write to the ruler of Koweet regarding the proceeding of

* See No. 14, *supra*.† See No. 4, *supra*.

of his subjects in stealing Somalee girls from the coast of Barbarah, and requesting him to exert his influence to put an end to such atrocities in future; but you are requested not to lose sight of the Abyssinians.

Appendix XIX.
Gulf Slavery.

FROM Captain S. Hennell, Resident in the Persian Gulf, to the Secretary to Government of Bombay, dated 19th July 1839.

No. 16.

I HAVE the honour to acknowledge your letter, No. 2,378,* in this department, under date the 12th December last, upon the subject of the slave trade carried on in the Gulf of Persia.

2. Adverting to the 2d paragraph of your communication, I beg respectfully to observe, that in noticing Mr. Mackenzie's remark regarding, "a disgraceful traffic in young women being carried on in every port of consequence in the Persian Gulf," I did not for a moment mean to imply that the protection secured to the negroes of the coast of Barbarah, under the treaty with Sir W. Grant Keir, excluded Abyssinia. The carrying away a native of Abyssinia by force is, by that treaty, equally an act of piracy as kidnapping a negro from Barbarah, and would, if proved, be treated as such.

3. The Honourable the Governor in Council may rely with confidence upon my gladly availing myself of every opening which may offer to use my utmost exertions in the restriction and suppression of a traffic so opposed to all the best feelings of humanity. A great advance would be made in this important object, if the imaum were persuaded to extend the line beyond which the vessels of his highness, engaged in the slave trade, are liable to seizure, from Diu Head to Cape Guadel on the coast of Mekran. I have long been looking for the return of his highness to Muscat, in order to have an opportunity of personally communicating with him upon the subject. But judging from the manner in which his return has been procrastinated, it would almost appear as if Syud Said were determined not to revisit his Arabian territories, although it is again currently reported he intends shortly to do so. I found, during my late visit to Muscat, that it was perfectly useless discussing any question of this nature with the regency of that place, as they always gave out that they could not act in any affair, excepting under the special authority and sanction of his highness the imaum.

4. With regard to the maritime Arabian chiefs, I have much satisfaction in enclosing the accompanying Arabic copies and a translation of engagements which have been entered into by Sheik Khuleefa of Aboothabee, Sheik Mukhtoom of Debay, Sheik Abdullah of Amulgaveen, and Sheik Sultan of Rasel Khymah. The first article of these engagements gives our vessels the right of search beyond a line drawn from Cape Delgado to Cape Guadel. The second renders any vessel belonging to the above chiefs, found with slaves on board, beyond the limits specified, liable to seizure and confiscation; the third makes the sale of Somalees an act of piracy.†

1 to 4.
Referring to copies of engagements entered into by Arabic chiefs regarding slave trade.

5. The restrictive line and other remedial measures suggested by me, in my letter of the 3d September 1838, have thus been agreed to by the principal Arabian chiefs of the gulf, and with these concessions I was obliged to remain satisfied for the present, as, with reference to the intrigues now carrying on, among them by the emissaries of Khorshid Pasha, it appeared to me impolitic to press them further upon a subject they at all times approach with suspicion and reluctance.

FROM the Acting Secretary to Government of Bombay to the Resident in the Persian Gulf, dated 21st October 1839.

No. 17.

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, with its enclosures, dated the 19th July last, No. 60, and to request that you will be pleased to embrace the first favourable opportunity of, inducing his highness the imaum of Muscat to extend the line of prohibition of the slave trade by his subjects from Diu Head to Cape Guadel, on the coast of Mekran.‡

2. The engagements entered into by the principal maritime Arabian chiefs regarding the slave trade are considered, by the Governor in Council highly satisfactory, and he is pleased to approve the whole of your proceedings now reported.

3. The superintendent of the Indian navy has been requested to issue the necessary instructions to the officers commanding the Honourable Company's vessels of war, on the subject of the articles of the engagements above adverted to.

* No. 15, *supra*.

† The translated treaty with the Rasel Khymah chief, annexed to this letter, is omitted here, because printed in *extenso* in page 176 of the General Report.

‡ On the 17th December 1839, the imaum was induced to assent to the extension of the line. The agreement signed by him is printed in *extenso* in page 176 of the General Report.

APPENDIX XX.

CORRECTION OF SLAVES.

1. DESPATCH of the Honourable Court of Directors, dated 26th September 1838, suggesting the enactment of a law barring impunity of Masters, in virtue of dominical right, for acts against Slaves.
2. Extract paragraphs 2, 3, 4, and 5, from a Letter from the Officiating Secretary to the Government of India with the Governor-general, to the Secretary to the President in Council, dated 18th December 1838.
3. Extract paragraphs 2, 3 and 4, of a Letter, dated 7th January 1839, from the Officiating Secretary to the Government of India, Legislative Department, to Secretary to the Law Commission.
4. Letter No. 222, dated 27th May 1839, from the Officiating Secretary to the Government of India to the Indian Law Commissioners, in reply to above, with enclosures.
N.B.—In answer to this, on the 1st February 1839, the Law Commission addressed to the Supreme Government its first Report on the subject of Slavery in India. It is printed in a distinct form.
5. Letter No. 223, same date, from same to same, requesting a distinct Report on the present state of the law and practice relative to the Sale of Children, and in particular with reference to Crimes occasioned by such traffic.
6. Letter, dated 30th July 1839, from the Chief Secretary to the Madras Government to the Secretary to the Supreme Government of India. The despatch No. 1 had been referred to the Madras Government, which obtained and sent opinion of the Judges of the Madras Sudder Adawlut.
7. Letter of the Acting Register, Madras Sudder Adawlut, dated 17th of July, referred to and enclosed in above, containing opinion of the Sudder Adawlut.
8. Letter from the Chief Secretary to the Bombay Government to the Officiating Secretary to the Government of India, Legislative Department, dated 5th August 1839. The Bombay Government had also been referred to, and obtained and forwarded opinion of the Judges of the Bombay Sudder Adawlut.
9. Letter of the Register, Bombay Sudder Foudary Adawlut, containing opinion of the Judges referred to and enclosed in the above.
10. Letter, dated 2d September, from the Secretary to the Supreme Government of India, Legislative Department, to the Chief Secretary to the Government of Bombay, in reply to the foregoing.
11. Letter, dated 14th May 1840, of the Secretary to the Government of India, Legislative Department, in answer to above. It enclosed the following from the Register Sudder Adawlut and Advocate General, to whom reference had been made by the Bombay Government.
12. Letter, dated 5th October 1839, to the Advocate General, referred to in above.
13. Letter, dated 5th May 1840, from Register, Sudder Foudary Adawlut, referred to in idem.

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DESPATCH of the Honourable Court of Directors, dated 26th September 1838.

- No. 1. OUR attention has been drawn to the observations on the subject of slavery contained in note B, which is appended by the law commissioners to the penal code. In those observations it is recommended, "that no act falling under the definition of an offence should be exempted from punishment because it is committed by a master against a slave." This recommendation has our entire concurrence; and we desire, accordingly, with reference to our despatch on this subject, under date the 29th of August last (No. 14), that you will lose no time in passing an enactment to the foregoing effect.

- No. 2. EXTRACT paragraphs 2, 3, 4 and 5, from a Letter from the Officiating Secretary to the Government of India with the Governor-general, to the Secretary to the President in Council, dated 18th December 1838.

2. THE Governor-general is impressed with the belief that the principle has been invariably acknowledged, and acted up to in all courts of justice in Bengal, such being the result of a minute inquiry entered into by the Sudder Dewanny Adawlut for the lower provinces, within the last four years, and to the records of which reference may be easily had for the purpose of verifying his Lordship's impression.

2. A similar equitable principle is believed to have been generally adhered to in the north-west provinces, in the very few instances in which persons have appeared before a criminal tribunal in the character of master and slave, the spirit of the regulations of government requiring that all persons should be dealt within our courts of justice on a footing of perfect equality.

4: It

4. It will remain for the Honourable the President in Council to determine whether, after a consideration of the question, reasons might not be shown for deferring the immediate enactment of a law, which there might be some doubt for not considering specially requisite, with reference to the limited prevalence of slavery in the Bengal presidency the very mild character in which it exists, and the established principle in our courts of refusing to recognize any distinction of persons in respect of criminal proceedings.

5. His Lordship has directed me in this letter more especially to refer to the presidency of Bengal. But although he is less accurately informed of the law and practice in the other presidencies, he is led to believe that the same principle of general protection is also extended to them; but he would wish on this head to have further information.

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EXTRACT paragraphs 2, 3 and 4, from a Letter, dated 7th January 1839, from the Officiating Secretary to the Government of India, Legislative Department, to the Secretary to the Law Commission.

No. 3.

2. THE President in Council, with advertence to what is said in note B. of the proposed penal code, upon the present state of the criminal law in respect to slaves, and to the observations made in the accompanying extract from the letter of the officiating secretary to the Right honourable the Governor-general, requests that the commissioners will be so good as to favour him with their opinion as to whether the law, as now actually in force over every part of British India, is or is not such as to make the passing of a law of the nature directed by the honourable court requisite, in order that the intention of the Home Government may be carried into complete effect.

3. If the commissioners are of opinion that a special law is requisite with this view, they are requested to frame the draft of such a law for the consideration of the Council of India.

4. The subject of this despatch will of course find a place in the general report upon Slavery in India, which the commissioners are now preparing, but I am directed to request that this letter may be specially answered at the earliest convenience of the commissioners.

FROM the Officiating Secretary to the Government of India, Legislative Department, to the Indian Law Commissioners, dated 27th May 1839, No. 222.

No. 4.

WITH reference to your report on the present state of the criminal law in India relating to slaves, the Honourable the President in Council requests that you will collectively favour him with your opinions on the following points:—

2. First. Whether or not it is expedient now to pass any law to the effect of that directed by the Honourable Court of Directors in their despatch of the 26th September 1838, No. 15, whereof an extract accompanied my letter to your address of the 7th January last.

3. The President in Council remarks on this point, that, as will appear from the perusal of B. of the penal code, much variance in the practice of magistrates exists as to recognizing the right of moderate correction by a master of his slave, it is desirable that doubts upon this subject should be removed, if it can be done without the hazard of creating greater inconveniences.

4. Upon the expediency of formally abolishing the power of a master to correct his slave, in any case, it may be desirable to consider whether it would be regarded, with justice, or, in fact, by any considerable portion of the community, as an infringement of rights and a deterioration of property through the medium of the criminal law. It is also to be considered, as the regulations for the punishment of servants do not appear to be applicable to slaves, whether, regarding such benefits as the slave may derive from his situation, it is proper that he should be placed in a much more independent condition than a servant, and be exempted from punishment of every kind, from whatever authority, and on whatever occasion.

5. It may deserve inquiry, whether an objection applies to any special law regulating the conduct of masters towards their slaves (especially if it be thought proper that the law should contain provisions for enforcing by a magistrate the obedience of slaves in like manner as servants), as implying a recognition of a state of slavery, towards the absolute extinction of which, by the mere force of time, of civilization, and of the lenient and well-understood principles and practice of British administration, great advances are in progress. It has been observed, that if government in this manner formally recognize the state of slavery, it will incur a great danger of directly defeating its own intentions, and of becoming parties to the maintenance of that state, by being led into different measures for the regulation of the rights and obligations incident to it. It appears to be very important to compare, on the one hand, the inconveniences to which it may be thought the law will give rise, not merely such as may necessarily result from it, but also such as it must be likely to produce, if administered indiscreetly, or if made a plausible ground for discontent and excitement, and, on the other, the practical benefits which the law may be expected to confer. As to this, it is to be observed, that the real operation of the law is much more limited than would at first sight appear from the terms of the provision suggested in note B. of the penal code, which provision, it must be recollected, was intended by the law commissioners to be applied to the whole criminal law, and not merely to supply a particular defect in the existing law. It was made to prohibit immoderate as well as moderate correction; the former of which is already provided against by the existing law. It may deserve consideration whether the operation

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of the law, in simply prohibiting moderate correction, will not, in fact, be still more limited by the general practice of magistrates upon complaints of the nature in question, which is, at present, to lean in favour of the slave. And regarding the effects of usage, the distance of tribunals, the difficulty of establishing a charge of moderate correction, the trifling nature of the punishment which could with justice be inflicted on a master for moderately correcting his slave (it being understood that, according to the existing law, the master would be punishable if he corrected his slave immoderately or even moderately, except for negligence, disobedience or disrespect), it may be proper to inquire whether the act would be likely to have any practical effect of a general or extensive nature.

6. Without entering into a discussion upon the degree to which, in the present condition of Indian society, all slavery is excluded from amongst the Mahomedans by the strict letter of their own law, or upon the degree to which the Mahomedan law and usage have superseded the Hindoo law of slavery, it must be sufficiently clear, that the abhorrence of slavery entertained by the English functionary is gradually establishing an administration of the law under which all slavery must fall. It may be certain that, with the lapse of time, that abhorrence will only increase and be diffused, and that any inconsistencies now existing in legal practice must be before long removed by uniform interpretations in favour of the slave.

7. Second. Whether, supposing a law of the nature proposed to be determined on, it could with justice be passed without compensation to the owners of slaves, and, generally speaking, what compensation would be equivalent to the practical chance which such a law would effect in the value of a slave. Also, whether it would be indispensable, that, if the power of moderate correction be taken away, some provisions for enforcing obedience, in the nature of the regulations or by-laws for enforcing the obedience of servants, should be enacted.

8. Third. Supposing a law of the nature proposed to be passed, whether it would be expedient to pass it somewhat in the form of the appended draft Act (A.), which has been slightly altered from the draft prepared by the law commissioners, or in a more general form, as in the appended draft Act (B.), which follows more nearly the words of the honourable court's despatch. It has been objected to the draft (A.), that it attempts to define and to restrict too closely. On the other hand, as will be seen from the report of the law commissioners, the only legal effect of the law would be to take away the right of moderate chastisement for misconduct, such as may be exercised by a parent over his child, or a master over his apprentice. It may, therefore, deserve consideration, whether the Act in the more general form would import a great deal more than its real operation; and though its terms might be very proper in a code which embraced the whole criminal law, they would be inappropriate in an Act which contained only a very partial modification of the existing law. It might be observed that the use of such general terms would have the effect of representing the existing law as much more defective than it really is, and of introducing much greater changes in the usages and rights of the native community than is either intended or effected.

[DRAFT Act (A.), enclosed in above.

"It is hereby declared and enacted, that whosoever assaults, imprisons or inflicts any bodily injury upon any person being a slave, either by way of punishment, or of compulsion, or in the prosecution of any purpose, or for any other cause, or under any other pretext whatsoever, under circumstances which would not have justified such assaulting, imprisoning or inflicting bodily injury upon such person, if such person had not been a slave, is liable to be punished by all courts of criminal jurisdiction within the territories subject to the government of the East India Company, as he would be liable to be punished by such courts if such person had not been a slave."

DRAFT Act (B.), enclosed in above.

"It is hereby declared and enacted, that no act which would be an offence if done against a free person shall be exempted from punishment because it is done against a slave."

No. 5. From Mr. J. P. Grant, Officiating Secretary to the Government of India, to the Indian Law Commissioners (No. 223), dated the 27th May 1839.

As bearing upon the general question of slavery in India, to which my letter to your address of this date, No. 222, relates; I am directed by the Honourable the President in Council to request that you will prepare and submit for the consideration of government a note of the present state of the law and practice in India relative to the sale of children.

2. It has been observed to the President in Council, that the subservience of a dancing-girl to her keeper is perhaps not greater in India than that of the young prostitute to the panders of Paris and of London; and no magistrate in these days would construe it to be slavery, or in any way sanction the right of control which is assumed. Yet the power over these girls is acquired by purchase; and it is suspected that the traffic in children for the supply of the zenana and the brothel is a source of extensive crime, upon the temptation to which gangs even of systematic murderers, as appears by the published report upon

upon the Megapana thugs, have been founded. All crimes, indeed, by which the possession of the child is obtained are already punishable by law, but it has been observed that such crimes are not easily detected, and that it seems probable that far too much of facility exists in the traffic which follows upon the possession.

The opinion and the suggestions of the Indian law commissioners are requested on this subject in a separate report, as it appears to the President in Council to be a question which, supposing it to require legislation, might be conveniently legislated upon with reference to the question to which my separate letter of this date relates.

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FROM Mr. *H. Chamier*, Chief Secretary to Government, Fort St. George, to Mr. *J. P. Grant*,
Officiating Secretary to the Government of India, dated 30th July 1839.

No. 6.

WITH reference to your letter of the 27th May last, No. 346, I am directed by the Right honourable the Governor in Council to transmit for the information of the Honourable the President in Council, the accompanying copy of a letter from the acting register of the Sudder Adawlut, submitting the sentiments of that court on the several points referred to in your letter under reply on the subject of slavery in India, and to intimate that his Lordship in Council entirely concurs in the opinions expressed by the judges, and considers it will be preferable not to legislate at all in respect to slavery, until the whole question in all its bearings has been fully considered.

FROM Mr. *J. H. Davidson*, Acting Register, Sudder Adawlut, to the Chief Secretary to the
Government of Bombay, dated 17th July 1839.

No. 7.

I AM directed by the judges of the Sudder Adawlut to acknowledge the receipt of the extract from the minutes of consultation, under date the 2d July 1839, No. 530, forwarding copies of a letter dated the 27th May last, from the officiating secretary to the Government of India, and of the papers which accompanied that communication on the subject of slavery in India, with reference especially to a despatch from the Honourable the Court of Directors, desiring the Government of India to pass an act to the effect of a provision suggested in note B. of the penal code, and requiring the court of Sudder Adawlut to submit their sentiments on the several points therein referred to.

2. The first question on which the sentiments of this court are required by government is, whether or not it is expedient now to pass any special law to the effect of that of which a copy is annexed, declaring and enacting that any assault committed or personal injury inflicted on a slave shall be punishable in the same manner as if such assault had been committed or personal injury inflicted on a free person.

3. With reference to the observation in paragraph 5 of the letter from the officiating secretary to the Government of India, dated 27th May 1839, that "much variance in the practice of magistrates exists as to recognizing the right of moderate correction by a master of his slave," the judges of the Sudder Adawlut remark that the circular order of the Foujdary Adawlut of the 27th November 1820, has laid down a uniform course of procedure in this respect; and that inasmuch as no specific penalty is prescribed in the regulations for assaults exceeding the jurisdiction of the magistrate, under section 32, Regulation IX. of 1816, the criminal judges required, under the provisions of section 7, Regulation X. of 1816, as illustrated by the circulated order of 28th January 1828, to be guided in such cases by the Mahomedan law, which does not make a master liable to punishment for correcting his slave in a lawful manner for an offence incurring discretionary punishment under that law.

4. Regulations for the punishment of servants for breach of duty "or departure from proper demeanour" have been enacted in section 18, Regulation XII. of 1827, in the code of Bombay; but there are no such provisions in force under this presidency, where, therefore, the comparison between the condition of a servant and that of a slave exempted from correction by his master cannot be made.

5. In the note B. to the penal code, it appears to be argued that the masters of slaves in these territories exact service by the use of violence, and that the sense of reciprocal benefit is not brought into operation under the system of slavery there prevailing.

6. But the information contained in the official reports on this subject does not appear to warrant this conclusion. It is certain that the ill-treatment of slaves by their masters is not general, if indeed it exists at all to any great degree; and as a motive of the nature of that adverted to by the law commission as not existing is observable, that the slave is fed, housed and clothed by his master, the enactment of a penal code abrogating all reference to the Mahomedan law will set aside the rule above mentioned, and under the general provisions for the punishment of assaults, the masters of slaves will, by the operation of that "abhorrence of slavery" noticed in the letter from the officiating secretary to the Government of India, be deprived of any power which they may now exercise of enforcing obedience by personal correction.

7. Some interval must elapse before the promulgation of a penal code. The subordinate functionaries, whose opinions have been required upon that framed by the law commission, have not yet all sent in their opinions, and the judges of this court have yet to commence the laborious revision of this code imposed upon them, as well as to digest the opinions laid before them. The occupation of their time and attention by their proper judicial duties leaves little leisure for this arduous undertaking.

8. But it does not appear to the court of Sudder Adawlut that in the meantime any special enactment on the subject is required. The observations in the letter under consider-

Appendix XX.
Correction of
Slaves.

ation show that there are grave reasons for questioning the expediency of any special legislation on the point in question, and that any practical good commensurate with the danger of evil would result from enacting the proposed law cannot, in the opinion of the judges of the Sudder Adawlut, be expected.

9. With reference to the second question in paragraph 8, it appears to the judges that no satisfactory conclusion as to the claim for compensation could be formed, or estimate as to the quantum of compensation be made, without local inquiries, into which it would not be proper for this court to enter without the special authority of the government.

10. The provisions in the Bombay code for the punishment of servants would be nugatory in the case of slaves, from whom a fine could not consistently be levied, and to whom "ordinary imprisonment without labour" for 14 days would be rather a boon than a punishment.

11. If a law of the nature proposed shall be determined upon, there can, in the opinion of the judges of the Sudder Adawlut, be no doubt that the Draft Act (A.) would be preferable to (B.), for the reasons stated in para. 9 of Mr. Secretary Grant's letter.

12. The latter Act would, in the opinion of the Sudder Adawlut, be calculated to occasion serious misconception.

- No. 8. FROM Mr. *L. R. Reid*, Acting Chief Secretary to Government, Judicial Department, Bombay, to the Officiating Secretary to the Government of India, in the Legislative Department, dated 5th August 1839.

In acknowledging the receipt of your letter, dated the 27th of May last, No. 342, enclosing the draft of a proposed Act, providing that a personal injury or an assault committed on a slave shall be punishable in the same manner as if committed on a free person, I am directed by the Honourable the Governor in Council to transmit to you, to be laid before the Honourable the President in Council, copy of a letter from the register of the Sudder Foudary Adawlut, dated the 20th ultimo, reporting the opinion of the judges of that court, that there is no necessity to pass a special law for the protection of slaves under this presidency, since the laws at present in force are applicable to them, and an offence which would be punishable when committed against a freeman would not be exempt from punishment if done against a slave.

- No. 9. FROM Mr. *P. N. Le Geyt*, Register, Sudder Foudary Adawlut, Bombay, to Mr. *J. P. Willoughby*, Secretary to the Government of Bombay, dated 20th July 1839.

I AM directed by the judges of the Sudder Foudary Adawlut to acknowledge your letter, No. 1,675, dated the 3d instant, giving cover to a despatch from the officiating secretary to the Government of India on the subject of a proposed law relative to a personal injury or an assault committed on a slave, and requesting their opinion on the same.

2. In reply I am instructed to observe, that there does not appear to be any necessity to pass a special law for the protection of slaves throughout the zillahs of this presidency, as the law in force is as applicable to them as to freemen, and no offence done against a freeman is by the Bombay code exempted from punishment because it is done against a slave.

3. As the power of a master to correct his slave has never been admitted by our code, the general practice of the magistrates has been against it, although exceptions are quoted in the note B. to the penal code; and it is not considered that a strict enforcement of this rule would be looked upon by the community as an infringement of right, or a deterioration of property; for masters are also protected against the misconduct of their slaves, as the regulations for the punishment of servants, contained in section 18, Regulation XII. of 1827, have been ruled by this court, under date the 4th November 1830, to be applicable to slaves.

- No. 10. FROM Mr. *J. P. Grant*, Officiating Secretary to the Government of India, Legislative Department, to the Acting Chief Secretary to the Government of Bombay, dated 2d September 1839.

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 2,037, under date the 5th ultimo, with its enclosure, and in reply to communicate the following observations:—

2. His Honor in Council is of opinion, that for the purpose of the report on slavery, as well as with respect to the particular Act under consideration, it will be desirable to inquire of the Company's advocate at Bombay, whether, in any proceedings for false imprisonment, the Bombay regulation would amount to a legal justification, the person imprisoned being a slave, and not under any specific contract of service.

3. It is desirable also to inquire of the judges of the Sudder Foudary Adawlut, at Bombay, what is the number of cases in which the regulation has been put in force against slaves, and whether, under the Bombay regulations, a master punishing a servant (not being a slave), young or old, by moderate correction, for gross negligence or misconduct, would be punishable as for an assault.

4. With regard to the "general practice of magistrates," there is no doubt that, as regards immoderate correction, or even moderate correction without fault, every kind of law and the universal practice of magistrates throughout India, is in favour of the slave. What his Honor

Honor in Council particularly desires to know is, whether the Sudder Foujdary Adawlut mean that the general practice applies to moderate correction for negligence or misconduct. If such be the case, he is further desirous of being informed of the number of cases in which masters have been punished by magistrates for moderate correction of their slaves.

Appendix XX.
Correction of
Slaves.

FROM Mr. *W. R. Morris*, Secretary to Government, Judicial Department, Bombay, to Mr. *T. H. Maddock*, Secretary to the Government of India, in the Legislative Department, dated 14th May 1840.

No. 11.

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of the officiating secretary's letter, dated the 2d of September last, No. 472, relative to a proposed law providing that a personal injury or assault committed on a slave shall be punished in the same manner as if committed on a free person; and in reply, to transmit to you for the purpose of being laid before the Right honourable the Governor-general of India in Council, copies of the documents noted below,* submitting the opinion of the judges of the Sudder Adawlut, and of the acting advocate-general, on the points noticed in the 2d, 3d and 4th paragraphs of Mr. Grant's letter.

FROM Mr. *Howard*, Acting Advocate General, to the Acting Chief Secretary to Government of Bombay, dated 5th October 1839.

No. 12.

I HAVE had the honour to receive your letter of the 3d of this month, with enclosures. With respect to the second paragraph of the letter from the officiating secretary to the Government of India, dated the 2d ultimo, there is no regulation or other law prevailing in Bombay authorizing slavery in any form. The English law, except in certain cases of contract and inheritance, extends over the whole island. I need scarcely add, therefore, that to an action or criminal prosecution for false imprisonment, it would be no defence to aver that the plaintiff or prosecutor was the slave of the defendant.

FROM Mr. *G. Grant*, Register, Sudder Foujdary Adawlut, to Mr. *W. R. Morris*, Secretary to Government, Judicial Department, Bombay, dated 5th May 1840.

No. 13.

WITH reference to Mr. Chief Secretary Reid's letter, dated 3d October 1839, No. 2,617, and its accompaniment, being copy of a letter from the secretary to the Government of India, dated 2d September 1839, on the subject of a proposed law for the protection of slaves in cases of personal injury or assault committed on them, I am directed by the judges to state for the information of the Government of India, that there are no cases on record of the regulation against slaves having been put in force in this presidency, save at Rutnagiree, where there are three instances of female slaves who had absconded having been restored to their masters.

2. With regard to the query "whether, under the Bombay regulations, a master punishing a servant (not being a slave) by moderate correction, for gross negligence or misconduct, would be punishable as for an assault," the judges are of opinion that the master would be obnoxious to penal consequence in point of law. So much, however, do the interests of master and servant reciprocate, that, in point of fact, the law, as in other parallel cases, is seldom appealed to; and when it is, its penal exercise must be entirely governed by the character of each individual case. For instance, the punishment of a master for correcting his servant would be graduated by the extenuating or aggravating features of the offence. The knowledge of this effect acts, I am desired to observe, as a very salutary restraint on the master, whilst it simultaneously checks improper conduct on the part of the servant, and that the mere knowledge of the existence of this law, combined with the reciprocal interests of master and servant above alluded to, effects what should be the aim of all penal law, namely, the prevention of necessity for its exercise.

3. In reply to the other points of reference, I am directed to state, that the only case in which the law has been enforced against a master for ill-treating a slave appears on the records of the Surat zillah, where a person was punished, in 1835, with a fine of five rupees, or five days' imprisonment, for putting his slave in the stocks; and in the following years, two persons were accused of a similar offence, and dismissed for want of proof. No other case appears to have occurred throughout the zillahs under this presidency.

* See Nos. 1, 12 and 13 of this Appendix.

(True extracts.)

East India House,
23 April 1841.

T. L. Peacock,
Examiner of Indian Correspondence.

SLAVE TRADE.

DESPATCHES

WITH RESPECT TO THE

PRACTICE OF THE SLAVE TRADE

BY THE

SUBJECTS OF THE NATIVE PRINCES OF INDIA.

Presented to both Houses of Parliament by Command of Her Majesty.



LONDON:

PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
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SLAVE TRADE.

DESPATCHES.

Judicial and Legislative, No. 33.

To His Excellency The Right Honourable The Governor General of India
in Council.

MY LORD,

India Office, London, 16th September 1872.

Para. 1. I desire to invite the serious attention of your Lordship in Council to the statements contained in the Despatches addressed by Dr. Livingstone, Her Majesty's Consul, Inner Africa, to the Secretary of State for Foreign Affairs, which have lately been presented to both Houses of Parliament.

2. Your will observe in ~~most~~ strong terms and with what repeated allegation Dr. Livingstone asserts that the machinery by which the slave trade in Eastern Africa is chiefly carried on is under the control and management of British subjects, or natives of protected states of India. "It is well known," he says, speaking of one whom he terms the richest Banian in Zanzibar, "that the slave trade in this country is carried on almost entirely with his money and that of other British subjects. "The Banians advance the food required, and the Arabs proceed inland as their agents, commit the man stealing, or rather murdering, and when slaves and ivory are brought to the coast, the Arabs sell the slaves, the Banians pocketing the price." I presume that here and in other passages Dr. Livingstone employs the name of Banian in the popular sense which it bears in Western India,—an Indian merchant, settled either as agent or principal in any of the chief places of traffic in the Persian Gulf, or Red Sea, or on the coast of Africa. "The Manyema cannibals," he says elsewhere, "are innocents compared with our protected Banian fellow subjects. By their Arab agents they compass the destruction of more human lives in one year than the Manyema do in ten; and could the Indian gentlemen who oppose the anti-slave trade policy of the Foreign Office but witness the horrid deeds done by the Banian agents, they would be foremost in decreeing that every Cutchee found guilty of direct or indirect slaving should forthwith be shipped back to India or to the Andaman Islands."

3. Such averments, made by one who has spent a large part of his life among those very African tribes of which he here depicts the sufferings, and corroborated as they are by general report and belief, throw no inconsiderable liability on the Imperial Government, and on the Government of India as more immediately affected, either to refute them if possible, or to take seriously in hand the duty which devolves on them. That duty is to prevent Her Majesty's Indian subjects from being agents in the monstrous abuses which are thus disclosed, and to inflict the severest punishments which the law allows upon those who lend themselves, directly or indirectly, to the prosecution of the slave trade.

4. Her Majesty has already announced to Parliament that the subject is one which will seriously occupy the attention of her Ministers during the recess. It embraces several distinct matters,—the disposal of our naval force for the purpose which it has so long and so zealously served, of repressing the slave trade itself; the consideration and revision of the treaty obligations which now bind us with African and other potentates; the question, whether any such measures as are suggested by Dr. Livingstone, for the formation of establishments on the east coast of Africa, would be practicable or beneficial.

5. On all these your opinion will be duly invited, or full information given you of the views which may be adopted by Her Majesty's Government. My present purpose is to impress upon you, as already stated, the duty of endeavouring to suppress this slave trade, if it exists at its alleged Indian source, by bringing to justice those who really nourish and maintain it by finding funds and agents for its purposes.

6. It is scarcely necessary that I should remind you that the British law against slave trading, chiefly contained in the two Acts, 5 Geo. 4, c. 113, known as "Brougham's Act," and 6 & 7 Vict., c. 98, which extends the provisions of the former is as stringent and sweeping in its provisions as possible. Not only the act of carrying away and removing slaves, or persons intended to be dealt with as slaves, is rendered unlawful, but to contract for their removal, or for their shipping, transshipping, removing, and so forth, is equally unlawful; that all persons who engage in such traffic, either directly or indirectly, by so contracting as aforesaid, or who fit out slave ships, or who advance money to be employed in slave trading, or who guarantee slaving adventures, or ship goods to be employed in the slave trade, are guilty of felony. Some of these enactments, indeed, apply specially to the case of slave trading by sea, which was chiefly in the contemplation of the Legislature, but others are more general, and I apprehend that, if any British subject were engaged, either personally or indirectly, in an adventure for the transfer of slaves, or persons intended to be dealt with as slaves, from one part of the African continent to another, he would be as fully within these provisions as if he committed similar offences at sea or in relation to sea adventure.

7. It is true, of course, that the British Government cannot interfere, except through the provision of treaties, with the removal of slaves from one part of an independent country, in which slavery is lawful, to another, and it is true also that by the existing arrangement with Zanzibar, which is now chiefly under our consideration, the Sultan reserves the right to transport slaves from one part of his dominions to another within certain geographical limits. But it by no means follows that a British subject assisting in a transport which, as regards Zanzibar subjects, is lawful, may not be himself guilty of slave trading within the provisions of the Act, the only exception noticed by the older Act is where the British subject is or was concerned in the removal of slaves from one part of a British colony in which slavery was then lawful to another. No such exception is made as regards foreign States or Colonies in which it was equally lawful; and for any intermeddling with such transfer on the mainland or on other points of the coast, British subjects are, beyond all doubt, punishable under the Statute.

8. I may add, that if any legal difficulty is experienced in applying these laws to Indian subjects, arising out of peculiarities of Indian jurisprudence, the Act 32 & 33 Vict. c. 98, to define the power of the Governor General in Council in certain cases, appears to give Legislative powers amply sufficient to meet any such difficulty.

9. It is to be observed that ever since the slave trade began to incur the hostile notice of our laws, the invention of the evil-doer concerned in it has been taxed to invent devices under which it may be carried on with an apparent attention to legality. I interpret in this way a passage in Dr. Livingstone's despatches, in which he says that the gangs which are dragged coastwards to enrich the Banians are usually not slaves, but captive free people.

10. But courts of justice are armed with ample powers to follow out the iniquitous traffic under all its disguises, if proof of fact can be brought home to the parties charged with it.

11. And I need hardly add, that offences against this law may be committed in any part of the world, although not subject to British jurisdiction, and that the legal manner of dealing with them, wherever committed is fully provided.

12. If, therefore, the most active agency of this evil is to be found in India, and its originators are British subjects, it is difficult to conceive but that, with determination and energy on the part of your internal Government, its detection and punishment may be secured in a sufficient number of instances to effect the main object of deterring from the offence.

13. Persons, to be punishable under it, must, no doubt, be British subjects, that is, not necessarily by birth or naturalization, but persons of whatever nationality domiciled among us. But Natives of Indian protected States, not domiciled among us, are, no doubt, not within the penalties of the Act for things done out of our territory. And I have noticed that, in one passage, Dr. Livingstone terms these slave traders "Kutcheen," as if this appellation, indicating that they are subjects of a native potentate, either belonged to them in popular language, or was assumed by them.

14. With this branch of the subject I must leave you to deal, but cannot but suppose that you would have no serious difficulty in obtaining from those Native Rulers, whose subjects are supposed to be concerned in the business, engagements

which should place such subjects, as regards the slave trade, on precisely the same footing as British.

15. I should recommend you consulting your law adviser as to the best mode of carrying into effect inquiry, followed, if necessary, by legal proceedings against individuals on a subject which Her Majesty's Government have so much at heart, and on which they are certain that their endeavours will be appreciated, and the success of those endeavours desired throughout the civilized world.

I have, &c.

(Signed) ARGYLL.

No. 58. of 1873.

GOVERNMENT OF INDIA. FOREIGN DEPARTMENT.—SECRET.

To His Grace the Duke of Argyll, K.T., Her Majesty's Secretary of State for India.

MY LORD DUKE,

Simla, the 16th June 1873.

IN forwarding, for the consideration of Her Majesty's Government, the correspondence noted in the accompanying Abstract of Contents, we have the honour to submit our views and suggestions on the subject of your Grace's despatch, No. 33, dated 16th September 1872, regarding the connection of Her Majesty's Indian subjects with the East African slave trade.

2. We communicated a copy of that despatch to the government of Bombay, and to Colonel Pelly, for their observations, and transmit the replies which we have received. We have also taken the opinion of the Advocate General at Calcutta upon the legal aspect of the questions raised in your Grace's despatch.

3. We have since received a copy of the elaborate opinion* of Sir Bartle Frere on the subject, as expressed in his memorandum regarding Banians or Natives of India in East Africa, together with the views of Kazeo Shahab-ood-deen.

4. It appears that the trade of the East Coast of Africa, and especially that of Zanzibar, is now for the most part necessarily associated, directly or indirectly, with the traffic in slaves. That trade is to a very considerable extent carried on with the capital of Her Majesty's Indian subjects and other natives of India, and therefore there can be no doubt that Her Majesty's Indian subjects, in common with all those who engage in traffic with that country, are necessarily more or less involved in the slave trade. We are, however, gratified to learn that the merchants whose business connects them with this traffic have expressed to Sir Bartle Frere their anxious desire to disconnect themselves from it,—a desire which Sir Bartle Frere considers to be genuine.

5. Such being the facts of the case, we have carefully considered the manner in which we can best prevent the continued connection of Her Majesty's subjects and other natives of India with the slave trade and the existing state of the law as affecting such transactions.

6. The first question for consideration is whether the Indian law against slavery is as comprehensive as the English law in respect to the acts which are declared to be penal offences. On this subject your Grace will perceive that the Advocate General in Calcutta and the Advocate General in Bombay concur in thinking that the Indian Penal Code embraces at least as wide a range of offences as the English statutes. Indeed, the Advocate General of Bombay considers the range of the Indian law to be somewhat wider. With the exception of the offences mentioned in the latter part of section 11. of 5 Geo. IV. c. 113. all the offences under the English law are either acts of actually dealing in slaves, or acts of knowingly taking a part directly or indirectly in promoting and abetting dealing in slaves. The first of these two classes of offences can be effectually dealt with under sections 367, 370, and 371, of the Indian Penal Code, and the others under the sections relating to abetment, while the sections of the Penal Code which relate to forgery and cheating sufficiently cover the acts referred to at the end of section 11. of the statute.

7. With reference to paragraphs 6 and 7 of your Grace's despatch, however, the Advocate General of Bombay seems to be of opinion that, under certain decisions to which he refers, traffic in slaves carried on in a country where slavery is lawful is not a crime by English law, and that the English statutes do not apply to a slave trade carried on by land. These are questions we do not feel ourselves called upon to examine, and which we must leave to your Grace to decide in communication with the legal advisers of the Crown. But we would point out that if Mr. Scoble's view be correct, very few of the acts described in Sir B. Frere's memorandum, on the connection of British subjects with the slave trade in Zanzibar, would be offences punishable under the English statutes; and, moreover, we apprehend that it would be extremely difficult, so long as the treaties with Zanzibar which recognize the slave trade within certain limits are in force, to secure a conviction under the Indian Penal Code for trading within those limits. Her Majesty's Government will decide whether, with reference to Mr. Scoble's opinion, legislation is necessary; but in any case we consider it of paramount importance that in no treaty to which the British Government is a party should any clause be allowed to remain giving countenance to the slave trade directly or indirectly within any sphere however restricted.

8. It will be observed that the Advocate General of Bombay suggests that the mere holding of a person as a slave should be made penal by striking out of section 370. of the Penal Code the words "*against his will.*" This, however, would erect into crimes a great number of acts which both English and Indian law have abstained from touching. By the joint operation of Act V. of 1843 and the Penal Code Indian law has deprived slavery of all its legal incidents and has placed the slave in such a position that he may be free if he chooses to exert his will. Under these legal provisions slavery must die out in course of time. But there are still a great number of cases in which people are living together on the relation recognized by both sides of master and slave, and in which it would be not only a harsh thing but probably prejudicial to the slaves themselves to interfere by law. This would be so even in India, where the legal incidents of slavery have been destroyed for 30 years, the idea itself decreasing in strength during at least that period of time. Much more would it be so in the countries where we are now endeavouring to stop the slave trade, to which the idea of service without slavery must be to a great extent strange. We think that our existing Penal Code must be judiciously worked in order to avoid cases of hardship in its extension to new tracts of territory. And we would not willingly at the same time extend its scope so as to enlarge the number of criminal acts beyond the existing range of either English or Indian law.

9. The next matter for consideration is the persons who are, or are to be made, subject to the law and the Courts by which they are to be tried. There are three classes upon whom the law should be brought to bear: (1) Native Indian subjects of Her Majesty; (2) European British subjects; (3) Natives of Indian States under British protection.

10. As regards the first class there is no difficulty. Act XI. of 1872 applies to the whole of British India and to all native subjects of Her Majesty without and beyond British India; it extends the Indian criminal law to them wherever they may be, and subject to certain provisos enacts that within British India they may be dealt with, in respect of offences wheresoever committed, as if such offences had been committed in any place within British India in which they may be or may be found. If, therefore, such persons commit any of the acts forbidden by the Indian Penal Code, wherever they may be, they offend against the Indian criminal law, and if arrested in British India may be tried by the ordinary Courts. If arrested elsewhere they may be tried according to the jurisdiction which the British Government exercises in that place by treaty, capitulation, agreement, grant, usage, sufferance, or other lawful means. Such jurisdiction we already exercise at Zanzibar and Muscat by treaty or usage; we possess it also in the territories of the petty Arab Chiefs on the shores of the Persian Gulf; and under the provisions of Act XI. of 1872 the offender can, if necessary, be committed for trial before the High Court at Bombay.

11. Under Act XI. of 1872 European British subjects are amenable to our Courts for offences committed against the Indian criminal law within the dominions of Princes and States in India in alliance with Her Majesty in the same way as native British subjects are amenable for offences committed anywhere. But under

28 Vict. cap. 17, section 1, the Governor General in Council has no power to legislate for European British subjects beyond British India except within the dominions of Princes and States in India in alliance with Her Majesty. Such persons, therefore, are not amenable to Indian laws for offences committed at Zanzibar, Muscat, and similar places. Under the English Foreign Jurisdiction Act jurisdiction over European British subjects has been conferred on the Consuls at Zanzibar and Muscat by the orders of Her Majesty in Council noted in the

* Order, dated 4th November 1867

† No. 7, dated 10th January 1873

No. 20, dated 24th January 1873.

No. 79, dated 2nd June 1873.

margin*. It is exercised also in a certain degree by the Political Resident in the Persian Gulf, and if the proposals made in our despatches noted in the margin† be approved, some of the existing difficulties in regard to jurisdiction over European British subjects in the countries bordering the Persian Gulf will be removed. Still the law to which they are subject is not the law of India, and we are of opinion that if control is to be efficiently exercised over the connection of Her Majesty's subjects with the slave trade, it is very desirable that all classes of Her Majesty's subjects in those countries should be amenable to one law and to one tribunal. We, therefore, suggest for the consideration of Her Majesty's Government, the expediency of enlarging the powers conferred upon us by 28 Vict. cap. 17. so as to place European British subjects in countries adjacent to India under the provisions of Indian law, and the forms of procedure and legislation, past and future, connected therewith. These countries should include the Coast of Beloochistan, the shores of the Persian Gulf and the Arabian Coast as far as Aden, and the African Coast from some point opposite Aden to about Delagoa Bay, with the islands adjacent to those coasts. We have the less hesitation in recommending this, as many European British subjects differ in no respect, and still more differ very slightly, from natives of India, and owe the distinction to accident and the locality in which they or one or both of their parents or grand-parents happened to be born. Moreover, the Order of Her Majesty in Council already referred to makes the Bombay High Court the paramount Court of Justice.

12. We have spoken of European British subjects because they are far the most important class of persons for whom we cannot already make laws. But there may be others engaged in criminal acts who are not Europeans, but Asiatics. If our proposal with respect to European British subjects is acceptable it will follow that we should receive power to make laws in the designated territories for all British subjects without distinction.

13. The position of the subjects of protected Indian States remains to be considered. By article 4. of the treaty concluded by His Excellency Sir Bartle Frere with the Sultan of Muscat, "Her Britannic Majesty engages that natives of Indian "States under British protection shall, from and after a date to be hereafter fixed, "be prohibited from possessing slaves, and in the meanwhile from acquiring "fresh slaves." Your Grace is aware that the native States of India, either under treaty engagements or by custom and usage, do not possess the power of holding diplomatic relations either with each other or with foreign powers. The external sovereignty is vested in the British Government, and the native States can hold no communications with foreign powers except with the knowledge and sanction and through the medium of the Government of India. Consequently, the native States are unable to afford their subjects abroad, who are engaged in commerce or other pursuits, the protection which they require; and that duty devolves upon the British Government. It has, therefore, been the practice at Zanzibar, Muscat, in the Persian Gulf and elsewhere, to treat as British subjects all persons belonging to the protected States of India, who register themselves at the office of the Political Agent or the Consul. At the same time this practice has not been formally recognised by the Legislature. The liability of such persons to Indian law, and the jurisdiction of Indian Courts might, therefore, be contested, and our power to legislate for such persons is defective just as it was defective in the case of our own native subjects until the defect was removed by 32 & 33 Vict. cap. 98. We, therefore, suggest that in order to prevent the practice being called in question in our own Courts which might disclaim jurisdiction, provision should be made by Act of Parliament to meet the case.

14. We have now specified the cases as to which it appears to us to be necessary that alterations should be made in the Imperial law in order to carry out effectually the punishment of Her Majesty's subjects and the subjects of protected States

who may render themselves liable to the penalties attached by the Indian Penal Code to dealings with the slave trade. A draft of the clauses which in our opinion might suitably be enacted will be found enclosed in this despatch. It remains, however, to consider how far the law as amended can be applied to those who will come under its provisions but who are resident in foreign territory. This appears to us to depend upon treaty engagements or usage. We have pointed out in paragraph 10. that at Zanzibar, at Muscat, and on the shores of the Persian Gulf the British Political Agent and Consul possess jurisdiction over British subjects. As regards the subjects of protected Indian States in those places we have explained in paragraph 13. that the same jurisdiction has been exercised; but on this subject it appears to us to be desirable that no doubt should exist, and we have, therefore, thought it advisable, as your Grace was informed in our Despatch, No. 87, dated the 9th instant, to instruct the Political Agent to obtain from the Sultan of Muscat, a formal recognition of it. In regard to Zanzibar a similar stipulation should form one of the cardinal points to be borne in mind in any measures adopted in consequence of the Sultan's refusal to enter into fresh negotiations. And in all future slave trade treaties provision should be made for the exercise of our jurisdiction over both British subjects and the subjects of the protected States of India where this right has not been already secured by treaty or usage.

15. We do not think it necessary to enter into any separate engagements with the native States of India on this subject, although we shall give all publicity to proclamations such as that issued by the Rao of Kutch, and forwarded to your Grace in our Despatch, No. 22, dated 31st January last.

16. With regard to the action to be immediately taken for the purpose of dealing with breaches of the law against the slave trade, the Government of Bombay has informed the public prosecutor and the Commissioner of Police of the desire of Government that all persons offending against the slave laws should be rigorously prosecuted. We have further issued a proclamation which will be republished annually in Arabic and Guzerati, warning all persons concerned in the slave trade of the penalties to which they render themselves liable; and it will be our pleasure in any other practical way that may occur or be suggested to us heartily to co-operate with Her Majesty's Government to the full extent of our power in the suppression of this infamous traffic.

We have, &c.
(Signed) NORTHBROOK,
" NAPIER OF MAGDALA.
" B. H. ELLIS.
" H. W. NORMAN.
" A. HOBHOUSE.
" E. C. BAYLEY.

Enclosure No. 15. to above Despatch No. 58.

A BILL for the further enlargement of the powers of the Governor-General of India in Council at Legislative Meetings.

WHEREAS under an Act passed in the session holden in the 32nd and 33rd years in the reign of Her present Majesty the Governor-General of India in Council is empowered to make laws for native Indian subjects of Her Majesty without and beyond British India: And whereas it is expedient for the purpose of more effectually punishing offences against the law relating to the slave trade and for other purposes to enlarge the said power in manner herein-after appearing: Be it enacted, &c.,—

1. The Governor-General of India in Council shall have power, at meetings for the purpose of making laws and regulations, to make laws and regulations for all subjects of Her Majesty, without distinction of race, residing or being in the following places; (that is to say,)

(a) The territories of the Khan of Khelat and of the Sultan of Muscat in Mekran and Arabia;

- (b) The coasts of Beloochistan and of the Buuder Abbass districts and the shores of the Persian Gulf;
- (c) The coast of Arabia from Ras Mussendom to Cape Bab-el-Mundeb;
- (d) The territories of the following tribes near Aden, namely,

The Abdali.	The Amir.
The Kudli.	The Subahi.
The Akrahi.	The Yafai.
The Howshahi.	The Oulaki.
The Alawi.	
- (e) The coast of Africa from Ras Sejarne to Delagoa Bay;
- (f) The territories of the Sultan of Zanzibar;
- (g) The seas and islands within ten degrees of latitude or longitude from such coasts and shores respectively.

2. And whereas under treaties and arrangements between the British Government and the several princes and states in India in alliance with Her Majesty such princes and states are bound to have no conventions or engagements or communications with foreign powers, and have, in fact, no such conventions or engagements or communications: And whereas the subjects of such princes and states are, when residing or being in places without and beyond India, entitled to the protection of the British Government, and do, in fact, receive such protection equally with the native Indian subjects of Her Majesty. It is hereby further enacted as follows:

The Governor-General of India in Council shall also have power at meetings for the purpose of making laws and regulations to make laws and regulations for all subjects of such princes and states residing or being in places without or beyond India:

And the Governor-General of India in Council may exercise over such subjects equally with the native Indian subjects of Her Majesty all such powers and jurisdictions as by treaty, capitulation, agreement, grant, usage, sufferance, or other lawful means the Governor-General of India in Council has or can exercise in any such place.

3. The preceding sections shall be read with and taken as part of section 22 of the Indian Councils Act, 1861.

No. 63, dated Zanzibar, 17th September 1873.

From POLITICAL AGENT and HER MAJESTY'S CONSUL-GENERAL, ZANZIBAR, to
SECRETARY to the GOVERNMENT OF INDIA, FOREIGN DEPARTMENT.

I HAVE the honour to report, for the information of the Right Honourable the Governor-General in Council, having committed for trial before the High Court at Bombay Kanjee Laljee of Cutch domiciled in Zanzibar.

2. The enclosures (as per Schedule) to this letter will clearly show the nature of the offence, and the various steps taken in order to prepare the case for transmission to Bombay.

3. The slight discrepancies between the depositions of the slaves and the voluntary admissions of Kanjee Laljee are, it will be seen, immaterial to the evident fact of this particular case, and the only defence likely to be raised will be that the accused has through long residence denationalized himself and become to all intents and purposes a Zanzibar subject, and in support of this it may be adduced that by failing to enrol his name on the list of British protected subjects, as required by clause 30 of the Order of Her Majesty in Council, dated 9th August 1866, he is *de facto* outside British protection, and as a consequence without British jurisdiction.

4. I am not aware that it is the intention of Kanjee Laljee to adopt the above line of defence, which in the hands of a clever pleader might be used to some purpose.

5. But under the circumstances of this case, and the probability of such an argument, I venture to think it my evident duty to point out with all due respect, for the information of the Right Honourable the Governor-General in Council, the fact that up to the present the Law Officers of the Crown have not communicated any decision as to the working of the British Naturalization Laws

with regard to natives of protected Indian States in the dominions of the Sultan of Zanzibar.

6. With a certain local knowledge and the fact that the working of such Naturalization Laws must in an independent country depend upon the wording of Treaties concluded between Great Britain and such country, I however am of opinion that a strong bar may be opposed to Zanzibar jurisdiction in this matter by the reading of clause IV. of the late Treaty.

83 Vict. cap. 14., and 83 & 84 Vict. cap. 102.

Treaty between Her Majesty the Queen and His Highness Syud Burgash, dated 5th June 1878.

7. This clause, which Her Majesty the Queen engages to carry out, provides that natives of Indian protected States shall be prohibited from possessing slaves, and His Highness by being a contracting party to such clause is clearly bound to relinquish any right likely to interfere with its proper working.

8. Hence no subject of a protected Indian State can claim the benefit of the operation of any Naturalization Acts which might imperil the due fulfilment of His Highness' obligation to the British Government.

9. The question of jurisdiction of the Court overcome, the accused will be unable to plead a general issue, which he might have done had he declared any slaves he held in February 1869, when our policy being changed those Indians (who had previously been allowed, with the cognizance of Government and under sanction of Colonel Pelly, and subsequently Colonel Playfair, to hold slaves) were called on to register their slaves at the Agency, who, on such registration, were allowed to retain on condition of neither transferring or selling.

10. By public proclamation from February 1869 any slave held by any native of India not so registered was held illegally, even in the case where such native of India claimed the protection of the Sultan and failed to enrol himself at the Agency as a British subject.

11. However, Kanjee Laljee's name does not appear as a proprietor of slaves on this exempted list of February 1869.

12. This matter of jurisdiction would appear settled by the Sultan's evident adoption of my reading of clause IV., which appears from the most conciliatory and humble manner in which in letter annexed he begs the release of the accused who claimed to be his subject for many years, and is still further evidenced by the fact that His Highness has made no reply to my answer which was written with the evident purpose of the question at issue.

His Highness the Sultan to Ali bin Saleh.

Dr. Kirk to His Highness the Sultan.

13. The arrest and committal of Kanjee Laljee has had a most salutary effect, and the more so as he is a quiet and respectable person. Had he been a confirmed dealer in slaves, or a man of questionable character, the matter would have only caused a momentary sensation instead of shaking, as it has done, the last hope clung to by many Indians, viz., that they might yet hold slaves by leaving British protection and enrolling themselves as Zanzibar subjects, a line of action which formerly was unfortunately not only permitted but sanctioned.

14. I may here confidently state that should this case end, as it can hardly fail to, in a conviction of the accused before the High Court of Bombay, I do not foresee that it will be probable any more cases of a similar nature need be sent on from Zanzibar.

15. Still I should not conceal from the Right Honourable the Governor-General in Council that cases of far greater gravity must be inevitably brought to light when the Indians resident on the long Zanzibar Coast line are brought under the Agency and Consular discipline in fulfilment of the Treaty, cases which will comprise not only slave-holding, but slave trafficking, the buying and selling of slaves for gain.

16. Her Majesty's vessels on the station have so many and important duties to perform and are so cramped as to time by the movements of their detached boat parties, that I have as yet found it utterly impossible to carry out that thorough examination of the towns and villages on the coast, which it is my duty to do, and it is for that purpose and for the yet more important purpose of actually asserting authority over many hundred British Indian subjects, that I have before urged the importance of a steamer being provided for the Political Agent at Zanzibar, as at Aden.

11
SCHEDULE.

1. Enclosure. Political Agent to C. GONNE, Esq., Secretary to Government of Bombay.
2. " *Précis.*
3. " His Highness Syud Burgash to Ali bin Saleh.
4. " Political Agent to Sultan.

No. 29, dated Zanzibar, 11th September 1873.

FROM HER MAJESTY'S POLITICAL AGENT AND CONSUL-GENERAL, ZANZIBAR, TO
SECRETARY TO THE GOVERNMENT OF BOMBAY.

I HAVE the honour to report, for information of His Excellency the Governor in Council, the steps taken by me to bring one Kanjee Laljee of Cutch, residing in Zanzibar, to trial before the High Court of Bombay charged with slave-holding.

2. I have adopted this course in accordance with the instructions of Earl Granville, with a copy of which you have been already furnished by the Secretary to the Government of India, No. 1289P., dated 13th June 1873.

3. I herewith transmit under flying seal, for information of Government, and to be forwarded without delay to the various departments to which they are respectively addressed, all the documents having reference to this case, which is the first of a criminal nature that has been transferred from Zanzibar to the jurisdiction of the High Court.

Registrar, High Court; Government
Pleader, and Chief Commissioner,
Police.

4. On the conclusion of this case in the High Court I would urge the expediency, in the event of a sentence of conviction being obtained, that the fullest publicity may be given thereto in the local, especially the Native, newspapers, which are regularly received by the Native community in Zanzibar, and I would further beg to be furnished with any observations regarding the mode in which this present case has been forwarded for trial to enable me in future to remedy any defects of procedure and any technical flaws that might in a more difficult case defeat the ends of justice.

5. I particularly urge the necessity of being furnished with clear instructions in what way local evidence here taken should be transmitted so as to be admissible in the High Court, where the witness himself cannot be produced. This I do in consequence of it having been found necessary in prosecuting indictments for offences committed under 5 George IV. cap. 113., to pass the Acts 6 and 7 Vict. cap. 98.

SCHEDULE.

Queen v. Kanjee Laljee.

Transmitted under flying seal to Chief Secretary to Government, Bombay, Political Dept.

To be given to the Registrar to High Court of Bombay or other competent officer in the Original Criminal Jurisdiction of that Court—

- A. Affidavit of accuser.
- B. Warrant of arrest of accused.
- C. Certificate of execution of warrant.
- D. Minute of Court on receipt of prisoner.
- E. Affidavit of officer executing warrant.
- F. Deposition of Zafuni.
- G. " Ouledi.
- H. " Majoni.
- I. " Zafarani.
- J. " Amao.
- K. Voluntary statement of accused.
- L. The charge.
- M. Certificate that accused is not in exempted list.
- N. Copy of warrant of detention on board ship.

II.

A. A. To Government pleader.

III.

A. A. A. Warrant to Chief Commissioner of Police to place accused in Bombay Jail.

Note.—For Précis of above documents and case, see Précis annexed.

Précis of Proceedings in Her Britannic Majesty's Agency and Consular Court, and detailed Memorandum of documents forwarded under flying seal to Secretary to Government of Bombay, concerning the case of the Queen *versus* Kanjee Laljee sent forward for trial before the High Court of Bombay.

A.

Affidavit of Accuser.

On the 8th September 1873, Kambo, a negro, affirmed before Dr. Kirk that he was held as a slave by one Kanjee, an Indian, of the Khoja sect, residing at Bambi, Island of Zanzibar; that he took refuge at the Consulate in consequence of ill usage. Hitherto he had been forcibly prevented from complaining, now he claimed his release and protection. Kanjee held five other slaves.

B.

Warrant of arrest of accused.

In consequence of above evidence Dr. Kirk issued on 8th September a warrant to Songoro (a peon of the Court) to arrest the said Kanjee Laljee (second name of accused is found to be Laljee) on a charge of having illegally purchased and held slaves."

C.

Certificate of execution of Warrant.

The warrant was executed on 9th September.

D.

Minute of Court on receipt of Prisoner.

Behaving with contempt before the Court. Kanjee Laljee was on the same day committed to prison, to be produced on the 10th instant.

E.

Affidavit of Officer executing Warrant.

Songoro (before mentioned) gave evidence before the Court on the 10th instant that he on the 8th proceeded to the plantation of Bambi in the Island of Zanzibar guided by Kambo. Kanjee had left for town. Kanjee's house was built of stone, and he had some property. A woman was there, who, as wife of the accused, endeavoured to stop five slaves found on the premises from of their own free will accompanying him (Songoro) on his return, although the neighbours asserted she had only married Kanjee within the last few days, and that these slaves had been held by Kanjee for some time. Songoro, on reaching town, arrested Kanjee and now produced him, together with the accused Kando and the five other slaves.

F.

Deposition of Zabuni.

Zabuni, native of Kamanga, affirms—"I am a slave of Kanjee. I have been his slave for three years. He bid himself for one in the Zanzibar slave market. I had just then been brought as a raw slave from Kilwa, and appeared for the first time for sale in the slave market. I was sent at once to the plantation at Bambi, where I had to work the land and carry loads to Zanzibar. Kanjee had six slaves. Halima (his late wife), a half caste Indian, had two of her own apart from Kanjee's; they are at Mayaba."

G.

Deposition of Ouledi.

Ouledi, from Nyassa, states—"He was bought by Kanjee and his brother in the slave market at the same time as Zabuni."

* * * * *

H.

Deposition of Majoni.

Majoni, from Nyassa, states—"Came with several others to the Shamba (plantation) of Kanjee about three years ago; I was bought in the slave market."

* * * * *

I.

Deposition of Zafarani.

Zafarani, woman, from Nyassa, states—"Kanjee himself bid for her in the market two years ago."

* * * * *

J.

Deposition of Amao.

Amao, woman, from M'Gindo, "was bought in the slave market six years ago; is slave of Kanjee; when the others came, I was in the town; now I work on the plantation."

* * * * *

K.

Voluntary statement of accused

Made after being duly warned that he is not bound to reply to any question, and that what he states may be used against him. "My father is dead; my mother lives in town; I in the country; I am 30 years of age; my former wife, Halima, died five months ago. Half of the estate belonged to her for her life; at her death I inherited the whole. I bought two of these six slaves in the market at Zanzibar, four by private sale through agency but with my money. I confess I have committed a mistake in purchasing and holding slaves against the order of the English Government. I did not mean to sell any of them. I kept them as my children. I arrived in Zanzibar when I was two years of age. I accompanied my father. I was born at Kairá in Cutch."

* * * * *

L.

The charge.

Consists of seven counts after preamble—

1st. That he (Kanjee Laljee) on or about the 8th and 9th days of September 1873 at Zanzibar did detain against his will as a slave a negro, named Kambo, whom he had himself previously purchased, and that he has thereby committed an offence punishable under Section 370 of the Indian Penal Code and within the cognizance of the High Court of Bombay.

2nd. A similar charge with regard to Zabuni.

3rd. " " Ouledi.

4th. " " Majoni.

5th. " " Zafarani.

6th. " " Amao.

7th. That having in each of the above individual cases removed, bought, trafficked, and dealt in slaves, he has thereby committed the offence of habitually removing, buying, trafficking, and dealing in slaves punishable under Section 371 of the Indian Penal Code and within the cognizance of the High Court of Bombay.

* * * * *

M
Certificate that accused is not in the exempted List.

Certifies that accused is not on the list of February 1869, under which, by Bombay Government, Indians were permitted to register and hold slaves then in their possession on condition of their not being re-sold.

Copy of Warrant.

Warrant of detention of accused during voyage from Zanzibar to Bombay.

A. A.

Letter to Government Pleader at Bombay.

Inform Government Pleader of commitment for trial of accused.

A. A. A.

Warrant to Chief Commissioner of Police to place accused in Bombay Jail.

Warrant to Chief Commissioner of Police to confine accused in Bombay Gaol.

Note.—Where not otherwise specified all the documents are dated 10th September 1873, and they are countersigned by me as Justice of the Peace under the High Court of Bombay.

(Sd.) JOHN KIRK,

H.M. Polt. Agent & Consul-Genl., Zanzibar.

Enclosure 3.

*Translation of a Letter from HIS HIGHNESS SYUD BURGASH to ALI BIN SALEH, Zanzibar,
12th September 1873.*

AND then please inform the Political Agent that Burgash would not trouble him concerning the Indian, but his mother and all the Hindis come crying to me and say that he bought the slaves now many years ago. Ask the Agent please to be good enough to release him, for he is sorry for what he has done and let him free the slaves. Let him do this if possible, but let it be just as he pleases, for I would not solicit him on this matter.

Enclosure 4.

Translation of a Letter from Political Agent and Consul-General, Zanzibar, to HIS HIGHNESS SYUD BURGASH; dated 11th September 1873.

ALI BIN SALEH has conveyed to me that it would please Your Highness were I to release the Indian Kanjee Laljee (committed for trial before the High Court of Bombay for illegally holding slaves) in consideration that he is penitent and that it is now some time since he purchased the slaves.

Your Highness will be good enough to bear in mind that, whilst by the terms of the late Treaty concluded for the suppression of the slave trade it is obligatory on Your Highness to use your utmost endeavours to prevent Arabs and all others from carrying slaves from place to place, so it is equally the duty of Her Majesty the Queen to see that natives of India residing here do not hold slaves, and I have received the most stringent orders to see that this is carried into effect, in order that no one may say that we look differently on the Indians under our rule and on the Arabs over whom we claim no authority.

Your Highness will know, in their own country Indians are not permitted to hold slaves, and if they buy slaves here it is simply to make money out of them, and this is quite different from the Arabs who have always possessed domestic slaves in their families.

But my orders from the Government are so stringent that to accede to Your Highness' request in this case is utterly impossible.

No. 2703, dated Bombay Castle, 16th May 1874.

FROM ACTING SECRETARY TO THE GOVERNMENT OF BOMBAY, TO SECRETARY TO THE
GOVERNMENT OF INDIA, FOREIGN DEPARTMENT.

I AM directed to acknowledge the receipt of your letter dated the 1st ultimo, No. 771P., and, as requested in paragraph 3, to forward herewith, for submission to the Government of India, copy of Mr. Justice Gibb's judgment in the case of *Regina versus Kanjee Lalljee*.

2. The pith of the judgment appears to His Excellency in Council to be that a mere arrangement with His Highness the Rao of Kutch cannot confer jurisdiction on the High Court.

REGINA *versus* KANJEE LALLJEE.

THIS case has been received from the Consul-General, Zanzibar, who is also a Justice of the Peace. The prisoner is charged on six different heads, with having detained certain purchased slaves, male and female, against their will, under section 370 of the Indian Penal Code, and further with habitually trafficking, &c., in slaves, under section 371. The Court learns from the Clerk of the Crown that no witnesses have been sent up; and further, that none are under orders to appear as no recognizances have been received. The charge also sets forth that prisoner is a native of Kutch, and therefore not a British subject. The proceedings do not show that the depositions were taken in the prisoner's presence, or that he had any opportunity to cross-examine the witnesses. A perusal of the depositions shows that they are not sufficient to sustain the charges made against the prisoner; but if there were no other objection, this could be amended by adding additional heads to the charge under section 370, as the depositions show that prisoner purchased slaves. But this course would be useless, as in the first place the prisoner not being a British subject, and there being no Treaty with Kutch, much less any Order of Her Majesty in Council, which under such a Treaty might confer jurisdiction on this Court to try subjects of His Highness the Rao for offences committed in foreign parts, this Court has no jurisdiction. The proclamation of the Rao, dated 16th December 1872, in no way affects the question, as His Highness can give no jurisdiction to this Court. The Court considers, therefore, that the right course to adopt in this case is to make an entry on the charge under section 8 of Act XIII. of 1865, to the effect that it is clearly unsustainable, which will have the effect of *nolle prosequi*: and the prisoner will be discharged. The Court thinks it right to notice how it appears that the Consul-General at Zanzibar has been led into error in the course he has pursued in this case. The Order in Council of the 9th August 1866 is issued under the provisions of 6 and 7 Vict., chapter 28, and only applies to British subjects. The power to issue Commissions to take evidence in cases of offences against the slave trade is confined to the Court of Queen's Bench in England. This Court can, under that Act, take evidence under a Commission issued by the Court of Queen's Bench at Westminster, but has no power to issue a Commission to Zanzibar, much less to use depositions taken by the political agent there as evidence against a prisoner. The only other cause which may have misled that officer is section 330 of the new Criminal Procedure Code and Act XI. of 1872, section 10. But the latter section only applies to British subjects, which this prisoner, on the face of the political agent's proceedings is not, while section 330 of the Criminal Procedure Code only applies to the District Courts and to the High Court on its Appellate Side, but not to it in its ordinary original criminal jurisdiction. The Court has deemed it right to notice these points in making the order in the case, as they may lead to the subject being considered by the only authorities who can amend the law.

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