SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

—No. 1.—

FEES AND SALARIES OF THE OFFICERS OF THE SUPRE COURTS.

JUDICIAL DEPARTMENT.

No. 3, of 1835.)

Our Governor-general of India in Council.

Y the returns of the emoluments of the several officers of the Supreme Cou of Judicature in India, ordered by the House of Commons, and furnished year 1830, it appeared that the receipts of some of those officers we essive, and that there was ground to expect that without reducing the emol ts of the several officers below an amount sufficient to secure the services tent persons, the burdens imposed on suitors and other parties might be ver derably lightened.

he fees from which those emoluments arise are charged either upon suitors Supreme Courts, or upon heirs and legatees interested in the estates peans dying in India without having appointed executors in that country.

he services required from the officers of the Supreme Courts by suitors shou aid for at a moderate rate, and if the fees payable in the Supreme Courts e than sufficient to yield an adequate remuneration to the officers of those fees ought to be reduced for the benefit of suitors.

the other portion of the fees of the officers of the Supreme Court, wh d not from judicial proceedings, but from the administration of the estat sed Europeans who have not left executors in India, the Registrar of th me Court being constituted by law the administrator in such cases, th gement was made for the security of the interests of the heirs or legatee the remuneration received by the Registrar exceeds a moderate scale, as nly the case at Calcutta, if not at the other Presidencies, the rate of co n should be reduced for the benefit of heirs and legatees.

legislative authority now conferred upon the Governor-general ncil puts it in your power to deal with this important subject s; and we have to desire that it may engage your attention, and d for in the manner which the interests involved in it may, after d all requisite information, seem to you to render most advisab rstand that practising attornies have not unfrequent s' Clerks.

n is very objectionable; the native suitor certa bean suitor, may suppose that the Judge will regar nfidential clerk, and that the opportunities posse Judge will enable him to pre-occupy the Ju ming before him; b nsuspected, and we ting the abuse we

probable s all

sured that your Government and the Judges of the Supreme Court ree with us, that in the regulation of the several offices in those the emoluments annexed to them as vacancies occur, the only attended to are those of the community.

ments of the Sheriff of Calcutta appear to be extravagant, and we you will likewise consider what amount of remuneration is sufficient cer.

We are, &c.

(signed) *W. Stanley Clarke.* *H. Alexander.*
J. R. Carnac. *J. Petty Muspratt.*
H. Lindsay. *George Lyall.*
John Morris. *N. B. Edmonstone.*
P. Vans Agnew. *J. Thornhill.*
R. Jenkins. *Joshua Duprez Alexander.*
W. B. Bayley.

ndon, 10 June 1835.

(No. 47.)

From the Government of India to the Judges of the Supreme Court of Fort William; dated 2 November 1835.

Honourable Sirs,

We beg leave to refer for your consideration the accompanying copy of a atch, dated the 10th of June last, to our address from the Honourable the Co Directors.

We shall be obliged if you will cause us to be furnished with a schedule of nual emoluments of every description received by each officer subject t uthority, and further, if you will favour us with your sentiments as to the ex which such emoluments are susceptible of reduction, either immediatel rospectively, as vacancies may occur.

With regard to the particular objection urged by the Honourable Court, e office of Judge's Clerk being filled by an attorney, we are not aware that t sent applies.

Should it occur to you that the number of officers in the Supreme Court educed without prejudice to the suitor, this method of promoting th templated by the Honourable the Court of Directors will, we are eceive your consideration.

We are, &c.

(signed) *C. T. Metcalfe.* *H. Shakespe*
H. Fane. *T. B. Maca*
W. Morrison.

ncil Chambers, 2 November 1835.

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e Judges of the Supreme Court to the Honourable the Governor-g in Council; dated the 30th November 1835.

ir, and Honourable Sirs,

nour to acknowledge the receipt of your letter of py of a despatch, dated the 10th day of June Court of Directors.

f the establishments of the Court and the fe ation of the Judges oard of Commission rangements has unf , and the i ope, howev

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of our inquiries, and the scheme which we should be disposed to recommend for reducing the expenses of the Court; we propose to accompany this statement with a full communication of the correspondence which has taken place with the Board of Commissioners on the subject.

Under these circumstances, we think it would be more convenient that the schedule of the annual emoluments of the different officers of the Court should form a part of that general communication, than that it should be furnished in the first instance as a separate and unconnected document; and we are the rather induced to come to this conclusion, because these emoluments have been considerably reduced by a new system of taxation, adopted subsequently to the returns of the year 1830, referred to in the despatch of the Honourable Court; and it is therefore desirable, as the whole time which has elapsed since the alteration is short, that as long a period as possible should be taken for the ascertainment of the average value since the reductions. The returns of another year will now very shortly be completed, and we think it desirable that they should be included in the schedule required. If, however, it is the wish of the Honourable the Governor-general in Council to receive the schedules as they stand at present, without waiting for the other papers which are in preparation, they can be immediately furnished.

The Honourable the Governor-general in Council is correctly informed that no Attorney now fills the office of Clerk to any of the Judges.

Without anticipating the details of our general communication on the subject of fees and emoluments, we may at once intimate our opinion that in any permanent and prospective arrangement it will be possible to reduce the number of officers in the Supreme Court. But there is one question materially affecting the facility with which this and every other alteration might be effected, on which we wish at once to obtain the opinion of the Governor-general in Council.

Any reduction of expenditure by diminution of the amount of fees would either fall very unequally on different officers, or if arranged with a view to the proper proportionment of the emoluments of different officers, it probably would not relieve the suitors from the expenses which press most inconveniently upon them. In the same manner, any reduction or abolition of salaries would be confined to particular officers, for some officers at present receive none, and would press very unequally, even on those who are so remunerated; for some of them are entirely paid by salary, while the salaries of others bear only a very small proportion to the amount of their fees. It probably would be desirable on these accounts that the whole of the emoluments of the different officers of the Court should be thrown into one general fund, out of which, either they should each receive a certain fixed remuneration, if that mode of payment should be thought most expedient, or they should be entitled to divide in certain fixed proportions the whole amount among them.

It probably would be found possible to obtain competent service on rather easier terms for fixed salaries, than for any fluctuating division of emolument. But the Court would have no means of insuring fixed salaries, unless the Government would take upon themselves to make good any occasional deficiency, receiving in return the benefit of any occasional surplus. The whole system of fees will have to be regulated, in the first instance, so as to produce an average return sufficient to provide for the charges necessary to be defrayed out of it, and would of course be liable to revision from time to time, if this average permanently exceeded or fell short of this necessary amount to any material extent.

It will be found, when we are able to communicate the correspondence already referred to with the Board of Commissioners for the Affairs of India, that such a plan has already been under the consideration of his Majesty's Government, and that in the year 1832 there was a strong intention of carrying it into effect.

This principle, also, has been acted upon in England by the statute 1 Will. 4, c. 58, and we are desirous of ascertaining whether it is one which the Government here would sanction, should we be able hereafter to submit a practicable scheme for consideration. The provisions of the statute referred to will sufficiently show the general nature of the arrangement suggested, although considerable alteration would be required to adapt them to the present case, where the sums to be received from the Government would not be the average of the existing emoluments, but depend on an entirely new rate of remuneration, to be settled on different principles.

In any alterations that are to be made, our principal object would necessarily be the relief of the suitors from expenses which now press very heavily on them. We have little doubt, however, that we shall be able, at least prospectively, to pro-

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pose an arrangement which, while it secures this main object, will considerably reduce the charge now incurred by Government for the payment of salaries, and perhaps, on a fair average, altogether extinguish it. It would, of course, be necessary for us not to run any risk of permanently increasing the expense to the Government, and any proposal which avoids that danger will most likely leave such a probable excess above the amount strictly necessary for security as almost to insure some advantage to the Government.

It would so much facilitate the preparation of any scheme to know the kind of plan which would be likely to be adopted, that we are induced now to submit the above question to the consideration of the Government. The final adoption or rejection of the plan must of course depend on its details when matured, but we are anxious to know, if possible, in the first instance, whether any objection would be entertained to the principle suggested.

We have, &c.

Court House, the 20th November 1835. (signed) *Edward Ryan.*
J. P. Grant.
B. H. Malkin.

(No. 67.)

From the Government of India to the Honourable the Judges of the Supreme Court, Fort William, dated 30 November 1835.

Honourable Sirs,

Legis. Cons. 30 Nov. 1835. No. 2.

We have the honour to acknowledge the receipt of the reply which you hav so promptly and obligingly furnished to our communication of the 2d instant.

2. We beg leave to assure you, that we entirely approve the principle of r muneration for the officers of the Supreme Court adverted to in your letter no acknowledged, and that we shall be prepared to sanction any plan which you ma recommend for remunerating your officers by fixed salaries, provided that th Honourable Company's Government be subjected to no additional expens thereby.

We have, &c.

(signed) *C. T. Metcalfe.* *H. Shakespear.*
H. Fane. *T. B. Macaulay.*
W. Morrison.

Council Chamber, 30 November 1835.

From the Judges of the Supreme Court of Madras to the Honourable S *C. T. Metcalfe*, Governor-general of India in Council, Fort William; dated t 31st December 1835.

Honourable Sir,

Legis. Cons. 23 Jan. 1837. No. 13.

We have the honour to acknowledge the receipt of your letter of the ultimo, together with the copy of a despatch from the Honourable the Court Directors therein referred to of the 10th of June last; and in compliance wi your request, we have now the honour to forward to you the returns by eve officer* under our authority, of the annual emoluments received by them of eve description from the end of the year 1828, (the period to which the returns to t House of Commons were made) up to the present time, so far as the subseque emoluments can be ascertained with reference to the changes which have tak place in some of the offices since the former period.

2. With respect to the amount of emoluments of the officers, as well as regards th number, we do not think that they are susceptible of any reduction, either imm diately or prospectively. Indeed, with reference to three of the principal offic vi

* With the exception of the Chief Clerk and Sealer of the Insolvent Court (Mr. Campbell), who is ab at Bangalore on leave, and not yet made his return.

(signed) *P. Cator.*

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viz., those of Registrar on the Equity side, Registrar on the Ecclesiastical side, and Prothonotary, the holders of which are all of course precluded from practising at the bar, it has been, we believe, the invariable practice, ever since the Supreme Court was established, and it is in our opinion still essentially necessary, to unite all those offices in one person, in order to insure the efficient discharge of the duties attached to them.

3. With regard to the suggestion of the Honourable Court, that the remuneration received by the Registrar for the administration of intestates' estates is not upon so moderate a scale as it ought to be, we have only to say, that the scale has been long since fixed in conformity with the rule laid down by the courts in England, which have continually decided that five per cent. is the proper and reasonable commission due to an executor in India, such being the rate allowed in cases where an executor or administrator acts merely as a volunteer; we cannot but think that it would be unfair to fix a less remuneration for the Registrar, who is by law compelled to become the administrator, more especially as the quantum of remuneration actually received must entirely depend upon the extent of the assets to be administered.

4. Upon the subject, however, of the amount of the emoluments of the officers of our Court, and also with regard to some of the fees which appear to have attracted attention at home, we cannot place our sentiments before you in a clearer point of view than by referring to a copy of a letter which we had the honour to address, in 1833, to the President of the East India Board, in answer to a communication made to us in common with the Judges at Calcutta from that Right Honourable person, with reference to the same subject; a copy of which letter we accordingly take the liberty of enclosing for your information.

5. As to the suggestion of the impropriety of allowing attornies to act as clerks to the Judges, we entirely coincide with the view taken by the Honourable Court, and from the time we have had the honour to sit on the Madras bench no such objectionable practice has been allowed to prevail.

We have, &c.

(signed) *Ralph Palmer.*
Robert Comyn.

Madras, 31 December 1835.

From the Judges of the Supreme Court of Fort St. George to the Right Honourable *Charles Grant*, President of the East India Board; dated February 1833.

Right honourable Sir,

Legis. Cons. 23 Jan. 1837. No. 14.

We have the honour to acknowledge the receipt of your letter of the 14th of August last (enclosing a copy of a letter to the Judges of the Supreme Court at Calcutta), wherein you request we will consider as addressed to ourselves such parts of the last-mentioned letter as are specially or generally applicable to the establishment of the Supreme Court at this place, as regards both the salaries and fees of the officers belonging to it; your object being, as we presume, from the observations in the commencement of the letter to the Judges at Calcutta, to direct our attention,—1st, to the practicability of reducing the present emoluments of the several officers; 2dly, to the expediency of revising the whole establishment of the Court, in order to regulate in future the salaries and fees, so as to afford to the officers an adequate remuneration to the business done.

2. With reference to the first point, we have accordingly called upon the officers of our Court to state, whether since the returns made by them in January 1829, in pursuance of the orders of the House of Commons, their incomes have, upon the average of the last three years, increased or diminished; and in either case, whether such increase or diminution has arisen from accidental causes, and such as are not likely to occur again.

3. The result of this inquiry has been, that the incomes of the Deputy Clerk of the Crown, the Coroner, and two or three of the minor interpreters, viz. the French, Canarese and Malay, are represented to have neither increased nor diminished; that the income of the Registrar has somewhat increased, partly in consequence of the Act of 1 Will. 4, throwing upon the East India Company the payment of the defaults of Mr. Ricketts, and partly from fees for filing an arrear of accounts;

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that the incomes of the Examiner and the Judges' Clerks have also increased, but to a very trifling extent, the latter owing to there being now only two Judges; that the income of the present Master likewise appears larger than what is stated in the return of 1829, the late Master having made his return from actual receipts, but the income of the present Master amounts only to 39,892 *Rs.*, or, at the present rate of exchange of 1 *s.* 8½ *d.*, to about 3,381 *l.*, and that the incomes of all the rest of the officers have in fact decreased from a falling off in the present business of the Court, except as relates to that of the Counsel for paupers, whose salary the Court of Directors have thought fit to order to be reduced from 600 *Rs.* per month, to 400 *Rs.*, and which we have no hesitation in saying is not an adequate remuneration for the duties thrown upon that officer.

4. Under these circumstances, referring to the returns before mentioned, which were made in 1829, we trust that whatever opinion may be formed of the emoluments of the officers of the Supreme Court at Calcutta, you will think that the officers of the Supreme Court here are not at all overpaid, and that it would be impossible to reduce either the fees or the salaries so as to afford anything like an adequate remuneration to them for their services.

5. With reference to the second point, viz. the expediency of revising the whole establishment as regards the remuneration of the officers, we certainly think that fixed salaries payable by the Government, accompanied with an adequate number of writers, and a due allowance for stationery and office establishments, would be a preferable mode of remuneration to that which at present exists; the whole of the fees being in such case accounted for to the Government.

6. This system, we believe, is adopted throughout the Company's Courts, and we are not aware of any practical inconvenience which would arise from it in the Supreme Court. It must be evident, however, that with regard to the principal officers, such as the Registrar, the Prothonotary and the Master, the salaries and allowances must be upon a very liberal scale, in order to induce competent persons to relinquish the profits of the bar; for neither of those officers could be permitted to continue their practice on any side of the court.

7. With respect to the more special parts of your letter to the Judges at Calcutta, relating to some particular items of charge pointed out by you, we beg to observe,—first, as regards copies of proceedings, that all the officers of the Supreme Court here are paid alike; viz. one rupee per folio, with the exception of the Examiner, who is allowed one rupee two fanams per folio; the reason of such larger allowance to that officer having been (it is presumed), that he is not entitled to make any charge for attendance; and secondly, as regards the fees for reading and filing exhibits, although, in point of fact, those fees appear with us to be even somewhat greater than they are at Calcutta, yet the only officers entitled to them are the Registrar and the Prothonotary, and no salary is allowed for either of those officers by the Government. The Clerk of the Crown is not entitled to these fees, nor to any fee for drawing an indictment, and only one rupee and two fanams for filing an indictment drawn by counsel; and we have no such offices as Sworn Clerk, or Clerk of the Papers and Reading Clerks, the duties of those offices being performed here by the Registrar and Prothonotary, who is generally the same person, and, as before stated, does not receive any salary.

8. With respect to the settlement of fees between the officers and the attornies, we have no rules upon the subject; that is a matter of private arrangement between the respective parties, and we are induced to think it best that it should so continue. To make the attorney pay his fees at the time the business is done, would, we conceive, be perfectly impossible in this Presidency, as far, at least, as relates to the major part of the practitioners, who are not men of capital themselves, and with difficulty obtain even sufficient advances from their clients to carry on the suits as fast as is desirable.

We have, &c.

(signed) *Ralph Palmer.*
Robert Comyn.

Madras, February 1833.

LIST

Legis. Cons. 23 Jan. 1837. No. 15.

LIST of SCHEDULES of EMOLUMENTS made by the Officers of the Supreme, Insolvent and Admiralty Courts, in pursuance of a Letter received from the Supreme Government, dated 2d November 1835.

No.			
1.	The Schedule of the Sheriff of Madras.		
2.	-	Ditto	- Deputy Sheriff of Madras.
3.	-	Ditto	- Accountant-general.
4.	-	Ditto	- Master in Equity.
5.	-	Ditto	- Clerk of the Crown.
6.	-	Ditto	- Deputy Clerk of the Crown.
7.	-	Ditto	- Registrar and Prothonotary.
8.	-	Ditto	- Examiner.
9.	-	Ditto	- Sealer.
10.	-	Ditto	- Pauper Counsel.
11.	-	Ditto	- Pauper Attorney.
12.	-	Ditto	- Clerk to the Chief Justice.
13.	-	Ditto	- Clerk to Sir R. Comyn.
14.	-	Ditto	- Malabar and Gentoo Interpreter.
15.	-	Ditto	- Persian and Hindostanee ditto.
16.	-	Ditto	- Canarese ditto.
17.	-	Ditto	- French ditto.
18.	-	Ditto	- Dutch ditto.
19.	The Schedule of the Armenian Interpreter.		
20.	-	Ditto	- Portuguese ditto.
21.	-	Ditto	- Malealum and Mopillay ditto.
22.	-	Ditto	- Malay ditto.
23.	-	Ditto	- Malabar and Gentoo ditto to Grand Jury.
24.	-	Ditto	- Common Assignee of Insolvent Court.
25.	-	Ditto	- Examiner of ditto.
26.	-	Ditto	- Malabar and Gentoo Interpreter of ditto.
27.	-	Ditto	- Armenian Interpreter of ditto.
28.	-	Ditto	- Dutch ditto of ditto.
29.	-	Ditto	- Portuguese ditto of ditto.
30.	-	Ditto	- Malealum and Mopillay ditto of ditto.
31.	-	Ditto	- Malay Interpreter of ditto.
32.	-	Ditto	- Registrar of Vice-Admiralty Court.
33.	-	Ditto	- Marshal of ditto.

Besides the foregoing officers, three Tipstaffs are attached to the court, whose fixed monthly salary is fifteen pagodas each, and who receive no fees or other emoluments of any description.

There is also a Crier, whose fixed salary is five pagodas a month, and who receives no fees or other emoluments whatever.

Legis. Cons. 23 Jan. 1837. No. 16.

To the Honourable the Judges of his Majesty's Supreme Court of Judicature at Madras.

The RETURN made by the Sheriff of the Supreme Court of the Annual Emoluments from the year 1829 to the end of November 1835.

	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
To amount of Salary paid by Government to the Sheriff monthly, 350 rupees, is for the year 1829 - - - - - - -	4,200	–	–			
To Office Rent, at 87 *Rs.* 8 *a.* monthly, is for the year 1829 - -	1,050	–	–			
To amount of Fees of every kind received for all and every description of business for one year - - - - - - - -	7,748	1	6			
				12,998	1	6
To amount of Salary paid by Government to the Sheriff monthly, 350 rupees, is for the year 1830 - - - - - - -	4,200	–	–			
To Office Rent, at 87 *Rs.* 8 *a.* monthly, is for the year 1830 - -	1,050	–	–			
To amount of Fees of every kind received for all and every description of business for one year - - - - - - - -	7,372	10	10			
				12,622	10	10
To amount of Salary paid by Government to the Sheriff monthly, 350 rupees, is for the year 1831 - - - - - - -	4,200	–	–			
To Office Rent, at 87 *Rs.* 8 *a.* monthly, is for the year 1831 - -	1,050	–	–			
To amount of Fees of every kind received for all and every description of business for one year - - - - - - - -	6,804	11	9			
				12,054	11	9
To amount of Salary paid by Government to the Sheriff monthly, 350 rupees, is for the year 1832 - - - - - - -	4,200	–	–			
To Office Rent, at 87 *Rs.* 8 *a.* monthly, is for the year 1832 - -	1,050	–	–			
To amount of Fees of every kind received for all and every description of business for one year - - - - - - - -	6,778	7	7			
				12,028	7	7
To amount of Salary paid by Government to the Sheriff monthly, 350 rupees, is for the year 1833 - - - - - - -	4,200	–	–			
To Office Rent, at 87 *Rs.* 8 *a.* monthly, is for the year 1833 - -	1,050	–	–			
To amount of Fees of every kind received for all and every description of business for one year - - - - - - - -	7,877	9	10			
				13,127	9	10
To amount of Salary paid by Government to the Sheriff monthly, 350 rupees, is for the year 1834 - - - - - - -	4,200	–	–			
To Office Rent, at 87 *Rs.* 8 *a.* monthly, is for the year 1834 - -	1,050	–	–			
To amount of Fees of every kind received for all and every description of business for one year - - - - - - - -	6,731	5	8			
				11,981	5	8

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Return made by the Sheriff of the Supreme Court, &c.—*continued.*

	Rs.	a.	p.	Rs.	a.	p.
To amount of Salary paid by Government to the Sheriff to the end of November 1835, being 11 months, at 350 rupees per month, is	3,850	–	–			
To Office Rent for the month of January 1835 - - Rs. 87 8						
To - ditto - to the end of November 1835, being 10 months, at 42 rupees per month, is - - - - - 420 –						
	507	8	–			
To amount of Fees of every kind received for all and every description of business to the end of November 1835 - - - -	5,070	–	4			
				9,427	8	4

Sheriff's Office, Madras, 31 December 1835. (signed) *Arthur Henry Harris,* Sheriff.

Legis. Cons. 23 Jan. 1837. No. 17.

To the Honourable the Judges of his Majesty's Supreme Court of Judicature at Madras.

The RETURN made by the Deputy Sheriff of the Supreme Court of the Annual Emoluments from the year 1829 to the end of November 1835.

To amount of Salary paid by Government to the Deputy Sheriff monthly, 210 rupees, is for the year 1829 - - - - - -	2,520	–	–			
To Pallenkin allowance for Deputy Sheriff, at 42 rupees monthly, is for the year 1829 - - - - - - - - - -	504	–	–			
To Fees of every description for the year 1829 - - - -	1,225	–	–			
				4,249	–	–
To amount of Salary paid by Government to the Deputy Sheriff monthly, 210 rupees, is for the year 1830 - - - - - -	2,520	–	–			
To Pallenkin allowance for Deputy Sheriff, at 42 rupees monthly, is for the year 1830 - - - - - - - - - -	504	–	–			
To Fees of every description for the year 1830 - - - -	1,225	–	–			
				3,899	–	–
To amount of Salary paid by Government to the Deputy Sheriff monthly, 210 rupees, is for the year 1831 - - - - - -	2,520	–	–			
To Pallenkin allowance for Deputy Sheriff, at 42 rupees monthly, is for the year 1831 - - - - - - - - - -	504	–	–			
To Fees of every description for the year 1831 - - - -	857	8	–			
				3,881	8	–
To amount of Salary paid by Government to the Deputy Sheriff monthly, 210 rupees, is for the year 1832 - - - - - -	2,520	–	–			
To Pallenkin allowance for Deputy Sheriff, at 42 rupees monthly, is for the year 1832 - - - - - - - - - -	504	–	–			
To Fees of every description for the year 1832 - - - -	1,032	8	–			
				4,056	8	–
To amount of Salary paid by Government to the Deputy Sheriff monthly, 210 rupees, is for the year 1833 - - - - - -	2,520	–	–			
To Pallenkin allowance for Deputy Sheriff, at 42 rupees monthly, is for the year 1833 - - - - - - - - - -	504	–	–			
To Fees of every description for the year 1833 - - - -	1,155	–	–			
				4,179	–	–
To amount of Salary paid by Government to the Deputy Sheriff monthly, 210 rupees, is for the year 1834 - - - - - -	2,520	–	–			
To Pallenkin allowance for Deputy Sheriff, at 42 rupees monthly, is for the year 1834 - - - - - - - - - -	504	–	–			
To Fees of every description for the year 1834 - - - -	1,277	8	–			
				4,301	8	–
To amount of Salary paid by Government to the Deputy Sheriff to the end of November 1835, being 11 months, at 210 rupees per month, is - - - - - - - - - - -	2,310	–	–			
To Pallenkin allowance for Deputy Sheriff to the end of November 1835, being 11 months, at 42 rupees per month, is - - - -	462	–	–			
To Fees of every description to the end of November 1835, being 11 months, is - - - - - - - - - - -	822	8	–			
				3,594	8	–

Sheriff's Office, 31 December 1835. (signed) *J. F. Baillie,* Deputy Sheriff.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

(No. 4335.)

From *J. G. Turnbull*, Esq., Accountant-general, Supreme Court, to the Honourable Sir *Ralph Palmer*, Knt., Chief Justice, and the Honourable Sir *Robert Buckley Comyn*, Knt., one of his Majesty's Justices.

My Lords,

I HAVE had the honour of receiving the circular letter, dated the 30th November last, from the Registrar of the Court, requesting to be furnished with schedules of the annual emoluments of every description of my office from 1829 to 1834 both inclusive, also this year to the end of November, for transmission to the Supreme Government, and beg to report, that I do not receive any separate salary or emoluments as Accountant-general of the Supreme Court; but on the issue of certificates of the funds standing to the credit of causes and estates, a fee of two rupees is allowed for the same, which is received by the clerk making the search; and that the average amount received from 1st January 1829 to the end of November 1835 inclusive, on that account, may be stated at (186 *Rs.*) One hundred and eighty-six rupees per mensem.

Legis. Cons. 23 Jan. 1837. No. 18.

I have, &c.
(signed) *J. G. Turnbull*,
Accountant-gen. Supreme Court.

Fort St. George,
Accountant-general's Office,
18 December 1835.

SCHEDULE of the Annual Emoluments of every Description of the Master of the Supreme Court, Madras.

Legis. Cons. 23 Jan. 1837. No. 19.

1829:				
Amount of Fees - - - - - - - - -	*Madras Rs.*		30,463 5 4	
Salary - - - - - - - - - -		6,300 – –		
Deduct office expenses, clerk's salary, stationery, &c.		3,153 7 2		
			3,146 8 10	
				33,609 14 2
1830:				
Amount of Fees - - - - - - - - -	*Madras Rs.*		31,875 10 8	
Salary - - - - - - - - - -		6,300 – –		
Deduct office expenses, clerk's salary, stationery, &c.		3,243 15 9		
			3,056 – 3	
				34,931 10 11
1831:				
Amount of Fees - - - - - - - - -	*Madras Rs.*		39,699 13 9	
Salary - - - - - - - - - -		6,300 – –		
Deduct office expenses, clerks' salaries, stationery, &c.		3,196 7 3		
			3,103 8 9	
				42,803 6 6
1832:				
Amount of Fees - - - - - - - - -	*Madras Rs.*		36,625 11 2	
Salary - - - - - - - - - -		6,300 – –		
Deduct office expenses, clerks' salaries, stationery, &c.		3,466 10 –		
			2,833 6 –	
				39,059 1 2
1833:				
Amount of Fees - - - - - - - - -	*Madras Rs.*		38,498 – 3	
Salary - - - - - - - - - -		6,300 – –		
Deduct office expenses, clerks' salaries, stationery, &c.		3,598 2 4		
			2,701 13 8	
				41,199 13 11
1834:				
Amount of Fees - - - - - - - - -	*Madras Rs.*		36,599 11 2	
Salary - - - - - - - - - -		6,300 – –		
Deduct office expenses, clerks' salaries, stationery, &c.		3,749 9 –		
			2,550 7 –	
				39,150 2 2
1835, from 1st January up to the 30th November:				
Amount of Fees - - - - - - - - -	*Madras Rs.*		33,358 10 5	
Salary - - - - - - - - - -		5,775 – –		
Deduct office expenses, clerks' salaries, stationery, &c.		3,379 15 9		
			2,395 – 3	
				35,753 10 8

Master's Office,
8 December 1835.

(signed) *J. Savage*,
Master.

Legis. Cons. 23 Jan. 1837. No. 20.

To the Honourable the Judges of his Majesty's Supreme Court of Judicature at Madras.

The SCHEDULE made by the Clerk of the Crown in the Crown Office of the Court of the annual Emoluments and Salary from 1829 to 1834 both inclusive, and also to the end of November 1835.

Received by R. F. Lewis, Esq., Clerk of the Crown:			
The amount of Fees and Emoluments of every kind received for all and every description of business for one year, being from the 1st day of January to the 31st day of December 1829, both inclusive	761	8	–
The amount of Salary for the same time, being one year, 525 *Rs.* per month	6,300	–	–
The amount of Fees and Emoluments, &c. for one year, being from the 1st day of January to the 31st day of December 1830, both inclusive	448	8	–
The amount of Salary for the same time, being one year, at 525 *Rs.* per month	6,300	–	–
Received by W. Bathie, Esq., Clerk of the Crown:			
The amount of Fees and Emoluments, &c. for one year, being from the 1st day of January to the 31st day of December 1831, both inclusive	279	–	–
The amount of Salary for the same time, being one year, at 525 *Rs.* per month	6,300	–	–
The amount of Fees and Emoluments, &c. for one year, from the 1st day of January to the 31st December 1832, both inclusive	737	–	–
The amount of Salary for the same time, being one year, at 525 *Rs.* per month	6,300	–	–
Received by W. Bathie and M. J. French, Esquires, Clerks of the Crown:			
The amount of Fees and Emoluments, &c. for one year, being from the 1st day of January to the 31st day of December 1833, both inclusive	613	6	–
The amount of Salary for the same time, being one year, at 525 *Rs.* per month	6,300	–	–
The amount of Fees and Emoluments, &c. for one year, being from the 1st day of January to the 31st day of December 1834, both inclusive	818	4	–
The amount of Salary for the same time, being one year, at 525 *Rs.* per month	6,300	–	–
Received by A. Rowlandson, Esq., present Clerk of the Crown:			
The amount of Fees and Emoluments, &c. for 11 months, being from the 1st day of January to the 30th day of November 1835, both inclusive	213	–	–
The amount of Salary for the same time, being 11 months, at 525 *Rs.* per month	5,775	–	–
	47,445	13	–

The Fees allowed in the Table of Fees for copies and swearing in judicial or ministerial officers are subject to be remitted at the pleasure of the Court.

Memorandum:—This Return is made from the Fee books kept in the Crown Office; the Fees and Salary from 1st January 1829 to 31st December 1834 were received by the former Clerks of the Crown, and the Fees and Salary from 1st January 1835 are received by me as Clerk of the Crown, as appears in the margin.

Crown Office, Madras, 1 December 1835.

(signed) *Arthur Rowlandson*, Clerk of the Crown.

Legis. Cons. 23 Jan. 1837. No. 21.

To the Honourable the Judges of his Majesty's Supreme Court of Judicature at Madras.

The SCHEDULE of the Annual Emoluments of the Deputy Clerk of the Crown, in the Crown Office of the Court, from 1829 to 1834 inclusive, and also to the end of November 1835.

The amount of Salary received from 1 January to 31 December 1829, both inclusive					2,100	– –
Ditto	for one year	1 January	31 December 1830	,,	2,100	– –
Ditto	ditto	1 January	31 December 1831	,,	2,100	– –
Ditto	ditto	1 January	31 December 1832	,,	2,100	– –
Ditto	ditto	1 January	31 December 1833	,,	2,100	– –
Ditto	ditto	1 January	31 December 1834	,,	2,100	– –
Ditto	for 11 months	1 January	30 November 1835	,,	1,925	– –
				Rs.	14,525	– –

Crown Office, Madras, 1 December 1835.

(signed) *Fredk Orme*, Deputy Clerk of the Crown.

To

To the Honourable the Judges of the Supreme Court of Judicature, Madras.

Legis. Cons. 23 Jan. 1837. No. 22.

SCHEDULE of Emoluments of every Description of the Registrar and Prothonotary, in pursuance of the Despatch from the Governor-general of India, bearing date the 2d day of November 1835, to the Honourable the Judges.

Years.	Fees.	Commission on Estates.	Total.	Total Expenses.	Net Amount.
	Ms. Rs. a. p.	*Ms. Rs. a. p.*	*Ms. Rs. a. p.*	*Ms. Rs. a. p.*	*Ms. Rs. a. p.*
1829	54,335 15 –	13,788 – 11	68,123 15 11	19,510 9 6	48,613 6 5
1830 -	51,838 7 2	12,674 6 11	64,512 14 1	21,354 1 9	43,158 12 4
1831 -	52,079 – 3	39,044 2 2	91,123 2 5	25,349 6 6	65,773 11 11
1832 -	54,497 9 3	13,973 – 8	68,470 9 11	23,874 8 9	44,596 1 2
1833 -	55,670 6 8	21,110 4 8	76,780 11 4	24,140 12 11	52,639 14 5
1834 -	46,894 1 5	33,331 7 10	80,225 9 3	25,028 14 10	55,196 10 5
1835 - up to 30th Nov.	55,404 13 6	11,534 7 4	66,939 4 10	20,153 2 8	46,786 2 2
			Net Income - - -		3,56,764 10 10

The Average Annual Income of the Seven Years is - - - *Madras Rs.* 50,966 6 1 $\frac{3}{7}$

The Registrar and Prothonotary has hitherto, besides an office, been provided with office furniture, four Golah peons and four attending peons, and, up to the end of the year 1834, with stationery, when it was discontinued in respect to estates. The expenses of stationery purchased for the year 1835 amounted to *Rs.* 626. 15., which sum is included in the total expenses for 1835.

(signed) *P. Cator,*
Registrar and Prothonotary.

11 December 1835.

To the Honourable the Judges of the Supreme Court of Judicature at Madras.

Legis. Cons. 20 Jan. 1837. No. 23.

The SCHEDULE made by the Examiner of the Supreme Court of the Emoluments and Salary received from the 12th day of March to the 30th November 1835.

1835:		*Rs. a. p.*
28 April -	Fees received in the case of Tolesinga Chitty *v.* Narasemaloo Chitty - - - - - - - - - - -	106 8 –
6 June -	Fees received in the case of Ameerud Dowlah *v.* Gordon Bhartee and another - - - - - - - - - -	1 – –
23 July -	Fees received in the case of Akelandamall *v.* Annundaroy Movdelliar - - - - - - - - - -	444 8 –
25 Sept. -	Fees received in the case of Lethbridge *v.* Lethbridge - -	380 5 –
16 Nov. -	Fees received in the case of Rava Ramanjum Chitty *v.* Rava Ramasawmy Chitty - - - - - - - - - -	1 – –
		933 5 –
	Examiner's Salary for the same time, being 8 months 19 days, at 175 *Rs.* per month - - - - - - - - - -	1,510 13 4
		2,444 2 4
	Deduct Expenses of Office for the same time, being from the 12th day of March to the 30th day of Nov. 1835, no writers or establishment being allowed for the Examiner's Office, at *Rs.* 70. 8. per month - - - - - - - - - -	608 5 4
	Net Receipts - - -	1,835 13 –
	Average Income per month - - - *Rs.*	215 – –

Observations:—The above is a true Schedule of the Emoluments and Salary received in the Office of the Examiner of the Supreme Court at Madras during the time I have held the appointment. I do not find any book of accounts in this office which would enable me to make a return of the Emoluments received by the former incumbent.

(signed) *Fred^k Orme*, Examiner.

SCHEDULE of the Annual Emoluments of the Sealer of the Supreme Courts, Madras.

Legis. Cons. 23 Jan. 1837. No. 24.

	Rupees.
Fees for the year 1833 - - - - - - - - - - - -	3,031
Ditto - ditto 1834 - - - - - - - - - - - -	2,544
Ditto - ditto 1835 - - - - - - - - - - - -	2,857

Madras, 23 December 1835.

(signed) *James Bell*, Sealer.

No Salary allowed the Sealer.

(signed) *J. B.*

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

From *C. M'Leod*, Esq., Counsel for Paupers, to the Registrar of the Supreme Court; dated 31 December 1835.

Sir,

In compliance with the requisition of the Supreme Government transmitted to me through your office, I have the honour to send you, hereunder written, a statement of my receipts as Counsel for Paupers from the 1st day of December 1832, the day on which I entered upon that office, up to the present time.

I have, &c.

(signed) *C. M'Leod*,
Counsel for Paupers.

	Rs.	*a.*
December 1832; Salary for this month	400	–
For 1833; Salary for this year, at 400 rupees per month	4,800	–
„ 1834; Ditto ditto	4,800	–
„ 1835; Ditto ditto	4,800	–
And fees during the whole of this period received from the Attorney for Paupers	262	8

I have been at some additional expenses on account of stationery, printing, &c.; but of these I have kept no accurate account.

Madras, 31 December 1835. (signed) *C. M'Leod.*

Schedule of the Annual Emoluments of every Description of the Office of Attorney, Solicitor and Proctor for Paupers, from the 1st day of September 1830 to the 30th day of November 1835.

	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
To amount of Salary of the Attorney, Solicitor and Proctor for Paupers, during the above-mentioned period, being five years and two months, at 350 rupees per month	21,700	–	–			
Deduct therefrom the charges of the establishment of the Paupers' Office for the above-mentioned period, at 127 rupees per month; (that is to say) for office rent *Rs.* 35 and for office clerks and a peon 92						
Rs. 127						
				13,826	–	–
1832, March 4:—To amount of costs received by the Attorney for Paupers this day, in Caroline Bryan *v.* C. M. Bryan	180	–	–			
Deduct therefrom the amount of fees of the other officers of the court, paid to them respectively by the Attorney for Paupers	93	2	6			
				86	13	6
October 3:—To amount of costs received by ditto ditto this day, in Mayoor Mooncamull, widow, &c. of M. Armoogum, deceased, *v.* Mayoor Vamasevry Moody, the son, &c. of M. Vydenanda Moodelly, deceased	387	11	4			
Deduct from the last mentioned sum of *Rs.* 387. 11. 4., the amount of fees of the other officers of the court, paid to them respectively by the Attorney for Paupers	287	6	3			
				300	5	1
1838, October 17:—To amount of costs received by the Attorney for Paupers this day, in Barthasarathy Jyengan, son, &c., *v.* Teagaroy Chitty, adopted son, &c.	300	–	–			
October 21:—Deduct therefrom the amount of fees of the other officers of the court, paid to them respectively by the Attorney for Paupers	169	10	–			
				130	6	–
October 23:—To amount of costs received by the Attorney for Paupers this day, in Jeremiah Bray, an infant, &c. *v.* Charles Hawkey and another	341	2	8			
October 24:—Deduct therefrom the amount of fees of the other officers of the court, paid to them respectively by the Attorney for Paupers	161	2	8			
				180	–	–
Net amount of salary and costs received by the Attorney for Paupers, from the said 1st day of September 1830 to the 30th day of November 1835				14,523	8	7

N.B.—The

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

N.B.—The Attorney for Paupers is in the receipt yearly from Government of the under-mentioned quantity of Stationery; viz.—

MEMORANDUM of Stationery and Sundries yearly allowed for the Office of the Solicitor, Attorney and Proctor for Paupers.

Demy, one ream.	Pencils, black-lead, six.
Quarto post or letter paper, ten quires.	Ink powder (black), four papers.
Foolscap, one ream.	Wafer boxes, two boxes.
King's arm, fifteen quires.	Shining sand pounds, two pounds.
Blotting paper, ten quires.	Indian rubber, one piece.
Cartridge paper, one quire.	Penknives, two.
Quills, one hundred.	Tape, eight pieces.

(signed) *Leman Conyers,*
Attorney, Solicitor and Proctor for Paupers.

Madras, 30 December 1835.

SUPREME COURT, MADRAS.

A SCHEDULE made pursuant to the Order of the Honourable the Judges, December 1835.

Legis. Cons. 23 Jan. 1837. No. 27.

	Rs.	*f.*	*c.*	*Rs.*	*f.*	*c.*
The amount of Fees received by me as Clerk to the Honourable Sir R. Palmer, in the year 1831	2,630	–	–			
Salary	2,520	–	–			
				5,150	–	–
Fees received in the year 1832	2,808	–	–			
Salary	2,520	–	–			
				5,328	–	–
Fees received in the year 1833	3,072	–	–			
Salary	2,520	–	–			
				5,592	–	–
Fees received in the year 1834	3,081	–	–			
Salary	2,520	–	–			
				5,601	–	–
Fees received from the 1st of January to the 30th of November 1835	2,121	–	–			
Salary	2,310	–	–			
				4,431	–	–

(signed) *James Bell,*
Clerk to the Honourable Sir R. Palmer.

SUPREME COURT, MADRAS.

A SCHEDULE made pursuant to the Order of the Honourable the Judges, December 1835.

Legis. Cons. 23 Jan. 1837. No. 28.

	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
The amount of Fees received by me as Clerk to the Honourable Sir Robert Comyn in the year 1831	2,630	–	–			
Salary	2,520	–	–			
				5,150	–	–
Fees received in the year 1832	2,808	–	–			
Salary	2,520	–	–			
				5,328	–	–
Fees received in the year 1833	3,072	–	–			
Salary	2,520	–	–			
				5,592	–	–
Fees received in the year 1834	3,081	–	–			
Salary	2,520	–	–			
				5,601	–	–
Fees received from the 1st of January to the 30th of November 1835	2,121	–	–			
Salary	2,310	–	–			
				4,431	–	–

(signed) *John Hodges,*
Clerk to the Honourable Sir Robt Comyn.

No. 1.
On Fees and Salaries of the Officers of the Supreme *Courts.*

To *Peter Cator*, Esquire, Registrar.

Sir,

In reply to your letter of the 3d instant, I beg to state, that I am unable to make any return of fees received by me previous to the year 1831, the books and memoranda of the same having been in the possession of Mr. Bell (Sir Ralph Palmer's clerk), who informs me, that, not supposing they would be required, he destroyed them, with other papers, not long ago, in contemplation of his leaving India.

I have, &c.

28 December 1835. (signed) *J. Hodges.*

Legis. Cons. 23 Jan. 1837. No. 29.

SCHEDULE of the Annual Emoluments of every Description of the Principal Interpreter for Telogoo and Taniel Languages of the Supreme Court, Madras.

1829:			
Salary for interpreting on the Civil side of the Court	1,050 – –		
Ditto to the Judges (in Chambers)	2,100 – –		
Ditto on the Criminal side of the Court	1,050 – –		
		4,200 – –	
Amount of Fees for explaining Pleadings, Affidavits, &c., and for translating Paper	5,886 3 10		
Deduct Office Establishment, Deputy and Clerk's Salaries, and Stationery, &c.	2,568 – –		
		3,318 3 10	
			7,518 3 10
1830:			
Salary, as above		4,200 – –	
Amount of Fees, as above	6,387 5 –		
Deduct Office, &c., as above	2,568 – –		
		3,819 5 –	
			8,019 5 –
1831:			
Salary, as above		4,200 – –	
Amount of Fees, as above	6,374 – 7		
Deduct Office, &c., as above	2,568 – –		
		3,806 – 7	
			8,006 – 7
1832:			
Salary, as above		4,200 – –	
Amount of Fees, as above	6,528 11 1		
Deduct Office, &c., as above	2,568 – –		
		3,960 11 1	
			8,160 11 1
1833:			
Salary, as above		4,200 – –	
Amount of Fees, as above	6,381 4 6		
Deduct Office, &c., as above	2,568 – –		
		3,813 4 6	
			8,013 4 6
1834:			
Salary, as above		4,200 – –	
Amount of Fees, as above	5,908 1 10		
Deduct Office, &c., as above	2,568 – –		
		3,340 1 10	
			7,540 1 10
1835, from 1st January up to 30th November:			
Salary, as above		4,200 – –	
Amount of Fees, as above	5,643 14 2		
Deduct Office, &c., as above	2,568 – –		
		3,075 14 2	
			7,275 14 2

(signed) *Y. Veerasawmy.*

Ever since I was employed, which was on the 23d March 1819, no salary or emolument of whatever kind was received by me for the business of the Admiralty side of the Court.

(signed) *Y. Veerasawmy.*

SCHEDULE

SCHEDULE of the Annual Emoluments of every Description of Mahomed Tippoo, Persian and Hindoostanee Interpreter to the Supreme Court, Madras.

Legis. Cons. 23 Jan. 1837. No. 30.

	Madras Rs.			
1829:				
Amount of Fees		336	– –	
Salary	1,680 – –			
Deduct Office Establishment, &c.	156 – –			
		1,524	– –	
				1,860 – –
1830:				
Amount of Fees		336	– –	
Salary	1,680 – –			
Deduct Office Establishment, &c.	156 – –			
		1,524	– –	
				1,860 – –
1831:				
Amount of Fees		336	– –	
Salary	1,680 – –			
Deduct Office Establishment, &c.	156 – –			
		1,524	– –	
				1,860 – –
1832:				
Amount of Fees		336	– –	
Salary	1,680 – –			
Deduct Office Establishment, &c.	156 – –			
		1,524	– –	
				1,860 – –
1833:				
Amount of Fees		336	– –	
Salary	1,680 – –			
Deduct Office Establishment, &c.	156 – –			
		1,524	– –	
				1,860 – –
1834:				
Amount of Fees		336	– –	
Salary	1,680 – –			
Deduct Office Establishment, &c.	156 – –			
		1,524	– –	
				1,860 – –
1835, from 1st of July up to 30th November:				
Amount of Fees		308	– –	
Salary	1,540 – –			
Deduct Office Establishment, &c.	143 – –			
		1,397	– –	
				1,705 – –

No Salary or Emolument of any kind was received by me since the establishment of the Insolvent Debtors' Court.

(signed) *Mahomed Tippoo*, Interpreter.

SCHEDULE of Annual Emoluments of every Description of Mahomed Tippoo, Canarese Interpreter to the Supreme Court, Madras.

Legis. Cons. 23 Jan. 1837. No. 31.

1830:			
Amount of Fees	none.		
Salary			276 8 –
Deduct Office Establishment, &c.	none.		
1831:			
Amount of Fees	none.		
Salary			630 – –
Deduct Office Establishment, &c.	none.		
1832:			
Amount of Fees	none.		
Salary			630 – –
Deduct Office Establishment, &c.	none.		
1833:			
Amount of Fees	none.		
Salary			630 – –
Deduct Office Establishment, &c.	none.		
1834:			
Amount of Fees	none.		
Salary			630 – –
Deduct Office Establishment, &c.	none.		
1835, from 1st January up to 31st November:			
Amount of Fees	none.		
Salary			577 8 –
Deduct Office Establishment.			

I was appointed as Canarese Interpreter on the 23d July 1830.

(signed) *Mahomed Tippoo*, Interpreter.

No Salary or Emolument of any kind was received by me since the establishment of the Insolvent Court.

(signed) *Mahomed Tippoo*, Interpreter.

Legis. Cons. 23 Jan. 1837. No. 32.

SCHEDULE of Emoluments of the French Interpreter of the Supreme Court of Judicature at Madras.

Amount of Salary from 1st January 1829, at 17½ Rs. per mensem -	210 – –	
Amount of Fees for the year 1829 - - - - - - -	- - -	130 – –
Amount of Salary from 1st January 1830, at 17½ Rs. per mensem -	210 – –	
Amount of Fees for the year 1830 - - - - - - -	- - -	129 8 –
Amount of Salary from 1st January 1831, at 17½ Rs. per mensem -	210 – –	
Amount of Fees for the year 1831 - - - - - - -	- - -	83 – –
Amount of Salary from 1st January 1832, at 17½ Rs. per mensem -	210 – –	
Amount of Fees for the year 1832 - - - - - - -	- - -	15 – –
Amount of Salary from 1st January 1833, at 17½ Rs. per mensem -	210 – –	
Amount of Fees for the year 1833 - - - - - - -	- - -	28 – –
Amount of Salary from 1st January 1834, at 17½ Rs. per mensem -	210 – –	
Amount of Fees for the year 1834 - - - - - - -	- - -	39 – –
Amount of Salary from 1st January to 30th November 1835, at 17½ Rs. per mensem - - - - - - - - -	192 8 –	
Amount of Fees from January to November 1835 - - - -	- - -	45 – –
TOTAL Amount of Salary from the 1st January 1829 to 30th November 1835 - - - - - - - - *Rs.*	1,452 8 –	
TOTAL Amount of Fees from 1st January 1829 to 30th November 1835 - *Rs.*		469 8 –

(signed) *C. Gandon,*
French Interpreter, His Majesty's Supreme Court.

Memorandum.—Schedule for the Vice-Admiralty Court:—Salary none; Fee none.
Schedule for the Insolvent Court:—Salary none; Fee none.

Legis. Cons. 23 Jan. 1837. No. 33.

To the Honourable the Judges of the Supreme Court of Judicature at Madras.

The RETURN made by the Dutch Interpreter of the Supreme Court, in pursuance of a Circular Letter from the Registrar, dated 29th day of November 1835.

The amount of Salary received from 1 January up to 31 December 1829 -		205 – –
Ditto - Fees - ditto - 1 January - 31 December „ -		370 8 –
Ditto - Salary - ditto - 1 January - 31 December 1830 -		205 – –
Ditto - Fees - ditto - 1 January - 31 December „ -		402 – –
Ditto - Salary - ditto - 1 January - 31 December 1831 -		205 – –
Ditto - Fees - ditto - 1 January - 31 December „ -		115 12 –
Ditto - Salary - ditto - 1 January - 31 December 1832 -		205 – –
Ditto - Fees - ditto - 1 January - 31 December „ -		290 – –
Ditto - Salary - ditto - 1 January - 31 December 1833 -		205 – –
Ditto - Fees - ditto - 1 January - 31 December „ -		510 – –
Ditto - Salary - ditto - 1 January - 31 December 1834 -		205 – –
Ditto - Fees - ditto - 1 January - 31 December „ -		97 – –
Ditto - Salary - ditto - 1 January - 30 November 1835 -		187 8 –
Ditto - Fees - ditto - 1 January - 30 November „ -		280 15 –
	Madras Rs.	3,483 11 –
The Exchange at 8¾ Rupees per pound - - - -	£. Stg	398 2 8½

Madras, Dutch Interpreter's Office, 30 November 1835.

(signed) *B. C. Regel,*
Dutch Interpreter to the Supreme Court, Madras.

SCHEDULE

SCHEDULE of Salary and Emoluments annually, of every Description, received by the Armenian Interpreter from the Year 1829 to 30 November 1835, both inclusive.

Amount of Fees of every description of business from 1st January to 31st December 1829					812	13 –
Amount of Salary on all sides of the Court, Crown, Civil, Ecclesiastical, Equity and Plea, from 1st January to 31st December 1829			1,260	– –		
Deduct,—Paid by Interpreter to Writers and Attendants, no salaries being paid by the Government, and no fees, perquisites, or any pecuniary advantages of any kind being allowed or received by them; as also, paid for Stationery and other Expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's Office			180	10 –		
					1,079	6 –
					1,892	3 –
Amount of Fees, from 1 January to 31 December 1830					496	– –
Ditto - Salary - 1 January - 31 December „			1,260	– –		
Deduct Office Establishment, &c.			166	4 3		
					1,093	11 9
					1,589	11 9
Amount of Fees, from 1 January to 31 December 1831					492	13 –
Ditto - Salary - 1 January - 31 December „			1,260	– –		
Deduct Office Establishment, &c.			179	12 –		
					1,080	4 –
					1,573	1 –
Amount of Fees, from 1 January to 31 December 1832					395	8 –
Ditto - Salary - 1 January - 31 December „			1,260	– –		
Deduct Office Establishment, &c.			165	– –		
					1,095	– –
					1,490	8 –
Amount of Fees, from 1 January to 31 December 1833					176	8 –
Ditto - Salary - 1 January - 31 December „			1,260	– –		
Deduct Office Establishment, &c.			100	– –		
					1,160	– –
					1,336	8 –
Amount of Fees, from 1 January to 31 December 1834					191	5 –
Ditto - Salary - 1 January - 31 December „			1,260	– –		
Deduct Office Establishment, &c.			120	– –		
					1,140	– –
					1,331	5 –
Amount of Fees, from 1 January to 30 November 1835					657	8 –
Ditto - Salary - 1 January - 30 November „			1,165	– –		
Deduct Office Establishment, &c.			155	– –		
					1,010	– –
				Rs.	1,667	8 –

16 December 1835.

(signed) *T. Paul,*
Armenian Interpreter to the Supreme Court.

Legis. Cons. 23 Jan. 1837. No. 35.

SCHEDULE of the Annual Emoluments of every Description of the Portuguese Interpreter of the Supreme Court, Madras.

1829:			
Amount of Fees - - - - - - - -	*Madras Rs.*	335 11 7	
Salary - - - - - - - - -	336 – –		
Deduct Office Establishment, &c. - - - -	36 – –		
		300 – –	
			635 11 7
1830:			
Amount of Fees - - - - - - - - -		355 7 4	
Salary - - - - - - - - -	336 – –		
Deduct Office Establishment, &c. - - - -	36 – –		
		300 – –	
			655 7 4
1831:			
Amount of Fees - - - - - - - - -		326 9 7	
Salary - - - - - - - - -	336 – –		
Deduct Office Establishment, &c. - - - -	36 – –		
		300 – –	
			626 9 7
1832:			
Amount of Fees - - - - - - - - -		220 6 2	
Salary - - - - - - - - -	336 – –		
Deduct Office Establishment, &c. - - - -	36 – –		
		300 – –	
			520 6 2
1833:			
Amount of Fees - - - - - - - - -		290 15 8	
Salary - - - - - - - - -	336 – –		
Deduct Office Establishment, &c. - - - -	36 – –		
		300 – –	
			590 15 8
1834:			
Amount of Fees - - - - - - - - -		290 6 8	
Salary - - - - - - - - -	336 – –		
Deduct Office Establishment, &c. - - - -	36 – –		
		300 – –	
			590 6 8
1835, from 1 January to 30 November:			
Amount of Fees - - - - - - - - -		280 6 –	
Salary - - - - - - - - -	336 – –		
Deduct Office Establishment, &c. - - - -	36 – –		
		300 – –	
			580 6 –

(signed) *W. Regel*, Portuguese Interpreter.

Legis. Cons. 23 Jan. 1837. No. 36.

SCHEDULE of the Annual Emoluments of every Description of the Malayalum and Mapoola Interpreter of the Supreme Court.

From 1 June to 31 December, inclusive, 1832:			
Amount of Fees - - - - - - - - -		—	
Salary - - - - - - - - -	*Madras Rs.*	735 – –	
Deduct Office Establishment for Seven Months, at 14 Rupees per mensem - - - - - - - - - -		98 – –	
			637 – –
1833:			
Amount of Fees - - - - - - - - - -		121 14 –	
Salary - - - - - - - - - -		1,260 – –	
		1,381 14 –	
Deduct Office Establishment - - - - - - -		168 – –	
			1,213 14 –
1834:			
Amount of Fees - - - - - - - - - -		—	
Salary - - - - - - - - - -		1,260 – –	
Deduct Office Establishment - - - - - - -		168 – –	
			1,092 – –
From 1 January to 30 November 1835:			
Amount of Fees - - - - - - - - - -		19 4 –	
Salary - - - - - - - - - -		1,155 – –	
		1,174 4 –	
Deduct Office Establishmeut - - - - - - -		154 – –	
			1,020 4 –
TOTAL Amount - - - -	*Rs.*		3,963 2 –

N. B.—Having been appointed to the situation on the 1st of June 1832, I am unable to furnish any statement for the period prior to that date.

Madras, 28 December 1835.

(signed) *C. Meenaeshagee*, Malayalum and Mapoola Interpreter.

To

Legis. Cons. 23 Jan. 1837. No. 37.

To the Honourable the Judges of His Majesty's Supreme Court of Judicature at Madras.

The RETURN made by the Malay Interpreter of the Court, in pursuance of a Circular Letter from the Registrar, dated 29th day of November 1835.

1829:	Amount of Salary	from 1 Jan.	to 31 Dec.,	at 52 *Rs.* 8 *a.*	per month	630	– –
1830:	Ditto	ditto	1 Jan. to 31 Dec.,	ditto		630	– –
1831:	Ditto	ditto	1 Jan. to 31 Dec.,	ditto		630	– –
1832:	Ditto	ditto	1 Jan. to 31 Dec.,	ditto		630	– –
1833:	Ditto	ditto	1 Jan. to 31 Dec.,	ditto		630	– –
1834:	Ditto	ditto	1 Jan. to 31 Dec.,	ditto		630	– –
1835:	Ditto	ditto	1 Jan. to 30 Nov.,	ditto		577	8 –
				TOTAL - - -	*Rs.*	4,357	8 –

No Fees or other Emoluments have been received from 1 January 1829 up to 30 November 1835.

(signed) *A. M. Constance,*
Malay Interpreter.

Madras, 7 December 1835.

Legis. Cons. 23 Jan. 1837. No. 38.

To the Honourable the Judges of His Majesty's Supreme Court of Judicature at Madras.

The RETURN made by the Malabar and Gentoo Interpreter of His Majesty's Justice of Sessions and of the Grand Jury of the Supreme Court, in pursuance of a Circular Letter from the Registrar, dated 29 November 1835.

1829:	Amount of Salary	from 1 January	to 31 December,	at 50 *Rs.*	per month	600	– –
1830:	Ditto	ditto	1 January to 31 December	ditto		600	– –
1831:	Ditto	ditto	1 January to 31 December	ditto		600	– –
1832:	Ditto	ditto	1 January to 31 December	ditto		600	– –
1833:	Ditto	ditto	1 January to 31 December	ditto		600	– –
1834:	Ditto	ditto	1 January to 31 December	ditto		600	– –
1835:	Ditto	ditto	1 January to 31 December	ditto		550	– –
				TOTAL - - -	*Rs.*	4,150	– –

No Fees or other Emoluments have been received from the 1st January 1829 up to the 30th November 1835.

(signed) *M. Somasoondarum,*
Interpreter to the Justice in Sessions and Grand Jury.

N. B.—The Salary above referred to is not included in the establishment of the Supreme Court, but drawn and paid to me by the Clerk of the Peace, under the authority of His Majesty's Justice in Sessions.

Legis. Cons. 23 Jan. 1837. No. 39.

SCHEDULE of the annual Emoluments of every Description of the Common Assignee of the Court for the Relief of Insolvent Debtors at Madras, from the Institution of the Court.

		Rs.	*a.*	*p.*
1829:	From 9 March to 31 December, Commission - - - - - - - - - -	969	12	1
„	Ditto ditto Office Establishment, Writers and Peons, paid by Government.	2,131	–	9
1830:	Commission - - - - - - - - - - - - - -	319	15	–
„	Office Establishment, &c. - - - - - - - - - -	2,625	–	–
1831:	Commission - - - - - - - - - - - - - -	477	2	6
„	Office Establishment, &c. - - - - - - - - - -	2,625	–	–
1832:	Commission - - - - - - - - - - - - - -	269	6	9
„	Office Establishment, &c. - - - - - - - - - -	2,625	–	–
1833:	Commission - - - - - - - - - - - - - -	418	4	2
„	Office Establishment, &c. - - - - - - - - - -	2,625	–	–
1834:	Commission - - - - - - - - - - - - - -	3,763	–	6
„	Office Establishment, &c. - - - - - - - - - -	2,625	–	–
1835:	From 1 January to 30 November, Commission - - - - - -	334	14	8
„	Office Establishment, &c. - - - - - - - - - -	2,406	4	–

(signed) *J. Savage,*
Common Assignee.

11 December 1835.

Legis. Cons. 23 Jan. 1837. No. 40.

SCHEDULE of the Annual Emoluments of every Description of the Examiner of the Court for the Relief of Insolvent Debtors at Madras, from the Institution of the Court.

		Ms. Rs. a. p.
1829:	From 9 March to 31 December, Fees	101 2 –
„	Office Establishment, Writer and Peons paid by Government	1,481 15 –
1830:	Fees	184 – –
„	Office Establishment, &c.	1,827 – –
1831:	Fees	461 – –
„	Office Establishment, &c.	1,827 – –
1832:	Fees	312 – –
„	Office Establishment, &c.	1,827 – –
1833:	Fees	468 – –
„	Office Establishment, &c.	1,827 – –
1834:	Fees	494 – –
„	Office Establishment, &c.	1,827 – –
1835:	From 1 January to 30 November, Fees	460 – –
„	Office Establishment, &c., from 1 January to 30 November	1,674 12 –

Madras, Examiner's Office, 4 January 1836.

(signed) *J. S. Baillie*, Examiner, Insolvent Court.

Legis. Cons. 23 Jan. 1837. No. 41.

SCHEDULE of the Annual Emoluments of every Description of the Principal Interpreter for Telegoo and Tamil Languages of the Insolvent Debtors' Court.

		Madras Rupees.
1829.	Amount of Fees	—
1830.	ditto	1 2 6
1831.	ditto	81 12 5
1832.	ditto	—
1833.	ditto	—
1834.	ditto	29 11 4
1835, from 1 Jan. up to 30 Nov.	ditto	3 6 2

Notwithstanding my duties are laborious on the day the Insolvent Court sits, which is universally once a month, and the fees so little, as exhibited above, I humbly submit that no salary is allowed to me, and that I am obliged to undergo an additional expense for transacting the business of the Insolvent Court.

(signed) *Veerasawmy*, Interpreter.

Legis. Cons. 23 Jan. 1837. No. 42.

To *Peter Cator*, Esq., Registrar of the Supreme Court at Madras.

Sir,

IN obedience to your two circulars of the 10th instant, relative to the emoluments, &c. of the Vice-Admiralty and Insolvent Courts, I most respectfully beg to submit, for the information of the Honourable the Judges, that as Armenian interpreter to the same, I have not derived from either of the said establishments, at any time, a salary, or any other emolument whatever.

I have, &c.

Madras, 16 December 1835. (signed) *T. Paul.*

Legis. Cons. 23 Jan. 1837. No. 43.

To *Peter Cator*, Esq., Registrar to the Supreme Court of Judicature, Madras.

Sir,

I BEG to inform you, that since the Insolvent Court has been established, I have never been called upon to do business; neither have I, ever since, received any salary from the said court as Dutch Interpreter.

I beg, &c.

(signed) *B. C. Regel*, Dutch Interpreter.

Madras, 28 December 1835.

SCHEDULE

SCHEDULE of the Annual Emoluments of every Description of the Portuguese Interpreter of the Insolvent Debtors' Court, Madras.

Legis. Cons. 23 Jan. 1837. No. 44.

From March to December 1829	Amount of Salary - -	-	none.
	,, Fees - -		
	Deduct Establishment, &c.		
1830	ditto - - -	-	none.
1831	ditto - - -	-	none.
1832	ditto - - -	-	none.
1833	ditto - - -	-	none.
1834	ditto - - -	-	none.
1835 from 1 Jan. up to 20 Nov.	ditto - - -	-	none.

(signed) *W. Regel,*
Portuguese Interpreter of the Insolvent Debtors' Court.

SCHEDULE of the Annual Emoluments of every Description of the Interpreter for Malayalum and Mapoola Languages of Insolvent Debtors' Court.

Legis. Cons. 23 Jan. 1837. No. 45.

From 1 June to 31 Dec. inclusive, 1832	Amount of Salary - - -		—
1833	ditto - - -		—
1834	ditto - - -		—
From 1 Jan. to 30 Nov. 1835	ditto - - -		—

(signed) *C. Meenarshaga,*
Malayalum and Mapoola Interpreter.

Madras, 2 January 1836.

To the Registrar of the Supreme Court of Judicature at Madras.

Legis. Cons. 23 Jan. 1837. No. 46.

Sir,

IN pursuance of your circular of the 28th instant, relative to the emolument of the Insolvent Court, I most respectfully beg to submit, for the information of the Honourable the Judges, that as Malay Interpreter to the same, I have not derived from the said establishment, at any time, a salary or any other emolument whatever.

I have, &c.
(signed) *A. M. Constance,*
Malay Interpreter.

Madras, 30 December 1835.

Vice-Admiralty Court, Madras.

Legis. Cons. 23 Jan. 1837. No. 47.

A SCHEDULE was made pursuant to the Order of the Honourable the Judges, December 1835.

A Monthly Allowance for Office Rent - - - -	87	8 -
No Fee or other Emoluments of any kind - - -	—	

(signed) *Jas. Bell,* Registrar.

To *P. Cator,* Esq., Registrar, Supreme Court.

Legis. Cons. 23 Jan. 1837. No. 48.

Sir,

IN answer to your inquiry of the 10th instant, I have the honour to state, that there have been no emoluments received by the Marshal of the Vice-Admiralty Court here, from 1829 to the present period.

I am, &c.
(signed) *James Scott,* Marshal.

Legis. Cons. 23 Jan. 1837. No. 49.

To the Honourable Sir *C. T. Metcalfe*, Bart., Governor-general of India in Council, Fort William.

Honourable Sir,

When the Judges of the Supreme Court at Madras had lately the honour to forward to you the returns of the emoluments of the several officers, they had not the means of furnishing the return of the Chief Clerk and Sealer of the Court of Insolvent Debtors; I beg leave now to supply this deficiency, and have the honour to be, &c.

Madras, 26 February 1836. (signed) *Robt B. Comyn.*

Legis. Cons. 23 Jan. 1837. No. 50.

Schedule of the Emoluments of every Description of the Chief Clerk and Sealer of the Court for the Relief of Insolvent Debtors at Madras, from the 1st day of March 1835.

1835: From 1 March to 30 November, Fees, 1,493 *Rs.* 7 *a.*, average per month	165	15	–
Ditto - ditto - Office Establishment, Writers and Peons paid by Government for ditto	243	4	–

Madras, Chief Clerk's Office, 6 January 1836. (signed) *D. M. Campbell.*

Observation.—As I do not find any book of accounts in my office which would enable me to make a return of the emoluments received by my predecessor, I make the above return from the 1st day of March up to the 30th day of November last.

(signed) *D. M. Campbell,*
Chief Clerk and Sealer.

Legis. Cons. 23 Jan. 1837. No. 51.

To the Honourable the President and Members of the Legislative Council of India.

Honourable Sirs,

Mr. Justice Awdry and myself had the honour duly to receive your letter of the 2d November last, referring for our consideration an accompanying copy of a despatch, dated the 2d of June last, from the Honourable the Court of Directors.

We immediately directed all the officers of the Supreme Court subject to our authority (except the Accountant-general of the Government of Bombay, who is ex-officio Accountant-general of the Supreme Court,) to furnish us with schedules of the annual emoluments of every description received by them respectively; but the severe and protracted illness of Mr. Fenwick, one of the principal officers, rendered it impossible for him to comply with our direction; and returns of the annual emoluments of the Master and of the Clerk of the Small Cause Court (which offices respectively were permanently held by him), and of the Ecclesiastical Register and Examiner in Equity (in which offices he acted during the two last years) have been recently sent to me; to this cause the delay in complying with your request must be ascribed.

Mr. Justice Awdry is at present absent from the Presidency, and probably will not return before a week may elapse; I have, therefore, deemed it proper to transmit to you the accompanying schedules with this communication from myself, instead of waiting to obtain the signature of my learned colleague.

I have already stated that Mr. Fenwick acted during two years as Ecclesiastical Register and Examiner in Equity. That arrangement was made in consequence of the certified bad state of health of Mr. Martin West, who applied for leave to proceed to the Cape of Good Hope for a period of 12 months. He thence transmitted a certificate, that an extension of time was necessary for the recovery of his health, and further leave was granted. Before the extended period had expired, Mr. Fenwick became dangerously ill, and we have been obliged to grant him leave to proceed to the same place; and as Mr. M. West has not yet returned, we have experienced much difficulty in obtaining competent persons to perform the duties of the offices recently held by Mr. Fenwick, especially as the appointments are all of a temporary nature. These circumstances will, I apprehend, serve

to

to show that the number of officers in the Supreme Court cannot at present be reduced.

You will perceive that the offices of Prothonotary, Register in Equity and Common Assignee of the Insolvent Court are held by one gentleman; and that, taking the average of 11 years, the whole of his emoluments as Prothonotary and Register have not exceeded 21,323 *Rs.* per annum, and as Common Assignee during six years his average receipt has been less than 2,300 *Rs.* annually. If this gentleman had been an advocate or an attorney of the court, I believe that his annual receipts would have greatly exceeded the sums; and I am of opinion that if the remuneration of these offices shall be reduced, it will be very difficult to find a competent gentleman of respectability and integrity to undertake the duties.

To the office of Ecclesiastical Registrar other offices were united in the person of Mr. Martin West many years ago; during the last two years the emoluments of Ecclesiastical Registrar and Examiner have averaged less than 21,400 *Rs.* annually; and although the remuneration received by the Ecclesiastical Registrar at Calcutta may have been immoderate, I think you will be satisfied that the sum received by the Ecclesiastical Registrar of this court has not been excessive, when the duties and responsibility of his office are considered, and that he is compelled to find ample security for the performance of his duty.

With regard to the scale of remuneration allowed to the Ecclesiastical Registrar, I am of opinion that in ordinary cases the commission of five per cent. on the assets realized is not more than a sufficient compensation for the trouble and responsibility usually incurred, and the service rendered in the collection of assets and payment of debts; less than this would not be taken by agents; and under the existing law, and the regulations of the court, I think that the estates of Europeans dying intestate within its jurisdiction are collected and secured in an efficient manner, and at a moderate expense.

Cases occasionally happen in which persons dying intestate leave considerable sums in Company's securities, and a Registrar administering may not have much trouble in realizing the assets; yet in these rare cases, although a diminished scale of remuneration may be deemed proper, it should seem that some regard ought to be had to the trouble and responsibility of administering a large estate, and of dividing the same among persons in Europe or at a distance. It may also be deserving of consideration, that in many instances the trouble of collecting the assets of estates is not adequately remunerated by a commission of five per cent., although the advantages in some cases compensate for the disadvantages of others.

I do not deem it necessary to submit any observations respecting any other office; but I venture to anticipate that the annual emoluments of the respective officers of this court will not be found excessive when compared with the remuneration received by the corresponding officers of the other Supreme Courts in India; and as far as I can form a correct judgment, I consider that the number of the officers or the amount of their emoluments cannot be reduced without prejudice to the suitors, or without the hazard of having the duties of office negligently and insufficiently performed.

I shall communicate a copy of this letter to Mr. Justice Awdry, and if he shall consider that I have imperfectly expressed myself on the subjects referred for our consideration, or if he shall not concur in the opinions that I have submitted, I shall request him to address a separate letter to the Legislative Council.

I have, &c.

(signed) *Herbert Compton.*

Bombay, 27 January 1836.

Legis. Cons. 29 Jan. 1837. No. 52.

STATEMENT of the Annual Emoluments of every Description received by the Sheriff of Bombay, together with the Gaol and Office Establishment, from the 19th day of December 1831 to the 19th day of December 1835.

For the Year ending the	Sheriff's Salary.	Fees.	Government Allowance for the Gaol and Office Establishment.	Total Receipt.	Deduct for Office Establishment.	Net Total received by the Sheriff.
	Rs.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
19 Dec. - 1832	4,200	8,664 10 3	14,118 - -	26,982 10 3	14,118 - -	12,864 10 3
19 Dec. - 1833	4,200	15,200 - -	14,118 - -	33,518 - -	14,118 - -	19,400 - -
19 Dec. - 1834	4,200	12,700 - -	14,118 - -	31,018 - -	14,118 - -	16,900 - -
19 Dec. - 1835	4,200	8,642 - -	14,118 - -	26,960 - -	14,118 - -	12,842 - -

N.B.—Out of the above the Sheriff allows his Deputy 100 *Rs.* per mensem, in lieu of any fees.

ABSTRACTS of Persons employed in the Gaol or Criminal and Civil Establishments, with their respective Salaries, &c.

GAOL OR CRIMINAL DEPARTMENT:			*Rs. a. p.*	*Rs. a. p.*
1 Deputy Sheriff - -	per mensem - - - -		300 - -	
1 Gaoler - - - - -	ditto - - - - -		252 - -	
1 Deputy Gaoler - - -	ditto - - - - -		100 - -	
1 Turnkey - - - - -	ditto - - - - -		25 - -	
3 Purvoes, at *Rs.* 20, 12 and 10 -	ditto - - - - -		42 - -	
1 Havildar - - - - -	ditto - - - - -		10 - -	
1 Naique - - - - -	ditto - - - - -		8 - -	
12 Peons, at 5 *Rs.* each - -	ditto - - - - -		60 - -	
1 Executioner - - - -	ditto - - - - -		6 - -	
3 Halalcores, at *Rs.* 7, 7 and 5 -	ditto - - - - -		19 - -	
1 Armourer - - - -	ditto - - - - -		3 - -	
1 Water Carrier - - -	ditto - - - - -		3 - -	
1 Massaul - - - - -	ditto - - - - -		6 - -	
1 Barber - - - - -	ditto - - - - -		3 - -	
Oil and Stationery for the Gaol -	ditto - - - - -		26 8 -	863 8 -
CIVIL DEPARTMENT:				
1 Bailiff - - - - -	per mensem - - - -		100 - -	
3 Purvoes, at *Rs.* 100, 20 and 20 -	ditto - - - - -		140 - -	
1 Havildar - - - - -	ditto - - - - -		10 - -	
1 Naique - - - - -	ditto - - - - -		8 - -	
9 Peons, at 5 *Rs.* each - -	ditto - - - - -		45 - -	
Oil and Stationery for the Office -	ditto - - - - -		10 - -	313 - -
	TOTAL per mensem - - -			1,176 8 -
				- - 12
TOTAL Government Allowance for the Gaol and Office Establishments, exclusive of the Sheriff's Salary, per annum - - - -		*Rs.*		14,118 - -

(signed) *W. C. Bruce*, Sheriff.

STATEMENT

STATEMENT of the Annual Emoluments of every Description received by me as Acting Deputy Clerk of the Crown, from the 1st January 1834 to the 30th November 1835.

Legis. Cons. 23 Jan. 1837. No. 53.

		REMARKS.
From the 1st of January to the 31st December 1834 - -	1,050 - -	Nothing is allowed to the Deputy Clerk of the Crown for Office Establishment.
From the 1st of January to the 30th November 1835 - -	962 2 -	The Salary allowed to the Deputy Clerk of the Crown is 175 *Rs.* per month, but I have only received half of that Salary from the time of my being appointed to act in January 1834. This is the same sum as that included in the Return of the Clerk of the Crown.

(signed) *D. B. Smith*,
Acting Deputy Clerk of the Crown.

(Legis. Cons. 23 Jan. 1837. No. 54.)

STATEMENT of the Annual Emoluments of every Description received by the Clerk of the Crown of the Supreme Court of Judicature at Bombay, from the 1st May 1834 to the 30th April 1835.

For the Year ending the 30th April 1835.	Salary as Clerk of the Crown.	Salary as Deputy Clerk of the Crown.	Fees as Clerk of the Crown.	Government Allowance of Office Establishment.	Total Receipt.	Deduct Salary of Deputy and Office Establishment.	NET TOTAL.
From 1st May 1834 to the 30th April 1835	6,300 - -	2,100 - -	1,353 8 -	2,454 - -	12,207 8 -	4,554 - -	7,653 8 -

(signed) *H. Roper*,
Clerk of the Crown.

STATEMENT of the Annual Emoluments of every Description received by me as Sealer of the Supreme Court, from 1st January 1834 to the present time, the 30th November 1835.

Legis. Cons. 23 Jan. 1837. No. 55.

For the Year ending the	Salary.	Fees of Sealer.	Allowance for Purvoes.	Deduct Salary for One Purvoe, Sealing Wax, &c.	TOTAL.
31 December 1834 -	- none -	4,286 2 -	- none -	428 - -	3,866 2 -
From 1 January 1835 to 30 Nov. 1835 -	- none -	3,544 - -	none -	385 - -	3,159 - -

(signed) *O. W. Kethen*, Sealer,
Supreme Court, Bombay.

(Legis. Cons. 23 Jan. 1837. No. 256.)

STATEMENT of the Annual Emoluments of every Description received by each Officer of the Translator's and Interpreter's Office of the Honourable the Supreme Court of Judicature of Bombay, from the 1st January 1833 to the 31st December 1835, inclusive.

Numbers.	For the Year ending the	Fixed Salaries of							Office Establishment.			Fees of	
		Chief Translator and Interpreter.	Maharatta Translator and Interpreter.	Portuguese Translator and Interpreter.	Senior Native Interpreter.	Junior Native Interpreter.	Native Translator.	Persian and Arabic Translator.	English Translator.	Goozerathee Reader and Cash-keeper.	Peon.	Translations.	Native Interpreters in Small Cause Court.
		Rs.	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*
1	31 Dec. 1833	7,200	4,80	1,200	3,600	2,400	4,080	1,200	360	300	84	*2,089 2 75	54 – –
2	31 Dec. 1834	7,200	4,800	1,200	3,600	2,400	4,080	1,200	360	300	84	*2,154 – 75	56 – –
3	31 Dec. 1835	7,200	4,800	1,200	3,600	2,400	4,080	1,200	360	300	84	*2,372 2 25	30 2 –
	Total for 3 years	21,600	14,400	3,600	10,800	7,200	12,240	3,600	1,080	900	252	6,616 1 75	140 2 –
	Monthly Average	600	400	100	300	200	340	100	30	25	7	183 3 16	3 3 61
	Annual Average	7,200	4,800	1,200	3,600	2,400	4,080	* 1,200	360	300	84	2,205 1 92	46 3 33

* All the Fees received in the Translator's Office are paid quarterly into the Government Treasury, after deducting incidental petty charges, amounting to about 100 *Rs.* per annum, or *Rs.* 8. 1. 33. monthly.
This amount of fees is the aggregate received.

(signed) *J. Vaupell,*
Chief Translator and Interpreter.

Court House, Translator's Office,
31 December 1835.

Legis. Cons. 23 Jan. 1837. No. 57.

STATEMENT of the Annual Emoluments received by *William Berghoff*, Crier of the Supreme Court of Judicature at Bombay, from the 1st day of January 1833 to 30th November 1835.

For the Year ending the	Salary at 50 Rupees per Month.	FEES.	REMARKS.
31 December 1833 - - -	600	- none -	I have held the situation of Crier from the 1st October 1815.
31 December 1834 - - -	600	- none.	
From 1 January 1835 to 30 November - - - -	550	- none.	

(signed) *William Berghoff.*

Legis. Cons. 23 Jan. 1837. No. 58.

STATEMENT of the Annual Emoluments received by me as Robe-keeper to the Supreme Court, from the 1st January 1833 to 31st December 1835.

For the Year ending the	Salary at 40 Rupees per Month.	FEES.	REMARKS.
31 December 1833 - - -	480	- none.	
31 December 1834 - - -	480	- none.	
31 December 1835 - - -	480	- none.	

(signed) *Bappoo Shaik Husson Gatell.*

STATEMENT

(Legis. Cons. 23 January 1837. No. 59.)

STATEMENT of the Annual Emoluments of every Description received by the Examiner of the Court for the Relief of Insolvent Debtors at Bombay, from the 1st January 1834 to the 1st January 1836.

For the Year ending	Salary.	Fees as Examiner.	Government Allow-ance for Office Establishment.	Total Receipts.	Disbursements on account of Office Establishment.	NET TOTAL after deducting Disbursement.
		Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
31 December 1834 - - -	none -	445 2 -	1,824 - -	2,269 2 -	1,495 2 -	774 - -
31 December 1835 - - -	none -	149 3 -	1,824 - -	1,973 3 -	1,280 2 -	693 1 -

(Errors excepted.)

Bombay, 15 January 1836. (signed) *J. L. Phillips*, Examiner.

(Legis. Cons. 23 Jan. 1837. No. 60.)

STATEMENT of the Annual Emoluments received by me as Attorney for conducting Paupers' Causes in the Supreme Court of Judicature at Bombay, from the 1st January 1833 to 30th November 1835.

For the Year ending the	Salary at 500 Rupees per Month.	Allowance for Office Establishment.	Cost received in Proceedings on behalf of Paupers.	Total. Receipt.	Deduct for Office Establishment.	NET TOTAL.
31st December 1833* - -	6,000 - -	nothing -	742 - 04	6,742 - 04	1,800 - -	4,942 - 04
31st December 1834 - -	6,000 - -	nothing -	- - -	6,000 - -	1,800 - -	4,200 - -
From the 1st January to 30th November 1835 - -	5,500 - -	nothing -	318 - -	5,818 - -	1,650 - -	4,168 - -

(signed) *D. B. Smith*, Attorney for Paupers.

(Legis. Cons. 23 Jan. 1837. No. 61.)

STATEMENT of the Annual Emoluments of every Description received by the Chief Clerk and Sealer of the Court for the Relief of Insolvent Debtors at Bombay, from the 1st January 1833 to 30th November 1835.

For the Year ending the	Salary.	Fees of Chief Clerk and Sealer.	Government Allowance for Office Establishment.	Total Receipt.	Disbursements on account of Office Establishment.	NET TOTAL, after deducting Disbursement.
31st December 1833 - -	no salary -	929 3 -	2,919 - -	3,848 3 -	2,919 - -	929 3 -
31st December 1834 - -	no salary -	612 - -	2,919 - -	3,531 2 -	2,919 - -	612 2 -
From the 31st January 1835 to 30th November 1835 - -	no salary -	781 - -	2,675 3 -	3,456 3 -	2,675 3 -	781 - -

(signed) *D. B. Smith*, Chief Clerk and Sealer.

(Legis. Cons. 23 Jan. 1837. No. 62.)

ACCOUNT of the Salary, Fees and other Emoluments received by *William Fenwick*, Esq., as Examiner on the Equity Side of the Supreme Court of Judicature at Bombay, from 1st January 1834 to the 31st December 1835.

EXAMINER ON THE EQUITY SIDE.	Salary per Month, Rs. 175.	Fees and Emoluments.	Total Receipt.	Deduct Disbursement on account of Office.	Total Amount of Net Balance.	GRAND TOTAL.
Examiner on the Equity side, from 1st January 1834 to 31st December 1834 - - -	2,100 - -	502 - -	2,602 - -	318 - -	2,284 - -	2,284 - -
Examiner on the Equity side, from 1st January 1835 to 31st December 1835 - - -	2,100 - -	4,780 3 -	6,880 3 -	486 2 20	6,394 - 80	6,394 - 80

Bombay, 22 January 1836. (signed) *J. L. Phillips*, Acting Examiner for William Fenwick.

(Legis. Cons. 23 Jan. 1837. No. 63.)

ACCOUNT of the Salary, Fees and all other Emoluments received by *William Fenwick*, Esq., as Clerk of Small Causes of the Supreme Court of Judicature at Bombay, from 1st January 1833 to 31st December 1835.

CLERK OF SMALL CAUSES.	Salary at 100 Rupees per Month.	Fees and Emoluments.	Allowance or Office Establishment received from Government.	Total of Receipts.	Deduct Total Amount of Disbursement on account of Establishment, &c.	NET TOTAL of Receipt.
Clerk of Small Causes, from 1st January to 31st December 1833	1,200 – –	20,634 1 48	nothing –	21,834 1 48½	7,487 3 60½	14,346 1 88½
Ditto – – – ditto, from 31st December 1833 to 31st December 1834	1,200 – –	20,390 3 50	nothing –	21,590 3 50	7,511 3 75	14,078 3 75
Ditto – – – ditto, from 1st January to 31st December 1835	1,200 – –	18,194 – 70	nothing –	19,394 – 70	6,896 2 45	12,497 2 25
					Rs. – –	40,922 3 88½

(signed) *D. B. Smith*,
Acting Clerk of the Small Cause.

(Legis. Cons. 23 Jan. 1837. No. 64.)

ACCOUNT of the Salary, Fees and all other Emoluments received by *William Fenwick*, Esq., as Master in Equity of the Supreme Court of Judicature at Bombay, from 1st January 1833 to 31st December 1835.

MASTER IN EQUITY.	Salary at 525 per Month.	Fees and Emoluments.	Allowance for Master in Equity received from Government.	Total of Receipts.	Deduct Total Amount of Disbursement on account of Office Establishment.	NET TOTAL of Receipts.
Master in Equity, from 1st January to 31st December 1833, being one year	6,300 – –	13,805 2 –	nothing –	20,105 2 –	2,097 3 –	18,007 3 –
Master in Equity, from 1st January to 31st December 1834, being one year	6,300 – –	10,905 1 –	nothing –	17,205 1 –	1,634 – –	15,571 1 –
Master in Equity, from 1st January to 31st December 1835, being one year	6,300 – –	9,908 2 –	nothing –	16,208 2 –	1,370 – 50	14,838 1 50
					Rs.	48,417 1 50

18 January 1836.

(signed) *J. L. Phillips*,
Acting Master in Equity,
For *William Fenwick*, Esq., as Master in Equity.

(Legis. Cons. 23 Jan. 1837. No. 65.)

ACCOUNT of the Salary, Fees and all other Emoluments received by *William Fenwick*, Esq., as Registrar on the Ecclesiastical Side of the Supreme Court of Judicature at Bombay, from 1st January 1834 to 31st December 1835.

ECCLESIASTICAL REGISTRAR.	Salary.	Fees and Emoluments.	Allowance for Office Establishment received from Government.	Total of Receipt.	Deduct Total Amount of Disbursement on account of Office Establishment.	NET TOTAL of Receipt.
Registrar on the Ecclesiastical side, from 1st January 1834 to 31st December 1834	none	14,168 3 16	4,296 – –	18,464 3 16	5,307 2 87	13,157 – 29
Registrar on the Ecclesiastical side, from 1st January 1835 to 31st December 1835	none	22,150 3 06	4,296 – –	26,446 3 06	5,590 2 01	20,856 1 05

STATEMENT

(Legis. Cons. 23 Jan. 1837. No. 66.)

STATEMENT of the Annual Emoluments of every Description received by me as Clerk to the Honourable Mr. Justice *Awdry*, and a Commissioner to take Affidavits in the Supreme Court, from the 1st January 1833 to 31st December 1835.

For the Year ending the	Salary at 210 per Month.	Fees of Judge's Clerk and Commissioner.	Gross Total.	Allowance for Purvoe.	Deduct Salary of one Purvoe, at 20 Rupees per Month.	NET TOTAL.
31 December 1833	2,520 – –	2,009 2 –	4,529 2 –	nothing	240 – –	4,289 2 –
31 December 1834	2,520 – –	2,054 2 –	4,574 2 –	nothing	240 – –	4,334 2 –
31 December 1835	2,520 – –	2,056 – –	4,576 – –	nothing	240 – –	4,336 – –

(signed) *D. B. Smith*,
Clerk to the Honourable Mr. Justice Awdry,
and a Commissioner to take Affidavits.

(Legis. Cons. 23 Jan. 1837. No. 67.)

STATEMENT of the Annual Emoluments of every Description received by me as Clerk to the Honourable the Chief Justice and a Commissioner to take Affidavits in the Supreme Court, from the 1st January 1832 to the present time, the 31st December 1835.

For the Year ending the	Salary at 210 per Month.	Fees of Judge's Clerk and Commissioner.	Total.	Allowances for Purvoes.	Deduct Salary for one Purvoe.	NET TOTAL.
31 December 1832	2,520 – –	2,025 2 –	4,545 2 –	none	240 – –	4,305 2 –
31 December 1833	2,520 – –	2,088 – –	4,608 – –	none	240 – –	4,368 – –
31 December 1834	2,520 – –	2,293 – –	4,813 – –	none	240 – –	4,573 – –
31 December 1835	2,520 – –	2,222 2 –	4,742 – –	none	240 – –	4,502 2 –

(signed) *O. W. Kethen*,
Clerk to the Chief Justice,
and Commissioner Supreme Court, Bombay.

STATEMENT of the Emoluments received by me, as Tipstaff to the Honourable the Chief Justice, from the 1st of July 1835 to the 1st of December 1835. Legis. Cons. 23 Jan. 1837. No. 68.

	Salary at 100 Rupees per Month.	Fees.
From the 1st day of July 1835 to the 1st of December 1835	500 – –	none.

(signed) *G. Roberts.*

STATEMENT of the Annual Emoluments received by me, as Tipstaff to the Honourable Mr. Justice *Awdry*, from the 1st January 1833 to the 1st December 1835. Legis. Cons. 23 Jan. 1837. No. 69.

For the Year ending	Salary at 100 per Month.	Fees.
31st December 1833	1,200 – –	none.
31st December 1834	1,200 – –	
From the 1st January 1835 to the 30th November 1835	1,100 – –	

(signed) *John Henderson.*

Legis. Cons. 23 Jan. 1837. No. 70.

STATEMENT of the Annual Emoluments received by *William Henry Flower*, Court-keeper, from the 1st day of December 1834 to the 1st day of December 1835.

	Salary.	Fees.	Remarks.
For the Year ending 1 Dec. 1835	1,200 – –	None	Is allowed apartments in the Court House.

(signed) *W. H. Flower.*

(Legis. Cons. 23 Jan. 1837. No. 71.)

STATEMENT of the Annual Emoluments received by the Common Assignee of the Insolvent Debtors' Court, from the 1st May 1829 to the 30th April 1835.

For the Year ending the	Salary.	Commission at Five per Cent. on all Assets collected as per Rule of Court.	Government Allowance for Office Establishment.	Gross Total.	Deduct, disbursed for Office Establishment.	NET TOTAL.
30th April 1830	None annexed to this office.	1,678 3 69	2,625 – –	4,303 3 69	2,625 – –	1,678 3 69
30th April 1831		1,279 1 21	2,625 – –	4,904 1 21	2,625 – –	1,279 1 21
30th April 1832		6,566 1 23	2,625 – –	9,291 1 23	2,625 – –	6,566 1 23
30th April 1833		684 1 60	2,625 – –	3,309 1 60	2,625 – –	684 1 60
30th April 1834		2,297 3 89	2,625 – –	4,922 3 89	2,625 – –	2,297 3 89
30th April 1835		1,146 3 39	2,625 – –	3,771 3 39	2,625 – –	1,146 3 39

(signed) *A. C. Ferrier*,
Common Assignee.

(Legis. Cons. 23 Jan. 1837. No. 72.)

STATEMENT of the Annual Emoluments of every Description received by the Prothonotary, Clerk of the Papers, of the Depositions, and Reading Clerk, on the Plea Side, and the Registrar on the Equity and Admiralty Sides of the Supreme Court of Judicature at Bombay, from the 1st of May 1834, the Date of the Establishment of the Court, to the 30th April 1835.

For the Year ending 30 April	Salary.	FEES OF			Government Allowance for Office Establishment.	Total Receipt.	Deduct for Office Establishment.	NET TOTAL.
		Prothonotary, Clerk of the Papers, the Depositions, and Reading Clerk.	Equity Register.	Admiralty Register.				
1825	None annexed to either of these Offices.	15,977 1 33	4,337 2 –	– – –	6,984 – –	27,298 3 33	10,807 3 36	16,490 3 97
1826		16,810 – 93	7,376 – –	– – –	6,984 – –	31,170 – 93	11,106 1 05	20,063 3 88
1827		23,662 2 88	7,167 3 –	– – –	6,984 – –	37,817 1 88	12,641 1 90	25,175 3 98
1828		27,595 2 –	9,092 3 –	– – –	6,984 – –	43,672 1 –	12,554 2 28	31,117 2 72
1829		20,636 1 –	6,821 2 –	– – –	6,984 – –	27,457 3 –	11,531 – –	15,926 3 –
1830		13,656 – –	4,967 2 –	– – –	6,984 – –	18,623 2 –	11,236 – –	7,387 2 –
1831		2,946 – –	7,253 – –	– – –	6,184 – –	20,199 – –	9,296 2 –	10,903 2 –
1832		16,196 3 –	8,388 2 –	74 1 –	5,784 – –	30,349 – –	8,684 – –	21,665 2 –
1833		14,989 – –	10,449 3 –	91 3 –	5,784 – –	31,230 2 –	7,204 3 –	24,025 3 –
1834		13,584 – –	8,473 3 –	93 – –	5,784 – –	27,850 3 –	6,834 2 –	21,016 1 –
1835		11,281 – –	10,224 – –	– – –	5,784 – –	27,205 3 –	6,909 – –	20,296 3 –

Remarks.—The Court was partially closed during the months of April, May, June and July 1829, and also during the months of November and December 1830.

An allowance of 100 *Rs.* per month for office rent, discontinued in September 1830 on accommodation being provided by Government in the Court-house.

N. B.—The amount disbursed by the Registrar on account of establishment has been both regular and contingent; the former consequent upon the inadequacy of the Government allowance even for the current duties of the Department; the contingent expense is of course dependent on the quantity and urgency of papers to be copied.

(signed) *A. C. Ferrier*,
Prothonotary and Registrar.

STATEMENT

(Legis. Cons. 23 Jan. 1837. No. 73.)

STATEMENT of the Annual Average Emoluments of the several Officers of the Supreme Court of Judicature at Bombay.

	Paid by Government Annually.		Fees.	Aggregate Annual Total.	Office Charges.	Net Annual Income.	
	Salary.	Office Allowance.				Amount.	On an Average of
The Master in Equity	6,300	none	11,539 12 –	17,839 12 –	1,700 15 8	16,138 12 8	3 years.
The Accountant-general	—	—	—	—	—	—	—
The Prothonotary, Clerk of the Papers, of the Depositions, and Reading Clerk	none	—	17,030 7 –				
The Register on the Equity side	none	6,474 14 6	7,686 8 9	31,215 6 –	9,891 6 1	21,323 15 11	11 years.
The Register on the Admiralty side	none	—	23 8 9				
The Ecclesiastical Register	none	4,296 – –	22,455 12 5	26,751 12 5	5,449 1 9	21,302 10 8	2 years.
The Clerk of the Crown and Register on the Admiralty side in the Criminal department	6,300	2,454 – –	1,353 8 –	10,107 8 –	2,454 – –	7,653 8 –	1 year.
The Clerk of the Small Causes	1,200	none	19,743 2 3	20,943 2 3	7,298 13 1	13,645 5 2	3 years.
The Deputy Clerk of the Crown	2,100	none	– – –	2,100 – –	– – –	2,100 – –	2 years.
The Examiner	2,100	none	2,641 6 –	4,741 6 –	402 4 5	4,339 1 7	2 years.
The Sealer	none	none	4,020 12 –	– – –	420 – –	3,600 12 –	—
The Chief Translator and Interpreter	7,200	6,024 * – –	2,252 5 – *	– – –	6,032 5 4	7,200 – –	3 years.
The Second ditto	4,800	none	– – –	– – –	– – –	4,800 – –	—
The First Native Interpreter	3,600	none	– – –	– – –	– – –	3,600 – –	—
The Second ditto	2,400	none	– – –	– – –	– – –	2,400 – –	—
The Portuguese ditto	1,200	none	– – –	– – –	– – –	1,200 – –	—
The Sheriff	4,200	7,494 – –	11,301 10 6	27,995 10 6	8,694 – –	14,301 10 6	4 years.
The Deputy Sheriff	3,600	none	– † –	– – –	– – –	3,600 – –	—
The Marshal	3,024	none	– – –	– – –	– – –	3,024 – –	—
The Chief Judge's Clerk	2,520	none	2,157 4 –	4,677 4 –	240 – –	4,437 4 –	—
The Chief Judge's Tipstaff	1,200	none	– – –	– – –	– – –	1,200 – –	1 year.
The Puisne Judge's Clerk	2,520	none	2,040 – –	4,560 – –	240 – –	4,320 – –	3 years.
The Puisne Judge's Tipstaff	1,200	none	– – –	– – –	– – –	1,200 – –	—
The Court Keeper	1,200	none	– – –	– – –	– – –	1,200 – –	1 year.
The Crier	600	none	– – –	– – –	– – –	600 – –	11 years.
The Robe Keeper	480	none	– – –	– – –	– – –	480 – –	3 years.
The Attorney for Paupers	6,000	none	353 5 04	6,353 5 04	1,800 – –	4,553 5 04	3 years.
The Examiner of the Court for the Relief of Insolvent Debtors	none	1,824 – –	297 10 –	2,121 10 –	1,388 – –	733 10 –	2 years.
The Chief Clerk and Sealer of the Court for the Relief of Insolvent Debtors	none	2,919 – –	774 6 7	3,693 6 7	2,919 – –	774 6 7	3 years.
The Common Assignee of the Court for the Relief of Insolvent Debtors	none	2,625 – –	2,275 10 –	4,900 10 –	2,625 – –	2,275 10 –	6 years.

* The Fees of this office are paid into the Treasury, after deducting contingent petty supplies, which average 100 *Rs.* per annum.
† Receives 100 *Rs.* per mensem from the Sheriff, in lieu of fees.

To the Right honourable the Governor-general of India in Council.

Legis. Cons. 23 Jan. 1837. No. 5.

Right honourable Lord, and Honourable Sirs,

WE have now the honour of submitting for your consideration a full statement of the existing establishments of the Court, and of the alterations which it appears to us desirable to effect in them. We intimated in our letter of the 30th November 1835, in answer to your communication bearing date the 2d of that month, that we should accompany this statement with a full communication of the correspondence which had taken place between the Board of Commissioners for the Affairs of India and the Judges on this subject, and copies of that correspondence accordingly are annexed to this letter. They will fully explain the circumstances under which the Judges took the state of the Court establishments into their consideration, the length of time which has been occupied in the examination, and the reasons of the apparent delay in communicating its results.

Letter from the President of the Board of Control to the Judges of the Supreme Court, dated 13 August 1832.
From the Judges to the Board of Control, dated 4 Feb. 1833.
From the Judges to the Board of Control, dated 25 Feb. 1833.
From the Judges to the Board of Control, dated 17 Dec. 1833.
From the Judges to the Board of Control, dated 29 May 1835.

2. We do not propose to encumber a communication which must necessarily extend to very considerable length with details of all the returns and other papers from which the results we have to state are derived. They can, of course, at any time be supplied to you if it is found necessary to refer to them; for which purpose a list of them is annexed in Schedule (A.) It is, however, necessary to state, that they have in most instances been derived from returns extending over the last four years, 1832, 1833, 1834, 1835. The reason for selecting this period is, that considerable alterations were made in the practice of the Court in 1830 and 1831, the effect of which was very much to reduce the emoluments of most of the officers. The average of the last four years, therefore, is the most extended that could be taken to represent the present condition of the offices. This observa-

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

tion does not extend to all the offices; the emoluments of the Ecclesiastical Registrar, as ex-officio administrator, arise entirely from commission, and are therefore independent of any alteration in the practice of the Court. As the sums so received by this officer are very large and very fluctuating, we thought it desirable in this case to take a more extended average, and we have accordingly taken the result of 11 years. The date at which the alterations made took complete effect in particular offices was different; and there has consequently been some difference in the course adopted with respect to them. Any details of this kind can be fully explained, if necessary, hereafter. At present it is sufficient to advert to the existence of these differences, and to state that they do not in our opinion prevent us from having sufficient and satisfactory data whereon to found our proposals.

3. It is, however, right to notice, that in a few instances the averages returned are taken from a very short period, in some cases not exceeding two years. These, however, are generally offices of subordinate amount, as the Judges' Clerks, the Sealer, the Interpreter, the Examiner of the Insolvent Court, the Crier, the Pauper Counsel and the Pauper Attorney; many of whom, also, are principally paid by salary, and therefore little affected by fluctuations on the amount of business; and in other cases, from the frequent changes and departure of the officers in question, it has been impossible to obtain fuller information. The case of the Receiver,* whose returns have only been given for two years, is the only one to which these observations will not strictly apply. It will, however, be found in the result that the plan proposed will render it unnecessary to enter into any minute details respecting it.

4. We consider, therefore, that the statements submitted are sufficient to act on with confidence, though we have thought it right thus to bring to your notice any thing which may appear scanty in the information we have obtained.

5. The whole number of offices at present existing in the Court will be found by the list in Schedule (A.) to be 40. This number includes the offices of the Insolvent Court, which we think ought at once to be put on the same footing with the Supreme Court; and treats the offices of Ecclesiastical and Admiralty Registrar, although generally united in the same person, as distinct. There are not, however, so many officers. Mr. Smoult unites the offices of Ecclesiastical and Admiralty Registrar already mentioned; Mr. Dickens holds those of Equity Registrar, Master, Accountant-general and Keeper of the Records; Mr. Franks is Clerk of the Papers and Chief Clerk of the Insolvent Court; Mr. Holroyd is Prothonotary and Clerk of the Crown, and Mr. Macnaughten is Examiner in Equity and Receiver. There are also minor offices, held jointly, as Judges' Interpreter and Tipstaff, or Clerk and Tipstaff. The union of so many offices in the person of Mr. Dickens gives some additional facility in carrying a large portion of the alterations we have to propose into immediate effect; and indeed it was with a view to this object that they were so concentrated as a temporary arrangement, but it does not in any other way bear either on the statement we have to make, or the proposals we have to submit.

6. It will be found on reference to the Schedule (B.) that the present net annual receipts of all these offices, including an allowance made to the Judges for chobdars (but exclusive of any small amount of fees received by the Pauper Counsel and Attorney, which are hardly to be considered as official emoluments, and occasion no expense to the Government and no peculiar pressure on the suitor, and which we therefore omit from our account), amounts to no less a sum than 4,33,855. 10. 3. Sicca rupees, or 4,62,779. 5. 7. Company's rupees. We take the net value, because this is what will have to be compared with the proposals we have to make for the future remuneration of these officers; and the question how the expenses of the different offices are to be borne, is quite distinct from that of the rate of remuneration the principal officers are to receive.

7. It

* As this is the first time that the Receiver has been named, it is the best opportunity of explaining the nature of his situation, which is rather peculiar. He is not strictly an officer of the Court. Whenever a Receiver is required in any cause, application is made for the appointment of one, and it is the business of the Master to approve of a fit person. Where the parties have no particular individual to propose, the Master usually nominates the same person in all cases, and the knowledge that this person is thus peculiarly habituated to the management of estates generally induces the parties themselves to select him, and to nominate him by consent of every one concerned, without the trouble and expense even of a reference to the Master. He thus becomes almost uniformly the Receiver; and without being strictly an officer of the Court, except in each particular cause, his situation is in substance a permanent one, of which the emoluments can be calculated and depended upon as well as those of any other. We therefore include him in our proposed arrangement, and treat his receipts as a fund which can be dealt with like many others.

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7. It is, however, of importance to advert to the gross receipts of each office with reference to the value of the currency in which they are hereafter to be paid, and Schedule (C.) accordingly gives these gross receipts, exclusive of all receipts for commission, which will, of course, be unaffected by any fluctuation of currency, the numerical amount of receipts on which commission is to be charged varying in the inverse ratio of the value of the coin. Schedule (D.) shows what amount of the receipts of the different officers consists of salary, and shows, therefore, the whole expense occasioned to the Government of these establishments, with the exception of the proportion of the receipts in the different offices which accrue from criminal or civil proceedings carried on by or against the Government, and which, though not exactly occasioned by the establishments, would be affected by any reductions in the expense of proceedings in them.

8. These Schedules give, we believe, a full and sufficient account of the present state of the Court establishments. They do not include the Sheriff or the Gaoler, whose duties are quite distinct from those of the other officers of the court, nor the Nazeer and Mehter, who are rather attached to the building than to the court. We only mention this because these officers and menials have been included in former returns.

9. We intimated in our former letter that we thought it possible to reduce in any prospective arrangement the number of the officers of the court; and it will be most convenient to point out now the permanent arrangement to which we think it desirable ultimately to come, before proceeding to propose those changes which we think practicable. At present their nature and expediency cannot fully be understood without a knowledge of the end to which they tend.

10. We are of opinion that one officer may well execute the duties of the following offices,—Master, Accountant-general, Examiner in Equity and Examiner of the Insolvent Court; one other, the offices of Ecclesiastical, Equity and Admiralty Registrar, and Sworn Clerk; one other, those of Prothonotary, Clerk of the Crown, and Clerk of the Papers; and one other, those of Taxing Officer, Receiver, Keeper of the Records and Chief Clerk of the Insolvent Court; thus making altogether four principal officers of the court, and no more. This we recommend as the best final arrangement of the offices.

11. We have already expressed an opinion, and have obtained your concurrence in it, that, as a general principle, payment of the officers of the court by salaries, is preferable to payment by fees. In proposing an arrangement founded on this principle, we do not at all discuss the questions how courts of justice ought generally to be supported, or whether there ought to be any difference in this respect between courts of general and courts of limited jurisdiction. We find the establishments of the court at present mainly supported at the expense of the suitors, but supported in a manner which we think inconvenient. The principle that they should be so supported, to whatever objections it may be exposed, we find in action; and without recognizing its validity in general, or discussing its application to the present case, we only suggest a practical remedy to a practical grievance of detail. We should have thought it desirable, if possible, to provide retiring pensions also for officers after a certain period of service. We do not, however, see any safe or certain principle of calculation on which to found any such arrangement; no pension could reasonably be claimed, except by reason of official service; yet the only way to render it a material consideration with practitioners of the court of long experience in accepting office, would be to connect it with professional standing. We do not, therefore, propose any such arrangement, though we should think it very beneficial if it can be effected; but it must be borne in mind, in considering the salaries proposed in this letter for the different officers of the court, that these are all they have to look to by the scheme suggested for the means of retirement, as well as for the current remuneration of labour, and are not, therefore, to be measured by the same scale as the emoluments of the members of any service which leads at any length of time to a permanent retiring provision.

12. Bearing this distinction in mind, we propose the scale of emoluments detailed in the Schedule (E.) for the ultimate remuneration of the officers of the court. Almost all the offices will require the complete devotion of the time of the officer, and the principal offices cannot be adequately filled except by persons of considerable legal acquirement and ability; those especially of Master, and Equity, Ecclesiastical and Admiralty Registrar, to which the largest salaries are assigned, furnish full exercise for every light qualification. Under these circumstances, we need only refer to the schedule for the scale of the remuneration of the principal officers, in the full conviction that it cannot be deemed excessive;

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some explanation, indeed, remains to be given of the emolument assigned to the Ecclesiastical and Equity Registrar, and to the Interpreters of the court, and the manner in which they are to arise, but this will be postponed with advantage till some of the minor arrangements are explained.

13. It will be observed that the whole amount of salaries, &c. contained in Schedule (E.) is 2,38,656 Company's rupees, and the existing net emoluments of the different officers of the court being *Rs.* 4,62,779. 5. 7., when reduced to the same currency, the total prospective saving in these offices (assuming that the current expenditure for writers and other subordinate persons in each will remain at its present rate, or nearly so,) is the difference between these sums, or 2,24,123. 5. 7. Company's rupees, or very nearly 48½ per cent. of the whole amount. The appropriation will be discussed hereafter; at present, it is hoped that the general result will be deemed satisfactory.

14. It is not, we think, necessary to discuss in detail the salaries assigned to each office; they are such, that, although reduced in almost every instance, we believe that we should be able to obtain competent service for them; and we do not apprehend that they will in any case be considered excessive. We are not aware that any require explanation, except the salaries assigned to the Judges' Clerks and to the Judges' Interpreters, each of which are in advance, and the latter very largely so, of the former emoluments of those officers. The only others which are not ostensibly and largely reduced are the Attorney for Paupers, the Moulnahs and the Brahmins, in which cases there is a small numerical advance, but only enough to meet the change in the currency in which they are to be paid, and to make an even sum monthly, except, indeed, that two Brahmins are appointed instead of one, for a reason which will be presently stated.

15. The Judges' Clerks, we have already said, receive a small increase of the proposed arrangement. These emoluments have averaged a little more than 600 Company's rupees per mensem; we propose to give to each of them 700; our reason for doing so, besides the general standard of qualification desirable in their situation, is the very precarious and very confidential nature of their office; precarious, because their tenure of it depends on the life and health of two persons, themselves and the Judges who employ them; a double contingency, which applies to no other officer whom we propose to retain; and confidential, because from the nature of their employment they necessarily become the depositaries of almost all the official communications, of however private a nature, in which the Judges may happen to be engaged.

16. The alteration proposed in the case of the Judges' Interpreters is of more importance; at present, however, the Judges' Interpreters are incomparably worse paid than any other officers connected with the court, so much so that it would be impossible, merely for the salaries assigned to them, to obtain sufficient service. Of the three, only one gives his undivided time and attention to his office; the others hold other situations independent of the court; this is undesirable, but unavoidable at the present rate of remuneration. The Interpreter, who is not employed elsewhere, holds the post of Tipstaff to the Chief Justice as well as of Interpreter, and it is only by this addition that the whole of his services can be secured; we propose, however, prospectively, that the office of Tipstaff should be abolished, Mr. Justice Grant having surrendered his opinion upon this matter to those of his colleagues, and that the number of the Judges' Interpreters should be reduced to two, generally attached to the Judges, instead of retaining the present system, which gives a separate Interpreter to each Judge. We propose, also, that they should in rotation perform the functions of Interpreter to the grand jury, and call on causes in the Insolvent Court (a duty now performed for a small remuneration by one of them), without any additional reward; and under these circumstances, as they ought, when vacancies occur in the higher offices of Interpreters to the court, very frequently to furnish the most eligible successors; and as they ought to have no engagement inconsistent with their giving their whole time, when required, to the court, we are of opinion that the proposed salaries of 300 *Rs.* per mensem are not more than adequate to the reward of the duties and qualifications required.

17. It will be observed that a considerable number of offices are completely omitted in Schedule (E.); the reasons for the omission in each case are very soon stated.

18. The Interpreters of foreign European languages are very seldom called upon; we propose, therefore, to abolish the offices, leaving the parties in a civil

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case to pay any extra Interpreter when his services are required, and making it a contingent expense on the Crown side of the court, to be defrayed out of the fund arising from the fines levied in criminal cases; this is only an extension of the practice already obtaining when interpretation is required in Arabic, Chinese or any other language with which the regular Interpreters of the court are not familiar.

19. We consider the Sealer an unnecessary officer. The abolition of this office was long ago recommended by Chief Justice Anstruther, and we can see no reason why its duties should not be annexed to the office of Prothonotary.

20. The abolition of the office of Counsel for Paupers was recommended at the same time as that of Sealer, and we concur in the recommendation. The Attorney for Paupers has a laborious and responsible situation, and his most important duties lie in the investigation of cases which in the result it is either unnecessary or improper to bring before the court. In these cases the Counsel for Paupers is by the present practice seldom consulted, although he is so occasionally, and his duties are now practically almost confined to the few cases which actually come to trial. We think it quite unnecessary to retain an officer with a considerable salary, nearly 7,000 *Rs.* per annum, for the performance of these occasional duties, provided adequate provision be otherwise made for their discharge when required; it would not be either safe or just, when the small number of an Indian bar is considered, to leave it to individual activity or benevolence; and we would suggest, though we do not feel that it is competent to us to propose this as any part of our plan, that in all cases where the interests of the Company or the Government are not involved, either the Advocate-general or the Standing Counsel for the Company might reasonably be required to act as Advocate for Paupers, and that in the cases where their official duties or their private professional engagements were inconsistent with their so acting, the court should name some barrister for the occasion. If it is not thought right to impose the burden of the bulk of these cases on the Company's law officers, the payment of a reasonable fee to counsel for an opinion occasionally taken by order of a Judge, or to counsel to be named by the court for the occasion, for the conduct of causes, would cost the Government much less than the present salary of the Counsel for Paupers, and would be met in some degree by the recovery of costs from the opposite party in successful cases.

21. We have already expressed our opinion, qualified in the manner we have stated, that the offices of Tipstaff may be abolished. We also think, as before intimated, that two Judges' Interpreters attached to the Judges generally, can render all the services now performed by the three attached severally to each, and those of Interpreter to the Grand Jury.

22. Among the expenses more immediately connected with the Judges individually than with the court, is the allowance for chobdars. We propose that this should be immediately reduced to 42 *Rs.* a month, or 504 by the year, to the Chief Justice, and to 28 *Rs.* a month, or 336 by the year, to each of the Puisne Judges. Whatever may have been the expenditure of Judges in former times on servants of this description, the Judges of late have not exhausted the whole of the existing allowance on these establishments; and we think it more proper, therefore, that the allowances should be reduced to the scale above stated, which is the expense actually incurred. These sums are computed in the schedules in Company's rupees. Mr. Justice Grant, however, is of opinion that the payment ought to be made in Sicca rupees as heretofore, or to an equivalent amount in Company's rupees, which would make the sums payable in each case 45 *Rs.* a month, or 540 a year, to the Chief Justice, and 30 *Rs.* a month, or 360 a year, in the case of each of the Puisne Judges. The Chief Justice and Mr. Justice Malkin have no objection to this alteration, though they do not think it of such importance as to wish to alter schedules already prepared for the purpose of introducing it. If it is acceded to, the whole expense of the court in all its future stages will be increased by 84 Company's rupees annually. Mr. Justice Grant also wishes that in his case the payment should be made to his chobdars immediately, and not to himself, as an allowance for them.

23. The Moularies and Pundits appear to us to have become useless officers of the court. At its first institution, their services may have been material; but there are now better guides to resort to on any questions of Mahometan or Hindoo law. We, therefore, propose that these offices should be abolished; but the abolition of the office of Pundit will make it necessary to appoint a second

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Brahmin for the purpose of swearing witnesses. At present, if the Brahmin is absent from illness, or other cause, the Pundit supplies his place. When this provision fails, a second Brahmin will be required.

24. The only explanation which remains to be given of the proposed final arrangement, respects the offices of Ecclesiastical Registrar as ex-officio administrator, and of the interpreters of the court. In these cases we propose to depart from the general principle of paying all officers by salary exclusively, and to leave the Ecclesiastical Registrar in possession of his commission on estates administered by him, and the interpreters in the receipt of their fees. We consider, generally, that an officer receiving a competent salary is bound to give his whole time to the performance of his duties, and that there is no occasion, therefore, to increase his profits on account of additional labour, when he is sufficiently rewarded for all that he can bestow, nor to diminish them on account of occasional diminution of exertion when his time, his principal possession, does not become any more his own, though it may be less fully employed. This is the general principle on which we have suggested salaries in preference to fees; but it does not apply to the case of the ex-officio administrator, for two reasons: he has the custody of very large sums of money, for which he is responsible, and finds security in a large amount, and as these sums increase, his pecuniary responsibility increases also. No fixed salary can be an uniform and equitable compensation for this varying risk. The same principle might seem to apply to the case of the Accountant-general and Receiver, who also receive money, and are remunerated by a commission upon it. They are, however, bound by the rules of the court so to deal with the monies which come to their hands, as, in substance, to incur no risk; and we see no reason, therefore, for excepting them from the general principle of payment by salaries. The office of Ecclesiastical Registrar necessarily requires him to use a much larger discretion and incur a real responsibility; besides this, all other officers of the court act only in matters brought to their notice, in which, therefore, they are not only bound to their duty fully, but are necessarily and easily liable to animadversion if they neglect it. But the Ecclesiastical Registrar is very largely employed in looking out for occupation, in ascertaining what estates there are which require to be administered to, and this he may neglect if he has not the stimulus of interest, without becoming in any way subject to the censure of the court, which has generally no means of knowing, except from himself, what cases there are which require his interposition. We have a right to expect that we shall never appoint a corrupt officer; and, therefore, we do not fear the incomplete discharge of the duties of any situation where the officer must either perform or wilfully and deliberately neglect them; but nothing can make it certain that we may not appoint an indolent one; and, therefore, in this situation, where it depends on the officer himself whether he is or is not to have the opportunity of exertion, we think it desirable that his emoluments should continue to depend on his activity. We propose, therefore, that the Ecclesiastical Registrar, as ex-officio administrator, should continue to receive his usual commission, and to defray the expenses of that office out of it. The average amount of his receipts and expenditure would make the net annual value of his office average, as nearly as we can compute it, the sum assigned it as a conjectural estimate in Schedule (E).* In consideration of the large emoluments derived from this source, we propose that the officer perform the other duties of Ecclesiastical Registrar and those of Admiralty Registrar, and Sworn Clerk, without any additional salary; the expenses of all these offices, except that of the ex-officio administrator, being borne in the way to be hereafter proposed as a general arrangement.

25. It will be observed, therefore, that in imposing the payment of the expenses of the ex-officio administrator's office upon that officer himself, we depart from the principle suggested for general adoption. The profits of that office, however, without

* This is the result on the average taken, as already mentioned, for a period of 11 years. We have since been furnished with a return for 20 years, the average of which is much lower (to the extent of about 11,000 *Rs.* per annum), and which Mr. Smoult considers more fairly to represent the average value of the office, especially as the period of 11 years includes one of very extraordinary emolument, (very nearly two lacs of rupees), which he considers not to be fairly included on an average extended only over 11 years. If this be so, the value assigned to his office would undoubtedly have to be diminished. We incline, however, to think that the period of 11 years is more likely to furnish an accurate estimate of the present value than the larger one, as the business of the office, independently of the accident of that very great year, has decidedly increased, and is, we think, likely rather to increase than to diminish.

without this or some equivalent reduction, would be larger than we think reasonable in a scheme intended to be permanent. And besides this, the nature of the office and the kind of inquiries requisite to its full discharge render it particularly difficult to form any judgment as to its necessary or reasonable expenditure, and make it, therefore, expedient to leave the officer unfettered in that respect, except by the consideration of his own interest. On both accounts we think it desirable that the payment of those expenses should be cast upon him, and thus that their amount should be left entirely to his discretion. Some of the same considerations apply to the Interpreters of the court; for much of their business consists of making translations out of court, the despatch of which may often be accelerated by the stimulus of payment by fees. There is, besides, a stronger reason for allowing it to continue; with two officers engaged in the performance of exactly similar duties, it would often be inconvenient to frame any strict rules for the distribution of labour between them. In some cases it would be impossible, as they might each be acquainted with some different languages, and might therefore have certain translations devolve upon them as a matter of necessity. It seems, therefore, expedient to allow them still to receive their present fees, and thus to allow to a certain extent the officer who labours most and gives the most satisfaction to derive the most emoluments. Receiving these fees, we propose that they, like the ex-officio administrator, shall continue to pay their own establishments of writers, &c.

26. We propose, therefore, that ultimately the officers of the court should be reduced to the number and receive the remuneration proposed in Schedule (E.); the Ecclesiastical and Equity Registrar being paid in the manner above explained, the Interpreters of the court continuing to receive their present fees, paid, however, in Company's rupees, and receiving salaries of 4,800 and 3,600 respectively, to make up the amount considered sufficient; and all the other officers receiving from the Government fixed salaries of the amount proposed, all the officers paying over to the Government the whole amount of their receipts of all kinds, except the commission received by the Ecclesiastical Registrar as ex-officio administrator, the fees received by the interpreters of the court, and any fees which the Attorney for Paupers may recover from the opposite party in cases where the pauper succeeds.

27. According to the present practice of the court, the sums so to be accounted for by the different officers, are received thrice a year, after a periodical taxation of their bills. It is, however, under the consideration of the court, whether it would not be desirable to abandon this practice, and to require all fees of office to be paid in ready money in the first instance. It will be found, on reference to the correspondence herewith transmitted, that this subject has been noticed by the Board of Control. The alteration would have its recommendations and its inconveniences, and we have to consider its expediency; we should be glad to know, if the general scheme now presented for consideration should meet your approval, whether it would be most convenient to the Government to receive at periodical intervals, as under the present practice, the whole amount of the receipts of the different offices, or to have from each officer, when he applies for his salary, a return of his actual receipts during the preceding month. It may be desirable to mention that the notion expressed in the letter of the Board of Control, that the attornies desire the change suggested, is entirely without foundation. The Judges think it deserving of consideration, on grounds of general expediency, but the attornies, we believe without a single exception, wish the present practice to continue.

28. Having now fully explained our proposals for the future, it remains to be considered to what extent the plan can be carried into immediate operation. We think it right, and we are convinced that the Government would wish, that in any plan proposed for adoption, the interests of the present holders of office should be treated with the utmost respect. We do not think, however, that this need prevent the immediate adoption of the general principle of payment by salary instead of fees; and we think it desirable, and even necessary, at once to introduce this as the only method of making practicable the reductions desirable in the expenditure incurred by the suitors in each office. The present holders of office can have no ground of complaint, if they receive salaries equal to their average emoluments, and reductions may at once be introduced where they appear most desirable, if, with the exceptions already noticed, the whole receipts of the different offices are thrown into a general fund, and the whole emoluments of the

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different officers derived from a source independent of their specific official receipts; while, on the other hand, very desirable alterations might be postponed on any other scheme, from the necessity of leaving a sufficient provision for the officer in whose department they could principally apply.

29. We propose, therefore, generally, to assign to the existing officers salaries equivalent to the average value of their respective offices. To this, however, there are two exceptions. The cases of Mr. Dickens and of Mr. Smoult are peculiar. Both accepted their present offices with the full knowledge that alterations and reductions would probably be necessary in them, and that they were to be made without reference to their incumbency. Neither, therefore, is entitled to receive the full average of his recent emoluments. On the other hand, Mr. Smoult has long been an officer of the court, and has given up situations of considerable emolument, in which he would have been entitled to all the indulgence shown to any existing holders, for that which he now holds, and Mr. Dickens, at the time when he quitted the bar, gave up professional prospects which he probably would not have been willing to abandon for the largest emoluments proposed in the ultimate arrangement. He is also an officer whose services at present are of very great importance to the court, and would now have such a likelihood of eminent success at the bar, were he to return to it, that it is hardly probable he would remain an officer of the court, except on a remuneration higher than any of those prospectively proposed. On the whole, therefore, we think that each of these gentlemen ought to receive a larger remuneration than those assigned for the future to any officer, and that they ought not to receive less than 66,000 Company's rupees each; in concurring in which recommendation, Mr. Justice Grant is also influenced by a doubt whether the emoluments of these two offices proposed in Schedule (E.) may not be found, upon occasion of future appointments, hardly adequate to secure the services in this country of such officers as their importance requires. We propose, therefore, to assign this sum as Mr. Dickens's salary, and to assign to Mr. Smoult a salary of 12,000 Company's rupees, in addition to his receipts of commission, which, on his defraying the expenses already proposed to be borne by the ex-officio administrator, will make the average emolument of his office amount to the same sum.

30. Under these circumstances, we propose that the present establishment of the court should be arranged and paid according to the Schedule (F.) The total amount is 3,58,756 Company's rupees, making an immediate saving of 1,04,023. 5. 7.

31. In this list, the office held by Mr. Marnell would cease absolutely when he ceased to hold it, as would also that of Mr. Seret, of Mr. Ryan, of the one Tipstaff retained, of the Moularies, and of the Pundits. When, however, the last Pundit vacated his office, it would be necessary, as before observed, to appoint a second Brahmin, and not till then. There are no temporary or varying arrangements to be made with respect to any of these offices; the final plan would come into operation as soon as the existing holders vacate them, and it would take effect immediately with respect to the Attorney for Paupers, the Judges' Clerks, the Interpreter to the Chief Justice, the Clerk to the Grand Jury, the Moulnahs, and the one Brahmin at present retained.

32. In these proposals, nothing, we believe, requires explanation except the retention of one Tipstaff, and the distinction made between the Interpreter to the Chief Justice and those of the Puisne Judges.

33. The Chief Justice's Tipstaff is his Interpreter also; Mr. Justice Malkins is his clerk. As each of these officers, in the plan proposed, will receive an addition to the present emoluments of his office, we think it reasonable that they should give up the situation of Tipstaff. If the proposal for increasing the amount of their permanent offices should be rejected, they would of course stand in the same situation as any other holders of existing offices, and the reduction of the offices should be postponed.

34. The Chief Justice's Interpreter has no other employment. Giving his whole time to the court, we think he should at once receive the full proposed remuneration.

35. The other Interpreters have other duties; they, therefore, are not entitled to the same salary, but they are, as we have already stated, underpaid at present; and we therefore propose that the salary intended to be hereafter given to one Interpreter should be divided between them; the whole, on the occurrence of a vacancy,

vacancy, to be paid to the remaining Interpreter, who is then to give up any situation incompatible with the full discharge of his duties.

36. Among the minor officers, there remain the Interpreters of the Court and the Crier. The salaries assigned to the present Interpreters of the Court are fixed a little above the mere equivalent, in Company's rupees, of their present salaries. We propose, as will appear in the latter part of this letter, that all fees should henceforward be paid in Company's rupees, and as these officers will retain their fees, the small increase of salary (which does not exceed 600 rupees between the two Interpreters) is necessary to secure them against loss. One other provision is necessary at present; Mr. Blaguire, who has other employment, makes very few translations, and the value of Mr. Smith's office is raised to an amount exceeding that of Mr. Blaguire's, notwithstanding the inferiority of his salary, by the translation devolving almost entirely on him. Should Mr. Blaguire vacate his office while Mr. Smith continues an Interpreter of the court, any new Interpreter appointed would be entitled to and probably require his fair share of the translations; and as Mr. Smith, who is a very old and deserving servant of the court, would thus be a loser, we think it desirable that he should, in that case, succeed to Mr. Blaguire's salary; subject to this contingent provision in his favour, the remuneration of the Interpreters and of the Crier would be reduced to its ultimate standard on the occurrence of vacancies.

37. The arrangements contemplated with reference to the higher offices of the court are necessarily more complicated. Before proceeding to explain them, it may be desirable to point out that the present net emoluments of the officers being derived merely from average receipts, there is no such exact certainty of their amount as to enable us to say precisely what salary would be equivalent to it. We have, therefore, in all cases, except that of the Interpreters already explained, taken even sums, in no case exceeding or falling short of the average emoluments, when reckoned in the new currency, by more than a few hundred rupees. There is only one instance in which the difference exceeds 300 rupees in the year, and generally it is not fifty.

38. It would, we think, be very desirable that some means should be devised for accelerating the vacancy of the unnecessary officers, by holding out some inducement to their holders to retire. We do not, however, include any such proposal in the scheme we submit. The details of it would require much consideration, especially as to the extent to which the acceptance of any proposed commutation should be made compulsory; and any arrangement of the kind can probably be better made, if made at all, after the new arrangements of the court have, in other respects, been completed, and the condition of the parties to whom the compensation would have to be made fully ascertained. The receivers of the largest salaries are not in any case likely, it is understood, to remain very long in this country.

39. The offices above referred to are those held by Mr. O'Hanlon, Mr. Macnaghten, Mr. Franks and Mr. O'Dowda, and are all, according to the projected plan, to be hereafter annexed to other offices; those at present to be divided among Mr. Dickens, Mr. Smoult, Mr. Holroyd and Mr. Vaughan. It will be observed that Mr. Holroyd and Mr. Vaughan, according to the proposals of Schedule (F.), are to receive for the present salaries of 24,000 Company's rupees each. These are less than the salaries to be annexed to their offices hereafter, but we think them sufficient, with the expectation of the prospective increase presently to be explained, for the remuneration of their present duties; and Mr. Holroyd, who now holds offices of which the present amount exceeds the sum thus assigned to him, was only very recently appointed Prothonotary, under circumstances which prevent his incumbency from furnishing any objection to the immediate introduction of the changes thought desirable in his offices. Whether they, therefore, remain in their hands, or whether new officers are appointed to them, we propose these as the salaries attached to those offices, the salary of the Prothonotary and Clerk of the Crown being increased to its full amount of 36,000 *Rs.* when the office of the Clerk of the Paupers is annexed to it, on being vacated by its present holder; but the duties of the Sealer being to be performed by the Prothonotary, whenever a vacancy occurs, without any additional remuneration, and the salary of the Taxing Officer and Record Keeper being increased by 6,000 *Rs.* on the annexation to it of each of the offices of Receiver and Chief Clerk of the Insolvent Court. These sums bear no very accurate relation to the present value of the different offices to be thus successively absorbed; but

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they correspond pretty nearly to their emoluments as they would be affected by the alterations we shall have to propose in the fees payable in each office; and even where there is any considerable difference, it is of no importance, in a general system like that proposed, though it would be a serious objection in a scheme which regulated different offices independently.

40. The following offices remain to be gradually absorbed in the offices now proposed to be held by Mr. Dickens and Mr. Smoult,—the Sworn Clerk, the Examiner in Equity, and the Examiner in the Insolvent Debtors' Court; on the general principle adopted with respect to the offices to be annexed to those of Prothonotary and Taxing Officer, we should assign to the officers who would respectively have to execute these offices, as they fall in, an increase of 12,000 *Rs.* on the annexation of each of the offices of Sworn Clerk and Examiner in Equity, and of 6,000 on that of Examiner in the Insolvent Debtors' Court. It is necessary to mention these sums with a view to contingent arrangements; but it would be unreasonable to give these large additions to Mr. Dickens or Mr. Smoult, to whom we have already, on personal considerations, assigned the large emoluments of 66,000 rupees each.

41. There is, however, a circumstance to be mentioned, which would render it, in our judgment, expedient, in the occurrence of one contingency, to assign some additional emolument to one of these officers. We propose, as will be observed on reference to the Schedule (F.), to appoint Mr. Dickens for the present Equity Registrar and Master and Accountant-general. The two first of these are offices which we do not think it desirable permanently to unite; there are inconveniences which might possibly arise from their union; but these are contingent, and, at any particular period, improbable, and we think it, therefore, more desirable for the present to retain Mr. Dickens's services in these offices, with both of which he is thoroughly familiar, than to avoid the risk of incurring occasional inconvenience, for which, even if it should arise, a remedy might be found by making any necessary alterations at the time.

42. Mr. Smoult, on the other hand, although a very valuable officer of the court in the situation which he occupies, and eminently entitled to consideration in the proposed arrangements on account of his long services and the other circumstances to which we have already referred, in suggesting his proposed emoluments for the future, has never been much connected with the Equity side of the court, and would not therefore be a desirable person to burden with the performance of services arising there. And such are the duties of all the offices proposed to be annexed to the principal situations now under discussion. We do not, therefore, think it desirable to annex any of them to the office which he holds; the duties of the Sworn Clerk will belong properly to the office of Equity Registrar, and those of Examiner in Equity and of Examiner in the Insolvent Court, which is of an analogous nature to the Mastership in Equity, should properly be annexed to that office.

43. Both these offices would at present be held by Mr. Dickens, and it may make the arrangement to be proposed most intelligible to treat them separately, as they would have to be treated in the event of his vacating them before any of the offices in question become vacant. In that case, we should propose to appoint two officers to fill the situations now occupied by him, dividing his proposed salary between them, the one to be Master and Accountant-general, with a salary of 36,000 Company's rupees, to be increased by 6,000 on the falling in of the office of Examiner of the Insolvent Debtors' Court, and by 12,000 on the falling in of that of Examiner in Equity; the other to be Equity Registrar, with a salary of 30,000, to be raised to 42,000 on the annexation of the office of Sworn Clerk, and to become Ecclesiastical Registrar on the proposed scheme of remuneration of the conjoint offices on Mr. Smoult's vacating that situation. If Mr. Smoult quitted his office before any vacancy occurred in that of Sworn Clerk, the Equity Registrar would at once enter upon the duties and receive the remuneration of the Ecclesiastical Registrar, and in that case would execute the office of Sworn Clerk also on its becoming vacant, without any addition to his emoluments.

44. These being the arrangements we should propose if Mr. Dickens's offices were divided between two holders, the simplest plan would be that they should take place also while the offices were united in his hands. This, however, we do not propose. We think it, indeed, expedient, as the most direct course towards the proposed ultimate arrangement, which it is very desirable to arrive at as soon as possible, that all these offices as they become vacant should coalesce in Mr. Dickens's

Dickens's hands, and we have that confidence in his energy and ability which makes us satisfied that he would be able for a time to perform their various duties. But we do not propose to assign to him their full remuneration, according to the above scheme; we think it would make his emoluments larger than it would be reasonable to assign as the reward even of the unusual exertion imposed. We should recommend, therefore, in that case, that he should execute the duties of Sworn Clerk and Examiner of the Insolvent Court, which would not very heavily increase his personal labour, though they would introduce a considerable addition of merely ministerial business into his office, without receiving any additional emolument, but that on the annexation of the office of Examiner in Equity, which would very largely add to his individual engagements, he should receive the additional 12,000 proposed to accrue to the Master on the annexation of that office. This recommendation, however, is supported by the opinion only of the Chief Justice and Mr. Justice Malkin, though, being the proposal of the majority of the court, it forms a part of the scheme submitted for adoption, and other arrangements would become necessary if it were not acceded to. Mr. Justice Grant does not think it necessary to say more in reference to a contingency which may never happen, than that he doubts extremely whether the duties proposed to be laid upon Mr. Dickens, if it should happen, are not more than he would be able adequately to discharge, and that he considers the salary proposed in this case greater than any officer of the court ought to receive.

45. These arrangements, it is to be observed, are temporary only. If Mr. Dickens should continue an officer after Mr. Smoult ceases to be so, the offices we propose to assign to him are those of Ecclesiastical, Admiralty and Equity Registrar and Sworn Clerk, and it would be a part of the proposed arrangement that he should then resign the Mastership and the office connected with it. He would then hold only offices which it is intended permanently to unite, and would receive only the commission on the plan proposed, with the addition already recommended in the case of Mr. Smoult, of the fixed salary of 12,000 to make the average value equal to the salary we think he ought at once to receive.

46. In this case a new Master would have to be appointed with the salaries already mentioned as attached to the several offices he would hold at the time, *i. e.*, 36,000 if only Master and Accountant-general, with the additions of 6,000 if Examiner in the Insolvent Court, and of 12,000 if Examiner in Equity.

47. In proposing that Mr. Dickens, on Mr. Smoult's vacating his present office, should be Ecclesiastical and Equity Register, we do not treat this as a necessary part of the plan. But in the present condition of the court we think those the offices in which it would be most expedient to retain his services. If at the time it should seem more useful to retain him as Master with the annexed offices, he might remain so at the proposed salary of 66,000, the additional 12,000 assigned as a remuneration for extra labour on the accruing of the office of Examiner in Equity ceasing, of course, on his being relieved from the duties of Registrar. The essential part of the plan is only that on Mr. Smoult's retirement the different offices should be placed on their ultimate footing, with only the exception of the higher emolument assigned to Mr. Dickens personally, if then in office, and the variations necessarily incidental to the continuance in the hands of their present holders of any offices which are not permanently to be retained.

48. It may, perhaps, appear that in assigning to Mr. Dickens the addition of 12,000 *Rs.* while he holds the situation of Examiner in Equity, in addition to those which he will at once discharge, we depart from the principle already stated, that on assigning to an officer a competent salary we have a right to require the whole of his time. The circumstances, however, are peculiar. We believe, with the exception of Mr. Justice Grant, as above stated, that Mr. Dickens individually will be able to perform all the duties assigned to him; but it is only for the high opinion we entertain of him, in which opinion Mr. Justice Grant entirely concurs, though he differs as to the amount of services to be imposed upon him which it warrants, that we venture to assign to him an amount of labour which we should not generally feel warranted in requiring from any one individual. We think it very desirable, for the purpose of simplifying the progress to the ultimate arrangement, that he should undertake these duties; but we should not think ourselves warranted in requiring from him the unusual exertion we propose to him, without departing also in some degree from the usual scale of reward. We all agree in thinking him, in the present circumstances, not overpaid for his services as Master and Equity Registrar at present,

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or in either of the collective offices which he may finally assume, by the proposed emoluments of 66,000 *Rs.*, and we should not therefore be willing to propose to him to perform more laborious services without some additional equivalent for the period during which he renders them.

49. Another objection may be raised, that if it be reasonable that Mr. Dickens should perform the duties of Sworn Clerk and Examiner of the Insolvent Court as these situations become vacant, without additional remuneration, on the ground that they will give him little additional trouble, it cannot be necessary to assign any advance of salary to other holders of the offices of Master and Equity Registrar in the manner proposed on the occurrence of the same contingencies. The answer is this, that Mr. Dickens is in our judgment sufficiently paid without the addition in these cases, but that the emoluments of the separate offices, 36,000 and 30,000, would be a scanty remuneration for their duties, and are only fixed so low from the necessity of economy, till the superfluous offices are absorbed, and from the belief that the prospect of advance, as the opportunity occurred, would induce persons perfectly qualified to accept the offices on a scale of immediate remuneration which would not otherwise be sufficient to command their services.

50. These are the arrangements, immediate, contingent and ultimate, which we propose for adoption. It only remains on this part of the subject to suggest that the 1st of June next be fixed as the day on which the new system, if approved, should come into operation. If, however, this proposal does not leave sufficient time for considering the expediency of the proposed arrangements, there is no reason why a later day should not be substituted, though the earliest time consistent with due deliberation would be desirable, as no reductions in the fees paid by the suitors of the court can be introduced until the question is determined.

51. Before proceeding, however, to the discussion of the most beneficial mode of applying the savings proposed to be effected in the offices of the court, it is necessary to mention the most desirable manner, in our judgment, of providing for the expenses of them. All the above calculations and proposals are made, it will be observed, on net average emoluments, the holders of the different offices at present defraying the expenditure of them, for subordinate clerks, writers, stationery, &c., out of their gross receipts. Of course the net average is the real value to the holder, and, consequently, furnishes the materials for estimating the amount of salary which ought to be assigned to him. It is obviously necessary, also, that the Government, on taking to themselves all the fees received in these offices, the fund from which these expenses have been hitherto paid, should take also the burden of their payment. The only question is, in what manner this is most conveniently regulated, and we think it will be the best course that the officers should still select and pay their own subordinates, drawing monthly on the Government for the actual amount of their outlay in this manner. If the Government were to undertake to furnish these establishments, they would not, probably, have so good an opportunity as the officers of securing their efficiency, and the officers could have less power of controlling the conduct of persons assigned to him than of those whom he himself selects. If, on the contrary, he received a fixed sum wherewith to provide for the contingencies of his office, he might at one time be making an unnecessary profit, at another, incurring an unreasonable loss, and he would have a direct interest, to a certain extent, in getting inefficient assistance if he could procure it cheap. On the plan proposed, the Government would have the opportunity of checking superfluous or questioning doubtful expenditure, and the officer would retain the power which he, on many accounts, ought to have of completely, in the first instance, regulating his own office.

52. The amount of expenditure in each, as it has lately existed, will very nearly appear by comparing the Schedule (B.) of net averages with the Schedule (C.) of gross averages. The only additions required to it are those of 4,632 *Rs.*,* the average expenditure on the Ecclesiastical Registrar's Office; of 1,050 in that of Admiralty Registrar; of 2,210 in that of Accountant-general; and of 1,794 in that of Receiver; the emoluments of the two former being mixed up with those of ex-officio administrator, and the table of gross averages excluding, for a reason already given, all emoluments founded on commission. These returns will give the

* This is an average of the expenditure of six years: a larger sum (9,175 rupees) appears on the face of the Ecclesiastical Registrar's Returns; but the difference consists of fees to counsel, &c., which are paid out of the estates to which he administers, and which, therefore, though they swell the apparent amount both of the receipts and disbursement of the office, do not really form any part of its expenditure.

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the means of seeing whether the expenses of the office, when no longer borne by the holder, show any suspicious tendency to increase; they ought, unless the business of the court increases, rather to diminish on the consolidation of different offices. The general result is exhibited in Schedule (G.) We have made no particular inquiry into the details of this expenditure, but we believe it to be well bestowed, because we hear no complaints of the execution of the business of the offices, and reasonable in amount, because the officers, who pay their subordinates themselves, are interested in keeping it low.

53. It remains for us to explain in what manner we propose to apply the very large savings of 1,04,023. 5. 7. Company's rupees per annum immediately, and of 2,24,123. 5. 7. ultimately, which we expect from the proposed arrangements. Of course the relief of the suitor is the first and principal object, subject always to the condition that the Government is not to incur the risk of additional expense. There is incidentally a strong probability that in being secured against this risk they will, in fact, gain some advantage.

54. The first saving to be effected will, of course, consist in the introduction of the new currency into all official payments. This will not apply to the sums received on account of commission for the reason already stated, and it will not apply to the salaries now received by the different officers, for which an entirely new scale of remuneration is to be substituted. It will, therefore, apply to the difference between the amount of Schedule (C.), the gross amount of the different offices, exclusive of commission, and of Schedule (D.), the present salaries which are to cease. This difference, or the sum of Sicca rupees 3,27,484. 2. 1., is the whole amount of fees now paid to the different officers, and this sum will be reduced 21,832. 5. 5. Company's rupees in amount, by having all fees paid in the new coinage. This alteration we propose to introduce at once in every office. It is obviously necessary for general convenience, and it affects all classes of suitors in the same degree.

55. Another source of universal reduction will be found in equalizing and reducing the rate paid in the different offices for all writings paid for by the folio. These payments constitute a very large source of emolument, and are at present unequal in the different offices, both as to the amount paid per folio, and as to the length of the folio itself. These are discrepancies generally indefensible, and it will be found, on reference to the correspondence with the Board of Control, transmitted with this letter, that they have attracted the notice of that Board. We propose to place all these payments on one reduced rate of five annas per folio of 90 words. In many cases, this would fall below the remuneration received in England for corresponding services, and, in some instances, where the labour, although paid by the folio, is really of that previous consideration and care, it is very inadequate if considered as pay for the particular duty. As it is not, however, necessary, in the proposed system of remuneration from a general fund, to look minutely to the precise proportion of pay and labour in each particular instance, we have thought it best to adopt one general rule, and to say that all payments, of whatever nature, which are charged by the folio, should be charged at the rate above mentioned of five annas per folio of 90 words.

56. Besides this, we propose that, in the office of Examiner in Equity, the practice of engrossing, and the charge for it, should be altogether discontinued. In many cases it is necessary to retain it; where the first copy can only be a hurried draft, a fair engrossment is indispensable, but this principle does not apply to the Examiner in Equity, who takes depositions at his leisure, and may make his original draft sufficient for all purposes.

57. By rules recently introduced into the practice of the Court of Chancery in England, the former practice of setting out in decrees all the proceedings which had taken place in the cause, has been abandoned, and they are now merely referred to. This produces a very large saving in the expenditure of an Equity suit, and we are very desirous to introduce it here. The present system is grossly oppressive, and produces no benefit whatever. The precise amount of saving thus introduced is complicated with those introduced by the other changes proposed; but at a loose estimate, it will not be less than 10,000 *Rs.* per annum in the Equity Registrar's office, and it is very material to observe that the benefit of this change is not limited to the reduction effected in the charge of the officers of the court. All briefs, copies of proceedings, &c. prepared by the Attornies of the court, will be reduced in the same proportion, as far as they consist of transcripts of these

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proceedings, and the whole benefit to the suitor will therefore very much exceed the mere saving in the fees paid to the officers of the Government.

58. The whole amount of reductions thus proposed is 76,527. 0. 6. Company's rupees. The saving, indeed, is really in Sicca rupees, but these fees having been included in the general amount on which the saving, by the change of currency, is computed, they must here only be reckoned as paid in Company's rupees, to avoid taking that reduction into account twice over. It is impossible completely to separate it into its different heads, and the result is, probably, less correct than most of those to which we have referred you. The labour of ascertaining the precise manner in which the proposed alterations would affect each office is great, and all the details of the charges of each must be examined, and the expense computed on any principle suggested. We have, therefore, been content, in a matter necessarily somewhat uncertain and conjectural, to take the results of shorter periods than we have generally thought desirable. It will be found, however, that in many cases where we have been satisfied with the results of a single year, there is little fluctuation in the receipts of the office, or the manner in which these changes would affect it. In other cases, where there seems to be more of difficulty, we have obtained, as will be seen on reference to the Schedule (H), fuller information.

59. There is one other change which we propose immediately to introduce. The commission of 2½ per cent. allowed to the Accountant-general is found to press very heavily on payments of principal. On payments of current interest it cannot fairly be treated as a grievance, and we do not propose to alter it with respect to these, nor to introduce any change as to the commission taken by the receiver which is on sums of an analogous nature. But we think it desirable that the commission on payments of principal should be reduced to 1 per cent., and this would effect a further saving on the average of the last three years of 8,146. 11. 10. Sicca, or 8,689. 13. 8. Company's rupees; for the commission having been excluded from the account of fees on which the reduction by change of currency was computed, the effect of that change has to be included here.

60. The whole amount of savings thus proposed to be introduced would be 1,07,049. 3. 7. Company's rupees; a sum falling far short of the ultimate reduction in the expense of the different offices, but exceeding that which we think it safe to introduce at once. We do not, therefore, propose that the whole of these alterations should take immediate effect. To do so would, in the opinion of the Chief Justice and Mr. Justice Malkin, be inconsistent with the principle that the Government is, at all events, to be secured against loss by the proposed changes, for they will not receive the security they require against loss unless they have the probability of some gain. Mr. Justice Grant, however, dissenting from the proposition that the Government ought to have any probability of gain, but such security only as may arise from the just calculation of averages which may render it probable that the loss will be nothing, and certain that it will be immaterial, and consenting to recommend no greater or immediate reduction of expense to the suitors, on the understanding that further reductions shall be made to bring the receipts strictly within this principle as soon as experience shall show that they can be afforded:

61. We propose, therefore, that the reductions and alterations contemplated should take place immediately in the offices which are to be placed at once on their ultimate establishment, or directly in progress towards it, but postponed (except that by the payment in Company's rupees) in all the offices which the present holders retain, without any provision for their ultimately succeeding to others. We recommend this not merely because it is the simplest arrangement, but because it so happens that it embraces the immediate reduction of those charges which press the most heavily upon the suitors.

62. According to these proposals, the reductions will at once be introduced in every office except those of Sworn Clerk, Clerk of the Papers, Examiner in Equity, Chief Clerk of the Insolvent Debtors' Court, and Examiners of the Insolvent Debtors' Court. The amount of the savings in these offices is estimated at 26,158. 7. Company's rupees, which, deducted from the total saving of 1,07,049. 3. 7. leaves 80,890. 12. 7. as the immediate amount of saving to the suitors of the court.

63. The general result, as far as the Government is concerned, is exhibited in Schedule (I.), from which it appears that the probable immediate saving to the Government would be 18,332. 8. 4. Company's rupees, the difference between the

the amount of salaries they now pay and the excess of the salaries they would have to pay on the proposed arrangement over the average amount of the fees and commission which would be carried to their account. We imagine that this probability of advantage is sufficient to furnish to the Government the indemnity they require against risk arising from the responsibility cast upon them by the scheme proposed. It is also fit to observe that the saving accruing on the dropping in of the different offices at present unreduced, will before long furnish an additional fund amply sufficient for security against any possible misconception or miscalculation.

64. It is necessary to explain, to remove any apparent inconsistency between the different Schedules, that in the Schedule (I.) the commission of the Ecclesiastical Registrar as ex-officio administrator, and the fees received by the Interpreters for translations, are omitted in the column of fees and commission, as they do not form any part of the fund to be accounted for to the Company. And the expenses of those offices are of course omitted in the column of expenses, as the Government is not to bear them. The Schedule, therefore, does not furnish a complete view of the emoluments of the offices or the condition of the court, nor of the reductions effected, because the reduction by the introduction of payment in the Company's rupee is made in the column of fees, instead of being included in the column of reductions. With these exceptions, it exhibits the condition of the court fully as it would stand immediately on the introduction of the scheme proposed, and Schedule (K.) is a similar representative of its condition, as it would exist in the full execution of all the changes now suggested, leaving an absolute surplus to the Government of 32,449. 5. 11. besides the extinction of the present salaries, and leaving, therefore, the sum of 1,12,265. 1. 4. applicable to the introduction of further reductions and to the indemnity of the Government against risk.

65. We further propose that the reductions above provided for should be introduced into each of the offices in which they do not take immediate effect, so soon as such office is vacated by its present holder. The reduction of expenses occasioned by the projected annexation of each office to some other, will enable these reductions to be then effected without the risk of increase of charge to the Government in any case, and with the certainty of a considerable diminution in the majority of instances.

66. There are many other alterations and reductions of charge which we hope hereafter, when the falling in of different offices renders them practicable in point of expense, to suggest to the Government, and to obtain their concurrence in introducing. At present, however, those which we propose, and which we think the most pressing, exhaust our means of reduction, and we prefer, therefore, to postpone any further alterations till we more fully know by experience the practical result of those now suggested, and the working of some of the alterations introduced. It is, however, material to observe that the changes now proposed, although no others directly affect the emoluments of the different offices, are not all which we propose to introduce at once. The whole practice of the court is under revision, and we hope to introduce a variety of modifications which will much tend to lessen the expense of a suit. Incidentally, if they shorten any proceedings, they may produce some effect on the receipts of the different offices, but they are likely to operate with much more force on the emoluments of Attornies and Counsel, and on the expenses incurred by the production of witnesses and documents, than upon the business of the officers of the court. Although, therefore, we think it desirable, on this among other accounts, not to draw the line too closely, lest the indemnity of the Government against additional expense should prove insufficient, we believe it to be probable that the increase of business arising from a large diminution of the charges of a suit will more than compensate any occasional diminution of receipts arising from these alterations.

67. It is possible that doubts may arise whether it is within the power of the court to effect some of the changes in practice which it is desirable to introduce. The practice of the courts in England has recently undergone much modification, and many of the alterations there introduced might, in our judgment, be most beneficially adopted here. If, when our proposals for any such modifications are completed, we should find it doubtful whether any of them can be legally effected without the ratification of some legislative authority, we hope to receive the assistance of the Legislative Council in carrying them into effect.

68. There is also a larger subject of the same nature to which we wish to draw the attention of the Government. It has been held that all statutes of the English

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Parliament apply to this country (with certain exceptions which it is unnecessary to mention), if they were passed before the establishment of the first Mayor's court in 1726, and none apply to it which have been passed at a later period, unless they are by express terms extended to India. We need hardly mention that many of the statutes which are in force here have received important and valuable modifications in England by statutes of a later period, which therefore are not in force in India, and that many other very useful alterations in the law, unconnected with previous Acts of Parliament, have also been introduced by statute of too late a date to apply to this country. It would be very desirable, wherever the statute law of England extends at all to this country, that it should extend with all the improvements that it has received which are not rendered inapplicable by local circumstances; and it may be mentioned as an anomaly deserving of correction, that at present the English law must be differently administered in the different presidencies and settlements from the different date at which it was introduced into each, although there is nothing in their respective situations to render such difference desirable.

69. In a common case the Chief Justice and Mr. Justice Malkin would merely submit these observations to the Government, leaving it to them to apply the remedy, if they thought the evil of sufficient magnitude. As their attention, however, is more likely, in the opinion of the Chief Justice and Mr. Justice Malkin, to be turned, on the principles of the recent Acts of Parliament, to the establishment of a general code of law for India, than to the amendment of any system of mere local or personal application, the Chief Justice and Mr. Justice Malkin are induced to go further in this case. It is not their province to express any opinion whether the system of law at present administered by the Supreme Court ought to continue, but they think there can be but little question that while it exists it had better exist in the best form which it can assume. They have no doubt that it would be much improved by the introduction of a judicious selection from the statutes passed since the general introduction of the English law. The labour of making this selection would be considerable; but they would willingly give any assistance in their power, and propose from time to time the enactment of such English statutes as they think it desirable to introduce wherever the English law has operation, if the Government would be disposed to carry such an alteration into effect. Of course, the approval of the whole or any part of the selection would rest entirely with the Government; but it would be of little use to enter upon the examination of the subject at all unless for the purpose of carrying it forward to a considerable extent; and the difficulty and trouble of making any selection of sufficient magnitude or importance to effect any material and general improvement would be so great that they would not wish to undertake it without the expectation that the general principle that such a selection was desirable would be adopted.

70. Mr. Justice Grant, in expressing his regret that he is unable to concur in any part of the last paragraph of this letter, except the statement that the law administered by the Supreme Courts in India would be improved by a judicious selection from the statutes passed since the general introduction of the English law into the several presidencies in India, is desirous of saying that he shall at all times, as cases shall present themselves to observation, consider it his duty to concur in or to suggest any recommendation, either to His Majesty's Government, to be laid before Parliament, or the Governor-general in Council, as may be deemed expedient in the particular matter, to extend to cases in India within the jurisdiction of the Supreme Courts such of the more modern Acts of Parliament as his experience has shown or may hereafter show to be necessary to render the administration of justice by those courts more perfect, or less expensive.

We have, &c.

(signed) *E. Ryan.*
J. P. Grant.
B. H. Malkin.

Court House, Calcutta, 25 April 1836.

From

From the President of the Board of Control to the Judges of the Supreme Court at Calcutta.

Legis. Cons. 23 January 1837. No. 6.

Gentlemen, India Board, 13 August 1832.

You are probably aware that the expense attending the administration of justice in the Supreme Courts of Judicature in India has for some time past attracted considerable notice in this country; and from the returns laid before Parliament of the salaries and emoluments of the officers of these courts, an impression has certainly been made that in many cases, in the Calcutta Court especially, these emoluments greatly exceed an adequate remuneration for the duties performed, and inflict, therefore, an unnecessary burthen on the suitors.

It was in contemplation, had circumstances permitted, to submit to Parliament, in the present Session, a Bill having for its object the payment of the officers of the Supreme Courts by fixed salaries, to be regulated according to the labour and responsibility of the duties of each office, the fees taken by each officer being accounted for to Government, and so revised from time to time as only to provide on the whole a sum sufficient for the indemnification of Government.

By such a plan the Government would have been relieved from the charge of the salaries now paid to the officers, and it was believed that, in the Calcutta Court at least, while an adequate provision might be secured for the discharge of really efficient officers, considerable relief might at the same time be afforded to suitors by the establishment of a reduced scale of fees.

That specific plan, indeed, cannot be carried into effect without the sanction of Parliament; but the Judges have so much in their power towards the attainment of the main object in view, that, unless the mode of remuneration is to be changed, the expediency of resorting to Parliament will depend more upon what they may have undone than upon any necessity for obtaining further powers for that purpose.

By the Charter of Justice, the Judges of the Supreme Court of Judicature at Calcutta are empowered to appoint clerks and officers, with such reasonable salaries as shall be approved by the Governor-general in Council, and with the same approbation they may settle a table of fees to be taken by the Sheriff, Officers, Clerks and Attornies, and may vary the same as occasion shall require.

It seems thus to be implied that salaries are to be paid by Government, as well as fees by suitors.

But when the fees alone of any office amount to a sum exceeding a reasonable remuneration to the holder, the salary, if there be any reason against its being dispensed with altogether, might be reduced to a nominal sum, and a reduction of fees be at the same time effected. In making this remark, I presume that the salaries may be varied from time to time, or, at least, that they may be altered on occasion of new appointments; but if I am mistaken in this supposition, there would be room for making a larger reduction of fees in favour of the suitors.

The ready concurrence of the Governor-general in Council in any such proposals which may be made to them by the Supreme Court cannot be doubted.

It will scarcely be expected of me to point out those items of charge in which it would be most desirable to make reductions. It has, however, been suggested to me, on what I have reason to consider competent authority, that, among others, the items mentioned in the annexed table would safely admit of diminution, and that a proper remuneration would be at the same time secured to the officers of the court.

From that table it appears that the Clerk of the Crown receives for passing every indictment prepared by the party or his attorney the same fees as he would have been entitled to demand if he had drawn the indictment.

The sums allowed to the officers for copies of proceedings appear to have been regulated by no fixed standard, since the amount to be paid per folio will be found to vary in each office.

The Master, for copies of all accounts, depositions, interrogatories, &c., and other writings when required, to be paid by the party requiring the same, not exceeding one sheet of 90 words, is to receive one rupee, and for every other sheet the sum of 10 annas.

The Clerk of the Crown for copies of indictments, &c., is to receive per folio of 72 words the sum of 10 annas, and for copies of indictments to be attested by him, to be made use of in civil causes, the sum of one rupee.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

The Prothonotary for making up the record, that is, copying the pleadings on parchment, is to receive for the first sheet of 72 words, the sum of two rupees, and for every other sheet of 72 words, the sum of one rupee.

The Registrar, on the contrary, for engrossing the decree, is allowed, per folio of 90 words, the sum of six annas, but for the entering the decree after it is engrossed, he is allowed per folio 10 annas. The lowest of these sums is represented to me as too large a remuneration for the labour bestowed, and particularly so as these copies are principally made by native writers retained at small wages.

The charges allowed to the Clerk of the Crown and Clerk of the Papers of eight annas for reading every exhibit, &c., and certificate or other paper produced at a trial or on motion to the court, and the further fee of one rupee for each exhibit, &c., to be paid, as the case may be, either to the Registrar, Prothonotary or Clerk of the Crown for filing the same, become, as I understand, from their number, very oppressive to the suitors.

Of these details, however, I am fully sensible that I may not be considered a very competent judge, and I ought perhaps to apologise for entering into them. But I trust I may be allowed to recommend to you the expediency of revising the whole establishment of the Supreme Court, in order, by the future regulation of the salaries and fees, to afford an adequate but reasonable remuneration to each officer, according to the labour and responsibility of the duties attached to the office.

I observe that in some of the offices to which new appointments have lately been made, certain fees have been reduced. How far the fees of these offices permit of further reduction I certainly cannot judge; but if such occasions are not taken of placing the offices on a proper footing, the omission may be productive of disappointment to the holders of them whenever that object may be effected. I have no doubt, however, that you will avail yourselves of every such opportunity which may offer; but in making this remark, of course I cannot undertake to say what consideration, if any, the holders of offices might receive if any legislative provisions on the subject should be resorted to.

I shall be very glad to be favoured with any observations or information which you may please to furnish me on the topics to which I have thus ventured to draw your attention.

Before I conclude, I beg to mention, that the rules for the settlement of fees between attornies and the officers of the court, have been represented to me, with what truth I know not, as being attended with some hardship to the former. According to these rules, the officers are to make up their accounts for business done only four times in the year, when after taxation they are to be paid by the attornies.

Now it is alleged that practitioners in India can scarcely be expected, especially at their first entrance into life, to be men of capital, so as at all times to be able to command the amount necessary for the payment of fees incurred during a whole quarter of a year, and that when disappointed by their clients in being provided with funds in proper time, they are frequently compelled to borrow money from their native head clerks at exorbitant interest, and that the independence, and too frequently the integrity, of the attorney are liable to be destroyed by these transactions.

These evils, it is thought, might be prevented if the court were to pursue the course adopted in England of making the attorney pay the officers all fees due to him at the time the business is done. By following this plan, it is supposed the client, knowing the purpose for which the money was required, would readily advance it when necessary, and the attorney would be enabled to carry on his business with independence and honour. The accounts of the officers might still be taxed quarterly, and some improperly paid then accounted for.

As this representation has been made to me, I have not declined bringing it to your notice, satisfied that it will receive the degree of consideration which it may be found to merit.

I have, &c.

(signed) *Charles Grant.*

(A.)

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

(A.)

The Master.

For every certificate	10	–	–
For copies of all accounts, depositions, interrogatories, examinations, reports, discharges, bills of costs, schedules and other writings, when required, to be paid by the party requiring the same, not exceeding one sheet	1	–	–
For every other sheet of 90 words	–	10	–
For every summons	2	–	–

The Clerk of the Crown.

For recording the appearance of every defendant, and every plea of not guilty, and for giving issues thereon, except in felony, and for every short order of the court, and for copy thereof, for each	2	–	–
For drawing every bill of indictment or special plea, replication, rejoinder or verdict in felony, exceeding four folios of 72 words, and for engrossing the same, each, per folio	1	–	–
For copies of indictments, informations or other papers, per folio of 72 words	–	10	–
For copies of indictments, informations or other papers attested by the Clerk of the Crown, when granted by the court, to be used in civil cases, per folio of 72 words	1	–	–
For passing every indictment prepared by the party or his attorney, the same fees (except for parchment) as if drawn by the Clerk of the Crown, for filing every plea, replication, rejoinder (except in felony and to an information), return of writ, order, certificate, affidavit, exhibit, deposition, examination, recognizance or other paper not expressly allowed for by this table, for each	1	–	–
For drawing record upon every traverse, for the first folio	2	–	–
For drawing every other folio of 72 words, and engrossing the same, each	1	–	–
For recording every exhibit or written evidence, affidavit, certificate, or other paper produced at a trial, or on any motion in court	–	8	–
For quashing an indictment	6	–	–
For filing interrogatories in contempt, and for filing answers thereto, each	10	–	–
For taking, answering and engrossing them, each, per folio of 72 words	1	–	–

The Register in the Court of Equity.

For every petition filed for entering every cause, for every subpœna to appear and answer, and for every search in his office	1	–	–
For drawing up every decree, for the first sheet of 90 words	–	12	–
For every other sheet	–	8	–
For engrossing the same, per folio	–	6	–
For entering every decree, per folio	–	10	–
For filing every affidavit or other paper to be made use of in court	1	–	–

The Prothonotary.

For every common writ of sequestration, execution on the effects, writ to sell goods sequestered, writ of possession, prohibition, surcease and *fieri facias* to revive a judgment, and for every capias for contempt, and for every *capias ad satisfaciendum*, for each of the above	4	–	–
For every party sworn in court, and for every search in his office, and for every certificate given under his hand where no search has been allowed	1	–	–
For making up the record (except where judgment has been confessed under a warrant of attorney before proceedings issued) for the first sheet of 72 words	2	–	–
For every other sheet of 72 words	1	–	–
For all copies to be certified to England, and for copies of all special rules, affidavits, judgments and proceedings, per folio of 72 words	–	10	–
For filing every warrant to defend, and exhibit, certificate or other paper produced on motion in court or filed in his office, in order to ground motions of court or judgment of *Non pros.* for each, and for filing depositions of record, for each	1	–	–

Sworn Clerk.

For every attendance in court on motion, or at the trial or hearing of any cause	3	–	–
For every rule, order or notice filed by him, for every certificate signed by him, and term fee	2	–	–
For office copies of all bills, answers, exceptions or other proceedings out of his office, for every sheet of 90 words	–	10	–
For every search in his office	1	–	–

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

THE CLERK OF THE PAPERS, DEPOSITIONS AND READING CLERK:

For reading and marking every exhibit, and for each separate part of an answer, or other proceedings in equity, read and marked by him	–	8	–
For reading and marking every charter, deed, record or Act of Parliament read in court	1	–	–
For filing and docketting every plea of the general issue, *ad diem, plene administravit, ne unques executor, record per minas, per dures, supra solvit ad diem,* and for every issue joined	1	–	–
For drawing and entering every rule, filing and docketting every special plea or other pleading in the cause by plaintiff or defendant, and for every imparlance and oyer, and for setting down each cause for trial or special argument	3	–	–
For every search in his office, except where certificate is taken	1	–	–
For every certificate	1	–	–
For filing and docketting every order of court or other paper filed in his office, and not herein specified	1	–	–
For every attendance in court or on a Judge at chambers with exhibits or other papers	3	–	–

Legis. Cons.
23 January 1837.
No. 7.

From the Judges to the President of the Board of Control.

Right honourable Sir, Calcutta, 4 February 1833.

WE have had the honour of receiving your letter of the 13th August, and we have to express our regret that the absence of the Chief Justice will delay our replying in detail to the many important questions to which our attention is called. The Chief Justice sailed for Penang on the 12th of January, for the recovery of his health; and he is expected to return to the presidency before the 1st day of next March. Upon his arrival here we shall immediately enter into the most anxious consideration of the matters submitted to us, and communicate without delay the result of our inquiry.

We are confident we shall have the honour of receiving the concurrence of the Right honourable the Governor-general in all arrangements which may tend to the reduction of the expenses attending the administration of justice in the Supreme Court; and we beg to assure you of our most anxious and earnest desire that the emoluments of the officers of the court shall in no case exceed an adequate remuneration for the duties performed, or entail any unnecessary burthen on the suitors.

As far back as the year 1830, the Judges of this court were of opinion that much benefit would arise from a more rigid system of examining the bills of costs; it being their belief that whatever grounds there might be for complaint of the heaviness of costs in the Supreme Court, they must rest rather upon imperfections in the mode of taxation, than upon any impropriety in the amount of established fees.

In consequence of our having formed this opinion, and for other reasons to which we think it unnecessary now to advert, the Judges, with the concurrence of the Governor-general in Council, thought it right to disannex the office of Taxer of Costs from that of Master in Equity, and to appoint one officer to the sole duty of taxing all costs in the Supreme Court and in the Court for the Relief of Insolvent Debtors. The result of a rigid scrutiny into the charges of the officers, which occupied the attention of this newly appointed Taxing Officer and the Judges of the court for several months, fully justified the opinion which we had formed, and which will be apparent from the returns accompanying this letter; should a detailed explanation of this taxation be desired, we have no doubt that the late Chief Justice Sir Charles Grey, who is now resident in England, would be both anxious and willing to give any information that may be required.

It will be seen from the statements of the officers, that the reduction in their emoluments, as compared with the returns made to the House of Commons, in 1830, arise partly from falling off of business, but chiefly from the new system of taxation adopted in 1831. The office of the Prothonotary has been very much diminished in value, owing to the Supreme Court having adopted the general rules promulgated by all the Judges in England in 1831 and 1832, which direct that in certain actions concise forms of pleading shall be adopted, and which establish other regulations tending to diminish the expense of proceedings in actions at law. We think it right that these facts should be brought to the notice of the President and Board of Commissioners, but we beg to assure you that they will in no

no way cause us to relax in our endeavours to reduce the costs of all proceedings to the lowest scale that is compatible with the securing able and competent persons to fill the offices of the court.

We have, &c.

(signed) *John Franks.*
Edward Ryan.

A RETURN of the Gross and Net Receipts of my Office for the Year 1832, made in obedience to the Orders of the Judges.

1832.

EQUITY REGISTRAR.

Salary, *Arcot Rs.* 500, or *Sicca Rs.* 465. 8. 4. per month, is annually -	5,586	4	–
Fees and charges for business done - - - - - - - - -	45,268	–	–
GROSS TOTAL RECEIPTS - - - - -	50,854	4	–
Deduct office establishment and expenses - - - - - - -	7,608	8	7
NET PROFIT - - - *Sa. Rs.*	43,245	11	5

ECCLESIASTICAL REGISTRAR.

Salary, *Ar. Rs.* 166. 10. 8., or *Sa. Rs.* 155. 2. 8. per month, is annually	1,862	–	–
Fees and charges for business done - - - - - - - -	32,829	1	4
Commission on the estates of intestates - - - - - - -	46,165	14	4
GROSS TOTAL RECEIPTS - - - - -	80,856	15	8
Deduct office establishment and expenses - - - - - - -	14,918	8	–
NET PROFITS - - - - *Lacs*	65,938	7	8

ADMIRALTY REGISTRAR.

Salary *Ar. Rs.* 166. 10. 8., or *Sa. Rs.* 155. 2. 8. per month, is annually -	1,862	–	–
Fees and charges for business done - - - - - - - -	2,564	6	3
GROSS TOTAL RECEIPTS - - - - -	4,426	6	3
Deduct office establishment and expenses - - - - - - -	970	–	–
NET PROFIT - - - *Sa. Rs.*	3,456	6	3

Equity Registrar, Net Receipts - - - - - - - - -	43,245	11	5
Ecclesiastical Registrar, Net Receipts - - - - - - - -	65,938	7	8
Admiralty Registrar, Net Receipts - - - - - - - -	3,456	6	3
TOTAL NET RECEIPTS - - - *Lacs*	1,12,640	9	4

From the above it appears, that the whole of my receipts for the year 1832 was 1,12,640. 9. 4. On reference to the returns made in obedience to the orders of the House of Commons, it will appear that the net receipts of my office in the year 1827, the last for the years for which returns were made, were *Rs.* 1,96,662. 5. 10., and that the net average receipts for three years were 1,66,726. 0. 10. The decrease arises partly from the new system of taxation and the strict construction put by the Judges on the table of fees in July 1831, and partly from the great falling off in the business of the court. I could not state accurately how much arises from each of the above causes, unless I were to make out fresh bills on the old system. When the Judges introduced the new system of taxation, I made for my own satisfaction a rough estimate of the effect it would have on my office, and I calculated that in the then state of business it would have reduced my annual receipts about *Rs.* 30,000, the reduction principally on the office of the Equity Registrar.

(signed) *J. W. Hogg.*

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

29 January 1833.

A RETURN of the Gross and Net Profits of my Offices for the year 1832, made in obedience to the Orders of the Judges' Clerk of the Crown.

No salary.			
Fees for business done - - - - - - - - *Sa. Rs.*		13,006	10 –
Prothonotary, no salary.			
Fees for business done - - - - - - - - - -		43,160	14 –
TOTAL - - - - *Sa. Rs.*		56,167	8 –
From which are to be deducted the annual expense of the establishment of clerks, *Sa. Rs.* 1,050 per month - - -	12,600 – –		
Stationery - - - - - - - - -	3,500 – –		
		16,100	– –
The Net Profit - - - - *Sa. Rs.*		40,067	8 –

The Returns made in obedience to the orders of the House of Commons show that the net receipts of my office in the last year included in these Returns was Sicca rupees 82,487, and that the net average receipts for three years were Sicca rupees 61,303.

The decrease arises partly from the new system of taxation and the strict construction put by the Judges on the table of fees in July 1831, partly from the great falling off in the business of the court, but chiefly from the court having lately framed rules adopting the general rules promulgated by all the Judges of the Courts of King's Bench, Common Pleas and Exchequer of Pleas in Trinity term 1831 and Hilary term 1832, so far as the same relates to the concise forms of pleadings thereby introduced, and diminishing the expense of proceedings generally in the conduct of actions at law.

(signed) *W. H. Smoult,*
Clerk of the Crown and Prothonotary.

SCHEDULE showing the Gross and Net Receipts of the Office of Receiver, during the year 1832.

No salary.			
Amount of Commission on the rents and profits of the estates - -		10,096	6 11
Amount of fees for office copies of accounts current, and for attending before Master to pass accounts - - - - - - - -		231	10 –
Sa. Rs.		10,328	– 11
Deduct office establishment, &c. - - - - -		1,827	7 6
Net Profit - - - - *Sa. Rs.*		8,500	9 5

(signed) *E. Macnaghten,*
Receiver's Office, Court-house. Receiver, Supreme Court.

A RETURN of the Fees and Emoluments and Salary received by me as Examiner, for the year 1832.

Received as fees and emoluments from 20 December 1831 to 20 December 1832 - - - - - - - - - - - - - -	7,091	4 –
Received as salary from the general treasury, monthly, 337. 15. 5. being annually - - - - - - - - - - - - - -	4,055	9 –
	11,146	13 –
Deduct office establishment and stationery, being monthly 368, annually - - - - - - - - - -	4,416	– –
TOTAL - - - - *Sa. Rs.*	6,730	13 –

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On Fees and Salaries of the Officers of the Supreme Courts.

The average annual gross receipts of this office for the years 1825, 1826 and 1827 were returned at 13,067. 12. 4. I attribute the reduction to two causes, viz., the general decrease of business, and to the operation of the rules promulgated in July 1831, and which have about in an equal proportion affected the receipts of the office.

(signed) *E. Macnaghten*, Examiner.

A RETURN of the Gross and Net Receipts of my Office for the year 1832, made in obedience to the Orders of the Judges.

1832:			
The Sworn Clerk receives no salary.			
Fees and charges for business done - - - - -	*Sa. Rs.*	23,893 8 –	
Deduct office establishment and expenses - - -		3,461 8 –	
Net Profit - - -	*Sa. Rs.*		20,432 – –

On reference to the Returns made in obedience to the orders of the House of Commons, it will appear that the net receipts of my office in the year 1827, the last of the years for which returns were made, were Sicca rupees 51,220. 2. 2., and that the net average receipts for three years were Sicca rupees 54,950. 9. 8. The decrease arises partly from the falling off of business, but chiefly from the new system of taxation, and the strict construction put by the Judges on the table of fees and the rules of Court relating to office charges in 1831. I could not state accurately how much arises from each of the above causes without making out fresh bills under the old system; but a deduction of about 10,000 rupees from the net profits of 1827 is, to the best of my judgment, as much as can be attributed to the falling off of business; this exhibits a reduction from the receipts of my office of more than one-half, arising solely from the new system of taxation introduced in 1831, and, as far as a rough calculation enables me to judge, I believe this to be correct.

(signed) *R. O. Dowda*,
Sworn Clerk.

Sworn Clerk's Office, 31 January 1833.

THE Amount of Fees received by the Clerk of the Papers of the Supreme Court, for the year 1832; viz.:

Fees and charges for business done - - - - - - - -		13,457 10 –	
Salary for the above year - - - - - - - - -		3,720 – –	
		17,177 10 –	
Deduct office establishment and expenses - - -		2,417 12 –	
Net Profit - - - -	*Sa. Rs.*		14,759 14 –

The average amount as returned to the Judges on the 31st October 1828, for the years 1825, 1826 and 1827, 38,308. 5. 9.

The decrease shown by the above statement is caused as well by the falling off of business as by the new system of taxation adopted by the orders of the Judges of the Court, under which system the profits of the Clerk of the Papers office have been reduced considerably more than one-third, as far as he is able to ascertain without making out his bills on the old system.

(signed) *J. Franks*,
Clerk of the Papers.

THE Amount of Fees received by the Master of the Supreme Court during the year 1832, and Salary for the same year; viz.:

Cash received for fees - - - - -	*Sa. Rs.*	33,007 10 –	
For salary - - - - - - - - -		7,448 4 –	
		40,455 14 –	
Deduct office establishment and expenses - - -		5,065 2 –	
Net Profit (carried forward)- - - -	*Sa. Rs.*		35,390 12 –

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Brought forward - - *Sa. Rs.*		35,390 12 –
The amount of fees received by the Accountant-general of the Supreme Court during the year 1832, and commission for the same year:		
Cash received for fees - - - - - *Sa. Rs.*	558 – –	
For commission - - - - - - - -	19,869 2 11	
	20,427 2 11	
Deduct office establishment and expenses - -	2,800 – –	
Net Profit - - - - *Sa. Rs.*		17,627 2 11
The amount of fees received by the Keeper of Records of the Supreme Court during the year 1832:—		
Cash received for fees - - - - *Sa. Rs.*	1,597 12 –	
Deduct office establishment and expenses - -	744 – –	
Net Profit - - - - *Sa. Rs.*		853 12 –
TOTAL - - - - *Sa. Rs.*		53,871 10 11

I consider my situation in the Court to have been reduced more than one-half in value; for though according to the Returns of 1828 my receipts had not for the time I had held the offices amounted to 90,000 a year, yet that arose from circumstances connected with my then recent appointment. I estimate the decreased value of my situation thus:—

MASTER.		
Owing to the Court having taken the taxation of the officers, and attornies' bills from the Master, and constituted for that duty a new office, to which Mr. Vaughan, one of the attornies of the Court, was appointed - - - - - - - - *Sa. Rs.*	25,000 – –	
Owing to the new system of taxation - - - -	8,000 – –	
Decreased commission upon sales - - - - -	1,000 – –	
Decrease of business - - - - - - - -	20,000 – –	
		54,000 – –
ACCOUNTANT-GENERAL.		
Owing to the new system of taxation - - - *Sa. Rs.*	1,000 – –	
Decreased commission - - - - - -	9,000 – –	
		10,000 – –
KEEPER OF RECORDS.		
Owing to the new system of taxation - - *Sa. Rs.*	3,000 – –	
		3,000 – –
Total Reductions - - - - *Sa. Rs.*		67,000 – –
Clear Receipts - - - - - *Sa. Rs.*		53,871 10 11

Before I quitted the practice of the bar to take my present offices, my receipts were, by appointments which I then held, Sicca rupees 40,000; my business for many preceding years varying from 50 to 70,000 rupees a year.

(signed) *G. Money.*

THE Amount of Salary and Fees received by the Clerks of the three Judges of the Supreme Court for the year 1832; viz.—

Fees and charges for business done - -	16,130 12 –	
Salary for the above year - - - -	8,379 6 –	
	24,510 2 –	
Deduct office establishment and expenses -	2,146 4 –	
Net Profit - - - *Sa. Rs.*	22,362 14 –	

The net amount, as returned to the Judges on the 21st October 1828, for the year 1826 and 1827, 33,785. 0. 0.

The decrease shown by the above statement is caused as well by the falling off of business as by the new system of taxation adopted by the orders of the Judges of the court in 1831, and by the abolishing of certain fees previously allowed, but ordered

ordered by the court in 1831 to be discontinued, on the offices being vacant by the then holders.

(signed) *T. Sandes,*
Clerk to the Hon. Sir John Franks.

Calcutta, 6 February 1833.

From the Judges of the Supreme Court to the President of the Board of Commissioners for the Affairs of India.

Legis. Cons. 23 January 1837. No. 8.

Right honourable Sir, Calcutta, 25 February 1833.

We had the honour of addressing a letter to the President of the Board of Commissioners for the Affairs of India on the 4th of February last, accompanied with certain returns from several of the offices of the Supreme Court. We have now the honour of transmitting duplicates of the letter, and, in addition, returns from the Master of the Supreme Court and the Judges' Clerks. From the Sheriff we have not been able to procure any return, as the accounts for the year 1832 are not completed, and the offices of Crier and Interpreter are not affected by the new system of taxation. The office of Sheriff is, however, greatly reduced in value, partly owing to the taxation of 1831, and partly from the Judges having directed the expenses of the establishment to be defrayed by the Sheriffs instead of the Government.

The lamented death of Sir William Russell has deprived the Judges of his most valuable aid and assistance. But deeply as we regret the loss we have sustained, we shall endeavour to the best of our ability to discharge the important duties which have devolved upon us.

The subject of your letter of the 13th August last must necessarily occupy much of our time, and to which we cannot give our undivided attention while the court is sitting. We hope, however, in the course of the next vacation to bring our inquiries to a close, and to communicate the result to the President of the Board of Commissioners for the Affairs of India.

In the present month some of the most important offices of the court have become vacant, and we selected persons to fill them whom we thought most able and competent to discharge their duties; but they have accepted these offices on the express condition that they shall be subject "to such alterations and regulations in the fees and emoluments as to the Judges may seem meet and right."

By the appointments we have made, the offices of Equity, Ecclesiastical and Admiralty Registrar, of Prothonotary, Clerk of the Crown, Clerk of the Papers and Chief Clerk of the Insolvent Court, are now held upon the condition we have mentioned, and the Judges, therefore, have full power to regulate the fees and emoluments of these offices, without interfering with any vested rights.

The Judges trust that they shall be enabled to avail themselves of this power so as to allow a fair remuneration for the services of active and intelligent officers, while at the same time they may relieve the suitors from all unnecessary and burdensome costs.

We have, &c.
(signed) *John Franks.*
Edward Ryan.

From the Judges of the Supreme Court to the President of the Board of Commissioners for the Affairs of India.

Legis. Cons. 23 January 1837. No. 9.

Court-house, Calcutta,
Right honourable Sir, 17 December 1833.

By letters which we have had the honour of addressing to the President of the Board of Commissioners for the Affairs of India, dated the 4th and 25th of February in this year, we expressed our hope that at no distant period we should have the honour of submitting the result of our inquiries into the fees and emoluments of the officers of the Supreme Court.

We lost no time in directing the different officers to make returns of the fees and charges in their respective offices, compared with the charges for the like business by officers of the courts at home. The variety of the items, and the great difficulty and delay that have been experienced by the officers in accurately ascertaining the charges at home, has prevented some of them from completing

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

their returns, and the Judges feel that, until they have something like accurate data of this description before them, it would be very difficult to enter into that full investigation of the existing charges which they deem necessary, before they can with propriety suggest any large or sweeping alterations in the existing fees and salaries.

We are, however, anxious in the meantime to state, that we have been using our best endeavours to obtain from other sources every kind of information relating to the subject, it being our earnest desire to fulfil the intentions expressed in our former letters of diminishing the costs of all proceedings in the court to the lowest point that may be compatible with the due and sufficient administration of justice.

The returns of the officers, we have every reason to believe, will be made without much further delay; and had they been before us at an earlier period, this inquiry could not have been concluded, owing to the severe illness and absence of one of us (Sir Edward Ryan) from Calcutta. In consequence of this delay, we shall now be able to avail ourselves of the valuable aid and assistance of Sir John P. Grant.

We have, &c.

(signed) *Edward Ryan.*
John Franks.

Legis. Cons.
23 January 1837.
No. 10.

From the Judges of the Supreme Court, Calcutta, to the Right Hon. the President of the Board of Commissioners for the Affairs of India.

Court-house, Calcutta,
29 May 1835.

Right honourable Lord,

Sir John Franks and Sir Edward Ryan had the honour of addressing a letter to the President of the Board of Commissioners for the Affairs of India on the 17th October 1833, in which they explained the causes which had delayed the completion of their inquiry into the fees and emoluments of the officers of the Supreme Court, to which their attention had been called by a letter of the Right honourable Charles Grant, dated the 13th August 1832.

So long a period having elapsed without any further communication having been made to the Board, we feel it incumbent upon us to explain very briefly the reason of this apparent delay in complying with the wishes expressed by the late President.

In January 1834, Sir Edward Ryan was from severe illness unable to attend to the duties of the court, and in February was obliged to proceed to Madras and the Cape for the recovery of his health. In March of the same year Sir John Franks, for the same cause, was obliged to return to Europe, leaving, from March 1834 to February 1835, Sir John Peter Grant the only Judge at this Presidency.

Under such circumstances, it is hardly necessary that we should state that the business of the court engrossed the whole time and attention of the remaining Judge, and that it was impossible he could complete an inquiry which required a most minute attention to details.

In February 1835, Sir Edward Ryan returned to this Presidency, and we have since been using our best endeavours to fulfil the intentions expressed in former letters on this subject.

We confidently hope that we shall be enabled to lay before the India Board a plan for diminishing to a considerable extent the costs of all proceedings in this court, and which will at the same time allow a fair remuneration for the services of active and intelligent officers.

In communicating that plan, we trust we shall not be considered as travelling out of our sphere if we avail ourselves of that opportunity of suggesting some matters for the consideration of the India Board regarding the jurisdiction and powers of the court.

We ought also to state, that it is our intention to lay copies of all the papers we may transmit to the India Board before the Right honourable the Governor-general, and before the Indian Law Commissioners.

We cannot hope, as the term is approaching, to be enabled to complete our plans and statements before the close of the year, but we trust we shall forward them to the India Board by the ships of the ensuing season. This delay, however,

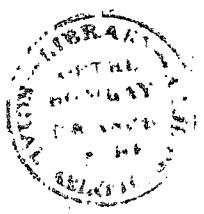
No. 1,
On Fees and Salaries of the Officers of the Supreme Courts.

ever, will be attended with the advantage of enabling us to have the advice and assistance of Sir Benjamin Malkin.

We beg also to add, that we hope to be able to diminish the expense of proceedings in the Insolvent Court, and also to avail ourselves of some of the valuable suggestions of Mr. Commissioner Law, communicated to the Judges of the court by the Right honourable the President of the Board of Control.

We have, &c.

(signed) *E. Ryan.*
J. P. Grant.



SCHEDULE (A.)

Legis. Cons.
23 January 1837.
No. 11.

RETURNS and STATEMENTS required by the Chief Justice, and furnished by the Master and Accountant-general.

No. 1. Return of fees and salary of the Master, Accountant-general and Keeper of Records, for the year from 19 November 1832 to 18 November 1833.

No. 2. Similar Return for the year from 19 November 1833 to 18 November 1834.

No. 3. Similar Return for the last-mentioned period, showing a difference arising from this Return, being for amount of taxed bills, the other actual receipts only.

No. 4. Return of fees, &c. of the Master, &c. for the year from 19 November 1834 to 18 November 1835.

No. 5. Statement showing the business done in references in Master Macnaghten's time for four years, from 1820 to 1823 inclusive.

No. 6. Like statement in Master Lewin's time for three years, from 1824 to 1826 inclusive.

No. 7. Like statement in Master Money's time for four years, from 1827 to 1830 inclusive.

No. 8. Like statement for one year in Master Dickens's time, from 1 April 1835 to 31 March 1836.

No. 9. Return of amount received by Accountant-general for commission from 1820 to 1832, both years inclusive, during a portion of which whole period the commission was 5 per cent., and the remainder 2½ per cent.

No. 10. Return showing the effect of reducing commission on principal sums paid into court to 1 per cent., retaining 2½ per cent. on receipts for interest.

No. 11. Master's Return, showing the effect of reducing charges for office copies to 5 annas per folio.

No. 12. Similar Return as to Accountant-general's office copies.

No. 13. Similar Return as to Keeper of Records.

(signed) *T. Dickens,*
Master and Accountant-general, S. C.

25 April 1836.

RETURNS and STATEMENTS required by the Chief Justice, and furnished by the Equity Registrar.

No. 1. Statement and Answer of the Equity Registrar in reply to the Queries put to him and the other officers of court by the Chief Justice as to their respective offices in the month of January 1834.

N.B.—This is joint with the Prothonotary's letter, No. 1.

No. 2. A comparative Table of all fees received by the Equity Registrar, and the charges for similar business in the Courts of Chancery and Exchequer, Equity side, as far as the same could be ascertained.

No. 3. Return of fees and salary of Equity Registrar from 19 November 1832 to 18 November 1833.

No. 4. Like Return for the year, from 19 November 1833 to 18 November 1834.

No. 5. Like Return for the year, from 19 November 1834 to 18 November 1835.

No. 6. Return of fees and salary for the years 1828, 1829, 1830, and the mean average of those three years; and like Return for the years 1831, 1832, 1833, 1834, and the mean average for those four years since the new system of taxation commenced.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

No. 7. Statement showing the number of decrees made in 1827, the number of folios in the same, and the charges for drawing, entering and engrossing.

No. 8. Statement showing the result which would have been produced in the years 1827, 1832 and 1833, by reducing the charges of all decrees, &c. to 6 annas per folio.

No. 9. Statement showing the effect in 1827 of reducing all charges for decrees to 5 annas per folio.

No. 10. Statement of number of decrees and orders made from 1828 to 1834, both inclusive.

No. 11. Tabulated Statement of business done by Equity Registrar for the period from 19 November 1831 to 18 November 1832, arranged under each head of charge.

No. 12. Like Statement for 1832, 1833.

No. 13. Return of orders and decrees made from 19 November 1831 to 18 November 1832, and amount of charges for each at present rates.

No. 14. Return showing the amount of charges for orders only for the years 1832 and 1833, at 10 annas per folio, and at 5 annas per folio, showing the effect of that reduction.

No. 15. Return for the like periods as No. 14, of affidavits and all other business charged per folio, as well as orders at both rates.

No. 16. Return showing number of decrees made in 1832, and the number of folios in each, and charges at present rates for drawing, entering and engrossing same.

No. 17. Similar Returns to No. 16 for the year 1833.

No. 18. Statement showing the difference in costs of a motion on notice and rule nisi.

No. 19. Explanatory Letter to the Chief Justice sent with No. 18.

(signed) *T. Dickens,*
Equity Registrar, S.C.

25 April 1836.

RETURNS and STATEMENTS required by the Chief Justice, and furnished by the Ecclesiastical and Admiralty Registrar.

No. 1. Statement and Answers of the Ecclesiastical and Admiralty Registrar in reply to the Queries put to him and the other officers of the court by the Chief Justice, as to their respective offices, in the month of January 1834.

No. 2. A Statement of the Ecclesiastical business of the court from the year 1828 to 1834 inclusive.

No. 3. A similar Statement of Admiralty business during the same period.

No. 4. Statement showing the number of probates of wills granted from November 1834 to 1835, and the total amount of the Registrar's fees in each case.

No. 5. A similar Statement in cases of administrations granted from November 1834 to November 1835.

No. 6. Particulars of the Registrar's fees as charged to parties in four different cases of applications for probate.

No. 7. A graduated ascending scale of fees on the grant of probate, varying as to the amount of assets, according to the course adopted in England.

No. 8. Particulars of the Registrar's fees as charged to parties in different cases of application for letters of administration.

No. 9. A graduated scale in cases of administration, according to the course adopted in England.

No. 10. A graduated ascending scale for cases in which the Ecclesiastical Registrar acts as proctor for the *ex-officio* administrator, and statement annexed.

No. 11. A comparative Table of all fees received by the Registrar, and the charges for similar business in the Ecclesiastical Courts in England.

No. 12. Comparative Table of charges for probates, administrations, &c. between the Prerogative Court of Canterbury and the Supreme Court at Calcutta, with several bills of costs, &c.

No. 13. Return of the particulars and number of folios for drawing, engrossing, registering, and office copies of sentences, orders, wills, &c., and the charges per folio, for the year 1835.

No. 14. Bill of costs for office copies of wills, accounts, &c. sent home.

No. 15. Returns of the fees and emoluments of the Ecclesiastical and Admiralty Registrar, from the year 1825 to 1833 inclusive.

No. 16. Ditto from 19 November 1833 to 18 November 1834.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

No. 17. Return of fees and emoluments of Ecclesiastical and Admiralty Registrar, from 19 November 1834 to 18 November 1835.

No. 18. A Statement exhibiting the mean of gross receipts and net receipts, and of the office expenses of the Ecclesiastical and Admiralty Registrar, from the year 1825 to 1834.

No. 19. Return of the various remittances made by the Registrar on account of estates in the year 1830, to February 1833.

No. 20. A similar Return from March 1833 to 1835.

No. 21. Letter from Government as to the transmission of copies of wills, accounts, &c. to the Court of Directors.

No. 22. Particulars of estates administered to in the year 1825, exhibiting names of parties, amount of assets, and the commission received by the Registrar.

No. 23. The like, from 1828 to 1830.

No. 24. The like, from 1831 to 1832.

No. 25. The like, for 1833.

No. 26. The like, for 1834.

No. 27. Memorandum of the commission in the returns of 1825, 1826 and 1827.

No. 28. A like Memorandum for 1828, 1829 and 1830.

No. 29. A like Memorandum for 1831 and 1832.

No. 30. A like Memorandum for 1833 and 1834.

No. 31. Return of amount of commissions received by the Registrar as *ex-officio* administrator for 20 years, from 1816 to 1835 inclusive.

No. 32. Registrar's account current with an estate.

No. 33. Proctor's bill of costs for obtaining administration with will under powers.

No. 34. Proctor's bill for common administration.

No. 35. Proctor's bill for probate.

No. 36. Registrar's ditto, as Proctor for *ex-officio* administrator.

No. 37. Registrar, as administrator under powers.

No. 38. Schedule of all sums of money, bonds and other securities remaining in charge of the Registrar, under 39 & 40 Geo. 3; and of all funds whatsoever that have ever come into the registry of the court since the establishment thereof, and remaining under charge of the Registrar on 31 December 1833.

No. 39. Schedule, filed 1 March 1834, of all estates, administration of which has been committed to the Registrar, under 39 & 40 Geo. 3, and of which the net balances are in course of payment, or have been paid to parties entitled to the same since the last Report, on 22 October 1833.

No. 40. Schedule, filed 1 March 1834, of all sums of money, bonds and other securities belonging to the estates committed to the Registrar, from 22 October 1832 to 1 March 1833, and of payments made thereout, with the balances appearing on the same after the expiration of 12 months from the date of each administration.

No. 41. A Schedule similar to No. 39, brought down to October 1834.

No. 42. A Schedule similar to No. 40, brought down to October 1834.

No. 43. Schedule of estates in the hands of the Registrar, exhibiting a statement of the amount of assets and unclaimed dividends payable on registered debts, from the year 1805 to 14 February 1833, when the same came into the hands of the present Registrar.

No. 44. Copy of Letter to the Secretary to Government, forwarding Schedules to be transmitted to the Court of Directors.

(signed) *W. H. Smoult*,
Ecclesiastical and Admiralty Registrar, S. C.

25 April 1836.

RETURNS and STATEMENTS required by the Chief Justice, and furnished by the Prothonotary.

No. 1. Statement and Answer of the Prothonotary in reply to the Queries put to him and the other officers of the court by the Chief Justice as to their respective offices, in the month of January 1834.

N.B.—This is joint with the Equity Registrar's statement.

No. 2. A comparative Table of all fees received by the Prothonotary, and the charges for similar business in the Courts of Common Law at Westminster, as far as the same could be ascertained.

No. 3. Return of fees received by the Prothonotary from 19 November 1832 to 18 November 1833.

No. 4. Similar Return for the period from 19 November 1833 to 18 November 1834.

No. 5. Similar Return for the period from 19 November 1834 to 18 November 1835.

No, 1:
On Fees and Salaries of the Officers of the Supreme Courts.

No. 6. Returns of the business done in the Prothonotary's office in the year 1832, showing the amount received under each head.

No. 7. Like Return for the like period, showing the amount received under each head, and further, the effect of reducing the charge to 5 annas a folio of all charges made per folio.

No. 8. Return showing the business done and amount received under each head of charge for the year 1835, and also the effects of a reduction to 5 annas per folio of all charges per folio.

No. 9. Return showing the amount charged for office copies of plaints, affidavits and orders in the Prothonotary's office (omitting records), from 19 November 1831 to 18 November 1832, and from 19 November 1834 to 18 November 1835, at 10 annas per folio and at 5 annas per folio.

No. 10. Statement of business done in the Prothonotary's office from 1829 to 1834 inclusive.

(signed) *T. Dichens*, Prothonotary, S. C.

25 April 1836.

A CORRECT LIST of the Returns and Statements required by the Chief Justice, and furnished by the Clerk of the Crown.

No. 1. Statement and Answers of the Clerk of the Crown, in Reply to the Queries put to him and the other officers of the court by the Chief Justice as to their respective offices, in the month of January 1834.

No. 2. A comparative Table of all fees received by the Clerk of the Crown, and the charges for similar business in the courts in England, as far as the same could be ascertained.

No. 3. Return of fees and emoluments of the Clerk of the Crown's office, from 18 November 1833 to 18 November 1834.

No. 4. Return of fees and emoluments of the Clerk of the Crown's office, from 18 November 1834 to 18 November 1835.

No. 5. Return of fees and emoluments of the Clerk of the Crown's office, for the year 1835 inclusive.

No. 6. Return of the total receipts of the Clerk of the Crown's office, from 1825 to 1834 inclusive.

No. 7. Return of the business done in the Clerk of the Crown's office for the year 1830, showing the amount received under each head.

No. 8. Return of the business done in the Clerk of the Crown's office for the year 1832, showing the amount received under each head.

No. 9. Return of the business done in the Clerk of the Crown's office for the year 1834 inclusive, showing the amount received under each head.

No. 10. Return of the business done in the Clerk of the Crown's office for the year 1835 inclusive, showing the amount received under each head.

No. 11. A Statement of receipts for drawing and engrossing indictments, and drawing and engrossing records, copying office copies, drawing jury list, and copying same for publication, in the years 1830, 1832, 1834 and 1835, at 1 rupee per folio, at 10 annas per folio, agreeably to the table of fees, and also at 5 annas per folio.

No. 12. Charges formerly in misdemeanor and charges now in misdemeanor; charges formerly in felony and charges now in felony.

No. 13. Number of cases tried in the Supreme Court at the sessions of Oyer and Terminer and Gaol Delivery, from the year 1829 to the year 1834 inclusive.

(signed) *Henry Holroyd*,
Clerk of the Crown.

25 April 1836.

A LIST of the Returns made to the Chief Justice by the Clerk of the Papers.

No. 1. Statement and Answers of the Clerk of the Papers in Reply to Queries put to him and the other officers by Chief Justice as to their respective offices, in the month of January 1834.

No. 2. Explanation by the Clerk of the Papers respecting certain fees alluded to in the letter of the President of Board of Control, dated 13 August 1832.

No. 3. General comparison of fees received here, with the fees received for the like business done at home.

No. 4. A comparative Statement of the reduction caused in the office of the Clerk of Papers by the new system of taxation, in February 1831.

No. 5. A Return of the receipts and emoluments from 1828 to 1834.

No. 6. A Return of receipts and emoluments for 1835.

No. 7. A detailed statement of fees and emoluments classed under distinct heads for 1830.
No. 8. Ditto, for 1831.
No. 9. Ditto, from 1831 to 1834, classed under distinct heads.
No. 10. An abstract of business from 1829 to 1834.
No. 11. The effect a reduction from 10 to 5 annas per folio would cause in the profits of the office for 1835.

(signed) *John Franks*,
Clerk of the Papers.

RETURNS and STATEMENTS required by the Chief Justice, and furnished by the Sworn Clerk.

No. 1. Statement and Answers of the Sworn Clerk in reply to the Queries put to him and the other officers of the court by the Chief Justice as to their respective offices in January 1834.	1834.
No. 2. Statements and observations submitted to the Judges in consequence of a communication from the President of the India Board, dated August 1832, relative to the charges of the different offices of the Supreme Court.	May 1834. 22 April 1835.
No. 3. Return of receipts and emoluments for the year 1834.	
No. 4. Return of receipts and emoluments of the Sworn Clerk's Office since the year 1827 to the end of 1834: Account of receipts and emoluments from the year 1827 to the end of 1830, the new system of taxation having come into operation in February 1831.	May.
No. 5. Return of fees and emoluments of the Sworn Clerk's Office for the year 1835.	November.
No. 6. Fees of the Sworn Clerk's Office, distinguished under the different heads of charge, including two terms of 1829 and two terms of 1830.	
No. 7. Ditto, ditto, for the four terms of the year 1830.	
No. 8. Ditto, ditto, for the years 1831, 1832, 1833 and 1834.	
No. 9. List of bills, bills amended, bills of revivor, supplement, &c.; answers, further answers, pleas, demurrer, &c., from the year 1828 to 1834.	
No. 10. Fees of the Sworn Clerk's Office, distinguished under the different heads of charge for the four terms of 1835.	
No. 11. Return, showing the effect it would have upon the Sworn Clerk's Office, if the rate at present fixed for engrossing and for office copies was reduced from 10 annas per folio to 5 annas.	December.

(signed) *R. O. Dowda*,
Sworn Clerk.

Court House, 25 April 1836.

LIST of Returns made to the Judges by the Examiner of the Supreme Court.

No. 1. Statement in reply to the Queries submitted by the Judges of the court.
No. 2. Return of the fees, salary and emoluments from 20 December 1824 to 20 December 1827.
No. 3. Return of the fees, salary and emoluments from 20 December 1827 to 20 December 1834.
No. 4. Return of the fees, salary and emoluments from 18 November 1834 to 19 November 1835.
No. 5. Statement showing the amount of charges for drawing, copying and engrossing of all business in the Examiner's Office for the years 1833, 1834 and 1835, at 10 annas and 8 annas per folio, and at 5 annas per folio, showing the effect of that reduction.

(signed) *E. Macnaghten*, Examiner.

LIST of Returns made to the Judges by the Receiver of the Supreme Court.

Return of Commission, &c.:—

No. 1. For the year 1832.
No. 2. For the year 1834.
No. 3. And from November 1834 to October 1835, inclusive.

(signed) *E. Macnaghten*,
Receiver, Supreme Court.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

RETURNS required by the Chief Justice and made by the Sealer.

No. 1. The Sealer's fees and emoluments from 1 January to 31 December 1834.

No. 2. The Sealer's fees and emoluments from 19 November 1834 to 18 November 1835.

(signed) *E. B. Ryan*, Sealer.

25 April 1836.

RETURNS required by the Chief Justice and made by the Clerk to the Chief Justice.

No. 1. The fees and emoluments of the Clerk to the Chief Justice from 1 January to 31 December 1834.

No. 2. The fees and emoluments of the Clerk to the Chief Justice from 1 January to 18 November 1835.

(signed) *E. B. Ryan*,
Clerk to the Chief Justice.

25 April 1836.

LIST of Returns made to the Honourable the Chief Justice by *John Caw*, Clerk to the Honourable Mr. Justice *Grant*.

No. 1. Return of fees and other emoluments received by and payable to John Caw, Clerk to the Honourable Sir John Peter Grant, for the year 1834, certified by the said John Caw on 1 May 1835.

No. 2. Return of fees and other emoluments received by and payable to the said John Caw, from 1 January to 18 November 1835, certified by the said John Caw on 19 November 1835.

(signed) *John Caw*,
Clerk to Mr. Justice Grant.

Calcutta, 25 April 1836.

No. 1. List of Returns made by the Chief Interpreter. A correct return of the salary, fees and emoluments received by me, W. C. Blaguire, Persian Translator and Chief Interpreter to the Supreme Court of Judicature at Fort William in Bengal, for and during the year 1834. Required by the Honourable the Chief Justice.

(signed) *W. C. Blaguire*,
Persian Translator and Chief Interpreter.

No. 2. A correct Return of the salary, fees and emoluments received by me, W. C. Blaguire, Persian Translator and Chief Interpreter to the Supreme Court of Judicature at Fort William in Bengal, for and during the year 1835. Required by the Honourable the Chief Justice.

(signed) *W. C. Blaguire*,
Persian Translator and Chief Interpreter.

LIST of Returns made by the Second Interpreter.

No. 1. A correct Return of the salary, personal sessions allowance and fees (for translations made at home) received by W. D. S. Smith, sole Second Interpreter of the Oriental languages in the Supreme Court of Judicature at Fort William in Bengal, for and during the year 1834, required by the Chief Justice.

No. 2. A correct Return of the salary, personal sessions allowance and fees (for translations made at home) received by Mr. W. D. S. Smith, sole Second Interpreter of the Oriental languages in the Supreme Court of Judicature at Fort William in Bengal, from the 18th November 1834 to the 17th November 1835, required by the Chief Justice.

(signed) *W. D. S. Smith.*

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

A CORRECT LIST of Returns and Statements required by the Chief Justice, and furnished by the Taxing Officer.

No. 1. A Return of the Attorney's and officer's bills taxed, and of the gross amount of the Taxing Officer's fees, exclusive of his office establishment, from 8 February 1831 to 18 November 1833.

No. 2. A Return of the Attorney's and officer's bills taxed, and of the gross amount of the Taxing Officer's fees, inclusive of his office establishment, from 19 November 1833 to 18 November 1835.

No. 3. Return of expenses of the Taxing Officer's establishment, from 1831 to 1834 inclusive.

(signed) *Richard Vaughan*, Taxing Officer.

25 April 1836.

A CORRECT LIST of Returns and Statements required by the Chief Justice, and furnished by the Counsel for Paupers.

No. 1. Salary and emoluments of Counsel for Paupers for the year 1834.

No. 2. Return of the fees and emoluments of the Advocate for Paupers from 18 November 1834 to 19 November 1835.

(signed) *Richard Marnwell*,
Advocate for Paupers.

25 April 1836.

A CORRECT LIST of Returns and Statements required by the Chief Justice, and furnished by the Attorney for Paupers.

No. 1. Return of fees and emoluments of the Attorney for Paupers from 1 November 1834 to 19 November 1835.

(signed) *Charles Strettell*,
Attorney for Paupers.

A CORRECT LIST of Returns and Statements required by the Chief Justice, and furnished by the Clerk to the Grand Jury.

No. 1. Return of the fees and emoluments of Clerk to the Grand Jury for 1835.

(signed) *R. Swinhoe*,
Clerk to the Grand Jury.

25 April 1836.

No. 1. A CORRECT RETURN of the salary and fees received by Mr. Gentloom Aviet, deceased, the late Interpreter and Tipstaff to the Honourable Sir Edward Ryan, Knight, Chief Justice of the Supreme Court of Judicature at Fort William in Bengal, for and during the year 1834.

(signed) *A. G. Aviet*,
Interpreter and Tipstaff to
the Honourable the Chief Justice.

RETURNS of the Crier and Apparator.

No. 1. Return of fees, emoluments and salary, from 18 November 1833 to 18 November 1834.

No. 2. Ditto, 19 November 1834 to 18 November 1835.

(signed) *B. Preston*,
Crier and Apparator.

Calcutta, 25 April 1836.

A LIST of the Returns made to the Chief Justice by the Chief Clerk of the Insolvent Court.

No. 1. Return of receipts and emoluments from 1829 to 1834.

No. 2. Statement of business from 1829 to 1834.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

No. 3. Return of receipts and emoluments for 1835.

No. 4. Return, showing the effect a reduction from 10 annas for engrossing and office copies to 5 annas per folio would cause in the receipts of the office for 1835.

(signed) *Jno. Franks,*
Chief Clerk.

A CORRECT LIST of the Returns and Statements required by the Chief Justice, and furnished by the Examiner, Common Assignee and Commissioner for taking Affidavits of Insolvents in the Court of Insolvent Debtors.

No. 1. Receipts and emoluments of offices held by me, viz.; Examiner, Common Assignee, and Commissioner for taking Affidavits of Insolvents in prison, for 1834.

No. 2. Receipts and emoluments of offices held by me, viz.; Examiner, Common Assignee, and Commissioner for taking Affidavits of Insolvents in prison, for the year 1835.

No. 3. Amended Return of receipts and emoluments of offices held by me, viz.; Examiner, Common Assignee, and Commissioner for taking Affidavits of Insolvents in prison, for the year 1835.

(signed) *P. O'Hanlon,*
Examiner, Common Assignee, and Commissioner, &c.

25 April 1836.

RETURNS to Orders of the Honourable the House of Commons of the Amount of Salaries and Emoluments of every kind received by the several Officers of His Majesty's Supreme Court of Judicature at Fort William in Bengal.—Ordered by the House of Commons to be printed, 5 February 1830.

LIST.

No. 1. Letter from Sir C. E. Grey, Sir J. Franks and Sir E. Ryan, to the Secretary of the Board of Commissioners for the Affairs of India.

No. 2. Return of the Honourable Sir Charles Edward Grey, Knight, Chief Justice.

No. 3. Return of the Honourable Sir John Franks, Knight, First Puisne Justice.

No. 4. Return of the Honourable Sir Edward Ryan, Knight, Second Puisne Justice.

No. 5. Table of Fees framed in 1803, and Tables of Fees in the Vice-Admiralty Court.

No. 6. Rules and Orders of Court relating to fees, and regulating the Master in taxation of costs.

No. 7. Charges and fees made and received by the Registrar, not provided for in the Table of Fees of 1803.

No. 8. Charges and Fees made and received by the Master, not provided for in the Table of Fees of 1803.

No. 9. Schedules showing the state of business on the Equity, Ecclesiastical and Admiralty sides of the Supreme Court, from 1800 to 1827, both inclusive, and showing the number of bills and answers filed since the establishment of the Court.

No. 10. Schedule showing state of business on the Plea and Crown sides of the Court, from the establishment of the Court.

No. 11. Schedule showing the number of writs received in the Sheriff's office from 1800 to 1828, both inclusive.

No. 12. Present List of salaried officers, and general establishment of the Court, not included in the Sheriff's establishment.

No. 13. Establishment of the Sheriff's office, including the court-house, gaol, and the house of correction.

No. 14. Return of James Weir Hogg, esq., Registrar in the Equity, Ecclesiastical and Admiralty sides of the Court, and Registrar of the Vice-Admiralty Court.

No. 15. Return of James Weir Hogg, esq., Receiver.

No. 16. Return of George Money, esq., the Master in Equity, Accountant-general, and Keeper of the Records.

No. 17. Return of William Hunter Smoult, esq., Clerk of the Crown and Prothonotary.

No. 18. Return of John Wheatley, esq., Sworn Clerk.

No. 19. Return of Robert O. Dowda, esq., Clerk of the Papers, Depositions and Reading Clerk.

No. 20. Return of Elliot Macnaghten, esq., Examiner and Sealer.

No. 21. Return of Sheriffs for years 1825, 1826 and 1827:

No. 22. Return of Richard Marnell, esq., Counsel for Paupers.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

No. 23. Return of Mr. Charles George Strettel, Attorney for Paupers.

No. 24. Return of the Clerks to the Judges, with a statement of some charges not provided for in the Table of Fees of 1803.

No. 25. Return of Mr. William Coates Blaguire, esq., Principal Interpreter and Persian Translator.

No. 26. Return of Mr. William Derrick Sovereign Smith, Second Interpreter.

No. 27. Return of Mr. A. G. Silveira, Interpreter of the foreign European languages.

No. 28. Return of Mr. Benjamin Preston, Crier of the Court, and Tipstaff to the Chief Justice.

No. 29. Return of George Aviet, Interpreter to the Chief Justice.

No. 30. Return of Gentloom Aviet, Interpreter and Tipstaff to Sir Edward Ryan, and Interpreter to the Grand Jury.

No. 31. Return of Edmund Preston, Tipstaff to Sir John Franks.

No. 32. Return of Gentloom Aviet, junior, Interpreter to Sir John Franks.

No. 33. Return of Mr. Robert Swinhoe, Clerk to the Grand Jury.

No. 34. Return of Mr. Samuel Prattington Stacy, Marshal of the Vice-Admiralty Court.

No. 35. Return of David Pearson, Gaoler.

No. 36. Rules and fees established by order of the Judges, the 15th of June 1829.

SCHEDULE (B.)

PRESENT NET AVERAGE ANNUAL VALUE OF OFFICES.

Sheriff, Gaoler, Nazeer and Mehter not included.

	Sa. Rs.			
Ecclesiastical and Admiralty Registrar	89,037	–	–	including commission.
Equity Registrar	52,786	–	–	
Prothonotary	24,110	–	–	
Master	37,358	–	–	
Accountant-general	25,681	–	–	
Record Keeper	936	–	–	
Sworn Clerk	21,104	–	–	
Clerk of the Papers	17,327	–	–	
Clerk of the Crown	14,890	–	–	
Examiner	15,112	7	–	
Receiver	13,704	–	–	
Interpreter, *First*	9,147	4	–	
„ Second	10,405	–	–	
„ of Foreign European Languages	3,000	–	–	
Sealer	5,611	–	–	
3 Judges' Clerks	20,147	14	–	
Crier	3,375	8	–	
Pauper Counsel	6,703	4	–	exclusive of fees.
Pauper Attorney	4,468	14	–	exclusive of fees.
3 Tipstaffs	2,792	4	–	
3 Judges' Interpreters	2,792	4	–	
Interpreter *to* Grand Jury	400	–	–	
Clerk to Grand Jury	800	–	–	
2 Moulavies	2,234	7	–	
2 Pundits	2,234	7	–	
2 Moolnas	335	1	–	
Brahmin	335	1	–	
Allowance for Chobdars	2,860	8	–	
Examiner of Insolvent Court	8,036	8	3	
Chief Clerk of Insolvent Court	13,885	–	–	
Taxing Officer	22,245	15	–	
	4,33,855	10	3, or *Co.'s Rs.*	4,62,779 5 7

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Legis. Cons. 23 January 1837. No. 12.

Schedule (C.)

Present Gross Average Value of Offices.

Ecclesiastical, &c. Registrar	43,717	–	–	exclusive of commission.
Equity Registrar	60,459	1	3	
Prothonotary	34,966	–	–	
Master	42,039	4	–	
Accountant-general	1,931	10	8	exclusive of commission.
Record Keeper	1,674	9	–	
Sworn Clerk	24,841	1	6	
Clerk of the Papers	19,868	3	6	
Clerk of the Crown	20,409	9	–	
Examiner	19,672	14	6	
Receiver	417	13	–	exclusive of commission.
Interpreter, First	9,147	4	–	
„ Second	12,573	–	7	
„ Foreign European Languages	3,000	–	–	
Sealer	6,091	–	–	
Judges' Clerks	21,629	10	–	
Crier	3,815	14	–	
Pauper Counsel	6,703	4	4	exclusive of fees in successful cases.
Pauper Attorney	4,468	14	–	exclusive of fees in successful cases.
Tipstaffs	2,792	4	–	
Judges' Interpreters	2,792	4	–	
Interpreter to Grand Jury	400	–	–	
Clerk to Grand Jury	800	–	–	
Moulavies	2,234	7	–	
Pundits	2,234	7	–	
Moolnas	335	1	–	
Brahmin	335	1	–	
Chobdars	2,860	8	–	
Examiner of Insolvent Debtors' Court	9,409	2	–	
Chief Clerk of Insolvent Debtors' Court	15,391	10	9	
Taxing Officer	25,300	8	–	
	4,02,311	5	9, or *Co.'s Rs.* 4,29,132	1 10

Schedule (D.)

Salaries.

Sheriff, Nazeer and Mehter not included.

Registrar in Equity	5,586	4	–	
„ Ecclesiastical 1,862	3,724	–	–	
„ Admiralty 1,862				
Master	7,273	8	8	
Clerk of Papers	3,724	2	–	
Examiner	4,055	9	–	
Counsel for Paupers	6,703	4	–	
Attorney for Paupers	4,468	14	–	
Judges' Clerks	8,380	2	–	
Principal Interpreter	7,448	4	–	
Second ditto	4,096	8	–	
Interpreter of Foreign European Languages	3,000	–	–	
Crier	1,582	12	–	
Interpreters to Judges	2,792	4	–	
„ to Grand Jury	400	–	–	
Tipstaffs	2,792	4	–	
Clerk to the Grand Jury	800	–	–	
Moulavies	2,234	7	–	
Pundits	2,234	7	–	
Moolnas	335	1	–	
Brahmin	335	1	–	
Chobdars, C. J.	1,430	4	–	
„ Puisne Judges	1,430	4	–	
Whole Amount of Salaries	74,827	3	8, or *Co.'s Rs.* 79,815	11 5

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

SCHEDULE (E.)

PROPOSED FINAL ARRANGEMENT OF OFFICES.

	Co.'s Rs.
Master, Accountant-general, Examiner in Equity and Examiner in Insolvent Court	54,000
Ecclesiastical, Equity and Admiralty Registrar, and Sworn Clerk, about	54,000
Prothonotary, Clerk of the Crown, Clerk of the Papers and Sealer	36,000
Taxing Officer, Receiver, Record Keeper and Chief Clerk of the Insolvent Court	36,000
Attorney for Paupers	4,800
3 Judges' Clerks	25,200
2 Interpreters of the Court, 4,800 salary to Senior Interpreter, 3,600 salary to Junior Interpreter, and about 8,000 in fees, about	16,400
Crier	2,400
2 Judges' Interpreters	7,200
Clerk of the Grand Jury	400
2 Moulnahs	360
2 Brahmins	720
Allowance for Chobdars (C. J. 504 each; Puisne Judge, 336)	1,176
	2,38,656

SCHEDULE (F.)

PROPOSED IMMEDIATE ARRANGEMENT OF THE COURT.

	Co.'s Rs.
Equity Registrar, Master and Accountant-general, Mr. Dickens	66,000
Ecclesiastical and Admiralty Registrar, Mr. Smoult, about	66,000
Prothonotary and Clerk of the Crown, Mr. Holroyd	24,000
Taxing Officer and Record Keeper, Mr. Vaughan	24,000
Sworn Clerk, Mr. O'Dowda	22,800
Clerk of the Papers and Chief Clerk of the Insolvent Court, Mr. Franks	33,000
Examiner in Equity and Receiver, Mr. Macnaghten	30,000
Examiner in the Insolvent Debtors' Court, Mr. O'Hanlon	8,400
Counsel for Paupers, Mr. Marnell	7,200
Attorney for Paupers	4,800
Judges' Clerks	25,200
First Interpreter, Mr. Blacquiere (8,100 salary)	9,800
Second Interpreter, Mr. Smith (4,800 salary)	11,100
Interpreter of Foreign European Languages, Mr. Airet	1,200
Sealer, Mr. Ryan	6,000
Crier, Mr. Preston	3,600
1 Tipstaff	960
Allowance for Chobdars	1,176
Interpreters to the Chief Justice	3,600
Interpreters to the Puisne Judges	3,600
Clerk to the Grand Jury, Mr. R. Swinhoe	800
Moulavies	2,400
Pundits	2,400
Moulnahs	360
Brahmin	60
	3,58,756

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Schedule (G.)

Amount of Expenditure in each Office.

	Sicca Rs.		
Ecclesiastical, &c. Registrar	5,682	–	–
Equity Registrar	7,673	1	3
Prothonotary	18,856	–	–
Master	4,681	4	–
Accountant-general	2,210	–	–
Record Keeper	738	9	–
Sworn Clerk	3,737	1	6
Clerk of the Papers	2,541	3	6
Clerk of the Crown	5,519	9	–
Examiner	4,560	7	6
Receiver	1,794	–	–
Sealer	480	–	–
Judges' Clerks	1,481	12	–
Crier	440	6	–
Examiner of I. D. C.	1,372	9	9
Chief Clerk of I. D. C.	1,506	10	9
Taxing Officer	3,054	9	–
	58,329	3	3
Or Company's Rupees	62,218	13	1

Schedule (H.)

Reductions by reducing everything paid by folio, except the Fees to the Interpreters, to Five Annas, and by introducing Lord Brougham's rule as to Decrees, and by abolishing the engrossing of Depositions in the Examiner's Office, and by making all Folios consist of 90 words.

				Period from which Returns are taken:
Master	2,986	7	–	November 19, 1834, to November 19, 1835.
Accountant-general	380	3	–	November 19, 1834, to November 19, 1835.
Prothonotary	12,002	–	1	Year 1832.
Equity Registrar	21,874	4	6	Average of 1832, 1833, and 1827, also included in taking the average of the Decrees.
Ecclesiastical Registrar	5,555	10	–	Year 1835.
Sworn Clerk	7,700	10	–	Year 1835.
Clerk of the Papers	3,556	–	–	Year 1835.
Examiner	5,965	12	–	Average of 1833, 1834, 1835.
Clerk of the Crown	7,570	–	–	Average of 1830, 1832, 1834, 1835.
Chief Clerk of Insolvent Court	7,936	1	–	Year 1835.
Examiner of Insolvent Court	1,000	–	–	This is a conjectural estimate, no Return having been furnished.
	76,527	–	6	

Schedule

SCHEDULE (I.)

	Present Fees and Commission, in Company's Rupees.	Immediate Reductions.	Sum immediately applicable to the Payment of Salaries and Expenses.	Expenses of Office, in Sicca Rupees.	Salaries to be paid immediately, in Company's Rupees.	
Ecclesiastical and Admiralty Registrar.	35,450 – –	5,555 10 –	29,894 6 –	5,682 – –	12,000 – –	Mr. Smoult.
Equity Registrar	54,872 13 3	21,874 4 6	32,998 8 9	7,673 1 3	} 66,000 – –	Mr. Dickens.
Master	34,765 11 8	2,986 7 –	31,779 4 8	4,681 4 –		
Accountant-general	29,621 10 –	9,070 – 8	20,551 9 4	2,210 – –		
Sworn Clerk	24,841 1 6	– – –	24,841 1 6	3,737 1 6	22,800 – –	Mr. O'Dowda.
Examiner in Equity	15,671 5 6	– – –	15,671 5 6	4,560 7 6	} 30,000 – –	Mr. M'Naghten.
Receiver	16,503 5 –	– – –	16,503 5 –	1,794 – –		
Taxing Officer	25,300 8 –	– – –	25,300 8 –	3,054 9 –	} 24,000 – –	Mr. Vaughan.
Record Keeper	1,674 9 –	– – –	1,674 9 –	738 9 –		
Prothonotary	34,966 – –	12,002 1 –	22,963 15 –	10,856 – –	} 24,000 – –	Mr. Holroyd.
Clerk of the Crown	20,409 9 –	7,570 – –	12,839 9 –	5,519 9 –		
Clerk of the Papers	16,144 1 6	– – –	16,144 1 6	2,541 8 6	} 33,000 – –	Mr. Franks.
Chief Clerk of the Insolvent Debtors' Court.	15,391 10 9	– – –	15,391 10 9	1,506 10 9		
Examiner of Insolvent Debtors' Court.	9,409 2 –	– – –	9,409 2 –	1,372 9 9	8,400 – –	Mr. O'Hanlon.
Interpreters	– – –	– – –	– – –	– – –	} 8,100 – –	Mr. Blacquiere.
					} 4,800 – –	Mr. Smith.
					} 1,200 – –	Mr. Airet.
Sealer	6,091 – –	– – –	6,091 – –	480 – –	6,000 – –	Mr. Ryan.
Judge's Clerks	13,249 8 –	– – –	13,249 8 –	1,481 12 –	25,200 – –	On permanent footing.
Crier	2,233 2 –	– – –	2,233 2 –	440 6 –	3,600 – –	Mr. Preston.
Counsel for Paupers	– – –	– – –	– – –	– – –	7,200 – –	Mr. Marnell.
Attorney for Paupers	– – –	– – –	– – –	– – –	4,800 – –	On permanent footing.
One Tipstaff	– – –	– – –	– – –	– – –	960 – –	Mr. ———
Judges' Interpreters	– – –	– – –	– – –	– – –	7,200 – –	On permanent amount.
Clerk of the Grand Jury	– – –	– – –	– – –	– – –	800 – –	Mr. R. Swinhoe.
Moulavies	– – –	– – –	– – –	– – –	2,400 – –	} Present holders.
Pundits	– – –	– – –	– – –	– – –	2,400 – –	
Moulnahs	– – –	– – –	– – –	– – –	360 – –	On permanent footing.
Brahmin	– – –	– – –	– – –	– – –	360 – –	To be increased when another is appointed.
Allowance for Chobdars	– – –	– – –	– – –	– – –	1,176 – –	On permanent footing.
	3,56,541 1 2	59,058 7 2	2,97,482 10 –	58,329 3 3	296,756 – –	
			Or Company's Rupees,		62,218 13 1	
					3,58,974 13 1	Whole immediate expense to Government.
					2,97,482 10 –	Whole receipts of Government.
					61,492 3 1	Immediate charge to Government, instead of the present amount of Salaries, 79,815. 11. 5.

SCHEDULE (K.)

	Present Fees and Commission, in Company's Rupees.	Total Reduction at present proposed.	Sums applicable Payment of Salaries and Expenses.	Ultimate Salaries, in Company's Rupees.		
Ecclesiastical and Admiralty Registrar.	35,450 – –	5,555 10 –	29,894 6 –	5,682 – –	} – – –	Ecclesiastical, Equity and Admiralty Registrar, and Sworn Clerk.
Equity Registrar	54,872 13 3	21,874 4 6	32,998 8 9	7,673 1 3		
Sworn Clerk	24,841 1 6	7,700 10 –	17,140 7 6	3,737 1 6		
Master	34,765 11 8	2,986 7 –	31,779 4 8	4,681 4 –	} 54,000 – –	Master, Accountant-general, Examiner in Equity, and Examiner in I. D. C.
Accountant-general	29,621 10 –	9,070 – 8	20,551 9 4	2,210 – –		
Examiner in Equity	15,617 5 6	5,965 12 –	9,651 9 6	4,560 7 6		
Examiner in Insolvent Debtors' Court.	9,409 2 –	1,000 – –	8,409 2 –	1,372 9 9		
Prothonotary	34,966 – –	12,002 1 –	22,963 15 –	10,856 – –	} 36,000 – –	Prothonotary, Clerk of the Crown, Clerk of Papers, and Sealer.
Clerk of the Crown	20,409 9 –	7,570 – –	12,839 9 –	5,519 9 –		
Clerk of the Papers	16,144 1 6	3,556 – –	12,588 1 6	2,541 8 6		
Sealer	6,091 – –	– – –	6,091 – –	480 – –		
Taxing Officer	25,300 8 –	– – –	25,300 8 –	3,054 9 –	} 36,000 – –	Taxing Officer, Receiver, Record Keeper, and Chief Clerk of I. D. C.
Receiver	16,503 5 –	– – –	16,503 5 –	1,794 – –		
Record Keeper	1,674 9 –	– – –	1,674 9 –	738 9 –		
Chief Clerk of Insolvent Debtors' Court.	15,391 10 9	7,936 1 –	7,455 9 9	1,506 10 9		

(continued)

SCHEDULE (K.)—*continued.*

	Present Fees and Commission, in Company's Rupees.	Total Reduction at present proposed.	Sums applicable to the Payment of Salaries and Expenses.	Ultimate Salaries, in Company's Rupees.		
Interpreters	- - -	- - -	- - -	- - -	4,800 - -	Senior Interpreter.
					3,600 - -	Junior Interpreter.
Judges' Clerks	13,249 8 -	- - -	13,249 8 -	1,481 12 -	25,200 - -	Judges' Clerks.
Crier	2,233 2 -	- - -	2,233 2 -	440 6 -	2,400 - -	Crier.
Attorney for Paupers	- - -	- - -	- - -	- - -	4,800 - -	Attorney for Paupers.
Judges' Interpreters	- - -	- - -	- - -	- - -	7,200 - -	Judges' Interpreters.
Clerk to the Grand Jury	- - -	- - -	- - -	- - -	400 - -	Clerk to the Grand Jury.
Moulnahs	- - -	- - -	- - -	- - -	360 - -	Moulnahs.
Brahmins	- - -	- - -	- - -	- - -	720 - -	Brahmins.
Allowance for Chobdars	- - -	- - -	- - -	- - -	1,176 - -	
	3,56,541 1 2	85,216 14 2	2,71,324 3 -	58,329 3 3	1,76,656 - -	
			Or Company's Rupees,		62,218 13 1	
					2,38,874 13 1	Whole final expense to Government.
Surplus, besides the whole amount of present Salaries saved - - -					2,71,324 3 -	
					32,449 5 11	Whole receipts of Government on full execution of plan as at present proposed.
					79,815 11 5	Amount of present Salaries.
					1,12,265 1 4	Fund applicable to future reductions, without subjecting the Government to any expense beyond that at present incurred.

(No. 175.)

Legis. Cons. 13 June 1836. No. 4.

To *F. Millett*, Esq., Secretary to the Indian Law Commissioners.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you, to be laid before the Indian Law Commissioners for their consideration, copies of the Papers, noted below,* relative to the mode of examination practised with regard to witnesses in Equity suits pending in the Supreme Court.

2. As connected with this subject, I am desired to forward the correspondence (also specified below,†) on the subject of the fees of the officers of the Supreme Courts of the three Presidencies, with the view to its being laid before the Indian Law Commissioners for their consideration, and such suggestions as a perusal of the contents of those documents may lead them to offer.

3. In the consideration of the plan for regulating the allowances of the officers of the Supreme Court, the Commissioners are requested to bear in mind the principle referred to in the 4th para. of the letter of this date, addressed to the Judges of the Supreme Court of Fort William.

4. You are requested to return the original papers when they are no longer required by you.

I have, &c.,

Council Chamber, 13 June 1836.

(signed) *W. H. Macnaghten*, Secretary to the Government of India.

MINUTE

* Letter to the Judges of the Supreme Court of Fort William, dated 30th May 1836.
Letter from the Judges of the Supreme Court of Fort William in reply, dated 6th June.
Letter to the Judges of the Supreme Court of Fort William, dated 13th June.

† Copy of a Letter from the Honourable the Court of Directors to the Governor-general of India in Council, No. 3, dated 10th June 1835; Copy of a Letter from the Governor-general in Council to the Judges of the Supreme Courts of Fort William, Fort St. George, and Bombay, dated 2d November 1835.
Copy of a Letter from the Judges of the Supreme Court of Fort William, dated 30th November.
Copy of a Letter to the Judges of the Supreme Court of Fort William, dated 30th November.
Original Letter from the Judges of the Supreme Court of Fort St. George, dated 31st December 1835, with 35 enclosures.
Original Letter from the Judges of the Supreme Court of Fort St. George, dated 26th February 1836, with one enclosure.
Original Letter from the Judges of the Supreme Court of Bombay, dated 27th January 1836, with 22 enclosures.
Original Letter from the Judges of the Supreme Court of Fort William, dated 25th April 1836, with seven enclosures.

MINUTE by the Right honourable the Governor-general, dated 11 September 1836.

Legis. Cons. 23 January 1837. No. 1.

Minute: Letter from Judges, on Supreme Court reforms.

I AM induced, upon considerations into which I will very shortly enter, to bring before the Government a subject, on the propriety of postponing which I not long ago entirely concurred. In the beginning of last May the Judges laid before us a Report upon the existing establishments of the Supreme Court, and suggested such alterations as it appeared to them desirable to effect in the number and emoluments of the officers under them. Direct attention was first given to this subject by the Government, under orders of the Court of Directors, dated June 1835, founded on returns which had been transmitted by order of the House of Commons. They directed the payment of the officers of the court at a moderate rate, and strongly expressed their opinion, that whatever reduction could be made should be for the benefit of the suitors in judicial proceedings, and of heirs and egatees in matters of administration.

The subject of this despatch was in November referred to the Judges, who stated in answer, that it had long been under their consideration, and that communications upon it had passed between them and the Commissioners for the Affairs of India; that delays had intervened by the death of one Judge and the illness of others; that the expenses of the suitors had already been reduced by the adoption of a new system of taxation; and stated the principle upon which they wished further to proceed, namely, that of throwing all the fees received into one general fund, out of which each officer should receive a fixed remuneration, the Government making up the deficiency; and of this the Council approved, "provided that the Honourable Company's Government be subjected to no additional expense whatever."

The correspondence of the Judges with the Board of Control began in August 1832, when Mr. Grant announced that the regulation of the salaries of the officers of the Supreme Court, by Act of Parliament, had been in contemplation, but that full control over the salaries was vested in the Judges; and the regulations, therefore, of the expenses of their court was left to them, and letters upon the subject passed between the Judges and the Board at intervals up to May 1835.

The grievance, therefore, of high fees exacted from the suitors of the Supreme Court, and the inordinate salaries paid to its officers, attracted the attention of Parliament, and has been admitted here, and the application of a remedy has been enjoined by the Board of Control, the Court of Directors and the local Government. The Judges have cheerfully undertaken the work, and the result of their labours has now been some months before us.

It appears by the Report that the number of offices at present under the Court is 40, held by about 30 officers, receiving 4,62,779 *Rs.* annually, of which 75,827 *Rs* is salary paid by the Government; the remainder consists of fees and commission.

The Judges recommend a consolidation of 15 offices, and their tenure by four principal officers of the Court:—

1.	2.
Master.	Ecclesiastical Register.
Accountant-general.	Equity ditto.
Examiner, Equity.	Admiralty ditto,
Examiner, Insolvent Court.	Sworn Clerk.
3.	**4.**
Prothonotary.	Taxing Officer.
Clerk of Crown.	Receiver.
Clerk of Papers.	Keeper of Records.
	Chief Clerk, Insolvents.

And they suggest a variety of changes and reductions in the subordinate offices of the Court, such as would finally reduce the number of officers to 18, with salaries amounting to 2,38,656 *Rs.*, and making an ultimate saving of 2,24,123 *Rs.*, or 48½ per cent. on their present expense, the immediate saving being not less than from 80,000 to 1,04,000 rupees.

The Judges wish, as far as possible, to support the tenures of the present holders of offices, and with some exceptions adopt the principle of payment by salaries instead of fees; and as no superannuation allowances or pensions on retirement are given, they have been led to propose a higher rate of salary than under other circumstances they might have thought right.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

It seems to me unnecessary that I should follow the Report through the suggestions in detail for the better arrangement of fees, of salary and official duty. It will be sufficient for the Council to bear in mind that the proposition of the Judges will immediately reduce by 25 per cent., and at no distant period by nearly 50 per cent., the expenses by procedure to every suitor in the Supreme Court, independently of the saving which will accrue to him by the abridgment of proceedings in fees to Attorney and Counsel. They have, indeed, modified their first proposal by offering to limit the immediate reduction of fees and commission to about 80,000 instead of 1,00,000 rupees, with the view of more than strictly abiding by the injunction of the Government, that no further charge shall be incurred by the public of leaving a surplus to meet all possible contingencies in this respect; but a question may arise as to whether the Government will insist upon this surplus; and the Report concludes with announcing, that the attention of the Judges will be given to a revision of the practice of the Court, and that the assistance of the Legislative Council may be required to enable them to convey the necessary modifications for this purpose into effect, and possibly to extend and to correct the application of the statute law of England to the Presidency of Bengal.

The immediate consideration of this Report was postponed in consequence of the suggestion (well worthy of attention) which has been made by the Law Commission for the introduction of the practice of *vivâ voce* examination in Equity cases, and the Judges of the Supreme Court, in a letter dated June 6, expressed their approbation in principle of the proposed changes, pointed out the difficulties (principally those of detail) which might attend it, and expressed their willingness to enter into communication with the Law Commission on the subject. Since that period no progress has been made with either of these important questions. The annexed list will show the extent to which the accumulation of important business thrown upon the Commission is every day increasing. The serious illness of three of the Commissioners leads me to despair of any early and satisfactory decision upon them with their assistance, and I have in consequence been led to the determination of bringing the subject again before the Council, and of recommending that the Judges of the Supreme Court be informed of the wish of the Governor-general in Council, that the remodelling of the offices of the court, could have been combined with the introduction of *vivâ voce* examination in cases of Equity, or framed with the ultimate view to the adoption of that practice; but if, in their opinion, long delays are likely to intervene by attempting to combine these objects, that we are disposed at once to express our approbation of the reforms which they contemplate, and our readiness cordially to co-operate with them in the measures to which allusion is made at the conclusion of their Report.

I am the more led to recommend this course, because every day of my short experience of this country confirms me in the opinion that delay ought rarely, indeed, to be admitted in the adoption of any measure evidently and practically useful for the purpose of combining it with something better. The rapidity with which the change of men in India unhappily takes place, the almost absolute certainty that he who plans a great measure may not remain to execute it, and the probability that his successor, new to all the considerations which led to the plan, may either mar or reject its execution, are of themselves strong reasons for rapid decision; and in this case, in which the Judges have so cordially met the wishes of the authorities under which they are acting, it is as well due to them as it must be advantageous to the public, that they should have every aid in perfecting the work upon which they have so creditably entered.

11 September 1836. (signed) *Auckland.*

I entirely concur.

(signed) *W. Morrison.*

Legis. Cons. 23 January 1837. No. 75.
On the subject of the reforms in the Supreme Court. Minute of the Right hon. the Governor-general, 11 September 1836.

MINUTE by the Honourable *H. Shakespear*, Esq., dated 11 September 1836.

THE Report and recommendations of the Judges promise so much good, that I am most unwilling to offer any objections that might throw obstacles in the way of their plans, the general results of which, considering the difficulties of the subject, are, I think, as satisfactory as could be expected.

The Judges are entitled to our fullest confidence, and it must not be overlooked that by agreeing to every reasonable proposition of theirs, we are securing their cordial

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cordial co-operation in the success of the reform contemplated, whilst a different course might engage us in unmanageable difficulties.

The changes proposed by the Judges involve so many questions, the bearings of which must be better known to them than to any one else, that I should be very reluctant to intrude my opinion in opposition to theirs. I had thought that in the permanent arrangement no salary attached to any officer of the court ought to exceed 50,000 rupees per annum, the highest salary allowed in the civil service; and considering the change of currency, the salaries (54,000 Company's rupees) proposed for the two principal officers do not much exceed that amount. I cannot, however, refrain from dissenting from the suggestion contained in paragraph 44 in regard to increasing the salary of the Master, &c., from 66,000 to 78,000, on the contingency of his having temporary charge of the offices of Examiner in Equity in addition to his regular duties. Adverting to the very large salary awarded to that officer in Schedule (F.), I entirely concur with Mr. Justice Grant (stated in para. 44) that no augmentation to it should be allowed, and that if Mr. Dickens (the officer alluded to) is equal to the performance of the additional duties therein proposed to be imposed upon him, he should engage to undertake them without any increase of allowances.

On the general principle declared in para. 24, those allowances ought to be considered an ample remuneration for the whole of his time and labour. By the Schedule (E.) the successors to Mr. Smoult and Mr. Dickens will receive 54,000 rupees; the additional 12,000 to each, which they are to draw during their continuance in office, under the new regime, as stated in Schedule (F.), should command their services, whatever duty it may be necessary to require from them.

In regard to the reduction of the fees of suitors, it is stated in para. 50, that such reduction cannot be introduced until the question of allowances is determined; and as the immediate arrangement will produce a saving of about 80,000, it is extremely desirable that no further time should be lost in giving the suitors relief to that extent; a reference to the Law Commission, under present circumstances, with much on their hands and few members to do it, would produce a delay which, if possible, ought to be avoided. I therefore concur with the Governor (with the exception above noticed, as to the contingent increase of Mr. Dickens's salary), in expressing our approbation of the reforms, immediate and prospective, proposed by the Judges.

11 October 1836. (signed) *H. Shakespear.*

Legis. Cons. 23 January 1837. No. 2. Governor-general's Minute, dated the 11th September.

NOTE by the Honourable *A. Ross*, Esq., dated 16 September 1836.

THE Report of the Judges of the Supreme Court, to which the Governor-general's Minute refers, is not among the papers now circulated, and I cannot, therefore, give an opinion as to the plan of reform which it recommends.

The impression left on my mind by a hasty perusal of the Report, before it was referred to the Law Commissioners, is, that the salaries proposed to be allowed to the officers of the court instead of fees are unnecessarily large, and that the rates of the fees to be levied on account of Government from suitors for services performed for them by the officers of the court, require to be thoroughly examined.

I regret that circumstances have occurred to prevent the Law Commissioners from taking the Report into their consideration; for without their assistance in the examination of it, I doubt whether the Legislative Council will be able to come to a satisfactory decision on the reforms recommended.

16 September 1836. (signed) *A. Ross.*

Legis. Cons. 23 January 1837. No. 3.

(No. 234. A.)

To *F. Millett*, Esq., Secretary to the Indian Law Commissioners.

Sir,

I AM directed to request that the correspondence connected with the proposed reforms in the establishments of the Supreme Court, which was forwarded to you with my letter of the 13th June last, may be returned to this office, as the Governor-general in Council has come to the resolution of communicating with the

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Judges on the subject, without incurring the delay which it is feared might otherwise arise, owing to the accumulation of business before the Law Commission.

2. At the same time I am directed to convey the request of his Lordship in Council, that the separate question relative to the introduction of the practice of *vivâ voce* examination in Equity cases, alluded to in my letter of the above date, should receive the consideration of the Law Commission, in communication with the Judges of the Supreme Court.

I have, &c.

(signed) *W. H. Macnaghten*,
Secretary to Government of India.

Council Chamber,
19 September 1836.

Legis. Cons.
23 January 1837.
No. 4.

(No. 37.)

To *W. H. Macnaghten*, Esq., Secretary to the Government of India.

Sir,

By direction of the Indian Law Commissioners, I have the honour to forward the documents required by your letter, No. 234 (A.) of this day's date.

I have, &c.

Indian Law Commission,
19 September 1836.

(signed) *F. Millett*, Secretary.

Legis. Cons.
23 January 1837.
No. 74.
Letters from the Judges of the Supreme Court, dated 25th April last.

Minute by the Honourable *A. Ross*, Esq., dated 8 October 1836.

1. In this letter two arrangements of the offices of the Supreme Court are proposed, both assigning fixed salaries without fees to the office holders; one to take immediate effect as a temporary arrangement, the other to take effect as a permanent arrangement when the existing offices shall be relinquished by the present incumbents.

2. The salaries which the first arrangement assigns to existing officers, as equivalent to the average emoluments now enjoyed by them, appear to me to be excessive, and unnecessarily so, in the cases of those who accepted their offices with the knowledge that alterations and reductions on them were intended, and would be made without reference to their incumbency.

3. Both the number of the offices and the amount of the salaries allowed by the arrangement proposed as a permanent one, will doubtless admit of reduction when the proceedings of the court shall be simplified and shortened by the revision which the Judges say the whole practice of the court is undergoing.

4. Under both the proposed arrangements, fees are to be levied from suitors for the services performed by the officers, and the amount realized carried to the account of Government. But no information is given which shows what are the services for which fees should be charged, and what should be the rates of the fees chargeable, although these are points the right adjustment of which is the reform most wanted by suitors. It is generally supposed not only that the authorized rates of the fees at present levied are much too high, with reference to the nature of the services performed, but that those high rates are exacted for services which need not be performed, and which in fact are only devices for enhancing the value of the offices of the court.

5. My opinion, therefore, is, that the arrangements suggested by the Judges in the letter under consideration require to be thoroughly examined, and that they should be referred for examination to the Law Commissioners.

8 October 1836. (signed) *A. Ross.*

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23 January 1837.
No. 76.

Minute by the Honourable *T. B. Macaulay*, Esq.

The question brought before us by the Governor-general has hitherto been considered by the Council of India in the Legislative department. If, however, it shall be thought fit to adopt the plan proposed by the Judges without any modification, it will be unnecessary to pass any law on the subject. The Executive Government and

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and the Supreme Court acting in concert will be able to do all that is to be done. If we determine to force on the Judges a measure of which they do not approve, an Act will of course be required.

I have conferred on this subject very unreservedly both with the Chief Justice and with Sir Benjamin Malkin, and, on the whole, I am disposed to think that our wisest course would be to take the plan just as it has been sent to us. I am not, I own, convinced that reduction has been carried far enough. I am not convinced that it is fit to give to any officer of the Supreme Court a salary larger than that of a Puisne Judge of the Court, far larger than that of a Judge of the Sudder, and larger by three-fifths than that of the Recorder of Penang. But I find that the distinguished persons whom I have mentioned, and who, I am certain, have nothing but the public interest in view, entertain a strong opinion that such an arrangement is necessary to the efficiency of the establishment over which they preside. I do not think that it would be wise for the sake of a few thousand rupees a year to risk the dissolution of that close alliance which at present exists between the Government of India and his Majesty's Judges; an alliance which, while the code is in preparation, I think it of the highest importance to maintain. I am, therefore, willing that the plan should be adopted as it stands. In that case, as I have said, no Act will be necessary; and I therefore have no more to do with the proceedings. I may, however, be permitted to suggest, that the Government should cause it to be distinctly understood that no person will ever henceforth acquire a vested interest in any office in the Supreme Court, and that no person who has not at present such an interest in his office will be considered as entitled to claim any compensation in case it should be deemed expedient to diminish his salary, or altogether to abolish his situation.

(signed) *T. B. Macaulay.*

(No. 296.)

To the Honourable the Judges of the Supreme Court.

Legis. Cons.
23 January 1837.
No. 77.

Honourable Sirs,

We now do ourselves the honour of replying to your communication under date 25th April last.

2. It appears from that communication that the number of offices at present under the Supreme Court is 40, the duties of which are discharged by about 30 officers, receiving in the aggregate annually 4,68,779 *Rs.*, of which 75,827 consists of salary paid by the Government, the remainder consisting of fees and commission.

3. We observe that you recommend a consolidation of 15 offices, and their tenure by four principal officers of the court, and that you suggest a variety of changes andreductions in the subordinate officers of the court, such as would justly reduce the number of officers to 18, with salaries amounting to 2,38,656 *Rs.*, and making an ultimate saving of 2,24,123 *Rs.*, or 48½ per cent. on the present expense, the immediate saving being not less than from 80,500 to 1,04,000 *Rs.* per annum.

4. We deem it unnecessary to follow your communication through its various suggestions for the better arrangement of fees, of salary, and of official duty, placing, as we do, the fullest confidence upon the judgment, the discernment, and the zeal for the public welfare by which those suggestions have been dictated.

5. This confidence leads us now to refrain from objecting to the principle of attaching permanently to any officer of the court a salary higher than that fixed as the maximum for the numbers of the civil service, but we nevertheless feel compelled to record our dissent from the suggestion that the salary of the Master in Equity shall be increased from 66,000 to 78,000 per annum, on the contingency of his having temporary charge of the office of Examiner in Equity, in addition to his other duties.

6. Adverting to the very large salary awarded to that officer in Schedule (F.), we entirely concur with Mr. Justice Grant in thinking that no augmentation to it should be allowed; and that if Mr. Dickens (the officer alluded to) is equal to the performance of the additional duties proposed to be imposed upon him, he should be expected to undertake them without any increase of allowances.

7. On the general principle declared in para. 24 of your communication now acknowledged, these allowances ought to be considered as being ample remuneration for the whole of the time and labour of the officer referred to by the Sche-

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dule (F.) The successors to Messrs. Smoult and Dickens will receive 54,000 *Rs.* per annum, and we are of opinion that the additional 12,000 *Rs.* per annum, which each of those gentlemen is to draw during his continuance in office under the new system, should command their services, whatever duty it may be necessary that they should be required to perform; and we are further of opinion, that it is advisable, for the sake of uniformity, that no exception should be made, in the case of the Ecclesiastical Register and Interpreters, to the practice of payment by fixed salary, though we admit that there is much force in the argument advanced by you on this point.

8. We trust that we shall have the gratification of finding that you are disposed to concur with us as to the reconsideration of these particular suggestions, especially because, as regards all other points, the reforms which you propose to introduce, both immediate and prospective, are such as to command our approbation, although the question of the future permanent rate of salary to be attached to the higher offices may, we think, properly be reconsidered as vacancies occur.

9. We do not deem it necessary that the immediate reduction of fees and commission should take place to an extent beyond that originally proposed, so as to leave a surplus to meet all possible contingencies; since it must be distinctly understood that no officer of the court shall be considered as possessing a vested interest in his allowances, and that the power will always rest with the Government to revise the arrangement now sanctioned, so as to prevent any further charge being incurred by the public.

10. We are glad to find that your attention is about to be given to a revision of the practice of the court. You observe, that the assistance of the Legislative Council may be required to enable you to carry the necessary modification for this purpose into effect, and possibly to extend and to correct the application of the statute law of England to the Presidency of Bengal. On this head, we beg to assure you, that it will always afford us the greatest pleasure to co-operate with you in your well-directed and laudable efforts for the advancement of the public interest.

11. We could wish, indeed, that the remodelling of the offices of the court were combined with the introduction of *vivâ voce* examination in cases of Equity, or framed with the ultimate view to the adoption of that practice, which in the work of reform seems to be of much importance; but we do not desire to press this subject on your attention, if its attainment would be productive of delay in giving effect to your proposition, by which a positive saving will accrue to every suitor in the Supreme Court immediately of 25 per cent., and at no distant period of 50 per cent. of the expenses of procedure.

12. As to the principle of the proposed change by introducing the practice of *vivâ voce* examination in Equity cases, you expressed your approbation in a letter, dated the 6th June last, but you pointed out difficulties (principally those of detail) which might attend it, and you expressed your willingness to enter into any communication with the Law Commission on the subject. The consideration of the general question regarding fees and commission, it was thought, might be appropriately taken up with the particular reform above referred to, and for that purpose the papers were made over to the Law Commission; but the serious illness of no less than three of the members of this body, has been the cause of postponing much longer than was desirable the consideration of both these important questions.

13. We are disposed to think that the 1st of January 1837 will be a fit period to fix for the commencement of the operation of the new system, and should you see no objection, we shall make the necessary intimation to our officers of account and audit accordingly.

14. In the meantime we beg to request, that the proper officers of the Supreme Court may be instructed to enter into communication with the Government Accountant, as to the mode in which the fees and commission are to be accounted for and remitted to the Government treasury; we further beg the favour of your furnishing us with a list of the officers of the court, showing their names and the salaries to which they are severally entitled under this resolution.

15. On the subject discussed in the 55th para. of your letter, we observe that the proposed allowance for copying seems unnecessarily high; a copy of the rules presented by us for these charges accompanies, and we request that you will be so good as to assimilate thereto the copying charges of your court's establishment, as far as may be practicable.

16. We

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16. We cannot conclude this letter without tendering to you our warmest acknowledgments for the prompt and able assistance which you have afforded us in suggesting the means of introducing reform into the important department of the administration intrusted to your superintendence.

We have, &c.

(signed) *Auckland.*
A. Ross.
W. Morrison.

Council Chamber, the 14th November 1836.

To the Chief Secretary to the Government of Fort St. George (No. 169), and Bombay (No. 168).

Legis. Cons. 23 January 1837. No. 78.

Sir,

I AM directed to transmit to you for submission to the Right honourable the Governor in Council the accompanying correspondence noted below,* with the Honourable the Judges of the Supreme Court at this Presidency, on the subject of introducing reform into the department of the administration entrusted to their superintendence.

2. From the returns with which the Governor-general in Council has been obligingly furnished by the Honourable the Judges of the Supreme Court, in reply to the letter of the 2d November 1835, it would appear that there is little room for reform as regards the emoluments of the officers of that tribunal at your Presidency, and that they do not receive a more than reasonable remuneration for their services.

3. The Governor-general of India in Council is decidedly of opinion, that it would be advisable to introduce the system of paying the officers and servants of the Supreme Court by fixed salaries instead of by fees or commission at all the three Presidencies, provided that it can be carried into effect without subjecting the Government to expense; and I am desired, therefore, to request that the Right honourable the Governor-general in Council will be pleased to enter into communication with the Honourable the Judges, with a view to ascertain whether a plan can be devised similar to that which is about to come into operation at the Presidency; the whole of the receipts from fees and commission being paid into the general treasury, and salaries, according to a fixed scale, being granted to the officers and servants of the court.

4. The result of the correspondence which may be held in furtherance of the above object, will, of course, be communicated for the consideration and final orders of his Honour in Council.

I have, &c.

(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Fort William, 4 November 1836.

To the Right honourable the Governor-general of India in Council.

Legis. Cons. 23 January 1837. No. 79.

Right honourable Lord and Honourable Sirs,

WE have the honour to acknowledge the receipt of your letter of the 14th November, in reply to our communication of the 25th of April last.

2. We beg to express the great satisfaction we feel in the approbation with which our suggestions for the better arrangement of the fees, salaries and official duties of the officers of his Majesty's Supreme Court have been received by the Supreme Government.

3. We are willing to concur in the modifications of our plan which are submitted for our consideration, but we are anxious respectfully to recall the attention of Government

* Letter to the Honourable the Judges of the Supreme Court of Fort William, Fort St. George and Bombay, dated 2 November 1835; Letter from the Honourable the Court of Directors to the Governor-general of India in Council in the Judicial Department, No. 3, dated 10 June 1835; Letter from the Honourable the Judges of the Supreme Court of Fort William, dated 30th November 1835; Letter to the Honourable the Judges of the Supreme Court of Fort William, in reply, dated 30th November 1835; Letter from the Honourable the Judges of the Supreme Court of Fort William, dated 25 April 1836; Letter to the Honourable the Judges of the Supreme Court of Fort William, in reply, dated 14th November 1836.

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Government to the reasons on which, as stated in our letter of April last, we thought it advisable, in the cases of the Ecclesiastical Registrar and the Interpreters of the court, to depart from the general principle of paying all officers by salary exclusively, and to leave the Ecclesiastical Registrar in possession of his commission on estates administered by him, and the interpreters in receipt of their fees.

4. We confess, after the best consideration we can give to the subject, we remain of opinion that it would not be advisable, for the sake of uniformity only, to adopt any other plan than that which we have suggested, and that by so doing great risk will be incurred of rendering less efficient than they now are, two of the most important officers of the court.

5. If the Government, after a reconsideration of reasons which have already been stated for these exceptions, shall nevertheless deem it advisable to place these officers also on salaries, it becomes necessary for us to state the rate at which the salaries for the respective Interpreters should be for the present fixed. At present, as appears by the Schedule (F.), Mr. Blacquiere and Mr. Smith receive salaries differing in amount; and Mr. Smith, who has the smaller salary of the two, derives the largest income from his office, the difference being made up by fees. We think it but just that the officer who labours most should still continue to receive the largest emoluments, and we think that on the same scale on which the salaries of all the other officers have been apportioned, namely, on an average of their net receipts, that Mr. Blacquiere should receive a salary of 9,800 Company's rupees, and Mr. Smith 11,100; and we think it will be desirable that the final arrangements of these offices should be postponed until both of them shall have become vacant.

6. Upon the salary which the Ecclesiastical Registrar should receive, as long as his offices are held by either Mr. Smoult or Mr. Dickens, it is not necessary to make any further observation than that the salary will be 66,000 Company's rupees.

7. On the proposed plan of allowing the Interpreters to continue to receive their fees, and the Ecclesiastical Registrar to receive the commission on the estates to which he administered, we proposed that they should pay the expenses of the establishments to which this principle was applied. If, however, they are put, like the rest of the officers of the court, on mere salaries, these salaries being calculated on the average of their net receipts, the expenses of these offices, as of all others, will have to be defrayed by the Government.

8. We trust that the speedy arrangement of the salaries of the officers upon the plan approved by the Government, will enable us without delay to modify the practice of the court, and to introduce some modes of proceeding that may be more expeditious, more satisfactory and less costly to the suitors, the doing which being necessarily dependent upon this arrangement, has been hitherto unavoidably delayed.

9. Where the exercise of the powers vested by Parliament in the Legislative Council may be necessary and competent to effect alterations tending to improve the administration of justice, the Judges will not fail to avail themselves of your permission to offer their suggestions to the Council.

10. We have already stated our willingness to put ourselves in communication with the Law Commission on the subject of *vivâ voce* examination in Equity; but we are of opinion, that the time which would be occupied in considering in detail the manner in which such a system could be connected with other parts of the proceedings of the court in Equity cases, or in which these could be adjusted to it, would be productive of great delay in the carrying into execution our plan for effecting large savings, immediate and prospective, in the costs of suitors, and upon which the plan of *vivâ voce* examinations, if adopted or rejected, would have no very important bearing. The introduction of the new scheme of remuneration to the officers, will clearly not throw any new difficulty in the way of effecting the change suggested in the mode of examination.

11. On the subject of the 15th paragraph of your letter, the Judges beg to say that they would be glad at once to assimilate the charges for copying in the Supreme Court to those allowed by Government, as stated in the rules annexed to their letter, but that it will be obvious, on a reconsideration of this suggestion, that it would be impossible to introduce a saving so desirable for the relief of the suitors without occasioning a deficiency in the fee fund. In the establishments of all English courts, the charges per folio for copies are not treated as a mere

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payment for the labour of the mere writing clerks in transcription, but one of the principal funds for the remuneration of the chief officers, and in the same manner the rate of charge in the present scheme is, we believe, reduced to as low a scale as it will admit of without endangering the surplus which we have calculated will arise from the fees of the officers when established on the reduced scale.

12. We will, immediately on receiving a reply to this letter, transmit, as requested, a list of the officers of the court, showing their names and the salaries to which they will be severally entitled on the arrangement that may be finally approved by the Supreme Government. We will also direct those officers to enter immediately into communication with the Government Accountant as to the mode in which the fees and commission are to be accounted for and remitted to the Government Treasury. But this being a matter in which the interests of Government are chiefly concerned, which is to receive the fees and pay the salaries, we think it is for the Government to adopt that plan which it shall consider the most consistent with its safety and convenience. We would only suggest for its consideration, that two plans have been adopted by Parliament in the like case; one by 50 Geo. 3, c. 112, which was passed for the purpose of lessening the expense to the suitors in the Court of Session in Scotland, and for substituting the payment of the officers of that court by salaries instead of fees. The details of the plan for receipt of fees will be found in sections 17, 18, 20, 22, 23, 24 and 25 of the said Act.

13. The other plan will be found in 11 Geo. 4, and 1 Will. 4, c. 58, to effect the like purposes in the courts of Common Law at Westminster. The first plan provides for the receipt of the fees by a collector; the second, for the rendering of an account by the officers of the court.

14. We hope that all arrangements may be made for bringing the new system into operation at the period proposed by the Government, the 1st of January next.

We have, &c.

(signed) *Edward Ryan.*
J. P. Grant.

Court-house, 21 November 1836. *B. H. Malkin.*

To *W. H. Macnaghten*, Esq., Secretary to Government, Judicial Department.

Jud. Cons. 23 January 1837. No. 80.

Sir,

THE Judges having communicated to me the answer of Government to their letter, proposing a plan for the present and future regulation of the offices of the Supreme Court, and having left me at liberty to submit directly to the Government such arguments as may appear to me worthy of consideration before the final adoption of that part of the plan by which the ex-officio administrator will be remunerated by a fixed salary, I am induced on this permission, and without further reference to the Judges, to lay before Government the following memorandum.

2. When I was about to proceed to the Cape in January last, with the permission of the Judges, which was reluctantly given, as they wished me to postpone my departure until the new arrangements contemplated with respect to the offices of the Supreme Court were completed and had received the sanction of Government, I at once expressed to them my readiness to contribute in any way to the general reduction desired by the Judges and the Government. I merely added, that so far as the interests of the public were concerned, I was satisfied that it would prove more advantageous that the Registrar, as ex-officio administrator, should always be paid by commission instead of salary.

3. In a pecuniary point of view, I feel indifferent as to the mode by which I am to be paid for the future. I shall not, I believe, remain much longer in office, and if I were to continue to hold it for the next 11 years, I consider that by the averages, as taken by the Judges, I should rather gain than lose, for the last 11 years, as taken, present a much more favourable result than the average of the last 20 years, which I had urged as affording a more just and fair criterion.

4. But, looking to my own resignation as not far distant, I deprecate, on general principles, a remuneration by salary for the services that the Registrar, as ex-officio administrator, has to perform.

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5. The Judges are perfectly aware of the general responsibilities of the office, and are acquainted with the general nature of the duties of the Registrar, as ex-officio administrator; but there are particular details which do not come immediately within their knowledge, and are yet very necessary to be adverted to for a full and complete understanding of the various circumstances which contribute to the public utility of the office. I beg, therefore, respectfully to submit the following statement for the consideration of the Right honourable the Governor-general of India in Council; and having done so, I shall have discharged my duty to the Government, to the court and to the public. The details may at all events be in some respects new to each.

6. In favour of paying the public Administrator by a commission rather than a salary, the following considerations appear to be of the greatest importance; viz., that the payment in his case is not merely a remuneration for service, but an indemnification for responsibility.

7. That this responsibility is of no light nature, nor one of which he can divest himself by resigning his office, nor which ceases even with his life.

8. That in distributing the assets of an estate, a man may, without any culpable negligence, through mere inadvertence, or indeed through an over anxiety to discharge his duty in the most satisfactory manner, become involved in great pecuniary risk, as in the cases to which I shall presently advert.

9. That the commission in this case, therefore, is in the nature of a premium of insurance, a guarantee against liabilities which are inseparable from the office, and of which the Government has no intention of taking the onus on itself; that being proportioned to the amount of funds passing through the Registrar's hands, it must always bear a fair ratio to his risks, while the payment of such duties by a salary would be like saying to an insurance office, "We will take the premiums, allowing you a salary, and you shall pay all losses."

10. That the rate of commission has not been fixed by the court, but is founded on general usage, now become settled law, acknowledged by statute, and is the universal customary charge of executors and administrators in India for conducting the management of estates of deceased persons, and established as a reasonable charge by the Court of Chancery, particularly in the case of "Cockerell against Barber," reported in the first volume of "Simon's Reports," where an executor was declared entitled to his commission, in addition to a legacy of one lac of rupees.

11. That the public voice is in favour of the remuneration of the officer by commission, and that the Registrar, to perform his duty properly, should not be unwilling to encounter responsibility to a very great extent; that otherwise his office would become most invidious to the holder and obnoxious to the public, with which he would constantly appear as a party litigant.

12. For the Registrar incurs the heaviest risks in respect to the adjustment of debts and conflicting claims of creditors and representatives residing in different parts of the world; and numerous cases arise, particularly in the instances of parties claiming as next of kin in England, who send out powers of attorney to agents here, in which there may be no doubt, morally speaking, of the identity of the parties, and still the Registrar may very safely, and it would be doubtful, according to the character of men's minds, whether he might not very properly decline to pay, except under protection of a decree or judgment of the court; and he might, without the slightest ground of justifiable complaint against him, decline active steps in many cases where he now takes a discretion on himself; and, on the other hand, he runs the hazard of being obliged to pay all the expenses of the proceedings out of his own pocket if he resists any claim which is presented to him as capable of legal proof.

13. A still more important consideration is, that the feelings of the officer should be enlisted in the series of numerous classes to whom accommodation is absolutely necessary, namely, in respect to advances for the maintenance of widows and children, required frequently beyond the mere interest of the funds in his hands, and particularly in the discretion which he ought to have, and cannot in future exercise without the sanction of Government, if they are to receive the commission, viz., in giving up (and he is prepared to exhibit a full and distinct statement of sums to a large amount given up by him) to representatives and creditors the whole or a portion of his commission, according to the exigencies of the case, and in many instances, without any formal authority, taking charge of small estates for the sole purpose of paying funeral charges, servants' wages and claims of poor creditors, without subjecting them to any charge whatever.

14. There

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14. There is, indeed, a numerous class of cases, more particularly those of the junior branches of the pilot service, officers of ships, uncovenanted assistants in the public offices, and other estates of small value, for the management of which the Registrar never makes any charge at all, to say nothing of the various other acts of discretion which he is almost daily called upon to exercise, and does exercise with advantage and convenience to the public, without requiring the parties to apply to the court in any form. The affairs of such estates are thus adjusted, and payment of claims promptly obtained for which no short course could be devised, and, in a great majority of instances, the evidence on which he acts is that of moral conviction merely of the substantial justice of the case.

15. There are now several children dependent on the exercise of a liberal and responsible discretion in this way in their behalf, or they would be very indifferently educated and insufficiently clothed; yet the Registrar is of course responsible to the legatees in reversion for the whole capital on which he takes upon himself to encroach when he exceeds the interest of it for any such purposes.

16. Further, it may be observed that the general objection against the payment of the officers of the court by fees, that it tends to multiply proceedings by giving these officers an interest in keeping up a number of superfluous forms, has no bearing whatever on the case of the Registrar's commission.

17. The principle of uniformity by which all the other officers of the Supreme Court will be paid conveniently by fixed salary, it is submitted, is itself based on these principles, viz., that though such a system may and must have a tendency to relax industry, that tendency can be counteracted by the vigilance of the Court, and the certainty that the Judges will be able to perceive delays in the course of justice in all suits, and also in all cases in which there are parties applicant to the court for any purpose.

18. These considerations which make the application of a uniform principle of payment by salary convenient in all other cases, evidently render it inconvenient in the case of an ex-officio administrator, who, if he should not move the Court himself, simply leaves the field open to other occupants; and I beg respectfully to submit that it is better that estates of absentees and intestates should be administered to by a public and responsible officer, publishing his accounts and acts in the public newspapers of Great Britain and Ireland, and investing the funds in Government securities, than by private and mercantile agency. For it is right that Government should be made thoroughly aware that if the Registrar does not apply quickly for administration, other parties, who will charge the legal commission of five per cent., will have the superior stimulus of self-interest less counteracted, and few estates will be left unadministered to; the proportion only that will be in public and responsible hands, such as those of the Registrar, may probably be much smaller than heretofore.

19. In conclusion, I most respectfully request that his Lordship in Council will take the foregoing observations into consideration. The observation made in the 9th, 10th and succeeding paragraphs appear to my humble judgment to merit the most serious attention of all. Whatever the decision may be, it will be my personal care and duty to act precisely as heretofore in the execution of my office, so as, with the utmost energy I can command, to give the fullest execution to the resolutions of Government and the plan that shall be adopted, whatever may be the mode of personal remuneration.

I have, &c.

(signed) *W. H. Smoult*,
Ex-Registrar, Supreme Court.

(No. 343.)

To the Honourable the Judges of the Supreme Court.

Legis. Cons.
23 January 1837.
No. 81.

Honourable Sirs,

We have the honour to acknowledge the receipt of your letter, dated the 21st ult., on the subject of the proposed arrangements for modifying the system of remunerating the officers of the Supreme Court.

2. In consideration of the arguments which you have urged on this occasion, we have much pleasure in acceding to your wishes as regards the mode of remunerating the Ecclesiastical Registrar, and that officer may therefore continue to

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On Fees and Salaries of the Officers of the Supreme Courts.

receive his commission as heretofore. The amount of such commission will, of course, be subject to revision when the office of Ecclesiastical Registrar shall be vacated by the present incumbent.

3. With regard, however, to the office of Interpreter, we are of opinion that the same reasons do not apply, and we are disposed to adhere to our former recommendation as regards the Interpreters of the Court. We therefore concur in your suggestion that Mr. Blaquiere, the Chief Interpreter, shall receive a salary of 9,800 Company's rupees per annum, and that Mr. Smith, the deputy, should receive a salary of 11,100 Company's rupees per annum. The allowance assigned to the office of Interpreters will be open to revision when either of the present incumbents shall vacate his situation.

4. With regard to the mode of accounting for the fees received by the officers of the Court, we are disposed to think that the second precedent cited by you would be the most expedient, and a communication to this effect will be made to our Accountant-general accordingly.

We are, &c.

(signed) *Auckland.* *H. Shakespear.*
A. Ross. *T. B. Macaulay.*
W. Morrison.

Council Chamber, 5 December 1826.

Legis. Cons. 23 January 1837. No. 82.

Paras. 12 & 13 of the Letter from the Judges of the Supreme Court, dated 21 November 1836. Para. 4 of the Letter to the Judges of the Supreme Court, dated 5 December 1836.

(No. 346.)

To *C. Morley*, Esq., Accountant-general.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you for your information extracts from a correspondence with the Honourable the Judges of the Supreme Court, and to request that you will at your early convenience submit for the consideration of his Honour in Council your opinion as to the best mode in which the fees of the Supreme Court may be accounted for and remitted to the General Treasury by the officers of that court.

I have, &c.

(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Council Chamber, 5 December 1836.

Legis. Cons. 23 January 1837. No. 83.

To the Right honourable the Governor-general of India in Council.

Right honourable Lord and Honourable Sirs,

WE have the honour to acknowledge the receipt of your letter dated the 5th of December ult., and we beg to transmit, as requested, a list of the officers of the Supreme Court, showing their names and the salaries to which they will be severally entitled on the arrangement that has been finally approved by the Supreme Government.

We beg also to state, that we have directed those officers to enter immediately into communication with the Government Accountant as to the mode in which the fees and commission are to be accounted for and remitted to the Government.

We shall use our best endeavours to complete all arrangements that may be necessary for bringing the new system into operation on the 1st day of January next.

We have, &c.

(signed) *Edward Ryan.*
J. P. Grant.
B. H. Malkin.

Court-house, 6 December 1836.

A LIST

Legis. Cons. 23 January 1837. No. 84.

A List of the Officers of the Supreme Court, showing their Names and the Salaries to which they will be severally entitled on the Arrangement that has been finally approved by the Supreme Government.

Equity Registrar, Master and Accountant-general, Mr. Dickens	66,000
Ecclesiastical and Admiralty Registrar, Mr. Smoult	—
Prothonotary and Clerk of the Crown, Mr. Holroyd	24,000
Taxing Officer and Record Keeper, Mr. Vaughan	24,000
Sworn Clerk, Mr. O. Dowda	22,800
Clerk of the Papers and Chief Clerk of the Insolvent Court, Mr. Franks	33,000
Examiner in Equity and Receiver, Mr. Macnaghten	30,000
Examiner in the Insolvent Court, Mr. O'Hanlon	8,400
Counsel for Paupers, Mr. Marnell	7,200
Attorney for Paupers, Mr. Strettell	4,800
Judges' Clerks, Mr. Ryan, Mr. Caw and Mr. Hilder	25,200
First Interpreter, Mr. Blaquiere	9,800
Second Interpreter, Mr. Smith	11,100
Interpreter of Foreign European Languages, Mr. Sirett	1,200
Sealer, Mr. Ryan	6,000
Crier, Mr. Preston	3,600
One Tipstaff, Mr. Sirett	960
Allowance for Chobdars	1,176
Interpreters to the Judges, Mr. A. G. Aviet and Mr. George Aviet	7,200
Clerk to the Grand Jury, Mr. R. Swinhoe	800
Moulavies, Mahomed Moraud and Warris Ally	2,400
Pundits, Ramjoy Turkolonkar and Calleekante Biddiabangis	2,400
Moolnahs, Syed Ahmed Ally and Shaik Mahomed Mokin	360
Brahmin, Gungadhur Paneegroho	360

(signed) *Edward Ryan.*
J. P. Grant.
B. H. Malkin.

Dated 6 December 1836.

(No. 372.)

Legis. Cons. 23 January 1837. No. 85.

To the Honourable the Judges of the Supreme Court.

Honourable Sirs,

We have the honour to acknowledge the receipt of your letter dated the 6th inst., furnishing a list of the officers of the Supreme Court, showing their names and salaries, and stating that they have been directed to communicate with the Accountant-general as to the mode of accounting for the fees, &c.

2. We feel much obliged by the promptitude with which you have attended to our wishes, and we shall not trouble you with any further observations connected with this question, except to state that we would not object to some reduction of the proposed surplus, which appears more than sufficient to guard the Government against incurring any loss in consequence of the arrangements recently authorized for the purpose of reducing the present high charges for engrossing.

We have, &c.,

(signed) *Auckland.*
A. Ross.
H. Shakespear.
W. Morrison.

Council Chamber, 19 December 1836.

Legis. Cons. 23 January 1837. No. 86.

To the Right honourable the Governor-general of India in Council.

Right honourable Lord and Honourable Sirs,

1. We beg to call the attention of Government to an omission in one part of the schedule of the salaries of the officers of the Supreme Court, forwarded by us to Government in our letter of the 6th of December last, which we understand may lead to some difficulty in completing the arrangement with the Accountant-general.

2. The sum of 12,000 *Rs.* is to be received by Mr. Smoult from the Government annually during the period he holds the office of Ecclesiastical Registrar. We did not think it necessary to insert this allowance in the schedule of salaries. It seems, however, to be convenient that it should appear in the schedule, and it is accordingly introduced.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

3. Two mistakes have also been made in copying the salaries of the Pundits and Moulavies from the printed Returns to the House of Commons. The salaries of the Pundits should be stated at 4,800 instead of 2,400, the salary of one Pundit. In the same manner the salaries of the Moulavies should be stated at 4,800 instead of 2,400, and a corresponding alteration will require to be made in the Schedules (B.), (C.), (D.) and (F.), annexed to our letter of April last.

4. These alterations make no difference in the immediate operation of the plan, as the past expenditure of Government on salaries, as well as that to which they will be immediately subjected, has been understated by the omission of the salary of one Pundit and one Moulavie. The balance, therefore, remains the same.

5. The only difference will be, that on the final arrangement the salaries of two Pundits and two Moulavies will be abolished, instead of one Pundit and one Moulavie; and thus the whole prospective saving will be 4,800 rupees greater than we originally stated it.

6. It may be convenient that we should furnish the Schedule in its corrected form, and we accordingly subjoin it.

We have, &c.

(signed) *Edward Ryan.*
J. P. Grant.
B. H. Malkin.

Court-house, 19 December 1836.

Legis. Cons. 23 January 1837. No. 87.

A List of the Officers of the Supreme Court, showing their Names and the Salaries to which they will be severally entitled on the Arrangement that has been finally approved by the Supreme Government.

Equity Registrar, Master and Accountant-general, Mr. Dickens	66,000
Ecclesiastical and Admiralty Registrar, Mr. Smoult	12,000
Prothonotary and Clerk of the Crown, Mr. Holroyd	24,000
Taxing Officer and Record Keeper, Mr. Vaughan	24,000
Sworn Clerk, Mr. O. Dowda	22,800
Clerk of the Papers and Chief of the Insolvent Court, Mr. Franks	33,000
Examiner in Equity and Receiver, Mr. Macnaghten	30,000
Examiner in the Insolvent Court, Mr. O'Hanlon	8,400
Counsel for Paupers, Mr. Marnell	7,200
Attorney for Paupers, Mr. Strettell	4,800
Judges' Clerks, Mr. Ryan, Mr. Caw and Mr. Hilder	25,200
First Interpreter, Mr. Blaquiere	9,800
Second Interpreter, Mr. Smith	11,100
Interpreter of Foreign European Languages, Mr. Sirett	1,200
Sealer, Mr. Ryan	6,000
Crier, Mr. Preston	3,600
One Tipstaff, Mr. Sirett	960
Allowance for Chobdars	1,176
Interpreters to the Judges, Mr. A. G. Aviet and Mr. George Aviet	7,200
Clerk to the Grand Jury, Mr. R. Swinhoe	800
Moolavies, Mahomed Moraud and Warris Ally	4,800
Pundits, Ramjoy Purkolonkar and Calleekants Piddyalangis	4,800
Moolnahs, Syed Ahmed Ally and Shaik Mahomed Mokeem	360
Brahmin, Gungadhur Paneegroho	360

(signed) *Edward Ryan.*
J. P. Grant.
B. H. Malkin.

Dated 19 December 1836.

Legis. Cons. 23 January 1837. No. 88.

To the Right honourable the Governor-general of India in Council.

Right honourable Lord and Honourable Sirs,

It is necessary, in order to carry into effect the arrangements that have been finally approved as to the fees and salaries of the officers of the Supreme Court, that the sanction of Government should be obtained to the rule which accompanies this letter.

2. The Government are aware that the Court is empowered under the 30th section of the Charter to make such rules of practice as shall be found necessary, but

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

but that under the 12th section it is provided that any variation of the table of fees must be made with the approbation of the Governor-general in Council.

3. We shall be glad to receive the formal sanction of Government to this rule or order in time to give effect to it by the 1st of January next.

We, have, &c.

(signed) *Edward Ryan.*
J. P. Grant,
B. H. Malkin.

Court-house, 26 December 1836.

Legis. Cons. 23 January 1837. No. 89.

1. It is ordered, That after the 1st day of January 1837, the fees and rewards mentioned in the present Table of Fees of the Supreme Court of Judicature at Fort William, in Bengal, and now made payable in Sicca rupees, and all fees hereafter established or altered, be paid in Company's rupees, and that the several fees in the said table specified be reduced accordingly.

2. That from the same date, in all offices of Court whatsoever, except the offices of the Sworn Clerk, Clerk of the Papers, Examiner in Equity, Interpreters of the Court, Chief Clerk of the Insolvent Debtors' Court and Examiner of the Insolvent Debtors' Court, the folio or sheet, for all purposes whatsoever, shall consist of 90 words, and seven figures shall be calculated as one word; and the charge for all writings charged per folio be reduced to five annas per folio of 90 words.

3. That from the same date, upon all monies ordered by the Court to be paid into the hands of the Accountant-general of the Company, with the privity of the Accountant-general of the Court, with the exception of all monies paid to the Accountant-general of the Company, by any officer of the Court as receiver of any estate or property, or guardian of the property of any infant or lunatic on which no commission or poundage is to be charged by the Accountant-general of the Court, the commission of the Accountant-general of the Court be one per cent., and upon all interest accruing upon money ordered to be paid by the Court as aforesaid 2½ per cent.

4. That the Accountant-general and Sub-treasurer of the Company shall charge the like per-centage on all agency for the suitors of this Court as they would charge and are accustomed to charge upon similar agency for any creditors of the Government. The Rules 3 and 4 are the same as the existing rules of the Court, with the exception of the commission or poundage to be charged by the Accountant-general of the Court, which, on money paid into the hands of the Accountant-general of the Company under the orders of the Court, is reduced from 2½ per cent. to one per cent.

(signed) *Edward Ryan.*

(No. 373.)

To the Honourable the Judges of the Supreme Court of Judicature of Fort William.

Honourable Sirs,

Legis. Cons. 23 January 1837. No. 90.

We have the honour to acknowledge the receipt of your letter of this date, and in reply, to convey to you our entire approval of the proposed rule which accompanied that communication.

2. We have the honour to acknowledge the receipt of your letter dated the 19th instant, forwarding a corrected schedule of the salaries of the officers of the court, which will be substituted for the schedule which accompanied your letter of the 6th of the same month.

We have, &c.

(signed) *Auckland.*
A. Ross.
H. Shakespear.
W. Morrison.

Council Chamber, 26 December 1836.

Legis. Cons.
23 January 1837.
No. 96.

To the Right honourable the Governor-general of India in Council.

Right honourable Lord and Honourable Sirs,

In Rule No. 1, submitted for the approbation of Government on the 26th of December last, an omission was made of the words " of the officers of the court," to whom only the present arrangements as to the table of fees apply. These words are now inserted, and a copy of the rules so amended submitted for the approbation of Government.

We have, &c.

(signed) *Edward Ryan.*
J. P. Grant.
B. H. Malkin.

Court-house, 3 January 1837.

Legis. Cons.
23 January 1837.
No. 97.

It is ordered, That after the 1st day of January 1837, the fees and rewards of the officers of the court, as mentioned in the present table of fees of the Supreme Court of Judicature at Fort William, in Bengal, and now made payable in Sicca rupees, and all fees hereafter established or altered, be paid in Company's rupees, and that the several fees in the said table specified be reduced accordingly.

(signed) *E. Ryan.*

(No. 4.)

Legis. Cons.
23 January 1837.
No. 98.

To the Honourable the Judges of the Supreme Court of Judicature of Fort William; dated 3 January 1837.

Honourable Sirs,

We have the honour to acknowledge the receipt of your letter of this date, and in reply to state that the amended copy of Rule No. 1 has been substituted for that which accompanied your letter of the 26th ultimo.

We have, &c.

(signed) *Auckland.*
A. Ross.
W. Morrison.

Council Chamber,
3 January 1837.

Legis. Cons.
23 January 1837.
No. 91.
Accountant-general's Office.

To *W. H. Macnaghten*, Esq., Secretary to the Government of India, Legislative Department.

Sir,

I have the honour to acknowledge the receipt of your letter under date the 5th instant, forwarding a correspondence with the Honourable the Judges of the Supreme Court of Judicature, and requesting my opinion as to the best mode in which the fees should be accounted for and remitted to the General Treasury by the officers of that court, under the arrangement for the future payment of the salaries of the officers of the said court.

I have the honour to state, for the information of the Right honourable the Governor-general in Council, that it appears expedient, in the first place, that the salary bills of the several officers of the Supreme Court, the abstracts of their monthly establishments and contingent bills, should be subject to audit by the Civil Auditor, in the same manner as the Government services, under specific instructions from the Government Treasury on the monthly issue of pay.

That the commissions and fees, as they are realized in the several departments of the court, be remitted by the respective officers to the General Treasury, under a receipt from the Sub-treasurer. That a head of account be opened in the general books of this Government, denominated " Fund for the Payment of Salaries, &c. of the Officers of the Supreme Court," to which all sums so received shall be credited by the Sub-treasurer, that head being charged with the amount of salaries, establishments and other incidental disbursements, and eventually closed by an annual transfer of the balance to " Profit and Loss."

Having put myself in communication with the Registrar of the Supreme Court, I have the honour to submit, for the information of Government, a copy of

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

of a letter from that officer, in which he states that it will be of essential importance, for the security of Government and the due working of the new plan, that the present system of taxation of officers' bills and payments on the 10th January, 18th June and 25th October, be continued for at least the next 12 months. If his Lordship in Council require him to do so, he is prepared to state his reasons at length for this proposition, in which the officers of the court generally concur. Should this proposition receive the sanction of Government, I would recommend, as suggested by Mr. Dickens, that on the 10th January, 18th June and 25th October in the following year, all sums received under taxed bills, and all sums on any other account intermediately, be paid over to the Sub-treasurer, accompanied by the following certificate:

"I, A. B., do hereby solemnly declare and certify, that, to the best of my knowledge and belief, the said last-mentioned sum of is the whole amount actually received by me as such aforesaid, on any account whatsoever, for business done in my said office from the period beginning from and ending on and that the above-mentioned sum of is the whole amount actually due and unpaid to me as such for the like period."

That the officers of the court transmit for adjustment to the Accountant in the Judicial Department, as soon after the close of each month as practicable, a verified statement of all sums received by them respectively, and remitted to the General Treasury.

That at the end of the year the Taxing Officer do furnish, at each period of payment, a detailed statement, in debtor and creditor form, to the Accountant in the Judicial Department and the Chief Justice or Senior Justice for the time being, of the amount of taxed bills of all the officers, and of amount of arrears unpaid, and of the amount paid to the officers for salaries, and of the amount of the ordinary and contingent bills for expenses; the latter to be furnished to the Taxing Officer by each officer of the court.

I have, &c.

(signed) *C. Morley*,
Accountant-general.

Fort William, 26 December 1836.

To *Charles Morley*, Esq., Accountant-general, &c.

Legis. Cons.
23 January 1837.
No. 92.

Sir,

On the 6th day of December the Judges of the Supreme Court passed an order in terms following:

"It is by the Judges ordered and directed, that the officers of the Supreme Court and Insolvent Court named in the list annexed to the said letter of the Judges, addressed to the Right honourable the Governor-general of India in Council, dated 6th December 1836, and hereinbefore last mentioned, do put themselves immediately in communication with the Government Accountant-general, as to the mode in which the fees and commission hereafter receivable by such officers respectively are to be accounted for and paid over to Government, and as to the mode of receiving the salaries to which they will be respectively entitled under the arrangement for the future payment of the officers of the said court, which has been finally approved of by the Supreme Government and Supreme Court, as appears by the letters and documents hereinbefore referred to and read, as the grounds of this order."

The drawing up and circulation of this order among the different officers of court was entrusted to me; and after notice had been given to all the officers of court, with access to the correspondence between the Supreme Government and the Judges, a meeting of the officers of court was held on Thursday the 15th instant, at which I was deputed to communicate with you, on behalf of all the officers of court, on the subject of such measures as will be requisite to carry into effect the arrangement for the due receipt of all fees and emoluments which are to be paid to Government, and for the future payment of the court establishment.

In performance of this duty, I proceed to submit for your consideration the following propositions, which appear to me to embrace all details that require to be provided for:

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1. It is proposed that the officers be paid from the 1st January next (or from the commencement of the arrangement, in case unexpected delays should occur to prevent its commencement on that day), in the same manner as the Government services, sending in signed and receipted bills monthly for audit, according to the corrected list annexed to the Judges' letter to the Right honourable the Governor-general in Council of India, under date the 19th December instant, supplying omissions in the list annexed to their letter to Government, dated the 6th December instant.

2. That the actual expenses of the Clerks and Writers be certified monthly, and signed and receipted by each officer, and drawn for in like manner.

3. That such certificate be printed, and be in the following form:—

"CERTIFICATE for Monthly Salaries to Clerks and Writers in Office of Supreme Court.

"I, of the Supreme Court, do hereby solemnly declare and certify, that the sum of Company's rupees is the amount required for the payment of the salaries and wages of the Clerks and Writers for the current month of , according to the list under mentioned; (that is to say)

Names	Amounts. Rupees.
	"

(signed) ."

4. That contingent bills for the wages of extra Writers and for actual charges previously and necessarily paid be sent in for audit, and certified by each officer.

5. That such last-mentioned certificate be in the form following:—

"CERTIFICATE for Contingent and Extra Charges incurred by of the Supreme Court.

"I, A. B., of the Supreme Court, do hereby solemnly declare and certify, that the sum of Company's rupees has been duly expended by me in the wages of extra Writers, and that such expenditure was absolutely necessary for the due conduct of the business of my office; and I further solemnly declare and certify, that the further sum of Company's rupees has been duly expended for the contingent charges under mentioned; (that is to say)

[each item to be specified] _____

and that such contingent charges were necessarily incurred in order to enable me to perform the duties of my said office.

(signed) ."

6. That stationery, parchment, quills, &c., be indented for by each officer, who has hitherto supplied the same at his own expense, as required, with a certificate that the same is necessary.

7. That such certificate be in the following form:—

"CERTIFICATE for Stationery, Indent of Supreme Court.

"I, certify, that is required for the use of the office of in the Supreme Court, and for no other use.

(signed) ."

8. That the present system of taxation of officers' bills and payments on 10th January, 18th June and 25th October in each year be continued for 12 months longer, if sanctioned by Government and the court. I am prepared to state my reasons at length for this proposition (which I think of essential importance for the security of Government, and the due working of the whole plan for the period of 12 months at least); but these reasons, if required, will most conveniently be given in a separate memorandum; and I shall only observe here, that it is a recommendation in which the opinion of almost every practical man, whether solicitor or officer of court, concurs.

9. That

No. 1.
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9. That on the 10th January, 18th June and 25th October in the following year (the dates at which the officers are now paid their taxed bills), all sums received under taxed bills, and all sums on any other account intermediately, be paid over to the proper officers of the Government Treasury, accompanied by the following certificates:

"I, A. B., do hereby solemnly declare and certify, that to the best of my knowledge and belief the said last-mentioned sum of is the whole amount actually received by me as such aforesaid, on any account whatsoever, for business done in my said office for the period beginning from and ending on , and that the above-mentioned sum of is the whole amount actually due and unpaid to me at such for the like period."

RECEIPT of Sub-treasurer.

"I hereby acknowledge the receipt of *Rs.* , according to the above certificate.

"Received, ."

10. That the Accountant-general's commissions be paid over at like period, under the same certificate.

11. That at the end of the year the Taxing Officer do furnish at each period of payment a detailed statement, in Dr. and Cr. form, to the Government Accountant-general and the Chief Justice or Senior Justice for the time being, of the amount of taxed bills of all the officers, and of amount of arrears unpaid, and of the amount paid to the officers for salaries, and of the amount of the ordinary and contingent bills for expenses; the latter to be furnished to the Taxing Officer by each officer of court.

12. That a claim be submitted to Government on behalf of the Clerks and Writers, who are now paid in Sicca rupees, for the same rate of payment as the Government uncovenanted servants receive; viz., payment of their actual salaries in Company's rupees, at the rate of 104/8 Company's rupees per 100 Sicca rupees.

I have, &c.
(signed) *T. Dickens*, Registrar.

Registrar's Office, 20 December 1836.

(True copy.)
(signed) *C. Morley*,
Accountant-general.

(No. 17.)

To *C. Morley*, Esq., Accountant-general.

Legis. Cons. 23 January 1837. No. 93.

Sir,

I AM directed to acknowledge the receipt of your letter, dated the 26th ultimo, with its enclosure, and, in reply, to acquaint you that the Right honourable the Governor-general of India in Council approves of the course proposed by you for giving effect to the new system which has been sanctioned for the fees and salaries of the officers of the Supreme Court. The Honourable the Judges of the Supreme Court have, accordingly, been requested to issue the necessary instructions to carry your suggestions into effect, should they not be aware of any objections to the course proposed; and the necessary instructions have been issued from this department to the Civil Auditor and the Sub-treasurer for the audit and payment of the salary bills of the several officers of the Supreme Court, the abstract of their monthly establishments and contingent bills, in the same manner as the Government services on the monthly issue of pay.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India,
Legislative Department.

Legislative Department, 16 January 1837.

(No. 16.)

Legis. Cons. 23 January 1837. No. 94.

To the Honourable the Judges of the Supreme Court of Judicature of Fort William.

Honourable Sirs,

We have the honour to forward, for your information, copy of a letter from the Accountant-general to our Secretary's address, dated the 25th ultimo, submitting in detail his propositions relative to the new system which has been sanctioned for the fees and salaries of the officers of the Supreme Court, and to request, should you not be aware of any objection to the course proposed by Mr. Morley, that you will be pleased to issue the necessary instructions for giving effect to his suggestions.

2. We do not see any objection to the proposition submitted by Mr. Dickens, in his letter to the address of Mr. Morley of the 20th ultimo, to the effect that the present system of taxation of officers' bills and payments on the 10th January, 18th June and 25th October should be continued for the next 12 months.

We have, &c.
(signed) *Auckland.*
A. Ross.
H. Shakespear.
T. B. Macaulay.

Legislative Department,
16 January 1837.

Legis. Cons. 23 January 1837. No. 99.

To the Right honourable the Governor-general of India in Council, dated 23 January 1837.

Right honourable Lord and Honourable Sirs,

We have the honour to announce to you that Mr. Smoult, in consequence of ill health, has resigned his offices in the Supreme Court of Judicature. We have, in consequence, appointed Mr. Dickens his successor in the offices of Ecclesiastical and Admiralty Registrar, which, in conformity with the arrangements proposed in our letter of the 25th April 1836, he will hold together with his present office of Equity Registrar. According to the same arrangements, Mr. Dickens has already resigned the office of Keeper of the Records, and Mr. Vaughan has been appointed to it; and Mr. Dickens now resigns the offices of Master in Equity and Accountant-general, and will hold the three offices at present united in him, and that of Sworn Clerk also, when a vacancy occurs, on the same terms as Mr. Smoult held those of Ecclesiastical and Admiralty Registrar only; that is to say, receiving the commission of the Ecclesiastical Registrar as ex-officio administrator, and defraying the expenses incurred in that capacity only; and receiving also the salary of 12,000 *Rs.* per annum, assigned in the scheme suggested by us, and adopted by the Government, to him or Mr. Smoult, while either of them filled those offices, but to which no future holder of the office will be entitled.

Mr. Dickens's offices of Master in Equity and Accountant-general being thus vacant, the Chief Justice and Mr. Justice Malkin have appointed Mr. Dobbs to hold them. His immediate salary, according to the arrangements proposed, will be 36,000 rupees per annum, to be increased by 12,000 rupees on the occurrence of a vacancy in the office of Examiner in Equity, and by 6,000 on the occurrence of a vacancy in that of Examiner of the Insolvent Debtors' Court, each of which offices will then be annexed to those held by Mr. Dobbs.

As Mr. Dobbs will hold these offices at a salary of 36,000 rupees instead of that now received by Mr. Dickens, namely 66,000, there occurs a saving of 30,000 rupees beyond those originally contemplated as likely to come into immediate operation. The whole amount of the reduction of expenditure which we proposed in our letter already referred to, but which we postponed till the falling in of offices rendered it practicable, was *Co.'s Rs.* 26,158. 7. As this falls short of the saving now effected, we propose at once to introduce it, and accordingly request your concurrence in the rules for the alteration of fees which we subjoin.

We do not propose at present to make any other alteration or reduction. The practice of the court is about to undergo considerable change by the introduction of the new rules already passed on the Equity side, and of others under consideration for the other sides of the court. It will, in our opinion, be desirable to see the effects of these changes before we decide what other reductions it will be most

No.
On Fees and Salaries of the Officers of the Supreme Courts.

most desirable to effect when the falling in of other offices affords the means of doing so.

We have, &c.
(signed) *Edward Ryan.*
J. P. Grant.
B. H. Malkin.

Court-house, Calcutta,
15 January 1837.

Legis. Cons.
23 January 1837.
No. 100.

I. It is ordered, That from and after the 16th day of January 1837, in all the offices of this court whatsoever, the folio or sheet, for all purposes whatsoever, shall consist of 90 words, and seven figures shall be calculated as one word, and the charge for all writings charged per folio shall be reduced to five annas per folio of 90 words.

II. It is ordered, That in the office of the Examiner in Equity the practice of engrossing and the charge for it shall be abolished.

(signed) *E. Ryan.*

(No. 10.)

Legis. Cons.
23 January 1837.
No. 101.

To the Honourable the Judges of the Supreme Court of Judicature of Fort William.

Honourable Sirs,

We have the honour to acknowledge the receipt of your letter, dated the 16th instant, with its enclosures, and in reply to state, that we are not aware of any objection to the arrangements which you have done us the favour to report for our information.

We have, &c.
(signed) *Auckland.* *H. Shakespear.*
A. Ross. *T. B. Macaulay.*

Legislative Department, 16 January 1837.

Legis. Cons.
23 January 1837.
No. 95.

To the Right honourable the Governor-general of India in Council.

Right honourable Lord and Honourable Sirs,

We have the honour to acknowledge the receipt of your letter, dated the 16th of January last, enclosing for our information the copy of a letter from the Accountant-general of this Presidency to W. H. Macnaghten, Esq., Secretary to the Government of India, dated the 20th of December 1836, submitting in detail the Accountant-general's propositions relative to the new system, which has been sanctioned, for the fees and salaries of the officers of the Supreme Court.

We are not aware of any objection to the course proposed by Mr. Morley, and we have issued the necessary orders for giving effect to his suggestions.

We do not see any objection to the propositions submitted by Mr. Dickens in his letter to the address of Mr. Morley of the 20th of December last, to the effect that the present system of taxation of officers' bills and payments on the 10th of January, 18th of June and 25th of October, should be continued for the next 12 months.

We have, &c.
(signed) *Edward Ryan.*
J. P. Grant.
B. H. Malkin.

Court-house, 23 January 1837.

Legis. Cons.
6 February 1837.
No. 3.

To *W. H. Macnaghten*, Esq., Secretary to the Government of India, dated 6 February 1837.

Sir,

With reference to your letter of the 10th instant, I have the honour to request that you will be pleased to furnish me with a statement of the salaries which the

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

officers of the Supreme Court of Judicature in Fort William are authorized to draw, to enable me to audit the bills for the present month.

I have, &c.

(signed) *C. Trowers*,
Civil Auditor.

Fort William, Civil Auditor's Office,
31 January 1837.

On the 3d instant a copy of the list of the officers of the Supreme Court of Judicature at Fort William, specifying their names and the salaries to which they are entitled, was transmitted to the Civil Auditor and Sub-treasurer respectively for their guidance.

Legis. Cons.
27 February 1837.
No. 5.

To *W. H. Macnaghten*, Esq., Secretary to Government in the Legislative Department, dated 27 February 1837.

Sir,

With reference to the letter addressed by me to the Accountant-general, under date the 20th day of December 1836, containing propositions for the future payment of salaries of the officers of the Supreme and Insolvent Courts, their Clerks and Writers, and the supply of stationery and parchment for the use of the several offices; the 6th and 7th paragraphs of which letter are annexed in the margin; I have to state that I have received from the Accountant-general a letter dated the 4th instant, the 6th paragraph of which is also annexed in the margin. The Governor-general in Council and the Judges having sanctioned the plans as submitted by me to the Accountant-general, I have to request that you will lay before Government my application for the issue of the requisite orders to the Stationery Committee; and I have further to request, with reference to paragraphs 1 to 5 of my letter of the 20th day of December 1836 to the Accountant-general (copies of which paragraphs are also annexed in the margin), you will lay before Government my application on behalf of the officers of the Supreme and Insolvent Courts, that the Civil Auditor may be furnished with the requisite orders to audit the bills for salary of officers and clerks, and for contingencies, from the 1st of January

1st. It is proposed that the officers be paid from the 1st January next (or from the commencement of the arrangement, in case unexpected delays should occur to prevent its commencement on that day), in the same manner as the Government services, sending in signed and receipted bills monthly for audit, according to the corrected list annexed to the Judge's letter to the Right honourable the Governor-general in Council of India, under date the 19th December instant, supplying omissions in the list annexed to their letter to Government, dated the 6th December instant.

2d. That the actual expenses of Clerks and Writers be certified monthly, and signed and receipted by each officer, and drawn for in like manner.

3d. That such certificate be printed, and be in the following form:—

"Certificate for Monthly Salaries to Clerks and Writers in the Office, Supreme Court.

"I, of the Supreme Court, do hereby solemnly declare and certify, that the sum of Company's rupees is the amount required for the payment of the salaries and wages of the Clerks and Writers for the current month of according to the list under-mentioned; (that is to say)

Amounts.

Names Rs.

4th. That contingent bills for the wages of extra Writers, and for actual charges previously and necessarily paid, be sent in for audit, and certified by each officer.

5th. That such last-mentioned certificate be in the form following:—

"Certificate for Contingent and extra Charges incurred by of the Supreme Court.

"I, A.B., of the Supreme Court, do solemnly declare and certify, that the sum of Company's rupees has been duly expended by me in the wages of extra Writers, and that such expenditure was absolutely necessary for the due conduct of the business of my office; and I further solemnly declare and certify, that the further sum of Company's rupees has been duly expended for the contingent charges under-mentioned; (that is to say)

[Each item to be specified.]

And that such contingent charges were necessarily incurred in order to enable me to perform the duties of my said office.

"(signed)

Registrar's Office, 8 February 1837.

6th. That stationery, parchments, quills, &c. be indented for by each officer who has hitherto supplied the same at his own expense, as required, with a certificate that the same is necessary.

7th. That such certificate be in the following form:—

"Certificate for Stationery, Indent of Supreme Court.

"I, certify, that is required for the use of the office of in the Supreme Court, and for no other use.

"(signed)"

6th. With reference to the second paragraph of your letter of the 1st instant, I would suggest the expediency of an application to Government for the issue of orders to the Stationery Committee for the Committee's complying with the indents of the several officers who, under the new arrangement, will require stationery from the stationery depot.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

January 1837, according to the plan sanctioned by Government, and contained in the letter of the Judges and the propositions I have submitted.

I have, &c.
(signed) *T. Dickens*, Registrar.

N.B.—Lists of the establishment of Clerks and of office servants of the respective offices of the Supreme and Insolvent Courts are submitted for consideration to the offices of Audit and Pay, for their information and guidance.

A list of establishment and servants of the Master's and Accountant-general's office is not included, but will be sent in hereafter.

Legis. Cons.
27 February 1837.
No. 6.

List of Clerks, Writers and Servants in the Equity, Ecclesiastical and Admiralty Registrar's Office.

Monthly Salaries, in Company's Rupees.

Mr. M. Cockburn	280	–	–
Mr. Richard Deefhotts	80	–	–
Bhacaram Bonnerjee	60	–	–
Damooderday	60	–	–
Mr. G. A. Swarris	60	–	–
Mr. G. Mackertich	50	–	–
Mr. M. De Souza	40	–	–
Groopersand Sill	40	–	–
Roopnarain Ghose	32	–	–
Brankijsen Bose	30	–	–
Roopchand Burraul	30	–	–
Hurropersand Sein	23	–	–
Bonemally Ghosaul	27	–	–
Mandub Mookerjee	26	–	–
Roopchund Sill	25	–	–
Muddenmohun Day	24	–	–
Gorrudchund Addy	20	–	–
Issurchunder Bonnerjee	20	–	–
Joznarain Doss	15	–	–
Mr. Francis de Pinto	12	–	–
Moheschunder Bonnerjee	12	–	–
Govindhone Chuckerbutty	10	–	–
Narain Row	9	–	–
Co.'s Rs.	990	–	–

Register's Office, 10 February 1837.

List of the Names of Writers and Servants attached to the Office of Sworn Clerk of the Supreme Court, with their respective Monthly Salaries.

	Co.'s Rs.	*a.*	*p.*
Buneymandub Bonnerjee	64	–	–
Chullachund Dutt	32	–	–
Bajnarain Biswas	29	–	–
Collypersand Ghose	17	–	–
Luckunchunder Bonnerjee	17	–	–
Gopeemohan Dutt	21	–	–
Brijo Mohun Sircar	17	–	–
Callachund Chuckerbutty	13	–	–
Annunchunder Chuckerbutty	13	–	–
Runobeharry Mitter	22	–	–
Ranjmohun Moitree	17	–	–
Kissonchunder Bonnerjee	11	–	–
Rahamut Hurkarah	6	–	–
Eedoo Bhistey	1	–	–
Joomun Maitur	1	–	–
Dufterree Meertajuddeen*	3	–	–
Surrubdee Duster	–	2	–
Co.'s Rs.	284	2	–

* This name is kept jointly by the Sworn Clerk of the Papers, from each of whom he has always received three rupees per month.

N.B.—On the 1st March each year Punkah-bearer has been added as joint account of Sworn Clerk and Clerk of the Papers (who sit in the same room), from each of whom he receives two rupees per month.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

List of Clerks, Writers and Servants in the Clerk of the Crown and Prothonotary's Office.
Monthly Salaries, in Company's Rupees.

Ramtoonoo Sill		260	– –
Mr. Saunders discharged, when a fit person procured to be appointed; Company's rupees, 130		130	– –
Dabychurn Mozendar		110	– –
Bolananth Bolear		64	– –
Sumbuchunder Bonnerjee		55	– –
Ramcomul Dutt		35	– –
Dinnobundo Seim		30	– –
Nilmoney Budden		22	– –
Raj Kistno Bonnerjee		20	– –
Colly Doss Mozendar		20	– –
Bhoyrubchunder Doss		20	– –
Nilcomul Chatterjee		16	– –
Bungachatterjee		16	– –
Ramcoomar Chatterjee		16	– –
Muddo Dutt		16	– –
Doorgachurn Doss		16	– –
Gungarnarain Sing		14	– –
Raj Kistno Chutterjee		14	– –
Muddoosoodun Mookerjee		10	– –
Dumobundo Bolear		10	– –
Groochurn Ghose Mohurer		10	– –
Surroopchunder Sircar		8	8 –
Nazim Duftry		7	8 –
One Peon		7	– –
One ditto		6	– –
	Co's. Rs.	933	– –

9 February 1837.

A List of the Establishment of the Interpreters to the Honourable the Judges of the Supreme Court.

Callee Doss, monthly, Company's rupees, eight		8 – –
List of Writers employed in the Chief Interpreter's Office for Translations.		
Ramdhon Mitter		40 – –
Thushmut Allee		20 – –
	Co.'s Rs.	60 – –

Calcutta, 10 February 1837.

A List of the Establishment of the Sealer of the Supreme Court.

Juggobundo Day, monthly, Company's rupees, seventeen		17 – –
Hazamendy Hurkara, – ditto – – six		6 – –
	Co.'s Rs.	23 – –

List of the Names of the Writers and Servants attached to the Office of the Crier of the Supreme Court, with their respective Salaries.

Buneymaudub Bonnerjee		24 – –
Muddoosoodun Sircar		10 – –
	Co's. Rs.	34 – –

10 February 1837.

Crier of the Court.

List

List of Clerks, Writers, &c., Salaries and Wages in the Receiver's Office, Supreme Court.

	Monthly.
Oleenosh Chunder Gangooly	125 – –
Obhoy Churn Roy	40 – –
Parbutty Churn Chatterjea	20 – –
Parbutty Churn Mookerjeea	10 – –
Moodoosoodun Ghose	10 – –
Durbarry Hircurrah	6 – –
Co.'s Rs.	211 – –

List of the Names of Writers and Servants attached to the Office of the Chief Clerk of Insolvent Court, with their respective Monthly Salaries.

Chief Clerk's Office.

	Co.'s Rs.
John D'Cruz	54 – –
Ramchunder Bonnerjee	27 – –
Gopeynauth Ghose	21 – –
Tarrachund Mookerjee	21 – –
Gungabistno Day	17 – –
Tarranneychurn Doss	11 – –
Dufturree Nazeer	6 – –
Co.'s Rs.	157 – –

Judges' Clerks' Establishments.

	Co.'s Rs.
Bissumbur Day, Writer	40 – –
Nilmoney Day, ditto	20 – –
Rambumo Bonnerjee, ditto	20 – –
Nilmoney Mozoomdar, Messenger and Collector of Fees	12 – –
Cossinauth Tajore, Brahmin	7 – –
Ram Tajore, ditto	7 – –
Ozar, Mootnah	7 – –
Khodubux, ditto	7 – –
Co.'s Rs.	120 – –

Company's Rupees, One hundred and twenty.

10 February 1837. (signed) *C. B. Ryan.*
John Carr.
Edward Hilder.

List of Writers and Assistants employed in the Second Interpreter's Office for Translations.
Monthly Wages in Company's Rupees.

H. A. Smith	53 – –
Shinauth Dutto	34 – –
Ramchund Mondole	13 – –
Rammaissore Dutto	9 – –
Rostomulley Moonshee	18 – –
Soodahram Pundit	13 – –
Co.'s Rs.	140 – –

Calcutta, 9 February 1837.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

LIST of Clerks and Writers, Salaries and Wages in the Examiner's Office of the Supreme Court.

	Monthly.		
Mr. Michael Cockburn	170	–	–
Issurahunder Chatterjee	64	–	–
Mr. Joseph Roger	64	–	–
Rammohun Doss	51	–	–
Ramdhone Mookerjee	25	–	–
Muddoosoodun Doss	16	–	–
Goormaney Duftory	8	8	–
Co.'s Rs.	398	8	–

LIST of the Names of Writers and Servants attached to the Office of Clerks of the Papers of the Supreme Court, with their respective Monthly Salaries.

CLERKS OF THE PAPERS OFFICE.	*Co.'s Rs.*	*a.*	*p.*
Chundrychurn Bose	64	–	–
Kissenchunder Bonnerjee	48	–	–
Vincent D'Souza	32	–	–
Geo. Reston	22	–	–
Dufterree* (Meertajuddeen)	3	–	–
Cumoo Hurkarah	6	–	–
A. Duster Surrub Dee	–	2	–
Co.'s Rs.	175	2	–

*This man is kept jointly by the Sworn Clerk of the Papers, from each of whom he has always received three rupees per month.

N. B.—On 1st March each year a Punkah-bearer has been added on joint account of Sworn Clerk and Clerk of the Papers, who sit in the same room, from each of whom he receives two rupees per month.

A LIST of the Establishment and Servants of the Record Office of the Supreme Court.

	Co.'s Rs.		
Nubokissen Mitter	34	–	–
Muddoosoodun Ghose	22	–	–
Ebuduth Khawn Duftery	8	–	–
Co.'s Rs.	64	–	–

Supreme Court, 9 Feb. 1837. Record Keeper.

A LIST of the Establishment and Servants of the Taxing Officer of the Supreme and Insolvent Courts.

Mr. Thomas Bothelho	150	–	–
Issurchunder Sain	50	–	–
Ramnarain Nunday	50	–	–
Mr. William Lawrence	30	–	–
Muddunmohun Doss	25	–	–
Sree Kissen Bose	15	–	–
Juggernauth Bramin	8	–	–
Habeewoolah Peon	8	–	–
Co.'s Rs.	336	–	–

Supreme Court, 9 Feb. 1837. Taxing Officer.

LIST

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

LIST of Writers and Assistants in the Office of the Attorney for Paupers in the Supreme Court.

	Co.'s Rs.
Mr. John Collys	100 – –
Mr. Julius Cesar	30 – –
TOTAL Co.'s Rs.	130 – –

Calcutta, 10 Feb. 1837.

(signed) *Charles Strettel,*
Attorney for Paupers.

COURT for the Relief of Insolvent Debtors at Calcutta.

RETURN of my Establishment as Examiner, Common Assignee and Commissioner for taking Affidavits of Insolvent Prisoners in the Gaol.

	Sa. Rs.	Co.'s Rs.
Brojomdrun Holdar	35 – –	
Mohunchunder Bose	20 – –	
Bearer	2 – –	
	57 – –	60 12 9
Disallowed:		
Charges for buggy and horse, necessary to attendance at the gaol to take Affidavits, Petitions, Assignments and Schedules from Insolvent Prisoners	32 – –	
Sa. Rs.	89 – –	per month.

The above charges are identical with those on which my Returns to the Judges were made, and were deducted from the gross receipts of the office to constitute the net proceeds thereof, on which the average was struck by the Judges.

Office of Examiner,
11 Feb. 1837.

(signed) *P. O'Hanlon.*

(No. 41.)

To the Honourable the Judges of the Supreme Court, dated 27th February 1837.

Legis. Cons.
27 February 1837.
No. 8.

Honourable Sirs,

WE have the honour to transmit for your information the accompanying letter from Mr. Dickens, dated the 8th instant, to the address of Mr. Secretary Macnaghten, covering lists of the establishments of clerks and office servants of the respective officers of the Supreme and Insolvent Courts.

2. We are unable to form any opinion as to the reasonableness or otherwise of the establishments appertaining to the several officers, and we request that you will do us the favour of stating your sentiments on that point.

3. On a cursory observation of the lists submitted, we have remarked one item, which hardly seems to form a legitimate charge. We allude to the charge for a buggy and horse for attendance at the gaol, which item is entered in Mr. O'Hanlon's statement of the establishment required for the duties of his office.

We have, &c.
(signed) *W. H. Macnaghten,*
Secretary to the Government of India,
Legislative Department.

Legislative Department,
13 February 1837.

Legis. Cons.
27 February 1837.
No. 7.

List of Clerks, Writers and Servants employed in the Offices of the Master and Accountant-general of the Supreme Court at Calcutta.

NAMES.	Monthly Salary in Co.'s Rs.
Shackoo Bos	322 – –
Hurromohun Dutt	450 – –
Mr. M. Z. Shircore	80 – –
Taruney Sunker Roy	53 8 –
Hurryhur Mookurjee	43 – –
Bowanny Churn Bose	35 – –
Rajnaraia Bonnerjee	32 – –
Hurrockunder Mitter	21 8 –
Tackoordoss Mookerjee	8 8 –
Bijoonauth Pundah	6 8 –
Mirza Nazim Duftey	7 – –
Aftré Buddeen Peon	6 – –
Durwun and Meter	2 – –
Expenses of Establishment per month, Co.'s Rs.	767 – –
Or, per annum, Co.'s Rs.	9,204 – –

20 February 1837.

(signed) *A. Dobbs*,
Master Accountant-general, Supreme Court.

(No. 46.)

Legis. Cons.
27 February 1837.
No. 9.

To the Honourable the Judges of the Supreme Court, dated 27 February 1837.

Honourable Sirs,

With reference to the letter of the Governor-general in Council to your address, under date the 13th instant, I am now directed to forward as a supplement the statement of the Master and Accountant-general of the Supreme Court, received since the despatch of the letter of the above-mentioned date.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India,
Legislative Department.

Legislative Department,
20 February 1837.

Legis. Cons.
27 February 1837.
No. 10.

To the Right honourable the Governor-general of India in Council.

Right honourable Lord and Honourable Sirs,

We have the honour to acknowledge the receipt of your letter of the 13th February last, enclosing a letter from Mr. Dickens, dated the 8th instant, to the address of Mr. Secretary Macnaghten, covering lists of the establishments of clerks and office servants of the respective officers of the Supreme and Insolvent Courts, and requesting us to state our opinion as to the reasonableness or otherwise of the establishments appertaining to the several officers. We have also to acknowledge the receipt of Mr. Secretary Macnaghten's letter, dated the 20th of February last, forwarding, as a supplement to the letter of the Governor-general in Council of the 13th instant, the statement of the Master and Accountant-general of the Court as to the expenses of his office.

We perceive, in looking over the lists, that the total amount of the expenses of the different officers of the Supreme and Insolvent Courts is Co.'s Rs. 59,037, exclusive of stationery. The returns made to us by the respective officers of the expenses of their establishment, and which we have annexed to the Schedules attached to our letter of the 14th April last, amount to Co.'s Rs. 62,218. 13. 1. These returns do not include the expenses of the offices of the Interpreters and Attorney for Paupers, which amount to Co.'s Rs. 4,056, and which are now included in

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

in the sum of 59,037. What the expense of stationery may be, we are not able to say, but we should hope the expense of the establishments of the officers of the court, inclusive of stationery, will not exceed the sum of Co.'s Rs. 66,274. 13. 1., being the total amount of expenses of the establishments, when the sum of 4,056 is added to our former return of 62,248. 13. 1.

In the returns made to us we had no detailed account of the disbursements. We had the gross receipts, with the gross expenditure, from which, as appears by the schedules to the letter of the 14th of April, the net value of each office was ascertained.

At the time the returns were made, the expenses of the respective establishments were borne by the officers, and they had then no reason to believe but that they would continue to be paid in the same manner. It was the interest of the officers to keep down the expenses of their respective establishments to the lowest scale compatible with the efficiency of their offices. Returns were made to us in 1827, 1832, 1833, 1834 and 1835 of the receipts and disbursements of the officers; and the expenses of the officers appear to be on the average nearly the same, though certainly much less than they were in 1827.

We have put the Government in possession of all the information we are at present able to give as to the reasonableness of the establishments. We could not speak with any accuracy as to the details without a minute investigation, which we should have some difficulty in conducting. We do not, however, believe, for the reasons we have stated, that there is any good ground for supposing that the officers have not made a correct return of the necessary expenses of their respective establishments.

With respect to the charge put forward by Mr. O'Hanlon for a buggy and horse for attendance at the gaol, it will appear from what we have stated, that the items of the disbursements of that gentleman were not stated in his returns to us.

This charge may have been included in the sum total of the expenses of his establishment, deducting which from the gross receipts, the net value of his office was estimated. If that be so, this charge should never have been inserted as part of the establishment required for the duties of his office, and it is one which, as our opinion is requested, we would respectfully submit the Government ought not to sanction as expenditure.

If, after the explanation we have given, the Government are desirous of further inquiry into the items of expenditure, we shall be ready to give our best assistance in concluding any inquiry they may desire to institute.

We have, &c.

(signed) *Edward Ryan.*
J. P. Grant.
B. A. Malkin.

Court-house, 22 February 1837.

To *T. Dickens*, Esq.

Legis. Cons. 27 February 1837. No. 11.

Sir,

I AM directed by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter, dated the 8th instant, with its enclosures, and in reply to inform you, that his Lordship in Council having sanctioned the establishments of the several officers of the Supreme and Insolvent Courts (with one exception, to be noticed hereafter), the necessary instructions have been issued to the officers of Audit and Pay to adjust the salaries of the establishments and contingent charges of those officers, from the 1st of January last, on presentation of bills, certified in the manner suggested by you.

2. The exception alluded to in the preceding para. is in the item of 32 *Rs.* for a buggy and horse, for attendance at the gaol, entered in Mr. O'Hanlon's statement, which is disallowed, as not appearing to be a legitimate charge.

3. The necessary instructions will be issued from the general department to the committee for controlling the expenditure of stationery, to comply with the requisition for stationery required by the officers of the Supreme and Insolvent Courts, on indents to be presented by each officer, certified in the manner also suggested by you.

I have, &c.

(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Council Chamber,
27 Feb. 1837.

Legis. Cons.
27 February 1837.
No. 12.

To *H. T. Prinsep*, Esq., Secretary to the Government of Bengal, General Department.

Sir,

UNDER an arrangement recently sanctioned by the Governor-general in Council, the officers of the Supreme and Insolvent Courts, who have hitherto supplied themselves with stationery, parchment, &c., at their own expense, are to be supplied in future with all such articles from the public stores. I am accordingly directed to request that the Right honourable the Governor of Bengal will be pleased to issue the necessary instructions to the committee for controlling the expenditure of stationery, that indents of the several officers of the Supreme and Insolvent Courts presented to the Clerk of the Stationery Committee, certified in the following form, may be complied with; viz.—

"I certify, that is required for the use of the office of in the Supreme (Insolvent) Court, and for no other use.

" (signed) ."

I have, &c.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Council Chamber,
27 Feb. 1837.

To *C. Trower*, Esq., Civil Auditor.

Legis. Cons.
27 February 1837.
No. 13.

Sir,

IN continuation of my letter, No. 28, dated the 3d February, I am directed by the Right honourable the Governor-general in Council, to transmit for your information and guidance the accompanying copies of a communication from Mr. Dickens, dated the 8th instant, and of its enclosures, being lists of establishments, of the several officers of the Supreme and Insolvent Courts, sanctioned by his Lordship in Council, from the 1st of January last, excepting the item of 32 *Rs.*, for a buggy and horse for attendance at the gaol, entered in Mr. O'Hanlon's statement, which item is disallowed, as not forming a legitimate charge of establishment required for the duties of his office.

2. A copy ef the list of establishment of the office of the Master and Accountant-general, referred to in the postscript of Mr. Dickens's letter, since received, is also enclosed.

3. The contingent charges of each officer will be audited by you on the presentation of bills drawn up in the usual form, and certified in the manner suggested by the Accountant-general, agreeably to the form of certificate, a copy of which is annexed.*

I have, &c.

Council Chamber,
27 Feb. 1837.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Legis. Cons.
27 February 1837.
No. 14.

To *W. H. Oakes*, Esq., Sub-treasurer.

Sir,

IN continuation of my letter, No. 27, dated the 3d February, I am directed by the Right honourable the Governor-general in Council to transmit for your information and guidance the accompanying copy of a communication from Mr. Dickens, dated the 8th instant, and of its enclosures, being lists of establishments of the several officers of the Supreme and Insolvent Courts, sanctioned by his Lordship in Council, from the 1st January last, excepting the item of 32 rupees for a buggy and horse for attendance at the gaol, entered in Mr. O'Hanlon's statement,

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* "Certificate for Contingent and Extra Charges incurred by of the Supreme Court.

"I, A. B., of the Supreme Court, do solemnly declare and certify, that the sum of Company's Rupees has been duly expended by me in the wages of extra writers; and that such expenditure was absolutely necessary for the due conduct of the business of my office; and I further solemnly declare and certify, that the further sum of Company's rupees has been duly expended for the contingent charges under mentioned; (that is to say)

[Each item to be specified] _____

and that such contingent charges were necessarily incurred in order to enable me to perform the duties of my said office.

" (signed)

No. 1
On Fees and Salaries of the Officers of the Supreme Courts.

statement, which item is disallowed as not forming a legitimate charge for establishment required for the duties of his office.

2. A copy of the list of establishment of the office of the Master and Accountant-general referred to in the postscript of Mr. Dickens's letter, since received, is also enclosed.

3. The contingent charges of each officer will be paid by you on the presentation of bills audited by the Civil Auditor, drawn up in the usual form, and certified in the manner suggested by the Accountant-general, agreeably to the form of certificate, a copy of which is annexed.*

I have, &c.
(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Council Chamber, 27 Feb. 1837.

LEGISLATIVE DEPARTMENT.

No. 4, of 1837.

To the Honourable the Court of Directors.

Honourable Sirs,

1. WE propose to detail in our present despatch the measures adopted by us in accordance with the instructions communicated in your Honourable Court's despatch, No. 13, (10th June) of 1835, relative to a revision of the establishments of the Supreme Courts at Fort William, Fort St. George, and Bombay, and of the rates of fees receivable by the officers of those Courts.

2. A copy of your Honourable Court's despatch above noted, having been forwarded to the Judges of the Supreme Courts, at the several Presidencies, with a request that they would furnish Schedules of the emoluments of the officers attached to those Courts, with their own sentiments upon the possibility of an immediate or prospective reduction in them, replies were received, upon which final arrangements have been concluded only in as far as regards the Supreme Court at Fort William. The reports transmitted from Fort St. George and Bombay form part of the collections forwarded with this despatch, and we trust to be enabled to submit, at no distant date, an account of the ultimate measures which may be in like manner introduced in the establishments of the Supreme Courts at those Presidencies.

Cons. 2 November 1835. No. 1.

3. A reply was received on the annexed date from the Judges of the Supreme Court of Fort William, in which they stated, that having been long employed in considering the means whereby revision might be effected in the fees and establishments of their Court, they were averse to submit other than a full report upon this subject, which by postponing the transmission of the schedules of establishments called for by us, might, they trusted, be prepared and forwarded within a short period. The Judges, then, (after informing us, in answer to the question put by your Honourable Court, that no practising attorney now held the office of Judge's Clerk) desired the expression of our opinion upon the subject stated in the two following paragraphs of their letter, in order that they might be guided accordingly in the scheme for revision which they proposed to submit:—"Any reduction of expenditure by diminution of the amount of fees, would either fall very unequally on different officers, or, if arranged with a view to the proper proportionment of the emoluments of different officers, it probably would not relieve the suitors from the expenses which press most inconveniently upon them. In the same manner, any reduction or abolition of salaries would be confined to particular offices, for some officers at present receive none, and would press very unequally

Cons. 30 November 1835. Nos. 1 & 2.

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* "Certificate of Contingent Charges incurred by of the Supreme Court.

"I, A. B., of the Supreme Court, do solemnly declare and certify, that the sum of Company's rupees has been duly expended by me in the wages of extra writers; and that such expenditure was absolutely necessary for the due conduct of the business of my office; and I further solemnly declare and certify, that the further sum of Company's rupees has been duly expended for the contingent charges under mentioned; (that is to say)

[Each item to be specified] _____

and that such contingent charges were necessarily incurred in order to enable me to perform the duties of my said office.

"(signed)"

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unequally even on those who are remunerated, for some of them are entirely paid by salary, while the salaries of others bear only a very small proportion of the amount of their fees. It probably would be desirable on these accounts that the whole emoluments of the different officers of the Court should be thrown into one general fund, out of which, either they should each receive a certain fixed remuneration, if that mode of payment should be thought most expedient, or hey should be entitled to divide in certain fixed proportions the whole amount mong them.

"It probably would be found possible to obtain competent service on rather easier terms for fixed salaries, than for any fluctuating division of emoluments. But the Court would have no means of ensuring fixed salaries, unless the Government would take upon themselves to make good any occasional deficiency, receiving in return the benefit of any occasional surplus. The whole system of fees will have to be regulated in the first instance, so as to produce an average return, sufficient to provide for the charges necessary to be defrayed out of it, and would of course be liable to revision from time to time, if this average permanently exceeded or fell short of this necessary amount to any material extent."

4. The Judges were informed in reply, that the principle of remuneration suggested by them was approved by us, "provided that the Honourable Company's Government be subjected to no additional expense thereby." Copies of the above correspondence were forwarded to Fort St. George and Bombay, for the information of the Judges of the Supreme Courts at those Presidencies.

Cons. 23 January 1837. No. 1 to 101.

5. In the beginning of the month of May of the past year, the promised report was submitted to us by the Judges of the Supreme Court at Fort William, and in connexion with certain minor reforms in procedure, noticed to your Honourable Court in our despatch (No. 9, 17th August of 1836, paras. 54 to 58) as advisable to be effected in connexion with the revision of establishments, was transmitted to the Law Commission for their consideration and suggestions.

Cons. 23 January 1837. No. 1.

6. The papers remained with the Law Commission until the month of September of the past year. The Governor-general recorded a minute on the 11th of that month, the subjoined extract from which is submitted in the body of the despatch, both as affording an analysis of the proposition afforded by the Judges of the Supreme Court, and as setting forth the reasons which induce his Lordship to recommend the immediate adoption of the reforms suggested in the Judges' report.

"It appears by the report that the number of offices at present under the Court is 40, held by about 30 officers receiving 4,62,779 *Rs.* annually, of which 75,827 *Rs.* is salary paid by the Government; the remainder consists of fees and commission.

"The Judges recommend a consolidation of 15 offices and their tenure, by four principal officers of the Court:—

1.	2.
Master.	Ecclesiastical Registrar.
Accountant-general.	Equity ditto.
Examiner, Equity.	Admiralty ditto.
Examiner, Insolvent Court.	Sworn Clerk.
3.	**4.**
Prothonotary.	Taxing Officer.
Clerk of Crown.	Receiver.
Clerk of Papers.	Keeper of Records.
	Chief Clerk Insolvents.

And they suggest a variety of changes and reductions in the subordinate offices of the Court, such as would finally reduce the number of officers to 18, with salaries amounting to 2,38,656 *Rs.*, and making an ultimate saving of 2,24,123 *Rs.*, or 48½ per cent., on their present expense; the immediate saving being not less than from 80,000 to 1,04,000 rupees.

"The Judges wish as far as possible to support the tenures of the present holders of offices, and, with some exceptions, adopt the principle of payment by salaries instead of fees; and as no superannuation allowances or pensions on retirement

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ment are given, they have been led to propose a higher rate of salary than under other circumstances they might have thought right.

"It seems to me necessary that I should follow the report through the suggestions in detail for the better arrangement of fees, of salary, and official duty. It will be sufficient for the Council to bear in mind that the proposition of the Judges will immediately reduce by 25 per cent., and at no distant period by nearly 50 per cent., the expenses of procedure to every suitor in the Supreme Court, independently of the saving which will accrue to him by the abridgment of proceedings in fees to Attorney and Counsel. They have indeed modified their first proposal by offering to limit the immediate reduction of fees and commission of about 80,000 instead of 100,000 rupees, with the view of more than strictly abiding by the injunction of the Government, that no further charge shall be incurred by the public, and of leaving a surplus to meet all possible contingencies in this respect; but a question may arise as to whether the Government will insist upon this surplus. And the report concludes with announcing that the attention of the Judges will be given to a revision of the practice of the Court, and that the assistance of the Legislative Council may be required to enable them to carry the necessary modifications for this purpose into effect, and possibly to extend and to correct the application of the statute law of England to the Presidency of Bengal.

"The immediate consideration of this report was postponed in consequence of the suggestion (well worthy of attention) which has been made by the Law Commission for the introduction of the practice of *vivâ voce* examination in Equity cases; and the Judges of the Supreme Court, in a letter dated June 6th, expressed their approbation in principle of the proposed change, pointed out the difficulties (principally those of detail) which might attend it, and expressed their willingness to enter into communication with the Law Commission on the subject. Since that period no progress has been made with either of these important questions. The annexed list will show the extent of which the accumulation of important business thrown upon the Commission is every day increasing. The serious illness of three of the Commissioners leads me to despair of any early and satisfactory decision upon them with their assistance, and I have, in consequence, been led to the determination of bringing the subject again before the Council, and of recommending that the Judges of the Supreme Court be informed of the wish of the Governor-general in Council, that the remodelling of the offices of the Court could either have been combined with the introduction of *vivâ voce* examination in cases of Equity, or framed with the ultimate view to the adoption of that practice; but that if, in their opinion, long delays are likely to intervene by attempting to combine these objects, that we are disposed at once to express our approbation to the reforms which they contemplate, and our readiness cordially to co-operate with them in the measures to which allusion is made at the conclusion of their report.

"I am the more led to recommend this course because every day of my short experience of this country confirms me in the opinion that delay ought rarely indeed to be admitted in the adoption of any measures, evidently and practically useful for the purpose of combining it with something better. The rapidity with which the change of men in India unhappily takes place; the almost absolute certainty that he who plans a great measure may not remain to execute it, and the probability that his successor, new to all the considerations which lead to the plan, may either mar or reject its execution, are of themselves strong reasons for rapid decision. And in this case, in which the Judges have so cordially met the wishes of the authorities under which they are acting, it is as well due to them as it must be advantageous to the public, that they should have every aid in perfecting the work upon which they have so creditably entered."

7. The Secretary to the Law Commission was accordingly directed to return the report above noted on the establishments of the Supreme Court, and the members were requested to take up the separate question of *vivâ voce* examinations in Equity cases in communication with the Judges of the Court.

Cons. 23 January 1837. No. 3.

8. The minutes herewith recorded will put your Honourable Court in possession of our individual opinions upon the expediency of adopting the propositions contained in the report from the Judges immediately, and with only some slight modifications. Mr. Ross, although concurring in the course we considered it expedient to adopt, continued of opinion that it would have been more advisable

Cons. 23 January 1837. No. 74 to 76.

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Cons.
23 January 1837.
No. 77.

to have obtained, in the first instance, a thorough examination of the suggestions above noted by the members of the Law Commission. The general opinion of our Board was communicated to the Judges in the following paragraphs:—

"We deem it unnecessary to follow your communication through its various suggestions for the better arrangement of fees, of salary and of official duty, placing, as we do, the fullest confidence upon the judgment, the discernment and the zeal for the public welfare by which those suggestions have been dictated.

"This confidence leads us now to refrain from objecting to the principle of attaching permanently to any office of the Court a salary higher than that fixed as the maximum for the members of the civil service; but we nevertheless feel compelled to record our dissent from the suggestion that the salary of the Master in Equity shall be increased from 66,000 to 78,000 per annum on the contingency of his having temporary charge of the office of Examiner in Equity in addition to his other duties.

"Adverting to the very large salary awarded to that officer in Schedule (F.), we entirely concur with Mr. Justice Grant in thinking that no augmentation to it should be allowed, and that if Mr. Dickens (the officer alluded to) is equal to the performance of the additional duties proposed to be imposed upon him, he should be expected to undertake them without any increase of allowances.

"On the general principle declared in paragraph 24 of your communication now acknowledged, these allowances ought to be considered as being ample remuneration for the whole of the time and labour of the officer referred to. By the Schedule (E.), the successors to Messrs. Smoult and Dickens will receive 54,000 *Rs.* per annum, and we are of opinion that the additional 12,000 *Rs.* per annum which each of those gentlemen is to draw during his continuance in office under the new system, should command their services, whatever duty it may be necessary that they should be required to perform; and we are further of opinion that it is advisable, for the sake of uniformity, that no exception should be made in the case of the Ecclesiastical Registrar and Interpreters to the practice of payment by fixed salaries, though we admit there is much force in the argument advanced by you on this point.

"We trust that we shall have the gratification of finding that you are disposed to concur with us on a reconsideration of these particular suggestions, especially, because, as regards all other points, the reforms which you propose to introduce, both immediate and prospective, are such as to command our approbation, although the question of the future permanent rate of salary to be attached to the higher offices may, we think, properly be reconsidered as vacancies occur.

"We do not deem it necessary that the immediate reduction of fees and commissions should take place to an extent beyond that originally proposed, so as to leave a surplus to meet all possible contingencies, since it must be distinctly understood that no officer of the Court should be considered as possessing a vested interest in his allowance, and that the power will always rest with Government to revise the arrangements now sanctioned, so as to prevent any further charge being incurred by the public."

9. In addition to the above remarks, we requested the Judges to enter into final arrangements regarding the question of *vivâ voce* evidence in Equity cases with the Law Commission; we suggested the 1st of January 1837 as the date whereon the new system might most conveniently commence operation; we observed on the expediency of assimilating the copying charges of the Supreme Court with those in use in Government offices, and we recommended that measures should be taken for arranging the mode of account and remittance to the Government Treasury of fees and commission paid into the Court.

Cons.
23 January 1837.
No. 79.

10. The objections taken to certain of our recommendations above detailed are comprised in the subjoined extract from the letter of the Judges in reply to them:—

"We are willing to concur in the modifications of our plan which are submitted for our consideration, but we are anxious respectfully to recall the attention of Government to the reasons on which, as stated in our letter of April last, we thought it advisable, in the cases of the Ecclesiastical Registrar and the Interpreter of the Court, to depart from the general principle of paying all officers by salary exclusively, and to leave the Ecclesiastical Registrar in possession of his commission on estates administered by him and the Interpreters on receipt of their fees.

"We

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"We confess, after the best consideration we can give to the subject, we remain of opinion that it would not be advisable, for the sake of uniformity only, to adopt any other plan than that which we have suggested, and that by so doing, great risk will be incurred of rendering less efficient than they now are two of the most important offices of the Court.

"If the Government, after a reconsideration of the reasons which have already been stated for these exceptions, shall, nevertheless, deem it advisable to place these officers also on salaries, it becomes necessary for us to state the rate at which the salaries for the respective interpreters should be for the present fixed. At present, as appears by the Schedule (F.), Mr. Blacquiere and Mr. Smith receive salaries differing in amount, and Mr. Smith, who has the smaller salary of the two, derives the largest income from his office, the difference being made up by fees. We think it but just that the officer who labours most should still continue to receive the largest emoluments, and we think that on the same scale on which the salaries of all the other officers have been apportioned, namely, on an average of their net receipts, that Mr. Blacquiere should receive a salary of 9,800 Company's rupees, and Mr. Smith 11,100; and we think it will be desirable that the final arrangement of these offices should be postponed until both of them shall have become vacant."

11. The assimilation recommended in copying charges was considered by the Judges impracticable for the present, for the following reasons :—

"On the subject of 15th paragraph of your letter, the Judges beg to say, that they would be glad at once to assimilate the charges for copying in the Supreme Court to those allowed by Government, as stated in the rules annexed to their letter, but that it will be obvious, on a reconsideration of this suggestion, that it would be impossible to introduce a saving so desirable for the relief of the suitors, without occasioning a deficiency in the fee fund. In the establishments of all English courts the charges per folio for copies are not treated as a mere payment for the labour of the mere writing clerks in transcription, but as one of the principal fnnds for the remuneration of the chief officers; and in the same manner the rate of charge in the present scheme is, we believe, reduced to as low a scale as it will admit of, without endangering the surplus which we have calculated will arise from the fees of the officers when established on the reduced scale."

12. On consideration of the above, we judged it expedient to accede to the recommendation regarding the payment of the Ecclesiastical Registrar by commission, the amount of commission to be revised on occurrence of a vacancy in the office. The rates of salary to Interpreters we also approved, subject to similar readjustments, on demise of the incumbents.

Cons. 23 January 1837. No. 81.

13. A copy of the correspondence above noted was forwarded through the Governments of Fort St. George and Bombay to the Judges of the Supreme Court there, for the purpose of ascertaining whether (although it appeared that reduction in the amount of officers' emoluments might not be practicable in those courts) it would not be possible to adopt at Fort William the practice of payment by salaries instead of fees. To this reference we have, as already noted, received as yet no reply.

14. A schedule of the officers of the court and of their salaries, with draft of a rule of practice for reduction of fees, having been submitted by the Judges of the Supreme Court, the Accountant-general was directed to prepare a scheme for the mode of future receipt of fees into, and payment of salaries from, the General Treasury, which he did to the following effect :—

Cons. 23 January 1837. Nos. 83 & 84, 86 & 87.
Cons. No. 82.

"I have the honour to state, for the information of the Right honourable the Governor-general in Council, that it appears expedient, in the first place, that the salary bills of the several officers of the Supreme Court, the abstracts of their monthly establishments and contingent bills, should be subject to audit by the Civil Auditor, in the same manner as the Government services under specific instructions from the Government, and that these bills be paid from the General Treasury on the monthly issue of pay.

Cons. 23 January 1837. No. 91.

"That the commissions and fees, as they are realized in the several departments of the court, be remitted by the respective officers to the General Treasury, under a receipt from the Sub-Treasurer. That a head of account be opened in the general books of this Government, denominated 'Fund for the Payment of Salaries,

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&c., of the Officers of the Supreme Court,' to which all sums so received shall be credited by the Sub-Treasurer, that head being charged with the amount of salaries, establishments, and other incidental disbursements, and eventually closed by an annual transfer of the balance of profit and loss.

"Having put myself in communication with the Registrar of the Supreme Court, I have the honour to submit, for the information of Government, copy of a letter from that officer, in which he states, that it will be of essential importance for the security of Government, and the due working of the new plan, that the present system of taxation of officers' bills and payments, on the 10th January, 18th June and 25th October, be continued for at least the next twelve months. If his Lordship in Council require him to do so, he is prepared to state his reasons at length for this proposition, in which the officers of the court generally concur. Should this proposition receive the sanction of Government, I would recommend, as suggested by Mr. Dickens, that on the 10th January, 18th June, and 25th October in the following year, all sums received under taxed bills, and all sums on any other account intermediately, be paid over to the Sub-Treasurer, accompanied by the following certificate:—

'I, A. B., do hereby solemnly declare and certify, that to the best of my knowledge and belief, the said last-mentioned sum of is the whole amount actually received by me as such aforesaid, on any account whatsoever, for business done in my said office, for the period beginning from and ending on , and that the above-mentioned sum of is the whole amount actually due and unpaid to me as such for the like period: That the officers of the court transmit, for the adjustment to the Accountant-general in the Judicial Department, as soon after the close of each month as practicable, a verified statement of all sums received by them respectively, and remitted to the General Treasury: That at the end of the year the Taxing Officer do furnish, at each period of payment, a detailed statement in Dr. and Cr. from the Accountant in the Judicial Department, and the Chief Justice, or senior Justice for the time being, of the amount of taxed bills of all the officers, and of amount of arrears unpaid, and of the amount paid to the officers for salaries, and of the amount of the ordinary and contingent bills for expenses; the latter to be furnished to the Taxing Officer by each officer of the court.'"

15. No objection to the above scheme having been offered by the Judges, it was duly approved, and directed to be carried into practice.

16. Mr. Smoult having been compelled in consequence of ill health to resign his offices in the Supreme Court, Mr. Dickens was appointed Ecclesiastical and Admiralty Registrar, in addition to his office of Equity Registrar and of Sworn Clerk, whenever a vacancy should occur in that office. Mr. Dickens had previously resigned his office of Record-keeper, in which he was succeeded by Mr. Vaughan, and the arrangements consequent on his resignation of the offices of Master in Equity and Accountant-general are thus described in the letter of the Judges:—

Cons. 23 January 1837. No. 99.

"Mr. Dickens's offices of Master in Equity and Accountant-general being thus vacant, the Chief Justice and Mr. Justice Malkin have appointed Mr. Dobbs to hold them. His immediate salary, according to the arrangements proposed, will be 36,000 *Rs.* per annum, to be increased by 12,000 *Rs.* on the occurrence of a vacancy in the office of Examiner in Equity, and by 6,000 on the occurrence of a vacancy in that of Examiner of the Insolvent Debtors Court, each of which offices will then be annexed to those held by Mr. Dobbs.

"As Mr. Dobbs will hold these offices at a salary of 36,000 *Rs.*, instead of that now received by Mr. Dickens, namely, 66,000, there occurs a saving of 30,000 *Rs.* beyond those originally contemplated as likely to come into immediate operation. The whole amount of the reductions of expenditure which we proposed in our letter already referred to, but which we postponed till the falling in of offices rendered it practicable, was *Co.'s Rs.* 26,158. 7. As this falls short of the saving now effected, we propose at once to introduce it, and accordingly request your concurrence in the rules for the alteration of fees which we subjoin.

"We do not propose at present to make any other alteration or reduction. The practice of the court is about to undergo considerable change by the introduction of the new rules already passed on the Equity side, and of others under consideration for the other sides of the court. It will in our opinion be desirable

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to see the effect of these changes before we decide what other reductions it will be most desirable to effect when the falling in of other offices affords the means of doing so."

17. All the above arrangements met with our approval.

18. The Registrar of the Supreme Court having applied for adjustment by the officers of Account and Audit of the salaries of the establishments of the officers of the Supreme Court, we forwarded the list submitted to the Judges, requesting their sentiments as to the reasonableness of the charges, and remarking, in particular, upon one put in by the Examiner in the Insolvent Court for a buggy and horse.

Cons. 6 February 1837. No. 3, and Order. Cons. 27 February 1837. Nos. 5 to 14.

19. The Judges informed us in reply, that the charges were, in as far as they had the means of determining by reference to former returns of establishments, equitable and proper, but recommended that the item noticed by us in the bill put in by the Insolvent Courts Examiner should be disallowed.

20. The charges are accordingly passed, with the single reservation to the amount annually of 66,274 *Rs.*

We have, &c.

(signed) *Auckland.* *T. B. Macaulay,*
A. Ross. *H. Shakespear.*
W. Morrison.

Legislative Department, Government of India,
27 March 1837.

To *W. H. Macnaghten*, Esq., Secretary to Government in the Judicial Department, &c. &c. &c.

Legis. Cons. 3 April 1837. No. 39.

Sir,

I HUMBLY beg leave, through you, to submit to the consideration of his Lordship the Right honourable the Governor-general and the Honourable Members of Council, that, in consequence of the resolution of Government to pay the officers of the Supreme Court by fixed monthly salaries alone, instead of office fees and salaries, by which they were theretofore remunerated, and also to defray the expenses of the establishments of their respective offices, I, among others, furnished Mr. Dickens (the then Master and Equity Registrar of the Court) with a list of the establishment of writers and others employed in my office for translations (always held in my dwelling-house, for reasons which will be given in the sequel), to assist me in the due discharge of my duty as Translator of the Court for the practitioners thereof; and as I had all along debited that office with the monthly sum of 50 Sicca rupees for office rent (which formed a component part of the annual sum deducted by me from my gross annual income, in the several returns made at different periods, and handed up to the Judges), I inserted this charge of 50 Sicca rupees, as one of the items of the permanent expenses of my office, in the said list; but that gentleman, considering this charge not to come properly under the head of Writers, &c., and Sir Edward Ryan, our Chief Justice, concurring in that opinion, I omitted that item of charge in the Schedule of Writers that I subsequently furnished (which was sent in, and has since been sanctioned by his Lordship and the Honourable Members of Council); but as Government have, by their public letter to the Judges of the Supreme Court of the 20th March instant, sanctioned an additional sum of 32 rupees, and directed that amount to be added to the salary of Mr. O'Hanlon (which had been disallowed as an exceptionable charge in his office estimate), upon the equitable principle of that sum having formed a part of what he has deducted from his gross income, and his salary being assessed on the average of his clear income, I have therefore been emboldened submissively to claim from their justice the said sum of 50 Sicca rupees, which I excluded from my List of Office Establishment under the circumstances above stated; and I am in hopes that my appeal to their justice and liberality will not be in vain.

I now beg leave to assign my reason for holding my office in my own residence, from which circumstance I humbly consider myself entitled to this charge, independent of the fact of its being a component part of the sum I deducted from my gross incomings; one of which is, that I have from the date of my appointment

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(which was 23 years ago) been under the necessity regularly and constantly to attend the court, whenever sitting, to discharge the arduous and laborious duty of Interpreter; the other, that whatever translations have been made by me ever since my appointment (and those not inconsiderable) have been effected out of office hours, always early in the morning, and often by candle light to a late hour in the evening, to meet the exigencies of the practitioners; and another, that, for the convenience of the practitioners and the benefit of their clients, I moved into the neighbourhood of the court, where house-rent is high, about 14 years ago, and have ever since appropriated the lower story of a large house in my occupation almost entirely to the use of my office, not having any accommodation in court, nor the opportunity of translating papers whilst in attendance there.

This exposition will, I hope, place this matter in a clear point of view to his Lordship and the Honourable Members of Council, and induce them to grant my prayer, by directing this sum to be added to my monthly salary, as in the case of Mr. O'Hanlon.

I have, &c.

(signed) *W. D. S. Smith,*
Second Interpreter, Supreme Court.

Dacres-lane, No. 7,
27 March 1837.

(No. 100.)

Legis. Cons.
3 April 1837.
No. 40.

To *W. D. Smith*, Esq., Second Interpreter Supreme Court.

Sir,

I AM desired by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter, dated the 27th ultimo, soliciting the additional sum of 50 Sicca rupees per month to your salary, on the principle on which 32 rupees has been granted to Mr. O'Hanlon.

2. In reply, I am directed to acquaint you that there is a material difference between your case and that of Mr. O'Hanlon, inasmuch as the charge for a buggy and horse, which was made by that gentleman, formed an item of the establishment referred for sanction by the Judges; whereas in your case the office-rent formed no part of the bill for similar charges, from which it is to be inferred that the allowance which has been assigned to you is deemed ample by the Judges, both for your personal remuneration and on every other account.

3. Should, however, the case be different, his Lordship in Council will be happy to pay due attention to any recommendation which may be made by the Judges in your favour.

I have, &c.

(signed) *W. H. Macnaghten,*
Secretary.

Council Chamber, 3 April 1837.

Legis. Cons.
22 May 1837.
No. 7.

To *W. H. Macnaghten*, Esq., Secretary to the Government of India.

Sir,

I AM directed by the Judges to address you, for the information and consideration of the Right honourable the Governor-general in Council, on the subject of a letter received by the Judges from Mr. W. D. S. Smith, the Second Interpreter of the Supreme Court.

2. The Judges can so far recommend Mr. Smith's claim to the attention of his Lordship in Council as to state, that when Mr. Smith, previous to the correspondence with Government relating to the reductions and new arrangements of the offices of court, made a return of his net receipts and of his charges of office to the Judges, he did specify distinctly, item by item, his charges of office, and among those the sum of 50 Sicca rupees monthly for office-rent, thereby reducing his apparent net income.

3. The present salary allowed to Mr. Smith was awarded on the principle of taking into calculation only his net income, consequently sent in his return of charges of office: he would have received in the result a salary of 50 rupees a month more than he has now.

4. Mr.

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4. Mr. O'Hanlon did not, in sending in his statement of office charges, enter into any specification of items whatever, but returned the gross amount only of his charges of office; consequently, until Mr. O'Hanlon referred to his Lordship in Council on the subject, the Judges were not made aware that he had included the sum of 32 Sicca rupees a month for a horse and buggy, as an office charge. In Mr. Smith's case, they were made aware by his return (the mode of making which they consider preferable to that adopted by Mr. O'Hanlon) that he had included 50 Sicca rupees per cent. as an office charge. The result in each case was, however, the same, for the average amount of net income alone was made the basis of the calculation for the allowance of salary; and if Mr. Smith should not now succeed in his application to his Lordship in Council, he will be placed in a disadvantageous situation, as compared with Mr. O'Hanlon, which was not the intention of the Judges.

I have, &c.
(signed) *T. Dickens*, Registrar.

Registrar's Office, Calcutta,
13 May 1837.

(No. 158.)

To *T. Dickens*, Esq., Registrar, Supreme Court.

Legis. Cons.
22 May 1837.
No. 8.

Sir,

I AM directed by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter dated the 13th instant, and, in reply, to request that you will acquaint the Honourable the Judges of the Supreme Court that, under the circumstances now stated, his Lordship in Council has been pleased to permit Mr. W. D. Smith, the Second Interpreter of the Supreme Court, to draw the additional allowance of 50 Company's rupees per mensem on account of house-rent. The Officers of Audit and Account will accordingly be instructed to adjust Mr. Smith's bill in future for 975 rupees per month, instead of 925 rupees, as at present.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Council Chamber, 22 May 1837.

(No. 905 of 1837.—Judicial Department).

To the Secretary to the Government of India in the Legislative Department.

Legis. Cons.
5 June 1837.
No. 10.

Sir,

I AM directed by the Right honourable the Governor in Council to acknowledge the receipt of your letter dated the 14th of November last, No. 168, and enclosures, requesting the Right honourable the Governor in Council to enter into a communication with the Honourable the Judges of the Supreme Court, relative to the introduction of the system of paying the officers and servants of that Court by fixed salaries instead of by fees or commission as at present.

2. In reply, I am instructed to transmit to you copy of a letter to the Judges, dated the 7th, and of their reply, dated the 18th ultimo, on the subject, from which the Right honourable the Governor-general of India in Council will learn that it is their wish to correspond with the Legislative Council of India instead of Government.

3. The Governor in Council is, however, clearly of opinion that no reforms should be finally adopted without this Government having had an opportunity of considering their expediency.

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

Legis. Cons.
5 January 1837.
No. 11.

(No. 583 of 1847.—Judicial Department.)

To the Honourable Sir *A. D. Compton*, Knight, Chief Justice, and the Honourable Sir *J. W. Awdrey*, Knight, Puisne Judge, Supreme Court.

Honourable Sirs,

We have the honour to transmit to you the accompanying copy of a letter from the Secretary to the Government of India in the Legislative Department, dated the 14th November last, with its enclosures, relative to the introduction of a reform into the department entrusted to the superintendence of the Honourable the Judges of the Supreme Court of Judicature at Calcutta.

2. In referring these proceedings for your consideration, we beg to request your attention both to the particular proposition which forms the subject of the third paragraph of Mr. Macnaghten's letter, and also to the other questions adverted to in the correspondence annexed, and that you will favour us with such observations on the several subjects as you may think it material to communicate.

We have, &c.

(signed) *R. Grant.*
T. Keane.
J. Farish.

Bombay Castle, 7 April 1837.

To the Right honourable the Governor in Council.

Right honourable and Honourable Sirs,

We have the honour to acknowledge the receipt of your letter of the 7th inst., with its enclosures.

2. We will address ourselves without delay both to the question of payment by salary instead of fees without increased expense to the public, as submitted to us in pursuance of the third paragraph of Mr. Secretary Macnaghten's letter, and to the other questions on which you have done us the honour of requesting our observations. We fear, however, that the difficulty will be found considerably greater here than at Calcutta, as we have not here, as there, a surplus fund after affording adequate remuneration, while the fluctuations on a less extended average will be more likely to derange the general results; and as with a narrower field of selection and less inducement to offer to those already possessed of some professional emoluments, we can less depend on commanding in every instance the services of those who may unite all the qualifications requisite for the discharge of the duties, several offices permanently united inadequately providing for such temporary charge of certain offices as has been rendered necessary by the serious illness of their holders, we have, in fact, seen very considerable difficulty even on their present footing.

3. We shall have occasion, before entering on an extended examination of the subject, to request the Legislative Council to furnish us with copies of the several documents referred to in the correspondence between themselves and the Judges of the Supreme Court at Fort William, with the details of the plan adopted there, and with the further correspondence, if any, which must probably have taken place in reference to those details, without which it will be impracticable to attain the desired and very important object of rendering any plan which may be adopted here as nearly similar as possible. We cannot otherwise see how far modifications were adopted on principle, and, therefore, constitute an example to be followed, if practicable, or submitted to from overpowering circumstances, and therefore to be avoided, unless forced on us by similar pressure of circumstances here. We should also request, with reference particularly to the observations on *vivâ voce* evidence in Equity, and to the difference between the jurisdiction over small debts here and at Calcutta, to be informed whether any legislative change is contemplated which will materially affect the duties of the office of Examiner or of any other existing offices.

4. We gladly avail ourselves of the opportunity offered of free communication with yourselves on these subjects, the advantages of which we fully appreciate, and in suggesting that it would be desirable, both on principle and upon the precedent furnished by the correspondence of the co-ordinate Court at Fort William with the Legislative Council, and not with the Executive Government, that all general results,

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results, and such other matters as may from time to time appear requisite, should in point of fact pass as heretofore directly between the Legislative Council and ourselves; we hope we may not appear to detract from the cordiality with which we embrace the proposal.

We have, &c.

(signed) *A. D. Compton.*
J. W. Awdrey.

Bombay, 13 April 1837.

(True copy.)

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

(No. 66.)

To *J. P. Willoughby,* Esq., Secretary to the Government of Bombay.

Legis. Cons. 5 June 1837. No. 12.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 905, dated the 19th ultimo, with its enclosures, and in reply to acquaint you, for the information of the Right honourable the Governor in Council, that the Governor-general of India in Council will be prepared, on receiving the promised communication from the Judges of the Supreme Court of Bombay, to furnish him with all the information in his power regarding every point on which they may require it. But his Lordship in Council entirely concurs in the opinion expressed in the concluding paragraph of your letter, that "no reforms should be finally adopted without the Bombay Government having had an opportunity of considering their expediency."

I have, &c.

(signed) *W. H. Macnaghten,*
Secretary to Government of India.

EXTRACT of a Despatch to the Honourable the Court of Directors in the Legislative Department, No. 4 of 1838; dated 7 February.

Supreme Courts, Fort William, Second Interpreter allowed office-rent. Legis. Cons. 3 April 1837. No. 39 & 40. 22 May 1837. Nos. 7 & 8.

Para. 82. WITH reference to the arrangements reported in our separate letter, No. 4 (27 March) of 1837, we have been induced, under the circumstances explained in the accompanying papers, to permit Mr. W. D. S. Smith, second Interpreter of the Supreme Court at Fort William, to draw an allowance of 50 Company's rupees per mensem on account of office-rent, in addition to the allowance assigned him of 925 rupees per mensem.

* * * * * * * * * *

Bombay: Proposed reform of the system of payment to officers of the Court. Legis. Cons. 5 June 1837. Nos. 10 to 12.

84. On the annexed date the Government of Bombay submitted a correspondence with the Judges of the Supreme Court at that Presidency relative to the introduction of a reform similar in character to that effected in the Supreme Court at Fort William, as reported to your Honourable Court in our separate despatch above mentioned.

85. The Judges, in adverting to the difficulties which appeared to them to attend the introduction of such a change, stated, that they would address us on certain points for information, and in the mean time expressed a wish to correspond with us on the subject direct, instead of through the local Government.

86. In reply, we intimated to the Bombay Government that we would be the most willing to afford all the information in our power to the Judges, but that we thought, in concurrence with the opinion of that Government, that no reforms should be finally adopted without their having an opportunity of considering their expediency.

(No. 815.)

Jud. Cons. 25 September 1837. No. 32.

To *W. H. Macnaghten*, Esq., Secretary to the Government of India, Legislative Department.

Sir,

With reference to your letter of the 14th November last, No. 169, I am directed to transmit to you, for submission to the Right honourable the Governor-general of India in Council, a copy of the correspondence as noted in the margin, which has passed between this Government and the Honourable the Judges of the Supreme Court at this Presidency, on the subject of the proposition of the Supreme Government to remunerate the officers and servants of that Court by fixed salaries instead of fees.

To the Honourable the Judges, 13 December 1836.
From the Honourable the Judges, 31 December 1836.
To the Honourable the Judges, 14 February 1837.
From the Honourable the Judges, 25 February 1837.
To the Honourable the Judges, 3 March 1837.
From the Honourable the Judges, 15 August 1837.

2. The Honourable the Judges, it will be observed, are of opinion that the proposed measure is likely to be more beneficial to suitors, and more satisfactory to the officers themselves, than the present system; they have, however, refrained from offering any suggestions as to the best mode of giving effect to it, notwithstanding they were expressly solicited to do so; and the Governor in Council not being sufficiently acquainted with the subject, either as regards the nature or amount of duty involved in the several offices, or the degree of talent and zeal required for their efficient and satisfactory performance, is unable to give any opinion as to whether any, and if so, which of the appointments will admit either of abolition or consolidation with others, or what would be a fair and sufficient remuneration to be attached to each office. Should the Judges hereafter express their sentiments on these points, a copy of their communication will be immediately forwarded for the information of the Supreme Government.

3. With reference to the remarks made by the Judges in their letter of the 31st December last, on the subject of the union of the office of Master in Equity with that of one of the Commissionerships of the Court of Requests, the Governor in Council desires me to observe that this arrangement, which was first effected in the year 1807 on the score of expediency, has been allowed to continue up to the present time, although the reason which originally suggested it has long ceased to exist, but that, in consequence of the great accession which has of late years gradually taken place in the business in the Court of Requests, it is the intention of the Governor in Council, when the allowances of the office of Master in Equity shall be fixed, or when the present incumbent vacates that office, whichever event may happen first, to separate the two offices and to remodel the constitution of the Court of Requests so as to allow of a daily sitting of the Commissioners, whenever found necessary, instead of two days in the week, with the view to secure an accurate and deliberate investigation of causes instituted in that court, and at the same time a more expeditious disposal of them than is at present effected.

4. One of the principal and express objects of the institution of the Court of Requests is to provide a speedy remedy for recovering the rights and enforcing the claims of the lower orders of the people; but in consequence of the great increase which has taken place in the business of the court, and the Commissioners sitting only two days in the week for the disposal of business, that object is oftentimes entirely defeated, as it not unfrequently happens that the hearing of a case is obliged to be postponed three weeks from the date of the first institution of the suit, and should the party against whom such suit is instituted not intend to defend the action, or purpose to do so, upon the issue of the third summons, a further delay of some weeks is inflicted upon the plaintiff before the case is finally disposed of.

5. It is of the greatest importance, on the one hand, to guard against delay in the proceedings of this court; so it is of equal if not greater importance, on the other hand, to prevent precipitancy in its decisions. It is understood to be the practice at present to set down about 300 cases for hearing on each day, with the view to obviate the inconvenient accumulation of arrears; and admitting that the court sits each time six hours, that is, from 11 A. M. to 5 o'clock, P. M., the average period which would even then be allowed for hearing and deliberating in each case would only be a minute and a fifth, which time it is manifest must be altogether insufficient for accurate and deliberate investigation; and although it may be that in many cases the parties do not attend, yet to guard against disposing of causes without sufficient consideration, it is necessary that some must be postponed

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poned to the next sitting, whereby a great and inconvenient delay is occasioned to the public.

6. By remodelling the Court as stated above, and appointing Under-commissioners, who will give up all their other employments and private pursuits, and devote their whole time and attention to the discharge of the duties of the court, the Governor in Council hopes to be able to provide full and sufficient remedy against either delay in the proceedings of the court or unbecoming and injurious haste in its awards.

I have, &c.

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

Fort St. George, 2 September 1837.

(No. 1042.)

To the Honourable the Judges of the Supreme Court.

Jud. Cons. 25 September 1837. No. 33.

Honourable Sirs,

We beg leave to refer for your consideration the accompanying copy of a letter from the Secretary to the Government of India, with its enclosures, and request to be favoured with your sentiments on the proposition therein contained, of remunerating the officers and servants of the Supreme Court by fixed salaries, instead of by fees on commission.

(signed) *Fred. Adam.*
P. Maitland.
J. Sullivan.

Fort St. George, 13 December 1836.

To the Right honourable Sir *Frederick Adam*, K. C. B., Governor in Council, &c. &c. &c., Fort St. George.

Right honourable Sirs,

We have now the honour of replying to your letter of the 13th instant, after having perused the correspondence with which you favoured us, and given the subject the best consideration in our power.

We have no hesitation in expressing our opinion that the proposition contained in the correspondence referred to, of remunerating the officers and servants of the Supreme Court by fixed salaries instead of by fees, is one likely to be more beneficial to the suitors, and more satisfactory to the officers themselves, than the present system; we beg leave, however, to state, that in our view of the subject, the Registrar of the Supreme Court, in his capacity of public administrator, forms an exception, as we consider it more advantageous for the public that the established mode of remunerating him by commission should be retained, as better calculated to stimulate his vigilance and attention than if he were provided with a fixed salary, without reference to the number and value of estates to be administered; upon this point, therefore, we entirely concur with the Honourable the Judges in Calcutta, who have set the matter in so clear a light in their letter to the Supreme Government.

We beg also to draw your attention to the subject of the income of the Master in Equity, which at present arises in his capacity as an officer of the Supreme Court from fees, and a monthly salary of only 150 pagodas. These having been deemed by the Government, as well as by the court, a remuneration insufficient for an office of so much responsibility, and requiring a person of superior information and capacity; the Government were pleased to make an arrangement with the Judges our predecessors, that in lieu of an increased salary, the appointment of Chief Commissioner of the Court of Requests should be always attached to that of Master; an arrangement continually acted upon, as will appear by reference to correspondence dated respectively, 7th November 1807, 16th August 1820, and 2d September 1820.

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Upon the last vacancy, however, in 1830, Mr. Savage, who succeeded Mr. Byrne, was appointed by the existing Government third instead of Chief Commissioner, which of course considerably diminished the value of his appointment as Master. We take the liberty to direct your attention particularly to this circumstance, in case you should be pleased to make any other arrangement than that which was made in the year 1807.

We shall have great pleasure in affording any other information which may be required by the Supreme Government of India or by the Right honourable the Governor of Madras in Council.

(signed) *Robert Comyn.*
Edw^d J. Gambier.

Madras, 31 December 1836.

(No. 174.)

To the Honourable the Judges of the Supreme Court.

Honourable Sirs,

Para. 1. We have the honour to acknowledge the receipt of your letter of the 31st ultimo, relative to the proposition of the Supreme Government to remunerate the officers and servants of the Supreme Court by fixed salaries instead of by fees.

2. We are happy to observe that in your opinion the proposed measure is not only likely to be beneficial to suitors, but also more satisfactory to the officers themselves, than the present system; and such being the case, it appears to us that no difficulty will be experienced in carrying it into effect at this Presidency at an early date, provided it can be done without subjecting the Government to expense; we accordingly beg to intimate that we shall be glad to receive and forward to the Government of India any suggestions which you may see fit to offer on this subject, and to be favoured, for the better understanding of the matter, with schedules similar to those which accompanied the communication from the Honourable the Judges at Calcutta, dated the 25th April 1835, to the Supreme Government, as far as they may be necessary.

3. With reference to the opinions expressed by you, that it would not be desirable to bring the Registrar of the Supreme Court, in his capacity of public administrator, under the operation of the proposed rule, we observe that the Supreme Government, in para. 7 of the letter addressed by them to the Honourable the Judges at Calcutta, under date the 14th November last, have intimated their desire that for the sake of uniformity, no exception should be allowed in favour of the same officer at Calcutta; and we therefore request that the office of Registrar may also be included in the Schedules requested above.

4. The office of Master in Equity having been united first to that of Chief Commissioner, and afterwards to that of Commissioner of the Court of Requests, principally on account of the inadequacy of the allowances attached to it, we are of opinion that advantage should be taken of the present opportunity to separate the two offices, which are altogether unconnected in their respective duties, by providing for that of Master in Equity an allowance suitable to the responsibility and arduousness of the situation; and as the projected modifications will necessarily involve the abolition of some offices and the consolidation of others, if not immediately, at least prospectively, it appears to us that this object may be easily attained.

(signed) *Fred^k Adam.*
C. Maitland.
John Sullivan.
C. M. Lushington.

Fort St. George, 14 February 1837.

To

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On Fees and Salaries of the Officers of the Supreme Courts.

To the Right honourable Sir *F. Adam*, K.C.B., Governor in Council, &c. &c. &c., Fort St. George.

Right honourable Sir,

We have the honour to acknowledge the receipt of your letter of the 14th instant, and shall lose no time in causing proper schedules to be prepared for your information; at the same time, we shall have great satisfaction in affording you every information in our power, so as to facilitate this very beneficial alteration.

We trust we shall be excused if we venture again to press upon you the expediency of the remuneration of the Ecclesiastical Registrar by commission on the present footing; and we do this with the greater confidence, as we observe, from the copy of a letter from the Supreme Government to the Honourable the Judges in Calcutta (a copy of which we have the honour to enclose), dated 5th December 1836, and which was communicated to Sir Robert Comyn in a private letter from Sir Edward Ryan, that the Registrar of the Supreme Court at that Presidency continues to receive his remuneration by way of per-centage.

(signed) *Robert Comyn.*
Edw. J. Gambier.

Madras, 25 February 1837.

(No. 343.)

To the Honourable the Judges of the Supreme Court.

Honourable Sirs,

We have the honour to acknowledge the receipt of your letter, dated the 21st ultimo, on the subject of the proposed arrangements for modifying the system of remunerating the officers of the Supreme Court.

2. In consideration of the arguments which you have urged on this occasion, we have much pleasure in acceding to your wishes as regards the mode of remunerating the Ecclesiastical Registrar; and that officer may therefore continue to receive his commission as heretofore. The amount of such commission will of course be subject to revision when the office of Ecclesiastical Registrar shall be vacated by the present incumbent.

3. With regard, however, to the office of Interpreter, we are of opinion that the same reasons do not apply, and we are disposed to adhere to our former recommendation as regards the Interpreters of the court. We therefore concur in your suggestion, that Mr. Blaguire, the Chief Interpreter, shall receive a salary of 9,800 Co.'s Rs. per annum, and that Mr. Smith, the deputy, should receive a salary of 11,100 Co.'s Rs. per annum. The allowance assigned to the office of the Interpreters will be open to revision when either of the present incumbents shall vacate his situation.

4. With regard to the mode of accounting for the fees received by the officers of the court, we are disposed to think that the second precedent cited by you would be the most expedient, and a communication to this effect will be made to our Accountant-general accordingly.

(signed) *Auckland.*
A. Ross.
H. Shakespear.
T. B. Macaulay.

Fort William, 5 December 1836.

(A true copy.)

(signed) *R. Comyn.*

(No. 235.)

To the Honourable the Judges of the Supreme Court.

Honourable Sirs,

Para. 1. We have the honour to acknowledge the receipt of your letter of the 25th ultimo, pressing upon our consideration the inexpediency of altering the present mode of remunerating the Ecclesiastical Registrar of your court.

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2. Having been led to believe, from the letter addressed by the Supreme Government to the Honourable the Judges at Calcutta, under date the 14th November 1836, that the Ecclesiastical Registrar at the Presidency was not exempted from the operation of the proposed rule for remunerating the officers and servants of the Supreme Court by fixed salaries instead of fees, we were induced to request, for the sake of uniformity, the same course might be adopted at this Presidency; but, as it appears from the enclosure in your letter under reply, that the Supreme Government, on a reconsideration of the subject, have consented to the present incumbent at Calcutta continuing to receive his commission as heretofore, there seems to us to be no good reason for not extending a like principle to the same officer at this Presidency; and we accordingly request that he may be excluded from the schedules which you have kindly promised to have prepared for our information.

We have, &c.

(signed) *P. Maitland.*
G. E. Russell.
John Sullivan.

Fort St. George, 3 March 1837.

To the Right honourable Lord *Elphinstone*, Governor-general, &c. &c. &c.,
Fort St. George.

My Lord,

We have the honour to forward your Lordship the return of the several officers of the Supreme Court at this Presidency, showing the average of their receipts for the last few years. Two or three of them are not so complete as we could wish, in consequence of the present incumbents having been recently appointed to their respective offices.

We beg leave further to call the attention of your Lordship to a letter addressed to us by the Registrar, relative to the system by which he and his predecessors have been accustomed to remunerate the Writers in his department.

We have, &c.

(signed) *Robert Comyn.*
Edw. J. Gambier.

Madras, 15 August 1837.

List of Schedules of Emoluments made by the Officers of the Supreme and Insolvent Courts, in pursuance of a Letter received from Government, dated 14th February 1837.

No. 1.	The Schedule of Sheriff of Madras		11,475 – –
No. 2.	Ditto - Deputy Sheriff of Madras		4,189 – –
No. 3.	Ditto - Accountant-general		—
No. 4.	Ditto - Master	42,203	52,403 – –
	Add salary as Commissioner of Court of Requests	10,200	
No. 5.	The Schedule of Clerk of the Crown		6,938 – –
No. 6.	Ditto - Deputy Clerk of Crown		2,507 – –
No. 7.	Ditto - Registrar and Prothonotary		43,844 – –
No. 8.	Ditto - Examiner		10,389 – –
No. 9.	Ditto - Sealer		3,428 – –
No. 10.	Ditto - Pauper Attorney		4,289 – –
No. 11.	Ditto - Clerk to the Chief Justice		5,486 – –
No. 12.	Ditto - Clerk to Sir E. J. Gambier		5,486 – –
No. 13.	Ditto - Malabar and Gentoo Interpreter		6,520 – –
No. 14.	Ditto - Deputy Malabar and Gentoo Interpreter		1,260 – –
No. 15.	Ditto - Persian and Hindostanee Interpreter		3,520 – –
No. 16.	Ditto - Canarese Interpreter		630 – –
No. 17.	Ditto - French Interpreter		292 – –
No. 18.	Ditto - Dutch Interpreter		492 – –
No. 19.	Ditto - Armenian Interpreter		1,549 – –
No. 20.	Ditto - Portuguese Interpreter		599 – –
No. 21.	Ditto - Malhalum and Mopillay Interpreter		1,127 – –
No. 22.	Ditto - Malay Interpreter		630 – –
No. 23.	Ditto - Chief Clerk		6,047 – –
No. 24.	Ditto - Common Assignee of the Insolvent Court		3,699 – –
No. 25.	Ditto - Examiner of the Insolvent Court		2,304 – –

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

SCHEDULES of the Annual Emoluments of every Description of the Sheriff of the Supreme Court from the 1st January 1832 to the 31st December 1836.

	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
To amount of salary paid by Government to the Sheriff monthly, 350 *Rs.*, is for the year 1832	4,200	–	–			
Office-rent, at 87 *Rs.* 8 *as.* monthly, is for the year 1832	1,050	–	–			
Amount of fees of every kind received for all and every description of business for one year	6,778	7	7			
				12,028	7	7
To amount of salary paid by Government to the Sheriff monthly, 350 *Rs.*, is for the year 1833	4,200	–	–			
Office-rent, at 87 *Rs.* 8 *as.* monthly, is for the year 1833	1,050	–	–			
Amount of fees of every kind received for all and every description of business for one year	7,877	9	10			
				13,127	9	10
Amount of salary paid by Government to the Sheriff monthly, 350 *Rs.*, is for the year 1834	4,200	–	–			
Office-rent, at 87 *Rs.* 8 *as.* monthly, is for the year 1834	1,050	–	–			
Amount of fees of every kind received for all and every description of business for one year	6,731	5	8			
				11,981	5	8
To amount of salary paid by Government to the Sheriff monthly, 350 *Rs.*, is for the year 1835	4,200	–	–			
Office-rent for the month of January 1835 – 87 *Rs.* 8 *as.* Ditto to the end of December 1835, being 11 months, at 42 *Rs.* per month, is – 462 *Rs.* – *as.*	549	8	–			
Amount of fees of every kind received for all and every description of business for one year	5,698	2	10			
				10,447	10	10
To amount of salary paid by Government to the Sheriff monthly, 350 *Rs.*, is for the year 1836	4,200	–	–			
Office-rent from 1st January to 30th November 1836, being 11 months, at 42 *Rs.* per month	462	–	–			
Amount of fees of every kind received for all and every description of business for one year	5,130	12	4			
				9,792	12	4

Sheriff's Office, Madras,
20 July 1837.

(signed) *A. Y. Fullerton,*
Sheriff.

The average for five years – – *Rs.* 11,475. 9. 3.

N.B.—The Sheriff is allowed a monthly sum of *Co.'s Rs.* 1,573. 13. 7. for his establishment by Government. This amount includes the salaries of himself and his Deputy, and the palanquin allowance of the latter.

SCHEDULE of the annexed Emoluments of every Description of the Deputy Sheriff of the Supreme Court, from the 1st January 1832 to the 31st December 1836.

	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
To amount of salary paid by Government to the Deputy Sheriff monthly, 210 *Rs.*, is for the year 1832	2,520	–	–			
To palenkeen allowance for Deputy Sheriff, at 42 *Rs.* monthly, is for the year 1832	504	–	–			
Fees of every description for the year 1832	1,032	8	–			
				4,056	–	–
To amount of salary paid by Government to the Deputy Sheriff monthly, 210 *Rs.*, is for the year 1833	2,520	–	–			
To palenkeen allowance for Deputy Sheriff, at 42 *Rs.* monthly, is for the year 1833	504	–	–			
To fees of every description for the year 1833	1,155	–	–			
				4,179	–	–
To amount of salary paid by Government to the Deputy Sheriff monthly, 210 *Rs.*, is for the year 1834	2,520	–	–			
To palenkeen allowance for Deputy Sheriff, at 42 *Rs.* monthly, is for the year 1834	504	–	–			
Fees of every description for the year 1834	1,277	8	–			
				4,301	8	–
To amount of salary paid by Government to the Deputy Sheriff monthly, 210 *Rs.*, is for the year 1835	2,520	–	–			
To palenkeen allowance for Deputy Sheriff, at 42 *Rs.* monthly, is for the year 1835	504	–	–			
Fees of every description for the year 1835	1,189	10	–			
				4,213	10	–
To amount of salary paid by Government to the Deputy Sheriff monthly, 210 *Rs.*, for the year 1836	2,520	–	–			
To palenkeen allowance for Deputy Sheriff, at 42 *Rs.* monthly, is for the year 1836	504	–	–			
To fees of every description for the year 1836	1,171	8	–			
				4,195	8	–

The average for five years – – *Rs.* 4,189. 3. 7.

Sheriff's Office, Madras,
20 July 1837.

(signed) *J. S. Baillie,*
Dep. Sheriff.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

(No. 59.)

To the Honourable Sir *Robert Buckley Comyn*, Kt., Chief Justice, and the Honourable Sir *Edward John Gambier*, Kt., one of his Majesty's Justices.

My Lords,

I HAVE had the honour of receiving the circular letter, dated the 8th of March last, from the Registrar of the court, requesting to be furnished with schedules of the annual emoluments of every description of my office for the last three years, ending 31st December 1836, showing also the average of those three years, and beg to report, that I do not receive any separate salary or emolument as Accountant-general of the Supreme Court; but on the issue of certificates of the funds standing to the credit of causes and estates, a fee of two rupees is allowed for the same, which is received by the Clerk making the search; and that the average amount received during the last three years, ending 31st December 1836, on that account, may be stated at Rs. (212) two hundred and twelve per annum.

(signed) *J. G. Turnball*,
Accountant-general, Supreme Court.

Fort St. George, Accountant-general's Office,
5 May 1837.

SCHEDULE of the Fees and Emoluments of every Description of the Master of his Majesty's Supreme Court of Judicature at Madras for Five successive Years.

	Rs. *a.* *p.*	*Rs.* *a.* *p.*	*Rs.* *a.* *p.*
1832:			
Fees - - - - - - - -	- - -	36,225 11 2	
Salary - - - - - - - -	6,300 - -		
Deduct office expenses, clerks' salaries and stationery - - - - - -	3,466 10 -		
		2,833 6 -	
1833:			39,059 1 2
Fees - - - - - - - -	- - -	38,498 - 3	
Salary - - - - - - - -	6,300 - -		
Deduct office expenses, clerks' salaries and stationery - - - - - -	3,598 2 4		
		2,701 13 8	
1834:			41,199 13 11
Fees - - - - - - - -	- - -	36,599 11 2	
Salary - - - - - - - -	6,300 - -		
Deduct office expenses, clerks' salaries and stationery - - - - - -	3,749 9 -		
		2,550 7 -	
1835:			39,150 2 2
Fees - - - - - - - -	- - -	37,214 4 8	
Salary - - - - - - - -	6,300 - -		
Deduct office expenses, clerks' salaries and stationery - - - - - -	3,707 6 9		
		2,592 9 3	
1836:			39,806 13 11
Fees - - - - - - - -	- - -	49,334 11 8	
Salary - - - - - - - -	6,300 - -		
Deduct office expenses, clerks' salaries and stationery - - - - - -	3,833 1 3		
		2,466 14 9	
			51,801 10 5
		Rs.	2,11,017 9 7

Making an average clear annual income for five years of *Rs.* 42,203. 8. 3.

N.B.—There is a Tamil and Gentoo Interpreter attached to the Master's office, who is paid by fees, and not by salary (which is not included in the above schedule), whose fees for interpreting, swearing, &c., yield an average annual income of about *Rs.* 736. 1. 8.

A swearing Priest is provided by the Tamil and Gentoo Interpreter, and paid out of his own funds *Rs.* 3. 8. per mensem.

The above sum of *Rs.* 42,203. 8. 3. is exclusive of my salary of *Rs.* 10,200, as one of the Commissioners of the Court of Requests, which together produce an annual average income of *Rs.* 52,403. 8. 3.

By an arrangement with the Judges, the Government were pleased to annex the appointment of Chief Commissioner of the Court of Requests (whose annual salary is *Rs.* 12,900), to the Mastership; and all my predecessors held the two offices of Master and the Chief Commissioner, as will appear by a letter from the Honourable the Judges to the Right honourable the Governor in Council, dated 31st December 1836.

(signed) *J. Savage*, Master.

To

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

To the Honourable the Judges of His Majesty's Supreme Court of Judicature at Madras.

The SCHEDULE made by the Clerk of the Crown, in the Crown Office of the Court, of the Annual Emoluments and Salary from 1832 to 1836.

	Rs.	*a.*	*p.*
The amount of fees and emoluments for one year, being from the 1st January to 31st December 1832, both inclusive	737	–	–
The amount of salary for the same time, being from the 1st January to 31st December 1832, at 525 *Rs.* per month	6,300	–	–
The amount of fees and emoluments received for one year, being from the 1st January to 31st December 1833, both inclusive	613	6	–
The amount of salary for the same time, being from the 1st January to 31st December 1833, at 525 *Rs.* per month	6,300	–	–
The amount of fees and emoluments received for one year, being from the 1st January to 31st December 1834, both inclusive	818	4	–
The amount of salary for the same time, being from the 1st January to 31st December 1834, at 525 *Rs.* per month	6,300	–	–
The amount of fees and emoluments received for one year, being from the 1st January to 31st December 1835, both inclusive (as far as it can be ascertained)	213	–	–
The amount of salary for the same time, being from the 1st January to 31st December 1835, at 525 *Rs.* per month	6,300	–	–
The amount of fees and emoluments received for one year, being from the 1st January to 31st December 1836, both inclusive	883	3	–
The amount of salary for the same time, being from the 1st January to 31st December 1836, at 525 *Rs.* per month	6,300	–	–
TOTAL *Rs.*	34,765	1	–

The general average income of the above five years - - *Rs.* 6,935.
The average income of the last three years - - - - 6,938.

P.S.—From the examinations that I have made into the mode in which the details of this office have been carried on, I have been struck with the great want of regularity and system in entering and collecting the amount of fees due to the Clerk of the Crown. No entries appear in the books of late years, either of the issuing of any certificates on which the orders of court have been grounded or the fees due thereon; nor are there any charges entered for the issuing of subpœnas, either in the case of prosecutors or prisoners, except when required by an attorney of the court, the charges for which, if made, would amount to a very considerable sum, there being, on the average, above 150 subpœnas in each year. It is necessary, also, for me to bring to the notice of the Honourable the Judges that records of the issues tried at the sessions have not generally been made up, and even in the cases of misdemeanors tried before a special jury they have frequently been omitted, so that the fees due thereon have not been calculated in the above returns. The average charge would be 800 *Rs.* for the year, or 200 *Rs.* for each sessions. I have therefore added a statement of the amount of fees received during the present year, to show how extremely deficient the former returns have proved.

The amount of fees and emoluments received from 1st January to 31st March 1837	970	–	–
The amount of fees and emoluments received from 1st April to 30th June 1837	149	–	–
The amount of fees and emoluments received for the last sessions held in July 1837	645	–	–
	1,764	–	–

Crown Office, Madras,
22 July 1837.

(signed) *James Minchin,*
Clerk of the Crown.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

To the Honourable the Judges of His Majesty's Supreme Court of Judicature at Madras.

The SCHEDULE of the Annual Emoluments of the Deputy Clerk of the Crown, in the Crown Office of the Court, from 1829 to 1836 both inclusive, and also to the end of December 1836.

					Rs.	a.	p.
The amount of my salary as Deputy Clerk of the Crown, which office I have had the honour to hold for the last (20) twenty years, received for one year, being from the 1st January to 31st December 1829, at 175 *Rs.* per month	-	-	-	-	2,100	–	–
Ditto, for one year, being from the 1st January to 31st December			1830	-	2,100	–	–
Ditto	ditto	ditto	ditto	1831	2,100	–	–
Ditto	ditto	ditto	ditto	1832	2,100	–	–
Ditto	ditto	ditto	ditto	1833	2,100	–	–
Ditto	ditto	ditto	ditto	1834	2,100	–	–
Ditto	ditto	ditto	ditto	1835	2,100	–	–
Ditto	ditto	ditto	ditto	1836	2,100	–	–
				Rs.	16,800	–	–

Making a yearly average of salary of 2,100 *Rs.*

The fees received in the Crown Office, which, on an average of the last two years, amounts per annum to 407 *Rs.*, have been liberally given up to me since the 1st day of January 1835, in consideration of the inadequacy of my salary.

Madras, Crown Office,
31 December 1836.

(signed) *Frederick Orme,*
Deputy Clerk Crown.

To the Honourable the Judges of the Supreme Court, Madras.

My Lords,

IN submitting my return of emoluments to the Court, with a view to their being transmitted to the Government, as the index for the fixed salary which it is now proposed to give to the Registrar and Prothonotary, the Government being at all expense of the office establishment, it is my duty to bring to the notice of the Court, in order to prevent great injustice to the establishment, and a surprise upon the Government, the mode in which that establishment has hitherto been maintained. It is the more necessary that I should do so, inasmuch as it varies considerably from that which obtains in the Government offices.

It has been my practice, following that which I understood to have previously prevailed, since the constitution of the office, to give an increase of pay at the end of every one, two or three years to each writer, accordingly as he conducted his duties to my satisfaction. Thus, the head Writer or manager in the Court department had at the time of his death, which happened about two years and a half ago, attained to the salary of pagodas (60) sixty per month. To the Clerk, the most competent in the office whom I appointed in his stead, I assigned a salary of pagodas (26) twenty-six per month, and this was an increase of pagodas (8) eight upon his former salary of pagodas (18) eighteen per month; and in January 1836, according to what I led him to understand, I increased his pay by pagodas (4) four per month, giving him then a salary of pagodas (30) thirty per month; at the end of this year, he ought, according to what I led him to expect, to have an increase of pagodas (5) five, so as to make his pay pagodas (35) thirty-five per month, and at the end of the two following years an increase of pagodas (5) five, so as to augment his pay to pagodas (40) forty; after 10 years from that time, his pay ought to be augmented to (45) forty-five, after other five years to (50) fifty, after other five years to (55) fifty-five, after other five to (60) sixty per month; and in such way, so far as I can judge, I should have proceeded, had it devolved on me to watch the establishment and fix the salary. The case of the head Writer will exemplify what is taking place among the subordinate writers in a more limited extent.

I may observe that my head Writer in the Account department, who has been in the office since 1812, has pagodas (60) sixty per month.

I beg to add that the amount of the expense of the Court department, which is set out in my return, will show the variation in the amount, year by year, and will show also the diminution of expense since December 1834, when the death of the former manager, Mr. V. Passanbra, happened.

(signed) *P. Cator,*
Registrar and Prothonotary.

Registrar's Office, 11 August 1837.

To

To the Honourable the Judges of the Supreme Court of Judicature, Madras.

SCHEDULE of Emoluments of every Description of the Registrar and Prothonotary, in pursuance of the Letters from the Government of Fort St. George to the Honourable the Judges, bearing date respectively 14th day of February and 3d day of March 1837.

Years.	Fees.	Commission in Estates.	Separate Expenses.		Total Expenses.	Net Separate Amount.		Net Amount of Court Department.
	Rs. a. p.	*Rs. a. p.*		*Rs. a. p.*	*Rs. a. p.*		*Rs. a. p.*	*Rs. a. p.*
						Fees or Court Department.	54,497 9 3	
			Court Department	11,194 4 –		Deduct		
1832	54,497 9 3	13,973 – 8	Estate ditto -	12,680 4 9	23,874 8 9	Expenses of Court Department.	11,194 4 –	43,303 5 3
						Fees or Court Department.	55,670 6 8	
			Court Department	11,485 6 5		Deduct		
1833	55,670 6 8	21,110 4 8	Estate ditto -	12,655 6 6	24,140 12 11	Expenses of Court Department.	11,485 6 5	44,185 – 3
						Fees or Court Department.	46,894 1 5	
			Court Department	11,549 3 5		Deduct		
1834	46,894 1 5	33,331 7 10	Estate ditto -	13,479 11 5	25,028 14 10	Expenses of Court Department.	11,549 3 5	35,344 14 –
						Fees or Court Department.	59,093 12 9	
			Court Department	9,816 7 2		Deduct		
1835	59,093 12 9	12,894 6 7	Estate ditto -	14,060 7 9	23,476 14 11	Expenses of Court Department.	9,816 7 2	49,277 5 7
						Fees or Court Department.	57,341 4 2	
			Court Department	10,230 9 9		Deduct		
1836	57,341 4 2	16,316 13 10	Estate ditto -	15,772 – 5	26,002 10 2	Expenses of Court Department.	10,230 9 9	47,110 10 5
						NET TOTAL INCOME - - -		2,19,221 3 6

The average Net Annual Income of the Five Years arising from the Court Department is Co.'s Rs. 43,844 3. 10½.

(signed) *P. Cator,*
Registrar and Prothonotary.

To the Honourable the Judges of his Majesty's Supreme Court of Judicature at Madras.

The RETURN made by the Examiner of the Supreme Court of the Amount of Salary and Emoluments of every kind received by him, and in such Office, for Three Years; distinguishing Salary from Fees and other Emoluments, and showing Expenditure, &c.

		Rs.	*Rs.*
To amount of fees and emoluments of every kind received for all and every description of business for one year; taken from the last return filed by my predecessor, C. H. Clay, Esquire, there being no records of books or accounts in my office from which I could form any certain calculation of later years, being from 1st January to 31st December 1828 - - - - - - - - -		9,037 – –	
Amount of salary during such period - -	*Rs.* 2,100 – –		
Deduct expenses of Clerks, none being allowed by Government, nor any fee taken by them - -	768 – –		
	Rs. 1,332 – –	1,332 – –	
Making the Net Receipts for the year 1828 -	*Rs.*	10,369 – –	10,369 – –
I have ascertained, as per receipted bills, in the possession of the members of the profession, that my predecessor, M. French, Esq., received in fees and emoluments from the 1st January to 12th March 1835, on which last-mentioned day I took charge, but as no account current of the receipt is to be found, I cannot otherwise set it forth - - - - - - - - - -		3,644 12 6	
Amount of salary during that period - - -	*Rs.* 312 1 6		
Deduct expenses of Clerk, &c., during that period	176 4 –		
	Rs. 135 13 6	135 13 6	
		Rs.	3,780 10 –
Carried forward - - - - -		*Rs.*	14,149 10 –

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Brought forward - - -	- - -	- - -	14,149 10 -
My return of salary and emoluments already made to Government from the 12th March to 30th November 1835, shows the total fees and emoluments to have been - - - - - - - *Rs.*	933 5 -		
Amount of salary during that period to have been - - - - *Rs.* 1,512 14 6			
Deduct expenses during that period 599 5 -			
Rs. 913 9 6	913 9 6		
	1,846 14 6	1,846 14 6	
My fees and emoluments of every kind during the month of December 1835, to complete the year -	572 4 -		
My salary for that month - - - *Rs.* 175 - -			
Deduct expenses of Clerks during the month of December 1835 - - 70 8 -			
Rs. 104 8 -	104 8 -		
Rs.	676 12 -	676 12 -	
Making a Net Total of Profits for the year 1835 of - *Rs.*		6,304 4 6	6,304 4 6
To amount of fees and emoluments of every kind and description received from 1st January to 31st December 1836 - - -		13,474 15 1	
Amount of Examiner's salary during the year 1836, being 175 *Rs.* per month or - - - *Rs.*	2,100 - -		
Deduct amount of stated office expenses, no Writer by Government, and no fees or perquisite of any kind being allowed or received by them, 70½ *Rs.* per month, or, for the year 1836 - - - - - - *Rs.* 846 - -			
Extra Writers on a press of business during the above period - - 235 - -			
Rs. 1,081 - -	1,081 - -		
Rs.	1,019 - -	1,0[illegible] - -	
Making the Net Total Profits for the year 1836 - - *Rs.*		14,493 15 1	14,493 15 1
		Rs.	31,167 3 7
Which, taking an average of the three years' salary and emoluments added together above given, makes the annual income to be - - - - - - - - *Rs.*			10,389 1 2

N.B.—The above estimates of expenses, &c., does not include the outlay for stationery and Clerks employed and paid for out of private funds by the Examiner on all Pauper cases.

(E. E.)

(signed) *Fred^k Orme,*
Examiner, Supreme Court, Madras.

Madras, 24 July 1837.

Supreme Court, Madras.

A SCHEDULE made pursuant to the Order of the Honourable the Judges, March 1837.

To amount of fees received by me as Sealer of the Supreme Court, in the year 1836 - - - - - - - - - - - - - - - *Rs.* 3,428 - - -

(signed) *John Hodges*, Sealer.

17 March 1837.

N.B.—I beg to state that I have held the office of Sealer only since the 1st January 1837.

(signed) *John Hodges.*

SCHEDULE

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

SCHEDULE of the Annual Emoluments of every Description of the Office of Attorney, Solicitor and Proctor of Paupers, from the 1st day of September 1830 to 31st December 1836.

	Rs.	a.	p.
To amount of my salary as Attorney, Solicitor and Proctor for Paupers, received for four months, being from the 1st September to the 31st of December 1830, at 350 *Rs.* per month	1,400	–	–
To ditto – ditto, for one year, being from 1 January to 31 December 1831, at 350 *Rs.* per month	4,200	–	–
To ditto – ditto, for one year, being from 1 January to 31 December 1832, at 350 *Rs.* per month	4,200	–	–
To ditto – ditto, for one year, being from 1 January to 31 December 1833, at 350 *Rs.* per month	4,200	–	–
To ditto – ditto, for one year, being from 1 January to 31 December 1834, at 350 *Rs.* per month	4,200	–	–
1834.—To amount of fees received in this year, as Solicitor for Paupers	310	8	–
To amount of my salary for one year, being from 1 January to 31 December 1835, at 350 *Rs.* per month	4,200	–	–
To ditto – ditto, for one year, being from 1 January to 31 December 1836, at 350 *Rs.* per month	4,200	–	–
1836.—To amount of fees received in this year as Proctor and Solicitor for Paupers	224	15	8
TOTAL Amount of salary and fees received in this year as Proctor and Solicitor for Paupers, from 1 September 1830 to 31 December 1836	27,135	7	8
Average per year *Rs*	4,289	3	11

(signed) *L. Cooper.*

(signed) *Leonard Cooper,*
Attorney, Solicitor, &c., for Paupers.

Supreme Court, Madras.

A RETURN made pursuant to the Order of the Honourable the Judges; March 1837.

				Rs.	a.	p.	Rs.	a.	p.
The amount of fees received by me as Clerk to the Hon. Sir R. Comyn, in the year 1831				2,630	–	–			
Salary				2,520	–	–			
							5,150	–	–
Fees received in the year 1832				2,808	–	–			
Salary				2,520	–	–			
							5,328	–	–
Fees received in the year 1833				3,072	–	–			
Salary				2,520	–	–			
							5,592	–	–
Fees received in the year 1834				3,081	–	–			
Salary				2,520	–	–			
							5,601	–	–
Fees received in the year 1835				2,944	–	–			
Salary				2,520	–	–			
							5,464	–	–
Fees received by me as Clerk to the Hon. the Chief Justice, in the year 1836			*Rs.* 5,991	8	–				
Arrears of fees for the year 1836 to be received			537	4	–				
TOTAL Amount of Fees			*Rs.* 6,528	12	–				
Divided between two Clerks will be				3,264	6	–			
Salary				2,520	–	–			
							5,784	6	–
							32,919	6	–
Average							5,486	7	–

(signed) *John Hodges,*
Clerk of the Chief Justice.

To *P. Cator*, Esq., Registrar, Supreme Court.

Sir,

IN answer to a circular addressed to myself and the other officers of the Supreme Court, I beg leave to say, as far as I am concerned, I cannot make any return of the average emolument of Judges' Clerk, inasmuch as I have been only very lately appointed. I beg, however, to add that the Judges' Clerks form their

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

their fees into a common fund, and then divide them equally, so that the return of the fees of the Chief Justice's Clerk may be considered as the amount of the return of the Puisne Judge's Clerk.

(signed) *W. A. Serle.*

14 August 1837.

The SCHEDULE of the annual Emoluments of every Description of the Principal Malabar and Gentoo Interpreter of the Supreme Court, Madras, commencing from the 1st of January 1829 to the 31st December 1836.

	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
Salary at the rate of 350 *Rs.* per month, for one year, from the 1st January to the 31st December 1829 - - - -	4,200	–	–			
Amount of fees for explaining pleadings, affidavits, and for translating papers for the same period - -	5,886	3	10			
Deduct office expenses, clerks' salaries, stationery, &c. - - - - - - -	2,568	–	–			
	3,318	3	10			
				7,518	3	10
Ditto, for one year, from 1st January to 31st December 1830	4,200	–	–			
Amount of ditto, for the same period - - -	6,387	5	–			
Deduct office expenses, &c. (as above) - -	2,568	–	–			
	3,819	5	–			
				8,019	5	–
Ditto, for one year, from 1st January to 31st December 1831	4,200	–	–			
Amount of ditto, for the same period - - -	6,374	–	7			
Deduct office expenses, &c. - - - -	2,568	–	–			
	3,806	–	7			
				8,006	–	7
Ditto, for one year, from 1st January to 31st December 1832	4,200	–	–			
Amount of ditto, for the same period - - -	6,528	11	1			
Deduct office expenses - - - - -	2,568	–	–			
	3,960	11	1			
				8,106	11	1
Ditto, for one year, from 1st January to 31st December 1833	4,200	–	–			
Amount of ditto, for the same period - - -	6,381	4	6			
Deduct office expenses - - - - -	2,568	–	–			
	3,813	4	6			
				8,013	4	6
Ditto, for one year, from 1st January to 31st December 1834	4,200	–	–			
Amount of fees for explaining pleadings, affidavits, and for translating papers for the same period - -	5,908	1	10			
Deduct office expenses, &c. - - - -	2,568	–	–			
	3,340	1	10			
				7,540	1	10
Ditto, for one year, from 1st January to 31st December 1835	4,200	–	–			
Amount of ditto, for the same period - - -	6,292	8	11			
Deduct office expenses, &c. - - - -	2,568	–	–			
	3,724	8	11			
				7,924	8	11
Ditto, for one year, from 1st January to 31st December 1836	4,200	–	–			
Amount of ditto, for the same period - - -	4,965	8	11			
Deduct office expenses, &c. - - - -	2,102	13	6			
	2,862	11	5			
				7,062	11	5
			Rs.	62,244	15	2
Making an average clear annual income for eight years of - -				*Rs.* 7,780	9	10½

I was appointed Principal Malabar and Gentoo Interpreter to the Supreme Court on the 2d of February 1837, on a reduced salary of 245 *Rs.* per month. I have been enabled to furnish the above information from an inspection of the books, &c. of Y. Veerasawmy Brameny, late Principal Interpreter, and of C. Shun, Mugum Moodellyar, who acted as such from 4th October (the day of the death of Y. Veerasawmy Brameny) to the 31st December 1836. No pay or other emoluments appear by the books of the late Y. Veerasawmy Brameny to have been received by him from the Court for the relief of Insolvent Debtors during the above period.

(signed) *R. Dasikacharloo,*
Interpreter.

Interpreter's Office, 13 May 1837.

Brought down - - - - - - Total, *Rs.*	7,780	9	10½
Deduct the salary of Deputy-Interpreter, per annum - - -	1,260	–	–
Making an average clear income of - - - - -	6,520	9	10½

(signed) *R. Dasikacharloo,*
Interpreter.

A SCHEDULE

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts

A SCHEDULE of the Emoluments of every Description of *C. Thunmugum Moodelliar*, Deputy Teloogoo and Tamil Interpreter of the Honourable Supreme Court of Judicature at Madras.

	Rs.	a.	p.
Salary from 4th October 1836 (the date of his appointment) up to 31st December of the same year, at 105 *Rs.* per month	304	8	–
Fees during the above period as Acting Principal Interpreter is - - *Rs.* 937 10 3			
Deduct salary and Clerks' salaries - - - - - - - 176 13 6			
	760	12	9

(signed) *C. Thumagum*,
Deputy Interpreter.

Interpreter's Office, 11 March 1837.

Net annual income of my situation at 105 *Rs.* per month is - - *Rs.* 1,260 – –

C. Thunmagum, Deputy Interpreter.

A SCHEDULE of the Emoluments of every Description of *C. Shumgum Modelliar*, Deputy Teloogoo and Tamil Interpreter of the Court for the Relief of Insolvent Debtors at Madras.

I have been sworn in as Deputy Tamil and Teloogoo Interpreter to the Court for the Relief of the Insolvent Debtors, on the day the court was established. No salary or fees have been received by me from that period up to this day, save and except the payment received by me from the Principal Interpreter.

(signed) *C. Shumugum*, Deputy Interpreter.

Interpreter's Office, 11 March 1837.

A SCHEDULE of Emoluments of every Description of *Mahomed Kurree Moollah Khan Sahib*, Persian and Hindostanee Interpreter of the Honourable Supreme Court of Judicature, Madras.

			Rs.	a.	p.	Rs.	a.	p.
1836: December -	Salary from 5th to 31st December, the day and month I had the honour of being appointed Persian and Hindostanee Interpreter - -		122	5	–			
	Amount of fees received during the above period -		15	6	–			
		Total -	137	11	–			
	Deduct office establishment, &c. - - -		22	2	–			
						115	9	–
1837: January -	Salary - - - - - - - - -		140	–	–			
	Amount of fees - - - - - -		44	1	–			
			184	1	–			
	Deduct office establishment, &c. - - -		42	–	–			
						142	1	–
February -	Salary - - - - - - - - -		140	–	–			
	Amount of fees - - - - 162 13 6							
	Deduct office establishment - - 42 – –							
			120	13	6			
						260	13	6
March - -	Salary - - - - - - - - -		140	–	–			
	Amount of fees - - - - 96 4 –							
	Deduct office establishment - - 42 – –							
			54	4	–			
						194	4	–
April - -	Salary - - - - - - - - -		140	–	–			
	Amount of fees - - - - 220 6 –							
	Deduct office establishment - - 42 – –							
			178	6	–			
						318	6	–
May - -	Salary - - - - - - - - -		140	–	–			
	Amount of fees - - - - 182 – –							
	Deduct office establishment, &c. - 42 – –							
			140	–	–			
						280	–	–
June -	Salary - - - - - - - -		140	–	–			
	Amount of fees - - - - 259 11 2							
	Deduct office establishment, &c. - 42 – –							
			217	11	2			
						357	11	2

(*continued*)

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

				Rs. a. p.	Rs. a p.
1837: July - -	Salary - - - - - - - - -			140 – –	
	Amount of fees - - - -	343 8 –			
	Deduct office establishment, &c. -	42 – –			
				301 8 –	441 8 –
August -	Salary from the 1st to the 4th August 1837 -			18 1 –	
	Amount of fees - - - -	219 11 –			
	Deduct office establishment, &c. -	1 5 8			
				218 5 4	236 6 4
			Total - - - Rs.		2,346 11 –

The monthly average of my income, after deducting office establishment - *Rs.* 293 5 4

The annual average of my income, after deducting office establishment, &c. - 3,520 – –

No salary, nor any fees whatever, have been received by me during the above period for my services as Persian and Hindostanee Interpreter to the Court for the relief of Insolvent Debtors.

(signed) *Mahomed Kurree Moollah Khan,*
Persian and Hindostanee Interpreter
of His Majesty's Supreme Court
of Judicature at Madras.

Madras, Supreme Court,
Interpreter's Office, 13 August 1837.

A Schedule of the Emoluments of every Description of *C. Sheemoga Moodeliar*, Canarese Interpreter of the Honourable Supreme Court of Judicature, Madras.

Salary, from 6th April 1836 (the date of his appointment) up to 31st December of the same year, at 52½ *Rs.* per month - - - - - - - - -	463 12 –
No fees or emoluments received during the above period.	

(signed) *C. Shumnuguon,*
C. Interpreter.

Interpreter's Office, 11 March 1837.

Schedule of Emoluments of the French Interpreter of the Honourable the Supreme Court of Judicature at Madras, from the Year 1829 to 1836 inclusive.

	Salary.	Fees.	Total.
Amount received from 1st Jan. to 31st Dec. 1829 -	210 – –	130 – –	340 – –
Ditto - - - - - - ditto - ditto - 1830 -	210 – –	129 8 –	339 8 –
Ditto - - - - - - ditto - ditto - 1831 -	210 – –	83 – –	293 – –
Ditto - - - - - - ditto - ditto - 1832 -	210 – –	15 – –	225 – –
Ditto - - - - - - ditto - ditto - 1833 -	210 – –	28 – –	238 – –
Ditto - - - - - - ditto - ditto - 1834 -	210 – –	39 – –	249 – –
Ditto - - - - - - ditto - ditto - 1835 -	210 – –	45 – –	255 – –
Ditto - - - - - - ditto - ditto - 1836 -	210 – –	191 2 –	401 2 –
Madras Rs.	1,680 – –	660 10 –	2,340 10 –

(signed) *C. Garidoin,*
First Interpreter of His Majesty's
Supreme Court of Judicature.

Madras, 11 May 1837.

For the Vice-Admiralty Court - - - -	- none -	- none.	
For the Insolvent Court - - - - - - -	- none -	- none.	

(signed) *C. Garidoin,* First Interpreter.

Average per year - - - - - - - -	210 – –	82 9 3	292 9 3
Ditto per month - - - - - - -	17 8 –	6 14 1¼	24 6 1½

(signed) *C. G.*, First Interpreter.

To

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

To the Honourable the Judges of the Supreme Court of Judicature at Madras.

The RETURN made by the Dutch Interpreter of the Supreme Court, in pursuance of a Circular Letter from the Registrar, dated 5th May 1837.

The amount of salary received from 1st January up to 31st December 1829	205	–	–
Ditto - - fees - - - - - - ditto - - - - ditto - 1829	370	8	–
Ditto - - salary - - - - - ditto - - - - ditto - 1830	205	–	–
Ditto - - fees - - - - - - ditto - - - - ditto - 1830	402	–	–
Ditto - - salary - - - - - ditto - - - - ditto - 1831	205	–	–
Ditto - - fees - - - - - - ditto - - - - ditto - 1831	115	12	–
Ditto - - salary - - - - - ditto - - - - ditto - 1832	205	–	–
Ditto - - fees - - - - - - ditto - - - - ditto - 1832	290	–	–
Ditto - - salary - - - - - ditto - - - - ditto - 1833	205	–	–
Ditto - - fees - - - - - - ditto - - - - ditto - 1833	510	–	–
Ditto - - salary - - - - - ditto - - - - ditto - 1834	205	–	–
Ditto - - fees - - - - - - ditto - - - - ditto - 1834	97	–	–
Ditto - - salary - - - - - ditto - - - - ditto - 1835	205	–	–
Ditto - - fees - - - - - - ditto - - - - ditto - 1835	280	15	–
Ditto - - salary - - - - - ditto - - - - ditto - 1836	205	–	–
Ditto - - fees - - - - - - ditto - - - - ditto - 1836	233	6	–
Co.'s Rs.	3,939	9	–

The average net annual income of the eight years arising from my situation is - - - *Rs.*492. 7. 3.

(signed) *B. C. Regel*,
Dutch Interpreter to the Supreme Court, Madras.

Madras, Dutch Interpreter's Office,
15 May 1837.

SCHEDULE of Salary and Emoluments annually of every Description received by the Armenian Interpreter, from the Year 1829 to 1836, both inclusive.

Amount of fees of every description of business from 1st January to 31st December 1829 - - - - - - -	-	-	-	812	13	–
Amount of salary on all sides of the Court, Crown, Civil, Ecclesiastical, Equity and Plea, from 1st January to 31st December 1829 - - - - - - - - - -	1,260	–	–			
Deduct:						
Paid by Interpreter to Writers and Attendants, no salaries being paid by Government, and no fees, perquisites, or any pecuniary advantages of any kind being allowed or received by them; as also paid for stationery and other expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's office - - - - - - - - - -	180	10	–	1,079	6	–
Rupees	-	-	-	1,892	3	–
Amount of fees of every description of business from 1st January to 31st December 1830 - - - - - - -	-	-	-	496	–	–
Amount of salary on all sides of the Court, Crown, Civil, Ecclesiastical, Equity and Plea, from 1st January to 31st December 1830 - - - - - - - - - -	1,260	–	–			
Deduct:						
Paid by Interpreter to Writers and Attendants, no salaries being paid by the Government, and no fees, perquisites, or any pecuniary advantages of any kind being allowed or received by them; as also paid for stationery and other expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's office - - - - - - - - - -	166	4	3	1,093	11	9
Rupees	-	-	-	1,589	11	9

(*continued*)

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Amount of fees of every description of business from 1st January to 31st December 1831 - - - - - - - -	- - -	492	13 -
Amount of salary on all sides of the Court, Crown, Civil, Ecclesiastical, Equity and Plea, from 1st January to 31st December 1831 - - - - - - - - - - - -	1,260 - -		
Deduct:			
Paid by Interpreter to Writers and Attendants, no salaries being paid by Government, and no fees, perquisites, or any pecuniary advantages of any kind being allowed or received by them; as also paid for stationery and other expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's office - - - - - - - - - - - -	179 12 -		
		1,080	4 -
Rupees	- - -	1,573	1 -
Amount of fees of every description of business from 1st January to 31st December 1832 - - - - - - - -	- - -	395	8 -
Amount of salary on all sides of the Court, Crown, Civil, Ecclesiastical, Equity and Plea, from 1st January to 31st December 1832 - - - - - - - - - - - -	1,260 - -		
Deduct:			
Paid by Interpreter to Writers and Attendants, no salaries being paid by Government, and no fees, perquisites, or any pecuniary advantages of any kind being allowed or received by them; as also paid for stationery and other expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's office - - - - - - - - - - - -	165 - -		
		1,095	- -
Rupees	- - -	1,490	8 -
Amount of fees of every description of business from 1st January to 31st December 1833 - - - - - - - -	- - -	176	8 -
Amount of salary on all sides of the Court, Crown, Civil Establishment, Equity and Plea, from 1st January to 31st December 1833 - - - - - - - - - - - -	1,260 - -		
Deduct:			
Paid by Interpreter to Writers and Attendants, no salaries being paid by the Government, and no fees, perquisites or any pecuniary advantages of any kind being allowed or received by them; as also paid for stationery and other expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's office - - - - - - - - - - - -	100 - -		
		1,160	- -
Rupees	- - -	1,336	8 -
Amount of fees of every description of business from 1st January to 31st December 1834 - - - - - - - -	- - -	195	- -
Amount of salary on all sides of the Court, Crown, Civil, Ecclesiastical, Equity and Plea, from 1st January to 31st December 1834 - - - - - - - - - - - -	1,260 - -		
Deduct:			
Paid by Interpreter to Writers and Attendants, no salaries being paid by the Government, and no fees, perquisites or any pecuniary advantages of any kind being allowed or received by them; as also paid for stationery and other expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's office - - - - - - - - - - - -	120 - -		
		1,140	- -
Rupees	- - -	1,335	- -

(*continued*)

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Amount of fees of every description of business from 1st January to 31st December 1835 - - - - - - - -	- - -	667 8 –
Amount of salary on all sides of the Court, Crown, Civil, Ecclesiastical, Equity and Plea, from 1st January to 31st December 1835 - - - - - - - - - - - -	1,260 – –	
Deduct:		
Paid by Interpreter to Writers aad Attendants, no salaries being paid by the Government, and no fees, perquisites, or any pecuniary advantages of any kind being allowed or received by them; as also paid for stationery and other expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's office - - - - - - - - - - - -	158 – –	
		1,102 – –
Rupees	- - -	1,769 8 –
Amount of fees of every description of business from 1st January to 31st December 1836 - - - - - - - -	- - -	287 – –
Amount of salaries on all sides of the Court, Crown, Civil, Ecclesiastical, Equity and Plea, from 1st January to 31st December 1836 - - - - - - - - - - - -	1,260 – –	
Deduct:		
Paid by Interpreter to Writers and Attendants, no salaries being paid by the Government, and no fees, perquisites or any pecuniary advantages of any kind being allowed or received by them; as also paid for stationery and other expenses incidental to the office, no required expenditure of any description being provided for by Government towards the Interpreter's office - - - - - - - - - - - -	132 8 –	
		1,127 8 –
Rupees	- - -	1,414 8 –

(E. E.)

The average net annual income of the eight years arising from my situation, is - 1,549 10 6

N. B.—No salary has been granted for any duties I may have to perform in the Insolvent Court, and from which I have not up to the present time received any fees whatever.

(signed) *Thos. Pan*, Armenian Interpreter.

Madras, 18 May 1837.

SCHEDULE of the Emoluments of the Portuguese Interpreter from the Date of his Appointment.

February 1837.	Salary from 17th to 28th February, at eight pagodas or 28 *Rs.* per month - - -	- - -	12 – –
March „	Salary - - - - - - -	- - -	28 – –
April - „	Salary - - - - - - -	28 – –	
	Amount of fees - - - - - -	7 – –	
			35 – –
May - „	Salary - - - - - - -	28 – –	
	Amount of fees - - - - - -	12 4 –	
			40 4 –
June - „	Salary - - - - - - -	- - -	28 – –
	TOTAL -	- - -	143 4 –

The average of seven years, according to the late Interpreter's return, a copy of which is on the other side, is - - - - - - - - - *Rs.* 599 15 $10\frac{1}{7}$

(signed) *Jas. B. Baptist*, Portuguese Interpreter.

Madras, 28 July 1837.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

SCHEDULE of the Annual Emoluments of every Description of the Portuguese Interpreter of the Supreme Court, Madras.

1829.	Amount of fees	*Madras Rs.*	335 11 7		
	Salary		336 –		
	Deduct office establishment, &c.		36 –		
			300 – –		635 11 7
1830.	Amount of fees	*Madras Rs.*	355 7 4		
	Salary		336 –		
	Deduct office establishment, &c.		36 –		
			300 – –		655 7 4
1831.	Amount of fees	*Madras Rs.*	326 9 7		
	Salary		336 –		
	Deduct office establishment, &c.		36 –		
			300 – –		626 9 7
1832.	Amount of fees	*Madras Rs.*	220 6 2		
	Salary		336 –		
	Deduct office establishment, &c.		36 –		
			300 – –		520 6 2
1833.	Amount of fees	*Madras Rs.*	290 15 8		
	Salary		336 –		
	Deduct office establishment, &c.		36 –		
			300 – –		590 15 8
1834.	Amount of fees	*Madras Rs.*	290 6 8		
	Salary		336 –		
	Deduct office establishment, &c.		36 –		
			300 – –		590 6 8
1835.	Amount of fees	*Madras Rs.*	280 6 –		
	(From 1st January to 30th November) Salary		336 –		
	Deduct office establishment, &c.		36 –		
			300 – –		580 6 –

(signed) *W. R. Kory,* Portuguese Interpreter.
(signed) *J. B. Baptist.*

SCHEDULE of the Annual Emoluments of every Description of the Malayaleem and Mapoola Interpreter of the Supreme Court.

Amount of fees from 1st June, the date of my appointment, to 31st December 1832, inclusive			
Salary, from ditto to ditto	735 – –		
	735 – –		
Deduct office establishment for seven months, at 14 rupees per mensem	98 – –		
			637 – –
Amount of fees from 1st January to 31st December 1833	121 14 –		
Salary from ditto to ditto	1,260 – –		
	1,381 14 –		
Deduct office establismment	168 – –		
			1,213 14 –
Amount of fees from 1st January to 31st December 1834			
Salary from ditto to ditto	1,260 – –		
	1,260 – –		
Deduct office establishment	168 – –		
			1,092 – –

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Amount of fees from 1st January to 31st December 1835 -	19 4 –	
Salary from ditto to ditto - - - - - - - -	1,260 – –	
	1,279 4 –	
Deduct office establishment - - - - - -	168 – –	
		1,111 4 –
Amount of fees from 1st January to 31st December 1836 -	—	
Salary from ditto to ditto - - - - - - - -	1,260 – –	
	1,260 – –	
Deduct office establishment - - - - -	168 – –	
		1,092 – –
TOTAL - - - - - - *Rs.*		5,146 2 –

N.B —I do not receive any separate salary nor fees in the Insolvent Court.

(signed) *C. Meenacshoya*, Malayalum and Mapooli Interpreter.

The average net annual income of four years arising from my office - *Rs.* 1,127. 4. 6.

Madras, 27 May 1837.

To the Honourable the Judges of His Majesty's Supreme Court of Judicature at Madras.

The RETURN made by the Malay Interpreter of the Court, in pursuance of a Circular Letter from the Registrar, dated 5th day of May 1837.

Salary from 1st January to 31st December 1829, at 52 rupees and 8 annas per month - - - - - - - - - - - - - -	630 – –
Salary from 1st January to 31st December 1830, at 52 rupees and 8 annas per month - - - - - - - - - - - - - -	630 – –
Salary from 1st January to 31st December 1831, at 52 rupees and 8 annas per month - - - - - - - - - - - - - -	630 – –
Salary from 1st January to 31st December 1832, at 52 rupees and 8 annas per month - - - - - - - - - - - - - -	630 – –
Salary from 1st January to 31st December 1833, at 52 rupees and 8 annas per month - - - - - - - - - - - - - -	630 – –
Salary from 1st January to 31st December 1834, at 52 rupees and 8 annas per month - - - - - - - - - - - - - -	630 – –
Salary from 1st January to 31st December 1835, at 52 rupees and 8 annas per month - - - - - - - - - - - - - -	630 – –
Salary from 1st January to 31st December 1836, at 52 rupees and 8 annas per month - - - - - - - - - - - - - -	630 – –
Rs.	5,040 – –

The annual average income of my office is - - - - - *Rs.* 630 – –

No fee or other emolument has been received by me during the above period.

(signed) *H. M. Constuneis*,
Malay Interpreter.

Madras, 12 May 1837

SCHEDULE of the Emoluments of every Description of the Chief Clerk and Sealer of the Court for the Relief of the Insolvent Debtors at Madras, from 12th July 1836 to 31st July 1837.

Fees from 12th July to 24th December 1836, during the time I was acting for Mr. Campbell, being five months - - -	779 – –	
No fees received from 24th December to 31st December 1836.		
Fees from 1st January 1837 to 27th July 1837, being 7 months	2,349 7 4	
Fees, Total for 12 months - - - - - -		3,128 7 4
Annual Salary, at 243 *Rs.* 4 *a.* per month - - - - -	- - -	2,919 – –
TOTAL annual Income - - - -		6,047 7 4

As I do not find any Book of Account in my office which would enable me to make a Return of the Emoluments received by my predecessors, I make the above return from the 12th day of July 1836, being the day I took charge of the office of Chief Clerk of the Insolvent Debtors' Court.

Madras, Chief Clerk's Office,
12 August 1837.

(signed) *Thos. Tad*,
Chief Clerk.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

SCHEDULE showing the Amount received by the Common Assignee of the Court for the Relief of Insolvent Debtors at Madras, for Remuneration from Government, and likewise for Commission of 5 per cent. on Money realized, there being no Fees of Office for the last Five Years.

	Remuneration.	Commission.	TOTAL.
	Co.'s Rs. a. p.	*Co.'s Rs. a. p.*	*Co.'s Rs. a. p.*
A.D. 1832	2,625 – –	269 6 9	2,894 6 9
1833	2,625 – –	418 4 2	3,043 4 2
1834	2,625 – –	3,763 – 6	6,388 – 6
1835	2,625 – –	341 3 3	2,966 3 3
1836	2,625 – –	581 1 11	3,206 1 11
TOTAL for five years	13,125 – –	5,373 – 7	18,498 – 7
Average for one year	2,625 – –	1,074 9 8	3,699 9 8

11 August 1837.

(signed) *C. W. Blunt*,
Common Assignee.

SCHEDULE of the Annual Emoluments of every Description of the Examiner of the Court for the Relief of Insolvent Debtors at Madras, from the Institution of the Court on the 9th of March 1829 up to 31st December 1836.

	M. Rs. a. p.
1829. From 9th March 1829 to 31st December, Fees	101 2 –
Office Establishment, Writer and Peons paid by Government	1,481 15 –
1830. Fees	184 – –
Office Establishment, Writer and Peons paid by Government	1,827 – –
1831. Fees	461 – –
Office Establishment, Writer and Peons paid by Government	1,827 – –
1832. Fees	312 – –
Office Establishment, Writer and Peons paid by Government	1,827 – –
1833. Fees	468 – –
Office Establishment, Writer and Peons paid by Government	1,827 – –
1834. Fees	494 – –
Office Establishment, Writer and Peons paid by Government	1,827 – –
1835. Fees	512 – –
Office Establishment, Writer and Peons paid by Government	1,827 – –
1836. Fees	936 – –
Office Establishment, Writer and Peons paid by Government	1,827 – –
The Average Net Annual Income of Seven Years arising from my office	2,308 – –

(signed) *J. S. Bailee*,
Examiner of the Insolvent Court.

(True copies.)

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

Madras, Examiner's Office,
22 May 1837.

(No. 93.)

Legis. Cons.
25 September 1837.
No. 34.

To *H. Chamier*, Esq., Chief Secretary to Government of Fort St. George.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to acknowledge the receipt of your letter, No. 815, dated the 2d instant, submitting copy of correspondence with the Government and the Judges of the Supreme Court at Fort St. George, on the subject of the proposition to remunerate the officers and servants of that court by fixed salaries, instead of fees.

2. In reply, I am desired to request that the Right honourable the Governor in Council will be pleased to repeat to the Honourable the Judges of the Supreme Court the wish of Government that, if they see no objection, they should intimate their opinion as to the amount of fixed salaries which should be granted to the officers

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

officers and establishments of the Supreme Court, as without such information it must be impracticable to determine whether the system of substituting fixed allowances for fees can be carried into effect without detriment to the public resources.

I have, &c.

(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Fort William, 25 September 1837.

(No. 1058.)

To *R. D. Mangles,* Esq., Officiating Secretary to the Government of India.

Jud. Cons. 4 December 1837 No. 21.

Sir,

With reference to Mr. Secretary Macnaghten's letter of the 25th September last, No. 93, requesting that the Judges of the Supreme Court at this Presidency may be again called upon for their opinion as to the amount of fixed salaries which should be granted to the officers and establishments of that court, I am directed to transmit, for the information of the Honourable the President in Council, the accompanying copy of a reply of the Judges to a reference which was accordingly made to them on the subject, and to intimate that the further communication promised therein as soon as received will be forwarded for the information of the Government of India.

Judicial Dep. 8 November 1837. No. 1214.

I have, &c.

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

Madras, 13 November 1837.

To the Right honourable Lord *Elphinstone,* Governor in Council, &c. &c. &c., Fort St. George.

Jud. Cons. 4 December 1837. No. 22.

My Lord,

We have the honour to acknowledge the receipt of your Lordship's letter of the 27th ultimo, enclosing a communication from the Secretary of the Supreme Government, expressing a desire that the Judges of the Supreme Court at Fort St. George should intimate their opinion as to the amount of fixed salaries to be granted to the officers and establishments of the court.

Although we shall be very ready to afford to the Supreme Government every assistance in our power, we fear some delay must necessarily take place before we can furnish a complete statement of the rates of salary proposed to be substituted for fees at present received, as the subject is one in which no small consideration will be requisite, in order to frame a satisfactory opinion upon it.

We shall, however, immediately address ourselves to the matters in question, and communicate to your Lordship the result of our inquiries with as little delay as possible.

(signed) *Robt Comyn.*
Edwd J. Gambier.

Madras, 8 November 1837.

(A true copy.)
(signed) *H. Chamier,* Chief Secretary.

(No. 920.)

To *W. H. Macnaghten,* Esq., Secretary to the Government of India.

Jud. Cons. 30 October 1837. No. 33.

Sir,

With reference to my letter of the 2d instant, I am directed to request that you will submit, for the consideration and orders of the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the Honourable the Judges of the Supreme Court at this Presidency, and of its enclosure, relative to an application from the Court-keeper and Crier of that court for an increase of his salary.

Judicial Dep.

I have, &c.

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

Fort St. George, 28 September 1837.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Jud. Cons.
30 October 1837.
No. 34.

To the Right honourable Lord *Elphinstone*, Governor in Council, &c. &c.

My Lord,

We have the honour to enclose to your Lordship a petition presented to us by Mr. W. Burden, the present Court-keeper and Crier of the Supreme Court; and as we have every reason to be entirely satisfied with his whole conduct, we particularly beg to recommend him to your Lordship's notice as well meriting an increase of his monthly salary, more particularly as the additional extent of the present range of building requires a much greater degree of attention than he was called upon to bestow on the old court-house.

As it may possibly be suggested that a house has been provided for the Court-keeper within the premises belonging to the present court, we beg to report to your Lordship that we have distinctly ascertained that the building erected under such an appellation is perfectly unfitted for the dwelling of any person descended from European parents.

(signed) *R. Comyn.*
E. Gambier.

Madras, 18 September 1837.

To the Honourable Sir *R. B. Comyn*, Knight, Chief Justice of the Supreme Court of Judicature at Madras, and the Honourable Sir *E. J. Gambier*, Knight, Puisne Judge of the Supreme Court of Judicature at Madras.

My Lords,

In taking the opportunity of submitting my case to your Lordships' favourable consideration, I must entreat your Lordships' pardon for this intrusion on your valuable time.

I take the liberty to state that I have been employed as a Tipstaff to this Honourable Court from the year 1818, making now a period of 19 years since my appointment of Tipstaff; I have also had to perform the duties of Court-keeper and Court-crier; for all which duties I receive only 20 pagodas per month, which I beg to submit is very inadequate.

I further crave leave to say, that previous to the removal of the new court-house I made use of my leisure hours, whereby I earned an addition to my salary of Tipstaff, &c.; but in consequence of my daily and constant attendance at the new court-house, I have been obliged to give up devoting my time to any other purpose.

As I have a very large family of a wife and eight children, three of whom are grown-up girls, I beg to lay before your Lordships' benevolent consideration my case, and entreat your Lordships to lay the same before Government in such a manner that I may obtain an addition to my salary. The amount of the addition I leave entirely to your Lordships' pleasure.

During a servitude of 19 years I take upon myself to say, that I believe I have conducted myself entirely to the satisfaction of your Lordships' predecessors, and also hope to that of your Lordships.

I finally beg to say, and kindly, of which your Lordships will excuse the liberty, that the Court-keeper and Crier at Calcutta receives a salary of 260 rupees per month.

11 July 1837. (signed) *W. Burden.*

(True copies.)
(signed) *H. Chamier*, Chief Secretary.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

(No. 111.)

To *H. Chamier*, Esq., Chief Secretary to Government of Fort St. George.

Sir,

Jud. Cons. 30 October 1837. No. 35. Judicial Dep.

I AM directed to acknowledge the receipt of your letter, No. 920, dated the 28th ultimo, to the address of Mr. Secretary Macnaghten, with its enclosure, relative to an application of the Keeper and Crier of the Supreme Court at Fort St. George for an increase to his salary; and to request that you will inform the Right honourable the Governor in Council, in reply, that the Honourable the President in Council will await a reply to Mr. Macnaghten's letter, No. 93, of the 25th ultimo, before disposing of the present reference.

I have, &c.
(signed) *R. D. Mangles*,
Officiating Sec. to Government of India.

Fort William, 30 October 1837.

EXTRACT from a DESPATCH to the Honourable the Court of Directors, in the Judicial Department, No. 3 of 1838, dated 5 March.

Supreme Court, Fort St. George. Jud. Cons. 25 September 1837. No. 32 to 34.

Para. 14. THE proceedings of the annexed date contain a correspondence between the Government of Fort St. George and the Honourable the Judges of the Supreme Court at that Presidency, respecting our proposition noticed in the despatch from the Legislative Department, under date 27th March 1837, No. 4, for remunerating the officers and servants of that court by fixed salaries, and instead of by fees. The Judges, as your Honourable Court will observe, are of opinion, that the proposed measure is likely to be "more beneficial to the suitors, and more satisfactory to the officers themselves, than the present system." They furnished us with returns of the average receipts of the several officers of the court; but omitted to communicate any suggestions as to the amount of fixed salaries which should be assigned to them; and as without such information we could not determine on the practicability, without detriment to the public resources, of giving effect to the change of system, we repeated our request to be favoured with the opinion of the Judges on this point.

Jud. Cons. 30 October 1837. No. 33 to 35.

15. Pending a reply to this communication, we have postponed passing any order and reference from the Judges recommending an increase of the salary at present enjoyed by the Keeper and Crier of the Supreme Court at Madras.

To *R. D. Mangles*, E Secretary to Government.

Jud. Cons. 20 November 1837. No. 22.

Sir,

I HAVE the honour to forward you a copy of certificate for monthly salaries to Clerks and Writers in the Clerk of the Crown and Prothonotary's office, Supreme Court, with my remarks upon the appointment of Mr. J. D. Crouch in the office, on the 24th October last, in the room of Dalychurn Mozendar, deceased, and Mr. Saunders, discharged, and with the remarks of the officiating Civil Auditor, and request that you will lay the same before the Vice-president in Council, and obtain the sanction of Government to the arrangement I have made, considering the same necessary to enable me to perform the duties of my office. I have the honour to request that you will forward the necessary order to the Civil Auditor upon obtaining the sanction of Government thereto.

I have, &c,
(signed) *H. Holroyd*,
Clerk of the Crown and Prothonotary.

10 November 1837.

(Copy.)

CERTIFICATE for Monthly Salaries to Clerks and Writers in the Clerk of the Crown and Prothonotary's Office, Supreme Court.

Jud. Cons. 20 November 1837. No. 23.

I, Henry Holroyd, Clerk of the Crown, and Prothonotary of the Supreme Court, do hereby solemnly declare and certify, that the sum of *Co.'s Rs.* 801. 6. is the amount required for the payment of the salaries and wages of the Clerks

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On Fees and Salaries of the Officers of the Supreme Courts.

and Writers in my said office for the month of October last, according to the list under mentioned; (that is to say)

Names.	Co.'s Rs.		
Reg. p. 17. Ramtonoo Sill	60	–	–
Dabychurn Mozemdar for 16 days, at 110 Company's rupees per month, died 17th October last	256	12	3
Mr. J. D. Crouch, appointed 24th day of October (in place of Dabychurn Mozemdar, deceased, and Mr. Sanders, discharged), at 200 rupees per month.—(*See* note below) (A.)	51	9	9
Bholanauth Bolear	64	–	–
Sumboo Chunder Bannerjee	55	–	–
Ram Comul Dutt	35	–	–
Dennobandoo Sein	30	–	–
Nilmony Buddan	22	–	–
Rajkishno Bannerjee	20	–	–
Colly Doss Mozendar	20	–	–
Bhoyrub Chunder Doss	20	–	–
Nilcomul Chatterjee	16	–	–
Bungsoo Chatterjee	16	–	–
Ram Cosmar Chatterjee	16	–	–
Mudoo Dutt	16	–	–
Doogachurn Dass	16	–	–
Gunganarain Sing	14	–	–
Rajkistnoo Chatterjee	14	–	–
Muddoo Mookerjee	10	–	–
Dinnobundoo Bolear	10	–	–
Groochurn Ghose	10	–	–
Surroop Chunder Sircar	8	8	–
Nazim Duftry	7	8	–
Peon	7	–	–
Peon	6	–	–
Total – – – *Co.'s Rs.*	801	6	–

Clerk of the Crown and Prothonotary's Office,
1 November 1837.

(signed) *H. Holroyd.*
Clerk of the Crown and Prothonotary.

Amount of this abstract – – – – – – – – *Co.'s Rs.*	801	6	–
Amount suspended, marked (A.) until the sanction of Government to the arrangement be obtained	51	9	9
Passed for – – – *Co.'s Rs.*	749	12	3

Company's rupees Seven hundred and forty-nine, twelve annas, and three pie, payable on issue of Civil Allowance for October 1837.

(signed) *G. F. M'Clintock,* Officiating C. A.

Civil Auditor's Office,
8 March 1837.

(Ex. Amount.—*H. H.*)

To *W. H. Oakes,* Esq., Sub-treasurer.

Refer to the Clerk of the Crown and Prothonotary's list of Clerks, Writers and servants of 8th February 1837, forwarded by Mr. Dickens, the Registrar, with other lists, to Mr. Macnaghten, in the Legislative Department, to be submitted for communication to officers of Audit and Pay for their information and guidance, in which list Mr. Saunders is named as place to be filled up when fit person procured, but which place I did not fill up, being unable to do so satisfactorily for the salary he received; but upon the death of Dabychurn Mozendar I appointed Mr. J. D. Crouch to perform their respective duties at 200 Company's rupees per month, being 40 Company's rupees less than their joint salaries.

(No. 180.)

No. 1
On Fees and Salaries of the Officers of the Supreme Courts.

Jud.-Cons. 20 November 1837. No. 24.

(No. 180.)

To *H. Holroyd*, Esq., Clerk of the Crown and Prothonotary.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, dated 10th instant, with its enclosure, and in reply to state, that the Civil Auditor will be directed to pass the monthly pay of your establishment for October last, amounting to *Co.'s Rs.* 801. 6.; and in future for *Co.'s Rs.* 893 (your second Clerk receiving 200 rupees per mensem, and the situation of third Clerk, held by Dabychurn Mozendar, being abolished), being 40 rupees less than that sanctioned on the 27th February last, in a letter to the address of Mr. T. Dickens from the Legislative Department, which sum is to be considered as permanent saving to Government.

2. The original paper which accompanied your letter is herewith returned.

I have, &c.

Council Chamber,
20 November 1837.

(signed) *R. D. Mangles*,
Officiating Secretary to Government of India.

EXTRACT from a DESPATCH to the Honourable the Court of Directors in the Judicial Department, No. 8 of 1838, dated 14 May.

Reduction in the Establishment of the Clerk of the Crown and Prothonotary of the Court.

Jud. Cons. 20 November 1837. No. 22 to 24.

Para 16. ON the application of the Clerk of the Crown and Prothonotary of the Court, we directed the Civil Auditor to pass the monthly pay of that officer's establishment for October last, amounting to *Co.'s Rs.* 801. 6., and in future for 893 Company's rupees, being 40 rupees less than the amount sanctioned by the general arrangements for the payment of the officers and subordinate establishments of that court, reported in our Legislative Despatch, dated 27th March 1837, No. 4.

To *R. D. Mangles*, Esq., Officiating Secretary to Government in the Legislative Department.

Jud Cons. 5 March 1838. No. 14.

Sir,

I AM directed by the Judges to communicate to you, for the purpose of being laid before the President in Council, the appointment of Mr. Edward Hilder, late clerk to Sir Benjamin Malkin, deceased, to the situation of Crier of the Supreme Court, vacant by the resignation of Mr. Preston, who has applied for leave to proceed to the Cape of Good Hope for a period of 18 months for the recovery of his health.

I had the honour, in my letter, under date the 19th August last, to explain to you that, by the terms of the charter, the Judges were precluded from giving leave of absence to officers of court, so as to enable them to quit the jurisdiction, and that the present Judges had great doubt whether they were not also precluded by the terms of the charter from making acting appointments, and had consequently not adhered to former precedents.

The cause of Mr. Preston's absence, his advanced age and his long services, all entitle him, however, in the opinion of the Judges, to the indulgence of permission to resume his appointment on his return, and they have accordingly reserved to him the liberty to do so.

Under the special circumstances of this case, and with reference to the letter of the Judges to the Governor-general of India in Council, dated 25th April 1836, and the Schedules (E.) and (F.) thereto annexed, the Judges deem it proper to explain the circumstances attending this appointment, and to submit to Government, through me, their opinion, that the appointment of Mr. Hilder ought not to be treated as a new appointment arising on a vacancy of the office of Crier by the late occupant.

They think that until Mr. Preston shall finally vacate the office by resignation or death, the contingency by which the salary is to be reduced to 200 Company's rupees monthly, as it appears in Schedule (E.), cannot be considered to have happened, and that the salary ought in the meanwhile to remain as fixed in Schedule (F.).

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The reduction might operate as a hardship on the officer in question, and the vacancy is not of that kind which was intended to be provided for by the arrangements specified in the Judges' letter above quoted and approved of by Government.

I have, &c.

Calcutta, Court House,
22 February 1838.

(signed) *T. Dickens*,
Registrar.

Jud. Cons.
5 March 1838.
No. 15.

(No. 39.)

To *T. Dickens*, Esq., Registrar of the Supreme Court at Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter of the 22d ultimo, and in reply to state, that the Honourable the President in Council sanctions the appointment of Mr. Edward Hilder as Crier of the Supreme Court on a salary of 3,600 *Rs.* per annum during the absence on leave of Mr. B. Preston to the Cape of Good Hope.

I have, &c.

Council Chamber,
5 March 1838.

(signed) *R. D. Mangles*,
Officiating Secretary to the Government of India.

Mr. Hilder appointed Crier of the Court during the absence of Mr. Preston.

EXTRACT from a DESPATCH to the Honourable the Court of Directors in the Judicial Department (No. 9 of 1838), dated 25 June.

Jud. Cons.
5 March 1838.
No. 14 & 15.

15. AT the recommendation of the Judges, we sanctioned the appointment of Mr. Edward Hilder as Crier, on a salary of 3,600 *Rs.* per annum during the absence on leave of Mr. B. Preston to the Cape of Good Hope.

Jud. Cons.
16 April 1838.
No. 21.

(No. 321.)

To *R. D. Mangles*, Esq., Officiating Secretary to the Government of India.

Jud. Department.

Sir,

WITH reference to my letter of the 13th November 1837, No. 1058, I am directed by the Right honourable the Governor in Council to submit for the orders of the Honourable the President in Council the accompanying copy of a communication from the Judges of the Supreme Court at this Presidency, requesting to be informed whether or not, under the proposed system of remunerating the officers of that court by salaries instead of fees, stationery will be supplied to them by the Government.

I have, &c.

Fort St. George,
27 March 1838.

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

Jud. Cons.
16 April 1838.
No. 22.

To the Right honourable Lord *Elphinstone*, Governor in Council, &c. &c. &c., Fort St. George.

My Lord,

IN compliance with the wishes expressed by the Supreme Government, we have given our best consideration to the question of remunerating the officers of the Supreme Court at Madras, hereafter to be appointed, by salaries instead of fees. Before, however, we come to any definite opinion as to the amount of such officers' allowance, we are desirous of ascertaining the intentions of the Government in respect of the article stationery. At present some of the officers are entirely supplied with their stationery from the Government stores, and it will of course call for a considerable addition of salary in case this supply should be withheld. We shall, therefore, feel obliged by your Lordship's information upon this point, whether, under the proposed system of remuneration by salaries, the stationery

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stationery will be supplied by the Government, or must be paid for by the court officers out of their own funds.

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

Madras, 10 March 1838.

(A true copy.)
(signed) *H. Chamier*, Chief Secretary.

(No. 73.)
To *H. Chamier*, Esq., Chief Secretary to the Government of Fort St. George.

Jud. Cons. 16 April 1838. No. 23.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 321, dated the 29th ultimo, with its enclosure, and, in reply, to state that, as under the new arrangements which obtain in the Supreme and Insolvent Courts at Fort William, the officers of those courts in the Madras Presidency will, when they also shall be remunerated by salary instead of fees, be entitled to indent for all articles of stationery on the public stores.

I have, &c.
(signed) *R. D. Mangles*,
Officiating Secretary to the Government of India.

Fort William, 16 April 1838.

(No. 564.)
To *R. D. Mangles*, Esq., Officiating Secretary to the Government of India.

Jud. Cons. 3 Sept. 1838. No. 6. Jud. Department.

Sir,

Para. 1. WITH reference to Mr. Secretary Macnaghten's letter of the 25th September last, No. 93, I am directed by the Right honourable the Governor in Council to transmit, for submission to the Honourable the President in Council, the accompanying copy of a communication* from the Judges of the Supreme Court at this Presidency, expressive of their sentiments as to the amount of fixed salaries which should be granted to the officers and establishments of that court in lieu of the fees at present received by them.

*21 May 1838.

2. The Right honourable the Governor in Council is not aware that it is expected he should offer any particular observations on the several propositions contained in the letter of the Judges of the Supreme Court now submitted, nor would his Lordship in Council desire to hazard any opinion on the subject without being better informed than he is at present as regards the nature and extent of duty required to be performed in some of the offices attached to that court; but he nevertheless cannot refrain from remarking that the salaries proposed to be assigned to the principal officers and translators appear to be high as compared with those received by members of the civil service filling the highest and most responsible offices under the Government, and discharging duties which, it is believed, are far more laborious and important than those which fall to be performed by gentlemen employed under the orders of the Supreme Court. Besides which, although the averages of the fees on which those propositions are primarily based may show what the extent of business in the court has hitherto been, it is understood they would not long continue to convey an accurate idea of its state, as it is believed to be on the decline from the want of means and object of litigation amongst the native community. This will necessarily cause a corresponding reduction in the commission and fees to be carried to the account of Government in future years, and the measure thereby ultimately entail a heavy loss on the state. It is, moreover, to be feared that such an arrangement as is now proposed may be regarded as a permanent contract or covenant with the Government, and not liable to alteration, although reductions in the scale of remuneration to all public officers may hereafter be found necessary. It appears, therefore, to his Lordship in Council to be very desirable that nothing should be left in uncertainty on this point.

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

Fort St. George, 4 June 1838.

Jud. Cons. 3 Sept. 1838. No. 7.

To the Right honourable Lord *Elphinstone*, Governor in Council, &c. &c. &c., Fort St. George.

My Lord,

1. We have the honour to acknowledge the receipt of your Lordship's letter of the 4th instant, enclosing the copy of a letter from the Supreme Government, intimating that under the new arrangement proposed to be made at this Presidency, for remunerating the officers of the Supreme and Insolvent Courts by salaries instead of fees, the officers would be entitled to indent for all articles of stationery on the public stores.

2. Having given our best attention to the subject, we now beg leave to submit to your Lordship the amount of the salaries by which we think the several officers should be respectively remunerated; and though in some instances the incumbents of offices would be benefited by the arrangement taking place at the present time, yet as a very considerable reduction is proposed in two very important offices, we beg it to be distinctly remembered that we have fixed the salaries with respect to officers to be hereafter appointed, and with the understanding that no present incumbent is to be prejudiced by the new arrangement.

3. The Officers of the Supreme Court at present entitled to fees are as follows:

I. Sheriff and Under-sheriff.
II. Accountant-general.
III. The Master in Equity.
IV. The Clerk of the Crown.
V. The Deputy Clerk of the Crown.
VI. The Prothonotary and Registrar.
VII. The Examiner.
VIII. The Attorney for Paupers.
IX. The Sealer.
X. The Judges' Clerks.
XI. Nine Interpreters, viz.; 1. Tamil and Teloogoo; 2. The Deputy Tamil, Teloogoo and Canarese; 3. The Persian and Hindoostani; 4. The Armenian; 5. The French; 6. The Dutch; 7. The Portuguese; 8. The Malialum; 9. The Malay.

The Officers of the Insolvent Court are—

I. Chief Clerk.
II. The Examiner.
III. The Common Assignee.

The two first being remunerated by fees, and an allowance from Government, the last by an allowance, and by a commission of five per cent. upon all sums realized by him in the collection of insolvent estates.

4. With respect to I. and II. of the Supreme Court, we deem it unnecessary to offer any observation, the Judges having no share in the nomination of the Sheriff, Under-sheriff and Accountant-general, more especially as we have already furnished Government with the particulars of their respective profits, so as to facilitate any arrangement it may be thought proper to make with respect to those officers; we proceed, therefore, to those who are appointed by the Judges, having reference to their present salaries, their profits from fees, and their disbursements on account of their establishments, and their adequate remuneration upon surrendering their fees to the Government.

5. III. The Master in Equity is at present in the receipt of an annual salary paid by Government of 6,300 Rs., and his fees have averaged for the last five years 39,574 Rs. per annum. Besides this, the present Master receives in his capacity as one of the Commissioners of the Court of Requests a salary of 10,200, making a gross income of 56,074 Rs. The separation of the offices of Master and Commissioner being part of the contemplated arrangement (as will appear by reference to former correspondence on the subject), and the Master's disbursements averaging at present upwards of 3,700 Rs., his annual net income would

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would be reduced to 42,174 Rs. But besides his ordinary disbursements the Master employs at present his own Interpreters, who are remunerated by fees averaged at 736 Rs. per annum, which fees in future would be payable to Government, so that the Master would be exposed to a further outlay for the payment of these Interpreters; we beg leave, therefore, to recommend that the future Master's salary should be fixed at 4,000 Rs. per mensem, or 48,000 Rs. per annum, and that out of this he should pay his Interpreters, and all other disbursements (stationery excepted), handing over to Government all his own fees, and those of his Interpreters, by which Government would receive an income of upwards of 40,000 Rs. Still, however, it is obvious that by this arrangement the Government would be anything but gainers; they would indeed receive the fees (say 40,000 Rs.), and save the present salary (6,300); but the balance would be nearly 2,000 Rs. against them. This consideration has not escaped us; but we very strongly feel that the annual sum of 48,000 Rs., reduced as it would be by considerable disbursements, is by no means too high a salary for an office of such importance and responsibility as that of Master.

IV. The Clerk of the Crown now receives a salary of 6,300 Rs., and an annual allowance for Clerks and Peons 3,108 Rs., making altogether 9,408, exclusive of stationery. We think his consolidated allowance for himself and Clerks might be fairly fixed at 9,600 Rs., and as his fees appear to average 800 Rs., there would be a small saving to Government of 608 Rs.

V. Thinking that the Deputy Clerk of the Crown is at present underpaid, we take the liberty of suggesting a small increase to his salary, and that in lieu of 2,100 Rs., the future Deputy should receive 3,000 Rs. per annum.

VI. The Prothonotary and Registrar's profits we think might fairly be reduced. At present he receives no salary; but his average annual receipts for the last five years in the Court department alone appear to have been nearly 55,000 Rs., in addition to his commission of five per cent. upon administrations. From this annual profit, 55,000 Rs., must be deducted the expenses of his office, which, exclusive of stationery, have averaged annually about 11,000 Rs., so as to leave him in the Court department a net income of about 44,000 Rs. For the reasons stated at large in our former letters, we think the commission of five per cent. in respect of estates should remain untouched, but that a salary of 48,000 Rs. should be allowed him for his labours and disbursements in the Court department, which would be productive of an annual saving to Government of between six and seven thousand rupees, and warrant the fixing of the salaries of some of the subordinate officers at a higher rate than those at present enjoyed.

VII. The Examiner now receives an annual salary of 2,100 Rs., and his fees average about 11,000 Rs., altogether 13,200, out of which he is compelled to disburse 900 Rs. for Clerks and Writers. This we consider insufficient for his office, and do not think a salary of 16,800 Rs. will more than repay his labour.

VIII. The Attorney for Paupers at present receives from Government 4,200 Rs., and his fees seem to average scarcely 90 Rs. Considering the troublesome nature of his office, and the necessary expense incurred for Writers, we deem ourselves justified in suggesting a trifling increase, and the fixing of his salary at 4,500 Rs. per annum. We have no observation to make as to the Counsel for Paupers, his salary having been fixed by the Honourable the Court of Directors at 400 Rs. per mensem.

IX. The Sealer is required to be at the Court-house every week-day in the year, and has no allowance for conveyances; we beg to suggest that his emoluments, which are now 3,500 Rs., be increased to 3,600 Rs. per annum.

X. The two Judges' Clerks receive each a salary of 2,520 Rs., and the same sum was allowed to the third Clerk when the Court had three Judges. The average amount of fees received by both the present Clerks is nearly 6,000 Rs. We take leave to suggest that the salary of each Clerk should be not less than 5,640 Rs., or 470 Rs. per mensem.

XI. With respect to the Interpreters, we consider it will simplify matters if the future Interpreter be ordered to attend the Examiner gratis, and the fees charged to the suitors for their attendance be accounted for by the Examiner to the Government. The fees of the Tamil Interpreter alone have averaged 1,650 Rs. per annum, and we propose that the offices of Malialum and Malay Interpreters

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should be abolished, those languages being of very rare occurrence in the Court. Under these circumstances, we think the salaries of the remaining Interpreters should be fixed at the following rate:—

Tamil and Teloogoo	*Rs.* 8,400
Deputy ditto and Canarese	2,400
Persian and Hindoostan	4,800
Armenian	1,692
French	360
Dutch	360
Portuguese	600

6. As to the salaries of officers of the Insolvent Court, we have only to call the attention of the Right honourable the Governor in Council to the extremely slender remuneration which they at present receive, and to the disbursements necessarily incurred, and to recommend that the gentlemen to be hereafter appointed should receive the following salaries:—

I. Chief Clerk	*Rs.* 6,000 per annum.
II. Examiner	2,400 ,,
III. Common Assignee	6,000 ,,

7. The above augmentation of salaries in the Insolvent Court will occasion an increased burthen on the Government to the amount of somewhat more than 2,500 Rs. a year. But, on the other hand, the proposed alterations in the Supreme Court, when carried fully into effect, will probably diminish the total annual charge now borne by the Government in the sum of 1,160 Rs.

8. In conclusion, I beg to assure your Lordship that in anxiously considering the subject, we have endeavoured to settle these several salaries upon strictly economical principles, not, however, forgetting the vast consequence it must always be to the public to make offices worth the acceptance of duly qualified persons.

We have, &c.

(signed) *Robert Comyn.*
E. J. Gambier.

Madras, 21 May 1838.

(A true copy.)

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

(No. 176.)

Jud. Cons. 3 Sept. 1838. No. 8. Judicial (Law).

To *H. Chamier*, Esq., Chief Secretary to the Government of Fort St. George.

Sir,

I AM directed to acknowledge the receipt of your despatch of the 4th June last, No. 564, transmitting a copy of a letter from the Honourable Judges of the Supreme Court at Madras, with their sentiments on the subject of granting fixed salaries to the officers of that Court, in lieu of fees, which it was proposed to bring to the credit of Government, and containing a statement of the rates of consolidated salaries which they would recommend for the officers of the Court.

2. From the second paragraph of the Honourable Judges' letter, it would appear that they do not contemplate the immediate substitution of the salaries which they propose in lieu of the remuneration, partly in the shape of salary, and partly in the shape of fees, now enjoyed by those officers; for they "beg it to be distinctly remembered that they have fixed the salaries with respect to officers to be hereafter appointed, and with the understanding that no present incumbent is to be prejudiced by the new arrangement." On this assumption, the arrangement could be carried only partly into effect at the present period; for though Government might consent to its immediate adoption in the case of those offices in which it is admitted that we must submit to a sacrifice by the arrangement, Government is to wait for vacancies in other offices, from which only, under the new plan, it can derive the means of paying the angmented allowances without direct loss.

3. This was not such an arrangement as was proposed in Mr. Secretary Macnaghten's letter to your address of the 14th November 1836. It was contemplated that the change of system, if adopted, should be general, not partial; and it

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it appears to the President in Council that there is no advantage in the plan recommended by the Honourable Judges of Madras to counterbalance the immediate increase of expenditure that would thereby be entailed on Government.

4. Independently of this objection, the President in Council apprehends that the proposed arrangement, even though it could be immediately brought into general operation, would be attended with a certain loss to Government, to the amount, as far as can be calculated from the accounts rendered by the officers of the Court, of several thousand rupees per annum, in which the average value of the fees now enjoyed by those officers is less than the aggregate amount of additional allowances to be paid to them; and this, too, without taking into consideration the additional expenditure of stationery to which Government would become liable.

5. Under these circumstances, the President in Council is averse to sanction the arrangement proposed by the Honourable Judges, as not conforming to the condition prescribed in the third paragraph of Mr. Macnaghten's letter, quoted above, that the new system should be such as might be carried into effect without subjecting the Government to additional expense.

6. The President in Council concurs generally in the sentiments expressed by the Right honourable the Governor in Council, in your letter under acknowledgment, and finds in the latter part of the second paragraph of that letter, additional reason for thinking that it would be inexpedient to adopt the arrangement submitted to him, particularly as it holds forth no prospect of benefiting the people by a reduction of fees; a result which has followed the introduction of the new system into the Supreme Court at Fort William.

I have, &c.

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

Fort William, 3 September 1838.

To *T. H. Maddock*, Esq., Officiating Secretary to the Government of India in the Legislative Department.

Jud. Cons.
10 Sept. 1838.
No. 20.

Sir,

On the 22d February 1838, I had the honour, by desire of the Judges of the Supreme Court, to address a letter to Mr. Officiating Secretary Mangles, for the purpose of being laid before the President and Council of India, on the subject of the leave of absence granted by the Judges to Mr. Benjamin Preston, the late Crier of the Court, and the appointment of Mr. Hilder as Crier in his absence.

In accordance with the opinion of the Judges, as expressed in the two last paragraphs of my letter of the 22d February 1838 (which paragraphs are quoted below,*) the President in Council sanctioned the receipt of salary by Mr. Hilder on the scale of 3,600 Company's rupees per annum.

I have now the honour to inform you that the Court has received an intimation that Mr. Preston has passed the Cape, which is equivalent to a vacation of the office, and therefore the contingency on the occurrence of which the salary of Crier is to be reduced, pursuant to the terms of the letter of the Judges of the 25th April 1836, addressed to the Governor in Council, having now actually taken place, the salary of Mr. Hilder ought, in the opinion of the Judges, to be reduced to 200 Company's rupees monthly.

I am also directed by the Judges to notify to you, for the information of the President in Council, the death of Richard Marnell, Esq., Barrister-at-Law, and Counsel for Paupers; by this event the salary of Counsel for Paupers has ceased.

With reference to the terms of the above-quoted letter of the 25th April 1836, in

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* "They (the Judges) think, that until Mr. Preston finally vacate the office by resignation or death, the contingency by which the salary is to be reduced to 200 Co.'s Rs. monthly, as it appears in Schedule (E.) cannot be considered to have happened, and that the salary ought in the meanwhile to remain as fixed in Schedule (F.)"

"The reduction might operate as a hardship on the officer in question, and the vacancy is not of that kind which was intended to be provided for by the arrangement specified in the Judges' letter above quoted, and approved of by Government."

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in which the accuracy is treated of (also quoted below*) I am directed to state that the Judges are desirous of postponing any suggestions which they may have to offer to the Governor-general in Council on the subject of this office, and the best mode of securing the aid of the Bar to paupers, for a certain period, until they shall be enabled by experience to say whether the voluntary aid of efficient counsel is likely to be secured on the chance of obtaining the usual professional fees, if successful, from the other party.

It remains for the Government to issue the requisite orders to the Civil Auditor with respect to the salary of the Counsel for Paupers, which has ceased from 2d day of August last, and the salary of the Crier, which from the 1st instant will commence on the reduced scale of 200 Company's rupees monthly.

I have, &c.

Calcutta, Court-house, Registrar's Office, 1 September 1838.

(signed) *T. Dickens*, Registrar.

Jud. Cons. 10 Sept. 1838. No. 21.

(No. 109.)

To *T. Dickens*, Esq., Registrar of the Supreme Court at Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter of the 1st instant, communicating the fact of two vacancies having occurred in offices in the Supreme Court, one, that of the Crier, whose salary the Honourable the Judges, in their letter of the 25th April 1836, addressed to the Governor-general in Council, recommended for reduction from 300 Rs. to 200 Rs. per mensem, and the other that of the Counsel for Paupers; an appointment the necessity of which the Judges, in the same letter, were not disposed to admit, provided that some adequate arrangement were adopted for the discharge of the duties which occasionally fell on the Counsel for Paupers.

2. The Honourable the President in Council concurs in opinion with the Honourable Judges, that Mr. Preston having virtually vacated his office as Crier of the Court, the time is arrived when the reduction contemplated ought to be carried into effect, and information will accordingly be given to the Civil Auditor, that from the 1st instant Mr. Hilder will be authorized to draw a salary of only 200 Rs. per mensem.

3. Intimation will at the same time be made to the Civil Auditor and the Accountant-general, that the salary of Counsel for Paupers ceased on the 2d August, the date of Mr. Marnell's death; and Government will await the communication of any suggestions respecting the mode of securing for paupers the aid of the Bar which the Honourable Judges may hereafter deem it necessary to make.

I have, &c.

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

Fort William, 10 September 1838.

(No. 110.)

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* "The abolition of the office of Counsel for Paupers was recommended at the same time as that of Sealer, and we concur in the recommendation. The Attorney for Paupers has a laborious and responsible situation, and his most important duties lie in the investigation of cases which in the result it is either unnecessary or improper to bring before the Court. In these cases the Counsel for Paupers is by the present practice seldom consulted, although he is so occasionally, and his duties are now practically almost confined to the few cases which actually come to trial. We think it quite unnecessary to retain an officer with a considerable salary, nearly 7,000 rupees per annum, for the performance of these occasional duties, provided adequate provision be otherwise made for their discharge when required. It would not be either safe or just, when the small number of an Indian Bar is considered, to leave it to individual activity or benevolence; and we would suggest, though we do not feel that it is competent to us to propose this as any part of our plan, that in all cases where the interests of the Company or the Government are not involved, either the Advocate-general or the standing Counsel for the Company might reasonably be required to act as Advocate for Paupers, and that in the cases where their official duties or their private professional engagements were consistent with their so acting, the Court would name some barrister for the occasion. If it is not thought right to impose the burden of the bulk of these cases on the Company's law officers, the payment of a reasonable fee to Counsel for an opinion occasionally taken by order of a Judge, or to Counsel to be named by the Court for the occasion for the conduct of causes, would cost the Government much less than the present salary of the Counsel for Paupers, and would be met in some degree by the recovery of costs from the opposite party in successful cases."

(No. 110.)—To Accountant-general.
(No. 111.)—Civil Auditor.
(No. 112.)—Sub-Treasurer.

Jud. Cons. 10 Sept. 1838. No. 22. Para. 2, and part of Para. 3.

Sir,

I AM directed by the Honourable the President in Council to forward to you the accompanying extract from a letter this day addressed to the Registrar of the Supreme Court at Fort William, for your information and guidance.

I have, &c.

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

Fort William, 10 September 1838.

To *H. J. Prinsep*, Esq., Secretary to Government in the General Department.

Jud. Cons. 6 August 1838. No. 32.

Sir,

I HAVE the honour to submit, for the consideration of Government, the accompanying correspondence with the Civil Auditor, in consequence of that officer's own request, contained in his letter dated the 14th day of July 1838.

This correspondence (copies of which are hereto annexed), and more especially my letter to the Civil Auditor, dated July 4th, 1838, will sufficiently explain the object of the reference, which in effect is to obtain the sanction of Government to a saving effected in the expenses of the office of the Ecclesiastical, Equity and Admiralty Registrar, which are paid by Government.

With reference to the increase of salaries to some of these Clerks, I beg distinctly to observe that this increase is paid by myself, and in no way falls on Government, and that the increase has been bestowed in consequence of my opinion that it was, from length of service and diligence, fully deserved.

The expenses of the office of ex-officio Administrator are borne by myself, under the arrangements proposed by the letter of the Judges, dated the 25th April 1836, and subsequently sanctioned by Government.

The arrangement proposed and sanctioned is in these words:—"It will be observed, therefore, that in imposing the payment of the expenses of the ex-officio Administrator's office upon that officer himself, we depart from the principle suggested for general adoption. The profits of that office, however, without this or some equivalent reduction, would be larger than we think reasonable in a scheme intended to be permanent; and besides this, the nature of the office, and the kind of inquiries requisite to its full discharge, render it particularly difficult to form any judgment as to its necessary or reasonable expenditure, and make it, therefore, expedient to leave the officer unfettered in that respect, except by the consideration of his own interest. On both accounts we think it desirable that the payment of those expenses should be cast on him, and thus that their amount should be left entirely to his discretion."

I am, &c.

(signed) *T. Dickens*, Registrar.

Registrar's Office, Supreme Court,
18 July 1838.

(Circular.)

To *T. Dickens*, Esq., Equity Registrar and Ecclesiastical and Admiralty Registrar.

Sir,

I REQUEST you will forward for audit a detailed abstract of your establishment for the month of April next, transmitting copies and specifying dates of authority

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under which any charges with regard to the situation of native and other officers may have been sanctioned during the current official year.

2. In your detailed abstract for April next you will be pleased to insert the names and dates of appointment of all individuals attached to your establishment, to enable this office to ascertain and check, at the time of audit, what new arrangements have been made or reductions effected in consequence of vacancies happening (or what officers have been appointed in succession to fill vacancies), with a view to give effect to the Resolutions of Government of the 25th March 1835.

I am, &c.

(signed) *E. Trower*,
Civil Auditor.

Fort William,
Civil Auditor's Office,
10 March 1838.

(Circular.)

To *T. Dickens*, Esq., Equity, Ecclesiastical and Admiralty Registrar, Supreme Court.

Sir,

In addition to the details of your establishment which will be required for the month of April next for audit, I request you will likewise forward a separate statement, exhibiting the particulars of the whole of your fixed establishments, as they may stand on the 1st of May next, which is to be drawn out in the annexed form, No. 1, in order to enable me to correct the annual books of civil establishments up to that date, conformably to orders received from the Honourable the Court of Directors, and communicated to this office in a letter from the Officiating Secretary to Government in the General Department, dated 30th December 1833; per accompanying extract.

2. You will likewise be pleased to furnish a list of uncovenanted Europeans on the establishment of your office in the employ of Government for 1st May 1838, required by the late Civil Auditor's circular letter, dated 18th March 1818, together with an additional statement showing the increase and decrease of your fixed establishments, and stating therein the dates of orders under which such increase or decrease may have been effected since the 1st May 1837, up to the 1st May 1838; the same to be drawn out according to the accompanying form, No. 2.

3. To enable me to complete the books of civil establishments at an early period, I request that you will cause the transmission of the above details now required as soon after the 1st of May next as may be practicable; sufficient time being now given to prepare the statements at your office, so as to admit of their being transmitted to the Presidency with your next April abstract, to be compared therewith at the time of their audit.

I have, &c.

(signed) *C. Trower*,
Civil Auditor.

Fort William,
Civil Auditor's Office,
15 March 1838.

Form,

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FORM, No. 1.

Detailed STATEMENT of Salaries and Establishment of the on the 1st May 1838.

Department, and Date of Government Order constituting each Office and Establishment existing on the 1st of May 1838.	Date of the Appointment of the Individual holding the Office.	Name of the Individual.	Description of Service.	Amount of Salary per Month in Company's Rupees.	TOTAL.
Judicial Department, 30 Dec. 1833.	1 June 1829	A. B. -	- - Judge or Collector, and as the case may be.	000 – –	
Judicial Department, 6 April 1833.	1 July 1831	C. D. -	- - Ft. Maj. and Dep. Collector.	000 – –	
Revenue Department, 17 Feb. 1829, and 10 July 1832.	9 Jan. 1834	E. F. - -	- - Head Assist[t] to the Maj. and Collector, and so forth.	000 – –	000 – –
ENGLISH OFFICE.					
Revenue Department, 1 May 1829.	17 Feb. 1825	A. B. - -	Head writer -	000 – –	
Ditto - -	20 Mar. 1809	C. D. -	2d ditto - -	00 – –	
		E. F. - Omlah.	Duftery - -	0 – –	000 – –
Revenue Department, 15 Sept. 1815.	3 Aug. 1815	A. B. -	Moulvie - -	000 – –	
	5 July 1819	C. D. -	Serishtadar -	000 – –	
	20 Mar. 1831	E. F. -	Record-keeper -	00 – –	
Ditto - -	1 Sept. 1830	G. H. -	Mohurer, &c. -	00 – –	
					000 – –
Reg. V. of 1831, Judicial Department.	&c. &c. -	- - Treasury, &c.	&c. - - -	- - -	000 – –
G. O. 1831 - -	- - -	- - Sudder Ameen's Establishment, &c. &c.	&c. - - -	- - -	000 – –
&c. - - -	&c. &c. -	- - Tahsuldaw, &c. &c.	&c. - - -	- - -	000 – –

N. B.—The names of individuals in the receipt of more than (10) ten rupees per mensem, are to be inserted in the present Schedule, and the number, description and salaries only of such as may be below that sum.

FORM, No. 2.

STATEMENT exhibiting the Increase and Decrease of the fixed Establishment, from 1st May 1837 up to 1st May 1838.

Number of Incumbents.	Names and Description of Service.	Salary per Month in Company's Rupees.	Date when granted or discontinued.
	INCREASE:		
1	A. B., English Writer -	0 – –	Authorized by Government on the
1	C. D., Molovy - -	0 – –	- - ditto - - ditto.
4	Chuprassies, at ea. - - &c. &c.	0 – –	- - ditto - - ditto.
	Total Amount - -		
	DECREASE:		
1	A. B., English Writer -	0 – –	Died on the
1	C. D., Moonshee - -	0 – –	Discontinued under order
5	Chuprassies, at, &c. &c.	0 – –	ditto - - - ditto.
	Total Amount - -		

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EXTRACT from a LETTER from the Officiating Secretary to Government in the Financial Department, under date the 30th December 1833.

Para. 2. "HIS Lordship in Council desires that the annual books of Civil Establishments be prepared for transmission to the Honourable Court at as early a period as possible after the close of the year."

3. "In future the books are to exhibit, in one column, the date of the Government order constituting each office and establishment on the then existing footing; and in another column the date of the appointment of the individual holding office or forming part of the establishments; a separate account is to be presented of the contingencies of each office."

(True Extract.)

(signed) *C. Trower*, Civil Auditor.

DETAILED STATEMENT of Salaries and Establishment of the Equity, Ecclesiastical and Admiralty Registrar's Office, in the Supreme Court, on the 1st May 1838.

Department and Date of Government Order constituting each Office and Establishment, existing on 1 May 1838.	Date of Appointment of the Individuals holding the Office.	Name of the Individuals.	Description of Services.	Amount of Salary in Company's Rupees.	TOTAL.
Legislative Department, 27 February 1837 - -	15 Dec. 1816	M. Cockburn - - -	Head Assistant.	280	
	1 Feb. 1838 -	J. R. Douglas; at the resignation of Hurryghur Mookerjee.	Assistant	80	
	1 May 1822 -	G. A. Swares - - -	- ditto -	70	
	1 May 1818 -	Bacharam Bonerjee - -	- ditto -	70	
	1 July 1823 -	Dammoodur Day - -	- ditto -	70	
	1 May 1822 -	G. Mackertich - -	- ditto -	60	
	1 June 1818 -	M. De Souza - -	- ditto -	40	
	1 Jan. 1810 -	Gooroopersaud Sill - -	- ditto -	40	
	1 June 1823 -	Roopnarain Ghose - -	- ditto -	32	
	1 March 1824	Roop Chaund Burraul -	- ditto -	30	
	1 Dec. 1818 -	Prawn Kissen Bossee -	- ditto -	30	
	1 Jan. 1810 -	Hurroopersaud Sein -	- ditto -	28	
	1 Aug. 1832 -	Bunmallee Ghosal - -	- ditto -	27	
	1 Aug. 1822 -	Maudul Mookerjee - -	- ditto -	26	
	1 June 1826 -	Roopchund Sill - -	- ditto -	25	
	15 Aug. 1825	Mudden Mohun Day -	- ditto -	24	
	1 Feb. 1829 -	Issur Chunder Bonnerjea -	- ditto -	20	
	1 Sept. 1833 -	Govind Chund Auddy -	- ditto -	20	
	1 March 1823	Joynarain Doss - -	- ditto -	15	
	1 Dec. 1836 -	F. D. Pinto - - -	- ditto -	12	
	1 Nov. 1836 -	Moheschunder Bannerjee	- ditto -	12	
	1 Jan. 1835 -	Goherdhone Chuckerbuttee	- ditto -	10	
		OFFICE SERVANT:			*Co.'s Rs.*
	6 Dec. 1807 -	Narrain Sing - - -	Peon -	9	1,030 - -
		Deduct paid by Mr. Dickens, proportion of expense of the Upper Office.	- - -	- - -	157 7 6
				Co.'s Rs.	872 8 6

(signed) *T. Dickens*,
Registrar of the Supreme Court.

(No. 694.)

To *T. Dickens*, Esq., Registrar of the Supreme Court.

Sir,

With reference to your detailed statement of salaries and establishment for 1st May 1838, amounting to *Co.'s Rs.* 872. 8. 6., I request you will explain by what order you have paid and deducted *Rs.* 157. 7. 6. from the sum 1,030 Company's rupees; which sum I beg to observe exceeds the amount authorized by Government under date the 27th February 1837, quoted by you in the above statement herewith returned for correction.

2. I beg to observe that your signature in the accompanying statement somewhat differs from that signed by you on the 1st May 1837.

I am, &c.

(signed) *C. Trower*, Civil Auditor.

Fort William, Civil Auditor's Office,
11 May 1838.

(No. 964.)

To *T. Dickens*, Esq., Registrar of the Supreme Court.

Sir,

Permit me to call your attention to my letter of the 11th May last, relative to the detailed statement of salaries and establishment for 1st May 1838, and to inform you that no reply to the same has been yet received at this office.

I have, &c.

(signed) *C. Trower*, Civil Auditor.

Fort William, Civil Auditor's Office,
3 July 1838.

To *Charles Trower*, Esq., Civil Auditor.

Sir,

Since my return to Calcutta, on the 29th June last, I have been prevented by press of business from answering your letter of the 11th May last; the receipt of which, and of that of the 3d instant, I hereby have the honour to acknowledge.

By the letter of the 27th February 1837, Government sanctioned the then establishments of the Equity, Admiralty and Ecclesiastical Registrar's Office at an aggregate of 990 Company's rupees monthly.

By the arrangement for the payment of officers of court, which commenced on the 1st January 1837, the Ecclesiastical Registrar was to receive the commission allowed him by statute as ex-officio Administrator of Intestates' Estates, and a salary of 1,000 rupees from Government, and no other remuneration; and out of this he was to pay the expenses of his own office as ex-officio Administrator, in which the business of Intestate Estates is carried on, and which is a distinct office above stairs in the court-house.

All the profits derived from fees received as Equity, Ecclesiastical and Admiralty Registrar, in which capacity only he is an officer of court, were to be paid into the Government Treasury, and the expenses of his office as such Register, which are distinct and below stairs, to be borne by Government.

In June 1837, on investigation into the working of the system, it appeared to me that I was bound, in fulfilment of this arrangement, to relieve the Government from a portion of the charge, because a portion of my business as ex-officio Administrator was done, and unavoidably done, in the office below (the forms of court not permitting it to be done elsewhere); and in consequence I charged myself with a just and fair portion of the salaries of the lower office for the benefit derived by me from the labour of the Clerks and Writers, and increased the salaries of some of them who were old servants of the office.

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By this arrangement I have paid away no part of the Government money, but the Government has been drawn upon, and paid 117. 7. 8. less than the sum authorized by their order of the 27th February 1837; in other words, a saving to that amount has been effected to Government by my voluntarily imposing the payment on myself, which I conceived I was bound to do.

I am, &c.

(signed) *T. Dickens*, Registrar.

Registrar's Office, Supreme Court,
4 July 1838.

(No. 1051.)

To *T. Dickens*, Esq., Registrar of the Supreme Court.

Sir,

As it appears by your letter of the 4th instant, that an arrangement has been made in the establishment of the Equity, Ecclesiastical and Admiralty Registrar's Office, I request you will report and obtain the requisite authority of Government on account of the same.

2. A copy of which authority you will be pleased to favour me with when obtained.

I am, &c.

(signed) *C. Trower*, Civil Auditor.

Fort William, Civil Auditor's Office,
14 July 1838.

Jud. Cons.
6 Aug. 1838.
No. 33.

(No. 89.)

To *T. Dickens*, Esq., Registrar of the Supreme Court at Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter of the 18th ultimo to the address of Mr. Prinsep.

2. The Honourable the President in Council is perfectly satisfied with the explanation furnished by you to the Civil Auditor, and observes that though you have raised the salaries of some of the officers employed in the Equity, Admiralty and Ecclesiastical Registrar's Office, whereby the aggregate expense of the establishment is increased from 990 rupees, at which it was fixed on the 27th February 1837, to 1,030 rupees, you have deducted *Rs.* 157. 7. 6. monthly from that sum, as a fair equivalent for the portion of the business of the office of ex-officio Administrator, which the establishments of the Registrar's office perform, and which, as the expenses of the ex-officio Administrator's office were by the arrangements proposed by the Judges in their letter of the 25th of April 1836 to be defrayed by you, ought, you think, in fairness to be borne by yourself, and not to be charged against Government. By this mode of calculation your monthly charge for the establishments amounts to *Co.'s Rs.* 872. 8. 6., instead of the amount authorized by Government of 990 rupees.

3. The President in Council is highly sensible of the honourable spirit which has deterred you from availing yourself of the services of persons paid by Government in one branch of your offices, to perform duties in another branch, the remuneration of which is incumbent on yourself; but his Honour thinks that this is an inconvenient mode of settling accounts, and inconsistent with the rules by which the department of Audit is guided, and as it is probable from the circumstances of the establishment of the Equity, Admiralty and Ecclesiastical Office being adequate to the discharge of more business than belongs to that office, that the establishment might be reduced, I am directed to ascertain from you whether you cannot, instead of deducting a certain sum from the aggregate amount of your monthly bills, strike out from the body of the bill itself such of the establishment as are principally engaged in the duties of the ex-officio Administrator's office, and leave the rest of the establishment to be charged in full against Government.

4. If

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4. If you can arrange a distribution of the establishment in the manner suggested, I will trouble you to furnish me with a statement of that portion of it which you will have attached to the office of Equity Registrar and Ecclesiastical Registrar, to be laid before the President in Council, for such orders as it may be necessary to issue to the Civil Auditor.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

Fort William,
6 August 1838.

To *T. H. Maddock*, Esq., Officiating Secretary to the Government of India.

Jud. Cons. 27 Aug. 1838. No. 17.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 6th, received by me on the 15th instant. With reference to the third paragraph thereof, I beg to state, for the information of his Honour the President in Council, that I could not strike out the names of all the individuals whom I pay in part for work performed by them for the office of ex-officio Administrator without increasing the charge to Government, as there are several persons occasionally employed in preparing petitions and other papers for grant of administration, as also bills for costs, whose services could not be dispensed with in that department which is paid by the public; but I can strike out of the monthly abstract all but the sums paid to the Writers by the public, making no mention of what they receive from me, and have accordingly in Schedule (A.), annexed hereto, framed a list of the establishment, the salaries of whom are paid by Government, in the form in which it will in future, if Government shall approve thereof, be forwarded for audit. At the same time, in order that his Honour the President in Council may understand the nature of the case more distinctly, I have in Schedule (B.), also annexed hereto, marked in red ink* the names of the Writers who are employed in the office below, and are exclusively paid by me, and the names of those in black ink † who are employed in the office below, chiefly on the public account, but who are paid additional sums by me on account of labour occasionally performed for the office of ex-officio Administrator. The reduction of 118 Company's rupees already effected by me in the charge for establishment, originally sanctioned by Government in January 1837, (which charge was 990 Company's rupees a month) cannot, I think, at present be carried further; but I request that you will assure the President in Council that it will always be my endeavour to reduce the charges of the offices of Equity, Admiralty and Ecclesiastical Registrar to the lowest standard compatible with efficiency.

* Printed in *Italics*.

† Printed in small Roman.

I have, &c.
(signed) *T. Dickens*,
Registrar.

Registrar's Office,
Supreme Court, Calcutta,
18 August 1838.

SCHEDULE (A.)

Mr. M. Cockburn	280	–	–
G. A. Swarris	60	–	–
G. Mackertick	50	–	–
M. De Souza	40	–	–
Bacharam Bonnerjee	60	–	–
Daummoodur Day	60	–	–
Goopersaud Sill	40	–	–
Roop Narain Ghose	32	–	–
Roop Chund Burraul	30	–	–
Prawnkissen Bose	30	–	–
Hurropersaud Sein	28	–	–
Bunmally Ghosaul	27	–	–
Pertumber Doss	25	–	–
Muddur Mohun Day	24	–	–
Isser Chundur Bonnerjee	20	–	–
Govind Chunder Addy	20	–	–
Joynarain Doss	15	–	–
Moheschundur Bonnerjee	12	–	–
Goberdhone Chuckerbutty	10	–	–
Narain Peon	9	–	–
Co.'s Rs.	872	–	–

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

SCHEDULE (B.)

Mr. T. S. Belletty	*40*	–	–
Mr. H. Jenkins	*20*	–	–
Mr. F. D. Pinto	*12*	–	–
Maudul Mookerjee	*26*	–	–
Mr. G. A. Swarris	15	–	–
Daummoodur Day	15	–	–
Mr. G. Mackertich	10	–	–
Bacharam Bonnerjee	10	–	–
Roopnarain Ghose	10	–	–
	158	–	–

Jud. Cons. 27 Aug. 1838. No. 18.

(No. 100.)
To *T. Dickens*, Esq., Registrar of the Supreme Court.

Sir,

YOUR letter of the 18th instant has been submitted to the Honourable the President in Council, and I am instructed to inform you that the revised list of establishments, amounting to 872 Rs. per mensem, as exhibited in Schedule (A.), enclosed in your letter for the Registrar's office, is approved and sanctioned, and that the necessary intimation will be made to the Civil Auditor.

2. I am directed to add, that the assurance contained in the concluding sentence of your letter is highly satisfactory to the President in Council.

I have, &c.

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

Fort William, 27 August 1838.

Jud. Cons. 27 Aug. 1838. No. 19.

(No. 101.) To Civil Auditor, and (No. 102.) Sub-Treasurer.

Sir,

I AM directed to forward for your information a revised list of establishments, amounting to 872 Company's rupees per mensem, for the office of the Registrar to the Supreme Court at Calcutta, which has received the sanction of the Honourable the President in Council.

I am, &c.

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

Fort William, 27 August 1838.

EXTRACT from a DESPATCH to the Honourable the Court of Directors in the Judicial Department, No. 15 of 1838, dated 3d December.

Supreme Court, Madras. Revision of the mode of remunerating the officers of the Courts.

Jud. Cons. 16 April 1838. Nos. 21 to 23. 3 September. No. 6 to 8.

Para. 9. WE received from the Right honourable the Governor of Fort St. George, in Council, copy of a letter from the Honourable Judges of the Supreme Court at Madras, with their sentiments on the subject of granting fixed salaries to the officers of that court in lieu of fees, which it was proposed to bring to the credit of Government, and containing a statement of the rates of consolidated salaries which they proposed for the officers of the court.

10. His Lordship observed that he did not desire to hazard any opinion on the subject of the above communication without being better informed than he was at the time with respect to the nature and extent of duty required to be performed in some of the offices attached to that court; "but he nevertheless could not

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

not refrain from remarking that the salaries proposed to be assigned to the principal officers and translators appeared to be high, as compared with those received by members of the civil service filling the highest and most responsible offices under the Government, and discharging duties which, it was believed, were far more laborious and important than those which fall to be performed by gentlemen employed under the orders of the Supreme Court. Besides which, although the averages of the fees on which those propositions were principally based might show what the extent of business in the court had been, it was understood they would not long continue to convey an accurate idea of its state, as it was believed to be on the decline from the want of means, and objects of litigation amongst the native community. This, observed his Lordship, would necessarily cause a corresponding reduction in the commission, and fees to be carried to the account of Government in future years, and the measure would thereby ultimately entail a heavy loss on the state" It was, moreover, apprehended that an arrangement should, as was proposed, be regarded as a permanent contract or covenant with the Government, and not liable to alteration, although reductions in the scale of remuneration to all public officers might hereafter be found necessary. It appeared, therefore, to his Lordship in Council to be very desirable that nothing should be left in uncertainty on this point.

11. From the second para. of the Honourable Judges' letter it appeared that they did not contemplate the immediate substitution of the salaries which they proposed in lieu of the remuneration, partly in the shape of salary, and partly in the shape of fees enjoyed by the officers of the court; for they "begged it to be distinctly remembered that they had fixed the salaries with respect to officers to be hereafter appointed, and with the understanding that no present incumbent would be prejudiced by the new arrangement." On this assumption, the arrangement could be carried only partially into effect at the commencement; for though we might have consented to its immediate adoption in the case of those officers in which it was admitted that we must submit to a sacrifice by the arrangement, the state would have had to wait for vacancies in other offices, from which only under the new plan it could derive the means of paying the augmented allowances without direct loss.

12. This was not such an arrangement as had been proposed in Mr. Secretary Macnaghten's letter of the 14th November 1836. It was then contemplated that the change of system, if adopted, should be general, not partial; and it appeared to us that there was no advantage in the plan recommended by the Honourable Judges of Madras, to counterbalance the immediate increase of expenditure that would thereby be entailed on Government.

13. Independently of this objection, we apprehended that the proposed arrangement, even though it would be immediately brought into general operation, would be attended with a certain loss to Government, to the amount, as far as could be calculated from the accounts rendered by the officers of the court, of several thousand rupees per annum, in which the average value of the fees enjoyed by those officers were less than the aggregate amount of additional allowances to be paid to them; and this, too, without taking into consideration the additional expenditure of stationery to which Government would become liable.

14. Under these circumstances, we were averse from sanctioning the arrangement proposed, as not conforming to the condition prescribed in the third para. of Mr. Secretary Macnaghten's letter cited above, that the new system should be such as might be carried into effect without subjecting the Government to additional expense.

15. We concurred generally in the sentiments expressed by the Right honourable the Governor of Fort St. George in Council, and found in his Lordship's concluding observations additional reason for thinking that it would be inexpedient to adopt the arrangement submitted, particularly as it held forth no prospect of benefiting the people by a reduction of fees; a result which has followed the introduction of the new system into the Supreme Court at Fort William.

16. The departure of Mr. Preston beyond the Cape having occasioned a vacancy in the office of Crier to the Supreme Court at this Presidency, we, in pursuance of the arrangements reported in the despatch from the Legislative department, dated the 27th March 1837, and at the recommendation of the Honourable Judges of that court, reduced the salary of the office from 300 Rs. to 200 Rs. per mensem.

Fort William; Abolition of the office of Counsel for Paupers, and reduction of the allowances of Crier to the Court.

Jud. Cons. 10 Sept. 1838. No. 20 to 22.

17. The death of Mr. R. Marnell has also occasioned a vacancy in the office of Counsel for Paupers according to the same arrangements; and in view of the abolition of the office, no successor has been appointed, the Judges having promised to report the mode in which the aid of the Bar might be secured in behalf of paupers.

Reduction of office establishment of the Registrar of the Court.

18. The expense of the office establishment of the Registrar of the court has been reduced from 990 *Rs.*, at which it was fixed by the late arrangement, to 872 *Rs.* per mensem.

Jud. Cons. 6 Aug. 1838. No. 32 to 34. 27 Aug. 1838. No. 17 to 19.

EXTRACT of a DESPATCH from the Honourable the Court of Directors in the Legislative Department, No. 15 of 1839, dated 18th September.

Whole and Para. 64, Leg. Letter, 12 June (No. 8) 1837; Para. 41, Fort St. George, Jud. Letter, 20 June (No. 6) 1837; Para. 26, 27, Fort St. George, Jud., 6 February (No. 1) 1838; Para. 82 to 84, Leg. Letter, 7 February (4) 1838; (No. 14), 15, India Jud. Letter, 5 March (No. 3) 1838; Para. 16, India Jud. Letter, 14 May (No. 8) 1838; Para. 14 to 16, India Jud. Letter, 25 June (No. 9) 1838; Para. 89, Fort St George, Jud. Letter, 12 October (No. 8) 1838; Para. 16 to 18, India Jud., 3 December (No. 15) 1838; Para. 13, Leg. Letter, 22 April (No. 11) 1839; Reform in the establishment and fees of the Supreme Court at Calcutta.

Para. 2. WE are much gratified by the judicious and public-spirited manner in which the Judges of the Supreme Court at Calcutta have carried into effect the suggestions conveyed to you in our despatch of the 10th of June 1835, regarding the emoluments of the officers attached to that court, and we approve of the arrangements on the subject which have obtained your sanction. We hope at an early period to receive a report of similar arrangements at the Presidencies of Madras and Bombay.

Jud. Cons. 28 Jan. 1839. No. 12.

To *J. P. Grant*, Esq., Officiating Secretary to the Government in the Legislative Department.

Sir,

I HAVE been directed by the Judges to notify to you for the information of Government, that Mr. Vaughan, the Taxing Officer and Keeper of Records, having on the 29th December 1838 produced to the Judges a medical certificate, by which it appeared that it was absolutely necessary that he should proceed to sea for the recovery of his health, and having applied for leave to proceed to the Cape of Good Hope, the Judges were pleased to comply with his application, and to appoint William Hunter Smoult, Esq., Taxing Officer and Record Keeper, during the absence of Mr. Vaughan for the purpose aforesaid, and with liberty reserved to Mr. Vaughan to resume his appointment as Taxing Officer and Record Keeper on his recovery and return within 12 months from the date of this order (29th December 1838). Mr. Smoult has been accordingly appointed Taxing Officer and Record Keeper.

2. I am further directed to acquaint you, for the information of Government, that Mr. Elliott Macnaghten, the Receiver of the court and Examiner in Equity, resigned his appointment on this day (14th January 1839), and that his resignation having been duly accepted, the court has, pursuant to the prospective arrangements, provided for in the correspondence between the Government and the Judges, commencing with the letter of the Judges, dated the 25th April 1836, appointed W. P. Grant, Esq., the present Master of the court, to the office of Examiner in Equity, and Mr. Smoult, during the absence of Mr. Vaughan, the Receiver of the court.

3. In consequence of these appointments and the increased duty thrown upon them, Mr. Grant will receive from this date, in pursuance of the arrangements already referred to, an increase of 1,000 *Rs.* a month, making his annual salary 48,000 *Rs.*, and Mr. Smoult an increase of 500 *Rs.* a month, making his annual salary 30,000 *Rs.*

4. It will be observed, on reference to the correspondence already cited, that the expenses of the Supreme Court to the suitors will consequently be diminished by these appointments to the extent of 12,000 *Rs.* per annum, as Mr. Elliott Macnaghten received an annual salary of 30,000 Company's rupees for the performance of duties which will hereafter be performed by officers whose joint remuneration for such duties will amount only to 18,000 *Rs.* annually.

5. I have

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On Fees and Salaries of the Officers of the Supreme Courts.

5. I have the honour to request that the requisite instructions may be issued to the Civil Auditor to audit and pass the salaries of Messrs. Grant and Smoult from the dates and for the amounts specified below.*

Registrar's Office, 14 January 1839.

I have, &c.

(signed) *T. Dickens*, Registrar.

Jud. Cons.
28 Jan. 1839.
No. 13.

(No. 9.)
To *T. Dickens*, Esq., Registrar of the Supreme Court.

Sir,

I AM directed by the Honourable President in Council to acknowledge the receipt of your letter of 14th instant, reporting the arrangements made by the Honourable the Judges of the Supreme Court, in consequence of the absence of Mr. Vaughan and the resignation of Mr. Elliott Macnaghten, and, in reply, to acquaint you that his Honour in Council has been pleased to approve the appointment of Mr. W. H. Smoult as Taxing Officer and Record Keeper, as well as Receiver, of the court, with a salary of 2,500 *Rs.* per mensem during the absence of Mr. Vaughan, who has been permitted by the Honourable the Judges to proceed to the Cape of Good Hope for the benefit of his health.

2. The Honourable the President in Council has also been pleased to confirm the appointment of Mr. W. P. Grant, *vice* Mr. Elliott Macnaghten, resigned, as Examiner in Equity, with an increase of 1,000 *Rs.* per month te his present salary, thereby making his allowance 48,000 *Rs.* per annum.

3. I am further directed to acquaint you that the Civil Auditor and Sub-treasurer have been duly apprized of the foregoing arrangements.

I have, &c.

Fort William,
28 January 1839.

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

Jud. Cons.
28 Jan. 1839.
No. 14.

(No. 10.) To the Civil Auditor, and (No. 11.) Sub-Treasurer.

Sir,

I AM directed to acquaint you, that the Honourable the President in Council has been pleased to confirm the appointment of Mr. W. H. Smoult as Taxing Officer and Record Keeper from the 29th ultimo, during the absence of Mr. Vaughan, with the salary assigned to those officers, viz., 2,000 *Rs.* per mensem, and as Receiver of the court, from the 14th instant, with an additional pay of 500 *Rs.* per mensem, or 2,500 *Rs.* in the aggregate.

2. The Honourable the President in Council has also been pleased to sanction the appointment of Mr. W. P. Grant from the 14th instant, as Examiner in Equity, *vice* Mr. Elliott Macnaghten, resigned, with an addition of 1,000 *Rs.* per mensem to his present salary, thereby making his allowance 48,000 *Rs.* per annum.

I have, &c.

Fort William,
28 January 1839.

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

EXTRACT

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* Mr. W. P. Grant, 4,000 Company's rupees, per month, from 14th January 1839; Mr. W. H. Smoult, 2,000 Company's rupees per month, from the 29th December 1838, and 2,500 Company's rupees, from the 14th January 1839.

Jud. Cons. 28 Jan. 1839. Nos. 12 to 14.

EXTRACT from a DESPATCH to the Honourable the Court of Directors in the Judicial Department, No. 4 of 1839, dated 22 July.

54. IN consequence of the absence, on medical certificate, of Mr. Vaughan, the Taxing Officer and Record Keeper, and of the resignation by Mr. Elliott Macnaghten of his offices of Receiver of the Court and Examiner in Equity, the Honourable the Judges proposed arrangements, to which we have accorded our sanction, whereby a reduction of 12,000 Rs. per annum will result in the authorized expenses of the court. Mr. W. H. Smoult has been appointed by the Judges to act for Mr. Vaughan, as also to hold the office of Receiver of the Court during Mr. Vaughan's absence, on a salary of 2,500 Rs. per mensem; and Mr. W. P. Grant, the Master of the Court, has been appointed to the office of Examiner in Equity, with an increase to his salary by 1,000 Rs. per mensem, making his total allowance 48,000 Rs. per annum. These arrangements are a part of those prospectively approved by the Government of India, as reported to your Honourable Court in the Despatch from the Legislative Department, dated the 27th March 1837, No. 4.

Jud. Cons. 15 April 1839. No. 14.

To *J. P. Grant*, Esq., Officiating Secretary to Government in the Legislative Department.

Sir,

I AM directed by the Judges to acquaint you, for the information of Government, that John Franks, Esq., Clerk of the Papers of the Supreme Court, and Chief Clerk of the Insolvent Court, resigned his appointment on the 31st ultimo, and his resignation having been duly accepted, the Court, pursuant to the prospective arrangements provided for in the correspondence between the Government and the Judges, commencing with the letter of the Judges, dated the 25th April 1836, have appointed Mr. Holroyd, the Prothonotary of the Court and Clerk of the Crown, to the office of Clerk of the Papers of the Supreme Court, and Mr. Smoult, during the absence of Mr. Vaughan, to the office of Chief Clerk of the Insolvent Court.

2. In consequence of these appointments and the increased duty thrown upon the new holders, Mr. Holroyd will receive, in pursuance of the arrangements already referred to, an increase of 1,000 Company's rupees a month from this day, making his annual salary 36,000 Company's rupees, and Mr. Smoult an increase of 500 Company's rupees, making his annual salary 36,000 Company's rupees.

3. It will, however, be observed, on reference to the correspondence already cited, that the expenses of the Supreme Court will be diminished in consequence of the resignation of Mr. Franks, and the new appointments to the extent of 15,000 Company's rupees per annum, as Mr. Franks received an annual salary of 33,000 Company's rupees, for the performauce of duties which will hereafter be performed by two officers, whose joint remuneration for such duties will amount only to 18,000 Company's rupees annually.

4. I have the honour to request that the requisite instructions may be issued to the Civil Auditor to pass the salary bills of Messrs. Holroyd and Smoult from this day for the amount specified below.*

I have, &c.

(signed) *T. Dickens*,
Registrar.

Fort William, Registrar Oe,
1 April 1845.

Jud. Cons. 15 April 1839. No. 15.

(No. 43.)

To *T. Dickens*, Esq., Registrar of the Supreme Court.

Sir,

I AM directed to acknowledge the receipt of your letter of 1st instant, reporting the arrangements made by the Court, in consequence of the resignation of Mr. John Franks, and in reply to acquaint you that the Honourable the President in Council

* Mr. Henry Holroyd, 3,000 Company's rupees per month, from 1st April 1839. Mr. W. H. Smoult, 3,000 Company's rupees per month, from 1st April 1839.

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On Fees and Salaries of the Officers of the Supreme Courts.

Council has been pleased to sanction the appointment from the 1st instant of Mr. Holroyd, the Prothonotary of the Court and Clerk of the Crown, to the office of Clerk of the Papers of the Court, with an increase of 1,000 Rs. per mensem to his present salary, making his entire annual income 36,000 Rs.

His Honour in Council has also been pleased to sanction the appointment from the same date of Mr. Smoult, during the absence of Mr. Vaughan, to the office of Chief Clerk of the Insolvent Court, with an increase of 500 Rs. per mensem to his present salary, making his entire annual increase 36,000 Rs. per annum.

The Civil Auditor and Sub-treasurer have been duly apprized of the foregoing arrangements.

I have, &c.

Fort William,
15 April 1839.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

EXTRACT from a DESPATCH to the Honourable the Court of Directors in the Judicial Department, No. 4 of 1839, dated 22d July.

Jud. Cons.
15 April 1839.
Nos. 14 and 15.

82. IN consequence of the resignation by Mr. John Franks of his offices of Clerk of the Papers of the Supreme Court and Chief Clerk of the Insolvent Court, the following arrangements, which have taken effect from the 1st of April 1839, were proposed by the Honourable the Judges, and sanctioned by us.

83. Mr. Holroyd, the Prothonotary of the Court and Clerk of the Crown, has been appointed to the office of Clerk of the Papers, with an increase to his salary of 1,000 Rs. per mensem, making his entire annual income 3,600 Rs.

84. Mr. Smoult, during the absence of Mr. Vaughan, has been appointed to the office of Chief Clerk of the Insolvent Court, with an increase of 500 Rs. per mensem to his salary, making his total annual income 36,000 Rs.

85. The arrangements whereby a reduction of 15,000 Rs. per annum will result in the authorized expenses of the Court, are a part of those prospectively approved by the Government of India, as reported to your Honourable Court in the Despatch from the Legislative Department, dated the 27th March 1839, No. 4.

(No. 1114.)

To *T. H. Maddock*, Esq., Officiating Secretary to the Government of India.

Jud. Cons.
4 February 1839.
No. 20.

Sir,

WITH reference to the correspondence noted below,* I am directed by the Right honourable the Governor in Council to submit for the consideration and orders of the Honourable the President in Council the accompanying copy of a letter† from the Honourable the Judges of the Supreme Court at this Presidency, bringing again to notice the claims of the Court Keeper and Crier of that court to an increase of salary.

† Dated 16 Nov. 1838.

I have, &c.

Fort St. George,
30 November 1838.

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

To the Right honourable Lord *Elphinstone*, Governor in Council, &c. &c. &c.
Fort St. George.

Jud. Cons.
4 February 1839.
No. 21.

My Lord,

WE have the honour to acknowledge the receipt of your Lordship's letter of the 7th instant, enclosing the Order of Government of the 11th November 1837, and the letter of the Secretary to the Military Board, bearing date the 23d October 1838, and requesting our sentiments upon the subject of the provision of a house or other accommodation for the Court Keeper.

Feeling

* Letter to the Secretary Government of India, 28th September 1837. No. 920; ditto, from ditto, 30th October 1837, No. 111; ditto, ditto, 3d Sept. 1838, No. 176.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Feeling assured that your Lordship in Council has evinced every anxiety to meet our wishes, but that insurmountable difficulties present themselves to the accommodation of the Court Keeper within the building, we have to express our thanks to your Lordship for the trouble already incurred, and our desire to relieve the Government from all further consideration of the subject.

At the same time we avail ourselves of the present opportunity of calling to your Lordship's notice our letter of the 18th September 1837, enclosing a petition from Mr. William Burden, the present Court Keeper and Crier, requesting the favourable consideration of the local Government to his claims to an increase of salary. Upon that occasion your Lordship was pleased to refer the application to the Supreme Government, who declined giving any answer until the receipt of a reply to Mr. Macnaghten's letter of the 25th September 1837. It will be now seen that a full reply has been given to that letter, which had for its object the remuneration of the officers of the Supreme Court by salaries in lieu of fees. The Supreme Government having declined to enter into such an arrangement upon the footing proposed by the Judges at Madras, without, however, adverting to Mr. Burden's petition, we trust we shall be excused for again bringing the matter to your Lordship's notice, and expressing an opinion in favour of his application.

(signed) *Robert Comyn.*
Edward J. Gambier.

Madras, 16 November 1838.

(No. 30.)

Jud. Cons. 4 February 1839. No. 22.

To *H. Chamier*, Esq., Chief Secretary to the Government of Fort St. George, dated 4 February 1839.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter of the 30th of November last, enclosing a reference by the Honourable the Judges of Her Majesty's Court at Madras to a former recommendation from them for increasing the salary of the Court Keeper and Crier of their court, who now receives 20 pagodas a month.

2. In reply, I am directed to request that the Right honourable the Governor in Council will be pleased to inform the Honourable the Judges that the Honourable the President in Council regrets that he feels himself compelled to decline sanctioning the proposed additional charge.

3. When the Honourable the Judges first brought forward this case, the consideration of it was postponed, in the hope that the general arrangement of the allowances of the officers of the court then under contemplation by the Judges, even if it should fail to afford material relief to the suitors by a diminution of fees (as had been the case in the Supreme Court of Calcutta under a similar arrangement made by the Judges of that Court), might at least enable the Government, out of the aggregate fees, to add a little to the salary attached to any small office, such as this, which the Judges might think to require an increase of pay. But as it has not hitherto been found practicable to make such a general arrangement (the only one yet proposed by the Judges involving an increase of charge to the State, with no diminution of fees to suitors), the Government of India feels itself to be precluded from taking up any proposition for increasing the cost of any one office, as such an increase must necessarily involve an increase of the aggregate cost of the establishment of the Court.

4. I am directed to take this opportunity of enclosing, for the information of the Judges of the Supreme Court at Madras, a copy of a letter, with its appendices, from the Judges of the Supreme Court in Calcutta, in which they furnish a full explanation of their scheme for the payment of officers by salaries instead of fees, under which, by the abolition of useless offices, the consolidation of under-worked officers, and a reduction in the emoluments of over-paid offices, they have been enabled to effect very important reductions in the fees charged to suitors, without any detriment to the efficiency of the offices of Court. The Judges of the Madras Court will observe that the Judges of the Calcutta Court were enabled to give immediate effect to a part of their scheme only, in consequence

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quence of their having had some such measure in contemplation for a considerable time, and of their having, with a view to it, made all appointments for some time back conditionally, and with an express warning of the intended changes; and further, it will be observed that a part of the scheme did not come at once into operation, but was prospective to come gradually into force as vacancies in existing offices might occur.

5. Perhaps the Judges of the Madras Court, though they found it impracticable to frame a scheme, coming under the requisite conditions, to have immediate effect, may nevertheless find it practicable to frame such a scheme to have prospective effect as vacancies occur.

6. The cost of the offices of the Madras Court is shown in the accompanying abstract statement, prepared from the Returns made to the Judges, and enclosed in your letter of the 2d September 1837. This statement, however, is exclusive of the salary of the Pauper Counsel, an office which has been abolished in Calcutta as useless, but which the Madras Judges have not proposed to abolish. It is also exclusive of the Crier of the Brahmins and Kiranees, and of the Chobdars attendant on the Judges, all of whom are included in the Calcutta Schedule, but it is inclusive of the Registrar's commission as administrator. The cost of the offices of the Calcutta Court, when the new scheme shall have complete effect, and exclusive of the Sheriff's office, is shown in Schedule (K.), appended to the letter from the Calcutta Judges.

7. In instituting any comparison between the expenses of the offices of the two Courts, the great difference in the business at Calcutta and Madras will of course be taken into consideration.

I have, &c.

(signed) *J. P. Grant*,
Officiating Secretary to
Government of India.

(Jud. Cons. 4 Feb. 1839. No. 23.)

YEAR	OFFICERS OF THE MADRAS COURT.	Salaries per Annum.	Office Allowances per Annum, paid by Government.	Gross Fees per Annum.	Office Expenses.	Net Income.	TOTAL.
1835	Sheriff	4,200	12,166	5,698	- -	9,898	25,773
„	Deputy Sheriff	2,520		1,189	- -	3,709	
„	Master	6,300	- -	37,214	3,707	39,807	43,514
„	Ditto as Commissioner of the Court of Requests	10,200	- -	- -	- -	10,200	10,200
1834	Clerk of the Crown	6,300	- -	818	- -	7,118	7,118
1835	Deputy Clerk of the Crown	2,100	- -	407	- -	2,507	2,507
„	Register and Prothonotary	- -	- -	71,988	26,002	45,986	71,988
1836	Examiner	2,100	- -	13,474	1,081	14,494	15,574
„	Sealer	- -	- -	3,428	- -	3,428	3,428
„	Attorney, Solicitor and Proctor for Paupers	4,200	- -	224	- -	4,424	4,424
1835	Clerk to the Chief Justice	2,520	- -	2,944	- -	5,464	5,464
	*Clerk to Sir E. J. Gambier	2,520	- -	2,944	- -	5,464	5,464
„	Principal Malabar and Gentoo Interpreter	4,200	- -	6,292	2,568	7,924	10,492
1836	Deputy Teloogoo and Gentoo Interpreter	1,260	- -	- - not stated for one whole year.			
1837	Persian and Hindostanee Interpreter	1,680	- -	1,525 28 months.	504 for 1 year.	2,701	2,205
1836	Canarese Interpreter	630	- -	- -	- -	630	630
1835	French ditto	210	- -	45	- -	255	255
„	Dutch ditto	205	- -	280	- -	485	485
„	Armenian ditto	1,260	- -	667	158	1,769	1,927
1835	Portuguese ditto	336	- -	280	36	580	616
„	Malayalum and Mapoola ditto	1,260	- -	19	168	1,111	1,279
„	Malay ditto	630	- -	- -	- -	630	630
1836–37	Chief Clerk and Sealer of Insolvent Court	2,919	- -	3,128	- -	6,047	6,047
1836	Common Assignee of ditto	2,625	- -	581	- -	3,206	3,206
„	Examiner of ditto	- -	1,827	512	- -	2,339	2,339
		60,175	13,993	1,53,657	34,224	1,80,176	2,25,565

* No Returns received from the Clerk to Sir E. J. Gambier.

Jud. Cons.
24 June 1839.
No. 11.

(No. 462.)
To *J. P. Grant*, Esq., Officiating Secretary to Government of India.

Sir, Fort St. George, 4 June 1839.

MR. SECRETARY PRINSEP'S letter of the 4th February last, No. 30, regarding the allowances of the officers and servants of the Supreme Court at this Presidency, having been duly communicated to the Honourable the Judges of that Court, they have individually replied to the reference, and copies of their answers* I am directed by the Right honourable the Governor in Council to transmit for the information of the Honourable the President in Council.

* Dated 21 May 1839.
Nos. 512 and 513.

I have, &c.

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

Jud. Cons.
24 June 1839.
No. 12.

To the Right honourable Lord *Elphinstone*, Governor in Council, &c. &c. &c.,
Fort St. George.

My Lord, Madras, 21 May 1839.

I HAVE now the honour to acknowledge the receipt of your Lordship's letter of the 5th of March last, enclosing a letter from Mr. Secretary Prinsep, by which it appears that the Supreme Government have declined sanctioning any addition to the salary of the Court Keeper and Crier of the Supreme Court, and are desirous of being furnished with a revised scheme for the payment of the officers of the Supreme Court, by salaries instead of fees, to be brought prospectively into operation. I have to apologize to your Lordship for having so long deferred replying to your Lordship's communication, and must offer, as my excuse, the occupation incident to the late term and sessions.

I regret to find the refusal of the Supreme Government couched in terms implying dissatisfaction with the scheme already furnished by the Madras Judges, as one calculated to ease neither state nor suitors, and coupled with something like an invidious comparison of our scheme, and that furnished by the learned Judges at Calcutta. As I feel confident that there is no part of our proposal which can authorize any injurious insinuation, and that such comparison must have arisen in the mistaken belief that the Supreme Court at this Presidency required a like reform with that at Calcutta, I shall proceed to notice the several heads of dissatisfaction as far as I can collect them from Mr. Prinsep's letter of the 4th February last.

I. In the first place, the Government seem to be surprised that the Madras Judges had not in contemplation (like their brethren of Calcutta) some scheme for the reduction of their officers' emoluments, and made appointments "conditionally, and with an express warning of the intended changes;" and the Calcutta Judges are further represented as having, by the abolition of useless offices, the consolidation of under-worked offices, and a reduction of the emoluments of over-paid officers, been enabled to effect very important reductions in the fees charged to suitors, without any detriment to the efficiency of the officers of the Court. Before I proceed to notice any one of these reforms by the Judges in Calcutta, I deem it right to point out the steps which were taken by our predecessors in office on the formation of the Supreme Court of Madras in 1801; and I think neither they nor their successors will be found liable to the charge of having wantonly imposed any unnecessary burthens on the state.

The officers of the Recorder's Court at Madras in 1801, with their respective salaries, were as follows:—

	Pagodas.
Sheriff's Department, per month	212 25 70
Master's ditto	150 – –
Clerk of the Crown's ditto	150 – –
Interpreter for Malabar and Gentoo on Civil side	25 – –
Interpreter for Malabar, Gentoo and Moors, on Crown side, being also Interpreter to the Justices	25 – –
Interpreter for French and Dutch	5 – –
Two Serjeants to be appointed Tipstaffs	30 – –
Braming	1 – –
Moolah	2 – –

To

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On Fees and Salaries of the Officers of the Supreme Courts.

To these it is proposed by Sir Thomas Strange, the first Chief Justice, to add the under mentioned; viz.—

	Pagodas.
Clerk to the Chief Justice	60 – –
Clerk to the First Puisne Justice	60 – –
Clerk to the Second ditto	60 – –
One Tipstaff	15 – –
Private Interpreter to the Judges	50 – –
Attorney to the Paupers	75 – –

This proposal being submitted to Lord Clive, then Governor in Council, the Government in a letter dated 3d September 1801, addressed to the Judges, thus express themselves:—

"We are convinced that the arrangement which the Judges have proposed for the offices of the Supreme Court has been regulated by every degree of attention to economy consistent with the dignity of the Court; we have accordingly issued orders to the proper officers for the payment of the several establishments included in the separate statement recommended by you.

"We have, in conformity to your recommendation, increased the salary of the Interpreter on the Crown side of the Court to the sum of 70 pagodas per month, and we shall authorize the payment of eight Chobdars for the establishment of the Judges of the Supreme Court."

The Court of Directors having by a general letter (27th April 1803) acquiesced in this arrangement, but intimated to the local Government a wish that Sir Thomas Strange should revise the Court establishment, with a view to ascertain whether any reduction were possible, Sir Thomas and Mr. Justice Guill, in their answer to Government (7th November 1803), thus express themselves:—

"We beg leave to declare to your Lordship that the extract of a general letter from England in the public department, dated the 27th April 1803, forwarded to us at the instance of the Honourable the Court of Directors, in your Lordship's letter of the 5th ultimo, perfectly astonishes us. We allude particularly to the 40th paragraph referring to the establishment of the Supreme Court, as settled previous to the publication of the charter, on the 4th September 1801. The solicitude of the Judges to distinguish themselves in forming it, by a moderation unexampled, we believe, upon any like occasion, had led us to expect from the Honourable Court very different sentiments indeed upon the subject, in the event of its particularly engaging its attention.

"It was regulated, as this Government at the time was pleased to admit, with the strictest (it may be questioned whether it should not rather be said with a culpable) regard to economy. Scarcely any addition was made to that which had previously existed for the Court of Recorder, a judicature framed upon the lowest possible scale of expense for a Court of its description, as may fairly be inferred from the Honourable Directors not appearing to have at any time made the smallest objection to any of its charges." In reply to this remonstrance of the Judges, the Government under Lord William Bentinck (26th November 1803) were pleased to write:—

"We take this opportunity for acknowledging the receipt of the letter from the Judges of the Supreme Court, dated the 7th instant, and have the honour to express our entire concurrence in the explanation which has been given relative to the principle of economy on which the allowances of the respective officers attached to the Supreme Court have been regulated, and our conviction that every degree of moderation compatible with the dignity of the Court was observed in the arrangement for the establishment attached to it.

"We shall take the earliest opportunity for bringing the letter of the Judges under the attention of the Honourable Court of Directors, and shall feel it to be our duty to convey to the Honourable Court the sentiments which we entertain on that subject." Finally the Honourable Court, by a letter of the 23d of October 1805, address the Madras Government in these words:—

"As the Judges of the Supreme Court of Judicature at your settlement have given their decided opinion that no reduction can be effected in the establishment of that Court, it having been originally fixed by them with great attention to economy, at an expense of little more than half the reduced expenses of the corresponding judicature at Bengal, without materially affecting the means of public justice, in which opinion, it appears, you entirely concur; we therefore acquiesce in the continuance of that establishment on its present footing." Subsequently,

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in 1807, in consequence of the increase of business of the sessions, the office of Deputy Clerk of the Crown, with a monthly salary of 50 pagodas, or 175 rupees, was established, and the Examiner having had originally no salary assigned him, and the incumbent in 1812 having represented to the Judges the insufficiency of his profits to maintain his establishment, "the Judges thought fit to apply to the Government, in preference to increasing the fees of the office; and upon that occasion the Government were pleased to appoint him a salary of 50 pagodas per mensem."

I scarcely think it necessary to advert to the appointment of certain additional Interpreters, whose salaries seem to have been fixed extremely moderately. These, however, all appear in the returns by the Judges to the Government.

I proceed, therefore, to another officer of the Court, the Counsel for Paupers, not included in the original establishment of the Supreme Court at Madras, but afterwards instituted by the Government under Sir Thomas Munro at the instance of the Judges in 1827. In consequence of the great increase of pauper cases, and the "impracticability of getting Counsel gratuitously to afford anything like effectual assistance in advising upon and preparing the necessary pleadings, and acting in such a number of cases, and the great unfairness in expecting them so to do," the Government, upon such representation, were pleased to express themselves satisfied of the expediency of the appointment of a standing Pauper Counsel at 600 rupees a month, which appointment was subsequently approved of by the Honourable the Directors, though the salary was by them reduced to 400 *Rs.*

The Judges, however, in Calcutta have recommended the abolition of this office at that Presidency; and certainly, as it appears to me, on very sufficient grounds, the Counsel for Paupers being by the present practice (in Calcutta) seldom consulted, and his duties being practically almost confined to the few cases which actually come to trial; now, nothing could be more unfair than to abolish the office of Pauper Counsel at Madras, because that office is useless in Calcutta; and I proceed to show how very different is the practice in our Court, and how entirely useful and beneficial are the services of the Pauper Counsel.

However advantageous may be the Pauper establishment, where parties in indigent circumstances would be otherwise without the means of bringing their rightful claims before the Court, a pretty long experience has convinced me that the system may be, and in some cases had been, made a vehicle of the grossest oppression. For unless some check be given to suits *in formâ pauperis*, a pauper may launch a vexatious suit against a defendant, and after a long and expensive litigation the claim may turn out utterly unfounded, and the defendant, by costs incurred, may be ruined, with no other satisfaction than seeing his pauper antagonist lodged in the gaol.

The system pursued at Madras is calculated to resist this evil. Once in every week one of the Judges sits in his chambers, and all paupers desirous of prosecuting or defending actions appear and state their claims and defence. If the Judge thinks their statement entitled to credit, the case is referred to the Pauper Attorney, who farther investigates the matter, and, on being satisfied of the validity of the claim or defence, he is directed to lay the case before the Pauper Counsel for his certificate. No action is thus allowed to be commenced without a certificate from Counsel, and no defence can be set up without the sanction of the like certificate. Parties are thus protected from wanton or malicious suits or untenable defences, and I cannot but think this protection to individuals cheaply purchased at the monthly outlay of 400 rupees by the local Government.

Such appears to have been the state of the Supreme Court at Madras, as far as the salaries of officers are concerned, when the public attention was drawn to the enormous receipts of the Calcutta officers, and a return was required by the House of Commons of the fees and emoluments of the several functionaries attached to the Supreme Courts at the three Presidencies. Still, however, the cry for reform seemed confined to Calcutta, as appears by the letter of the President of the Board of Control, dated 13th August 1832, to the Bengal Judges, wherein the great burthen upon the suitors at that Presidency is especially complained of, no such complaint having been made to the Judges of Madras. The House of Commons might reasonably have felt some surprise, when the income of the Calcutta Registrar appeared by his return to be *Rs.* 1,96,662. 5. 10. for the year 1827. I may add that the income of the Madras Registrar, including his commission on estates, amounted in that same year to *Rs.* 44,519. 1. 2.

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On the 14th November 1836, a letter was addressed by Mr. Secretary Macnaghten to the Madras Government Secretary, forwarding for the information of the Judges at Madras (I was during that year the only Judge upon the spot) the identical letter, now forwarded by Mr. Prinsep, of the Calcutta Judges, to the Supreme Government, showing the principle upon which they thought reduction might be made. The second paragraph of Mr. Macnaghten's letter is in these words :—

"From the returns with which the Governor-general of India in Council has been obligingly furnished by the Honourable the Judges of the Supreme Court in reply to the letter of the 2d November 1835, it would appear that there is little room for reform, as regards the emoluments of the officers of that tribunal at your Presidency, and that they do not receive a more than reasonable remuneration for their services."

It is not, perhaps, very extraordinary that, under these circumstances, the Madras Judges did not feel themselves called upon to retrench the emoluments of their officers, especially when it was impossible for the most rigid economist to object to any but those of the Master and Registrar. When, however, the Supreme Government proposed the remuneration of the officers by salaries instead of fees, the Judges admitted the possibility of some retrenchment in those two offices, appropriating the overplus to increase the allowances of such as appeared to be underpaid; nor did there appear any warning to be necessary of intended charges in those two offices when they were last filled up; Mr. Cator, the present Registrar, having been appointed in 1826, and Mr. Savage, the present Master, on Mr. Byrne's death, in 1830, with the original salary of 150 pagodas, and, according to the previous arrangement, the office of Commissioner of the Court of Requests. Indeed the difference between Calcutta and Madras is in this respect sufficiently striking, for whilst only one of our officers has been enabled during 14 years to retire with a competence, the vast acquisitions of their brethren in Calcutta have been continually causing vacancies.

With respect, therefore, to the abolition of useless offices, I beg respectfully to point out to the Supreme Government, that, with the exception of the Counsel for Paupers and the Deputy Clerk of the Crown, and two or three of the smaller Interpreters, none now exist who were not part of the Supreme Court as originally established. I have already pointed out the advantages of the Pauper Counsel, and should much regret to see this office abolished. The necessity of hereafter filling up the office of Deputy Clerk of the Crown I very much question; but as no present likelihood exists of the gentleman who holds that office, in conjunction with that of Examiner, vacating, at least while I remain in India, I must here satisfy myself with recording my opinion, that upon any vacancy taking place, no necessity will exist for giving any deputy to the Clerk of the Crown.

But we are further informed by Mr. Secretary Prinsep's letter, that reductions have been made in Calcutta, by the consolidation of under-worked officers. Now, by Schedule (C.) appended to that letter, the chief officers appear to have been,—

1. Ecclesiastical Registrar.
2. Equity Registrar.
3. Prothonotary.
4. Master.
5. Accountant-general.
6. Record Keeper.
7. Sworn Clerk.
8. Clerk of the Papers.
9. Clerk of the Crown.
10. Examiner.
11. Receiver.

Besides minor Offices.

By Schedule (E.) these offices are now vested in four individuals :—

1.
Master.
Accountant-general.
Examiner in Equity,
and Examiner in Insolvent Court.

2.
Ecclesiastical Registrar.
Equity Registrar.
Admiralty Registrar.

3.
Prothonotary.
Clerk of the Crown.
Clerk of the Papers.
Sealer.

4.
Taxing Officer.
Receiver.
Record Keeper.
Chief Clerk of the Insolvent Court.

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Upon adverting to our list of officers, it must be borne in mind that the Accountant-general is entirely in the appointment of the Court of Directors, and not of the Judges, and over his remuneration and emoluments we have not the slightest control. It will be further observed, that we have not, nor ever had, such officers as Clerk of the Papers, Taxing Officer, Receiver or Record Keeper.

That the offices of Registrar on the Ecclesiastical, Equity and Admiralty sides, have all along been exercised by one person, who has also been the Prothonotary; here, therefore, the consolidation had taken place from the very inception of the Court.

I can see no objection for hereafter uniting the offices of Master and Examiner in Equity; but I see the utter impossibility of requiring a person of the Master's rank in the profession to attend to take examinations at the gaol in the capacity of Examiner of the Insolvent Court; as to any further union of offices, it seems to me wholly uncalled for, especially as (with the exception of the Insolvent Court) the present division of labour was originally provided for, and sanctioned and approved of by the competent authorities. There would also here be a manifest inconvenience in uniting the offices of Prothonotary and Clerk of the Crown; because at present the latter officer is enabled to practise on all sides of the Court, except the criminal; whereas, if he were Prothonotary he must give up his practice on the common law side at last, and would require a large remuneration as an equivalent for loss of professional income.

On the whole, therefore, as far as concerns the burthen of the Supreme Court upon the state, I find that (exclusive of the salaries of the two Judges, but including all the officers' salaries,) all allowance for Writers, Tipstaffs, Peons, Lascars, &c. &c., the monthly expense of the court amounts to 4,168 rupees and 15 pice (4,168. 0. 15.), or the annual outlay of about 50,000 rupees, a sum now nearly covered by the non-appointment of a second Puisne Judge, whilst the annual expense of the Calcutta court before the late arrangements (*see* Schedule D.) averaged little less than 80,000 rupees, exclusive of the salaries of the Chief Justice and two Puisne Judges.

II. I pass on to another part of our proposed plan, which appears to have disappointed the Indian Government; viz. that it is not calculated to afford any relief to the burthens of the suitors, which has been one main benefit effected by the Calcutta scheme.

The answer to this objection lies on the surface. In Calcutta, the enormous receipts of the officers at once enabled the Judges to lighten the suitors' burthens, and they create a fee-fund which might not only indemnify the Government for any loss incurred in the working of the new system, but even to pour into the Government Treasury a large annual profit. The comparative smallness of our officers' receipts forbade any thing of the kind, and every rupee that we remitted to the suitors would have been an actual loss to the Government, by diminishing the fee-fund, by which they were to be indemnified for the payment of salaries. Indeed, I think for their own sakes the Indian Government have done wisely in continuing the Madras Court upon its original footing, because the outlay of salaries and the income from fees appears so nearly balanced, that any great falling off of business, any new system of taxation, any reduction in the table of fees, might cause the Government to be considerable losers. I am by no means ready to admit that the fees payable to the officers are exorbitant or unreasonable. The table originally proposed by the Judges was approved of by the existing Government on its being submitted to Lord Clive in 1802, and it is the outlay to the counsel and attornies, and not to the court officers, which constitutes the great expense of litigation in India. To limit these as much as possible is the business of the Master, who is called upon to tax the bills upon all sides of the court; and in the case of any improper allowance on his part, the Judges would not fail to correct this evil. Though I lament as much as any man the expense of law in India, I cannot forget the risk of health and fortune which practitioners must necessarily here encounter. But on the other hand, I am no vehement advocate for cheap law in a country like this, where among the natives such a morbid appetite for litigation prevails, and where a lawsuit too often furnishes an opportunity to harass an enemy, and keep up the bitterest feelings of animosity between families and individuals.

III. One other para. of Mr. Secretary Prinsep's letter, I feel called upon to notice. The Judges at Madras are said to have furnished their returns without including

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including "the Crier of the Brahmins and Kerames, and of the Chobdars attendant on the Judges; but the return is said to be inclusive of the Registrar's commission as Administrator." I am utterly at a loss to divine what this Crier may mean, we having no such officer in our court, and the Chobdars were not included, because in fact they form no part of the court establishment, but are personal attendants, whether in court or at home, granted originally by the Government to the Judges, *honoris causâ*; when I first arrived in this country the Chief Justice was allowed six Chobdars, and each of the Puisne Judges four. After Mr. Justice Rickett's death his four were gradually discontinued, and the establishment at present consists of ten, at $2\frac{1}{2}$ pagodas each per mensem, the Judges finding the turbans and gowns.

The Registrar's commission as Administrator was not included, because it was understood that, notwithstanding any alteration in the system, his receipt of commission was to remain untouched.

In conclusion, I have to regret that I have felt myself compelled to fatigue your Lordship with this voluminous letter. But I have been anxious to make it apparent that, in the original formation of the Supreme Court at Madras, a scrupulous regard was had to economy; that any increase of expense has grown out of newly existing circumstances, and never incurred without the sanction of the Government or the Court of Directors; that in meeting the late proposal of the Indian Government, the Judges could not materially ease the burthens of the state without injustice to their officers, nor could they alleviate the burthens of the suitors without injuring the Government revenues. I will only add, that I have preferred writing singly in my own name, because my long residence in this country in the judicial office ought to make me singly answerable for any sanction of improper outlay, and not involve my learned colleague in any censure for old abuses, from which his comparatively recent elevation to the Bench may entirely absolve him.

I have, &c.
(signed) *Robert Comyn.*

To the Right honourable Lord *Elphinstone*, Governor in Council, &c. &c. &c., Fort St. George.

My Lord,

I HAVE the honour to acknowledge the receipt of the letter of the 5th March last, addressed by your Lordship in Council to the Chief Justice, Sir R. Comyn and myself, accompanied by a communication from the Supreme Government of India.

The Chief Justice has stated to your Lordship the reason which has led him to prefer giving in his own name a single and separate answer to that letter and its inclosures, and I am happy that the opportunity has been afforded for your Lordship's becoming possessed of the full information with respect to the officers of the court, and the history of their appointments, which his great experience and knowledge of the subject enabled him to supply, and which he alone could lay before your Lordship in at once so succinct and so comprehensive a manner.

It might have been sufficient for myself simply to express my assent to the statements and propositions contained in his letters, in many of which I entirely coincide; but that upon further consideration of the subject, I have been led to form the opinion that alterations and reductions may be made in the establishment of the court, beyond those which he feels disposed to sanction or suggest.

I have arrived at these conclusions from having had my attention of late directed to the practicability of uniting and consolidating in a single person the duties which are now performed by several individuals. If I had not formed the opinion that in several instances such consolidation might be advantageously effected, I should have nothing to add to the suggestions which the Chief Justice and myself concurred in making, when, in obedience to your Lordship's wishes, we laid before the Government a scheme for paying the officers of the court by means of salaries instead of fees. The salaries proposed by us on that occasion did not appear to me then, nor do they appear to me now, more than adequate remuneration for gentlemen who had many of them important and arduous duties to perform. But the larger salaries, as fixed by that table, those I mean which were

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assigned to the Master, and to the Registrar and Prothonotary, are, in my opinion, an ample compensation for the devotion of their whole time (necessary rest and relaxation only excepted) to the service of the court and of the public; and upon the best consideration which I can give to the subject, it appears to me that those who may hereafter be appointed to these two offices will not have too great a burthen cast upon them, if other duties are added to those which the present incumbents perform.

With respect to the Master, who we both agree in thinking ought in any future appointment, to be relieved from attendance in the Court of Requests, and to be adequately compensated for the loss of that office, I am of opinion that when relieved of these duties he will be able to execute not only the office of Master in Equity as at present, but also that of Examiner both on the Equity and Ecclesiastical sides of the court, with which offices I should also be disposed to recommend the union of that of Examiner of the Insolvent Debtors Court, but for the reason stated by the Chief Justice, that it would be imposing an unbecoming duty upon an officer of his rank, to which may also be added, that the necessity for attending at the gaol would consume a great deal of valuable time; assuming, therefore, that it will not be expedient to blend the appointment of Examiner of the Insolvent Debtors' Court with that of Master, I think that any future Master enjoying a salary to the amount specified in our Table may well be called upon to undertake the general duty of examining witnesses in Ecclesiastical and Equity suits.

With respect to any future Registrar and Prothonotary, I think that he may without inconvenience perform the functions of Clerk of the Crown, and that as in fixing the amount of his salary regard was had (by myself at least) to the necessity of his always appointing under him a deputy of competent qualifications, such deputy may assist him in the execution of criminal as well as civil business, so as to render it unnecessary to keep up the present distinct office of Deputy Clerk of the Crown.

It seems to me that a still further reduction may be made in the expenses of the court, or rather that a still greater addition may be made to the fund which will arise from the court fees, by delivering the seal of the court upon any future vacancy in the office of Sealer to the Registrar or his deputy.

In the Insolvent Debtors Court I can see no objection to the union of the two offices of Chief Clerk and Common Assignee in one and the same person; but each of these appointments is so inconsiderable in point of emolument, that I could hardly contemplate more than a very moderate saving as capable of being effected by this arrangement. The profits of the best paid of these two offices would not be a sufficient remuneration for discharging the duties of both of them.

With regard to the office of Counsel for Paupers, I am rather disposed to agree with the Chief Justice that it is inexpedient to abolish it. I know that the present holder of the office pays great attention to the cases as they present themselves upon the very threshold of the court, and I know that great advantage has resulted from the diligence with which he examines into them. It is hardly to be expected that gratuitous services should be performed with an equal degree of zeal; and looking at the members of the Madras Bar, there would not be the same facility for even thus inadequately supplying the place of the Pauper Counsel as at Calcutta, where the members of the Bar are much more numerous.

I have now pointed out to your Lordship the only instances in which, as at present advised, I think a more economical distribution of the offices of the court can advantageously be made, and I do not enter into any calculation of the saving which would thus be effected, because, unless the Chief Justice is able to concur in these views, the proposed changes are suggested to your Lordship only as the individual opinion of one of the Judges of the court, and not as the recommendation of the court itself. What, therefore, the amount of such saving would be, and whether it would operate to the relief of the Government or of the suitors of the court, or of both, are points which it is now unnecessary to consider. With regard to the suitors, however, I may be permitted to say, that any material relief for which they are to look, is not to be effected by the mere reduction of the fees taken by the officers of the court. I perfectly agree in the opinion expressed by the Chief Justice on this subject. I concur with him in thinking that the pressure which they feel does not arise from this cause, but from those which he has pointed out, and with respect to those charges and burthens which are the most grievous of all that a suitor has to sustain, and which swell their bills of costs

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to the startling amount which they too frequently exhibit. I feel bound to state to your Lordships that after a careful consideration of this most painful subject, I have come to the conclusion that no adequate remedy can be afforded by the Judges of the Supreme Court, as long as the present mode of conducting the cases of the suitors, by a division of the business between two branches of the legal profession, is allowed to continue; for that in order to secure the services of eminent or even respectable practitioners, in either of these branches of the profession, (an object of first-rate importance to the suitors themselves), it is absolutely necessary that their remuneration should be a liberal and a handsome one; and, whatever may be the case at the other Presidencies, it seems to me very clear that at Madras the field of their practice is so small and confined that they cannot be adequately paid without occasioning such a pressure upon the client as amounts to a positive grievance.

If I am correct in these views, no remedy which can be afforded by the court to the sufferings of the suitors can have more than a very partial effect. The only real and effectual cure for the evil will be an alteration in that which by the charter is made a part of the very construction of the court itself; I mean the direction virtually, and I may say actually, given by it, that the business should be distributed in the same manner that it is in the Superior Courts in England, between two distinct classes of professional men. A power, equal to that from which the charter emanated, is alone sufficient to bring about a change of so fundamental a nature.

(signed) *Edw^d Gambier.*

Madras, 21 May 1839.

(True copy.)

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

(No. 257.)

To *H. C. Sutherland,* Esq., Secretary to the Indian Law Commissioners.

Jud. Cons. 24 June 1839. No. 13.

Sir,

I AM directed by the Honourable the President in Council to forward to you, for the consideration of the Indian Law Commissioners, in connexion with the code of civil procedure, the accompanying papers, as noted below.*

2. You are requested to return the original papers when no longer required.

I have, &c.

(signed) *J. P. Grant,*

Officiating Secretary to Government of India.

EXTRACT from a DESPATCH to the Honourable the Court of Directors in the Judicial Department, No. 6, of 1839, dated 6 November.

Madras: Proposed revision of the mode of remunerating the officers of the Supreme Court, and on the subject of bringing all fees to the credit of Government.

88. WE beg to draw the attention of your Honourable Court to the correspondence recorded on our consultations of the subjoined dates, to the proposal of revising the fees of the offices attached to the Supreme Court at Madras, and of introducing into that court the system of remunerating the officers by salaries instead of fees, which system is now in operation in the Supreme Court at Calcutta.

Jud. Cons. 4 February 1839. No. 20 to 23. Jud. Cons. 24 June 1839. No. 11 to 13.

89. Your Honourable Court will find that the Chief Justice, Sir R. Comyn, does not think it practicable to make any better general arrangement than that reported to your Honourable Court in paras. 9 to 15 of our despatch, No. 15, of the

* Original:—Legis. Cons. 23 Jan. 1837, No. 1 to 101; ditto, 5 June 1837, No. 10 to 12; Judicial, 25 Sept. 1837, No. 22 to 34; ditto, 30 Oct. 1837, No. 33 to 35; ditto, 4 December 1837, Nos. 21 and 22; ditto, 3 September 1838, No. 6 to 8.

Copies:—Letter from Chief Secretary to the Government of Fort St. George, dated 30 Nov 1838, with one Enclosure; Letter to ditto, dated 4 Feb. 1839, with an Abstract Statement annexed; Letter from ditto, dated 4 June 1839, with one Enclosure.

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the 3d December 1838. Sir R. Comyn furnished a history of the appointments in the Supreme Court, from its establishment in 1801, and endeavoured to show that in the original formation of the court a scrupulous regard was had to economy; that any increase of expense which had since taken place grew out of newly existing circumstances, and had never been incurred without the sanction of the Government or the Court of Directors, and that in meeting our proposal for a revision of the system of fees, the Judges could not materially ease the burthens of the state without injustice to their officers, nor could they alleviate the burthens of the suitors without injuring the Government revenues.

90. Sir Edward Gambier, the second Judge, concurred generally with the Chief Justice, although he thought that a distribution of the offices of the court more economical than what had been at first arranged could advantageously be made. Sir E. Gambier pointed out how this could be done, by consolidating some of the offices; but this, he stated, was his individual opinion, and he thought it unnecessary to show by any calculation the benefits that might accrue from his suggestion, unless the Chief Justice was able to concur in his views. Both Judges agreed that no material relief to suitors could be effected by the mere reduction of the fees taken by the officers of the court, the great expense of litigation being in their opinion not what was paid to the court officers, but what was paid in fees to the Counsel and Attornies.

91. We have forwarded the foregoing papers, and all former correspondence with the Judges, both of the Madras and Calcutta Supreme Courts, for the consideration of the Indian Law Commissioners, in connexion with the code of civil procedure.

92. The Governor-general, in a letter dated the 22d August last, while replying to a reference made by us regarding the costs of the Supreme Court at Calcutta, as exhibited in the bill of costs attending the trial of Mr. Ogilvy, which reference will be noticed in the next despatch from the Legislative department, observed that he concluded that we should again take up the question of the substitution of fixed salaries for fees in the Supreme Court of Madras, with a view to determine whether reform shall be prosecuted or for the present given up. The observations of Sir E. Gambier, regarding the practicability of the future reductions of the present salaries, and of new distributions of the duties of the officers of the court, appeared to his Lordship to be deserving of attention.

93. The matter having been referred to the Law Commissioners, we have postponed the further consideration of the papers.

(No. 191.)

Legis. Cons. 6 May 1839. No. 7.

To *F. J. Halliday*, Esq., Secretary to the Government of Bengal.

Sir,

I AM directed to request that you will, with the permission of the Honourable the Deputy-governor, forward, for the information of the President in Council, the bill of costs which accompanied your letter of the 9th of October last, showing the expenses attending Mr. Ogilvy's trial for manslaughter before the Supreme Court, which expenses were defrayed by Government.

2. I am directed further to request that you will forward any other bills of legal expenses, whether of civil or criminal suits, against individuals, which have been defrayed by Government within the last few years.

I have, &c.

Council Chamber, 6 May 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 883.)

Legis. Cons. 9 Sept. 1839. No. 13.

To *J. P. Grant*, Esq., Officiating Secretary to the Government of India, Legislative Department.

Sir,

Judicial Department.

I AM directed by the Honourable the Deputy-governor of Bengal to acknowledge the receipt of your letter, No. 191, dated the 6th instant, and in conformity with

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with the tenor of its first para. to re-transmit, for submission to the Supreme Government, the accompanying bill of costs attending Mr. Ogilvy's trial, which had accompanied my letter of the 9th of October last, to the address of Mr. Officiating Secretary Maddock.

2. With reference to the requisition contained in the second para. of your letter under acknowledgment, calling for any other bills of legal expenses, whether of civil or criminal suits, which have been defrayed by Government within the last few years, I am directed to state, that only one other such case (namely, that of Calder *v.* Halkett) has occurred during the last six years. The taxed bill of costs in that case is herewith forwarded for the inspection of the President in Council.

I have, &c.

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

Fort William, 21 May 1839.

MINUTE by the Honourable *A. Amos*, Esq.

Legis. Cons. 9 Sept. 1839. No. 14.

IT is impossible to advert to the bill of costs in this case of Mr. Ogilvy, amounting to *Rs.* 6,832. 5. 4., and to the costs in other proceedings before the Supreme Courts, which must have occasionally come under the notice of members of Council, without being struck by the ruinous expense of a suit in those courts. Whether a suit in the Mofussil Courts be equally expensive, I have not the means of saying, though I believe the comparative expense of suits before these two species of tribunals has been the subject of much controversy.

The fees in the Supreme Court are of two kinds; one consists of fees which a party pays to his own attorney and counsel; the other is what he pays the opposite party on the suit being decided against him. What a party pays his own counsel, is perhaps not a tangible subject of regulation; what can be legally demanded by an attorney from his client, and what a losing party must pay, have in the Supreme Court of Calcutta been the subject of careful regulation of late years, after the discovery of the grossest abuses. I apprehend they are strictly conformable to the rules upon the subject in England, allowing the difference of rupees for shillings. Whatever rules may be formed, it will seldom be found that persons have the resolution to dispute the bill of their own attorney, or to hesitate about incurring expenses which he recommends. When the amount which a losing party is to pay comes to be settled, much must depend on the alacrity of the taxing officer, and still more on the vigilance of the losing attorney in watching the items charged by the winning attorney; but as in the next suit the position of the two attornies may be reversed, they have a strong inducement to be lenient in canvassing the charges of each other. Thus a great part of what parties pay for law is not to be imputed to the regulations of the Supreme Court respecting the costs of its proceedings; so long as the forms of procedure in English courts are observed in the Supreme Court, I incline to think it would be too strong a measure to enact that what is done for a shilling in England (assuming it necessary to be done for the purposes of justice, which will be considered in the next para.,) shall be done for sixpence, or even for a shilling, in Calcutta. The consequences that might result from such a measure open a wide field for conjecture.

Another resource remains; viz., that of changing the procedure. Something may be done, but I think much less than is supposed, in the way of abridging the proceedings. I am not aware that any great expense is attributable to arrears, which is a principal cause of complaint in England; the only change in the procedure of the Supreme Courts which I think is calculated to meet the existing inconvenience (though such inconveniences as may result from the charge must be weighed) is to amalgamate the duties of counsel and attorney, as is done in most of our colonies, and, I believe, generally in the American courts. A gentleman of experience and authority, with reference to the Supreme Courts of India, has suggested this course to me; he continues, "for the purpose of supplying the Courts with professional agents, I would pick out the very best of the young men appointed to the civil service; they should continue, with the pay of writers, for

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such term as might be sufficient for completing their legal education; this education should be carried on at the Presidency where they were intended to practise, and a thorough familiarity with one or more of the vernacular languages should be insisted upon. After their admission to practice, they should be allowed to retain the Government pay for a limited time. Out of this class of practitioners should be selected the Advocate-general and the Judges of the Mofussil Courts, and ultimately the Judges of the Supreme Court, that court being united with the Sudder Court as a general Court of Appeal, half the Judges of the Supreme Court being always English-bred lawyers." This arrangement may be very conducive to bringing up young men to fill the double functions of attorney and counsel, but it is not essential to that project.

The above observations, suggested by the bills of costs in circulation, are not made with a view of offering immediately any proposition to Government, but as leading to the consideration of subjects of great urgency and importance, but which the Law Commission cannot at present enter upon, in consequence of their attention having been diverted from the formation of a code of procedure.

4 June 1839. (signed) *A. Amos.*

Legis. Cons.
9 Sept. 1839.
No. 15.
Law Charges in the Supreme Court.

MINUTE by the Honourable *T. C. Robertson*, Esq., and NOTE by *W. W. Bird*, Esq.

HOWEVER desirable it may be to reduce the costs of suit in the Supreme Court, the subject appears to me, on further consideration, so beset with difficulties that nothing can immediately be done to abate that evil without risk of creating others.

If the remuneration be not high, men with the habits and education of gentlemen will not turn to the Indian Bar as a profession; and I can imagine no greater calamity, so long as the Supreme Court stands upon its present footing, than that its practice should fall into the hands of persons of an inferior grade in general society.

There are some very important suggestions thrown out in Mr. Amos's minute, upon the discussion of which I should be happy to enter, but for the disheartening condition that there is no chance of their leading to any even moderately remote result.

It is melancholy to think of the Law Commission being still occupied upon the question of Slavery; a question, I may observe, that to all practical purposes has had all that can be said upon it recorded in a recent minute of the Governor-general's.

I beg to propose, therefore, that some period may be fixed beyond which the Law Commission may be requested not to continue their inquiries or deliberations on one exclusive topic.

(signed) *T. C. Robertson.*

9 June 1839.

NOTE by the Honourable *W. W. Bird.*

THE costs in the Supreme Court are extremely heavy, far more so than in the Mofussil Courts; but it appears that nothing can be done to reduce them, so long as the present forms of procedure are adhered to. What, in this respect, can be devised by the Law Commission time will show, but the plan suggested to Mr. Amos, "by a gentleman of experience and authority," appears to me very unadvisable, for reasons which I shall be prepared to state, should it ever be seriously proposed.

(signed) *W. W. Bird.*

Legis. Cons.
9 Sept. 1839.
No. 16.

(No. 409.)

To *T. H. Maddock*, Esq., Officiating Secretary to the Government of India, with the Governor-general.

Sir,

I AM directed by the Honourable the President in Council to forward to you, for the consideration of the Right honourable the Governor-general of India, the accompanying

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accompanying papers, as noted below,* on the subject of the costs of the Supreme Court, and also to a communication from the Judges of the Supreme Court of Madras, respecting fees of court and other costs incurred by suitors.

2. You are requested to return the original papers herewith sent, with your reply.

I have, &c

(signed) *J. P. Grant*,
Officiating Secretary to
Government of India.

Fort William, 22 July 1839.

To *J. P. Grant*, Esq., Officiating Secretary to the Government of India.

Legis. Cons.
9 Sept. 1839.
No. 17.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 409, of the 22d ultimo, transmitting papers relative to the costs of Supreme Court at Fort William, and a communication from the Judges of the Supreme Court at Madras, respecting fees and other costs incurred by suitors in their courts.

2. The Governor-general observes on the minute of Mr. Amos, that the suggestions which it conveys open a wide field for speculation, but that the time is hardly arrived when the Government can feel itself prepared to deliberate upon them with a view to an early practicable result; and, indeed, till the Law Commission shall again have devoted its attention to the promised law of procedure, it can prove of little advantage to enter upon topics which ought properly to be taken into consideration in the framing of that code.

3. His Lordship would feel no objection to addressing the Judges of the Supreme Court on the subject of any inordinate expenses attending the prosecution of suits in that Court, which it may either be in their power to check, or to the prevention of which, by legislative enactment, they may be able to offer any suggestion for the guidance of the Council. The evil seems to prevail not more in Calcutta than at Madras, where the Puisne Judge has suggested a remedy similar to what is alluded to in Mr. Amos's minute, the permission of attornies to plead as barristers, whereby the double fees to the two branches of the profession would be saved to the suitors. In adverting, however, to this recommendation, his Lordship would not be understood as disposed to adopt it; for his own observation of the very high character which is attached to the legal profession in England, would make him unwilling to see it otherwise constituted in India.

4. His Lordship concludes that his Honour in Council will again take up the question of the substitution of fixed salaries for fees in the Supreme Court of Madras, with a view to determine whether that reform shall be prosecuted, or for the present given up. The observations of Sir Edward Gambier regarding the practicability of future reductions of the present salaries, and of new distributions of the duties of the officers of the Court, appear deserving of attention.

5. His Lordship trusts that the time is not distant when the investigations into the state of Indian slavery will be brought to a close by the Law Commissioners, when their labours may be mainly devoted to digesting the law of procedure; but he would not deem it expedient that their attention should be drawn from the slavery question till they are prepared to report on the evidence which it is understood they have been taking on that subject.

I have the honour to return the original papers I received with your letter, and to be, &c.,

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India
with the Governor-general.

Simla, 22 August 1839.

EXTRACT

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* In original:—Letter from Secretary to Government of Bengal, dated 9th October 1838; Letter to ditto, dated 19th November 1838; Letter to ditto, dated 6th May 1839; Letter from ditto, dated 21st May 1839, with Enclosures.
Copies:—Minute by the Honourable Mr. Amos, dated 4th June 1839; Minutes by the Honourable Mr. Robertson and Mr. Bird, dated 9th June 1839.
Original:—Letter from Chief Secretary to the Government of Fort St. George, dated 4th June 1839, with Enclosure.

Legis. Cons. 9 Sept. 1839. No. 13 to 17.

Costs of the Supreme Courts.

EXTRACT from a DESPATCH to the Court of Directors in the Legislative Department, No. 9, of 1840; dated 16th March.

120. WE beg to invite the attention of your Honourable Court to the accompanying papers regarding the great expense of litigation in Her Majesty's Supreme Courts of Judicature in India. The subject has been discussed in the minutes of the members of this Board, as noted below,* some of which have been already laid before your Honourable Court, with the papers relating to the passing of Act, No. 22, of 1839, which enables persons under criminal prosecution to employ counsel before Her Majesty's Courts. We have taken no steps as regards the reduction of these expenses, the whole question of the costs of the Supreme Courts having been referred by the Government of India to the Law Commission, as reported to your Honourable Court in the concluding portion of the despatch from the Judicial department, dated the 6th November last, No. 6.

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120. Costs of the Supreme Court.

EXTRACT from a DESPATCH from the Court of Directors in the Legislative Department, No. 4 of 1841, dated 3 February.

23. THIS subject has properly been referred to the Law Commission, and will come under their consideration in framing the code of procedure.

Jud. Cons. 17 May 1831. No. 18.

To *F. J. Halliday*, Esq., Secretary to Government in the Legislative Department.

Sir,

I AM directed by the Judges to acquaint you for the information of Government that Theodore Dickens, Esq., Registrar of the Equity, Ecclesiastical and Admiralty sides of the Supreme Court, resigned his appointments on the 30th ultimo, and his resignation having been duly accepted, I was appointed to those offices in his room on the same day.

I am further directed to inform you that pursuant to the prospective arrangements provided for in correspondence between the Government and the Judges, commencing with the letter of the Judges of date the 25th of April 1836, the salary of 12,000 Company's rupees annually allowed to my predecessors in office will cease from the 30th day of April last.

I have, &c.

(signed) *T. E. M. Turton*,
Registrar.

Fort William, 7 May 1841.

(No. 54.)

To *T. E. M. Turton*, Esq., Registrar's Supreme Court, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter, dated the 7th instant, and to acquaint you, in reply, for the information of the Honourable the Judges of the Supreme Court, that the Right honourable the Governor-general of India in Council approves of your appointment in the room of Mr. Theodore Dickens as Registrar of the Equity, Ecclesiastical and Admiralty sides of the court.

2. The necessary communication has been made this day to the Civil Auditor and Sub-treasurer.

I have, &c.

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

Council Chamber,
17 May 1841.

(No. 54)

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* Minutes by the Honourable Mr. Amos, reported in despatch, No. 24, of 1839, dated 21st October (50 to 63); Minute by Mr. Amos, dated 4th June 1839; ditto by the Honourable Mr. Robertson and Mr. Bird, dated 9th June 1839; Mr. Secretary Maddock's letter, dated 22d August 1839, communicating the opinion of the Governor-general. *Vide* also Papers in Mr. Ogilvy's (No. 7), dated 1839 and 21st October (No. 24) of 1839, para. 135.

(No. 54) To Civil Auditor, and (No. 55) Sub-Treasurer.

Jud. Cons. 17 May 1841. No. 20.

Sir,

I AM directed to acquaint you that the Right honourable the Governor-general of India in Council has been pleased to confirm the appointment made by the Judges of the Supreme Court at Fort William of Mr. T. E. M. Turton to be Registrar in the Equity, Ecclesiastical and Admiralty sides of the court from the 1st instant, *vice* Mr. Theodore Dickens, resigned, the appointment being attended with a reduction of 12,000 Company's rupees per annum.

I have, &c.

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

EXTRACT from a DESPATCH to the Court of Directors in the Judicial Department, No. 13 of 1841, dated 18th October.

Appointment of Mr. Turton to be Registrar of the Court. Jud. Cons. 17 May 1841. No. 18 to 20.

63. WE approved of the appointment of Mr. T. E. M. Turton, as Ecclesiastical, Equity and Admiralty Registrar, in the room of Mr. T. Dickens, by whose resignation a reduction of 12,000 Company's rupees per annum has taken place, as prospectively arranged, in the salary to the office.

No remarks.

(No. 23.)

To *T. C. Trower*, Esq., Civil Auditor.

Jud. Cons. 21 March 1842. No. 8.

Sir,

I AM directed to request that you will furnish me at your early convenience, for the information of the Right honourable the Governor-general in Council, with a statement of the salaries of the officers of the Supreme Court as at present paid to them under the new system which was sanctioned in the year 1837.

I have, &c.

Council Chamber, 21 March 1842.

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

(No. 24.)

To *C. Morley*, Esquire, Accountant-general.

Jud. Cons. 21 March 1842. No. 9.

Sir,

I AM directed to request that you will furnish me at your early convenience, for the information of the Right honourable the Governor-general in Council, with a statement of fees paid into the general Treasury by the officers of the Supreme Court, under the new system which was sanctioned in a letter to your address from the Legislative Department, No. 17, dated the 16th January 1837.

The statement in question is to contain the fees received from the year 1837 to the end of 1841, but so prepared as to exhibit the receipts of each year separately.

I have, &c.

Council Chamber, 21 March 1842.

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

(No. 2942.)

To *T. H. Maddock*, Esq., Secretary to the Government of India, Legislative Department.

Legis. Cons. 13 May 1842. No. 5.

Sir,

IN reply to your letter to my address, under date the 21st instant, I have the honour to forward, as therein requested, a statement of fees paid during the official Accountant-general's Office.

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official years 1837/38 to 1840/41 into the general Treasury by the officers of the Supreme and Insolvent Courts at this Presidency under the new system which was sanctioned in a letter to this department, No. 17, of the 16th January 1837.

I have, &c.

Fort William,
24 March 1842.

(signed) *C. Morley*,
Accountant-general.

(Legis. Cons. 13 May 1842, No. 6.)

STATEMENT of Fees received at the General Treasury, from Officers of the Supreme and Insolvent Courts at the Presidency of Fort William, under the Orders of Government in the Legislative Department, communicated in Letter to my Address, No. 17, of the 16th of January 1837.

Supreme Court.	1837/38.	1838/39.	1839/40.	1840/41.	Total.
Master and Accountant-general	41,982 5 6	47,758 – 3	29,935 3 –	- - -	1,19,675 8 9
Registrar	56,915 2 11	58,540 14 8	49,297 1 –	45,029 – 4	2,09,782 2 11
Receiver	10,640 4 –	18,397 10 –	15,052 7 6	11,193 7 10	55,283 13 10
Examiner	3,384 8 –	7,232 4 –	1,038 3 –	- - -	11,651 15 –
Sworn Clerk	16,709 11 –	11,082 14 –	16,691 4 –	15,500 8 –	59,984 5 –
Clerk of the Papers	11,768 13	9,839 10 –	10,779 13 –	10,558 11 –	42,946 15 –
Record Keeper and Taxing Officer	23,578 6 –	28,236 15 –	23,292 10 –	21,732 15 –	101,840 14 –
Clerk of the Crown	27,348 9 6	33,796 11 6	34,771 4 –	34,180 3 9	1,30,096 12 9
Clerks to the Judges	10,195 1 –	12,604 8 –	11,840 5 –	11,678 – –	46,317 14 –
Sealer of the Court	5,238 – –	3,663 – –	4,041 – –	5,336 – –	18,278 – –
Crier of the Court	1,327 – –	1,523 – –	1,426 – –	1,656 – –	5,932 – –
Keeper of Records	788 15 –	- - -	- - -	- - -	788 15 –
Practitioners of the Court	1,877 10 –	234 10 6	1,952 6 –	640 15 6	4,705 10 –
Interpreters of the Court	10,048 8 4	9,212 8 3	9,356 8 7	13,999 9 8	42,617 2 10
Interpreters to the Judges	332 – –	355 – –	535 – –	292 – –	1,514 – –
Master Accountant-general and Examiner	- - -	- - -	12,585 2 10	46,688 12 2	59,273 15 –
Refund of Sums overdrawn	259 – –	- - -	- - -	- - -	259 – –
	2,22,390 14 9	2,42,477 10 2	2,27,594 3 11	2,18,486 3 3	9,10,949 – 1
Insolvent Court.					
Chief Clerk of the Insolvent Court	5,142 7 –	5,874 10 –	8,864 9 –	7,814 10 –	27,296 4 –
Examiner of ditto	2,353 9 –	5,043 4 –	3,100 – –	1,829 10 –	12,326 7 –
Master and Accountant-general of ditto	- - -	1,634 13 6	42 2 4	- - -	1,676 15 10
	7,496 – –	12,552 11 6	12,006 11 4	9,244 4 –	41,299 10 10
Co.'s Rupees	2,29,886 14 9	2,55,030 5 8	2,39,600 15 3	2,27,730 7 3	9,52,248 10 11

Fort William, Accountant-general's Office,
24 March 1842.

(Errors excepted.)

(signed) *C. Morley*,
Accountant-general.

Legis. Cons.
13 May 1842.
No. 7.

(No. 338.)

To *T. H. Maddock*, Esq., Secretary to the Government of India in the Judicial Department.

Sir,

PURSUANT to the requisition contained in your letter of the 21st instant, I have the honour to submit a statement of the salaries of the officers of the Supreme Court of Judicature, as the same are at present paid to them under the new system which was sanctioned by the Government in the year 1837.

I have, &c.

(signed) *C. Trower*,
Civil Auditor.

Fort William, Civil Auditor's Office,
29 March 1842.

STATEMENT

STATEMENT of the Salaries of the Officers of the Supreme Court of Judicature in Bengal, as at present paid under the new System, sanctioned in 1837.

Cons. 13 May 1842. No. 8.

OFFICES.	NAMES.	Salaries per Annum, Company's Rupees.
Chief Justice	Sir J. P. Grant, Kt., officiating	83,347 2 –
Puisne Judge	-	62,510 4 –
Ditto - ditto	Sir W. H. Seton, Knight	62,510 4 –
Advocate-general to the Honourable Company	Lawrence Peel, Esq.	37,620 – –
Standing Counsel to the Honourable Company	C. R. Prinsep	16,000 – –
Attorney to the Honourable Company	T. B. Swinhoe, salary, including Establishment	24,000 – –
	House-rent	1,881 – –
Attorney for Paupers	C. G. Strettel	4,800 – –
Master in Equity, Accountant-general, Examiner in Equity	W. P. Grant	36,000 – –
	Ditto	12,000 – –
Taxing Officer, Record Keeper, Receiver and Chief Clerk of the Insolvent Court	R. Vaughan	36,000 – –
Registrar in Equity, Ecclesiastical and Admiralty sides of the Court	T. C. M. Turton	(no salary.)
Prothonotary and Clerk of the Crown	H. Holroyd	24,000 – –
Sworn Clerk	R. O. Dowda	22,800 – –
Clerk of Papers	H. Holroyd	12,000 – –
Clerk to the Grand Jury	R. Swinhoe	800 – –
Clerk to Sir H. W. Seeton, Knight	H. Holroyd	8,400 – –
Clerk to Sir Edward Ryan, Knight	R. O. Dowda	8,400 – –
Clerk to Sir J. P. Grant	J. Caw	8,400 – –
Examiner of the Insolvent Court	P. O. Hanlon	8,784 – –
Sealer	H. Holroyd	6,000 – –
1st Interpreter	W. C. Blaguire	9,800 – –
2d Interpreter	W. D. S. Smith	11,100 – –
	House-rent	600 – –
Interpreters to the Judges	G. A. & G. Aviet, at 300 each	7,200 – –
Interpreter of Foreign European Languages	M. Seret	1,200 – –
Sheriff	W. H. Smoult	1,167 8 –
Under-sheriff	E. B. Ryan, passed up to 31st August 1841	3,000 – –
Crier	E. Hielder	2,400 – –
1 Tipstaff	M. Seret	960 – –
Chobdars	-	1,176 – –
2 Moulavees, at 200 each per month	-	4,800 – –
2 Pundits, at 200 each per month	-	4,800 – –
2 Mollahs	Syed Ahmud Ally and Mahomed Mokeem	360 – –
1 Brahmin	Gungadhur Paneeghrit	360 – –
	TOTAL per Annum - - - *Co.'s Rs.*	5,25,176 2 –

Fort William, Civil Auditor's Office, 29 March 1842.

(signed) *C. Trower*, Civil Auditor.

To the Honourable *A. Amos*, Esq.

My dear Sir,

Legis. Cons. 13 May 1842. No. 9.

IT appears to us that the offices now held in the Supreme Court by Mr. Turton are the only offices now remunerated by fees, and the amount is supposed to be very large. There is at present no Chief Justice, and the occasion is favourable for enacting that, on the next vacancy, in those offices, the fees shall be transferred to the public account, and the officer remunerated by a salary of which the amount shall be fixed by the Governor-general in Council when the vacancy shall occur.

This should be passed forthwith.

Believe me, &c.

(signed) *Ellenborough.*

Council Chamber, 6 April 1842.

Legis. Cons. 13 May 1842. No. 10. Registrar of the Supreme Court.

MINUTE by the Honourable *A. Amos*, Esq.

I HAVE received, since the last meeting of the Legislative Council, a letter from the Governor-general, expressing what it appeared to the Council should be done (and that forthwith) in regard to the Registrarship of the Supreme Court. Of course this letter must be interpreted (as it was no doubt intended) as simply conveying an initiative proposal, to be adopted or rejected as might appear to be expedient after mature deliberation at a Legislative Council.

It will be convenient for the discussion of this question to consider, in the first place, that it is clearly expedient that the Registrar should be paid by a salary, and not by fees, and that by a salary considerably less in amount than the amount of fees; for upon these grounds I suppose it was considered important to take immediate steps before (as mentioned in the letter) the office of Chief Justice was filled up. It was apprehended, I presume, that a new Chief Justice might complain if we diminished the emolument of an office to the patronage of which he had actually succeeded.

In the first place, I doubt whether the new Chief Justice would have any well-founded cause for such complaint, there being no pecuniary loss to himself or to any one already appointed by him, and if the Government did not itself take the fees, giving a salary less than their amount.

2dly. As we know that Mr. Peel is actually appointed Chief Justice, and that his patent has not arrived simply from inadvertence, I doubt whether the case is substantially different from what it would be if his patent had arrived.

3dly. I would infer from the letter that it was proposed to pass a Legislative Act. But in order that such an Act may be passed before the arrival of the patent, we must dispense with any previous communications with the Judges, and with the usual interval between the publication and final passing of the Acts. This course would most probably be obnoxious to the Sessions Judges, and would have that air of hastily seizing on accidental opportunities which, I incline to think, may on reflection appear to us derogatory to Government.

4thly. The case may be a little different if it is merely intended before the next mail to publish a draft, and to send a letter communicating our intentions to the Judges; but, even if this course be adopted, the Judges may complain that this innovation is projected at a time when any thing which they should communicate to Government upon the subject might compromise the rights of the party most interested in the question. They may also complain if an important modification should be agitated in the arrangements of the Supreme Court, without having the benefit of the opinions and suggestions of a full court, especially where the absent member is the Chief Justice.

The last five paras. have reference to the hypothesis, that the salary would be less than the fees. Without such an hypothesis, I do not see that a Chief Justice can have any ground of complaint. The value of the fees is a question resting very much on surmises. A late acquisition of a considerable amount is very likely to lead to an exaggerated view being taken of the amount of fees; no calculations have been made, or, perhaps, can for some time be made, with accuracy, on the effect of the recent Act regarding Mofussil administration. The office is one of very great responsibility, and subject to serious liabilities, and must be liberally remunerated.

It has been assumed that the appointment of the Registrar is in the Chief Justice. If it be in the three Judges, there does not appear to be any reason why the Puisne Justices would not have the same ground of complaint, which is supposed to be reasonable only in a Chief Justice fully invested previous to the proposed change.

At Madras, all the officers of the court, I believe, receive fees, and not salaries. It should be very desirable, if we thought that salaries were preferable, that our measure should be general, and not confined to a particular office in which the expediency of a salary in preference to fees is at least much more questionable than is the case in regard to many offices at Madras, if not also at Bombay. Besides, the extreme anxiety to avail ourselves of the opportunity of a peculiar vacation of the office of Chief Justice might be used as an argument against the right or justice of interfering in like manner at Madras, where there is a Chief Justice in full possession of his office.

I have proceeded on the hypothesis of salaries being preferable to fees. It has been thought by many persons that this principle has in England been carried too

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too far. In the case of the Registrarship, no doubt a Registrar may be often tempted to interfere by the prospect of fees, where the estate is in no danger, and where there is reason to expect that within a short period a will may be forthcoming, or the family of a deceased may be in a condition to take out administration themselves. On the other hand, if an agency house (and they are the people who talk the loudest against the Registrar) takes out administration, it exacts as much as the Registrar. In a great many cases property will all be dissipated, and the debtors to an estate will all disappear, unless some one clothed with legal authority steps forward to protect it promptly. I have heard from Sir E. Ryan, that the property of natives in Calcutta has been before the late Act perfectly the subject of plunder for want of a public Administrator, who might interfere immediately. Now, it is obvious that a public Administrator paid by a salary will not act or collect information so quickly as if he were paid by fees, and moreover he will not incur risks of a suit at law against himself, or entangle himself with troublesome, perhaps hazardous, suits against others, where he is paid the same, whether he incur such risk and trouble or not, and where excuses for non-interference, should he be called upon for any, must abound. When it was resolved to make the other offices of the Supreme Court payable by salaries, Government intended to have included the Registrar; but on the representations of the Judges and others, as to the expediency of not making this change in regard to the Registrar, the Government of that day altered their opinion. Perhaps, before negativing the propriety of the decision of a former Government, it may be thought desirable to inspect the papers. They are voluminous. Mr. Sutherland has sent me nine volumes of manuscript connected with the subject.

I apprehend the principal grievance is that so unnecessarily a high commission as five per cent. is payable upon the simple transfer of Government and other public securities. I suggested, prior to Mr. Turton's appointment, that it should be intimated to whosoever might accept the office, on Mr. Dickens vacating, that the commission would be reduced. I have for some time past been in correspondence with Sir E. Gambier, who is bent, if it be practicable, on reducing the commission of his own Registrar. On the reduction of this fee during Mr. Turton's incumbency, there would be difficulty and opposition. I do not apprehend that there would be any difficulty with his successor, if the reduction were notified before any person accepted the office. I scarcely think that the Chief Justice could or would object, or that his objections, if any, would be removed by passing an Act at the present juncture.

I have a very strong belief that the salaries of most of the officers of the Supreme Court (which were paid on an average of fees) are egregiously too high. Two matters are to be considered which it is very necessary to keep apart; first, the change from fees to salaries, which is a mere question of expediency, without affecting interests; and, secondly, the reduction of fees, or the reduction of salaries below the average amount of fees. What is proposed to be done in the latter, will not, I conceive, fulfil the intentions of Council, unless, besides changing the mode of paying the Registrar, we make his salary less than his fees, and give relief to the public from the exorbitancy of the fee in certain cases; all the other officers are paid by a salary equivalent to the fees. This is what affects incumbents, and what might possibly (though I think not rightly or probably) be contended as affecting the interests of an actual Chief Justice. This latter subject includes all the officers of the Calcutta Court as well as the Registrar. I think they should be legislated for at the same time.

I have prepared the draft of an Act; but as far as my own opinion goes, I would wait for the arrival of Mr. Peel's patent, and then communicate the draft to the Court, for their sentiments before publication. Our letter might state that we have been prepared with a draft Act, but had been waiting till the Court was full.

13 April 1842. (signed) *A. Amos.*

ENCLOSED in a MINUTE by the Honourable *A. Amos*, Esq., dated 13th April 1842. Legis. Cons. 13 May 1842. No. 11.

OFFICIAL ADMINISTRATION.

A., a British subject, had died intestate within a Presidency, and on citation no next of kin or creditor proves right to administer to 39 & 40 G. 3. cap. 29, sec. 21. The Court grants letters if A. died without effects

Instances, Macnaghten, Edmonstone; the Court ought to have the jurisdiction.

effects of A; Registrar must apply, and Court must give letters ad colligenda, or of administration.

Registrar corresponds with representatives in Europe, and remits through his agents; a practice convenient to the public, but of risk to Government.

2. Registrar collects and brings assets into Court; he accounts for same in the mode in which accounts of any official depository appointed under equitable jurisdiction.

55 G. 3, cap. 84, sec. 2.
Court grants letters with will annexed, if C. has a general power from B. for such purposes.

3. B. is executor named in A.'s will; he is administrator of, A., or entitled to administration as next of kin or residuary legatee, with will annexed; but B. is absent, and has appointed C., a resident, to be his attorney to act for him in collection and administration of the effects of A.; C. has a right to obtain letters general or special, according to the nature of the case, in preference to the Registrar and others whom B. legally precedes.

Section III.

4. Court must revoke letters to Registrar, and grant to C. if C. apply, except in cases of delay.

Section II.
The same rule should apply, if letters or probate be granted to principal after letters to Registrar.

5. A reasonable custom may obtain, by which Registrar is entitled to commission on administered assets. If letters be revoked, Court may direct whether Registrar shall receive all or part of the commission. It adverts to quality of services rendered, trouble and risk.

Section III.
By practice C. would draw some commission as Registrar, and so would his principal if he acted.

5. C. is not bound to take out letters, unless bound before the Act. He has no right to commission by reason of letters; but may be entitled to remuneration according to establishment in special agreement.

Curator Act.

Act XIX. of 1841.

Sect. 7. Official Curator gives security; commission not more than five per cent. on personal effects, and profits of lands may be allowed; surplus funds are invested. Curator may be allowed to act before security given.

Sect. 20. A. has died, leaving moveable or immoveable property in the local jurisdiction of Supreme Court, which he satisfied that there is danger of misappropriation before legal succession can be ascertained. Supreme Court may appoint Ecclesiastical Registrar or another person to be Curator to collect, hold and invest, subject to order of Court.

Act XX. of 1841.

Administration.

Sect. 3. Zillah Judge, after inquiry and satisfaction, may grant certificate to A., that he is entitled to represent B., deceased, in regard to his personality, (provided B. left any) in jurisdiction of the Judge.

Sects. 4. 8. Securities.

Sects. 1. 9. 7. Certificate is efficacious everywhere, and by express words extends to negotiation of Government notes and bank shares, or shares thereof.

Sects. 9. 11. Deceased was not a British subject, and had personal estates in local jurisdiction of Supreme Court. The Court may grant probate or letters. The Supreme Court and Zillah Court are reciprocally barred of jurisdiction by prior exercise of functions.

Sect. 2. Curator's function is personality barred by certificate, or by probate or letters.

Liability of real property.

9 Geo. 4, c. 33. This is implied. Preamble, Sect. 2. *N.B.*—The letters do not, I believe, extend to administration of real property.

Real property of Mahomedans and Gentoos is liable, as assets in the hands of executors and administrators, to the payment of debts of deceased owners. This is not doubted, but it is doubted if such estate of British subjects and others are so liable. It is therefore enacted that real estate of British subjects within the general Presidency, and of others non-Muslim and non-Gentoo persons, shall be liable for payment of deceased's debts in the ordinary course of administration; executor or administrators may sell.

Draft Act.

Whereas the existing wages and rules for remuneration of Official Administrators and Curators require amendment:

It is hereby enacted, that the Governor-general in Council shall be authorized from time to time to fix by proclamation, published in the Government Gazette, the

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the rates of commission which the official administrators under 39 & 40 Geo. 3, sect. 21, appointed by a Supreme Court by virtue of 55 Geo. 3, c. 84, s. 3, a Curator appointed under Act XX. of 1841, s. 9, shall be entitled to charge the estate of deceased; and such rules shall supersede the reasonable usage recognized in the 55 Geo. 3, c. 84, and the rate defined in sect. 7, Act XIX. of 1841.

In extension of 39 & 40 Geo. 4, c. 79, s. 21, it is hereby enacted, that if a British subject die intestate within the general jurisdiction of a Supreme Court, it may issue the letters prescribed by this section, on being satisfied that effects of deceased exist in such jurisdiction.

It is hereby enacted, that letters granted to the Ecclesiastical Registrar shall be recalled on application of the person having a preferable right to such letters or title of execution, who was absent from the local jurisdiction of the Supreme Court when the letters to the Ecclesiastical Registrar were issued, and whose application has not been unreasonably delayed; and it is also enacted, that letters or probate shall be granted to such applicant, and that the Court may, in cases of suppression of letters previously granted to the Ecclesiastical Registrar, direct the Ecclesiastical Registrar to charge only a part of the regulated commissions.

Letters of administration granted by a Supreme Court may be extended to charge and management of real estate situated within the general limits of the Presidency, if deceased were a British subject, and situate within the local jurisdiction of the Court, if not such subject; provided that it be shown to the satisfaction of the Court that the payment of the debts of the deceased will require sale of real estate.

It is the principle of Acts XIX. and XX. of 1841, that the Supreme Court or a Zillah Court is ousted of its functions of granting letters or probate, or appointing a Curator, or granting certificate, when similar functions may have been already legally exercised by another court; it is hereby enacted, that the principle and the rules providing for it shall continue in full force, any thing contained in this Act notwithstanding.

It is hereby enacted, that the Ecclesiastical Registrar of a Supreme Court shall keep a cash account with the Sub-treasurer of his Presidency, through which shall pass all his receipts as Official Administrator; and that his payments and disbursements in such capacity shall pass through the same account, being effected by orders on the Sub-treasurer drawn against the sums so deposited; provided, however, that sums less than 100 *Rs.* which shall be paid through a petty cash account, to be kept in the office of the Ecclesiastical Registrar, which will be kept in funds by drafts drawn from time to time on the Sub-treasurer against the general deposits at credit.

It is hereby further enacted, that interest at four per cent. per annum shall be allowed on such cash account in the general treasury, being charged to the estate; and that the Official Administrator shall allow such interest on the funds at credit of accounts of individual estates.

The circumstances of an estate may occasionally require an advance of funds, and admit of such advance being made securely and beneficially. It is therefore enacted that in such cases the Registrar Administrators shall apply to the Sub-treasurer for the same, explaining the case; and the Sub-treasurer, if satisfied, to advance the sum from the general cash account of the Registrar, at the risk of Government, and the estate to which such advance is made shall be liable to a charge of five per cent. commission, besides interest at four per cent., and one-half of such commission, when realized, shall be receivable by the Registrar; provided, however, an advance exceeding 10,000 *Rs.* shall not be made on any estate without special permission of the Governor-general in Council being first obtained.

Where a debtor to any estate to which the Registrar had administered unjustly refuses payment, and compels the Registrar Administrator to have recourse to proceedings at law and equity, the Court trying the claim, if the unjust resistance of the debtor is apparent, shall add to the costs recoverable by him the commission which will be chargeable to the estate by foregoing rules.

SCHEME of Commissions allowed to Official Administrators and Curators.

On money due by individuals to deceased, collected by Administrator without recourse to law - - - - - - - - - - 2 per cent.

On monies due by the Government, the Bank of Bengal, or any Joint Stock Bank, recovered without recourse to law, and on cash found in deceased's house - - - - - - - - - - - 1 per cent.

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On sale, proceeds, Government notes, or on bank shares brought into possession by Administrators - - - - - - - - - - - 1 per cent.
On sale of bullion, jewellery and precious stones, exclusive of one per cent. allowed to a broker or auctioneer - - - - - - - - 1 per cent.
On sale, proceeds of ships and real property and factories, when legally saleable, exclusive of commission which may be allowed to a broker or auctioneer - - - - - - - - - - - - 1 per cent.
On rents of houses and lands in Calcutta collected - - - - 2 per cent.
On rents of real property, not situate within the local courts of the Presidency - - - - - - - - - - - - - 5 per cent.
On sums recovered by recourse to law, exclusive of law charges and share of commission for money advanced for use of an estate under Sale Act - - - - - - - - - - - - - - 5 per cent.

DRAFT ACT by the Honourable *A. Amos*.

Legis. Cons. 13 May 1842. No. 12.

AN ACT for settling the Remuneration of the Officers of Her Majesty's Courts of Justice in the Territories under the Government of the East India Company.

WHEREAS it is expedient that certain officers attached to Her Majesty's Courts of Justice within the territories of the East India Company should be paid by salaries, and not by fees, and that certain fees should be considerably reduced, and that the future salaries of such of the said officers as are now payable by salaries, and the salaries of such of the said officers as are now payable by fees, should not be regulated by any average of fees, but with reference to the duties and responsibility of the office: It is hereby enacted, that it shall be lawful for the Governor-general in Council, as often as any office held by any such officer as aforesaid shall become vacant, to declare whether the successor to such office shall be remunerated by a salary or by fees, and to make such reduction in the amount of fees as may be deemed proper, and to fix such salary, in case a salary be payable, as may be deemed proper, regard being had to the duties and responsibility of the office, and not to the fees actually or formerly payable.

MINUTE by Sir *E. Perry*.

Legis. Cons. 13 May 1842. No. 13.

MINUTE on Ecclesiastical Registrar and Administrators in India.

NOTHING in the practice of the Supreme Court strikes an English lawyer, on arriving in this country, more than to find it is an established rule to allow executors and administrators five per cent. on the effects of parties who have left property to be administered in India. Few things strike the English public so much as to hear that the largest fortunes taken home from this country have been made by gentlemen filling the office of Ecclesiastical Registrar, and derived solely from the per-centage to which they are entitled on administering estates. It is, besides, an unpleasant reflection for every man in India who has put by a few thousand rupees, that if death should cut him off before he has transferred his property to England, the Company's paper standing in his name, or the balance in the hands of his agent, will not find their way to his heirs without the deduction of at least five, and possibly ten or twelve per cent. For when a mercantile house under a power of attorney obtains letters of administration, it is, I believe, not unusual to claim commission, as in other agency business, on receipts and payments, which adds one or two per cent. to the five receivable under the rule of court; but when the Ecclesiastical Registrar has taken out administration, and collected the effects of a deceased party, and subsequently a merchant's house obtains a power of attorney, and repeats the grant of administration to the Ecclesiastical Registrar, the latter only pays over to the merchant the balance in his hands, after deducting his commission, and the merchant, in his turn, in paying over to the next of kin, deducts his commission, making a total deducted from the estate varying from 10 to 12 per cent.

By this practice it may happen, as in fact it has happened, that the estate of an insolvent not able to pay 10 *s.* in the pound to the creditors, may give in the shape of commission 20,000 or 30,000 rupees to the administrators. By this practice it may also happen that what would have proved a comfortable subsistence for the family of a deceased party, is entirely swallowed up by the large commission.

sion. For suppose a man die, leaving 10 lacs of Company's paper, on which he had borrowed nine lacs, the Ecclesiastical Registrar, on obtaining administration, would entitle himself to 50,000 rupees as his per-centage on the gross assets; if after that, (as is frequently the case) a second administration is taken out by friends of the family, a second commission of five per cent. would be claimable* on the nine lacs and half; and thus the next of kin or those entitled under the will, instead of receiving a lac of rupees, as they would have done if the property had been in England, are obliged to content themselves with 200 or 300.

The question, therefore, naturally arises, whether there is any thing peculiar to British India with reference to the administration of deceased parties' estates, which calls for a rule giving payment to executors and administrators, no such rule existing in England; and secondly, if it should appear that some such rule is necessary, whether so large a commission as five per cent. is requisite for the duty to be performed.

1st. The Supreme Courts in India have in most cases adopted the practice of the courts at home so rigidly, even when a totally different set of circumstances would seem to have called for more original forms, that it is impossible to avoid surprise at the innovation in the law which is caused by a rule entitling executors to a commission of five per cent. Lord Eldon expressed this feeling strongly when the point was first brought to his notice in the Court of Chancery. The truth is, I believe, though, as I am writing on the road without books, I cannot assert it, that the practice of allowing remuneration to administrators sprung up prior to the establishment of the Supreme Court, at a time when the demands of a European resident on the spot, and connected in interests with the members of an imperfectly constituted court, were likely to receive more favour than the silent claims of absent parties, that in some cases it was no more than an equivalent for the duty performed, and that it never underwent any discussion or scrutiny from parties interested in disputing its legality; and thus when inquiry was at length made into the grounds on which the rule rested, a difficulty, long established practice was vouched to give it validity, and Lord Eldon first, and an Act of Parliament subsequently, recognized its existence.

The question, however, is not whether a commission to administrators in India is warranted by law, but whether the service performed by them, but which is performed gratuitously in England, require remuneration here. It may be observed that the duties of an administrator, especially of an administrator in India, are of a very simple nature. On obtaining authority from the Court of Probate, he collects in the effects of the deceased party, sells his furniture and goods by auction (unless the family wish to retain them), pays the outstanding bills, and remits the balance to the next of kin or party entitled. For these duties no legal or other technical knowledge is requisite. Common vigilance, honesty and acquaintance with the ordinary business of life are all that is required. Accordingly, the friend of any European dying in this country might transact all these duties satisfactorily, and with very little trouble to himself; trouble, indeed, so small, that, independently of other considerations, it would be preposterous to provide a remuneration for it by law. Accordingly, in the late Mutiny Act, which appears to extend the powers of regimental administrators, no remuneration is awarded to the officer who conducts the administration; he discharges the office as part of his duty; and possibly in India, as it is at present circumstanced, no more difficulty would be found by Europeans, of whatever class in life, in choosing a friend to act as executor, than is found on similar occasions in England; and the same feeling of duty which prompts a man to act for the widow and children of his deceased friend gratuitously at home, would no doubt be equally operative in India, were the legal claim to five per cent. commission abolished.

It cannot be denied, however, that many cases may occur in this country which require the interposition of a paid administrator. A European may have been too short a time in the country to make a friend, or at all events one willing to act without remuneration. The creditors or next of kin who would be entitled to administer are not on the spot, and the property may require immediate care to preserve it from injury. For all such cases a public officer like an Ecclesiastical Registrar seems absolutely necessary. But if there be a public officer whose duty and interest should combine in making him interfere where death occurs, and

* It is true that the Supreme Courts have the power in certain cases to apportion the commission, and in the case mentioned would undoubtedly do so, if the facts were brought to their knowledge; but parties applying to a court of law rarely disclose facts contrary to their own interests.

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and no executor presents himself, a public officer whose salary and position in life should ensure high character, and whose subordination to the Supreme Court should secure a control over his accounts and proceedings, which can never be exercised effectively over the conduct of private administrators, it would appear to be needless, and even prejudicial, to allow remuneration to private parties. All who prefer having their affairs administered after death by a friend have only to nominate such friend as their executor, and if he consents to act, he performs the part of a friend by saving the commission to the children of the deceased party. If the duties of the executorship are onerous, it is to be presumed that the dying man supposed that his friend would undertake them gratuitously; but if the burthen is too much for friendship to undertake, and the agency is repudiated, except as a paid agency, common experience would seem to show that the business will be better done, and cheaper done, by those whose express duty it is to perform it, than by an amateur undertaking it, perhaps, for the first time. By this proposal of making the Ecclesiastical Registrar the sole paid administrator, several advantages will probably accrue; first of all, the avoidance of an indecent struggle for the administration of a large estate between the Registrar and a so-called friend of the deceased; secondly, the saving to the public on all estates administered by private parties, and in the amount of commission now payable, which could never again exceed a fixed sum; a third advantage would probably result in the Ecclesiastical Registrar becoming nearly the sole administrator to deceased's estates. For that fraud is to be guarded against in the case both of public and private executors, every day's experience and the provisions of the law itself proclaim. But as fraud is much more easily found out in the case of a public officer than of a private individual, from the circumstances of the former being the servant of a court of law competent to exercise all control over him, of a large number of people being interested on their own accounts to watch his conduct with respect to administrations, and of the public vigilance, always beneficially exerted with regard to public officers entrusted with a control over other people's funds, it may be assumed that, *cæteris paribus*, cases of fraud will more frequently occur when these guarantees are wanting; and therefore in cases where administration is accepted solely on the ground of payment, the public are safer, on the whole, with a public officer as administrator, than with a private individual. Another advantage may perhaps be hinted at in the moral effect (surely no inappropriate object of law) likely to be produced by a law holding out additional advantages to be obtained by conciliating friends, and which in a country "where all on which the hand or eye can rest give sad and solemn warning that we die," may come to be considered a part of moral duty that every man ought to be ready in his turn to render to another.

2d. The remaining question is, what amount of payment is necessary to secure a trustworthy, respectable public officer for the performance of the duties of Ecclesiastical Registrar? If it be true, as I observed before, that the duties of an administrator are of a very simple nature,* requiring no special education or previous training, and such as can be and constantly are satisfactorily performed by persons in every station of life, it seems clear that individuals in the British society resident in India will always be found well fitted for the office on such salary as is proved to secure trustworthiness and habits of business in other public offices.

It is sometimes erroneously supposed that a lawyer is required for the post, but that is not so; in the minor Presidencies the office has been frequently filled, and not ill filled, by gentlemen from the army, and others. Difficult questions of law may occasionally arise, but in such cases the Ecclesiastical Registrar, whether layman or lawyer, will (as it is understood he always does) resort to the professional advice of some gentleman in actual practice.

It cannot be contended, therefore, that for such an office, and for such qualifications as are required, a salary equal or greater than that of the Chief Justice or a member of Council is necessary. It can hardly, I apprehend, be doubted, that an allowance of 1,500 *Rs.* to 1,800 *Rs.* a month would secure the services of gentlemen at each of the Presidencies, fitted from their position in society to inspire confidence in their character, and to give the security against malversation which is

* It sometimes occurs, no doubt, that the administration of a native's estate is a very complicated matter; but the executor in such cases is usually a native, and the Supreme Court have adopted a rule as to him, which I am humbly recommending should be extended to all executors. Sir H. Compton, C. J. at Bombay, following, I believe, the practice of Calcutta and Madras, laid down that European executors only were entitled to commission.

is called for from the holder of such an office. The payment of officers by fees or by fixed salary, is a question that has been so much discussed of late years, as to make it unnecessary to do more than refer to the conclusions generally adopted.

Where fees are payable on each stage of the business, and it consequently becomes the interest of those entitled to the fees to make as many stages as possible, the mode of payment is considered the most objectionable, and for this reason all law taxes are now universally condemned. On the other hand, when the fee is paid on the amount of business done, without reference to the time consumed, it seems to afford the best stimulus to activity and despatch that can be devised, and for this reason is adopted in most mercantile transactions, as amongst brokers, factors and agents generally. An Ecclesiastical Registrar appears to fall within the second class; but the objection to paying him by fees or commission is, that it is then difficult to avoid paying him too much. If the commission of 5 per cent. were reduced to $2\frac{1}{2}$, it appears by no means improbable that in the course of a few years as large a salary might be obtained by the Ecclesiastical Registrar as under the present commission; and as the object of the present paper is to save the pockets of, generally speaking, a very poor class, viz., the families of Europeans who have died in India, an objection on this ground seems of the greatest weight. All that might be wanting, in affixing a defined salary to the Ecclesiastical Registrar, would be to afford some motive for the activity now displayed in the discharge of the office, and which might slumber under the pleasing certainty of the first of each month's returns; but such a motive is easily supplied by giving a small per-centage, say $\frac{1}{2}$ per cent., on every estate administered by him; and if Government should think that the alteration proposed, though highly beneficial to a class already the objects of much beneficial legislation, presents difficulties against being carried into effect from the additional expense it casts on the Government of some 50,000 rupees per annum, a source can easily be pointed out, viz., the administered estates themselves, from which this amount can be obtained.

I have no returns before me of the amount of commission received by the Ecclesiastical Registrar at the three Presidencies; but as the topic of allowances is a favourite one in Indian society, perhaps the following estimate, founded on the popular calculation, is not very incorrect:—

Amount received by Ecclesiastical Registrar, at 5 per cent. commission:

Calcutta - -	*Rs.* 7,000 a month	- -	84,000
Madras - -	*Rs.* 2,500 „	- -	30,000
Bombay - -	*Rs.* 2,000 „	- -	24,000
			Rs. 1.38,000

If, therefore, instead of 5 per cent. commission, 2 or $2\frac{1}{2}$ per cent. only were directed to be taken, it is clear that the Government would be able to reimburse themselves the amount of salary paid to the Registrars. But this calculation is not put forcibly enough; for in all the Presidencies a considerable number of estates are administered by private administrators, on which commission is now payable according to the proportions in the Madras almanack for 1840. Private administrators may be reckoned at half; and therefore to the sum now paid to Ecclesiastical Registrars, viz. - - - - - - 138,000

Add half as much for private administrators - -	69,000
Total paid on deceased estates per annum - -	207,000*

And as it is to be presumed that a large proportion of private administrators, who now act for the consideration of the per-centage, would cease to do so, when their acting was to be gratuitous, it seems clear that the number of estates to be administered by the Ecclesiastical Registrar would be increased, and therefore a per-centage of 2 per cent. on all such estates, and on such estates only, would more than produce 50,000 rupees a year.

The

* There is probably a larger sum than this paid by the Indian public, or rather by their English representatives; for supposing that the estimate above given is fully equal to the total amount of commission at 5 per cent., there is still to be added the additional per-centage for double administrations, &c., which it has been shown is charged on certain estates. Altogether, it would appear that if the suggestions in the present paper should be carried into effect, there would be a saving to a very helpless class of the public, at least 150,000 rupees a year.

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The only consideration that remains is with respect to the parties who would be affected by the change proposed, viz., the Ecclesiastical Registrars, and the Judges of the Supreme Court, who appoint to that office. But the interests of the former need not be dwelt on for a moment, as the moral principle is far too universally received, of not making any change for the public benefit that shall sacrifice individual interest, to doubt that it would be acted on by the Government. The interests of the actual occupants of the office might even be made to coincide with those of the public, and immediate efficacy be given to the scheme by the Government guaranteeing to them their present average income, and at the same time reducing at once the per-centage. But this would involve an immediate sacrifice on the part of Government of some 5,000 rupees.

The patronage of the Supreme Court is therefore what is most to be considered. Government might perhaps insist that if they pay the Ecclesiastical Registrar, they should also appoint him. The Supreme Court would not unnaturally demur to the consequence; and as it does not seem a logical or necessary one, it is to be hoped that it would not be insisted on; at all events, if the question should eventually turn on a balance of private interest, I am quite sure that the former would have no weight with the present Chief Justices of India.

The conclusions, therefore, which I humbly wish may be drawn from the foregoing observations are, that it would be expedient to pass an Act disallowing all commission to executors and administrators, except as hereinafter mentioned. To provide that the commission of 5 per cent. heretofore received by Ecclesiastical Registrars on estates administered by them, shall continue to be received by them, so long as the existing Ecclesiastical Registrars continue in the said office respectively, and to enact that all future Ecclesiastical Registrars shall receive per annum as specified in a schedule, in lieu of all fees and commission except as hereinafter mentioned.

To enact, that on all estates administered by the Ecclesiastical Registrar, he shall, before paying over the balance to the party entitled, deduct a commission of per cent. on the gross assets; per cent. of which he shall retain for his own fee and reward, and the remaining per cent. of which he shall pay over to the Treasury of the Honourable Company.

(signed) *E. Perry.*

Vaniembady, 28 March 1842.

Legis. Cons. 13 May 1842. No. 14. Registrar of the Supreme Court.

MINUTE by the Honourable *A. Amos*, Esq.

WITH reference to the desire that this subject should be taken up forthwith, I have to notice that my first minute and my draft Act were in circulation some days before the next meeting of Council subsequent to the receipt of Lord Ellenborough's letter; but it was properly wished to see the previous correspondence on the subject of the Registrar. Mr. Peel's patent arrived in a few days after Lord Ellenborough quitted Calcutta. I have ascertained that the appointment is not with the Chief Justice, but with the whole court.

Since writing my last minute, I have circulated a note by Sir Erskine Perry on the subject of the Registrar. I may also mention that I have reason to believe that the Madras Judges are at present engaged upon a measure for diminishing the fees of all the officers of their court; none of these officers are in fact paid by salaries.

I think it deserving the consideration of Council whether we should not at least leave it open to decide, upon a vacancy, whether the Registrar should be paid by a salary or fees, or at all events, as Sir E. Perry suggests, partly by fees; but I conceive it may be proper that the courts should adopt some rules for diminishing the Registrar's appetency for managing that kind of property, which is not liable to waste or spoliation, if not immediately perfected, where there is reason to believe that an executor or next of kin will speedily be in a condition to take charge of the estate of a deceased.

The fee of five per cent. on the transfer of public securities must clearly be reduced, and it may probably be desirable to prevent agency houses from making this exorbitant charge. Executors even, I am told, claim this high commission as their right.

I still

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I still think it desirable that all the fees and all the salaries of the three Supreme Courts should be revised, and that we should on the present occasion go into the whole subject, and not confine ourselves to the office of the Registrar.

Though I have drafted an Act, I think that very probably what we desire may be effected by rules of court, without legislation. I would strongly recommend consulting the Judges upon the subject. I believe they would have every disposition to reduce all the fees and all the salaries, and to place their officers upon fees or salaries as Government might think most expedient; nor do I apprehend that they would raise any question of patronage as to the future appointment to any office which would not admit of very easy adjustment, and that without pecuniary compensation.

2 May 1842. (signed) *A. Amos.*

(No. 95.)

To *T. H. Maddock*, Esq., Secretary to the Government of India, with the Governor-general.

Legis. Cons. 13 May 1842. No. 15.

Sir,

I AM desired by the Honourable the President of the Council of India, in Council, to request the favour of your laying the accompanying papers* before the Right honourable the Governor-general of India.

2. The Honourable Mr. Amos, with his minute dated the 13th of April, laid before the Board the draft of an Act for settling the remuneration of the officers of Her Majesty's Courts of Justice in India. Mr. Amos is of opinion that the system of paying the Ecclesiastical Registrar by fees is expedient for the public interests; and this opinion is held also by Sir Erskine Perry, whose note on the same subject accompanies this despatch. The Government of India, when it resolved in 1836 upon altering the system of remunerating the officers of the court, had intended to include the Ecclesiastical Registrar, and thus abolish all fees, but gave up this intention as respected the Ecclesiastical Registrar upon the following reasons urged by the Judges of the Supreme Court in their letter of 25th April of that year:—

"The only explanation which remains to be given of the proposed final arrangement respects the offices of Ecclesiastical Registrar, as ex-officio administrator, and of the Interpreters of the court. In these cases we propose to depart from the general principle of paying all officers by salary exclusively, and to leave the Ecclesiastical Registrar in possession of his commission on estates administered by him, and the Interpreters in the receipt of their fees. We consider generally that an officer receiving a competent salary is bound to give his whole time to the performance of his duties, and that there is no occasion, therefore, to increase his profits on account of additional labour when he is sufficiently rewarded for all that he can bestow, nor to diminish them on account of occasional diminution of exertion when his time, his principal possession, does not become any more his own, though it may be less fully employed. This is the general principle on which we have suggested salaries in preference to fees; but it does not apply to the case of the ex-officio administrator, for two reasons: he has the custody of very large sums of money, for which he is responsible, and finds security in a large amount, and as these sums increase, his pecuniary responsibility increases also. No fixed salary can be an uniform and equitable compensation for this varying risk. The same principle might seem to apply to the case of the Accountant-general and Receiver, who also receive money, and are remunerated by a commission upon it. They are, however, bound by the rules of the court so to deal with the monies which come to their hands, as, in substance, to incur no risk; and we see no reason, therefore, for excepting them from the general principle of payment by salaries. The office of Ecclesiastical Registrar necessarily requires him

* Letter from Judges, Supreme Court, at Calcutta, dated 25th April 1836; Letter to ditto, dated 14th November 1836; Letter from ditto, dated 21st November 1836; Letter from Mr. W. H. Smoult, Ecclesiastical Registrar, 21st November 1836; Letter to Judges, Supreme Court, Calcutta, 5th December 1836; Copy of Note from the Governor-general to Mr. Amos, dated 6th April 1842; Letter to Accountant-general and Civil Auditor, dated 21st March 1842; Letter from Accountant-general, dated 24th March 1842, with enclosure; Letter from Civil Auditor, dated 29th March 1842, with enclosure; Copy of Minute by the Honourable Mr. Amos, dated 13th April, with enclosure and Draft Act; Copy of a Note by Sir E. Perry, dated 28th March 1842; Copy of Minute by the Honourable Mr. Amos, dated 2d May 1842.

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him to use a much larger discretion and incur a real responsibility; besides this, all other officers of the court act only in matters brought to their notice, in which, therefore, they are not only bound to do their duty fully, but are necessarily and easily liable to animadversion if they neglect it. But the Ecclesiastical Registrar is very largely employed in looking out for occupation in ascertaining what estates there are which require to be administered to, and this he may neglect, if he has not the stimulus of interest, without becoming in any way subject to the censure of the court, which has generally no means of knowing, except from himself, what cases there are which require his interposition. We have a right to expect that we shall never appoint a corrupt officer, and therefore we do not fear the incomplete discharge of the duties of any situation, where the officer must either perform or wilfully and deliberately neglect them. But nothing can make it certain that we may not appoint an indolent one; and, therefore, in this situation where it depends on the officer himself whether he is or is not to have the opportunity of exertion, we think it desirable that his emoluments should continue to depend on his activity. We propose, therefore, that the Ecclesiastical Registrar, as ex-officio administrator, should continue to receive his usual commission, and to defray the expenses of that office out of it. The average amount of his receipts and expenditure would make the net annual value of his office average, as nearly as we can compute it, the sum assigned it as a conjectural estimate in Schedule (E.)* In consideration of the large emoluments derived from this source, we propose that the officer perform the other duties of Ecclesiastical Registrar, and those of Equity and Admiralty Registrar and Sworn Clerk, without any additional salary; the expenses of all these offices, except that of the ex-officio Administrator, being borne in the way to be hereafter proposed as a general arrangement."

3. The Judges were, however, apprised that the rate of commission drawn by the Registrar, would be subject to revision on the occurrence of a vacancy.

4. The President in Council, after careful reconsideration of the question, is of opinion that the Ecclesiastical Registrar should continue to be remunerated by fees, but that a reduction ought to be made in the rate charged for administering invested property. This may be fixed at one per cent. when the amount is considerable, with an increasing rate for smaller sums, leaving five per cent. to be charged, as at present, on other descriptions of property.

5. Mr. Amos, it will be perceived, is of opinion that the fees and salaries of officers in Her Majesty's courts at all the Presidencies should be revised. He believes the salaries of the officers in the Calcutta Court, as fixed by the last arrangements, to be very high; and he suggests that while engaged on the question of reducing the fees of the Ecclesiastical Registrar, the Government should also revise the salaries of all the paid officers of the court. In this the President in Council fully agrees. At the other Presidencies the officers are still remunerated by fees, and the President in Council would propose to press an alteration in this system, so as to make it correspond with the system in Calcutta; at all events, if an entire change of system should not upon good grounds appear everywhere desirable, the suitors may, as far as possible, be relieved by a reduction in the rate of fees.

6. Should his Lordship concur in these views, the President in Council will consult the Judges at all the Presidencies. It may be proper to defer the consideration of the Act until the result of the proposed communication; for his Honour in Council expects the willing co-operation of the Judges, and the matters to be adjusted may effectually be provided for by Rules of Court without the necessity of a Legislative Act.

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

Fort William, 13 May 1842.

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* "This is the result as the average taken, as already mentioned, for a period of eleven years. We have since been furnished with a return for 20 years, the average of which is much lower (to the extent of about 11,000 rupees per annum), and which Mr. Smoult considers more fairly to represent the average value of the office, especially as the period of 11 years includes one of very extraordinary emolument (very nearly two lacs of rupees), which he considers not to be fairly included in an average extended only over 11 years. If this be so, the value assigned to his office would undoubtedly have to be diminished. We incline, however, to think that the period of 11 years is more likely to furnish an accurate estimate of the present value than the longer one, as the business of the office, independently of the accident of that very great year, has decidedly increased, and is, we think, likely rather to increase than to diminish."

(No. 29 of 1842.)

Legis. Cons. 5 Aug. 1842.

From the Junior Secretary to the Government of India with the Governor-general to *F. J. Halliday*, Esq., Officiating Secretary, Government of India, Legislative Department.

Sir, Allahabad, 20 July 1842.

Legis. Department.

I AM directed to acknowledge the receipt of your letter, No. 95, dated the 13th May last, with its enclosures, relative to a proposed revision in the fees and salaries of Her Majesty's officers in the Courts of Judicature at the several Presidencies.

2. In reply, I am directed to state that the Right honourable the Governor-general entirely concurs in opinion with the Honourable the President in Council, as expressed in para. 4 to 6 of your letter, and requests that his Honour will take the necessary steps for giving effect to the measures proposed.

I have, &c.

(signed) *C. G. Mansel*,
Junior Secretary to Government of India with the Governor-general.

Allahabad, 20 July 1842.

(No. 195 and 196, Madras and Bombay; No. 61, Calcutta.)

Legis. Cons. 5 Aug. 1842. No. 4.

To the Honourable the Judges of the Supreme Court at Calcutta, Madras and Bombay.

Honourable Sirs,

WE have the honour to enclose for your information copies of a letter to Mr. Secretary Maddock, dated the 13th May last, and of Mr. Maddock's reply of the 20th ultimo, respecting the remuneration of the officers of Her Majesty's Courts of Justice in India, and shall feel obliged by a communication of your sentiments upon the principle of the measure proposed in the letter to Mr. Maddock, and on the best mode of carrying it into effect.

We have, &c.

(signed) *W. W. Bird.* *A. Amos.*
W. Casement. *H. T. Prinsep.*

5 August 1842.

To the Honourable the President of the Council of India in Council.

Legis. Cons. 23 Dec. 1842. No. 9.

Honourable Sirs,

WE have the honour to address you, in answer to your letter to us dated the 5th August 1842, enclosing for our information copies of a letter addressed by you to Mr. Secretary Maddock, dated the 13th May last, and of Mr. Maddock's answer thereto of the 20th July last, respecting the remuneration of the officers of Her Majesty's Courts of Justice in India, and requesting a communication of our sentiments upon the principle of the measures proposed in the letter to Mr. Maddock, and on the mode of carrying them into effect. By the arrangement entered into between the Government of India and the Judges of the Supreme Court at this Presidency in the year 1836, the latter were enabled to pay the officers of the Court by salaries instead of by fees, or fees and salaries combined. This was done in pursuance of a suggestion emanating from the Board of Control, and contained in a letter from the present Lord Glenelg, then the President of that Board, bearing date the 13th May 1832, and addressed to the Judges of the Supreme Court. The substitution of fixed salaries for fees, as the mode of remunerating officers of the Courts of Justice, had then been generally introduced in legal reforms in Scotland and in England, and its superiority was assumed to admit of no question. The arrangement before referred to proceeded on this assumption, on which the Government of India acted (*see* their

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Letter of the 14th November 1836, to the Judges of the Supreme Court). It would now be extremely inconvenient to revert to the former mode of payment; if, indeed, a return to that system be now practicable; and it appears to us to be so inexpedient to weaken the stability of the arrangement by discussing the wisdom of the preference given to fixed salaries as a mode of remuneration, contrasted with a payment by fees, that we forbear from any discussion of the subject. The arrangement which was then effected has been acquiesced in, and no complaints have been made of its operation. This was not the case when the payment by fees prevailed. The Government expressed in warm terms their approbation of the spirit in which the Judges of the Court at that time had met their suggestions of reform, and had reformed the establishments of the Court. The Government, indeed, expressed an opinion that the salaries fixed by the Judges were in some instances high, and grounded this opinion on a comparison between them and the highest rate of remuneration given to the servants of the East India Company in the Civil Service not in Council; a comparison which could not be made complete without taking into account the certainty of a maintenance in the Honourable Company's civil service to all who embrace it, who are not rejected from it for misconduct, the early advancement in it to a comfortable and adequate maintenance, the privileges it affords, the indulgences which the Company grants to its servants, and the prospect of an annuity purchased, but in part by the contributions of the annuitant. The profession of the Bar is expensive in the training to it, and generally for some considerable period afterwards it affords maintenance to few, ruins many, and its advantages are uncertain of duration when enjoyed. The inequality objected by the Government was, in our opinion, apparent rather than real; but be this as it may, the Government ratified the scheme laid before it by the Judges; the objections to which we have referred were never again renewed; the Judges had no notion that changes were contemplated in the Registrar's emoluments, or in the salaries prospectively fixed to the offices of the Court by the scheme alluded to, and they filled up appointments on subsequent vacancies upon the supposition that that arrangement was not about to be disturbed. These officers so appointed accepted their offices in that belief. By the scheme in question, it was mentioned that the three offices of Ecclesiastical, Equity and Admiralty Registrar would be filled by one officer, discharging all the duties of the office of Sworn Clerk, which was to be suppressed on its being vacated by Mr. O. Dowda. The Government had at first inclined to the opinion that the Ecclesiastical Registrar, as Official Administrator, should be a salaried officer, as well as the other officers of the Court. The Judges, in their letter to the Government before referred to, proposed the continuance of his remuneration by the receipt of his commissions on the grounds therein assigned. The Government acquiesced in this recommendation, and its propriety is no longer questioned. Upon the appointment of Mr. Turton to the offices which he now fills, viz. those of Ecclesiastical, Equity and Admiralty Registrar, in the early part of the year 1841, it was agreed between him and the Judges of the court, at that time, that he should discharge the duties of the three offices, and also those of the Sworn Clerk, when vacated by Mr. O. Dowda, and that he should be remunerated for these services by the receipt of the commissions as Official Administrator. It should be remembered that the emoluments were not of the court's creation, which had no power to diminish or increase them. The right of the Ecclesiastical Registrar to administer the estates of deceased persons in the cases in which he acts, is derived from statutes of the English Parliament. The commission originally springing from the usage of the place, as an agency commission, confirmed by decisions of the Court of Chancery in England, and referred to and sanctioned by the Acts in question, could not have been altered by the act of the court, nor by the authority of the Government, nor by the united authority of the two, nor by any thing short of a legislative Act. This seems to have been lost sight of in the observations contained in the letter from the Government to the Judges so frequently referred to. By the consent, however, of the officer in question, his commission might have been reduced or waived, and the agreement between the court and him, on the occasion referred to, stands entirely upon the footing of a bargain or compact. The Judges ought not to break it, or recommend, or to forbear to protest against its infraction; and had they been informed that an Act of the nature referred to in the letter to which this is an answer was in contemplation, they would, ere it had been framed, have respectfully brought to the notice of the Government the injurious operation

which

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which such an Act as that now contemplated would have on Mr. Turton's interests, and the embarrassing position in which it would place the Judges of the Court. We trust that we are justified in requesting that this provision may be made prospective only, so as not to take effect until a vacancy occur in the office, or that we may be enabled to compensate Mr. Turton for his loss in the reduction of his commission, by assigning him an equivalent salary in respect of the offices of Equity Registrar and Admiralty Registrar, the duties of which he now discharges without fee or salary. The consequence of any reduction in Mr. Turton's emoluments would probably be, that at the risk of his health again giving way, he would return to the Bar, and throw up his offices; his return to the bar might replace him in the position which he held there when he quitted it; but if so, it would then operate injuriously to the interests of other gentlemen, who have resorted hither from other Presidencies, or from England, upon the prospect of an opening at the Bar here, and also of those who have shared his practice amongst them. If we could induce any gentleman competent to discharge the duties of the office of Ecclesiastical Registrar to undertake it at the reduced commission, of which we entertain great doubts, we have no hope that we should be enabled to annex to it the offices of Equity Registrar and Admiralty Registrar upon the terms on which Mr. Turton held them. We have no power, under the present arrangement, to pay these officers by fees, and none of assigning a salary to them, and we should be unable, whilst the present arrangement is in force, to fill up offices essential to the due discharge of the functions of the court, on its Equity and Admiralty sides. It has been the constant practice in Great Britain to make reforms in, judicial establishments prospective, or to give a compensation to those whom they affect. This principle was acted upon by the Government and the court when the existing arrangement was adopted, and we hope that it will not now be lost sight of. On the occasion of any future vacancies, we have the honour to propose certain reductions and changes in the establishments of the court, which will materially lessen the cost of them to the suitors. The salary assigned to the Master, Accountant-general, Examiner in Equity and Examiner in the Insolvent Debtors' Court, when he shall assume this last office, is, by the scheme before-referred to, fixed at 54,000 Company's rupees per annum. We propose to detach from this officer the duties of the Examiner in the Insolvent Debtors' Court, which we think it will be more convenient to have performed by the chief officer of that court, and to confer on the Master the office of Taxing Officer at Law and in Equity, which was formerly held in conjunction with the office of Master, and was for some temporary reason disunited from it. This is a much more onerous and important office than that of Examiner in the Insolvent Debtors' Court, and the labours of the Master will be increased by the alteration. As Mr. Grant accepted his office on the understanding that it would be fixed at 54,000 rupees per annum, on his assumption of the duties of the office of Examiner in the Insolvent Debtors' Court, we recommend that during his possession of the office, when the addition to its labours shall have taken place, he should receive that salary, and that on his vacating office the salary should be reduced to 48,000 Company's rupees per annum. This officer is the highest in dignity of all the officers of the court; he has duties to transact which are in their nature judicial; when he appears in court he takes his seat on the Bench. Considerable attainments are necessary to the proper discharge of the duties of the office; and as the salary to be assigned to the office on a vacancy falls within the amount which the Government thought might properly be assigned to it, namely, the highest class of salaries paid to civil servants, not members of the Council, we hope that it will be considered a reasonable remuneration. The office of Official Administrator, which is annexed by law to that of Ecclesiastical Registrar, is one which requires in the person holding it considerable and varied legal attainments, with habits of business, and a knowledge of commercal affairs. The labour of the office is heavy, and it is attended with some pecuniary risk. If, in conjunction with this office, that of Equity Registrar be united, which conjoint offices none but a man of superior powers could hold, a practising lawyer of superior attainments must be selected to fill them. Taking this into consideration, and that this officer has always received the highest remuneration of any of the officers of the court, we think that on a future appointment, allowances, not exceeding 50,000 Company's rupees per annum, to be paid partly by commission and partly by salary, in the manner hereinafter stated, will be free from objection. For the Prothonotary, who will also hold the offices of Clerk of the Crown, Clerk of the Papers, Sealer and

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Keeper of the Records, we propose, on the next vacancy, a salary of 26,000 Company's rupees, in lieu of 36,000 Company's rupees per annum, which the present officer receives. The principal officer of the Insolvent Debtors' Court, who will hold the united offices of Chief Clerk of the Court, Examiner, Provisional Assignee, and Receiver and Taxer of Costs incurred in that court, will receive, on the next vacancy being filled up, 24,000 Company's rupees per annum, in lieu of 36,000 Company's rupees, the present salary. The Judges' Clerks in future vacancies will receive 600 Company's rupees per month, instead of 700 each, and the whole saving effected will be as follows:—

		Salary assigned by Judge's Letter.	Saving per Annum.
	Co's. Rs.		
Master, Examiner in Equity, Accountant-general, and Taxing Officer at Law and in Equity - -	48,000	54,000	6,000
Ecclesiastical, Equity and Admiralty Registrar and Sworn Clerk - - - - - - - - -	About 50,000	Emoluments now about 60,000	10,000
Prothonotary, Clerk of the Crown, Clerk of the Papers, Sealer and Keeper of the Records - - -	26,000	36,000	10,000
Chief Clerk in Insolvent Debtors' Court, Examiner in ditto, Taxing Officer in ditto, Provisional Assignee and Receiver - - - - - - -	24,000	36,000	12,000
Judge's Clerk - - - - - - - - -	21,600	25,200	3,600
		TOTAL SAVING - - -	41,600

This is nearly one-fifth of the whole cost of the Court, as finally established by the scheme before referred to. The saving to be effected in the salaries paid by Government will be 31,600 rupees per annum; from that must be deducted the salary to be paid to the Equity and Admiralty Registrar of 10,000 Rs.; this will leave the total amount saved in salaries 21,600 Rs. and the residue will be made up of the reduction in the commission. To one who views these reduced salaries, contrasting them with the remuneration given to offices of the like kind in England, and not taking into account the usual rate of Indian allowances, they may appear to be fixed still at too high a rate. Viewed relatively to India, they cannot be so considered; nor would it be just to assign lower salaries to these offices, unless a reduction took place in all salaries throughout India which are paid to civil servants either of the Crown or of the East India Company. The plan of reduction of the commission now payable to the Ecclesiastical Registrar appears to us to be objectionable. It proposes to leave the general commission of five per cent. on the assets realized as it is at present, except in the cases where the collection of assets, by reason of the nature of the property, is presumed to be productive of little trouble. If it were possible to make the amount of commission in every case depend on the trouble occasioned to the administrator, in that case it would be desirable to adopt the mode by which this could be best effected. But the test proposed is one which appears to us to be essentially defective. The collection of assets is but one of the many duties of a personal representative. Questions the most important, the most difficult, and the most troublesome, may, and frequently do, arise, where the collection of assets presents no difficulty whatever. An investigation into the circumstances of each particular administration is impracticable. The remuneration by commission must be by giving a general commission upon the principle of an average. As the commission now is, the commission of five per cent. attaches on the assets realized; that is, on the value of what may be termed the principal of the fund, of whatever it may consist. If the circumstances of an estate require a continuing administration, and the investment of funds, and the receipt of the proceeds of the same, whether dividends, interest, rent, &c., a further commission of five per cent. on the amount of such recurring receipts is received. The best course to be adopted, as it appears to us, would be to reduce the commission on a future vacancy from five per cent. to three-and-a-half per cent., and on recurring receipts to reduce the commission to two-and-a-half per cent., except as to houses and buildings, which are so very troublesome and expensive an item of administration in the office, that we think the full reduced commission, viz., three-and-a-half per cent., should still be payable on these receipts. Estimating the

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the present net value of the commission to be the same that it was when Mr Dickens filled the office, it may be stated as averaging about 60,000 Company's rupees annually. It is probable that it would rather diminish than increase. The reduction proposed would bring the emoluments down to about 40,000 Company's rupees per annum, and it is very doubtful whether we could induce any gentleman properly qualified, in whom we should have confidence, to undertake the labours of the office, with its risk and responsibility, for this amount of remuneration. By annexing to this office those of Equity Registrar and Admiralty Registrar, which may be held in conjunction with it by an officer possessing high qualifications, and by assigning a salary of 10,000 Company's rupees per annum in respect of these two offices, a very moderate salary for the discharge of the duties of such offices, we think it probable that these offices may be filled in a perfectly efficient manner.

These reforms are prospective, and some time may elapse before they can take effect. It is desirable to accelerate the period of their taking effect, and if the Court were enabled to ensure a retiring pension of 1,000 *l.* a year to Mr. Vaughan, one of the officers of the Court, we think that a portion of these projected improvements might be brought into speedy operation, without subjecting the Government to any increase of charge. In this event the Court would press on Mr. O. Dowda the necessity of his vacating his present office of Sworn Clerk, and taking the office vacated by Mr. Vaughan. This would effect an immediate reduction of 34,000 Company's rupees per annum, and retaining from that the retiring pension in question, enough would remain to compensate, in the shape of a salary to Mr. Turton for his offices of Equity and Admiralty Registrar, his loss in the reduction of his commissions. We submit this to the consideration of Government.

By the arrangement before referred to, the Government were secured against loss by the payment of the salaries which it undertook to pay by means of a surplus in the nature of a guarantee fund. At the time when the arrangement was effected, the Government paid certain salaries to certain officers of the Court; the rest of the emoluments of these offices consisted of fees. Salaries were substituted for the latter, and the whole amount of fees was paid over to the Government. By this contrivance the charge in salaries paid by the Government before the arrangement was considerably reduced; and in this the saving to the Government consisted. The proceeding had in view the reduction of the charge on the suitors, and not the reduction of the charge to the Government; but the necessity of a guarantee against future loss to the Government prevented the Court from carrying the reduction of fees to the full extent to which it would otherwise have been carried. During the five years that this plan has been in operation, the Government has gained by the arrangement about a lac of rupees. By the falling in of the office of Sealer, which was suppressed on the resignation by Sir Edward Ryan of the office of Chief Justice, a further saving of 6,000 rupees per annum has been effected. By the falling in of Mr. O. Dowda's office, and that of Mr. O. Hanlon, which he holds in the Insolvent Court, a further saving of 29,000 rupees will be effected. The plan now proposed contemplates a further saving in salaries of 21,600 Company's rupees, making altogether 56,600 Company's rupees per annum. The charges of the Court, therefore, are altogether on the decrease. Its business is slightly, but steadily, on the increase, and there is no prospect of any loss to the Government arising from the bargain which has been effected. We therefore take the liberty of suggesting that the estimated surplus should now be reduced to 5,000 Company's rupees per annum, and that that sum should constitute the permanent guarantee fund; and thus the Court would be enabled now to diminish some charges on the suitors, which it is desirous of seeing effected, and still further to extend this benefit as the offices in question fall in.

We have, &c.

(signed) *J. P. Grant.*
W. H. Seton.

Court House, 14 September 1842.

Legis. Cons 23 Dec. 1842. No. 10.

MINUTE by the Honourable *A. Amos.*

Fees of Courts.

UNTIL we hear from the other Presidencies, we cannot well come to any resolutions on the subject. But it is very satisfactory to find that the result of our inquiry at Calcutta has been, that the Judges themselves unanimously agree that considerable

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considerable reductions may be made, and they have stated the amounts of these reductions (constituting one-fifth of the present allowances), so that no difficulty can occur in making a very material reform, if we stop where the Judges have stopped.

The Judges have spoken much of the dignity and confidential duties of their officers. I would not raise any issue upon this point, nor upon the propriety of their being compensated on the same scale (eminently liberal as it is) of civil servants; nor can it be denied that the furloughs and other advantages of the civil service are valuable appendages to the salaries. But the Judges do not give us satisfactory information concerning the quantity of business done by their dignified officers. The quantity of labour is at all events an important consideration in a question of salary. There is, I believe, no prohibition against the officers of the Court trading. I have heard that they have not unfrequently traded. The late Registrar was extensively concerned in indigo factories. They may be directors of public companies, receiving allowances for their duty in that capacity. The Clerk of the Crown has held at the same time the office of Judge's Clerk, and a directorship in the Union Bank. The Judges say that they propose to add to the Master's duties that of Taxing Officer, instead of Examiner in the Insolvent Court. I do not make out whether Mr. Grant has assumed the duties of Examiner in the Insolvent Court; but at all events the Judges say that the taxing business will be more onerous. All this admits that Mr. Grant is by no means fully employed. If he has not assumed the Examinership of the Insolvent Court, I should like to know the reasons. I think the proposition about Mr. Vaughan will require much consideration before it can be adopted.

With regard to the systems of payment by salaries or fees, I believe it is generally considered that the system of salaries with regard to Masters in Chancery in England has failed. There is no doubt an inconvenience in changing from one system to another, and it seems clear that the Registrar should be paid in part by fees. I have little doubt that there are various collateral advantages which render the Registrar's office much more valuable than as here represented, and a windfall, such as Sir W. Macnaghten's stock, must put averages out of the question. I have been told that when Palmer & Co. paid the balance of the Martiniere fund into the Master's office, the Master received as his fees a lac and a half.

Officers of Supreme Court; Minute.

When Mr. Turton was at Darjeling for a considerable time, I believe his duties were performed by Mr. O. Dowda, who has offices of his own under the Court.

19 September 1844. (signed) *A. Amos.*

Legis. Cons. 22 Dec. 1842. No. 11.

To the Honourable the President in Council of India.

Fort William, Madras,
17 September 1842.

Honourable Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 5th August last, with its enclosures. The subject to which they refer had already, in most of its parts, been under the consideration of Mr. Justice Norton and myself; but we have not been able to take the same view of the principal points which it embraces, and it has therefore become necessary for us to address you in separate answers.

2. I have no doubt as to the propriety of reducing the commission now taken by the Ecclesiastical Registrar on the administration of intestate estates; and if such reduction can be made by act of the Court alone, I shall be ready to assist in carrying it into effect upon a vacancy occurring in the office. If the regulation of this matter is taken in hand by the Legislative Council, as, being one which admits of the framing of a general rule for the three Presidencies, may possibly be the case, I venture to suggest, at the same time, the expediency of making it unlawful for any executor whatever, and for any administrator, other than the Registrar, to take the commission which has heretofore been allowed to them. Where the deceased person leaves a will, it is always in his power to compensate his executor by a legacy. Where no such remuneration is given, the executor may be deemed, as in England, to act from motives of regard for the deceased and his family; and in cases of intestacy, a next of kin or a creditor act for their own benefit, and for that

that of the class to which they belong. The usage of taking commission on the administration of estates in this country was founded originally upon the notion that the executor or administrator would in the great majority of cases be a stranger to the deceased, and not a member of his family; that he was therefore to be considered in the light of an agent, and that being so regarded, he could not be expected to discharge his duties without an adequate remuneration for his trouble. This usage might with great propriety have been abandoned at the time when, by creating the office of Ecclesiastical Registrar, an official administrator was provided, who could, on the remuneration of executors, or next of kin, take charge of the estate. But it has been inadvertently, as I think, continued to the present day. Being no longer necessary, it ought, in my opinion, to be abolished. Mr. Justice Norton is of opinion that this cannot be done by the sole authority of the Supreme Courts, although I do not agree in this opinion; I feel that a legislative enactment is a more advantageous mode of effecting the same object.

3. I have for some time past had the subjects contained in the fifth para. of your letter under my anxious consideration; desirous as I have always been, and still am, that the several officers of the court should receive a handsome remuneration for their labours, I am obliged to come to the conclusion that their emoluments cannot and ought not to be kept up on the scale which now exists, the tax which is for this purpose levied upon the suitors being greater than the suitors are able to bear. I have arrived at this conclusion from having turned my attention during the last year or two to the bills of costs which have been allowed on taxation, and which present sums total and particular items of a startling amount. I ought at the same time to mention that a greater burthen than that which arises from the legal demands of the officers of the court, is occasioned by the fees which are allowed to be taken by the solicitors, attornies and proctors. But this not being a subject adverted to in your letter, I only refer to it for the purpose of expressing my opinion, that any measure for the relief of the suitors which shall not embrace a reduction of the professional fees now taken, must necessarily be incomplete and defective.

4. Acting upon the conviction that a change in the existing table of fees is imperatively called for, I have framed a new table upon a reduced scale, curtailing in an especial manner those which have been found to press most hardly upon the suitor, but otherwise making a certain proportionate reduction throughout the whole, and having a view particularly to the diminution of those charges which now exist in respect of the grant of probates and administrations, and which, in many cases, operate most harshly as a severe and grinding tax upon estates of very inconsiderable amount. This altered table of fees, I had proposed, should take effect immediately with regard to the practitioners of the court, and those officers who have been appointed in the present year, and prospectively (that is to say, upon vacancies occurring) as regards all the rest.

5. In this measure, with such alterations and modifications as further consideration may suggest, I am very desirous that Mr. Justice Norton should concur, and I still hope that on a further and more intimate acquaintance with the details of the present system, and with the mode in which it operates upon the very limited population over which the jurisdiction of the court extends, he may be disposed to alter the opinion which he at present entertains, and which I believe is adverse to that which I have here expressed.

6. With regard to the proposition for remunerating the officers of the court (with the exception of the Registrar) by salaries in lieu of fees, I certainly entertain considerable doubts as to its expediency. But if you, sir, should ultimately conclude that it is an alteration which it would be desirable to effect, I trust at least, that no arrangement for that purpose will be made which should create any obstacle to the granting of the relief to the suitors I am so anxious to afford them.

I have, &c.

(signed) *E. P. J. Gambier.*

Legis. Cons. 23 Dec. 1842. No. 12.

To the Honourable *William Wilberforce Bird*, Esq., President of the Council of India, Fort William.

Honourable Sir, Madras, 23 September 1842.

In reply to your letter of the 5th ultimo, requesting the sentiments of the Judges upon the principle of the measure therein referred to, and the best mode of carrying it into effect, I have to observe that having paid a good deal of attention to the question of the propriety of the substitution of salaries for fees as a remuneration to officers of Courts of Justice, and having witnessed the operation of that change in some of the legal offices in England, I greatly fear that the adoption of the proposed measure in its full extent will not be beneficial.

There are, doubtless, many objections to the system of payment by fees. There is a strong inducement to the holder of the office to endeavour to multiply and augment them. If they at all depend upon the length of the procedure, the evil is still greater. The wonderful increase of wealth at home during the last half century, and its frequent transfer, the immense increase of population, led to a corresponding increase of litigation, and the income of many of such officers had become in some instances enormous, overgrown in almost all. These evils were doubtless great, and required a remedy, but the opposite mode of payment by salaries only is likely to lead to a careless and inefficient discharge of most important duties.

Payment by fixed amount of salary is undoubtedly right where there is necessarily a desire in the officer, either from ambition, hope of advancement, or the public nature of his duties, to devote his best energies and faculties to their discharge.

Salaries are also a proper mode of payment to clerks and subordinates who work under the eye and control of their principal; few men will labour without the stimulant of want or expectant advantage; duty cannot be looked to as a continuing motive; most of the important officers of Courts of Justice, Masters, Registrars, Taxers of Costs, have to discharge their main duties in private; they are usually fixed for life in their stations; little or no hope of advancement is open to them; under the system of salary, their remuneration continues the same, let the quantity of the work be what it will. At first, the call of duty, loud and clear, and the habits of the labouring lawyer prevail; by degrees the call becomes more faint and less distinct; the natural love of ease becomes gradually and imperceptibly more powerful. The assistance of the subordinate officer, who is or must be made equal in some degree to the task, is called in; he has many motives for exertion which are wanting to the principal; the importance he acquired in the office is an obvious instance; the public lose the benefit of the talents, learning and experience which they have a right to demand in the chief ministerial offices of the Courts of Justice; this is not imagination, it is reality. The servant must feel that he has an interest in the result of his service, or it will not be well performed; the value of counsel's opinion without a fee is proverbial; a higher class of men, more tenderly alive to their duties and anxious to discharge them, than that from which the Masters in Chancery in England are taken, is not to be found. I desire to make no particular or invidious statement, but it is a very general feeling that their duties have not been better discharged since the mode of remunerating them has been changed.

The check proposed by Lord Chancellor Brougham, that the Chief Clerk in each office should keep an account of the Master's daily attendance, is both degrading and inefficient; but it shows that there was a suspicion that payment by fixed salaries might lead to inattention. I must further observe, that in matters of Equity, unusual expedition, which cannot be provided for, is frequently most essential to the interest of the suitor; under the system of fixed salary he can expect no extra work. It seems to me that all such officers whose labour is mainly in the private chamber, and whose duties are important, should have some interest in their zealous and faithful discharge, and I do not see any other which can be thought sufficient and continuing except a pecuniary interest; this may be effected by paying such officers partly by fees and partly by salary, or per-centage upon the fees may be given in addition to the salary.

By the first, I mean that the larger part of the income should consist of uncertain fees, and by the second, that the salary should be nearly in amount what may be considered proper for the office, and the fees to be superadded. In any event, the amount of fees received by the officer should be annually laid before the Court to remedy any extravagant increase.

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The observations I have thought it right to make upon the payment of officers of Courts of Justice by salaries instead of fees, have in all probability already struck the Law Commissioners, who may think the objections to that method overbalanced by its advantages; but, fearing that the result will be otherwise, I have thought it right, at the risk, perhaps, of repeating what has already been considered, to open my views upon the subject.

2d. With regard to the suggestion of Mr. Amos, that the fees of the officers of all the Courts of Justice should be revised, I beg leave, with respect to those of this Presidency, to refer you to two letters on the subject; the first, a joint letter from the late Chief Justice Sir Robert Comyn and Sir Edward Gambier, dated the 21st May 1838, the other from Sir Robert Comyn alone, dated the 21st May 1839, both addressed to Lord Elphinstone, in reply to a communication from the Supreme Court at Calcutta, and also to the returns of the amount of such fees for the years 1829 and 1837, which accompany this letter. I believe that the receipts of those offices have subsequently undergone little alteration, but I have been informed that those of the Master and Registrar have rather diminished; however, we have not at present called for any returns of their fees subsequently to 1839.

Upon the returns sent herewith, it seems to me that the incomes of the two offices above mentioned are those to which alone any excess of payment can be attributed. In any reduction which may be made in the receipts of those offices, it seems to me that the fact of their having very laborious and most important duties to perform, requiring much professional learning and experience, and also that the persons filling them ought to be enabled to move in the sphere they have been accustomed to, should ever be borne in mind. The climate of India and the necessarily limited residence of Europeans in this country should not be forgotten. The other officers appear to me generally to be rather under than overpaid; in fact, several of them are necessarily held by practising barristers; an evil, in my opinion, as its tendency is to create a subserviency from the Bar to the Bench; but I fear that we are not likely to have means to remedy this.

Something may be done in the way of consolidating some of the offices, but we have not space to do much.

The Chief Justice having favoured me with a perusal of the draft of his answer to your communication, I think it right, with reference to the difference of opinion upon certain points between us, to observe,—

1. That I continue to think that it is not in the power or province of our Courts of Justice, by any general order, to alter any established rule or usage of law; and I consider the allowance of five per cent. commission to executors and administrators upon property which may devolve upon them in this country to be such an established rule.

It has not only been sanctioned by all the Courts in India, but by the most important tribunal and the greatest Judges at home.

I believe some such commission to be beneficial to those entrusted in the estates of deceased persons. It may at present be too large in amount, too extensive in its range. It might be proper to limit it to monies actually got in, and to exclude stock, and merely transferred or otherwise to qualify the allowance; but all this seems to me subject of legislation, and not of judicial power. If the power existed, I do not think it would be soundly exercised by allowing commission to the officer of the Court, and denying it to others, on whom the law has cast a prior right to clothe themselves with such office. It would be better at once to declare that the Registrar should be the sole administrator.

2. With regard to the opinion I expressed by the Chief Justice, that the tax now levied upon the suitors by means of fees for the maintenance of the officers of the Court is more than they can bear, I have to observe, that it is clear that a Court of Justice cannot be efficient without a proper establishment of officers. This establishment must be kept up by the suitors or the state, or both jointly. When all the inhabitants of a country are subject to one jurisdiction, and one system of laws, courts may be sustained by the claimant for justice without much pressure. Whether a tax upon them for that purpose is right or convenient, I am not called upon now to consider; but it is clear that if the limited extent of the objects of their jurisdiction is not inconsistent with the establishment of the Supreme Courts in India, and if it is desirable not only for administering justice to a limited community, but upon general policy, that they should exist, they must have the means of doing so. The head cannot act without the assistance of the body and members, and they should be proportionate to each other. The

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extent of the pressure must be in proportion to the expense of the establishment, and the greater or smaller number of suitors. Unless the salaries of the officers are too large, I do not see how the Court can, with justice, relieve the suitors at their expense. My experience is so very limited, that I scarcely like to venture an opinion on the extent of this pressure; but the inquiries and observations which I have made, do not lead me to the conclusion that it is very grievous. This pressure has been of long duration; I do not find that the business of the Court diminishes, or that there are any complaints from suitors. General complaints of the expense of law, and especially of English law, will always exist. One of the litigant parties must be a loser, and is sure to grumble.

If the pressure was very grievous, I think we shall find particular complaints. I am opposed to any general reduction, either of fees or costs; each particular case and item would require consideration.

With regard to costs, it is many years since the scale of costs was established. It may probably require revision; if it should appear to do so, and I should be called upon to revise it, I should be happy to lend all the assistance I can. Any particular evil should at once be remedied, but generally I rather look to the shortening of pleadings, and the simplifying practice and process, as the surest method of relieving the suitor.

To whatever conclusion you may come as to the proposed measure, I shall be always ready, in co-operation with my colleague, the Chief Justice, to do all in my power to carry it into effect.

I have, &c.

(signed) *John D. Norton.*

Legis. Cons. 23 Dec. 1842. No. 13.

MEMORANDUM of Returns made to the House of Commons by the Officers of the Supreme Court, January 12, 1829.

No.		Rs.	a.	p.
1.	The Sheriff's average annual income is	13,374	15	–
2.	The Deputy Sheriff	4,231	6	–
3.	The Coroner	4,704	–	–
4.	The Accountant-general	102	–	–
5.	The Master	75,398	10	–½
6.	The Clerk of the Crown	7,443	12	6
7.	The Deputy Clerk of the Crown	2,100	–	–
8.	The Registrar and Prothonotary	45,500	10	4½
9.	The Deputy ditto and ditto	6,300	–	–
10.	The Examiner	7,810	8	–
11.	The Sealer	3,656	1	6
12.	The Pauper Counsel	6,600	–	–
13.	The Pauper Attorney	3,000	–	–
14.	Clerk of the Justice,	4,403	–	–
15.	Clerk of Sir R. Comyn	4,403	–	–
16.	Clerk of Sir G. W. Ricketts	4,403	–	–
17.	The Malabar and Gentoo Interpreter	8,238	3	10
18.	The Canarese Interpreter	630	–	–
19.	The Persian and Hindoostanee	1,944	–	–
20.	The French Interpreter	14	–	–
21.	The Dutch Interpreter	578	4	4
22.	The Armenian Interpreter	2,173	–	–
23.	The Portuguese Interpreter	511	–	–
24.	The Mallialum and Mopulla Interpreter	1,800	–	–
25.	The Malay Interpreter	687	–	–
		1,60,066	8	1

LIST

List of Schedule of Emoluments made by the Officers of the Supreme and Insolvent Courts, in pursuance of a Letter received from Government, dated 14 February 1837.

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No.			
1.	The Schedule of the	Sheriff of Madras	11,475 – –
2.	Ditto	Deputy Sheriff of Madras	4,189 – –
3.	Ditto	Accountant-general	—
4.	Ditto	Master	42,203 – –
5.	Ditto	Clerk of the Crown	6,938 – –
6.	Ditto	Deputy Clerk of the Crown	2,507 – –
7.	Ditto	Registrar and Prothonotary	43,844 – –
8.	Ditto	Examiner	10,389 – –
9.	Ditto	Sealer	3,428 – –
10.	Ditto	Pauper Attorney	4,289 – –
11.	Ditto	Clerk to the Chief Justice	5,486 – –
12.	Ditto	Clerk to Sir Edward John Gambier	5,486 – –
13.	Ditto	Malabar and Gentoo Interpreter	6,520 – –
14.	Ditto	Deputy Malabar and Gentoo	1,260 – –
15.	Ditto	Persian and Hindoostanee	3,520 – –
16.	Ditto	Canarese Interpreter	630 – –
17.	Ditto	French Interpreter	292 – –
18.	Ditto	Dutch Interpreter	492 – –
19.	Ditto	Armenian Interpreter	1,349 – –
20.	Ditto	Portuguese Interpreter	599 – –
21.	Ditto	Mallialum and Mopully	1,127 – –
22.	Ditto	Malay Interpreter	630 – –
23.	Ditto	Chief Clerk of the Insolvent Court	6,047 – –
24.	Ditto	Common Assignee of the Insolvent Court	3,699 – –
25.	Ditto	Examiner of the Insolvent Court	2,308 – –
			1,68,737 – –

To the Honourable the President of the Council of India, and the Council of India.

Legis. Cons. 23 Dec. 1842. No. 15.

Honourable Sirs,

I REGRET that from bad health and the pressure of business during the late term, it was not in my power to send an earlier reply to your letter of the 5th of August, which the Judges of the Supreme Court at Bombay have had the honour to receive.

2. I have not yet seen the draft of the Act for settling the remuneration of officers of Her Majesty's Courts in India, and am thus unable to express any opinion as to the particulars of the proposed enactment. Regarding the principle of the measure, I concur in thinking it expedient that the officers of those courts should be remunerated by fixed salaries instead of by fees; but as the fees allowed to the officers of the court at Bombay are already as few and small as appears to be consistent with obtaining competent persons to fill the situations, it seems to me that the salary allowed to each officer should be fully equivalent to the average amount of fees received in respect of his office under the existing system.

3. These observations, I conceive, apply to the Ecclesiastical Registrar at Bombay, in his capacities as Registrar on the Ecclesiastical and Admiralty sides of the Court, and as Examiner on the Equity side. His services in those capacities might be recompensed by salaries instead of by fees. As Ex-officio Administrator and as Common Assignee, I think his remuneration should continue to be by commission, but that the rate of his commission should be greatly reduced.

4. The amount of security given by the Ecclesiastical Registrar at Bombay is very disproportionate to the property subject to his management or control. By the rules of the court and the strict superintendence of the Judges, he is, however, precluded from retaining any considerable balance in his hands. He is obliged to invest monies as they accrue in Government securities. Accounts of the estates are published periodically in the Government Gazette; and by an order made in December last, he furnishes to the Judges and to the Master in Equity (who taxes and passes his accounts) schedules showing what particular Government securities belong to the respective estates he administers. Thus, if

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duly careful, he may incur in substance but little risk, and I cannot see that his responsibility, or his giving the security above mentioned, can entitle him to commission, at the rate at present payable to him and to other administrators in India, and which appears to me to be exorbitant.

5. It might be severe, perhaps inequitable, to deprive the present Ecclesiastical Registrar at Bombay of that high rate of commission he understood he was to receive when he undertook the duties of Ex-officio Administrator Registrar on the Ecclesiastical and Admiralty sides, and common Assignee. I would suggest that compensation be given to him for whatever reduction may take place in the rate of his commission, such compensation to be made by two several salaries, one in respect of his office of Ex-officio Administrator, the other in respect of his situation as Common Assignee; each salary to be payable so long as he may hold the appointment in respect of which such salary is granted; no successor to the office having any claim to compensation.

6. The Honourable the President in Council suggests that the charge for administration of invested property (by which, I presume, is intended money invested in Government securities) be fixed at one per cent. where the amount is considerable, with an increasing rate for smaller sums, leaving five per cent. to be charged, as at present, on other descriptions of property. It appears to me, that no more than one per cent. commission should be allowed for administering invested property of whatever amount; to this might be added a trifling charge for what natives term "petty brokerage," if actually and properly incurred. On other descriptions of property, I think the commission should be not five per cent., as at present, but two or two-and-a-half, or at the utmost three per cent.; merchants here transact the like business at such rates, except where they act as administrators. If the rate of commission payable to the Ecclesiastical Registrar were reduced, the rate of commission granted to administrators in India generally might at once be put upon the same footing; a most valuable boon to the public.

7. The Accountant-general of the East India Company at Bombay is also Accountant-general of the Supreme Court at Bombay. For performing the duties of the last-mentioned office, he receives a salary of about 30 *Rs.* per month; but little difficulty or inconvenience arises from both offices being thus held by the same person, and some advantages may accrue from the arrangement.

8. The Interpreters of the Supreme Court at Bombay are already paid by salaries, and not by fees.

9. There is no such appointment as Ex-officio Receiver in the Supreme Court at Bombay.

I have, &c.

Poonah, 2 October 1842. (signed) *H. Roper.*

Legis. Cons. 23 Dec. 1845. No. 16.

The Honourable the President in Council, &c. &c. &c.

Honourable Sirs,

I HAVE to acknowledge the receipt of your letter of 5th August 1842, with its enclosures, relative to a proposed alteration in the system of paying the officers of the Supreme Courts.

2. In reply, I beg to state that I cordially concur in the proposition of his Honour the President in Council, as expressed in para. 5, of Mr. Halliday's letter, more especially with reference to the relief which it is contemplated the suitors of the Supreme Court may derive from it.

3. The chief evils likely to arise from the payment of judicial officers by fees appear to be two; first, the encouragement which such a system holds out to the needless multiplication of forms, and prolixity of procedure; and second, the disproportionate incomes thereby derived in proportion to the services rendered.

4. The latter of these objections, as relates to Bombay, may be disposed of in few words; for although the mere statement of an officer like an Ecclesiastical Registrar (who, as I have shown in a former paper, requires no special education or training) receiving in any one year nearly two lacs of rupees from his office, forcibly illustrates the evil arising out of the fee system to which I am alluding, yet it

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it will be seen, by a statement which I transcribe below,* that the officers of the Supreme Court here do not for the most part receive a larger income by fees than it would be probably found necessary to give by fixed salary, in order to secure competent services. I take the statement from the latest return on which I can at the moment lay my hand, and which will be found in the 28th volume; As. Journal, p. 62.

5. Except, therefore, so far as a saving may be effected by the consolidation of offices (and, I think, that to some extent this is practicable), I do not conceive that much reduction can be made on the total amount now paid to the officers of the court by the substitution of fixed salary for fees.

6. But with respect to the principal evil arising out of the fee system, namely, the unnecessary protraction of the suit, and consequent increase of expenditure to the client, I think great benefit may be anticipated from the substitution of fixed salaries. Under the present system, whenever a question arises on which it is necessary to obtain the decision of a Court of Justice, the interests of the suitor and the interests of those to whom he is paid to entrust the conduct of his cause, appear to run, for the most part, in opposite channels; the former, of course, desires to obtain the judgment of the court in as short a time and with as little expense as is compatible with bringing his case fully before the Judge; the interests of the latter, with the exception perhaps of counsel, to whom the reputation derivable from success supplies a different set of motives, will be found to consist in making the cause last for as long a period as the client can furnish money to keep the suit alive.

7. An example of the mode in which this operates may be taken from the common case of an account before the Master. At the termination of a partnership, for instance, one of the partners brings a suit for his share of the profits, and as a long investigation of accounts in such case is usually necessary, the difficulty, or rather impossibility, of taking these accounts in a public court of justice, has rendered the expense of such matters to the Master's office imperative. Now, in all such cases, under the system of remuneration by fees, the Master is paid so much an hour for each attendance before him; the attornies on each side are also paid so much an hour; every summons for witnesses issued by the Master entitle him to an additional fee; every oath administered, deposition taken, deed perused, bearing in each its fee respectively; and at every stage the claim of the attorney to fees proceeds *pari passu* at least.

8. It is by no means intended to suggest that the pecuniary motives which are thus obviously called into play to protect the account before the Master are allowed to operate directly on the minds of the officers of the court; and with reference to the gentlemen now filling the offices in question at this Presidency, I can safely assert that such motives would be repudiated and suspended by them whenever they should be made distinctly conscious of their presence. But it is needless to observe on the inexpediency of placing the interests and duty of individuals in opposition with each other; and I feel convinced that if they were made to coincide, a stimulus to the despatch of business, and a consequent diminution of expense to the client, would be the inevitable result.

8. The principle which has pervaded the formation of judicial establishments in England, appears to have been to make the support of each court derivable from and dependent on the suitors. From the first purchase of the writ to the fine demandable for his unsuccessful claim (*pro falso*), the litigant party could not take a step without a fee being due from him, and from those fees the Judges and ministerial officers of the court were subsisted. Fortunately, in these later times, it has been deemed expedient to make the income of the Judge independent of the litigants at his bar, and to withdraw the premium that formerly existed on delay and countless technicalities. The consequence has been, that the interest of the Judge at the present day (except, perhaps, so far as the love of ease may interfere) coincides entirely with that of the public. And it is impossible, I think, to avoid coming to the conclusion, so soon as one enters into an investigation of this subject, that all the reasoning which dictated the abolition of fees with respect to Judges, applies equally to their abolition in respect of the officers of the court. If the state has conceived it to be its duty to supply a Judge out of the general taxation of the country, it is difficult to understand why the Master, the

* Master in Equity, 16,983; Clerk of Small Causes, 20,617; Ecclesiastical Registrar, 27,495, Examiner, 2,603; Prothonotary Equity Registrar, 2,312.

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the Prothonotary and the Ecclesiastical Registrar, who may be all considered to form parts of the judicial office, are to be paid for by the suitors themselves.

9. But whether the examination of this latter topic be open or not to us on the reference you have made (for it does not appear that the total abolition of fees is in contemplation), I am decidedly of opinion that the mere substitution of payment to the officers of the court by fixed salaries instead of fees will be a great improvement. I beg to suggest, however, that the alteration in question be made by legislative enactment, as I think there would be great difficulty in carrying it into effect by rule of court, as is suggested in para. 6 of Mr. Halliday's letter. By the charter of justice for Bombay, the Judges are empowered, with the concurrence of the Governor in Council, and the approbation of Her Majesty, to vary the fees payable to the officers of the court; but such fees, I apprehend, when so settled, are claimable of right by the officers; "which fees," says the charter, "the said Sheriff, &c. &c., shall and may lawfully demand and receive."

10. On this subject, I would continue further to suggest, that the table of fees payable to attornies, and the salaries to the officers of the court, should be established on a uniform basis for the three Presidencies. The services to be performed at each are of the same kind, demand the same knowledge and station in life, and ought, I apprehend, to be remunerated at the same rate. At Calcutta there is probably more business than at Bombay; at Bombay than at Madras; but the amount of business at each will probably determine the number of competitors for it; and there seems to be no reason why a suitor seeking the assistance of the Supreme Court should not be enabled to do so on equally favourable terms at all the three Presidencies. The Supreme Courts, being perfectly distinct bodies, have no power of acting in common with one another, except so far as casual private friendship may facilitate a joint action from intercommunication of views; it is for this reason that I humbly conceive the best course would be for the Legislative Council to take into consideration the different fees payable at each Presidency, and to establish an uniform rate of remuneration for all the officers of the courts.

11. With reference to para. 11 of Mr. Halliday's letter, I may perhaps be permitted to observe (though it is rather immaterial) that my opinion as to the propriety of paying the Ecclesiastical Registrar by fees has been somewhat misconceived. I think that such mode of payment engenders one of the evils I have pointed out above; viz., the giving a much larger income to the occupant of the office than the services rendered call for. The mode of remuneration I ventured to recommend was so much fixed salary as would induce a competent person to accept the office, and such small per-centage in addition as would ensure his activity and zeal whilst he continued to hold the office.

I have, &c.

Bombay, 5 October 1842. (signed) *E. Perry.*

Legis. Cons. 23 December 1842. No 17. *Officers and Fees, Supreme Courts.*

MINUTE by the Honourable *A. Amos*, dated 26 October 1842.

I SHALL be happy, if the Council think it expedient, to draw up a succinct statement of the result of the reference upon this subject, and to state what may appear to me to be the most material points for consideration.

It will not fail to occur to the Council, that the greatest benefits are likely to be accomplished, not only without collision with the Judges of any one of the three Supreme Courts, but that we shall derive every assistance from these courts in accomplishing the measures we may adopt.

26 October 1842. (signed) *A. Amos.*

Legis. Cons. 23 December 1842. No. 18.

MINUTE by the Honourable *A. Amos*, dated 4 December 1842.

IN answer to our letter upon the subject of the fees and salaries of the officers of the Supreme Courts, the Calcutta Judges reply, that it would be extremely inconvenient to revert to the former mode of payment by means of fees instead of salaries; they say that the propriety of remunerating the Registrar by a commission instead of salary "is no longer questioned."

With regard to the extent of commission charged by the Registrar, the Calcutta Judges say, that it can only be altered legislatively, and that the objections

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tions to its amount apply equally to agency commission upon intestate and even testate estates. But the Judges propose, on the next vacancy of the office of Registrar, to reduce the commission generally from five per cent. to three-and-a-half per cent., and on recurring receipts, except as regards rents of houses and buildings, to two-and-a-half per cent.; as the Judges think that such a reduction would place the emoluments of the office too low, they propose to give a salary of 10,000 Co.'s Rs. in respect of the two officers of Equity and Admiralty Registrar.

The Judges propose a scheme of officers and salaries which, on the whole, will be a saving of 21,600 rupees in the salaries payable by Government, besides the saving to the public by the reduced commission of the Registrar.

The Judges notice that some outstanding salaries, which were continued only during the tenure of office by individuals, have fallen in, or are about to do so, and that these amount to 29,000 rupees, making, with 21,600 rupees, an annual surplus of 56,600. The Judges wish to reduce this surplus, together with the surplus now accruing to the fee fund (and which has yielded Government a lac in five years), should be reduced to 5,000 Company's rupees annually by way of a guarantee fund, and that the rest should go towards diminishing charges on suitors.

The Bombay Judges have given separate answers. Sir H. Roper observes, that he thinks the officers of the Supreme Court at Bombay should be paid by salaries instead of fees. They are now paid by fees; he thinks that a salary, according to the average of fees now received, would be a proper remuneration for their services.

He thinks that the Ex-officio Administrator and Common Assignee should continue to be paid by fees, but that the commission should be "greatly reduced." He thinks that the commission paid to administrators in India is exorbitant. He considers that no greater commission than one per cent. should be allowed for administering invested property of whatever amount; but he thinks that what natives call "petty brokerage" might be added, if actually earned on other descriptions of property; he would have the commission two-and-a-half per cent., or at the utmost three per cent.

Sir E. Perry cordially concurs in the views of the President in Council; he shows with great ability the advantages of paying by salaries instead of fees, except in the case of the Official Administrator, whom he would pay in part by commission. He thinks that at Bombay a pecuniary saving might be made by the consolidation of offices, but that the salaries must be about as large as the present amount of fees, and he gives a list of the average fees of the different offices. He recommends that a uniform table of fees for the three Presidencies be made; he would have the salaries also uniform for the three Presidencies.

The Madras Judges also send separate answers. Sir E. Gambier recommends that administrators, whether official or otherwise, should not be allowed their present commission, and that executors should not be allowed any commission. Indeed, I collect that he would not allow commission to administrators, except the Official Administrator. He thinks that the emoluments received by the officers of the court are too high, and should be reduced; and he shows that he has himself framed a reduced scale of fees. He expresses doubts as to the expediency of compensating by salaries instead of fees.

Sir J. Norton inclines against the substitution of salaries for fees. He appears to think that the Master and Registrar are overpaid, but that the other officers are underpaid. He thinks that some saving may be made by means of consolidating offices. He thinks that if the Officiating Administrator is to receive commission, the other administrators should receive it also. He thinks the fees of court at present are not too high, and is opposed to any general reduction of fees or costs.

Upon a review of these opinions and of our previous inquiries and discussions, I think,—

1. That commission on the administration of intestates' effects, whether of the official or common administration, should be reduced, and that a distinction may be made between vested and uninvested effects, and, perhaps, between houses and other vested property, or with reference to the amount of assets obtained; and that the commission now received in India by executors should be reduced in like manner or, perhaps, altogether prohibited.

2. That we should adopt the proposed consolidation of offices and reductions of salary which the Judges of the Calcutta Court have recommended, as far as

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regards that court, subject to such further modifications as may hereafter appear necessary, especially if an uniform scale of salaries and fees be adopted for the three Presidencies; no new officer should be appointed to the Calcutta Court under expectations of the continuance of the present salaries. As it is a great object in India not to defer immediate advantage for the prospect of remote arrangement, I think that the scheme of the Calcutta Judges should be adopted for that court provisionally, but immediately.

3. The ex-officio Administrator at each Presidency should continue to be paid in part by administration; the other officers at Madras and Bombay should be paid by salaries, and not by fees.

4. The salaries of the Bombay officers, other than the Registrar and Master, should for the present (subject to the inquiries hereafter indicated) be taken as a scale proportionate to their average fees. The salaries of Madras Registrar and Master may, for the present, be kept at a medium between those of the corresponding offices at Calcutta and Bombay.

5. The Law Commission should be required to prepare a scale of fees for the Supreme Courts of the three Presidencies, with as much regard to uniformity as the circumstances may permit, and to report on the amount of salaries which should be paid, having regard only to the duties of the respective offices, and on the consolidation of offices, which may be conveniently effected, preserving as much uniformity as may be practicable.

6. It may suggest some modifications of the third and fourth heads, and expedite the inquiry under the fifth, if we write to Madras and Bombay to inquire what consolidation of offices the Judges would recommend, they having intimated that such consolidation may be expedient. The Bombay Judges have told us, as have the Calcutta Judges, what salaries their officers ought to receive, except that the Bombay answer is subject to the question of consolidation. The Madras Judges seem to agree that their Registrar and Master are paid too high, but differ as to the other officers. I think they should be asked what salaries they would assign for all their officers after their proposed consolidations are made, and considering that salary payments are to be substituted for the present at that Presidency; and they should be told that their calculation is expected solely with reference to the duties and responsibilities of the offices, as if they were now to be established for the first time.

The only material practical difficulty which I see in the way of any of the above arrangements is, that of reducing the fees of the Registrars during the present encumbrances. The same difficulty, indeed, occurs with regard to all the offices; but it is here alone that the amount of fees is a great public grievance, and connected with the general subject of allowing five per cent. to all administrators and executors also. There is an awkwardness in stating, at least in a public Act, that this important measure is to be deferred till the Registrars at the Presidencies vacate their offices; and yet we are, perhaps, not prepared, out of any fee fund or otherwise, to pay an Ecclesiastical Registrar what they would lose by our reductions.

(signed) *A. Amos.*

4 December 1842.

(No. 325.)

Legis. Cons. 23 December 1842. No. 19.

From *F. J. Halliday*, Esq., Secretary to the Government of Bengal, to *T. H. Maddock*, Esq., Secretary to the Government of India, dated 23 December 1842.

Sir,

With reference to my letter, No. 95, dated the 13th May, and Mr. Junior Secretary Mansell's reply, No. 29, of 20th July last, by which it was determined that the Judges of the Supreme Courts at all the three Presidencies should be consulted on the subject of a proposed revision in the fees and salaries of Her Majesty's officers in the Courts of Judicature, and that having been done, I am now directed by the Honourable the President in Council to transmit to you, for submission to the Right honourable the Governor-general of India, the accompanying

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panying papers noted below,* being the result of the communication with the Judges of the Supreme Courts of the three Presidencies.

2. His Lordship will perceive that the Calcutta Judges reply that it would be extremely inconvenient to revert to the former mode of payment by means of fees instead of salaries; they say that the propriety of remunerating the Registrar by a commission instead of salary is no longer questioned.

3. With regard to the extent of commission charged by the Registrar, the Calcutta Judges say that it can only be altered legislatively, and that the objections to its amount apply equally to agency commission upon intestate and even testate estates. But the Judges propose on the next vacancy of the office of Registrar to reduce the commission generally from 5 per cent. to $3\frac{1}{2}$ per cent., and on recurring receipts, except as regards rents of houses and buildings, to $2\frac{1}{2}$ per cent. As the Judges think that such a reduction would place the emoluments of the office too low, they propose to give a salary of 10,000 Co.'s Rs. in respect of the two offices of Equity and Admiralty Registrar.

4. The Judges proposed a scheme of officers and salaries which on the whole will be a saving of 21,600 rupees in the salaries payable by Government, besides the saving to the public by the reduced commission of the Registrar.

5. The Judges notice that some outstanding salaries, which were continued only during the tenure of office by individuals, have fallen in, or are about to do so, and that these amount to 29,000 Rs., making, with 21,600 Rs., an annual surplus of 56,600 Rs. The Judges wish to reduce this surplus, together with the surplus now accruing to the fee fund (and which has yielded Government a lac in five years), which should be reduced to 5,000 Co.'s Rs. annually, by way of a guarantee fund, and that the rest should go towards diminishing charges on suitors.

6. The Bombay Judges have given separate answers. Sir H. Roper observes that he thinks the officers of the Supreme Court at Bombay should be paid by salaries instead of fees. They are now paid by fees; he thinks that a salary, according to the average of fees, now received, would be a proper remuneration for their services.

7. He thinks that the Ex-officio Administrator and Common Assignee should continue to be paid by fees, but that the commission should be "greatly reduced." He thinks that the commission paid to administrators in India is "exorbitant." He considers no greater commission than one per cent. should be allowed for administering invested property, of whatever amount; but he thinks that what natives call "petty brokerage" might be added if actually earned. On other descriptions of property he would have the commission $2\frac{1}{2}$ per cent., or at the utmost three per cent.

8. Sir E. Perry cordially concurs in the views of the President in Council; he shows with great ability the advantage of paying by salaries instead of fees, except in the case of the Official Administrator, whom he would pay in fact by commission. He thinks that at Bombay a pecuniary saving might be made by the consolidation of offices, but that the salaries must be about as large as the present amount of fees, and he gives a list of the average fees of the different offices. He recommends that a uniform table of fees for the three Presidencies be made; he would have the salaries also uniform for the three Presidencies.

9. The Madras Judges also send separate answers. Sir E. Gambier recommends that administrators, whether official or otherwise, should not be allowed their present commission, and that executors should not be allowed any commission. Indeed, it is collected that he would not allow commission to administrators, except the Official Administrator. He thinks that the emoluments received by the officers of the Court are too high and should be reduced, and he observes that he has himself framed a reduced scale of fees. He expresses doubts as to the expediency of compensating by salaries instead of fees.

10. Sir

* Letter from the Honourable the Judges of the Supreme Court at Calcutta; dated 4th September 1842.
From the Chief Justice at Madras; dated 17th September 1842.
From the Puisne Justice at Madras; dated 23d September; with enclosures.
From the Chief Justice at Bombay; dated 2d October 1842.
From the Puisne Justice at Bombay; dated 5th October 1842.
Minutes by the Honourable A. Amos; dated 19th September, 26th October, and 4th December 1842.

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10. Sir J. Norton inclines against the substitution of salaries for fees. He appears to think that the Master and Registrar are overpaid, but that the other officers are underpaid. He thinks that some saving may be made by means of consolidating offices. He thinks that if the Official Administrator is to receive commission, the other administrators should receive it also. He thinks the fees of Court at present are not too high, and is opposed to any general reduction of fees or costs.

11. The Honourable the President in Council is desirous of consulting with the Governor-general before taking any further measures consequent on these communications, and for that reason copies of the papers are now transmitted. His Honour in Council would, however, suggest for his Lordship's consideration,—

1. That commission on the administration of intestate effects, whether by the official or common Administrators, should be reduced, and that a distinction may be made between vested and uninvested effects, and perhaps, between houses and other vested property, or with reference to the amount of assets obtained; and that the commission now received in India by executors should be reduced in like manner, or perhaps altogether prohibited.

2. That the Government should adopt the proposed consolidations of offices and reductions of salary which the Judges of the Calcutta Court have recommended as far as regards that Court, subject to such further modifications as may hereafter appear necessary, especially upon the adoption of an uniform scale of salaries and fees for the three Presidencies. No new officer should be appointed to the Calcutta Court under expectations of the continuance of the present salaries. As it is a great object in India not to defer immediate advantages for the prospect of remote arrangements, his Honour in Council thinks that the scheme of the Calcutta Judges should be adopted for that court provisionally, but immediately.

3. The Ex-officio Administrator at each Presidency should continue to be paid in part by commission. The other officers at Madras and Bombay should be paid by salaries, and not by fees.

4. The salaries of the Bombay officers and of the Madras officers, other than the Registrar and Master, should for the present (subject to the inquiries hereafter indicated) be taken on a scale proportionate to their average fees. The emoluments of Madras Registrar and Master may, for the present, be kept at a medium between those of the corresponding offices at Calcutta and Bombay.

5. The Law Commissioners should, in the opinion of the President in Council, be required to prepare a scale of fees for the Supreme Courts of the three Presidencies, with as much regard to uniformity as the circumstances may permit, and to report on the amount of salaries which should be paid, having regard only to the duties of the respective offices, and on the consolidation of offices which may be conveniently effected, preserving as much uniformity as may be practicable.

6. It may suggest some modification of the third and fourth heads, and expedite the inquiry under the fifth, if the Government wrote to Madras and Bombay to inquire what consolidation of offices the Judges would recommend, they having intimated that such consolidations may be expedient. The Bombay Judges have told the Supreme Government, as have the Calcutta Judges, what salaries their officers ought to receive, except that the Bombay answer is subject to the question of consolidation. The Madras Judges seem to agree that their Registrar and Master are paid too high, but to differ as to the other officers; the President in Council thinks they should be asked what salaries they would assign for all their officers after their proposed consolidations are made, and considering that salary payments are to be substituted for the present system at that Presidency; and they should be told that their calculation is expected solely with reference to the duties and responsibilities of the offices, as if they were now to be established for the first time.

I have, &c.

Council Chamber,
23 Dec. 1842.

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

EXTRACT

EXTRACT from a Legislative Despatch to the Honourable Court of Directors, No. 6, dated 17 March 1843.

Supreme Courts; Fees and Salaries of Officers of the Courts at all the Presidencies.
Jud. Cons. 21 March 1842. Nos. 8 & 9.
Legis. Cons. 13 May 1842. Nos. 5 & 15. 5 Aug. 1842. Nos. 3 & 4. 23 December 1842. Nos. 9 & 19.

Para. 82. AT the instance of the Right Hono rable the Governor-general, the question of revising the fees and salaries of the officers of Her Majesty's Courts at the several Presidencies was again entered into, and statements were called for from the offices of the account of fees paid into the General Treasury at Calcutta by the officers of the Supreme Court at this Presidency, and of the salaries paid to those officers under the new system introduced in 1837.

83. These statements having been received, our colleague, Mr. Amos, with his Minute, dated the 13th April 1842, laid before us the draft of an Act for settling the remuneration of the officers of Her Majesty's Courts of India. Mr. Amos was of opinion that the system of paying the Ecclesiastical Registrar by fees was expedient for the public interests; and this opinion was held also by Sir Erskine Perry, whose note on the same subject accompanies this despatch. The Government of India, when it resolved, in 1836, upon altering the system of remunerating the officers of the court, had intended to include the Ecclesiastical Registrar, and thus to abolish all fees; but this intention was given up, as respected the Ecclesiastical Registrar, upon the reasons urged by the Judges in their letter dated 15 April 1836; they were, however, apprised that the rate of commission drawn by the Registrar would be subject to pension on the occurrence of a vacancy.

84. After careful reconsideration of the question, we were of opinion that the Ecclesiastical Registrar should continue to be remunerated by fees, but that a reduction should be made in the rate charged for administering invested property. This we thought might be fixed at one per cent. when the amount was considerable, with an increasing rate for smaller sums, leaving five per cent. to be charged, as at present, on other descriptions of property.

85. Mr. Amos was of opinion that the fees and salaries of officers in Her Majesty's courts at all the Presidencies should be revised. He believed the salaries of the officers in the court, as fixed by the arrangements, to be very high, and he suggested that while engaged on the question of reducing the fees of the Ecclesiastical Registrar, the Government should also revise the salaries of all the paid officers of the court. In this we fully agreed, and as at the other Presidencies the officers were still remunerated by fees, we proposed to press an alteration in this system, so as to make it correspond with the system in Calcutta. At all events we considered if an entire change of system should not upon good grounds appear everywhere desirable, the suitors might, as far as possible, be relieved by a reduction in the rate of fees.

86. We communicated the foregoing remarks to the Right honourable the Governor-general, and with his Lordship's concurrence, we consulted the Judges of the Supreme Court at Calcutta, Madras and Bombay, requesting to be favoured with their sentiments upon the principle of the measure proposed, or the best mode of carrying it into effect; we thought it best to defer the consideration of the Act proposed by Mr. Amos until the result of this communication could be ascertained; for we expected the willing co-operation of the Judges, and the matters to be adjusted could be effectually provided for by rules of court, without the necessity of a legislative Act.

87. The replies which we have received from the Judges to our communication are to the following effect:—

88. The Calcutta Judges stated that it would be inconvenient to revert to the former mode of payment by means of fees instead of salaries; they said that the propriety of remunerating the Registrar by a commission instead of salary was "no longer questioned."

89. With regard to the extent of commission charged by the Registrar, the Calcutta Judges stated that it could only be altered legislatively, and that the objections to its amount applied equally to agency commission on intestate and even testate estates. But the Judges proposed on the next vacancy of the office of Registrar to reduce the commission generally from five per cent. to three-and-a-half per cent., and on recurring receipts, except as regards rents of houses and

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buildings, to two-and-a-half per cent. As the Judges thought that such a reduction would place the emoluments of the office too low, they proposed to give a salary of 10,000 Company's rupees in respect of the two offices of Equity and Admiralty Registrar.

90. The Judges proposed a scheme of officers and salaries, which on the whole showed a saving of 21,600 rupees in the salaries payable by Government, besides the saving to the public by the reduced commission of the Registrar.

91. The Judges noticed that some outstanding salaries, which were continued only during the tenure of office by individuals, had fallen in, or were about to do so, and that these amounted to 29,000 rupees, making, with 21,600 rupees, an annual surplus of 56,600 rupees. The Judges wished to reduce this surplus, and that the surplus now accruing to the fee fund (and which has yielded Government a lac in five years) should be reduced to 5,000 Company's rupees annually, by way of a guarantee fund, and that the rest should go towards diminishing charges on suitors.

92. The Bombay Judges gave separate answers. Sir H. Roper observed, that he thought the officers of the Supreme Court at Bombay should be paid by salaries instead of fees. They are now paid by fees; he thought that a salary, according to the average of fees now received, would be a proper remuneration for their salaries.

93. He further remarked, that the Ex-officio Administrator and Common Assignee should continue to be paid by fees, but that the commission should be "greatly reduced." He thought the commission paid to Administrators in India to be "exorbitant." He considered that no greater commission than one per cent. should be allowed for administering invested property, of whatever amount. But he suggested that what natives call "petty brokerage" might be added, if actually earned. On other descriptions of property, he would have the commission two-and-a-half per cent., or at the utmost three per cent.

94. Sir E. Perry cordially concurred in our views; he showed with great ability the advantages of paying by salaries instead of fees in the case of the Official Administrator, whom he would pay in fact by commission. He thought that at Bombay a pecuniary saving might be made by the consolidation of offices, but that the salaries must be about as large as the present amount of fees, and he gave a list of the average fees of different offices. He recommended that an uniform table of fees for the three Presidencies should be made, and that the salaries also should be uniform for the three Presidencies.

95. The Madras Judges also sent separate answers. Sir E. Gambier recommended that administrators, whether official or otherwise, should not be allowed their present commission, and that executors should not be allowed any commission. Indeed, we collected that he would not allow commission to administrators, except the Official Administrator. He was of opinion that the emoluments received by the officers of the court were too high and should be reduced, and he observed that he had himself framed a reduced scale of fees. He expressed doubts as to the expediency of compensating by salaries instead of fees.

96. Sir J. Norton inclined against the substitution of salaries for fees. He appeared to think that the Master and Registrar were overpaid, but that the other officers were underpaid. He apprehended that some saving might be made by means of consolidating offices, but he thought that if the Official Administrator was to receive a commission, the other administrators should receive it also. He was of opinion that the fees of Court were not too high, and he was opposed to any reduction of fees or costs.

97. We were desirous of consulting with the Governor-general before taking any further measures consequent on these communications, and for that reason, we forwarded copies of the paper to his Lordship. We have, however, suggested the following points for his Lordship's consideration.

EXTRACT

EXTRACT from a Legislative Despatch from the Honourable the Court of Directors, No. 24, dated 6 December 1843.

Nos. 82 and 97. Remuneration of Officers of Her Majesty's Courts at the three Presidencies.

Para. 16. WE shall be glad to learn that the consideration which this subject has received, and the communications regarding it which you have held with the Judges of the Supreme Court at the several Presidencies, have terminated in arrangements tending to diminish the charges for the officers of those Courts upon the Government and the community.

(No. 1479.)

From the Civil Auditor to the Officiating Secretary to the Government of India, Legislative Department, Fort William, dated 1 November 1842.

Jud. Cons. 11 November 1842. No. 12.

Sir,

I HAVE the honour to submit copy of a letter from the Master, Accountant-general and Examiner, Supreme Court, dated 16th ult., with a certificate of the cost of his establishment, amounting to 665 Rs. per mensem, and beg to recommend that as there is a monthly saving of 102 Rs., the arrangement made by Mr. Grant may be sanctioned by Government.

I have, &c.

(signed) *C. Trower*,
Civil Auditor.

Fort William, Civil Auditor's Office,
1 November 1842.

From *W. P. Grant*, Esq., Master, Accountant-general and Examiner, Supreme Court, to *C. Trower*, Esq., Civil Auditor; dated the 6th October 1842.

Sir,

ACCORDING to your desire, I have made out separate certificates for the cost of the establishments in my offices, as, 1. Master and Accountant-general, and, 2. Examiner of the Supreme Court.

I have, in reference to my letter to you of the 1st inst., to request that you will obtain the sanction of Government to keeping the accounts of both establishments under one head in future. The writers are now, under the arrangement sanctioned by the Judges, employed in the different departments as required, instead of being kept to the duties of one office, as was necessarily the case when the offices were held by different individuals; yet the salaries of two writers are now charged wholly to the Examiner's office, while they are employed in the duties of all the offices held by me.

I have been obliged to include in the certificate the Examiner's office, otherwise I should appear to have made an increase in the cost of the other offices, while in reality I have decreased the expense to Government of the whole establishment under me.

I have, &c.

(signed) *W. P. Grant*,
Master, Accountant-general and Examiner,
Supreme Court.

Calcutta, Court-house,
6 October 1842.

CERTIFICATES of Monthly Salaries to Clerks and Writers in the Master's and Accountant-general's Offices.

SUPREME COURT.

I, W. P. Grant, Master and Accountant-general of the Supreme Court, do hereby solemnly declare and certify, that the sum of 665 Co.'s Rs. is the amount required for the payment of the salaries and wages of the Clerks and Writers in my

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my said office for the month of last, according to the list under mentioned; (that is to say)

Names.	Co.'s Rs.	Amount.
Hurromohun Dutt	250	
J. R. Douglass	100	
Faraneysunkur Roy	100	
Bhovaneychurn Bose	50	
Bullychund Dutt	35	
Hurradhone Dutt	35	
Nubboogopaul Dutt	25	
Hurrochunder Mitter	22	
Takoo Doss Mookerjee	9	
Cummullochun Pundit	7	
Takoor Doss Duftery	7	
Hurruck Sing Harcanali	7	
Gocool Farash	6	
Soodhone Bearer	5	
Bolukee Bearer	5	
Sweeper	1	
Durwan	1	
Total	*Co.'s Rs.*	665

(signed) *W. P. Grant*,
Master and Accountant-general,
Supreme Court.

Calcutta, Supreme Court,
Master's Office.

(True copies.)
(signed) *C. Turner*,
Civil Auditor.

(No. 118.)

Jud. Cons.
11 November 1842.
No. 13.

From *F. J. Halliday*, Esq., Secretary to the Government of India, to *C. Trower*, Esq., Civil Auditor; dated 11 November 1842.

Sir,

Jud. Department.

I am directed to acknowledge the receipt of your letter, No. 1,479, dated the 1st inst., with its enclosures, and to convey the sanction of the Honourable the President in Council to the arrangement proposed by the Master and Accountant-general of Her Majesty's Supreme Court, as regards the future establishment of his offices, by which a saving of 102 Rs. per mensem will be effected.

I have, &c.

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

Council Chamber,
11 November 1842.

Reduction in the Establishment of the Master and Accountant-general of the Court.
Jud. Cons.
11 November 1842.
Nos. 12 & 13.

Extract from a Legislative Despatch to Court of Directors, No. 3, dated 5 May 1843.

Para. 42. We sanctioned an arrangement made by the Master and Accountant-general of the Supreme Court at Calcutta, as regards the future establishment of his offices, by which a saving of 102 Rs. per mensem has been effected.

From

From *T. E. M. Turton*, Esq., Registrar of the Supreme Court, Calcutta, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, Judicial Department; dated 9 February 1843.

Jud. Cons. 17 February 1843. No. 24.

Sir,

I AM directed to acquaint you, for the information of Government, that in consequence of the death of Mr. Richard Vaughan, late Taxing Officer, Keeper of the Records, Receiver and Chief Clerk of the Insolvent Court, Her Majesty's Judges of the Supreme Court have been pleased, as a temporary arrangement, to appoint Robert O. Dowda, Esq., by order of the 2d inst., to hold the offices lately held by Mr. Vaughan, on which day Mr. O. Dowda took charge of such offices accordingly.

I am, &c.

(signed) *T. E. M. Turton*,
Registrar.

Calcutta, Registrar's Office,
9 February 1843.

From *F. J. Halliday*, Esq., Secretary to the Government of India, No. 7, to Officiating Civil Auditor, and No. 8, Officiating Sub-treasurer; dated 17 February 1843.

Jud. Cons. 17 February 1843. No. 25.

Sir,

I AM directed by the Honourable the President in Council to transmit to you, for your information and guidance, the accompanying copy of a letter from the Registrar, Supreme Court, dated the 9th instant, reporting arrangements made by Her Majesty's Judges of the Supreme Court, in the room of Mr. R. Vaughan, deceased.

Law Department.

I have, &c.

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

Council Chamber,
17 February 1843.

EXTRACT from a Legislative Despatch to Court of Directors, No. 0, dated 2 September 1843.

Mr. R. O. Dowda appointed as Taxing Officer, &c. of the Supreme Court at Calcutta, on the death of Mr. R. Vaughan.
Jud. Cons. 17 February 1843. Nos. 24 & 25.

Para. 43. ON the demise of Mr. Vaughan, late Taxing Officer, Keeper of Records, Receiver and Chief Clerk of the Insolvent Court, Her Majesty's Judges of the Supreme Court at Calcutta appointed Mr. R. O. Dowda to those offices as a temporary arrangement. The permanent arrangement, since made, will be reported from the Legislative Department.

(No. 5, of 1843.)

From the Junior Secretary to the Government of India with the Governor-general to *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, Legislative Department; dated Camp, Soonam, the 14th January 1843.

Jud. Cons. 17 February 1843. No. 1.

Sir,

THE Governor-general is of opinion that the Supreme Government should, after hearing the Judges, proceed, as the Government of England would in a similar case, to decide for itself, and to effect by its own legislative power whatever it may deem most advisable for the public.

Leg. Department.

2. The Governor-general, who, more than 13 years ago, first pressed this matter, as President of the Board of Control, upon the consideration of the Government of India, is most desirous that it should be at length satisfactorily settled; and he can only consider it so settled, if the result should be the obtaining for the suitors in the Queen's Court of Justice in Calcutta whatever may be absolutely required for the due administration of justice in that court at the smallest possible cost to the people of India, which has so very remote and minute an interest therein.

3. The Governor-general must impress upon the members of the Supreme

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On Fees and Salaries of the Officers of the Supreme Courts.

Government that the remuneration attached to the ministerial offices in the Court of Justice ought not to be so far beyond that for which competent persons can be found to perform the duties thereof, as to make the right of appointment to those offices an article of valuable patronage to the Judges.

4. The Judges are sufficiently remunerated by their fixed salaries, and it never was intended by Parliament that they should be further in practice remunerated by the value of the patronage at their disposal.

5. That faulty principle was permitted to grow up in England, and was there avowedly acted upon by Parliament, a smaller salary having been given to a Judge in consideration of the value of the patronage at his disposal for the benefit of his family or his friends; but in late years it has been repudiated; it is no longer acted upon, and it never was established in India.

6. The Governor-general cannot acquiesce in the opinion, that the remuneration to be given to the highest ministerial officers in the Queen's Court in Calcutta should be as high as that given to any officers of the Government of India under the Members of Council.

7. The Governor-general knowing under what circumstances barristers come out to India, can have no apprehension that even much diminished emoluments would fail to engage competent men in the service of the Queen's Courts. The highest ministerial offices in these courts may require the possession by their holders of qualities, perhaps, of a peculiar nature, but certainly not of the highest order; and it appears to the Governor-general to be contrary to reason and propriety that the persons charged with the performance of such inferior duties at the very place at which they land in India, in the midst of all the conveniences attached to a residence in a great maritime commercial city, should receive emoluments equal to those which, after a life of labour and hardship in the Mofussil, may become the reward of those who fill the most important offices in the internal administration of an empire, or preserve that empire by their arms.

8. The Governor-general cannot doubt that a perfectly competent Master may be obtained for 40,000 instead of 48,000 rupees, and a perfectly competent Registrar for the same sum, instead of 52,000 rupees; and, by insisting on these further reductions, the Government will effect a further prospective saving of 20,000 rupees a year.

9. Indeed the Governor-general cannot but feel that even in thus, and no further, reducing the emoluments of the persons who may hereafter hold those offices, he may be too much influenced by the recollection of their present and past receipts, and not sufficiently by the consideration which, the President in Council justly observed, should alone govern the decision to be taken, namely, that of the sum for which the services of a competent officer can be obtained. To leave emoluments of undue amount attached to those offices tenable by barristers, would involve this further evil, that barristers practising in the court, having before them the prospect of being appointed to offices, which, their emoluments, and the certainty of those emoluments, being considered, might be desirable even to gentlemen in the possession of full business, might be led to abate somewhat of that spirit of independence which, accompanied, as it should be, by a proper respect for the court, forms the characteristic of an English barrister, and tends so much to maintain the purity of the administration of justice, and to secure the confidence of the public therein.

10. With respect to the subordinate offices in courts of justice, they are not in England held by barristers, nor is there the least reason why they should be in India.

11. The Governor-general entirely agrees with those who think that the commission upon administration of intestate property should be much reduced. The present per-centage is extravagant, and should be reduced to two per cent., with this exception, that the per-centage upon the administration of funded property should not exceed one per cent., for it gives no trouble.

12. The Governor-general doubts whether it would be expedient to take away altogether the per-centage now received by executors. In India the executor can rarely be a relative of the deceased person, frequently not even a very intimate friend; further, in India every man has some employment; and whatever he does as executor must be in the rare and short intervals of his own business. There would be a danger of executors renouncing executorship if there were no emoluments attached to the duty, and the Governor-general would not object to allowing executors a per-centage of one per cent.

13. The

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13. The Governor-general recollects having brought to the notice of the Judges of the Queen's Court at Calcutta, 13 years ago, the impropriety of the custom which then prevailed of employing practising barristers as Clerks to the Judges before whom they practised. It is impossible that such a custom, involving much of private intercourse between the Judge and a practising barrister, can be known to exist, without giving to such barrister the undue advantage, inconsistent with the character of the court, of being supposed by the suitors to have a peculiar influence with the Judge. The duties of a Judge's Clerk cannot be such as to make it necessary that the office should be held by a barrister. It is not expedient that the office should be held by any one in any manner connected with the conduct of suits before the court. In this country, as much as in England, it is necessary to do what is right; and in this country, much more than in England, t is necessary, in doing right, to avoid all appearance and all possibility of the suspicion of doing wrong; and the Governor-general hopes that in any legislative measure which may be introduced, the members of Council will provide against the continuance of the custom, if it should still exist, to which he has now adverted.

14. Whether officers in courts of justice should generally be remunerated by salaries or by fees, is so much a settled question, that the Governor-general does not think it desirable to re-open it, whatever may be his opinion upon the subject; but with respect to the amount of fees on proceedings in the Queen's Court, the Governor-general cannot but think that, as far as possible, those courts in which the great body of the people of India is so very little interested, should be made to provide for their own charges out of their own fee funds, and not be made a heavy burthen upon the revenue of the state.

15. With these observations the Governor-general feels that he may safely leave the further proceedings in this matter to the President in Council, with whom he has the good fortune generally to coincide in opinion; and he only desires that no unavoidable delay may take place in the effecting of a final settlement, and that in the meantime it may be distinctly intimated that every officer taking office in one of the Queen's Courts, at any one of the Presidencies, must take it subject to whatever alterations in the mode and amount of his remuneration which the Government may hereafter think fit to prescribe.

I have, &c.
(signed) *C. G. Mansel*,
Deputy Secretary to the Government of India,
with the Governor-general.

Camp, Soonam,
14 January 1842.

From the Government of India to the Honourable the Judges of the Supreme Courts at Fort William, Fort St. George and Bombay.

Jud. Cons. 17 February 1843. No. 2. Bengal, No. 12. Fort St. George, No. 52. Bombay, No. 53.

Honourable Sirs,

In continuation of our letter, dated the 5th August last, on the subject of the proposed revision in the fees and salaries of the officers of Her Majesty's Court at , we have the honour to request, that in case it should be necessary to make any appointments, such as are within the purpose of the alterations contemplated, you will cause them to be made on the understanding that changes are under consideration, and subject to any alterations that in the course of the pending discussions it may prove expedient to carry into execution,

We have, &c.
(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.

Council Chambers,
17 February 1843.

(No. 15.)

From *F. J. Halliday*, Esq., Secretary to the Government of India, to *J. C. C. Sutherland*, Esq., Secretary, Indian Law Commission; dated 17 February 1843.

Jud. Cons. 17 February 1843. No. 3.

Sir,

I am directed by the Honourable the President in Council to transmit to you, for submission to the Indian Law Commission, the accompanying copies of papers noted

Legal Department.

Legis. Cons. 13 May 1842. Nos. 9 & 15. 5 August 1842. Nos. 3 & 4. 23 December 1842. Nos. 9 & 19. Letter from Mr. Junior Secretary Mansel, No. 5 of 14 January 1843.

noted in the margin, relative to a proposed revision in the fees and salaries of Her Majesty's officers in Courts of Judicature at the Presidencies of Fort William, Fort St. George and Bombay, and to request that the Law Commission will submit a draft Act for the purpose indicated in a letter, No. 5, dated the 14th ultimo, from Mr. Junior Secretary Mansel.

I have, &c.

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

Council Chamber, 17 February 1843.

Jud. Cons. 3 March 1843. No. 14.

From the Honourable Chief Justice, Supreme Court, Fort William, to *F. J. Halliday,* Esq., Officiating Secretary to the Government of India; dated the 27th February 1843.

Sir,

Jud. Law.

I HAVE the honour to inform you that the Judges of the Supreme Court have appointed Mr. Ryan to the office of Taxing Officer, Chief Clerk of the Insolvent Court and Keeper of the Records, lately filled by Mr. Vaughan, and temporarily by Mr. O. Dowda, and that they have assigned Mr. Ryan a salary of 1,600 rupees a month, and that he will enter upon the discharge of the duties of these several offices, and be entitled to receive his salary on and from the 1st day of March 1843, exclusive of that day. I have also the honour to inform you, that Mr. O. Dowda will remain in charge of the duties of the office of Receiver, also vacated by the death of Mr. Vaughan, at a salary of 400 Company's rupees per month; and that the Judges have assigned to Mr. Hilder, the Crier of the Court, 100 rupees per month, for an increase to his present salary of 200 rupees per month, having brought the intended augmentation under the notice of the Honourable the President in Council, who entertains no objection to that increase. I beg further to observe, that by the present arrangement a reduction of 900 Company's rupees per month will be effected, the emoluments of the late Mr. Vaughan, of which salary he was in receipt up to the time of his death.

I have, &c.

Calcutta, 29 February 1843. (signed) *L. Peel.*

(True copy.)

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

Jud. Cons. 23 March 1843. No. 15.

From *F. J. Halliday,* Esq., Officiating Secretary to the Government of India, to the Officiating Civil Auditor and Officiating Sub-Treasurer; dated 3d March 1843.

Sir,

Jud. Depart.

I AM directed by the Honourable the President of the Council of India to forward for your information and guidance the accompanying copy of a letter from the Honourable Chief Justice of the Supreme Court, reporting the completion of arrangements in that court consequent on the death of Mr. R. Vaughan, Taxing Officer.

I have, &c.

Council Chamber, 3 March 1843.

(signed) *F. J. Halliday,*
Offg Secy to the Govt of India.

(No. 29.)

Jud. Cons. 3 March 1843. No. 16.

From the Officiating Secretary to the Government of India to *J. C. C. Sutherland,* Esq., Secretary to the Indian Law Commission; dated 3d March 1843.

Sir,

IN continuation of my letter, No. 15, in the Legislative Department, dated the 17th ultimo, I am directed by the Honourable the President in Council to transmit to you, for submission to the Indian Law Commission, the accompanying copy of a letter of the 27th idem, from the Honourable Chief Justice, reporting completion

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completion of arrangements in Her Majesty's Supreme Court, consequent on the death of the late Mr. R. Vaughan, Taxing Officer.

I have, &c.

Council Chamber, 3 March 1843.

(signed) *F. J. Halliday,*
Off^g Sec^y to the Gov^t of India.

From the Judges of the Supreme Court, Calcutta, to the Honourable the President and the Members of the Council of India in Council; dated 2d March 1843.

Legis. Cons. 10 March 1843. No. 21.

Honourable Sirs,

We have the honour to acknowledge the receipt of your letter of 17th February 1843, No. 12, addressed to us, and received by us yesterday, requesting that in making any appointments, such as are within the purpose of the alterations that may be contemplated in the offices of Her Majesty's Supreme Court at this Presidency, we may cause them to be made on the understanding that changes are under consideration, and subject to any alterations that in the course of the pending discussions it may prove expedient to carry into execution; and we have to inform you that the appointments which have been made by us to supply the offices vacant by the death of the late Mr. Vaughan, and future appointments, have been and will be made by us upon that understanding, and subject to those alterations, and that those above referred to, which have taken place, are accepted upon that understanding, and subject as aforesaid.

We have, &c.

(signed) *L. Peel.*
J. P. Grant.
H. W. Seton.

Court-house, 2 March 1843.

From the Judges of the Supreme Court of Madras to the Honourable *William Wilberforce Bird*, Esq., President of the Council of India, Fort William; dated 14 March 1843.

Legis. Cons. 31 March 1843. No. 2.

Honourable Sir,

In answer to your letter of 17th February, expressing your wish with regard to the mode of appointing to those offices in the Supreme Court which are likely to be effected by the changes or reductions contemplated by the Supreme Government, we have the honour to acquaint you, that we had already determined to adopt the course which you have suggested to us, in the propriety of which we fully concur.

We have, &c.

(signed) *E. J. Gambier.*
J. D. Norton.

Madras, 14 March 1843.

Extract from a Legislative Despatch to the Honourable the Court of Directors, No. 18; dated 14 September 1843.

Para. 111. In para. 97, of our despatch, No. 6, dated 17th March 1843, your Honourable Court were informed, that we have referred to the Right honourable the Governor-general the opinions of the Judges of the Supreme Courts of Calcutta, Bombay and Madras, on the proposed reduction of the fees and salaries of the officers of those courts. His Lordship's reply has been since received, and we have now the honour to report our further proceedings in this matter.

112. The Governor-general was of opinion, that the Supreme Government should, after hearing the Judges, proceed, as the Government of England would do in a similar case, to decide for itself, and to effect by its own legislative power whatever it may deem most advisable for the public.

113. His Lordship stated, that as President of the Board of Control he had pressed this matter upon the consideration of the Government of India, and he was most desirous that it should be at length satisfactorily settled. He could only consider it to be so settled if the result should be the obtaining for the suitors in

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the Queen's Courts of Justice in Calcutta, whatever may be absolutely required for the due administration of justice in that court at the smallest possible cost to the people of India, which has so very remote and minute an interest therein.

114. With respect to the subordinate offices in the courts, the Governor-general observed, that they are not in England held by barristers, nor is there the least reason why they should be in India.

115. It was his Lordship's opinion, that the commission upon administration of intestate property was extravagant, and should be reduced to two per cent.; and that the per-centage upon the administration of funded property should not exceed one per cent.

116. The Governor-general considered the question, whether officers in courts of justice should be generally remunerated by salaries or by fees, to be so nearly settled, that he did not think it desirable to re-open it; but with respect to the amount of fees on proceedings in the Queen's courts, his Lordship was of opinion that, as far as possible, those courts in which the great body of the people of India is so very little interested, should be made to provide for their own charges out of their own fee-funds, and not be made a heavy burthen upon the revenues of the state.

117. We forwarded the communication from the Governor-general, with all previous correspondence on the subject, to the Law Commissioners, and requested them to submit a draft Act for the purpose indicated by his Lordship, at whose suggestion we also requested the Judges of the Supreme Courts at all the Presidencies, in case they should find it necessary to make any appointments coming within the purpose of the alterations contemplated, to make them on the understanding that changes are under consideration, and subject to any alterations that in the course of the pending discussions it may be found expedient to carry into execution.

118. The Judges of the Calcutta Court, in reporting an arrangement which they had made consequent on the death of Mr. R. Vaughan, Taxing Master, stated that the appointments in this instance, and all future appointments, had been and would be made subject to any alteration that may be determined upon.

119. The Madras Judges expressed their concurrence in the propriety of our suggestion, and added, that they had already determined to adopt the course pointed out.

EXTRACT from a Legislative Despatch from the Honourable Court of Directors, No. 17; dated the 24th July 1844.

111 to 119. References to the Law Commission for the preparation of a draft Act, relating to the Fees and Salaries of the Officers of the Supreme Courts.

Para. 27. THIS subject will engage our particular attention when the draft Act, which has been called for, shall be brought to our notice.

Jud, Cons. 4 January 1845. No. 6.

From the Judges of the Supreme Court, Calcutta, to the Right Honourable Sir *H. Hardinge*, K. C. B., Governor-general of India in Council; dated 18 December 1844.

Right Honourable and Honourable Sirs,

WE have the honour to state, that we have effected a temporary reduction in the emoluments of the office of Sworn Clerk, to the extent of 700 Co.'s Rs. per month, by an arrangement with Mr. O. Dowda, the holder of that office, who consents to relinquish that amount of salary in consideration of his being from time to time appointed Assignee of Insolvent Estates in lieu of Mr. Alexander, who has intimated to the Judges that he is not about to return to this country. The emoluments derived from the assigneeships being fluctuating, and giving on an average of years a considerably less income than the office of Sworn Clerk, Mr. O. Dowda could not be expected to relinquish the latter office for an employment uncertain in duration and in its profits, and of less value than his present office; and though we are anxious to bring about the suppression of this office at the earliest period, we have not been able to effect a greater saving at present than that which we have the honour to announce. This reduction will take effect from the 1st of January next ensuing, and be in force during the time that the assigneeships continue on their present footing, but subject to reconsideration on any change in the assigneeships, and without prejudice to any application for compensation

sation which Mr. O. Dowda may at any time prefer, in the event of any legislative interference with the office of Sworn Clerk.

We have, &c.

(signed) *L. Peel.*
J. P. Grant.
H. W. Seton.

Court-house, 18 December 1844.

(No. 26.)

From the Government of India to the Honourable the Judges of the Supreme Court of Judicature, Calcutta; dated the 4th January 1845.

Jud. Cons. 4 January 1845. No. 7. Legislative.

Honourable Sirs,

We have the honour to acknowledge the receipt of your letter dated 18th ultimo, and to state that the necessary communication will be made from the Financial Department to the Offices of Audit and Account, respecting the arrangement made by you, under which a temporary reduction in the emoluments of the office of Sworn Clerk, to the extent of 700 Rs. a month, has been effected from the 1st instant.

We have, &c.

(signed) *F. Millett.*
G. Pollock.

Council Chamber, 4 January 1845.

(No. 8.)

Ordered, That a copy of the letter from the Judges of the Supreme Court, and of the foregoing reply, be sent to the Financial Department, whence the necessary communication will be made to the offices of Audit and Account.

(No. 25.)

From *G. A. Bushby*, Esq., Secretary to the Government of India, to the Members of the Indian Law Commission; dated the 4th January 1845.

Jud. Cons. 4 January 1845. No. 8. Legislative.

Gentlemen,

In continuation of Mr. Secretary Halliday's letter, dated the 3d March 1843, I am directed to transmit to you a copy of a further letter from the Judges of the Supreme Court at Fort William, dated the 18th ultimo, notifying a temporary reduction of 700 Rs. a month, effected by the court, from the 1st instant, in the emoluments of the office of Sworn Clerk.

2. I am instructed at the same time to inquire as to the probable period by which the Government of India may expect to receive the draft of an Act for regulating the salaries and emoluments of the various officers employed in Her Majesty's Supreme Courts at the several Presidencies, called for in Mr. Secretary Halliday's letter of the 17th February 1843.

I have, &c.

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

Council Chamber, 4 January 1845.

(No. 2.)

From the Indian Law Commissioners to *G. A. Bushby*, Esq., Secretary to the Government of India; dated the 16th January 1845.

Legis. Cons. 15 February 1845. No. 13.

Sir,

We have the honour to acknowledge the receipt of your letter dated the 4th instant.

Received, 14 January 1845.

2. In reply to the inquiry contained in the 2d para., we have the honour to state, that deeming it necessary to take a comparative view of the business, civil and criminal, of the Supreme Courts at the several Presidencies, we addressed

4 November 1843. 12 August 1843.

letters to the Honourable the Judges at Calcutta and Madras respectively, requesting them to do us the favour to cause schedules to be prepared and furnished to us, according to forms annexed to our letters, which were framed for the purpose of comparing statements already received from Bombay.

3. We were favoured with the schedules requested from Madras, under date the 12th December 1843.

4. Under date the 15th August last, we addressed a letter to the Honourable the Judges at Calcutta, requesting an explanation of the deficiency in the actual receipts of fees below the estimate formed in 1836, when the present arrangement for the remuneration of the officers of the court by salaries was proposed; and not having received the schedules we had previously asked for, we took the opportunity to beg that they might be furnished at an early period, together with the explanation therein solicited. To this letter we have not received a reply.

5. When we obtain the information we have solicited from the Judges of the Supreme Court at Calcutta, for which we have again applied, we shall have the honour of submitting a report upon the subject of Mr. Secretary Halliday's letter of the 17th February 1843.

We have, &c.

(signed) *C. H. Cameron.*
D. Elliott.

Supreme Court: Reduction of the emoluments of the Sworn Clerk of the Calcutta Supreme Court.

Jud. Cons. 4 January 1845. Nos. 6 to 8.

EXTRACT from a Legislative Despatch to the Honourable the Court of Directors, No. 10; dated the 19th August 1845.

Para 16. THE annexed papers will inform your Honourable Court that the Honourable the Judges of the Supreme Court at Calcutta have, by an arrangement with Mr. O. Dowda, the Sworn Clerk of the court, effected a temporary reduction in the emoluments of that officer to the extent of 700 rupees per mensem.

Leg. Cons. 15 Feb. 1845. No. 13.

Vide Leg. Letter to Court, No. 18. 14 September 1844. p. 111–119.

17. The papers were referred to the Law Commissioners, whose report, dated 3d July, on the general question of the remuneration of officers of Her Majesty's Supreme Courts at the several Presidencies, has been received; but we have postponed the consideration of it pending your Honourable Court's reply to our despatch, No. 11, dated the 10th May 1844, respecting the remodelment of the existing courts of civil judicature.

Jud. Cons. 26 April 1845. No. 8.

From the Members of the Indian Law Commission to *G. A. Bushby*, Esq., Secretary to the Government of India, Legislative Department; dated the 21st April 1845.

Sir,

IT appearing that the Judges of Her Majesty's Supreme Court at Madras have lately passed some rules for the reduction of the fees of the officers of the court, we have the honour to request that an application may be made to the Madras Government for a copy of the correspondence which it is presumed has passed between the Government and the Judges upon the subject, for our guidance in framing the report required from us by the Government of India, under the instructions adverted to in your letter of the 4th January last.

We have, &c.

(signed) *C. H. Cameron.*
D. Elliott.

Indian Law Commission,
21 April 1845.

(No. 268.)

Jud. Cons. 26 April 1845. No. 9.

From *G. A. Bushby*, Esq., Secretary to the Government of India, to the Secretary to Government of Fort St. George; dated 23 April 1845.

Sir,

I AM directed to transmit to you the accompanying copy of a letter from the Indian Law Commissioners, dated the 21st instant, and to request that, with the permission

permission of the Most Noble the Governor in Council, you will have the goodness to furnish this department with a copy of the correspondence therein referred to.

I have, &c.

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

Fort William, 23 April 1845.

(No. 502.)

From *E. P. Thompson,* Esq., Secretary to the Government of Fort St. George, to *G. A. Bushby,* Esq., Secretary to the Government of India, in the Home Department; dated the 30th June 1845.

Jud. Cons. 26 July 1845. No. 4.

Sir,

WITH reference to your letter of the 23d April last, No. 268, I am directed by the Most Noble the Governor in Council to request that you will submit, for the information of the Government of India, the accompanying communication from the Honourable the Judges of the Supreme Court at Madras, stating that no rules for the reduction of the fees of the officers of that court have been passed by them.

24 March 1845.

I have, &c.

(signed) *E. P. Thompson,*
Secretary to Government.

Fort St. George, 30 June 1845.

From the Judges of the Supreme Court of Madras to the Most Noble the Marquis of *Tweeddale,* Governor in Council, &c., Fort St. George; dated 24 June 1845.

Jud. Cons. 26 July 1845. No. 5.

My Lord,

IN answer to your Lordship's letter of the 27th May, we have the honour to state, for the information of the Government of India, that we have passed no rules for the reduction of the fees of the officers of the court. No alteration can be made in the existing table of fees without your Lordship's approval, and we should not have been so wanting in due respect to your Lordship, and in proper obedience to the Royal Charter, as to attempt any such reduction without the previous sanction of your Lordship.

2. It is probable that the Law Commissioners have heard of an order made by us, declaring certain fees, the taking of which had been brought under our notice, to be inconsistent with the table of fees, and therefore unlawful; and that learning this only from public rumour, or the reports of the newspapers, they have misapprehended the scope and tenor of the order referred to. That order is not of such a nature as that your Lordship would desire to transmit a copy of it to the Government of India, and therefore we do not enclose one. Indeed, we observe that what is asked for by the Governor-general in Council is not a copy of any rules or orders made by us, but of the correspondence which was supposed to have passed between your Lordship's Government and ourselves.

We have, &c.

(signed) *E. J. Gambier.*
W. W. Burton.

(A true copy.)

(signed) *E. P. Thompson,*
Secretary to Government.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

From *G. A. Bushby*, Esq., Secretary to the Government of India, to the Members of the Indian Law Commission; dated 26 July 1845.

Gentlemen,

In reply to your letter, dated the 21st April last, I am desired to forward, for your information, the accompanying copy of a letter from the Government of Fort St. George, No. 502, dated the 30th ultimo, and of its enclosure from the Judges of the Supreme Court at Madras, stating that no rules for the reduction of the fees of the officers of the court have been passed by them.

I have, &c.

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

Jud. Cons.
20 April 1845.
Nos. 8 & 9.
26 July 1845.
Nos. 4–6.
**Vide* Despatch No. 10 of 19 Aug. 1845, p. 16, 17.

Extract from the Legislative Despatch to the Honourable the Court of Directors, No. 14; dated 27 December 1845.

Para. 23. In reply to an inquiry* which we made as to the probable period by which we might expect to receive the draft Act for regulating the salaries and emoluments of the officers of the Supreme Courts, the Indian Law Commissioners requested to be furnished with a copy of the correspondence which it was presumed had passed between the Government and the Judges of the Supreme Court of Madras, relative to some rules for reducing the fees of the officers of that court. It was found, however, upon inquiry, that no such rules had been passed by the Judges, and no correspondence had taken place with the Government of Madras on the subject.

(No. 1.)

Jud. Cons.
13 September 1845.
No. 28.

From *J. F. Thomas*, Esq., Chief Secretary to Government, Fort St. George, to *G. A. Bushby*, Esq., Secretary to the Government of India; dated 17 June 1845.

Sir,

I am directed to forward copies of a letter from the Company's Solicitor, and of the statement and account current there alluded to, in the case of the Queen *v.* Archibald Douglas; and the Most Noble the Governor in Council viewing the charges as extremely high, and entertaining some doubt as to the correctness of the principle upon which the fees set forth in the Solicitor's account have been paid to the Advocate-general in addition to his salary, requests that the Supreme Government will do him the favour to refer the charges incurred to their law officers, in order that they may be compared with the charges and bill of costs in the Supreme Court of Calcutta. His Lordship in Council would further request to be informed whether it is the practice in Calcutta to charge for "refreshers" to the extent exhibited in the bill now forwarded, and, generally, whether the items of charge in the bill in question are such as would be authorized in Calcutta or not.

I have, &c.

(signed) *J. F. Thomas*,
Chief Secretary.

Fort St. George, 17 June 1845.

Statement

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Jud. Cons.
13 Sept. 1845.
No. 29.

STATEMENT of DISBURSEMENTS made by Mr. *Dale* on account of the Honourable Company between the 6th of June 1842, when Mr. *Dale* took charge, and the 31st December 1844.

The Honourable EAST INDIA COMPANY to CLEMENT DALE. *Dr.*

		In Equity.—The East India Company and others *v.* Charles Gaudoin.		
1842:				
June -	7	Paid Registrar for filing consent of Mr. Rose for Mr. Dale appearing for the Honourable Company in his stead	2 –	
		Paid same for entering Mr. Dale's appearance for the defendants in the stead of Mr. Rose	2 –	
		Paid officer for service of notice of appearance entered	1 –	
August -	13	Paid Registrar for filing answer of the Honourable Company	3 6	
		Paid officer for serving notice of answer, filed	1 –	
December	28	„ Registrar for filing answer of the Honourable Company to amended bill	3 6	
		Paid officer for serving notice of answer filed to the amended bill	1 –	
				14 –
		Crown Side.—The Queen on the information of George Norton, Esq., the Advocate-general *v.* Archibald Douglas, Esq.		
June -	8	Paid Clerk of the Crown for filing 21 criminal informations	24 6	
		Paid same for filing an application	1 2	
		„ same for searches in the office	2 –	
		„ same for issuing 2 certificates	4 –	
		„ same for filing same	2 4	
		„ same for minuting motion	1 2	
		„ same for drawing 2 orders of Court	7 –	
		„ same for filing same	2 4	
		„ same for attendance herein	4 –	
		„ Judge's Clerk for 2 orders, 2 copies	7 –	
		„ same for his attendance at the Judge's garden	10 6	
		„ Sealer for sealing 2 orders	3 –	
		„ Clerk of Crown for issuing, 2 copies	10 –	
		„ Sealer for sealing 2 copies	3 –	
				82 –
		The same, on the information of Her Majesty's Attorney-general in England.		
1843:				
February -	8	Paid Clerk of the Crown for minuting motion that the mandamus received from England be filed	1 2	
		Paid same for reading an affidavit	1 2	
		„ same for filing same	1 2	
		„ same for order of Court that mandamus be received and filed	3 6	
		Paid Sealer for sealing same	1 6	
		„ officer for serving same	1 –	
		„ Clerk of the Crown for filing same	1 2	
		„ same for filing an application for a copy of the mandamus	1 2	
		Paid same for copy of the mandamus for 183, at 1 rupee per folio	183 –	
		Paid Sealer for sealing same	1 6	
March -	2	„ Clerk of the Crown for filing mandamus	3 6	
„ -	8	„ Clerk of the Crown minuting motion that a day be fixed by the Court for the examination of the witnesses	1 2	
		Paid same for filing a notice annexed to the motion paper	1 2	
		Paid Judge's Clerk for order appointing 3d April 1843 for examination of witnesses	3 6	
		Paid Clerk of Crown for filing same	1 2	
		„ same for order of Court	3 6	
		„ Sealer for sealing same	1 6	
		„ officer for serving same	1 –	
		„ Clerk of the Crown filing same	1 2	

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843: March	-	8	Paid same, filing a letter from the Solicitor for the prosecution to the Clerk of the Crown, requesting to insert in the Gazette the notice of the Court -	1 2
			Paid same for filing 2 applications for subpœnas -	2 4
			„ same for issuing 7 subpœnas - - - -	22 2
			„ Sealer for sealing same - - - - -	10 6
			„ Sheriff with same - - - - - -	16 4
			„ ditto Bailiff's batta for serving Sadaseva Row and others in Madras - - - - - -	2 —
			Paid ditto batta for serving subpœnas upon Dranjum Pell and Pungum Palava Row at Poothoo Choultry, being 68 miles - - - - - -	68 —
			Paid Clerk of the Crown filing subpœnas - -	8 2
April	-	1	„ Palanquin hire for Mr. Dale - - - -	2 —
			„ ditto for Mr. Branson to Mr. Dale's house -	2 —
„	-	2	„ (Sunday) for conveyance hire for Writers to Mr. Dale's house - - - - - - - -	2 —
„	-	3	„ Clerk of the Crown for cause called on - -	2 —
			„ ditto for reading the order of Court appointing this day for the examination of witnesses - -	1 2
			Paid ditto for reading the "Fort St.George Gazette," in which the advertisement of the Court was published	1 2
			Paid ditto for reading the writ of mandamus - -	1 2
			„ ditto for minuting motion by Mr. Advocate-general, that the examination be postponed, when Court ordered that the Court be adjourned to the 10th instant - - - - - - - -	1 2
			Paid ditto for reading an affidavit - - - -	1 2
			„ ditto for filing same - - - - -	1 2
			„ ditto for the order of Court - - - -	3 6
			„ Sealer for sealing same - - - - -	1 6
			„ officer's batta for serving same - - -	1 —
			„ Clerk of the Crown for filing same - - -	1 2
			„ ditto for minuting the proceedings this day -	1 2
			„ for conveyance of Writers to Mr. Dale's house this day - - - - - - - - -	2 —
„	-	4	Paid the like this day - - - - - - -	2 —
„	-	5	„ ditto - - - - - - - - -	2 —
„	-	6	„ ditto - - - - - - - - -	2 —
„	-	8	„ ditto - - - - - - - - -	2 —
„	-	10	„ Clerk of the Crown for cause called on - -	2 —
			„ ditto for reading the order of the adjournment of the Court this day - - - - - - -	1 2
			Paid for reading the "Fort St. George Gazette," in which the adjournment is published - - -	1 2
			Paid for minuting motion by Mr. Advocate-general for a further postponement, when same ordered to the 12th instant - - - - - - -	1 2
			Paid ditto for order of Court - - - - -	3 6
			„ Sealer for sealing same - - - - -	1 6
			„ officer's batta for serving same - - -	1 —
			„ Clerk of the Crown for filing same - -	1 2
			„ ditto for minuting the proceedings - - -	1 2
			„ ditto for filing an application for an office copy of the order - - - - - - - -	1 2
			Paid ditto for searching records for the same - -	1 —
			„ ditto, for office copy of same, for 2 - -	2 —
			„ Mr. Parker with brief, pags. 150 - - -	525 —
			„ ditto for consultation „ 25 - - -	87 6
			„ Mr. J. B. Norton with brief, pags. 100 - -	350 —
			„ ditto for consultation „ 25 - -	350 —
			„ ditto for conveyance for Writers to Mr. Dale's house this day - - - - - - - -	4 —
			Paid the like this day - - - - - - -	4 —
„	-	12	„ Clerk of the Crown for cause called on - -	2 —
			„ ditto for reading the order of adjournment of court this day - - - - - - - -	1 2
			Paid ditto for reading the "Fort St. George Gazette," in which the adjournment was published - -	1 2
			Paid ditto for swearing three several witnesses, Mr. W. H. Bayley, Mr. Kindersley and Morgapah Moodelly, 81 folios - - - - - - -	81 —
			Paid ditto for reading and marking 4 exhibits at the examination of Mr. Bayley - - - -	9 4
			Paid ditto for reading and marking 16 exhibits at the examination of Mr. Kindersley - - -	37 4
			Paid ditto for reading and marking 4 exhibits at the examination of Morgapah Moodelly - -	9 4

1843: April	12	Paid Clerk of the Crown for minuting the proceedings this day	1	2
		Paid Mr. Parker fee for consultation, the afternoon, pags. 25	87	6
„	13	Paid the like to Mr. J. B. Norton, pags. 25	87	6
		„ Mr. Parker refresher for this day „ 20	70	–
		„ the like to Mr. Norton „ 20	70	–
		„ Clerk of the Crown for cause called on	2	–
		„ ditto for taking down the further examination of Moorgapah, being 80 folios, at 1 rupee per folio	80	–
		Paid for minuting the proceedings this day	1	2
„	14	„ conveyance for Writers to Mr. Dale's house this day	2	–
„	15	Paid Mr. Parker refresher this day, pags. 20	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown for cause called on	2	–
		„ ditto for taking down the further examination of Moorgapah, 79 folios, at 1 rupee per folio	79	–
		Paid ditto for minuting the proceedings this day	1	2
„	16	„ conveyance for Writers to Mr. Dale's house this day	2	–
„	17	Paid Mr. Parker refresher this day, pags. 20	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown for cause called on	2	–
		„ ditto for swearing 2 several witnesses, J. Johannes and Parthasarady, in court	2	4
		Paid Clerk of the Crown for taking down the further examination of Moorgapah, Mr. Kindersley, and the examination of J. Johannes and Parthasarathy, being 60 folios, at 1 rupee per folio	60	–
		Paid ditto for reading and marking 2 exhibits at the examination of J. Johannes	4	8
		Paid ditto for reading and marking 2 exhibits at the examination of Parthasarathy	4	8
		Paid ditto for an order of court for adjourning court to the 25th instant	3	6
		Paid Sealer for sealing same	1	6
		„ officer for serving same	1	–
		„ Clerk of the Crown for filing same	1	2
		„ ditto for filing an application for an office copy of the order	1	2
		Paid ditto for searching the records for ditto	1	–
		„ ditto for an office copy of affidavit of Mr. Dale, 3d April, 20 folios	20	–
		Paid ditto for filing an application for the exhibits	1	2
		„ ditto for minuting the proceedings this day	1	2
„	20	„ for conveyance for Writers to Mr. Dale's house this day	2	–
„	25	Paid Clerk of the Crown for cause called on	2	–
		„ ditto for reading the order of the argument of court this day	1	2
		Paid ditto for order of court adjourning the proceedings to the 27th instant	3	6
		Paid Sealer for sealing same	1	6
		„ officer for serving same	1	–
		„ Clerk of the Crown for filing same	1	2
		„ ditto for minuting proceedings this day	1	2
		„ ditto for filing an application for office copies of the orders of court of the 17th and 25th instant	1	2
		Paid ditto for searching records for ditto	1	–
		„ ditto for the office copies thereof, 4 folios	4	–
„	26	„ fee to Mr. Parker for attending consultation this day, 25 pags.	87	6
		Paid the like to Mr. J. B. Norton	87	6
„	27	„ refresher fee to Mr. Parker for this day, 20 pags.	70	–
		Paid the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown for cause called on	3	–
		„ ditto for reading the order of adjournment of court this day	1	2
		Paid Clerk of the Crown for reading the "Fort St. George Gazette," in which the adjournment of the court was published	1	2
		Paid ditto for swearing 1 witness, Sadaseva Row, in court	1	2
		Paid ditto for taking down the examination of Sadaseva Row, being 36 folios, at 1 rupee per folio	36	–
		Paid ditto for an order of court for the adjournment of the court until 1st May 1843	3	6
		Paid Sealer for sealing same	1	6

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843: April	27	Paid officer for serving same	1	–
		„ Clerk of the Crown for filing same	1	2
		„ ditto for minuting the proceedings this day	1	2
		„ ditto for office copy of the above order, 2 folios, at 1 rupee per folio	2	–
		Paid for bandy hire for Writers to Mr. Dale's house	2	–
„	28	„ M. Narasengu Row, Interpreter, for translating 18 Gezzurattee Hoondees, or bills of exchange, drawn in favour of Bhutt Rammah Venkatasa for Mooroo Mordilly by Raoo proa Sunker Umban Sunker, as follows; viz.:—		
		No. 74, fol. 5	17	6
		No. 75, fol 5	17	6
		No. 76, fol. 4	14	–
		No. 77, fol. 4	14	–
		No. 78, fol. 5	17	6
		No. 79, fol. 4	14	–
		No. 80, fol. 4	14	–
		No. 81, fol. 5	17	6
		No. 82, fol. 5	17	6
		No. 83, fol. 4	14	–
		No 84, fol. 4	14	–
		No. 85, fol. 5	14	–
		No. 86, fol. 4	17	6
		No. 87, fol. 4	14	–
		No. 88, fol. 4	14	–
		No. 89, fol. 5	17	6
		No. 90, fol. 5	17	6
		No. 91, fol. 5	17	6
		Paid ditto for translating a Mahratta letter, addressed to Moorgapah Moodilly by Soyuchen Uawjock, No. 92, 3 folios	10	6
		Paid ditto for explaining to the several witnesses the deposition given by them in court, per bill	468	–
		Paid ditto for translating a Mahratta receipt given to Rogoroy Muntry Varia, the head minister, by Crapa Sunker Bhutt, No. 98, 20 folios	7	–
		Paid M. Narsinga Row, Interpreter, for translating a Mahratta memorandum for the Hoondees purchased, which were debited on the account, No. 99, fol. 5	17	6
		Paid ditto for translating a Mahratta receipt, given to the Treasury by Cripa Sunker Bhutt, No. 100, fol. 3	10	6
		Paid ditto for a Mahratta hoozoor carwangie, or order to the treasury, No. 101, fol. 3	10	6
		Paid ditto for ditto ditto, No. 102, fol. 3	10	6
		„ ditto for translating a Mahratta hoozoor purwanjie, or order to the treasury, No. 104, fol. 3	10	6
		Paid ditto for translating a Mahratta hoozoor purwunjie, No. 105, fol. 3	10	6
		Paid ditto for ditto, No. 106, fol. 4	14	–
		„ ditto for ditto, No. 107, fol. 6	21	–
		„ ditto for transmitting a Goozzarattee account from A. No. 6 to A. No. 9, No. 108, fol. 31	108	6
		Paid ditto for translating a Mahratta letter addressed to Sirkele and Fouzdar by Moorgapen, No 111, fol. 3	5	3
		Paid Uancer am Josee, Interpreter, for copying 3 Mahratta names of 3 different papers, per bill	3	–
„	29	Paid for bandy hire for Writers to Mr. Dale's house	2	–
May	1	„ refresher fee to Mr. Parker for this day, 20 pagodas	70	–
		Paid the like to Mr. J. B. Norton	70	–
		„ Clerk to the Crown for cause called on	2	–
		„ ditto for reading the order of the adjournment of court to this date	1	2
		Paid ditto for reading the "Fort St. George Gazette," in which the adjournment of the court was published	1	2
		Paid ditto for taking down the further examination of Sadaseva Row, being 78 folios, at 1 rupee per folio	78	–
		Paid ditto for minuting the proceedings this day	1	2
„	2	„ refresher fee to Mr. Parker, for this day, 20 pagodas	70	–
		Paid the like to Mr. J. B. Norton	70	–
		„ Clerk to the Crown for cause called on	2	–
		„ ditto for swearing 3 several witnesses, Kistnagee Casava, Punt Soobajie Yek Nak and Sammy Row Appah, in court	3	6

1843: May	2	Paid ditto for taking down the further examination of Sadaseva Row, Kistnajie Cassava Punt Soobajie Yeth Nath, and Sawammy Row Appah, being 62 folios, at 1 rupee per folio	62	–
		Paid Clerk of the Crown for reading and making 6 exhibits at the examination of Soobajie Yek Nak	14	–
		Paid ditto for reading and making 1 exhibit at the examination of Sawmmy Row Appah	2	4
		Paid ditto for minuting the proceedings this day	1	2
„	3	„ refresher to Mr. Parker for this day, 20 pagodas	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk to the Crown, cause called on	2	–
		„ ditto for swearing 1 witness, Ramnah Bhutt, in court	1	2
		Paid ditto for taking down the further examination of Sobbajie Yek Nath and Ramnad Bhutt, being 43 folios, at 1 rupee per folio	43	–
		Paid ditto for minuting proceedings this day	1	2
„	4	„ refresher to Mr. Parker for this day, 20 pagodas	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown, for cause called on	2	–
		„ ditto for swearing 1 witness (Mr. Ellis) in court	1	2
		„ ditto for taking down the further examination of Ramnad Bhutt, and the examination of Mr. Ellis, being 58 folios, at 1 rupee per folio	58	–
		Paid for reading and marking 17 exhibits at the examination of Mr. Ellis	39	8
		Paid for minuting proceedings this day	1	2
		„ Mr. Parker for attending consultation this day, 25 pagodas	87	6
		Paid the like to Mr. J. B. Norton	87	6
„	5	„ refresher to Mr. Parker for this day, 25 pagodas	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown for cause called on	2	–
		„ ditto for swearing 1 witness, Sukkeram Naih in court	1	2
		Paid for taking down the examination of Sukkeram Naih, being 50 folios, at 1 rupee per folio	50	–
		Paid for minuting proceedings this day	1	2
„	6	„ refresher to Mr. Parker for this day, 20 pagodas	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown, for cause called on	2	–
		„ ditto for swearing 2 several witnesses, Appanah and Soorabba Naig in court	2	4
		Paid for taking down the further examination of Sukkeram Naig, and examination of Appanah and Soorba, being 70 folios, at 1 rupee per folio	70	–
May	6	Paid Clerk of the Crown for reading 7 exhibits at the examination of Sukkeem Naik	16	4
		Paid ditto for minuting the proceedings of this day	1	2
„	8	„ refresher to Mr. Parker for this day, 20 pagodas	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown for cause called on	2	–
		„ ditto for swearing 4 several witnesses, Jyathtorary, Jyen Soobeen, Annasawmy Naik and Veirasawmy in court	4	8
		Paid ditto for taking down the further examination of Jyen Soobrien, Annasawmy Naik and Veirasawmy, being 70 folios, at 1 rupee per folio	70	–
		Paid ditto for minuting proceedings this day	1	2
		„ ditto for an order of court for the adjournment of the court until 15th May 1843	3	6
		Paid Sealer for the same	1	6
		„ officer, batta for swearing same	1	–
		„ Clerk of the Crown for filing same	1	2
		„ ditto for office copy of the above order, 2 folios	2	–
		„ ditto for minuting the proceedings	1	2
„	9	„ bandy hire for Writers to Mr. Dale's house, this day	2	–
„	10	Paid the like this day	2	–
„	11	„ ditto	4	–
„	12	„ ditto	2	–
„	13	„ Mr. Parker fee for attending consultation this day, pagodas 25	87	6
		Paid the like to Mr. J. B. Norton	87	6
„	14	„ bandy hire for Writers to Mr. Dale's house, this day	2	–
„	15	Paid refresher to Mr. Parker for this day, pagodas 20	70	–
		„ the like to Mr. J. B. Norton	70	–

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843: May - 15	Paid Clerk to the Crown for cause called on - -	2	–	
	„ ditto for reading the order of adjournment of court of this day - - - - - - -	1	2	
	Paid for reading the "Fort St. George Gazette," in which the adjournment of the court was published	1	2	
	Paid ditto for taking down further examination of Ramnad Bhutt, being 9 folios, at 1 rupee per folio	9	–	
	Paid ditto for minuting proceedings - - -	1	2	
„ - 16	„ refresher to Mr. Parker for this day, pagodas 20	70	–	
	„ the like to Mr. J. B. Norton - - - - -	70	–	
	„ Clerk of the Crown, for cause called on - -	2	–	
	„ ditto for swearing 3 several witnesses, Thummanah, A. F. de Sylva and Calastry, in court -	3	6	
	Paid ditto for taking down the further examination of Ramnad Bhutt, Parthasarady Soobajee Yiknath, and examinations of A. F. de Sylva and Calestry, being 29 folios, at 1 rupee per folio - - -	29	–	
	Paid ditto for reading and marking several exhibits at the examination of Parthasarady - - - -	21	–	
„ - 17	„ bandy hire for Writers at Mr. Dale's house -	2	–	
	„ Clerk of the Crown for copies of examinations engrossed on parchment, 909 folios, at 1 rupee per folio - - - - - - - - -	909	–	
	Paid ditto for duplicate on the same, engrossed on parchment - - - - - - - - -	909	–	
	Paid ditto for four minutes of proceedings for transmission to England, on parchment, being 67 folios, at 1 rupee per folio - - - - - - - -	67	–	
	Paid ditto for copies of the exhibits, with the endorsement thereon, engrossed on parchment, being 425 folios, at 1 rupee per folio - - - - - -	425	–	
	Paid ditto for filing an application for copies of examinations - - - - - - - -	1	2	
	Paid ditto for such copies, 909 folios - - -	909	–	
	„ ditto the like for copies of the several exhibits, 375 folios - - - - - - - - -	375	–	
	Paid ditto the like for copying the minute of proceedings taken down in court, being 67 folios, at 1 rupee per folio - - - - - - - - -	67	–	
	Paid ditto for drawing Judge's certificate in duplicate	10	8	
	„ ditto for drawing certificate of the Clerk of the Crown and his Deputy, in duplicate - - -	14	–	
	Paid extra Writers engaged in copying the proceedings, as per their receipts - - - - - -	492	10	
	Paid 2 office Peons for extra work by them pending this business - - - - - - - - -	10	–	
	Paid Gollah for ditto - - - - - - - -	6	–	
September 17	„ Mr. Arnals for bandy hire to Mr. Dale's, engaged in preparing papers to send to Mr. Lawford 1 8			
„ - 18	Paid ditto - - - - - - - - 1 8	4	6	
„ - 19	„ ditto - - - - - - - - 1 8			
	„ for 2 teakwood boxes, with lock and key, to send the mandamus and return to England - - 6			
	Paid for cutting out names on the lid of boxes; viz., W. H. Bayley, Esq., and J. D. Mente Arbuthnot, Esq. - - - - - - 1	9	–	
	Paid 2 tin cases, at 1 rupee each - - - 2			
				10,391 11
	Plea Side.—Malcolm Lewin, George Dominico Drury and Andrew Robertson, at the suit of Paulian Narrain Swammy Chitty.			
1842: June - 20	Paid Prothonotary for filing warrant of attorney and consent - - - - - - - - -	2	4	
	Paid ditto for entering appearance of Mr. Dale for the defendants, in the stead of Mr. Rose - -	3	6	
	Paid officer for service of notice of appearance entered	1	–	
				6. 10
	Plea Side.—The East India Company *v.* James R. Hogg, Esq.			
July 4, 11 & 19	Paid officer batta for presenting 3 promissory notes for payment to defendants, at Mount Road, and batta for posting 3 notices of dishonour to Mr. Leonhard, the indorser - - - - - -	9	–	
„ - 23	Paid ditto for affidavit of jurisdiction - - -	1	6	
	„ Prothonotary for administering oath and filing affidavit - - - - - - - - -	2	4	

1842: July - 23	Paid Mr. Advocate-general to sign plaint - -	17	6	
„ - 26	„ Prothonotary for filing plaint and summons -	5	10	
	„ Sealer for summons - - - - - -	1	6	
	„ Sheriff - - - - - - -	2	4	
	„ Bailiff's batta to serve summons on defendant -	2	-	
August - 4	„ Prothonotary for side bar rule to plead - -	4	8	
	„ Sealer - - - - - - -	1	6	
	„ officer's batta for serving side bar rule on the defendant, J. R. Hogg, at Mount Road - -	2	-	
	Paid ditto for service of side bar rule on defendant, at ditto - - - - - - - -	2	-	
	Paid ditto for affidavit of service of rule - - -	1	6	
	„ Judge's Clerk for administering oath on order -	7	-	
„ - 12	„ Prothonotary for filing affidavit - - -	1	2	
	„ ditto for 6 several searches and for certificate of the Plea side - - - - - - -	8	2	
	Paid Mr. Advocate-general to move for order for trial ex parte - - - - - - - -	17	6	
„ - 19	Paid Prothonotary for order of court to enter cause for trial ex parte, and making up record - -	26	8	
	Paid Sealer - - - - - - - -	1	6	
	„ officer for serving copy of order on defendants -	2	-	
	„ ditto batta to the Mount Road - - -	2	-	
September 6	„ Prothonotary for 3 subpœnas, and filing - -	5	10	
	„ Sealer, sealing same - - - - -	4	6	
	„ Sheriff, with ditto - - - - - -	7	-	
„ - 12	„ Prothonotary for search to withdraw the record	1	2	
	„ ditto for filing cognovit - - - - -	11	4	
	„ officer serving Master's warrant - - -	2	-	
	„ ditto batta - - - - - - -	2	-	
	„ for affidavit of service warrant - - -	1	6	
	„ Master for taxing costs - - - - -	71	6	
	„ Judge's Clerk for allocatur - - - -	3	6	
November 16	„ Prothonotary for filing judgment - - -	1	2	
	„ ditto for filing Master's certificate - - -	1	2	
„ - 25	„ ditto for writ of fi. fa. - - - - -	6	2	
1843: January - 10	„ ditto for search for the Sheriff's return to the 1st writ of fi. fa. - - - - - - -	1	2	
March - 6	Paid Judge's Clerk for order to issue 2d writ of fi. fa.	3	6	
	„ Prothonotary for minuting, &c., and for order of court - - - - - - - - -	5	10	
	„ Sealer - - - - - - - - -	1	6	
„ - 8	„ Prothonotary for 2d writ of fi. fa. - - -	6	2	
	„ Sealer for sealing same - - - - -	1	6	
	„ Sheriff - - - - - - - -	3	4	
				261 6

N.B.—This sum has been recovered and credited in account current.

Plea Side.—The East India Company *v.* Henry Leonhard.

1842: July - 23	Paid officer for serving affidavit of jurisdiction - -	1	6	
	„ Prothonotary for filing affidavit of J. Johannes	1	2	
	„ ditto for oath administered in court - -	1	2	
	„ Mr. Advocate-general to sign plaint - -	17	6	
„ - 26	„ Prothonotary for filing plaint - - - -	3	6	
	„ ditto for summons and filing - - - -	2	4	
	„ Sealer for summons - - - - -	1	6	
	„ Sheriff therewith - - - - - -	2	4	
, - 27	„ Prothonotary for 3 several searches - -	3	6	
	„ ditto for certificate - - - - -	1	2	
	„ ditto for searches, to produce in court the affidavit of jurisdiction - - - - - -	1	2	
	Paid Sheriff for drawing letter, and conveying copy of a summons to the defendants, and postage to Vizagapatam - - - - - - - -	4	-	
October - 8	Paid Prothonotary for search if defendant appeared -	1	2	
1843: July - 29	„ ditto for side bar rule to plead, and filing -	4	8	
	„ Sealer for side bar rule - - - - -	1	6	
	„ officer for serving and for affidavit of service -	2	6	
August - 2	„ Prothonotary for filing affidavit of D. D. Cunlia	1	2	
	„ ditto for oath administered in court - - -	1	2	
„ - 10	„ ditto for five several searches - - - -	5	10	
	„ ditto for certificate - - - - -	1	2	
„ - 11	„ ditto for filing ditto - - - - -	1	2	
	„ ditto for search for affidavit of service - -	1	2	

(continued)

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843: August	11	Paid Mr. Advocate-general to move to set down cause for trial ex parte	17	6	
		Paid Judge's Clerk for Judge's order	3	6	
		„ Prothonotary for filing same	1	2	
		„ ditto for minuting ditto	1	2	
		„ ditto for order of court	3	6	
		„ Sealer for sealing same	1	6	
		„ officer for serving same	1	–	
		„ Prothonotary for setting down cause for trial	3	6	
		„ ditto for making up record	16	–	
		„ officer for serving notice to produce	1	–	
„	19	„ Prothonotary for 2 subpœnas for 8 witnesses	3	6	
		„ ditto for filing ditto	2	4	
		„ ditto for subpœna for 1 witness and filing	2	4	
		„ Sealer for 3 subpœnas	4	6	
		„ Sheriff for 3 witnesses' subpœnas	7	–	
		„ ditto Bailiff's batta for serving subpœna on Shunmoogum	3	–	
September	12	Paid Mr. Advocate-general with brief	52	6	
„	13	„ Prothonotary for several to withdraw the record	1	2	
					188 6
		N.B.—This sum has been recovered, and credited in account current.			
		Plea Side.—The East India Company *v.* Satur Peter Arathon.			
1842: August	10	Paid Prothonotary for filing consent and entering Mr. Dale's appearance for the plaintiff in the stead of Mr. Rose	2	4	
„	11	Paid ditto for 3 summonses, and filing	2	4	
		„ Sealer	1	6	
		„ Sheriff	2	4	
„	18	„ Prothonotary for search and certificate	4	8	
		„ Sheriff Bailiff's (Boyd) batta for endeavouring to serve summons on defendant	9	–	
		Paid to swear for sequestration	1	6	
		„ ditto Sectaram for ditto	1	6	
		„ Interpreter for explaining affidavit to Sectaram and Vurdarazooloo Naik	9	–	
		Paid Mr. Advocate-general to move for sequestration	17	6	
„	19	„ Prothonotary for order of court	9	4	
		„ Sealer	1	6	
		„ Judge's Clerk for affidavit and order	7	–	
		„ ditto for 2 affidavits	5	10	
„	24	„ Prothonotary for writ of sequestration	6	2	
		„ Sealer	1	6	
		„ Sheriff	3	4	
1843: February	15	„ Prothonotary for side bar rule, and filing	4	8	
		„ Sealer	1	6	
		„ officer for service and affidavit	2	6	
		„ Prothonotary for filing affidavit of Johannes and oath administered in court	2	4	
		Paid ditto for 5 several searches and certificate	7	–	
„	22	„ ditto for reading and filing certificate, search and reading record, minuting motion, order of court, setting down cause for trial and making up record	22	10	
		Paid Sealer for order	1	6	
		„ officer for service	1	–	
March	18	„ Prothonotary for search to produce in court the original promissory note made by A. J. Johannes	1	2	
		Paid ditto for 1 subpœna for 1 witness, and filing	2	4	
		„ Sealer	1	6	
		„ Sheriff, with subpœna duces tecum	2	4	
		„ ditto	2	4	
		„ Prothonotary for 1 subpœna, 3 witnesses, and filing	4	8	
		Paid Sealer	1	6	
		„ Sheriff	2	4	
„	23	„ Prothonotary for cause called on for trial, 3 witnesses sworn in court, reading and making 2 exhibits, minuting trial, verdict pronounced, rule to sign judgment, and for docketing	18	–	
		Paid Sealer for rule	1	6	
		„ Master for receiving and filing rule for judgment	4	8	
		„ ditto for attending to receive bill of costs	3	6	
		„ ditto for warrant to tax	2	2	

1843:					
March -	23	Paid Master for copying bill of costs - - -	30	-	
		„ officer for serving copy warrant on Messrs. Rowlandson & Rose - - - - - - -	1	-	
		Paid the like service on the defendant - - -	1	-	
		„ ditto for batta - - - - - -	3	-	
		„ ditto for affidavit of service - - - -	1	6	
		„ Master attending to receive affidavit of service of warrant - - - - - - - -	3	6	
		Paid ditto for administering oath - - - -	2	-	
		„ ditto for filing same - - - - -	1	2	
		„ ditto for attending warrant to tax - - -	3	6	
		„ for taxing - - - - - - -	5	-	
		„ ditto for registration - - - - -	15	-	
		„ ditto for certificate of debt and costs - -	13	2	
		„ Judge's Clerk for allocatur - - - -	3	6	
December	16	„ Prothonotary for filing judgment and Master's certificate - - - - - - - - -	2	4	
„ -	19	Paid ditto for writ of fi. fa. and filing - - -	6	2	
		„ Sealer - - - - - - - - -	1	6	
		„ Sheriff - - - - - - - - -	3	4	
		„ Bailiff's batta - - - - - -	3	-	
					277 4

Rs. 86. 4. has been recovered, and credited in account current.

Plea Side.—The East India Company *v.* Pooleyoor Prethopram Pillay.

1842:					
October -	15	Paid Prothonotary for filing consent - - -	1	2	
		„ ditto for entering appearance for plaintiff in the stead of Mr. Rose - - - - - - -	1	2	
„ -	21	Paid ditto for writ of ca. sa. and filing - - -	6	2	
		„ Sealer - - - - - - - - -	1	6	
		„ Sheriff - - - - - - - - -	3	4	
December	13	„ Prothonotary for 3d writ of ca. sa. and filing -	6	2	
		„ Sealer - - - - - - - - -	1	6	
					21 -

This sum has been recovered and credited in account current.

Plea Side.—The East India Company *v.* Chittalhoor Sadasea Moodelly.

1842:					
October -	15	Paid Prothonotary for filing consent - - -	1	2	
		„ ditto for entering appearance for plaintiff in the stead of Mr. Rose - - - - - - -	1	2	
„ -	21	Paid Prothonotary for writ of ca. sa. and filing -	6	2	
		„ Sealer - - - - - - - - -	1	6	
		„ Sheriff with writ of ca. sa. - - - -	3	4	
December	13	„ Prothonotary for 3d writ of ca. sa. and filing -	6	2	
		„ Sealer for sealing same - - - - -	1	6	
					21 -

This sum has been recovered, and credited in account current.

The East India Company *v.* Coonjievram Woodundy Moodelly, Executor of Mr. Ventalachella Moodelly, deceased; and by revivor, at the suit of Verasawmy Moodelly.

1842:					
December	1	Paid Prothonotary for entering appearance for the defendant - - - - - - - -	2	-	
		Paid ditto for copies of bill and affidavit - -	82	-	
		„ officer for serving notice of appearance -	1	-	
1843:					
January -	30	„ Registrar for 18 searches, appearance entered by all the defendants, and answer filed - -	36	-	
		Paid ditto for 47 several searches and certificates -	110	2	
February -	15	„ ditto for filing answer - - - - - -	3	6	
		„ officer for serving a notice of answer filed on Mr. Branson, Plaintiff's Attorney - - -	1	-	
1844:					
January -	15	Paid Registrar for entering appearance for defendant to bill of revivor - - - - - -	2	-	
		Paid ditto for copies of bill of revivor and affidavit -	14	-	
					251 8

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

		Crown Side.—The Queen *against* Dhierasanum, on two indictments for misdemeanors under the Post Office Acts.		
1842: December	29	Paid Mr. Osborne for retainer on behalf of the prosecution	87	6
1843: January	13	Paid ditto for drawing indictment	105	–
„	16	„ ditto with briefs	210	–
„	18	„ Clerk of the Crown for filing 2 indictments	2	4
		„ ditto for swearing 21 witnesses to go before the Grand Jury	24	6
		Paid ditto for minuting motion	1	2
		„ ditto for filing an affidavit	1	2
		„ ditto for an order of court	3	6
		„ extra Writers for engrossing indictment, making briefs, &c., being pressed for time, the prisoners having traversed to next sessions	45	2
February	28	Paid Clerk of the Crown for the recognizances entered into by 26 witnesses in the above 2 prosecutions, to appear and give evidence on the trial, and filing	96	8
March	20	Paid ditto for filing 2 applications — 2 4		
		„ ditto for issuing 7 subpœnas for 26 witnesses — 30 4		
		„ ditto for filing same — 8 2		
			40	10
		„ Sealer for sealing 7 subpœnas	10	6
		„ ditto for sealing 1 subpœna	1	6
		„ Sheriff with 7 subpœnas	16	4
		„ ditto for drawing letter and entering a true copy of a writ of subpœna to Captain Nicholls at Vallona	3	7
		Paid ditto ditto to Jutharan Ranjoo at Vallona	3	7
		„ ditto ditto to Rajahrun Pillay at Chingleput	3	7
„	31	„ ditto ditto to Rameah and others at Bangalore	4	2
		„ Sealer for sealing 1 subpœna	1	6
		„ Sheriff with ditto	2	4
		„ ditto with ditto	2	4
April	1	„ M. Narsenga Row, Interpreter, for translating a Malabar letter addressed to the Head Waiter by one Poonga Caundy, No. 54, fol. 6	10	6
„	18	Paid Clerk of the Crown for filing 5 applications	5	10
		„ ditto for issuing 5 subpœnas for 6 witnesses	7	–
		„ ditto for filing same	5	10
		„ Sealer for sealing 3 subpœnas	4	6
		„ Sheriff therewith	7	–
		„ extra Touters for copying briefs; all my writers were engaged in case of the Queen *v.* Douglas	30	3
		Paid Mr. Osborne with refresher on 2 briefs	175	–
		„ Sheriff Bailiff's batta for serving subpœnas on Sir H. C. Montgomery on the 23d March — 2		
		Paid ditto on Moonsawmy on the 28th — 2		
		„ Bailiff's batta for serving subpœna on Rutnasawmy Pillay on the 13th April — 2		
		Paid ditto on Lieut. A. S. Tweedie on 17th ditto — 3		
		Paid ditto on Lieut. R. W. O'Grady on 18th ditto — 4		
			13	–
		The prisoner being acquitted, Mr. Advocate-general moved he should be retained to take his trial at the next sessions for the felony.		
		Paid Clerk of the Crown for minuting 2 motions	2	4
		„ ditto for 2 orders of Court made thereon	7	–
		„ Sealer for sealing same	3	–
		„ Clerk of the Crown for filing same	2	4
		„ ditto for 13 recognizances entered into by 13 witnesses to appear and give their evidence on the trial	39	–
		Paid ditto for filing same	15	2
		„ Mr. Osborne to draw 2 indictments for the felony	105	–
June	7	„ Clerk of the Crown for filing 3 applications	5	10
		„ ditto for issuing 10 subpœnas for 23 witnesses	26	10
		„ Sealer for sealing same	15	–
		„ Clerk of the Crown for filing same	11	8
		„ Sheriff therewith	23	4
		„ ditto for drawing 3 letters for ditto	10	6
		„ ditto for postage of 3 letters	–	7

1843: June - 10	Paid extra Writers for repairing part of briefs - -			47 9	
	„ Clerk of the Crown for filing an application -			1 2	
	„ ditto for issuing 1 subpœna for 1 witness - -			1 2	
	„ Sealer for sealing same - - - - -			1 6	
July - 10	„ Sheriff therewith - - - - - -			2 4	
	„ Clerk of the Crown for filing same - - -			1 2	
	„ ditto for filing 2 indictments - - - -			2 4	
	„ ditto for swearing 23 witnesses to go before the Grand Jury - - - - - - -			26 10	
	Paid ditto for swearing 13 ditto on the trial - -			15 2	
	„ Sheriff Bailiff's batta for serving subpœna on Lieut. A. L. Tweedie on the 21st June - -			3 –	
	Paid ditto on Ramasawmy Naik and others - -			2 –	
	„ ditto on Dr. Forbes, on the 3d July - -			3 –	
	„ ditto for drawing letter to Capt. J. Alexander A. Ramiah, Brahmy & Co., Sheenvessiah Bangalore, on the 12th June - -	3 6			
	„ ditto for postage - - - - -	– 6			
				4 –	
	„ ditto for drawing a letter to T. Raguhram Pillay Seristadar of Chingleput, on the 13th June - - - - - -	3 6			
	Paid ditto for postage to Chingleput -	– 1			
				3 7	
	„ ditto for drawing letter to Captain K. I. Nicholls, Vellore, on the 21st June - - -	3 6			
	Paid ditto for postage of letter to ditto -	– 1			
				3 7	
	„ Mr. Osborne with 2 briefs - - - -			210 –	
					1,524 4

Plea Side.—Capt. Richard Rodney Ricketts, at the suit of Vasoodray Naido and Anagherry Moodilly.

1843: January - 25	Paid Prothonotary for filing warrant of attorney -			1 2	
	„ ditto for entering appearance for the defendant			1 2	
	„ ditto for copies of plaint and affidavit - -			11 –	
February - 2	„ Judge's Clerk for summons - - - -			3 4	
	„ officer for affidavit of service of summons -			1 6	
	„ Judge's Clerk for order - - - - -			3 6	
	„ Prothonotary for filing summons - - -			1 2	
	„ Prothonotary for filing affidavit of service -			1 2	
	„ ditto for oath administered in court - -			1 2	
	„ ditto for filing Judge's order - - - -			1 2	
	„ ditto for minuting ditto - - - - -			1 2	
	„ ditto for order of court - - - - -			3 6	
	„ Sealer for sealing order - - - - -			1 6	
	„ Prothonotary for 2 several searches to produce in Chamber the Judge's summons, and affidavit of service thereof - - - - - - -			2 4	
„ - 9	Paid Judge's Clerk for summons and order - -			7 –	
	„ Prothonotary for filing Judge's summons - -			1 2	
	„ ditto for filing Judge's order - - - -			1 2	
	„ ditto for minuting ditto - - - - -			1 2	
	„ ditto for order of Court - - - - -			3 6	
	„ Sealer for order - - - - - -			1 6	
	„ Mr. Advocate-general for settling pleas - -			35 –	
March - 9	„ Prothonotary for filing pleas - - - -			3 6	
	„ ditto for side bar rule to reply, and filing -			4 8	
	„ Sealer for ditto - - - - - -			1 6	
„ - 15	„ Prothonotary for search of replication, filed -			1 2	
„ - 17	„ ditto for filing affidavit of J. Johannes - -			1 2	
	„ Judge's Clerk for summons and order - -			7 –	
„ - 21	„ Prothonotary for filing Judge's summons -			1 2	
	„ ditto for filing Judge's order - - - -			1 2	
	„ ditto for minuting ditto - - - - -			1 2	
March - 21	Paid Prothonotary for order of Court - - -			3 6	
	„ Sealer for sealing ditto - - - - -			1 6	
	„ Mr. Advocate-general to move for leave to plead several matters - - - - - - -			17 6	
	Paid Prothonotary for minuting motion for leave to plead several matters - - - - -			1 2	
	Paid ditto for order of court - - - - -			3 6	
	„ Sealer for sealing ditto - - - - -			1 6	
	„ Prothonotary search to withdraw the pleas -			1 2	
	„ ditto for filing consent - - - - -			1 2	
	„ ditto for filing pleas - - - - -			3 6	
	„ ditto for side bar rule to reply, and filing - -			4 8	
	„ Sealer for sealing ditto - - - - -			1 6	
	„ Judge's Clerk for affidavit of service - -			3 6	

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843: March - 21	Paid officer for serving copy order on plaintiff's attorney	1	–	
	Paid ditto for service of rule	1	–	
	„ ditto for serving copy of order	1	–	
May - 1	„ Prothonotary for search and copy of replication	4	2	
„ - 18	„ Extra Writers for briefing part of depositions, &c.	4	3	
July - 5	„ Prothonotary for filing rejoinder	3	6	
„ - 26	„ ditto for two several subpœnas for six witnesses	7	–	
	„ ditto for filing ditto	2	4	
	„ Sheriff for two witnesses' subpœnas	4	8	
	„ ditto for letter, fees and postage	3	8	
	„ Sealer for two subpœnas	3	8	
August - 2	„ Prothonotary for one subpœna for one witness, and filing	2	4	
	Paid ditto for two subpœnas for four witnesses	4	8	
	„ ditto for filing ditto	2	4	
„ - 7	„ ditto for subpœna for one witness, and filing	2	4	
	„ Sealer for sealing subpœnas	6	–	
	„ ditto Sheriff with same	7	–	
	„ Mr. Advocate-general with brief	210	–	
„ - 8	„ ditto for refresher for this day	52	6	
	„ Prothonotary for cause called on for judgment	2	4	
	„ ditto for minuting ditto	1	2	
	„ ditto for judgment of nonsuit pronounced	5	–	
	„ ditto for rule to sign ditto	3	6	
	„ ditto for docketing ditto	1	–	
	„ officer for two services on the plaintiff's attorney and Master in Equity	2	–	
	Paid extra Writers for preparing part of briefs	15	–	
	„ Sheriff's bailiff's batta for going out to serve subpœna on Major Alexander Lowe	4	–	
	„ same for ditto ditto, Captain Detmas	6	–	
	„ same for ditto ditto, Captain Considine	2	–	
	„ Mr. J. H. Hagg, his expenses incurred in surveying the *locus in quo*, as per bill	18	9	
	Paid Captain Ricketts for hire of conveyance, &c., as allowed by the Master	67	5	
	Paid Master for taxing costs	114	8	
	„ Judge's Clerk for allocation	3	6	
September 29	„ Prothonotary for filing judgment	1	2	
	„ same for Master's certificate	1	2	
	„ officer for affidavit of service	1	6	
October - 2	„ Prothonotary for writ of fi. fa. and filing	6	2	
	„ Sealer for fi. fa.	1	6	
	„ Sheriff therewith	3	4	
	„ same for serving execution	2	2	
	„ same for endorsing and returning	2	4	
	„ same for withdrawing the seal from four premises	13	4	
	„ same for answering two letters and annexing copies of notices to plaintiff's attorney	7	–	
	Paid Sheriff's Bailiff's batta for seizing, &c., removing the seals	16	–	
	Paid for bricklayer Maistry for measuring four premises, with batta	16	–	
	Paid ditto for six Watching Peons in charge of the premises five days	7	–	
	Paid six ditto for batta	3	6	
	„ Interpreter for explaining affidavit to Ramshaye	7	8	
	„ same for explaining special affidavit to ditto and another	7	–	
„ - 21	„ Prothonotary with writ of ca. sa. and filing	6	2	
	„ Sealer for sealing ditto	1	6	
	„ Sheriff therewith	3	4	
				829 6
	This sum has been recovered and credited in account current.			
	Plea Side.—A. Hall, Esq., *v.* Teroovengadasawmy Modelly, and another.			
March - 4	Paid Prothonotary for copies of plaint and affidavit	17	–	17 –
1843:	Plea Side.—A. Hall, Esq., *v.* Kistnasawmy Moodelly.			
March - 4	Paid Prothonotary for copies of plaint and affidavit	12	–	12
	Plea Side.—A. Hall, Esq., *v.* Teroovengadasawmy.			
„ - 4	Paid Prothonotary for copies of plaint and affidavit	12	–	12 –

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843:		Plea Side.—East India Company *v.* A. J. Johannes.			
March	14	Paid Prothonotary for search for the inspection of the promissory note	1	2	
„	16	„ same for writ of scire facias, and filing	6	2	
		„ Sealer for scire facias	1	6	
		„ Sheriff	3	4	
1844:					
October	24	„ Prothonotary for several searches and for certificate	5	10	
		Paid officer for affidavit of the defendant being alive	1	6	
		„ Judge's Clerk for administering two oaths to Messrs. Sharlieb & Soares	5	10	
		Paid Prothonotary for filing affidavit of Mr. Soares	1	2	
		„ Judge's Clerk for order	3	6	
„	25	„ Prothonotary for filing certificate, affidavit, Judge's order, numbering same, and for order of court	8	2	
		Paid Sealer	8	2	
„	26	„ Prothonotary for writ of scire facias, and for a filing	1	6	
		„ Sealer	6	2	
		„ Sheriff	1	6	
December	7	„ Prothonotary for search for the writ of scire facias	3	4	
		„ ditto for filing plaint in scire facias for summons, and filing	1	2	
		Paid Sealer	5	10	
		„ Sheriff	1	6	
„	17	„ Prothonotary for side bar rule to plead, and filing	2	4	
		„ Sealer	4	8	
		„ officer for serving same on defendant at Sydapettah	1	6	
„	20	Paid ditto for affidavit of service	1	—	
		„ Judge's Clerk for administering oath	1	6	
		„ Prothonotary for filing affidavit of Soares	3	6	
			1	2	
					74 10
1843:		East India Company *v.* Ben Johnson.			
March	14	Paid Mr. Johannes batta for presenting the note for payment at Kilpank	2	—	
		Paid officer for affidavit of jurisdiction	1	6	
		„ Interpreter for explaining same	1	2	
May	26	„ Prothonotary for filing plaint	3	6	
		„ ditto for filing affidavit of jurisdiction	1	2	
		„ ditto for summons and filing	2	4	
		„ Judge's Clerk for affidavit of jurisdiction	3	6	
		„ Sealer for summons	1	6	
		„ Sheriff for ditto	2	4	
June	12	„ Prothonotary for search of defendant, appeared	1	2	
		„ ditto for filing affidavit of D. D. Cunlia	1	2	
		„ ditto for entering appearance for the defendant by plaintiff's attorney	1	2	
		Paid ditto side bar rule to plead, and filing	4	8	
		„ officer for serving rule on defendant	1	—	
		„ ditto for affidavit of service	1	6	
		„ Judge's Clerk for ditto	3	6	
		„ Sealer for side bar rule	2	6	
December	1	„ Prothonotary for filing affidavit of D. D. Cunlia	1	2	
		„ ditto filing certificate	1	2	
		„ ditto search for affidavit of service	1	2	
		„ ditto filing Judge's order	1	2	
		„ ditto for minuting ditto	1	2	
		„ ditto for order of court	3	6	
		„ ditto for making up record, &c.	11	—	
		„ ditto five several searches	5	10	
		„ ditto certificates	1	2	
		„ Sealer for order	1	6	
		„ Judge's Clerk for affidavit of service	3	6	
		„ ditto for order	3	6	
1844:					
February	16	„ Prothonotary for two subpœnas for three witnesses	3	6	
		Paid ditto for filing ditto	2	4	
		„ ditto for setting down cause for rule ex parte	3	6	
		„ ditto subpœna for one witness and filing	2	4	
		„ ditto two witnesses' summonses in court	2	4	
		„ ditto for reading and marking one exhibit	—	9	
		„ ditto for minuting trial	1	2	
		„ ditto for verdict pronounced	5	—	
		„ ditto for rule to sign judgment	3	6	
		„ ditto for docketing ditto	1	—	
		„ Sealer for three subpœnas	4	6	

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

		Paid Sealer for order	1	6	
		„ Sheriff with three subpœnas	7	–	
		„ Ballamoodundoss for his attendance to give evidence	3	6	
		Paid officer for serving copy rule on the defendant	1	–	
		„ same for serving on the Master	1	–	
		„ Master for receiving and filing rule for judgment	4	8	
		„ ditto for attending to receive bill of costs	3	6	
		„ ditto for warrant of tax	2	2	
		„ ditto for copying bill of costs	20	–	
		„ officer for serving copy warrant on defendant	1	–	
		„ same for affidavit of service	1	6	
		„ Master attending to receive affidavit of service and warrant	3	6	
		Paid Master for administering oath	2	–	
		„ ditto for filing same	1	2	
		„ ditto for want of tax	3	6	
		„ ditto for taxing	5	–	
		„ ditto for registration	10	–	
		„ ditto for certificate of debt and costs	13	2	
		„ Judge's Clerk for allocatur	3	6	
July	2	„ Prothonotary for filing judgment and Master's certificate	2	4	
					193 9
		Plea Side.—The East India Company *v.* Bala Govindoss.			
1843:					
May	–	Paid officer for swearing affidavit of jurisdiction	1	6	
		„ Judge's Clerk, administering oath	3	6	
„	26	„ Prothonotary for filing plaint	3	6	
		„ ditto filing affidavit of jurisdiction	1	2	
		„ ditto summons, and filing	2	4	
		„ Sealer	1	6	
		„ Sheriff therewith	2	4	
June	12	„ Prothonotary for two summonses	1	2	
		„ same for filing	1	2	
		„ Sealer for sealing	1	6	
		„ Sheriff for ditto	2	4	
1844:					
January	5	„ Prothonotary for 3 summonses, and filing	2	4	
		„ Sealer for sealing	1	6	
		„ Sheriff therewith	2	4	
„	26	„ Prothonotary for search of Defendant, appeared	1	2	
		„ ditto for side bar rule to plead, and filing	4	8	
		„ Sealer for sealing same	1	6	
		„ officer for serving rule on Defendant	1	–	
		„ same for affidavit of service	1	6	
February	2	„ Prothonotary for filing affidavit of D. D. Cunlia	1	2	
		„ ditto for oath administered in court	1	2	
„	3	„ ditto for five several searches	5	10	
		„ ditto for certificate	1	2	
„	6	„ ditto for reading and filing certificate	2	4	
		„ ditto for search and for reading a record	2	4	
		„ ditto for minuting motion	1	2	
		„ ditto for order of court	3	6	
		„ Sealer sealing same	1	6	
		„ Prothonotary for making up record, &c.	11	–	
„	17	„ ditto for setting down cause for trial ex parte	3	6	
		„ ditto for one subpœna for one witness, and filing	2	4	
		„ ditto for two ditto for four witnesses	4	8	
		„ Prothonotary for filing two subpœnas	2	4	
		„ Sealer for sealing three subpœnas	4	6	
		„ Sheriff therewith	7	–	
		„ Prothonotary for cause called on for trial	–	—	
		„ ditto for administering oath to two witnesses in court	2	4	
		Paid ditto for reading and marking one exhibit	–	9	
		„ ditto for minuting trial	1	2	
		„ ditto for verdict pronounced	5	–	
		„ ditto for rule to sign judgment	3	6	
		„ Sealer sealing ditto	1	6	
		„ officer for serving same on defendant and Master	2	–	
		Paid Prothonotary for docketing judgment	1	–	
March	–	„ Bullamookoondoss for his attendance to give evidence on behalf of the plaintiffs	3	6	
May	30	Paid Prothonotary for filing judgment	1	2	
		„ ditto for Master's certificate	1	2	
		„ Judge's Clerk for costs	3	6	
June	1	„ Master for taxation	68	8	
					191 1

Her Highness Baila Begum *v.* Jerunmub Lalah and others.

1803:				
March	21	Paid Prothonotary for 4 several searches	4	8
		„ same for copies of plaint and affidavit	23	–
		„ same for copy of affidavit of Bulchaca Lalah	22	–
		„ same for copy of order of 22d February 1843	7	–
		„ same for 3 several searches in the cause Bhoojungah Row *v.* Abdool Mawboodee Cawn	3	6
		„ and for copies of the Nabob's certificate in English, the defendant's affidavit and certificate by Governor in Council	8	–
„	31	Paid Prothonotary for filing warrant of attorney	1	2
		„ same for entering appearance for the defendant	1	2
April	22	„ Judge's Clerk for commission	3	6
		„ same for attendance at the gardens	10	6
		„ same for order	3	6
„	24	„ same for attendance at the gardens	10	6
		„ same for order	3	6
		„ same for order for Captain Forbes	3	6
		„ same for attendance thereof	10	6
		„ same for 2 affidavits	7	–
		„ Prothonotary filing affidavit of B. Cunliffe	1	2
		„ same for filing 8 several exhibits annexed thereto	9	4
		„ same for filing another affidavit of B. Cunliffe	1	2
		„ Prothonotary for filing certificate of Governor in Council annexed thereto	1	2
		Paid same for filing Judge's order	1	2
		„ same for minuting order	1	2
		„ same for order of court	3	6
		„ Sealer for sealing ditto	1	6
		„ Prothonotary for commission and filing	6	2
		„ Sealer for commission	2	6
		„ Prothonotary filing affidavit of her Highness	1	2
		„ same filing certificate of Nabob	1	2
		„ same filing affidavit of J. Forbes, Esq.	1	2
„	27	„ same for 5 several searches for affidavit	5	10
		„ same for filing Judge's order	1	2
		„ same for minuting ditto	1	2
		„ same for order Nisi	4	2
		„ Sealer for sealing ditto	1	6
		„ Judge's Clerk for order	3	6
		„ same for attendance at the Begum's	10	6
		„ Persian Interpreter for attending at the house of her Highness, 24th April, explaining to her a special affidavit	10	6
		Paid Moolah's attendance	1	–
		„ Persian Interpreter for attending at the house of the Begum	10	6
		Paid Moolah's attendance	1	–
		„ Persian Interpreter for attending at the Begum's house on the 26th, explaining special affidavit to her Highness, fo. 5	4	6
		Paid same for attendance at her house	10	6
		„ Moolah ditto	1	–
July	21	„ Prothonotary for 4 several searches to produce in court the affidavits of the defendant and others, sworn and filed	4	8
		Paid Mr. J. B. Norton with brief to make the rule absolute	87	6
August	4	Paid Prothonotary for 3 several searches, and for reading 3 several records	7	–
		Paid same for minuting motion	1	2
		„ same for order of Court	7	11
		„ same for order of appeal	4	6
September	12	„ Prothonotary for search to produce the defendant's petition in courts	1	2
		„ same for filing petition	3	6
„	14	„ same for reading a record	1	2
		„ same for search and reading another record	2	4
		„ same for minuting motion	1	2
		„ same for order of court	6	5
		„ Sealer for sealing ditto	1	6
„	26	„ Prothonotary for search and certificate	2	4
		„ same for filing rule Nisi	1	2
		„ Prothonotary for affidavit of service	1	2
		„ same for oath administered in court	1	2
		„ same for filing affidavit of Mr. Dale and another	1	2
		„ same for 2 oaths administered in court	2	4
		„ same for several to produce in court the petition of appeal	1	2
			359	8

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

		Crown Side.—The Queen on the Prosecution of the East India Company *v.* Lutchoomee *alias* Lutchee, for receiving money under false pretences.			
1843:					
April	25	Paid Clerk of the Crown for filing an indictment	1	2	
		„ same for swearing 6 witnesses to go before the Grand Jury	7	–	
		Paid same for swearing in 8 *ditto* on the trial	9	4	
		„ Mr. Arnals for briefing indictment, 9 folios, at 1 fanam per folio	–	9	
November	15	Paid V. Passanlea at B. D'Souza, for copying deposition, folios 65	5	4	
		Paid Mr. D'Souza De Cooita Rozario and Arnals for copying fair draft indictment and proof, 121 folios	10	1	
					33 8
		Crown Side.—The Queen *v.* Ally Raza and others, for Coining.			
1843:					
July	1	Paid extra Writers for engrossing a part of the indictment and preparing brief	16	1	
„	10	„ Clerk of the Crown for filing an indictment	1	2	
		„ same for swearing 9 witnesses to go before the Grand Jury	10	6	
		„ same for swearing 10 witnesses on the trial	11	8	
					39 5
		Plea Side.—Captain R. R. Ricketts *v.* Arnagherry Moodelly.			
1843:					
August	25	Paid Prothonotary for copies of plaint and affidavit	9	–	
		„ same for search, and copy of warrant of attorney	3	2	
September	18	„ same for filing warrant of attorney	1	2	
		„ same for entering appearance for the defendant	1	2	
		„ Judge's Clerk for summons and order	7	–	
		„ Prothonotary filing Judge's summons and consent	2	4	
„	26	Paid same for filing Judge's order	1	2	
		„ same for minuting ditto	1	2	
		„ same for order of court	3	6	
		„ Sealer for sealing ditto	1	6	
„	27	„ Prothonotary filing affidavit of C. Dale, esq., and others	1	2	
		Paid same for oath administered in court	5	10	
		„ same for filing 1 exhibit marked (A.)	1	2	
October	–	„ same for search to produce in court the affidavit of Mr. Dale and another	1	2	
		Paid same for filing notice	1	2	
		„ same for filing affidavit	1	2	
		„ oath administered in court	1	2	
		„ same for minuting motion	1	2	
		„ same for order of court	3	6	
		„ Sealer for sealing ditto	1	6	
		„ Prothonotary for filing pleas	3	6	
		„ same for side bar rule to reply, and filing	4	8	
		„ Sealer for sealing side bar rule	1	6	
November	7	„ Prothonotary for search, and copy of replication	4	2	
		„ same for filing rejoinder	3	6	
January	30	„ same for subpœna for witnesses, and filing	2	4	
		„ same for 3 subpœnas for 10 witnesses	11	8	
		„ same for filing ditto ditto	3	6	
		„ same for 1 subpœna for 1 witness, and filing	2	4	
February	6	„ same for ditto, ditto	2	4	
		„ Sealer for 6 subpœnas	9	–	
		„ Sheriff with 5 subpœnas	11	8	
		„ same for letter for witness	3	6	
		„ same for postage for ditto	–	2	
		„ same with subpœna duces tecum to Col. Sim.	2	4	
		„ fee to J. B. Norton, esq., with brief	105	–	
		„ same for consultation	87	6	
		„ Extra Writers for transcribing one set of brief, 297 folios, less 32 folios done in office hours, net 265	44	7	
March	27	Paid Prothonotary for subpœna for 1 witness, and filing	2	4	
		Paid same for ditto ditto	2	4	
		„ same for 3 subpœnas, for 10 witnesses	11	8	
		„ same for filing	3	6	
		„ same for subpœna for 1 witness, and filing	2	4	
		„ Sealer for 6 subpœnas	9	–	
		„ Sheriff with same	14	–	
		„ ditto for letter forwarding subpœna for service	3	6	

1843: March	27	Paid Sheriff for postage of subpœna for service	–	2	
		„ fee refresher to Mr. J. B. Norton for two terms	35	–	
		„ the like for 2d day	35	–	
April	–	„ Prothonotary for cause called on for trial	2	4	
		„ same for minuting ditto	1	2	
		„ same for judgment of nonsuit pronounced	5	–	
		„ same for rule to sign ditto	3	6	
		„ Sealer for sealing rule to sign judgment	1	6	
		„ Prothonotary for docketing judgment	1	–	
		„ Sheriff's Bailiff's batta to serve subpœna on Mr. Johnston at Royapettah, as per bill	3	–	
June	19	Paid Prothonotary for search if subpœna was issued to Nothem Moodelly	1	2	
		Paid same for search to produce in chambers a plan produced by the plaintiff at the trial of this action	1	2	
		Paid Interpreter for explaining affidavit to Pooniah and another, fol. 10 *l.*	9	–	
		Paid Judge's Clerk for oath	5	10	
		„ same for Judge's order	3	6	
		„ Prothonotary for filing affidavit	1	2	
		„ same for filing affidavit	1	2	
		„ same for minuting ditto	1	2	
		„ same for order of Court	3	6	
		„ Sealer sealing same	1	6	
July	1	„ Prothonotary for search to deliver the map marked C.	1	2	
		Paid Master for taxing costs	124	4	
		„ Judge's Clerk for allocatur	3	6	
October	31	„ Prothonotary for filing judgment	1	2	
		„ same for filing Master's certificate	1	2	
					650 3

Plea Side.—Captain R. R. Ricketts, at the suit of Vasoodavy Naidoo.

1843: August	25	Paid Prothonotary for search and copy plaintiff's warrant of attorney	3	2	
September	18	Paid same filing warrant of Attorney	1	2	
		„ same for entering appearance for the defendant	1	2	
		„ same for copies of plaint and affidavit	9	–	
„	25	„ Judge's Clerk for summons for time to plead	3	6	
		„ same for order	3	6	
„	26	„ Prothonotary for filing Judge's summons and consent	2	4	
		Paid same for filing Judge's order	1	2	
		„ same for minuting Judge's order	1	2	
		„ same for order of court	3	6	
		„ Sealer for sealing ditto	1	6	
„	27	„ Prothonotary for oath administered to Mr. Dale and others in court	5	10	
		Paid same for filing affidavit of Mr. Dale and others	1	2	
		„ same for filing 1 exhibit marked A.	1	2	
October	2	„ Prothonotary for search to produce in court the affidavit of Mr. Dale and another	1	2	
		Paid Prothonotary for oath administered in court to affidavit of service of notice	1	2	
		„ same for filing notice and affidavit of service	2	4	
		„ same for minuting motion for leave to plead several matters	1	2	
		„ same for order of court	3	6	
		„ Sealer for sealing ditto	1	6	
		„ officer for serving same	1	–	
		„ Prothonotary for filing pleas	3	6	
		„ same for side bar rule to reply, and filing	4	8	
		„ sealer for side bar rule	1	6	
		„ officer for serving	1	–	
November	7	„ Prothonotary for search and copy of replication	4	2	
„	21	„ same for filing rejoinder	3	6	
1844: January	30	„ same for 1 subpœna for 1 witness, and filing	2	4	
		„ same for 3 subpœnas for 10 witnesses	11	3	
		„ same for filing ditto	3	6	
		„ same for 1 subpœna for 1 witness, and filing	2	4	
		„ same for 1 subpœna for 1 ditto ditto	2	4	
		„ Sealer for 2 ditto	3	–	
		„ same for 3 ditto	4	6	
		„ same for 1 ditto	1	6	

 (*continued*)

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1844: January	30	Paid Sheriff with five subpœnas	11	8
		„ same for writing letter and enclosing subpœnas to Captain Ricketts	3	6
		Paid same for postage for ditto to Mount	2	–
		„ same with subpœna duces tecum to Col. Sim	2	4
		„ Extra Writers for transcribing 2 sets of brief, each 296 folios, deduct 91 folios done in office hours, net 501 folios, at 1 fanam per folio	41	9
		Paid fee to Mr. J. B. Norton, with brief	105	–
		„ same for consultation fee	87	6
		N.B.—Countermand notice of trial served.		
March	28	Fresh notice of trial served for 4th April.		
„	29	Paid Prothonotary for subpœna for 1 witness, and filing	2	4
		Paid same for ditto ditto	2	4
		„ same for 3 subpœnas for 10 witnesses	11	8
		„ same for filing ditto ditto	3	6
		„ same for 11 subpœnas for 1 witness, and filing	2	4
		„ Sealer for 6 subpœnas	9	–
		„ Sheriff with 2 subpœnas	14	–
		„ same for letter, forwarding subpœna to Capt. Ricketts	3	6
		Paid same for postage to Mount	–	2
		The cause was made remanet.		
June	25	Paid Prothonotary for 3 subpœnas for 10 witnesses	11	8
		„ same for filing ditto	3	6
		„ same for 1 witness, and filing	2	4
		„ same for 1 ditto, and filing	2	4
		„ same for 1 ditto, and filing	2	4
		„ Sealer for 6 subpœnas	9	–
July	17	„ Prothonotary for subpœna for 1 witness, and filing	2	4
		Paid same for subpœna for 2 witnesses	2	4
		„ same for filing ditto	1	2
		„ Sealer for sealing 2 subpœnas	3	–
		„ Sheriff with 6 subpœnas	14	–
		„ same for letter fees and postage	3	–
		„ same with 2 subpœnas	4	8
		„ Sheriff's Bailiff's batta, for serving subpœna on J. A. Haddleston, esq., at the Adgar	6	–
		Paid refresher fee to Mr. J. B. Norton, and with further papers	52	6
„	20	Paid ditto to ditto for this day	35	–
		„ ditto to ditto for this day	35	–
„	22	„ Prothonotary for search and copy of a translation of a petition marked A.	6	2
„	23	Paid refresher to Mr. J. B. Norton for this day	35	–
		„ Prothonotary cause called on for judgment	2	4
		„ same for 5 witnesses sworn in court for the defendant	5	10
„	27	Paid same for reading and marking 6 exhibits	4	6
		„ same for minuting trial	1	2
		„ same for verdict pronounced	5	–
		„ same for rule to sign judgment	3	6
October	31	„ Master for taxing costs	129	8
		„ Judges' Clerk for allocatur	3	6
		„ Prothonotary for filing Master's certificate	1	2
		„ same for filing judgment	1	2

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In Equity.—Her Majesty's Attorney-general *v.* Brodie and others.

1843: October	2	Paid Registrar for minuting motion made by Mr. Advocate-general to discharge order of 7th August 1842, which was refused	2	–
		Paid same for search to produce in court the order of court, dated 7th August last	2	–
		Paid same for 6 several searches to produce in court the proceeding in this suit	12	–
1844: January	4	Paid same for search and certificate of motion, made on 2d October, and of the refusal thereof	4	–
		Paid same for 6 several searches	12	–
		„ same for copy of information filed on the 8th January 1805	35	–

1844:					
January -	15	Paid Registrar for copy decree dated 22d April 1805	8	–	
		„ same for copy of order dated 22d February 1809	9	–	
		Paid same for copy of order dated 9th March 1810	6	–	
		„ same for ditto of 7th April 1817	10	–	
		„ same for ditto of 6th May 1817	5	–	
„ -	20	„ same for search and copy of Master's report, dated 20th September 1805	80	–	
„ -	26	Paid same for 4 several searches	8	–	
		„ same for copy of order dated 18th November 1805	8	–	
		Paid same for copy of Master's report dated 11th February 1809	31	–	
		Paid same for copies of minutes taken in court on the 28th July and 7th August 1843	4	–	
„ -	29	Paid same for search for the petition of the Rev. A. D. R. Cardozo, sworn and filed herein	2	–	
February -	6	Paid same for reading and filing petition of appeal	5	6	
		„ same for ditto certificate	4	–	
		„ same for search and for reading a record	4	–	
		„ same for minuting motion	2	–	
		„ same for drawing order of court	8	8	
		„ Sealer for sealing ditto	1	6	
„ -	22	„ Registrar for reading and filing order of 7th February 1844	4	–	
		Paid same for minuting motion	2	–	
		„ Registrar for minuting allowance of petition of appeal	7	–	
		Paid same for order of court	3	6	
		„ Sealer for sealing ditto	1	6	
March -	7	„ Registrar for 19 several searches	38	–	
		„ same for copies of evidence, proceedings, judgments, decrees and orders had or made in the cause, so far as the same had relation to the matter of the appeal of the Advocate-general against the order and directions of court, dated respectively 7th August 1843 and 2d October 1843	391	6	
		Paid same for 4 several other searches, to prepare the under-mentioned certificate of proceedings			
		Paid same for drawing certificate of proceedings, so far as the same had relation to the matter of the said appeal	8	8	
		Paid same for making up the packet containing copies of all evidence, &c., for the purpose of the same being transmitted to the Privy Council, pursuant to the order of court dated 22d February 1844, and for attending the Chief Justice therewith for his signature	87	6	
„ -	8	Paid Judge's Clerk for order	3	6	
		„ Prothonotary for filing Judges' order	2	–	
		„ same for minuting ditto	2	–	
		„ same for order of court	3	6	
		„ Sealer for sealing ditto	1	6	
		„ Judge's Clerk for packet of appeal	10	6	
		„ Sealer for sealing same	21	–	
					859 4
		Crown Side.—The Queen *v.* Lutchoomee, *alias* Lutchee, for receiving Money under false pretences.			
1843:					
October -	–	Paid Clerk of the Crown for issuing 2 subpœnas duces tecum, for 2 witnesses	2	4	
		Paid ditto for 2 subpœnas ad testificandum	9	4	
		„ Sealer sealing same	6	–	
		„ Sheriff with same	9	4	
		„ Clerk of the Crown for filing same	4	8	
		„ ditto for filing indictment	1	2	
		„ ditto for swearing 10 witnesses to go before the Grand Jury	11	8	
		Paid ditto for ditto on the trial	7	–	
		„ Extra Writers employed for engrossing indictment and making copy, part of brief being pressed for time	7	4	
					58 10
		Plea Side.—The East India Company, at the suit of N. Barambeg.			
November	20	Paid Prothonotary for entering appearance for the defendant	1	2	

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843:					
November	20	Paid Prothonotary for copy of plaint - - -	11	–	
December	12	„ ditto for filing plea - - - - -	2	–	
„ -	16	„ ditto for side bar rule to reply and filing - -	4	8	
		„ Sealer for sealing same - - - - -	1	6	
„ -	23	„ Prothonotary for search and copy of replication	3	2	
1844:					
January -	10	„ ditto for search to produce in the office the receipt granted Mr. Ben Johnson to Moothee Ummall for a certain Government promissory note, No. 2,300 of 1829-30, of 18th January 1831 -	1	2	
February -	12	Paid Prothonotary for subpœna for one witness, and filing - - - - - - - - -	2	4	
		Paid ditto for 2 subpœnas for 6 witnesses - -	7	–	
		„ ditto for filing ditto - - - - -	2	4	
		„ ditto for 1 subpœna for 1 witness, and filing -	2	4	
		„ ditto for 1 subpœna for 1 ditto, and filing -	2	4	
		„ Sealer for sealing 5 subpœnas - - -	7	6	
		„ Sheriff with a subpœna duces tecum to Moothee Ummall - - - - - - - - -	2	4	
„ -	15	Paid Sheriff with 3 subpœnas - - - -	7	–	
		„ ditto with subpœna duces tecum to the Prothonotary - - - - - - - -	2	4	
		Paid bailiff his batta for serving subpœna - -	6	–	
„ -	13	„ Judge's Clerk for summons calling on plaintiff's attorney to admit certain documents to prevent necessary proofs on the trial, pursuant to the rule of court - - - - - - - - -	3	6	
		Paid Prothonotary for search to produce at chambers the receipt granted by Mr. Ben Johnson to Moothee Ummall for the Government promissory note in question - - - - - - -	1	2	
		Paid for Judge's order on summons - - -	3	6	
		„ for Extra Writers preparing part of brief for Junior Counsel, now required by Mr. Advocate-general -	7	–	
		Paid fee to Mr. J. B. Norton with brief - - -	70	–	
		„ ditto ditto for refreshers this day - - -	52	6	
		„ Prothonotary for 3 searches to produce in court the pleadings in the cause Moothee Ummall *v.* Ben Johnson, and also a receipt granted by Mr. Johnson - - - - - - - - - -	3	6	
		Paid for 2 witnesses sworn in court for the defendants - - - - - - - - -	2	4	
		Paid ditto for reading and marking 4 exhibits - -	3	–	
„ -	22	„ ditto for minuting motion for new trial, order Nisi granted - - - - - - - -	1	2	
		Paid ditto for order of court - - - - -	3	6	
		„ Sealer for sealing same - - - - -	1	6	
March -	21	„ Prothonotary for filing rule Nisi - - -	1	2	
		„ ditto for filing affidavit of M. Soares - -	1	2	
		„ ditto for oath administered in court - -	1	2	
		„ Mr. Soares for serving 2 notices to produce certain documents, &c., dated 10th February 1844, on Mr. J. T. Crompton, plaintiff's attorney - -	2	–	
		Paid same for batta - - - - - - -	3	–	
		„ J. B. Norton, esq., with brief to make rule, also nisi	52	6	
		„ same for refresher - - - - - - -	35	–	
		„ Extra Writers for copying notes of trial - -	4	4	
					319 2
		Crown Side.—The Queen on the prosecution of the East India Company *v.* Audy Lutchmee Ummal, *alias* Lutchmee, *alias* Lutchmoo, *alias* Audy Ummal, for receiving money under false pretences.			
1843:					
December	–	Paid Clerk of the Crown for issuing 5 subpœnas -	14	–	
		„ Sealer for sealing ditto - - - - -	7	6	
		„ Sheriff with same - - - - - - -	11	8	
		„ ditto Bailiff for serving subpœna on Govindo Moodelly - - - - - - - - -	2	–	
		Paid Clerk of Crown for filing same - - -	5	10	
		„ ditto for filing indictment - - - -	1	2	
		„ ditto for swearing witnesses to go before the Grand Jury - - - - - - - -	11	8	
					53 10
		Crown Side.—The Queen *v.* Anmanee, otherwise called Vencatomah, for receiving money under false pretences.			
„ -	15	Paid Clerk of the Crown for issuing 3 subpœnas for 7 witnesses - - - - - - - -	8	2	
		Paid Sealer for sealing same - - - - -	4	6	
					12 8

		Crown Side.—The Queen on the prosecution of the East India Company *v.* Ellamah, otherwise called Ammaloo, for receiving money under false pretences.			
1843: December	–	Paid Clerk of the Crown for 2 subpœnas for 8 witnesses		9	4
		Paid Sealer for sealing same		3	–
		„ Sheriff with same		4	8
		„ Sheriff's bailiff for batta, serving same		2	–
		„ Clerk of the Crown for filing subpœnas		2	4
		„ ditto for filing indictment		1	2
		„ ditto for swearing 7 witnesses to go before a Grand Jury		8	–
					30 8
		The Military Board in the matter of the purchase of ground in Carraputtady in Bally Chitty, Battery-street, from Ruthnavadoo Chitty.			
1844: February	9	Paid Prothonotary for 3 several searches for the will of R. Arnachella Chitty, deceased		6	–
		Paid Prothonotary for copies in English of will, probate and executors' oath		9	–
		Paid Interpreters for copying the will in original language to annex		7	6
					22 6
		Crown Side.—The Queen *v.* M. Moodookistna Moodelly and M. Verasawmy Moodelly, by *scire facias*.			
March	20	Paid Prothonotary for writ of Diem clausit extremum		16	11
		„ ditto for filing ditto		1	2
		„ Judge's Clerk for Judge's signature to ditto		3	6
		„ Sealer for sealing writ of Diem clausit extremum		2	6
April	3	Paid Prothonotary for 2 several searches		2	4
		„ ditto for certificate		8	8
July	18	„ ditto for reading and filing certificate		2	4
		„ ditto for minuting motion that Prothonotary should indorse on writ of Diem clausit extremum, that Venditioni exponas should issue		1	2
		Paid for drawing order of court		10	2
		„ Sealer		1	6
		„ Prothonotary for 2 searches for affidavit of M. Jugganada Moodely, and certificate whereon he had obtained a rule Nisi, for setting aside writ of Diem clausit extremum		2	4
		Paid ditto for copies of the affidavit of M. Juggana-dra Moody and the certificate of the Deputy Prothonotary		33	–
		Paid ditto for search and indorsing the writ of Diem clausit extremum		3	2
		Paid ditto for search for writ of Diem clausit extremum		1	2
		Paid ditto for search and for reading a record		2	4
		„ ditto for minuting a motion		1	2
		„ ditto for order of court discharging rule Nisi		6	5
		„ Sealer for sealing order		1	6
		„ Prothonotary for search if any one had appeared to the writ of Diem clausit extremum		1	2
		Paid ditto for issuing writ of Venditioni exponas		24	5
August	3	„ ditto for filing of Venditioni exponas		1	2
		„ Judge's Clerk for Judge's signature to writ of Venditioni exponas		3	6
		Paid Sealer for sealing same		2	6
		„ Sheriff with Venditioni exponas		3	4
September	6	„ Prothonotary for 2 writs of Venditioni exponas		25	2
		„ ditto for filing ditto		1	2
		„ Judge's Clerk for Judge's signature		3	6
		„ Sealer for sealing writ		2	6
		„ Sheriff with same		3	4
„	17	„ Prothonotary for search to produce in court the first writ of Venditioni exponas		1	2
					177 7
		Plea Side.—Geo. Norton, Esq., Advocate-General, *v.* Moodo Kistna Moodelly and M. Veerasawmy Moodelly, by information.			
March	–	Paid Sheriff for his certificate of the death of the defendant Veerasawmy		2	–

1844: March	-	-	Paid officer for serving the Sheriff notice of the claim on the part of the Crown of the jewels in the defendant's case	1 —
„	-	20	Paid Prothonotary for issuing writ of Diem clausit extremum	17 4
			Paid Judge's Clerk for Judge's signature	3 6
			„ Sealer for sealing same	2 6
			„ Sheriff with the writ	3 4
			„ Prothonotary for 2 searches and certificate	11 —
			„ ditto for reading and filing certificate, minuting motion for order of court that Prothonotary should indorse on the writ of Diem clausit extremum, and for writ of Venditioni exponas to issue	12 11
			Paid Sealer for sealing order	1 6
July	-	19	„ Prothonotary for 2 searches and for copies of the affidavit of M. Gagganada Moodelly and certificate of the Deputy Prothonotary on rule Nisi, obtained to set aside writ of Diem clausit extremum	29 4
„	-	23	Paid ditto for search and indorsing the writ Diem clausit extremum, pursuant to order of 18th July	3 2
			Paid ditto for search for the writ Diem clausit extremum	—
			Paid ditto for search for reading record, minuting motion and order of court, or showing cause against rule obtained by M. Jagganadum	9 11
August	-	—	Paid Sealer for sealing order discharging rule Nisi	1 6
			„ Prothonotary for search if any one had appeared to the writ of Diem clausit extremum, also on issuing writ of Venditioni exponas, and filing same	26 9
			Paid Judge's Clerk for Judge's signature to the writ	3 6
			„ Sealer for sealing same	2 6
			„ Sheriff with same	3 4
			„ Prothonotary to produce in court the writ of Venditioni exponas	1 2
September		17	Paid ditto reading 4 several records, minuting motion, and for order of court	9 4
			Paid Sealer for sealing order	1 6
			„ officer for serving order on the Prothonotary	1 —
			„ same for serving on the Sheriff	1 —
			„ Prothonotary for search for the delivery of the writ of Venditioni exponas to the Sheriff	1 2
			Paid ditto for 2d writ of Venditioni exponas	25 7
			„ Judge's Clerk for Judge's signature	3 6
			„ Sealer for sealing same	2 6
			„ Sheriff with same	3 4
				186 4

Plea Side.—The East India Company *v.* C. Pagavvoloo Chitty.

May	-	31	Paid officer for affidavit of jurisdiction	1 6
			„ Judge's Clerk for oath administered to ditto	3 6
			„ Prothonotary for filing plaint	3 6
			„ ditto for filing affidavit of jurisdiction	1 2
			„ ditto for summons and filing	2 4
June	-	1	„ Sealer for sealing summons	1 6
			„ Sheriff with ditto	2 4
July	-	2	„ Prothonotary for search if defendant appeared	1 2
			„ ditto for side bar rule to plead, and filing	4 8
			„ Sealer for sealing same	1 6
			„ Prothonotary for filing affidavit of M. Soares	1 2
			„ ditto for oath administered in court	1 2
			„ ditto for five several searches	5 10
			„ ditto for certificate that no plea filed, &c.	1 2
			„ ditto for reading and filing certificate	2 4
			„ Prothonotary for a search and for reading record	2 4
			„ ditto for minuting motion for trial ex parte	1 2
			„ ditto for order of court	3 6
			„ Sealer for sealing same	1 6
			„ Prothonotary for making up record	12 —
August	-	5	„ ditto for setting down cause for trial ex parte	3 6
			„ ditto for 2 subpœnas for 4 witnesses	4 8
			„ Sealer for sealing same	3 —
			„ Sheriff with same	4 8
			„ Prothonotary for filing same	2 4
			„ ditto for cause called on for trial	2 4
			„ ditto for 3 witnesses sworn in court	3 6
			„ ditto for reading and marking 1 exhibit	— 9

1844:					
August - 5	Paid Prothonotary for minuting trial - - -	1	2		
	„ ditto for verdict pronounced - - - -	5	–		
	„ ditto for rule to sign judgment - - -	3	6		
	„ Sealer for sealing same - - - - -	1	6		
	„ Prothonotary for docketing judgment - -	1	–		
October - 12	„ Master for taxing costs - - - - -	62	8		
	„ Judge's Clerk for allocatur - - - -	3	6		
	„ Prothonotary for filing Master's certificate -	1	2		
	„ ditto for filing judgment - - - -	1	2		
				160	9
	Plea Side.—The East India Company *v.* C. Poorooshotum Chitty.				
May - 31	Paid officer for affidavit of jurisdiction - - -	1	6		
	„ Judge's Clerk for oath administered to ditto -	3	6		
	„ Prothonotary for filing plaint - - - -	3	6		
	„ ditto for filing affidavit of jurisdiction - -	1	2		
	„ ditto for summons and filing - - - -	2	4		
June - 1	„ Sealer for sealing summons - - - -	1	6		
	„ Sheriff with summons - - - - -	2	4		
				15	10
	Crown Side.—In the matter of Valungapooly Thaver.				
July - 11	Paid Clerk of the Crown for copy of affidavit of Chedunbara Tondava Pillay, and copies of exhibits annexed thereto, being 106 folios, at 1 rupee per folio - - - - - - - - -	106	–		
„ - 30	Paid Clerk of the Crown for minuting motion for a commission to administer oath to Mr. Onslow -	1	2		
	Paid for order of court - - - - - -	3	6		
	„ Sealer for sealing same - - - - -	1	6		
	„ Clerk of the Crown for filing same - - -	1	2		
	„ ditto for issuing a commission - - -	5	–		
	„ Judge's Clerk for Judge's signature thereto -	3	6		
	„ Sealer for sealing same - - - - -	2	6		
	„ Clerk of the Crown for filing same - - -	1	2		
	„ ditto for attendance in this matter - - -	2	–		
	„ ditto for filing an affidavit of Mr. Onslow -	1	2		
	„ Extra Writers for preparing brief - - -	15	4		
				144	–
	Crown Side.—The Queen *v.* J. D. Shreene; 2 Indictments for Assault.				
„ - 13	Paid Clerk of the Crown for copies of depositions of the witnesses for the prosecution, 37 folios - -	37	–		
	Paid ditto for filing 2 depositions - - - -	2	4		
	„ ditto for swearing 10 witnesses, and 2 indictments to go before the Grand Jury - - -	11	8		
	Paid ditto for swearing 10 witnesses on the trial -	11	8		
	„ Extra Writers for briefing indictment - -	7	–		
				69	8
	In Equity.—Shurfool Moolk Bahader *v.* C. Veerabudda Moodelly and others.				
„ - 26	Paid Prothonotary for 2 searches - - - -	4	–		
	„ ditto for certificate of subpœna for costs having been issued against plaintiffs at the instance of the defendants - - - - - - - -	2	–		
August - 2	Paid ditto for 15 searches to produce in court the proceedings in this suit - - - - -	30	–		
	Paid ditto for 19 searches to produce in court the proceedings in Plea Side action D. Veerabudra Moodelly *v.* Shurfool Moolk - - - -	22	2		
	Paid ditto for search whether the subpœna for costs had been returned - - - - - -	2	–		
	Paid ditto for 15 searches to produce in court the proceedings in this Plea Side action - - -	30	–		
	Paid ditto for 19 searches to produce in court the proceedings in the Plea Side action - - -	22	4		
„ - 9	Paid ditto for filing warrant of attorney and consent	4	–		
	„ ditto Mr. Dale's appearing for the plaintiff in the stead of Mr. Wilkins - - - - -	2	–		
„ - 10	Paid Prothonotary for 30 searches - - - -	60	–		
	„ ditto for drawing certificate - - - -	14	8		
„ - 16	„ ditto for 5 searches to produce in chambers the bill and original answer of S. P. Anathon, also 2 orders made herein on the 16th April and May 1844, and the subpœna for costs - - - -	10	–		

(*continued*)

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1844: August	16	Paid Prothonotary for another search to produce the affidavit of the plaintiff on the Plea Side action	1	2
		Paid ditto for filing notice	2	–
		„ Judge's Clerk for administering oath on affidavit of service	3	6
		Paid Prothonotary for filing affidavit of service	2	–
		„ Judge's Clerk for order for a commission to swear plaintiff to an affidavit	3	6
„	23	Paid Prothonotary for filing Judge's order	2	–
		„ ditto for minuting ditto	2	–
		„ ditto for order of court	3	6
		„ Sealer for sealing ditto	1	6
„	26	„ Prothonotary for commission and filing	7	–
		„ Judge's Clerk for Judge's signature to ditto	3	6
		„ Sealer, sealing same	2	6
„	30	„ Judge's Clerk for oath to affidavit of G. D. Drury, esq.	5	6
		Paid Prothonotary for filing ditto	2	–
		„ S. G. Dustegen, Interpreter, for explaining special affidavit for Shurfool Moolk Bahader, fo. 6	5	2
		Paid ditto for attendance at his house	10	6
		„ for swearing Moollah	1	–
		„ Mr. Shaw, Commissioner for executing commission	35	–
		Paid Prothonotary for filing affidavit	2	–
September	2	„ ditto for searches to produce in court the subpœna for costs and affidavit made by the plaintiff and G. D. Drury, esq.	6	–
		Paid Judge's Clerk for oath to affidavit of service	3	6
		„ Prothonotary for filing same, and notice of motion	4	–
		Paid Judge's Clerk for order commission	3	6
		„ Prothonotary for filing Judge's order	2	–
		„ ditto for minuting ditto	2	–
		„ ditto for order of court	3	6
		„ Sealer for sealing same	1	6
		„ Prothonotary for commission and filing	7	–
		„ Judge's Clerk for Judge's signature to ditto	3	6
		„ Sealer for sealing same	2	6
		„ Persian Interpreter, for explaining affidavit to plaintiff, 6 folios	5	2
		Paid ditto for his attendance at the plaintiff's house	10	6
		„ for attendance of swearing Moollah at ditto	1	–
		„ Mr. Shaw, the Commissioner, for executing the commission	35	–
„	11	Paid Prothonotary for filing affidavit of plaintiff	2	–
„	13	„ ditto for filing affidavit of G. D. Drury, esq.	2	–
		„ ditto for oath administered to ditto in court	2	–
		„ officer for serving notice of motion on Mr. Branson	1	–
		Paid same for affidavit of service	1	6
„	14	„ Prothonotary for 3 several searches to produce in court the subpœna for costs, and also the affidavit of the plaintiff and G. D. Drury, esq.	6	–
„	17	Paid ditto for filing notice	2	–
		„ ditto for filing affidavit of service	2	–
		„ ditto for oath administered in court	2	–
„	18	„ ditto for 3 searches to produce in court the subpœna for costs, together with the affidavit of the plaintiff and G. D. Drury, esq., this day	6	–
„	19	Paid Prothonotary for 3 searches to produce in court the subpœna for costs, together with the affidavit of the plaintiff and G. D. Drury, esq., this day	6	–
„	20	Paid ditto for reading and filing 2 certificates	8	–
		„ ditto for reading 8 several records	16	–
		„ ditto for minuting motion	2	–
		„ ditto for drawing order of court	20	8
„	27	„ Sealer for sealing order	1	6
October	4	„ officer for serving copy order on Mr. Branson	1	–
				470 8

Plea Side.—East India Company *v.* Edward Gilles.

1844: November	9	Paid Prothonotary for search if judgment filed	1	2
				1 2

		Plea Side.—East India Company v. Golam Dustagee and Syed Hamed.			
1844:					
August	26	Paid Prothonotary for entering appearance by Mr. Dale for the plaintiffs in the stead of Mr. Ackworth	1	2	
		Paid ditto for 2 several searches for the original bond and warrant of attorney given by the defendant Syed Hamed	2	4	
September	4	Paid ditto for 5 searches	5	10	
		„ ditto for certificate	1	2	
					10 6
		This sum has been recovered and credited in account current.			
		Crown Side.—The Queen *against* F. Ramasawmy Jyah and others, for murder.			
1844:					
October	–	Paid Clerk of the Crown for filing an indictment	1	2	
		„ same for swearing 34 witnesses to go before the Grand Jury	39	8	
		Paid same for minuting motion	1	2	
		„ same for an order of sessions	3	6	
		„ Sealer for sealing same	1	6	
		„ Clerk of the Crown for filing same	1	2	
		„ same for swearing 30 witnesses on the trial	35	–	
„	8	„ fee to F. Osborne, esq., with brief for the prosecution	87	6	
		Paid ditto for fuller fee for the same	35	–	
„	11	„ ditto refresher for this day	87	6	
„	12	„ ditto for ditto	87	6	
		„ ditto for Extra Writers	31	2	
					411 10
		In the matter of W. S. Jugga Nathasawmy Naidoo; Order for a Habeas Corpus.			
1844:					
October	–	Paid Clerk of the Crown for copies of 2 affidavits filed herein, with the exhibit annexed, and copy of an order made by the Chief Justice for a writ of habeas corpus, 9 fol.	9	–	
		Paid same for reading a return annexed to the habeas corpus	1	2	
		Paid same for filing ditto	1	2	
		„ same for reading the translate copy of warrant under which the party herein detained	1	2	
		Paid same for filing ditto, and copy of warrant in native language	2	4	
		Paid Judge's Clerk for order remanding prisoner to custody	3	6	
		Paid Clerk of the Crown for filing order	1	2	
		„ same for drawing an order of court	3	6	
		„ Sealer for sealing same	1	6	
		„ Clerk of the Crown for attendance in this matter	2	–	
		„ postage of a letter to M. A. Morehead, esq., Chingleput, and fine	–	6	
					27 –
		Miscellaneous Disbursements on account of the East India Company.			
1842:					
June	7	Paid for Coolies removing the office desks and records from Mr. Rose's office	1	–	
„	20	Paid Mr. Pharaoh for Almanack for 1842	8	–	
		„ ditto for quarter Army List, from 1st July to 30th September 1842	4	–	
„	28	Paid Coolies for bringing stationery from Stationery-office	–	6	
August	8	Paid Mootoosawmy for binding the Acts of the Supreme Government	3	8	
„	13	Paid Coolies for removing iron cash chest from Mr. Ackworth's office	–	8	
		Paid Mr. Johanes for 2 mds. of "Fort St. George Gazette," lost before I took charge	2	–	
		Paid for repairing iron cash chest and painting	2	–	
		„ Mootoosawmy for binding "Fort St. George Gazette" for 1841	2	–	
		Paid ditto for dissecting and rebinding Company's letter-book	4	4	
		Paid 2 Coolies for bringing stationery	–	4	
		„ for mending the rattan mats, &c.	–	10	
		„ the Government Bank for a bank-book	1	–	

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1842: December	9	Paid for postage to G. Norton, esq., Ootacamund, and fine	–	11
		Paid ditto - ditto	–	14
		„ ditto - ditto	–	14
		„ postage of a letter from E. Lawford, esq.	–	15
		„ ditto to ditto	1	2
		„ Coolies for bringing stationery from stationery-office	–	4
		Paid Mr. Marsden for Army List, per bill	4	–
		„ ditto for Madras Almanac	5	–
		„ postage of a letter to E. Lawford, esq.	1	2
		„ ditto from ditto	–	10
		„ ditto to N. W. Kindersley, esq., Tanjore	–	4
		„ ditto to E. Lawford, esq., by express	1	2
		„ for binding "Fort St. George Gazette" for the year 1842	2	–
		Paid Coolies for bringing stationery	–	4
		„ Mr. Pharaoh for Army List	2	–
		„ postage of letter to E. Lawford, esq.	–	5
		„ ditto from ditto	–	10
		„ ditto to Lieut. O'Grady	–	3
		„ extra Writers for copying the case of Mr. James Crump, 112 folios, at 1 fanam per folio	9	5
		Paid ditto for copying power of attorney from East India Company to new Bank	1	12
		Paid Coolies for bringing stationery	–	4
July -	19	„ postage of a letter from J. J. Mackenzie, Calcutta	–	12
„ -	25	Paid Mr. Pharaoh for Army List for 3d quarter	3	–
August -	3	„ Cooly carrying letter to R. R. Rickets, at the Mount	–	6
September	25	Paid postage of a letter to E. Lawford, esq.	1	10
October -	7	„ ditto from ditto	–	10
„ -	12	„ Cooly for taking a letter to Captain Ricketts, St. Thomas's Mount	–	4
„ -	19	Paid Mr. Pharaoh for Army List	2	–
November	23	„ postage of a letter from E. Lawford, esq.	–	10
June -	18	„ Cooly for bringing stationery	–	6
„ -	24	„ postage of a letter to E. Lawford, esq.	–	10
„ -	25	„ Cooly for bringing stationery	–	2
„ -	26	„ Mr. Pharaoh for Army List for one quarter	2	–
February -	13	„ ditto for Almanack for 1844	7	–
„ -	24	„ postage of a letter to E. Lawford, esq., by express	1	10
April -	23	Paid Mr. Pharaoh for Army List, as per bill	2	–
May -	4	„ for binding the "Fort St. George Gazette" for 1843	2	–
July -	1	Paid Mr. Arnals for rattan, and repairing and patching rattan mats of the office	2	–
„ -	9	Paid Mr. Stacker, Portuguese Interpreter, for translating from the Portuguese language a letter from the Governor-general of Goa to the Governor of Madras	5	4
„ -	17	Paid Mr. Pharaoh for bill for Army List for 3d quarter	2	–
August -	20	Paid postage of letter by express to E. Lawford, esq.	–	13
October -	15	„ Mr. Pharaoh for Army List for 4th quarter, 1844	2	–
„ -	31	„ postage of a letter to S. Caunamall, widow of the late C. Poornapah Moodelly, to Coimbadoo, near Madras	–	1
December	19	Paid Mootoosaumy for binding a Minute-book of Government	1	8
				101 8
				19,381 3

(signed) *Clement Dale*,
Honourable Company's Solicitor.

At the request of Mr. Dale, I have compared the vouchers produced by him before me in support of the foregoing charges, and I find them to be correct.

19 May 1845. (signed) *J. Minchin.*

(A true copy.)

(signed) *J. F. Thomas*, Chief Secretary.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

(No. 121.)

From *Clement Dale*, Esq., Honourable Company's Solicitor, to *J. F. Thomas*, Esq., Chief Secretary to Government, Fort St. George, Madras; dated the 26th May 1845.

Sir,

Jud. Cons. 13 September 1845. No. 30.

I HAVE the honour to forward a statement of disbursements made by me on account of the Honourable Company from the time of my assuming charge of my office on the 6th June 1842 up to the 31st December 1844, together with an account current with the Honourable Company, in which are credited the several advances received by me from Government, as per the order noted in the margin,* as well as all sums recovered or received by me for the Honourable Company during the same period, showing also the application of such recoveries and receipts, and exhibiting a balance in my favour of *Rs.* 1,220. 6. 2.; and I have to request that you will be pleased to obtain the sanction of Government, for such balances, (of *Rs.* 1,220. 6. 2.) being paid to me.

* 21 June 1842, No. 5, Law Department, 22 July 1843, No 98, Secret Department.

I have, &c.
(signed) *Clement Dale*,
Honourable Company's Solicitor.

(A true copy.)
(signed) *J. T. Thomas*,
Chief Secretary.

EXTRACT from a Statement of Disbursement made by Mr. *Dale*, on account of the Honourable Company, between the 6th of June 1842, when Mr. *Dale* took charge, and the 31st December 1844.

Jud. Cons. 13 September 1845. No. 31.

The Honourable the EAST INDIA COMPANY to CLEMENT DALE, *Dr.*

		Crown Side.—The Queen, on the information of George Norton, Esq., the Advocate-general, *v.* Archibald Douglas, Esq.			
1842: June	8	Paid Clerk of the Crown for filing 21 criminal informations		24	6
		Paid same for filing an application		1	2
		,, same for 2 searches in the office		2	–
		,, same for issuing 2 certificates		4	–
		,, same for filing same		2	4
		,, same for minuting		1	2
		,, same for drawing 2 orders of court		7	–
		,, same for filing same		2	6
		,, same for attendance herein		4	–
		,, Judge's Clerk for 2 orders for 2 copies		7	–
		,, same for his attendance at the Judge's garden		10	6
		,, Sealer for sealing 2 orders		3	–
		,, Clerk of the Crown for issuing 2 copies		10	–
		,, Sealer for sealing 2 copies		3	–
					82 –
		The same, on the information of Her Majesty's Attorney-general in England.			
1843: February	8	Paid Clerk of the Crown for minuting motion that the mandamus received from England herein be filed		1	2
		Paid same for reading an affidavit		1	2
		,, same for order of court that mandamus be received and filed		3	6
		Paid Sealer for sealing same		1	6
		,, officer for serving same		1	–
		,, Clerk of the Crown for filing same		1	2
		,, same for filing an application for a copy of the mandamus		1	2
		Paid same for copy of the mandamus, 183 folios, at 1 rupee per folio		183	–
		Paid Sealer for sealing same		1	6
		,, Clerk of the Crown for filing mandamus		3	6
		,, same for minuting motion that a day be fixed by the court for the examination of the witnesses		1	2
		Paid same for filing a notice annexed to the motion paper		1	2

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843: February	-	8	Paid Judge's Clerk for order appointing 3d April 1843 for examination of witnesses - - -	3 6
			Paid Clerk of the Crown for filing same - - -	1 2
			„ same for order of court - - - - -	3 6
			„ Sealer for sealing same - - - - -	1 6
			„ officer for serving same - - - - -	1 —
			„ Clerk of the Crown for filing same - - -	1 2
			„ same filing a letter from the Solicitor for the prosecution to the Clerk of the Crown, requesting to insert in the Gazette the notice of the court -	1 2
			Paid same for filing 2 applications for subpœna -	2 4
			„ same for issuing 7 subpœnas - - - -	22 2
			„ Sealer for sealing same - - - - -	10 6
			„ Sheriff with same - - - - - -	16 4
			„ ditto Bailiff's batta for serving Sadaseva Row and others in Madras - - - - -	2 —
			Paid ditto batta for serving subpœna upon Dravyum Pillay and Rungum Pallava Row, at Pathoo Choultry, being 68 miles - - - - -	68 —
March	-	—	Paid Clerk's bill, Crown, for filing the 7 subpœnas -	8 2
April	-	1	„ palanquin hire for Mr. Dale - - - -	2 —
			„ ditto for Mr. Branson to Mr. Dale's house -	2 —
„	-	2	„ (Sunday) for conveyance hire for Writers to Mr. Dale's gardens - - - - - -	2 —
„	-	3	Paid Clerk of the Crown for cause called on - -	2 —
			„ ditto for reading the order of court appointing this day for the examination of witnesses - -	1 2
			Paid ditto for reading the "Fort St. George Gazette," in which the advertisement on the court was published - - - - - - - - -	1 2
			Paid ditto for reading the writ of mandamus - -	1 2
			„ ditto for minuting motion of Mr. Advocate-general, that the examination be postponed, when court ordered that the court be adjourned to the 10th instant - - - - - - - -	1 2
			Paid ditto for reading an affidavit - - - -	1 2
			„ ditto for filing same - - - - -	1 2
			„ ditto for the order of court - - - -	3 6
			„ Sealer for sealing same - - - - -	1 6
			„ officer batta for serving same - - - -	1 —
			„ Clerk of the Crown for filing same - - -	1 2
			„ ditto for minuting the proceedings this day -	1 2
			„ for conveyance of Writers to Mr. Dale's house this day - - - - - - - - -	2 —
„	-	4	Paid the like this day - - - - - -	2 —
„	-	5	„ the like this day - - - - - -	2 —
„	-	6	„ the like this day - - - - - -	2 —
„	-	8	„ the like this day - - - - - -	2 —
„	-	10	„ Clerk of the Crown for cause called on - -	2 —
			„ ditto for reading the order of the adjournment of the court to this day - - - - -	1 2
			Paid ditto for reading the "Fort St. George Gazette," in which the adjournment was published - -	1 2
			„ ditto for minuting motion by Mr. Advocate-general, for a further postponement, when same ordered to the 12th instant - - - -	1 2
			Paid ditto for the order of court - - - -	3 6
			„ Sealer for sealing same - - - - -	1 6
			„ officer batta for serving same - - - -	1 —
			„ Clerk of the Crown for filing same - - -	1 2
			„ ditto for minuting the proceedings - - -	1 2
			„ ditto for filing an application for an office copy of the order - - - - - - -	1 2
			Paid ditto for searching for records for same - -	1 —
			„ ditto for office copy of same, 2 folios - -	2 —
			„ Mr. Parker, with brief, 150 pagodas - -	525 —
			„ for consultation, 25 pagodas - - - -	87 6
			„ Mr. J. B. Norton, with brief, 100 pagodas -	350 —
			„ ditto, for consultation, 25 pagodas - - -	350 —
			„ for conveyance for Writers to Mr. Dale's house, this day - - - - - - - - -	4 —
			„ the like, this day - - - - - -	—
„	-	12	„ Clerk of the Crown for cause called on - -	2 —
			„ ditto for reading the order of adjournment of court to this day - - - - - -	1 2
			Paid ditto for reading the "Fort St. George Gazette," in which the adjournment was published - -	1 2
			Paid ditto for swearing 3 several witnesses, Mr. W. N. Bayley, Mr. Kindersley and Moorgapah Moodelly - - - - - - - - -	3 6

1843:				
April - 12	Paid Clerk for taking down the examination of Mr. Bayley, Mr. Kindersley and Moorgapah, 81 folios	81	–	
	Paid ditto for reading and marking 4 exhibits at the examination of Mr. Bayley - - - - -	9	4	
	Paid ditto for reading and marking 16 exhibits at the examination of Mr. Kindersley - - - -	37	4	
	Paid ditto for reading and marking 4 exhibits at the examination of Moorgapah Moodelly - - -	9	4	
	Paid ditto for minuting the proceedings this day -	1	2	
	,, Mr. Parker fee for consultation this afternoon, 25 pagodas - - - - - - - - -	87	6	
	Paid the like to Mr. J. B. Norton, 25 pagodas - -	87	6	
,, - 13	,, Mr. Parker refresher for this day, 20 pagodas -	70	–	
	,, the like to Mr. J. B. Norton, 20 pagodas - -	70	–	
	,, Clerk of the Crown for cause called on - -	2	–	
	,, ditto for taking down the further examination of Moorgapah, being 80 folios, at 1 rupee per folio -	80	–	
,, - 14	Paid ditto for minuting the proceedings this day -	1	2	
,, - 15	,, conveyance for Writers to Mr. Dale's house this day - - - - - - - - - -	2	–	
	Paid Mr. Parker refresher this day, 20 pagodas -	70	–	
	,, the like to Mr. J. B. Norton - - - -	70	–	
	,, Clerk of the Crown for cause called on - -	2	–	
	,, ditto for taking down the further examination of Moorgal, 70 folios, at 1 rupee per folio - -	79	–	
	Paid ditto for minuting the proceedings this day -	1	2	
,, - 17	,, Mr. Parker refresher this day, 20 pagodas -	70	–	
	,, the like to Mr. J. B. Norton - - - -	70	–	
	,, Clerk of the Crown for cause called on - -	2	–	
	,, ditto for swearing 2 several witnesses, J. Johannes and Parthasarady, in court - - - -	2	4	
,, - 17	Paid Clerk of the Crown for taking down the further examination of Moorgapah, Mr. Kindersley, and the examination of Mr. T. Johannes and Parthasarathy, being fo. 60, at 1 rupee per fo. - - - - -	60	–	
	Paid ditto for reading and marking 2 exhibits at the examination of J. Johannes - - - -	4	8	
	Paid ditto for reading and marking 2 exhibits at the examination of Parthasarathy - - - -	4	8	
	Paid ditto for an order of court for adjourning court to the 25th instant - - - - - - -	3	6	
	Paid Sealer for sealing same - - - - -	1	6	
	,, officer for serving same - - - - -	1	–	
	,, Clerk of the Crown for filing same - - -	1	2	
	,, ditto for filing an application of an office copy of the order - - - - - - - - -	1	2	
	Paid ditto for searching the records for ditto - -	1	–	
	,, ditto for office copies of 3 orders made herein, fo. 7 - - - - - - - - - -	7	–	
	Paid ditto for office copy of affidavit of Mr. Dale, filed 3d April, fo. 20 - - - - - - -	20	–	
	Paid ditto for filing an application for the exhibits -	1	2	
	,, ditto for minuting the proceedings this day -	1	2	
,, - 20	,, for conveyance for Writers to Mr. Dale's house this day - - - - - - - - -	2	–	
,, - 25	Paid Clerk of the Crown for cause called on - -	2	–	
	,, ditto for reading the order of the adjournment of the court to this day - - - - -	1	2	
	Paid ditto for reading the "Fort St. George Gazette," in which the adjournment is published - - -	1	2	
	Paid ditto for order of court adjourning the proceedings to the 27th instant - - - - - -	3	6	
	Paid Sealer for sealing same - - - - -	1	6	
	,, officer for serving same - - - - -	1	–	
	,, Clerk for minuting the proceedings this day -	1	2	
	,, ditto for filing an application for office copies of the orders of court of the 17th and 25th instant - - - - - - - - -	1	2	
	Paid ditto for searching records for ditto - - -	1	–	
	,, ditto for the office copies thereof, folios 4 -	4	–	
	,, fee to Mr. Parker for attending consultation this day - - - - - - - - -	87	6	
	Paid the like to Mr. J. B. Norton - - - -	87	6	
	,, refresher fee to Mr. Parker for this day, pagodas 20 - - - - - - - -	70	–	
	Paid the like to Mr. J. B. Norton - - - -	70	–	
	,, Clerk of the Crown for cause called on - -	2	–	
	,, ditto for reading the order of adjournment of court this day - - - - - - - -	1	2	

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843: April - 25	Paid Clerk of the Crown for reading the "Fort St. George Gazette," in which the adjournment of the court was published	1	2
	Paid ditto for swearing 1 witness, Sadaseva Row, in court	1	2
	Paid ditto for taking down the examination of Sadaseva Row, being fo. 36, at 1 rupee per folio	36	–
	Paid ditto for an order of court for an adjournment of the court until 1st May 1843	3	6
	Paid Sealer for sealing same	1	6
	„ officer for serving same	1	–
	„ Clerk of the Crown for filing same	1	2
	„ ditto for minuting the proceedings this day	1	2
	„ ditto for office copy of the above order, fo. 2, at 1 rupee per fo.	2	–
„ - 28	Paid for bandy hire for Writers to Mr. Dale's house	2	–
	„ M. Narasinga Row, Interpreter, for translating 18 guzzarattee hoondies, or bills of exchange, drawn in favour of Bhut Bamnaha Venkatasa, for Moorgapah Moodelly by Keeroopoora Sunkur Unbare Sunkur, as follows;—viz.		
	No. 74, fol. 5	17	6
	No. 75, fol. 5	17	6
	No. 76, fol. 4	14	–
	No. 77, fol. 4	14	–
	No. 78, fol. 5	17	6
	No. 79, fol. 4	14	–
	No. 80, fol. 4	14	–
	No. 81, fol. 5	17	6
	No. 82, fol. 5	17	6
	No. 83, fol. 4	14	–
	No. 84, fol. 4	14	–
	No. 85, fol. 5	17	6
	No. 86, fol. 4	14	–
	No. 87, fol. 5	17	6
	No. 88, fol. 4	14	–
	No. 89, fol. 5	17	6
	No. 90, fol. 5	17	6
	No. 91, fol. 5	17	6
	Paid ditto for translating a Maharatta letter addressed to Moorgapah Moodelly *v.* Soyerchurn Manjock, No. 92, folio 3	10	6
	Paid ditto for explaining to the several witnesses the deposition given by them in court, per bill	468	–
	Paid ditto for translating a Maharatta receipt, given to Rogoroy Muntry Varea, the Head Minister, by Crippa Sunker Bhutt, No. 98, fo. 20	—	
	Paid Mr. Narsinga Row, Interpreter, for translating a Maharatta memorandum for the hoondees purchased, which were debited on the account No. 99, folio 5	17	6
	Paid ditto for translating a Maharatta receipt given to the Treasury for Cripa Sunker Bhut, No. 100, folio 3	10	6
	Paid for a Maharatta Hoozoor Carwanjee, or order to the Treasury, No. 101, folio 3	10	6
	Paid ditto for ditto, No. 102, folio 3	10	6
	„ ditto for translating a Maharatta receipt given to the Treasury by Bhutt Reevanpawsunker a Umlansunkur, No. 103, folio 3	10	6
	Paid ditto for translating a Maharatta Hoozoor Perwanjee or order to the Treasury, No. 104, folio 3	10	6
	Paid ditto for translating a Maharatta Hoozoor Purwanjee, No. 105, folio 3	10	6
	Paid ditto for ditto, No. 106, folio 4	10	6
	„ ditto for ditto, No. 107, folio 6	21	–
	„ ditto for translating a Goozzearattee account from A. No. 6, to A. No. 29, No. 108, folio 31	108	6
	Paid ditto for translating a Maharatta letter, addressed to Serkele and Fouzdar by Moorgapen, No. 111, folio 3	5	3
	Paid Vaneeram Jozie, Interpreter, for copying three Maharatta names of three different papers, per bill	3	–
„ - 29	Paid for bandy-hire for Writers to Mr. Dale's house	2	–
May - 1	„ refresher fee to Mr. Parker for this day, pags. 20	70	–
	„ the like to Mr. J. B. Norton	70	–
	„ Clerk of the Crown for cause called on	2	–

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843:				
May - 1	Paid Clerk of the Crown for reading the order of the adjournment of court to this day - - -	1	2	
	Paid ditto for reading the "Fort St. George Gazette," in which the adjournment was published - -	1	2	
	Paid ditto for taking down the further examination of Sadazeva Row, being 78 folios, at one rupee per folio - - - - - - - - -	78	–	
	Paid ditto for minuting the proceedings this day -	1	2	
	„ refresher fee to Mr. Parker for this day, pags. 20 - - - - - - - - -	70	–	
	Paid the like to Mr. J. B. Norton - - - -	70	–	
	„ Clerk of the Crown for cause called on - -	2	–	
	„ for swearing three several witnesses, Kistnajee Cassava, Punt Soobajee, Yek Nak, and Sawmy Row Appa, in court - - - - - - -	3	6	
	Paid ditto for taking down the further examinations of Saddaseva Row, Kistnajee Cassava, Punt Soobajee, Yeth Nath, and Sawmy Row Appa, being 62 folios, at one rupee per folio - - - - - -	62	–	
„ - 2	Paid Clerk of the Crown for reading and marking six exhibits at the examination of Sobajee Yek Nath	14	–	
	Paid ditto for reading and marking one exhibit at the examination of Sawmy Row Appa - - -	2	4	
	Paid ditto for minuting the proceedings of this day -	1	2	
„ - 3	„ register to Mr. Parker for this day, pags. 20 -	70	–	
	„ the like to Mr. J. B. Norton - - - -	70	–	
	„ Clerk of the Crown for cause called on - -	2	–	
	„ ditto for swearing one witness, Ramnad Bhut, in court - - - - - - - - -	1	2	
	Paid ditto for taking down the further examination of Soobajee, Yek Nath, and Ramnad Bhut, being 43 folios, at one rupee per folio - - - -	43	–	
	Paid for minuting proceedings of this day - -	1	2	
„ - 4	„ register to Mr. Parker for this day, pags. 20 -	70	–	
	„ the like to Mr. J. B. Norton - - - -	70	–	
	„ Clerk of the Crown for cause called on - -	2	–	
	„ ditto for swearing one witness (Mr. Ellis) in court - - - - - - - - -	1	2	
	Paid ditto for taking down the further examination of Mr. Ellis, being 58 folios, at one rupee per folio -	58	–	
	Paid ditto for reading and marking 17 exhibits at the examination of Mr. Ellis - - - - -	39	8	
	Paid ditto for minuting the proceedings of this day -	1.	2	
	„ Mr. Parker for attending consultation this day, pags. 25 - - - - - - - - - -	87	6	
	Paid the like to J. B. Norton - - - -	87	6	
„ - 5	„ register to Mr. Parker for this day, pags. 20 -	70	–	
	„ the like to Mr. Norton - - - - -	70	–	
	„ Clerk of the Crown for cause called on - -	2	–	
	„ ditto for swearing one witness, Sukeram Naik, in court - - - - - - - - -	1	2	
	Paid for taking down the examination of Sukeram Naik, being 50 folios, at one rupee per folio - -	50	–	
	Paid ditto for minuting proceedings this day - -	1	2	
„ - 6	„ refresher to Mr. Parker for this day, pags. 20 -	70	–	
	„ the like to Mr. J. B. Norton - - - -	70	–	
	„ Clerk of the Crown for cause called on - -	2	–	
	„ ditto for swearing two several witnesses, Appavia and Sorraba Naig, in court - - - -	2	4	
	Paid ditto for taking down the further examination of Sukeram Naig, and examination of Appava, and Soorabia Naig, being 70 fols. at one rupee per folio	70	–	
„ - 6	Paid Clerk of the Crown for searching 7 several exhibits at the examination of Sukkeram Naith -	16	4	
	Paid ditto for minuting the proceedings this day -	1	2	
	„ refresher to Mr. Parker for this day, pags. 20	70	–	
	„ the like to Mr. J. B. Norton - - - -	70	–	
	„ Clerk of the Crown for cause called on - -	2	–	
	„ ditto for swearing 4 several witnesses, Jyahto Ray, Jyen Soobian, Annasawmy Naik and Veerasawmy, in court - - - - - - -	4	8	
	Paid ditto for taking down the further examination of Sooraba Naig, and examination of Jahto Ray, Jyen Soobien, Annasawmy Naick and Veerasawmy, being 70 folios, at 1 rupee per folio - - - -	70	–	
	Paid ditto for minuting proceedings this day - -	1	2	
	„ ditto for an order of Court for the adjournment of the court until May 15th, 1843 - - -	3	6	
	Paid Sealer for same - - - - - -	1	6	

(continued)

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

1843: May	6	Paid officer batta for serving the same	1	
		„ Clerk of the Crown for filing same	1	2
		„ ditto for minuting the proceedings	1	2
„	9	„ Bandy hire for Writer to Mr. Dale's house this day	2	–
„	10	Paid the like this day	2	–
„	11	„ the like this day	4	–
„	12	„ the like this day	2	–
„	13	„ Mr. Parker fee for attending consultation this day, pags. 25	87	6
		Paid the like to M. J. B. Norton	87	6
„	14	„ Bandy hire for Writers to Mr. Dale's house this day	2	–
„	15	Paid refresher to Mr. Parker for this day, pags. 20	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown for cause called on	2	–
		„ ditto for reading the order of adjournment of court to this day	1	2
		Paid ditto for reading the "Fort St. George Gazette," in which the adjournment of the court was published	1	2
		Paid ditto for taking down further examination of Ramnad Bhut, being 9 folios, at 1 rupee per folio	9	–
		Paid for minuting proceedings	1	2
„	16	„ refresher to Mr. Parker for this day, pags. 20	70	–
		„ the like to Mr. J. B. Norton	70	–
		„ Clerk of the Crown for cause called on	2	–
		Paid Clerk of the Crown for swearing 3 several witnesses, Thummanah, A. F. De Sylva and Calastry, in court	3	6
		Paid ditto for taking down the further examination of Ramnad Bhutt, Parthasarady, Soobajee, Yek Nak, and examinations of A. F. De Sylva and Calastry, being 29 folios, at 1 rupee per folio	29	–
		Paid ditto for reading and marking 9 several exhibits at the examination of Parthasarady	31	–
„	17	„ Bandy hire for Writers at Mr. Dale's house	2	–
		„ Clerk of the Crown for copies of examinations engrossed on parchment, being 90 folios, at 1 rupee per folio	909	–
		Paid ditto for duplicate of the same engrossed on parchment	909	–
		Paid ditto for fair minutes of proceedings for transmission to England on parchment, being 67 folios, at 1 rupee per folio	67	–
		Paid ditto for duplicate of the same, on ditto	67	–
		„ ditto for copies of the exhibits, with the endorsement thereon, engrossed on parchment, being 425 folios, at 1 rupee per folio	425	–
		Paid ditto for filing an application for copies of examinations	1	2
		„ ditto for such copies, 909 folios	909	–
		„ ditto the like for copies of the several exhibits, 375 folios	375	–
		Paid ditto the like for copy of minute of proceedings taken down in court, being 67 folios, at 1 rupee per folio	67	–
		Paid ditto for drawing Judge's certificate in duplicate	10	8
		„ ditto for drawing certificate of the Clerk of the Crown and his deputy, in duplicate	14	–
		Paid extra Writers engaged in copying the proceedings, as per receipts	492	10

1843:					
May - 17	Paid to office Peons for extra work by them pending this business			10 –	
	Paid Gollah for ditto			6 –	
September 17	„ Mr. Arnals for bandy hire to Mr. Dale's gardens, engaged in preparing papers to send to Mr. Lawford	1	8		
	Paid ditto - ditto - ditto	1	8		
	„ ditto - ditto - ditto	1	8		
				4 6	
	„ ditto for 2 teak-wood boxes, with lock and key, to send the mandamus and return to England	6	–		
	Paid for cutting out names on the lids of boxes: viz., "Mr. W. H. Bayley and J. D. Mente Arbuthnot, esq."	1	–		
	Paid for 2 tin boxes, at 1 rupee each	2	–		
				9 –	
					10,391 11

(A true Extract.)

(signed) *J. F. Thomas*, Chief Secretary.

CLEMENT DALE in account with the Honourable the EAST INDIA COMPANY.

[Jud. Cons. 13 Sept. 1845. No. 32.

Dr.

		Rs.	a.	p.
1842:				
June - 28	Received from the Sub-Treasurer of Fort St. George, on account of advances required to be made for the Honourable Company	300	–	–
August - 1	Received from Mr. J. T. Crampton, on account of the 1st instalment of his debt to the Honourable Company, payable under cognovit given by him	563	–	–
„ - 15	Received from the Honourable Company amount of damages and costs in the action against Mr. Lewen and others, at the suit of Narrainsawmy Chitty	1,128	9	4
September 15	Received from Messrs. Hogg & Son, amount of promissory note presented to them for payment, due 14th instant	800	–	–
October - 13	Received from A. J. Johannes, esq., amount of out fees expended by me on behalf of the Honourable Company in the action against Arathoon	86	4	–
„ - 14	Received from A. J. Johannes, esq., the amount of his promissory note, 28 July 1841, in favour of H. J. Johannes, at 3 months after date - 2,000 – –			
	And for interest to this date - - - - 133 6 2	2,133	6	2
November 1	Received from Mr. J. T. Crampton, on account of 2 instalments due from him the 31st ultimo	300	–	–
„ - 7	Received from ditto the balance of 2d instalment on his debt, due the 31st ultimo	226	7	5
„ - 8	Received from Messrs. Hogg & Son, on account of costs incurred by the Honourable Company in the action against them	200	–	–
	Received from C. Sadaseven Moody balance of principal and interest on note, 25th July 1841, by Prethopram Pillay, and discounted at the bank by Sadaseven Moody - - - - 389 2 7			
	And on account of costs in the action against him by the Honourable Company - - - - 10 13 5	400	–	–
„ - 22	Received from ditto the balance of amount expended by me on behalf of the Honourable Company, in the action against him	10	2	7
	Also the amount expended by me as above, in the action against Prethopram Pillay	21	–	–
„ - 29	Received from Messrs. Hogg & Son the balance amount expended by me on behalf of the Honourable Company against them	38	8	–
1843:				
February - 4	Received from Mr. J. T. Crampton further on account of his debt	517	10	3
„ - 15	Received from Messrs. Hogg & Son, on account of their debt to the Honourable Company	120	–	–
March - 1	Received from ditto further on account of ditto - 80 – –			
„ - 9	„ from ditto further on account of ditto - 100 – –	180	–	–

No 1.
On Fees and Salaries of the Officers of the Supreme Courts.

Clement Dale in account with the Honourable the East India Company, *Dr.—continued.*

						Rs.	a.	p.
1843: April	1	Received from Messrs. Hogg and Son further on account of their debt to the Honourable Company				100	–	–
„	5	Received from Mr. A. J. Johannes for the 1st instalment of his debt to the Honourable Company				—		
„	7	Received from Messrs. Hogg & Son further on account of their debt due to the Honourable Company			80 – –			
„	25	Received from ditto, further on account of ditto			80 – –	160	–	–
May	3	Received from Mr. J. T. Crampton, balance of his debt due on the action at the suit of the Honourable Company				505	7	5
„	19	Received from Messrs. Hogg & Son further on account of their debt				175	2	–
July	11	Received from Mr. A. J. Johannes 2 instalments on his debt				500	–	–
„	25	„ from the Sub-treasurer, further on account of disbursement to be made by me on behalf of the Honourable Company				9,100	14	–
August	10	Received from Syed Hamed, on account of his debt due to the Honourable Company				725	15	8
September	12	Received from Messrs. Hogg & Son balance of debt, &c., due from them on the 3 promissory notes: viz.						
		For balance debt			1,894 5 7			
		For amount expended by me on behalf of the Honourable Company, in the action against Henry Leonhard			188 8 –			
		And for amount expended on behalf of ditto, in further costs in action against Hogg & Son			23 – –	2,105	13	7
November	9	Received from Mr. H. Crampton, amount expended by me on behalf of the Honourable Company, in the action brought against R. R. Rickets, esq., by Vasoodanynaidoo and Amagherry Moodelly				829	8	–
1844: April	24	Received from the Sub-treasurer amount of the plaintiff's taxed costs in the action brought by Mr. Barumbeg against the Honourable Company				1,086	6	–
July	29	Received from Syed Hamed further on account of his debt to the Honourable Company				100	–	–
September	6	Received from ditto, on account of debt and costs incurred in the action against him; viz.						
		Further on account of debt			160 – –			
		And in repayment of amount expended by me for the Honourable Company			10 8 –	170	8	–
„	13	Received from Syed Hamed further on account of his debt to the Honourable Company				20	–	–
October	16	Received from ditto further on account of ditto				20	–	–
November	12	„ from ditto further on account of ditto				20	–	–
December	12	„ from the Sheriff of Madras, in full of execution ordered by writs of Venditioni exponas, issued in case of Woodeagherrcludy Narain Bramy *v.* Madavancum Moodookistna Moody and M. Verasawmy Moody, and by sci. fa. The King *v.* the same parties			2,438 9 3			
		And from ditto, on account of sum ordered to be levied by writs of Venditioni exponas, in the case of the Advocate-general *v.* the same parties, by information			2,203 1 7	4,641	10	10
„	13	Received from Syed Hamed, further on account of his debt to the Honourable Company				20	–	–
„	31	Balance due to Honourable Company's Solicitor				1,220	6	2
					Rs.	31,727	–	–

Cr.

						Rs.	a.	p.
1842: August	1	Paid the Sub-treasurer amount received from Mr. J. T. Crampton as per contra				563	4	7
„	13	Paid Mr. Wilkins, the plaintiff's attorney, the amount of damages and costs in the action brought by Narrainsawmy Chitty against Mr. Lewin and others				1,128	9	4
September	15	Paid the Superintendent and Treasurer of the Government Bank amount received from Messrs. Hogg & Son as per contra				800	–	–
October	14	Paid ditto amount received by me from Mr. Johannes as per contra				2,133	6	2

Clement Dale in account with the Honourable the East India Company, *Cr.*—*continued.*

			Rs.	a.	p.
1842: November	1	Paid the Superintendent and Treasurer of the Government Bank amount received by me from Mr. J. T. Crampton as per contra	300	–	–
„	7	Paid ditto the balance of Mr. Crampton's 2d instalment received as per contra	226	7	5
„	9	Paid ditto the amount received from Sadaseva Moodelly as per contra	389	2	7
1843: February	6	Paid ditto amount received from Mr. J. T. Crampton as per contra	517	10	3
„	15	Paid ditto amount received from Messrs. Hogg & Sons as per contra	120	–	–
March	10	Paid ditto amount received from ditto	180	–	–
April	1	„ ditto amount received from ditto	100	–	–
„	5	„ ditto amount received this day from Mr. Johannes as per contra	500	–	–
May	1	Paid the Prothonotary and Treasurer of the Government Bank amount received from Messrs. Hogg and Son on the 7th and 25th ultimo as per contra	160	–	–
„	4	Paid ditto amount received from Mr. Crampton as per contra	505	7	5
„	19	„ ditto amount received from Messrs. Hogg & Son as per contra	175	2	–
July	11	Paid ditto amount received from Mr. Johannes as per contra	500	–	–
August	11	„ ditto amount received from Syed Hamed as per contra	725	15	8
September	12	„ ditto amount of debt received from Messrs. Hogg & Son as per contra on the 12th instant	1,894	5	7
1844: April	24	Paid plaintiff's attorney amount of the plaintiff's taxed costs in the action of Mr. Barambeg against the Honourable Company	1,086	6	–
July	30	Paid the Sub-treasurer amount received from Syed Hamed as per contra	100	–	–
September	6	Paid ditto amount received from ditto this day	160	–	–
„	13	„ ditto amount received this day from Syed Hamed	20	–	–
October	16	„ ditto ditto ditto this day	20	–	–
November	12	„ ditto ditto ditto this day	20	–	–
December	13	„ amount received from Syed Hamed as per contra	20	–	–
„	31	By amount of disbursements made for the Honourable Company on their account from the 6th June 1842, and this date, as shown by the statement allowed by the Master in Equity	19,381	3	–
		Rs.	31,727	–	–
1845: January	1	By Balance brought down	1,220	6	2

(signed) *Clement Dale*,
Honourable Company's Solicitor.

(A true copy.)

(signed) *J. F. Thomas*, Chief Secretary.

(No. 2.)

From *J. F. Thomas*, Esq., Chief Secretary to Government of Fort St. George, to *G. A. Bushby*, Esq., Secretary to the Government of India; dated 7 July 1845.

Jud. Cons. 13 September 1845. No. 33.

Sir,

I AM directed to transmit the accompanying communication from the Advocate-general, Mr. Norton, having reference to my letter addressed to you, under date the 17th June last, No. 19.

Law Department, 28 June 1845.

2. It is clear from Mr. Norton's letter that the Government have fallen into an error, which they much regret, in concluding from certain items entered in the account submitted by the Company's Solicitor (referred to in par. 1 of my letter), that fees had been charged and paid to the Advocate-general, which it now appears has not been the case.

3. The Government observe, in reference to the Advocate-general's letter, that they did not view their proceedings as conveying any charge against that officer. The Solicitor's account was sanctioned and passed upon the ground that the charges were the usual and authorized fees, and the account was also certified by the Master to be correct.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

4. The charges, therefore, were not held to be irregular, or they would never have been sanctioned; nor were they submitted to the Government of India as such, but solely as high; and the object of the reference to the Government of India was to obtain information upon this point for the purpose of reviewing the question of the fees paid in the Supreme Court of this Presidency generally.

5. It is scarcely necessary to add, that had the Government considered the Advocate-general open to charge or censure, he would, in accordance with the uniform practice of the Most Noble the Governor in Council, have been required in the first instance to explain.

6. I am desired now to forward the remainder of the Honourable Company's Solicitor's bills not transmitted with my letter of the 17th ult., and to request information whether the fees entered in these bills are such as are charged in Calcutta, and considered high or otherwise.

7. I am also directed to forward the minutes recorded by the Hon. Mr. Chamier and the Most Noble the President on this occasion.

I have, &c.
(signed) *J. F. Thomas,*
Chief Secretary.

Fort St. George, 7 July 1845.

Jud. Cons.
13 September 1845.
No. 34.

From the Advocate-general to the Chief Secretary to Government,
dated 28 June 1845.

Sir,

I HAVE the honour to bring to the notice of Government that the Company's Solicitor has laid before me an extract from minutes of consultation, dated 17th inst., No. 20, received by him yesterday, in which is contained an intimation that the charges in his bill of costs in the information of The Queen *v.* Douglas, submitted to Government for payment, are considered extremely high, and that the Most Noble the Governor in Council has doubts upon the principle upon which the fees set forth in that bill are paid to me as Advocate-general, in addition to my salary. The Most Noble the Governor in Council has therefore submitted the question of the propriety of these fees to the consideration of the Supreme Government, as also a question as to the propriety of certain "refresher" fees, as contained in such bill.

2. I have the honour to acquaint Government that no fee or refresher whatever was paid to me in the prosecution in question, nor have I ever received any fee or refresher in any other cause or matter, save when money has been recovered to the use of the Crown, when the costs of such fees have been recovered from the opposite party in a Government cause.

3. I have been informed by the Honourable Company's Solicitor that no such fees have been charged to Government in any bill of costs, and I can only surmise that the impression of Government that any such fees have ever been paid to me must have proceeded from misinformation.

4. As Government has referred this matter to the consideration of the Supreme Government at once, without any previous reference to me, or any direct communication to me since, of such a charge having been forwarded against me, perhaps I may be acting irregularly in addressing this Government, and it may be thought that I ought to have rather referred myself (under permission) to the Supreme Government, to whom the representation has been made; I beg to apologize if I am wrong in thus acting, and I trust Government will attribute it to the anxiety of clearing away any imputation on my character at the earliest moment, as it would become the more difficult in proportion to the time it might be suffered to prevail uncontradicted.

5. I have the honour to solicit that a copy of this letter may be forwarded at the earliest convenient opportunity to the Supreme Government

I have, &c.
(signed) *Geo. Norton,*
Advocate-general.

Fort St. George, 28 June 1845.

(A true copy.)
(signed) *J. F. Thomas,*
Chief Secretary.

MINUTE

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

MINUTE by *H. Chamier*, Esq.; dated 5 July 1845.

1. As the Chief Secretary states in his memorandum that the draft of the letter to the Government of India, dated 17th June 1845, No. 1, on the subject of the charges contained in the Company's solicitor's account, submitted to Government on the 26th May last, was framed in accordance with what he understood to be my instruction and views, I think it right to place on record the notes written by me on this occasion.

2. On the solicitor's letter (26 May 1845), I wrote as follows:—"I think the Advocate-general should report whether any of these charges are objectionable under the recent orders of the Judges of the Supreme Court in the case of the matter."

• Jud. Cons. 13 September 1845. No. 85.

3. Upon this, a memorandum was circulated by the Chief Secretary, showing that similar disbursements had been passed on former occasions, on being audited by the Master in Equity, and that by a note at the foot of the statement now submitted, it appeared that the charges there exhibited had been found correct by the present Master. Upon this I wrote as follows:—

"After what has lately passed in the Supreme Court, in which the Master is plainly stated by the Judges on the Bench to have 'plundered' the suitors in court by illegal charges taken by himself, and allowed to others, I decidedly object to pass this enormous bill (19,381 rupees), without a reference to the Advocate-general; many of the charges are precisely those to which the Judges have objected in other cases, and those cases, and those for 'refreshers' alone, amount to so large a sum as to render an inquiry into their correctness indispensable. If the majority of the Board resolve to pass the bill, I request that the papers may be returned to me to enable me to record my sentiments at large."

4. When the papers were brought before Council, I explained that the charges were not taxed by the Master in the proper form,* and that no charges could be taxed for payment without the signature of one of the Judges, which was here, as in other instances, wanting; and urged that steps should be taken to bring the charges before a Judge, which would secure the object I had in view. I then pointed out the great number and expense of the "refreshers" paid to the extra counsel, Mr. J. B. Norton† and Mr. Parker, in the case of the Queen *v.* Douglas (which were repeated every day the Court sat), and many of which I read out aloud.

* They were merely audited, as on former occasions.

†Not the Advocate-general, whose name is George.

5. I had not noticed at that time any refresher paid to the Advocate-general, but in passing the draft letter to Bengal, presumed that there were such in the other suits to justify the reference, and I find there is one, and only one, in the case of Captain Rickets at the suit of Vassdavoo Naidoo and Arnagherry Moodelly, but in that case, it appears from a note at the end of the bill, that the charges were recovered from the opposite party, and therefore not paid by Government.

6. I was under the impression, that the entire statement of disbursements was to go to Bengal, whereby the charges which I desired to have sifted, namely, those to which the Judges had objected in other cases as illegal, as well as the refreshers paid to extra counsel, would be brought to notice; but it is clear that, from an extract only of the solicitor's account, which does not include the charges in question, having been sent to Bengal, the object of my inquiry could not be attained, whilst the part sent is not applicable to the Advocate-general at all.

7. I was only induced to concur in sanctioning the solicitor's account upon the expressed declaration at Council, that it would not prevent a refund if the result of further inquiry should render it necessary.

8. I have entered thus into detail, because I consider these charges to form a most important subject of inquiry. The charges which the Judges condemned as illegal, are alleged to have been taken by the Master and officers of the Court, under the authority of a Table of Fees sanctioned by Government, and not allowed to be varied in any respect, except with the concurrence of Government. The character of the Government, therefore, if the allegations are true, is involved as the imputed approvers of a system under which enormous sums have been illegally demanded from suitors in the Supreme Court for years past, and it is very necessary that it should be clearly shown that the Government is not in any way answerable or blameable in this matter. The alleged authority for the chief abuse is the entry in the Table of Fees, "For every attendance 3 rs. 6 f. Now the Government was manifestly not competent to determine what were legal and necessary attendance in matters under litigation in the Supreme Court; this

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

could only be done by the Judges themselves, or by practised lawyers, and it was the duty of the Judges to determine this important point when the Table of Fees was first established; but this, with all other points connected with the alleged abuses, requires to be thoroughly sifted, and a full report should, in my opinion, be called for from the Advocate-general on the subject. The Table of Fees evidently requires revision in many parts where it is vague and indefinite. There would appear also to be some faulty arrangement in it, for it is remarkable, that under the head "Master in Equity," fees are only allowed under two heads, and "attendances" are not included in either of them, though by a foot note at the end of the table it would appear that on some extraordinary occasions a "reasonable fee" is to be taken by that officer for "every attendance."

9. Considering the great amount of misery and ruin which has been inflicted on the inhabitants of Madras by the operations of the Supreme Court from the earliest date, it appears to me to be the duty of the local Government to bring to the notice of the Home authorities every instance in which its working is prejudicial to the natives, in order that means may be devised to remedy existing evils. This can only be done by bringing upon the records of Government detailed reports from the Advocate-general, and forwarding them to the Honourable Court for transmission to the Board of Control, for I am informed that the Chancellor, when appealed to by the Bar of Madras against the proceedings of the court in the case of the appointment of the present Registrar, declined to act unless called upon by the President of the Board of Control; and there can be little doubt that the late disallowance by Her Majesty in Council of the rules established by the Supreme Court at this place, under date the 6th May 1843 (whereby administrators were required to file accounts for the last 20 years), would not have been effected if this Government had not submitted detailed reports on the injurious consequences and illegality of those Regulations first brought to its notice in the Advocate-general's letter of the 16th May 1843. The transmission of the original, disallowing these rules, through the Government of Madras to the Judges of the Supreme Court, sufficiently indicates the correct channel for such communications.

10. I request that a copy of this minute may accompany the letter about to be despatched to the Government of India, upon the Advocate-general's communication of the 28th June 1845, and I beg that it may be understood that I do not presume to pass any judgment upon the conduct of the present Master of the Supreme Court, as distinct from that of his predecessors in office, and as lately impugned by the Judges, or upon the propriety of his removal from the mastership. These matters belong to another and a higher tribunal, by which his defence will be weighed, if he shall think fit to appeal against the orders passed in his case.

11. This seems to be a suitable opportunity for suggesting, that the office of Master in Equity might be abolished without any inconvenience, and to the great benefit of the suitors. There is but little business in the Supreme Court at this Presidency for two Judges, and that is all done by them; a very large proportion of it is transferred to the Master, upon whose reports the Judges act. The Judges having so little other occupation, might be required to do that part of their own duty which has hitherto been imposed upon the Master, and they might specify in their decrees all the costs payable by both parties, as the Company's Judges do in the Mofussil courts. This would secure the suitors against illegal exaction, and not impose upon the Judges any more duty than now properly belongs to them, in passing bills of costs for payment.

(signed) *Hy. Chamier.*

Madras, 5 July 1845.

(A true copy.)
(signed) *J. F. Thomas,*
Chief Secretary.

Jud. Cons.
13 September 1845.
No. 36.

MINUTE by the Most Noble the Earl *Tweeddale*, Governor of Madras, dated 5 July 1845.

HAVING taken no part in the discussion with regard to the fees charged, considering the question before Government to be only this; viz. whether the balance of the solicitor's account should be paid to him or not; my opinion was, that it should

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

should be paid, as in former cases, and I passed the draft accordingly; I did not object to the rest of the draft, as I understood it to be the wish of the Honourable Mr. Chamier to obtain the information therein asked for from the Government of India, and that it was framed according to his views and instructions expressed at the Council Board.

I pass this draft, because I think the Advocate-general's letter should be forwarded without delay.

(signed) *Tweeddale.*

(A true copy.)
(signed) *J. F. Thomas,*
Chief Secretary.

(No. 3.)

From *J. F. Thomas*, Esq., Chief Secretary to the Government of Fort St. George, to *G. A. Bushby*, Esq., Secretary to the Government of India; dated 29 July 1845.

Jud. Cons. 13 September 1845. No. 37.

Sir,

WITH reference to my letters, Nos. 19 and 22, of the dates noted in the margin, I am desired by the Most Noble the Governor in Council to transmit a copy of a further minute recorded by the Honourable Mr. Chamier, on the subject of the fees or refreshers erroneously alleged to have been paid to the Advocate-general, together with transcripts of all memoranda relating thereto.

Law Department, 17 June 1845, 7 July 1845.

I have, &c.
(signed) *J. F. Thomas,*
Chief Secretary.

Fort St. George, 29 July 1845.

MINUTE by *H. Chamier*, Esq.; dated 9 July 1845.

Jud. Cons. 13 September 1845 No. 38.

As I could not consent to be the imputed author of what did not originate with me, I wrote to Mr. Bird, after seeing the Most Noble the President's minute of 5th July 1845, to ask him to state what he recollected of the discussion at Council, respecting the Company's solicitor's account * of disbursements in the Supreme Court, and whether I had suggested the reference to Calcutta on the subject of fees or refreshers to the Advocate-general. The original note, No. 1, appended to this minute, is his reply.

* Submitted with his letter of the 26th May 1845.

2. I then wrote to him to ask if he would furnish me with an official memorandum on the subject; note No. 2 is his reply.

3. I request that a copy of this minute and appendices may be forwarded to the Government of India, with reference to our letter of 7th July 1845, and to the Honourable Court, when all the other papers are sent to England.

(signed) *H. Chamier.*

Madras, 9 July 1845.

No. 1.

My dear Mr. Chamier,

I REMEMBER you alluded to charges of extra counsel, but I do not recollect any thing being said respecting payments to the Advocate-general. I think that you will find the proposition to refer to Calcutta, noted upon one of the papers, but I do not recollect who made it. The object was to ascertain (I think) whether such charges were authorized in Calcutta; my impression was, that the order was passed by all the members of Council, upon the understanding that the account was merely an account current, and that it could be objected to hereafter if requisite. I understood you to doubt whether the writing by the Master was sufficient to show that the bill had been formally taxed.

Yours, &c.
(signed) *John Bird.*

7 July 1845.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

No. 2.

My dear Mr. Chamier,

BEING no longer in Council, I do not think that I could, with propriety, write any paper to be used publicly; but you are quite welcome to use my note of the 7th, and this also; I signing the draft of the 17th, however. I must have understood that fees paid to the Advocate-general had been entered in the bill; and I remember asking whether the Advocate-general could receive fees in addition to his salary; but whether this occurred at the last meeting or not, I am not quite sure.

Yours, &c.

9 July 1845. (signed) *John Bird.*

MEMORANDUM by the Most Noble the President.

I THINK the Secretary should record what took place at the Council.

(signed) *H. D.*

MEMORANDUM.

THE Chief Secretary has the honour to submit the accompanying record of the proceedings of the Board on the subject of the Honourable Company's solicitor's application for the discharge of his account.

(Letter, No. 14, dated 26 May 1845.)

This letter, and the account, were first circulated on the 30th May last, with an order drafted, merely sanctioning the payment. This order was returned to the office, bearing the initials of the President alone, without remark; it had the following notes recorded upon it by the Honourable Mr. Chamier and the Honourable Mr. Bird:—

"I think the Advocate-general should report whether any of these charges are objectionable under the recent order of the Judges of the Supreme Court in the case of the Master.

(signed) "*H. C.*"

"Would this be proper at present?

(signed) "*J. B.*"

The matter was then brought before the Council on the 3d June, and, under instructions then received, a memorandum of former orders, sanctioning similar bills, was submitted; in circulation upon that memorandum the following notes were made:—

See Memorandum, No. 14, of 1845.

"After what has lately passed in the Supreme Court, in which the Master is plainly stated by the Judges on the Bench to have 'plundered' the suitors in court by illegal charges taken by himself and allowed to others, I decidedly object to pass this enormous bill (19,381 rupees) without a reference to the Advocate-general; many of the charges are precisely those to which the Judges have objected in other cases; and those for 'refreshers' alone amount to so large a sum as to render an inquiry into their correctness indispensable. If the majority of the Board resolve to pass the bill, I request that the papers may be returned to me, to enable me to record my sentiments at large.

(signed) "*H. C.*"

"This may be postponed, perhaps, until the proceedings in the Supreme Court are terminated. I have no wish to pass the charges, if there is any reason to suppose that they are not correct.

(signed) "*J. B.*"

"If these charges have been paid by the solicitor to the Master, as usual, it appears to me that the charges of the Master is a question with the Government, and not with the solicitor.

"If the Government wish to get back what they may have overpaid, they must move the court through the Advocate-general.

(signed) "*T.*'

The

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

The papers were again brought before the Council Board for final orders on the 10th ult.

A desultory conversation took place, which (so far as the Chief Secretary can now recall the circumstances) arose chiefly, if not entirely, on the Honourable Mr. Chamier demurring to the passing of the account. The Chief Secretary understood the Most Noble the President and the Honourable Mr. Bird to maintain their respective opinions that the account should be passed; and on the Honourable Mr. Chamier continuing to point out the large amount of fees, and expressing the opinion that the charges in the solicitor's account should not be paid till they had been sifted, it was resolved first to pass the account for payment, and secondly, to refer the question raised by the Honourable Mr. Chamier, as to the character of the fees, to Bengal. This order was passed with the understanding that the bills were to be subject to future consideration, if, on the result of the reference, the Government should see cause to call upon the Honourable Company's solicitor for an explanation, or to question any items of the charges. 17 June 1845.

In the course of the conversation the Honourable Mr. Chamier, who had the bills before him, pointed out to the Chief Secretary the refreshers charged for counsel, with other items of fees, apparently heavy charges; and the Chief Secretary was then under the impression that the charges had reference to the Advocate-general as well as to other counsel. In this part of the conversation the right of the Advocate-general to receive fees was adverted to, and the Most Noble the President observed, that that point might be determined by a reference to that officer's covenant.

The draft of the extract, 17th June 1845, was prepared immediately after the Council, and sent as usual to the Honourable Mr. Chamier, the junior member of Council, in the first instance; it was passed with this note:— Circulated 11 June.

"I think that the sanction should be deferred until the answer comes.

(signed) "*H. C.*"

"The Chief Secretary probably misunderstood the views of the Honourable Mr. Chamier, as gathered in a desultory conversation, having the impression above stated, but the draft was made on what he believed those views to be; and, as it was passed without remark or question, he considers himself to have fully carried out the instructions received at the Board. He may observe, that it was on these verbal orders given at the Board, and not on the notes written in circulation, that the draft of the extract was prepared. And had he erred in this, he would, he concludes, have been set right when the draft was submitted for consideration.

(signed) "*J. F. Thomas,*
"16 July 1845." "Chief Secretary."

"I am sure the Most Noble the President will recollect my reading out, and pointing out to him, the names of Mr. J. B. Norton and Mr. Parker, as the parties to whom refreshers were paid day after day; and will also remember Mr. Thomas mentioning the case of a gentleman who, in former days, had refused to take refreshers, except from term to term, as contrary to the practice in England. All the conversation about fees and refreshers to counsel related to extra counsel, not to the Advocate-general.

"But, I suppose, no one doubts for an instant that the Chief Secretary prepared the orders according to what he understood to be the intention of the Board. I have not the smallest doubt on that point; but was merely anxious that my own views and intentions, as best known to myself, and as apparent from my notes on the papers, should be stated.

(signed) "*H. C.*"

"All this took place when I was afflicted with deafness; I heard the Honourable Mr. Chamier introduce Mr. Norton's name; which led to my asking the Secretary what the Advocate-general's covenant said; but I heard none of the details of the conversation which passed, on which the draft was written.

(signed) "*T.*"

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Memorandum.—"Orders are requested, if the Honourable Mr. Chamier wishes these papers to be sent immediately and specially to the Government of India, or in the usual course.

(signed) "*J. F. Thomas,*
"23 July." "Chief Secretary."

"I certainly wish my minute, with Mr. Bird's notes, to go, as I cannot consent to be considered the original of a proceeding, when I know myself not to be so. But while I am thus anxious on my own account, I do not by any means impute blame to others. I wish my minute to go to Bengal without delay, in reference to the late transmission to minutes on this case. I must leave to others the disposal of their memoranda, notes, &c., as they may desire.

(signed) "*H. C.*"

(True copies.)

(signed) *J. F. Thomas,*
Chief Secretary.

(No. 549.)

Jud. Cons. 13 September 1845. No. 39.

From *G. A. Bushby*, Esq., Secretary to the Government of India, to Sir *Thomas E. M. Turton*, Bart., Registrar of the Supreme Court; dated 26 July 1845.

Sir,

THE Government of Fort St. George, being desirous of reviewing the Table of Fees at present in force in the Supreme Court of Judicature at Madras, has applied to the Government of India for information as to the scale of charges which obtains in the Supreme Court here; and to aid the inquiry, the Madras Government has forwarded the enclosed statement of disbursements by the Honourable Company's solicitor at that Presidency. I am instructed accordingly by the Governor-general in Council to request, that you will have the goodness to cause the charges inserted in the above-mentioned statement to be examined with the Table of Fees established at the Supreme Court in Calcutta, and to return the statement, with a note of any differences that may become apparent on comparison, or of any items which may appear unusual.

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

Council Chamber,
26 July 1845.

Jud. Cons. 13 September 1845. No. 40.

From Sir *T. E. M. Turton*, Bart., Registrar of the Supreme Court, to *G. A. Bushby*, Esq., Secretary to the Government of India; dated 3 September 1845.

Sir,

I HAD the honour to receive your letter dated the 26th of July last, received the 29th of July last, enclosing copies of bills of costs of the Honourable Company's solicitor at Fort St. George, on the various sides of the Supreme Court at Madras; and requesting that I would cause the charges inserted in the abovementioned statement to be examined with the Table of Fees established at the Supreme Court in Calcutta, and to return the statement with a note of any differences that might become apparent on comparison, or of any items which may appear unusual. To answer your inquiries in detail, not only would be attended with great trouble and very considerable delay, but after all would be far from satisfactory, inasmuch as a vast proportion of the items in the Madras solicitor's bills are such as we do not know in the Supreme Court here. Therefore, after communicating with the honourable the Judges here, and stating my view of your letter and its enclosure, and receiving their sanction to that course, I made an application to all the officers of the Supreme Court in Calcutta, forwarding a copy of your letter to each of them, to which I received their answer uniformly to the same effect; namely, that our court is strictly guided by the Table of Fees published by Messrs. Smoult & Ryan, with the exception of certain fees which are lessened by two Orders of Court; I enclose herewith copy of my letter to them, and copies of their answers to me, together with copies of the amended orders referred to by them. I have the honour to return herewith, the copies of the bills of the Company's

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Company's solicitor at Madras, enclosed in your letter to me, and beg to suggest, that if you will obtain a copy of the Rules and Orders published by Messrs. Smoult and Ryan, and forward it with your answer, the honourable the Judges of the Supreme Court at Madras will at once perceive the difference in charges made by each office of this court from Madras, and charged by the Honourable Company's solicitor at Madras in his bills, as paid by him to the officers of that Court.

I perhaps should mention, that all court fees received by me as Equity, Ecclesiastical and Admiralty Registrar, are regulated by the same Table of Fees, but they are paid by me to Government, and I am only paid by a commission of five per cent. on the amount of estates coming into my hands as administrator.

I have, &c.

(signed) *T. E. M. Turton,*
Registrar.

Registrar's Office, Supreme Court,
3 September 1845.

From Sir *T. E. M. Turton,* Bart., Registrar of Supreme Court at Calcutta, to *E. B. Ryan,* Esq., Taxing Officer of Supreme Court; dated 1 August 1845.

Jud. Cons. 13 September 1845. No. 41.

Sir,

I BEG to forward to you the accompanying copy of a letter from Mr. Bushby, Secretary to the Government of India, to my address, and to inform you that the letter was accompanied by an original voluminous communication from the Government of Fort St. George, consisting of copies of bills of costs on the various sides of the Supreme Court at Madras, to go through which, in detail, as desired by Mr. Bushby, would occupy very considerable time, and involve much labour and close examination. In taking the directions of their Lordships the Judges of the Supreme Court here, it has struck them, as it does me, that there are no fees taken under the authority of this court, except such as are contained in the printed list of the Table of Fees published on Messrs. Smoult & Ryan's Rules and Orders. I apprehend all others, on whichever side of the Court they may be, would be struck out on taxation; the fees charged by attorneys for conveyancing which are not subject to taxation, being the only exception to this, as far as I am aware.

Under the authority of their Lordships the Judges of this Court, I am directed to inquire whether, according to the practice of your office, any other fees are charged or would be allowed on taxation, than such as are contained in the Table of Fees so published.

I am, &c.

(signed) *T. E. M. Turton,*
Registrar.

1 August 1845.

To W. P. Grant, Esq., Master, Accountant-general and Examiner.
H. Holroyd, Esq., Prothonotary and Clerk of the Crown.
R. O. Dowda, Esq., Sworn Clerk and Receiver.
J. Beckwith, Esq., Sheriff.
E. B. Ryan, Esq., Taxing Officer.

(A true copy.)

(signed) *T. E. M. Turton,*
Registrar.

From *W. P. Grant,* Esq., Master, Accountant-general and Examiner, Supreme Court, to Sir *T. E. M. Turton,* Bart., Registrar Supreme Court; dated 2 August 1845.

Sir,

IN answer to your letter of yesterday's date, accompanying one to you from Mr. Bushby, Secretary to Government, dated 26th ultimo, I beg to state, that their Lordships the Judges and you are quite right in your surmise that no fees are taken in this office except such as are contained in the printed list of the Table

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of Fees published in Messrs. Smoult & Ryan's edition of the Orders of this court, and in the amended Orders of the 4th and 18th January 1837.

I am, &c.

(signed) *W. P. Grant,*
Master, Accountant-general and Examiner,
Supreme Court.

Supreme Court,
Master, &c. Office.

(A true copy.)

(signed) *T. E. M. Turton,*
Registrar.

From *H. Holroyd,* Esq., Clerk of the Crown and Prothonotary, and Clerk of the Papers, Supreme Court, to Sir *T. E. M. Turton,* Bart., Registrar, Supreme Court; dated 7 August 1845.

Sir,

In reply to your letter of date the 1st instant, accompanying one to you from Mr. Bushby, Secretary to Government, dated 26th ultimo, I beg to state, that their Lordships the Judges and you are quite right in your surmise that no fees are taken in this office except such as are contained in the printed list of the Table of Fees published in Messrs. Smoult & Ryan's edition of the Orders of this court, and in the amended Orders of 4th and 18th January 1837.

I am, &c.

(signed) *H. Holroyd,*
Clerk of the Crown and Prothonotary, and
Clerk of the Papers, Supreme Court.

Supreme Court,
Clerk of the Crown and Prothonotary's,
and Clerk of the Papers' Office,
7 August 1845.

(A true copy.)

(signed) *T. E. M. Turton,*
Registrar.

From *R. O. Dowda,* Esq., Sworn Clerk, Supreme Court, and Receiver, to Sir *T. E. M. Turton,* Bart., Registrar, Supreme Court; dated 6 August 1845.

Sir,

In answer to your letter of the 1st instant, accompanied by one from Mr. Bushby, Secretary to Government, dated the 26th ultimo, I beg to state that no fees whatever are taken in my office of Sworn Clerk, except such as are contained in the printed list of the Table of Fees published in Messrs. Smoult & Ryan's edition of the Rules and Orders of the court, and in the amended Orders of the 4th and 18th January 1837.

My office of receiver is paid by a commission of five per cent.

I am, &c.

(signed) *R. O. Dowda,*
Sworn Clerk, Supreme Court, and Receiver.

Court House,
6 August 1845.

(A true copy.)

(signed) *T. E. M. Turton,*
Registrar.

From

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

From *J. Beckwith*, Esq., Sheriff, to *T. E. M. Turton*, Bart., Registrar of the Supreme Court; dated 8 August 1845.

Sir,

I BEG to acknowledge the receipt of your letter of the 1st instant, together with a copy of a letter to your address, from Mr. Bushby, Secretary to the Government of India, and in reply thereto to state, that there are no other fees taken by me under the authority of the court, except such as are contained in the printed list of the Table of Fees published in Messrs. Smoult & Ryan's Rules and Orders.

It is not the practice of my office to charge other fees than those contained in the table referred to, and in the amended orders of the 4th and 18th January 1837.

I am, &c.

(signed) *J. Beckwith*,
Sheriff.

Sheriff's Office,
8 August 1845.

(A true copy.)

(signed) *T. E. M. Turton*,
Registrar.

From *E. B. Ryan*, Esq., Taxing Officer, to Sir *T. E. M. Turton*, Bart., Registrar; dated 4 August 1845.

Sir,

I HAVE to acknowledge the receipt of your letter of the 1st instant, and obedience to the directions of the honourable the Judges of the Supreme Court, I beg to inform you, that no fees are taken by the officers or the attorneys of the Supreme Court, except such as are authorized by the Table of Fees, or by the amended Orders of the court of the 4th and 18th January 1837; nor should I allow any other fees on the taxation of their bills.

I am, &c.

(signed) *E. B. Ryan*,
Taxing Officer.

Taxing Office,
4 August 1845.

(A true copy.)

(signed) *T. E. M. Turton*,
Registrar.

IN the Supreme Court of Judicature at Fort William in Bengal.

4 January 1837.

IT is ordered (the concurrence of the Governor-general in Council, pursuant to the 12th clause of the Letters Patent of 1774 having been previously ascertained and signified), that after the 1st day of January 1837, the fees and rewards of the officers of the court, as mentioned in the present Table of Fees of the Supreme and Insolvent Courts of Judicature at Fort William, in Bengal, and now made payable in Sicca rupees, and all fees hereafter established or altered, be paid in Company's rupees; and that the several fees in the said table specified be reduced accordingly. That from the same date, in all the offices of court whatsoever, (except the offices of the Sworn Clerk, Clerk of the Papers, Examiner in Equity, the Interpreters of the Court, Chief Clerk of the Insolvent Debtors' Court, and Examiner of the Insolvent Debtors' Court), the folio or sheet for all purposes whatsoever shall consist of 90 words; and seven figures shall be calculated as one word; and the charge for all writings charged per folio be reduced to 5 annas per folio of 90 words.

(signed) *E. Ryan.*
J. P. Grant.
B. H. Malkin.

(True copy.)

(signed) *T. E. M. Turton*,
Registrar.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

In the Supreme Court of Judicature at Fort William, in Bengal.

It is ordered (the concurrence of the Governor-general in Council, pursuant to the 12th clause of the Letters of 1774, having been previously ascertained and signified), that from and after the 16th day of January 1837, in all the offices of this court whatsoever, and the Insolvent Court, the folio or sheet for all purposes whatsoever shall consist of 90 words, and seven figures shall be calculated as one word; and the charge for all writings charged per folio shall be reduced to 5 annas per folio of 90 words.

It is ordered, that in the office of Examiner in Equity, the practice of engrossing, and the charge for it, shall be abolished.

(signed) *E. Ryan.*
J. P. Grant.
B. H. Malkin.

(True copy.)

(signed) *T. E. M. Turton,*
Registrar.

(No. 649.)

Jud. Cons. 13 September 1845. No. 42.

From *G. A. Bushby*, Esq., Secretary to the Government of India, to *J. F. Thomas*, Esq., Chief Secretary to the Government of Fort St. George; dated 13 September 1845.

Sir,

I am directed to acknowledge the receipt of your several letters, Nos. 1, 2 & 3, dated 17th June and 7th and 29th July 1845 respectively, on the subject of the law charges in the Supreme Court of Madras.

To Registrar Supreme Court, Calcutta, dated 26 July 1845.
From Registrar Supreme Court, Calcutta, 3d September 1845, with Enclosures.

2. In reply, I am directed to forward, for the information of the Most Noble the Governor in Council, a copy of the correspondence noted in the margin, from which it will be perceived that the Registrar of the Supreme Court of Calcutta states, that a vast proportion of the items in the Madras solicitor's bills are such as are not known here; and that the officers of this Court are strictly guided by the Table of Fees published by Messrs. Smoult & Ryan, a copy of which also is herewith forwarded.

3. I am instructed to request that the proceedings which may be held by the Madras Government on this subject be reported for the consideration of the Government of India.

I have, &c.

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

Fort William,
13 September 1845.

(No. 13.)

Unrecorded.

From the Indian Law Commissioners to the Right Honourable Sir *H. Hardinge*, G.C.B., Governor-general of India in Council; dated 3 July 1845.

We have the honour to report upon the subject of the remuneration of the officers of Her Majesty's Courts of Judicature, referred to us by the President in Council, under date the 17th February 1843.

From Mr. Halliday, Officiating Secretary Government of India, 17 February 1843.

2. We are instructed that Government had determined that the officers of the Supreme Court at Madras and Bombay, excepting the Official Administrators, should be paid by salaries instead of fees, as the officers of the Supreme Court at Calcutta have been paid since 1836; and that the Official Administrator at each Presidency should continue to be paid in part by commission; and we were required to prepare a scale of fees for the Supreme Courts of the three Presidencies, with as much regard to uniformity as the circumstances may permit, and to report on the amount of salaries which should be paid, having regard only to the duties of the respective officers; and on the consolidation of offices which may be conveniently effected, preserving as much uniformity as may be practicable.

3. It

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3. It appeared to us that, in revising the establishments of the courts, there were three points to be inquired into:

1st. Whether any and what offices could be dispensed with.

2d. What offices of those which must necessarily be continued, could be conveniently united.

3d. What amount of salary would be an adequate remuneration for the business to be done in each office, or set of offices proposed to be united, with reference to the quantity and quality of the work, the qualifications necessary for the due performance of it, and degree of responsibility attached to the officer, regard being had to the remuneration usually given within the Presidency to which the Court belongs, for duties involving the same degree of labour, and occupying the same time, requiring similar qualifications, and attended with like responsibility; and in cases of the duties being such as can only be performed by professional men, to the average remuneration to be gained by professional practice.

4. We accordingly addressed letters to the Judges at Calcutta, Madras and Bombay respectively,* requesting them to communicate to us their opinions on these points, considering the subject as if the offices necessary to render the several courts effective in every department were now to be established for the first time.

5. With a view to the preparation of a general scale of fees, we requested the Judges of Madras and Bombay to furnish us with the Tables of Fees at present authorized in their respective courts, to be compared with those levied in the court at Calcutta, and to state the alterations which they thought to be advisable.

6. Referring to the letter from the Judges at Calcutta to the President in Council, under date the 14th September 1842, we begged them to favour us with a statement of the further reductions of fees which they had in contemplation, as therein intimated.

7. Subsequently, having received from the Judges at Bombay schedules of the business in the court at that Presidency, we applied to the Judges at Calcutta and Madras respectively,† for corresponding statements, to enable us to compare and judge of the work required from the officers of the several courts.

8. Lastly, having observed that the fees actually levied in the Supreme Court at Calcutta, and carried to the account of Government, under the arrangement for remunerating the officers of the court by salaries, which was introduced in 1837, had fallen short of the estimate, we requested the Judges‡ to obtain for us an explanation of the causes which had made this source of income less productive than was expected.

9. The answers of the Judges at Calcutta and Bombay to our applications to them regarding the establishments, and the remuneration of the officers of their courts, we have already laid before Government, in the Appendix to our Report upon Judicature in the Presidency Towns. The answers of the Judges at Madras are submitted herewith.§

10. We submit also a report of the Registrar of the Court at Calcutta, upon the reductions which have been effected in the court charges, and the consequent diminution in the income from fees since 1836, which we have lately received from the Judges. 28 February 1845.

11. In attempting to fulfil the instructions of Government, we have endeavoured, in the first place, to adjust the establishments of the several courts as economically as possible, but with care to provide adequately for the duties that are essential to the efficiency of the courts in their several departments, continuing, therefore, all the offices, the functions of which appear to be really necessary; but on the principle of the arrangements for the Calcutta Court, which were

Revision and reform of establishments.

* To Judges at Calcutta, 27th May 1843; answered, 13th February 1844.
To Judges at Madras, 6th May 1843; answered by the Chief Justice and the Puisne Justice separately, 15th August 1843.
To Judges at Bombay, 6th May 1843; answered by Sir E. Perry, Puisne Justice, 3d June 1843; answered by the Chief Justice, 4th August 1843.

† To the Judges at Madras, 12th August 1843; schedules furnished 1st December 1843.
To the Judges at Calcutta, 4th November 1843; schedules furnished 20th February 1845.

‡ To the Judges, 15th August 1844; from ditto, 28th February 1845.

§ 15th February 1844; from the Chief Justice Sir E. Gambier, 15th August 1843.
From the Puisne Justice Sir J. D. Norton, of same date, with Enclosures, 31st January 1845.

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were introduced in 1837, combining such of them as can be conveniently discharged by one person; studying on the one hand, that no person charged with a plurality of offices shall be over-burdened with work; and on the other hand, that every person having a competent salary shall have his time fully occupied with the business of the court.

Calcutta.

12. With regard to the Supreme Court at Calcutta, we have had particularly under consideration the correspondence which passed between the Government and the Judges relative to the arrangements introduced in 1837, the letter of the Judges, dated 13th February 1844, referred to in the letter of the Judges of the same date, as containing their joint opinions.

Administration of the estates of intestates, &c. at Calcutta, proposed to be committed to a a separate officer.

Minute, 13 February 1844.

13. With respect to the delegation to the officers of the courts of duties not necessarily connected with a court, the Chief Justice at Calcutta, Sir Lawrence Peel, makes the following observations:—"Of this kind in one court are, first, the Official Administration of the Estates of Intestates, conferred by command of the Legislature of Great Britain on an officer of the court, the Ecclesiastical Registrar. Next, the Receivership, which commonly falls on an officer of the court by the consent of the parties in a suit, but it is not of compulsory obligation on the parties to select an officer of the court for such purpose; and lastly, the Official Trusteeship, lately created by an Act of the Indian Legislature. All the duties of these various officers are those of ordinary administrators, ordinary receivers and ordinary trustees, and they have no necessary reference to any suit whatever. In my opinion it would be the better course to retain the offices, but to disconnect the person discharging them from the court, and to transfer the appointment of him to the Government; and to confine the court establishment to the officers really necessary for the discharge of the ministerial duties beforementioned. I think it is of importance that no offices should exist as connected with the court, which are of an administrative character, and have no necessary connexion with proceedings in court."

14. In the opinion here expressed by the Chief Justice, with the consent of the other Judges, we entirely concur. At Calcutta there is no obstacle, that we are aware of, to prevent the accomplishment of the arrangement suggested. Our first recommendation therefore is, that the Registrar of the Supreme Court at this Presidency shall be relieved from the official administration of the estates of intestates, and that this duty shall be committed, with the requisite legislative sanction, to an officer to be appointed by the Government, who shall also officiate occasionally under the orders of the court, in the capacity of Receiver, Curator and Assignee of Insolvent Estates respectively. A similar arrangement is equally desirable at Madras and Bombay, but if the commission on the administration of estates be reduced, as we shall presently propose, it will not be practicable there, as the remainder will not afford a sufficient remuneration to induce a competent person to undertake the office separately. At Calcutta there will be no such difficulty, as the commission, at the reduced rate which we have in contemplation, will be more than sufficient to afford an adequate remuneration to the officer.

Under Act XIX. of 1841.

Not practicable at Madras and Bombay.

Accountant-general of the Supreme Court.

15. In our letter to the Judges at Calcutta, under date the 27th May 1843, we observed, that the office of Accountant-general of the Court, which is here vested in the Master, at Madras and Bombay is discharged by the Accountant-general of the East India Company, and quoted a remark of the Chief Justice at Bombay that, "but little difficulty or inconvenience arises from both offices being thus held by the same person, and some advantage may accrue from the arrangement." We then said, "on referring to the rules for the office of Accountant-general of the Supreme Court at Calcutta, we see it is ordered that he shall not meddle with any funds, but shall only keep the account with the Accountant-general and Sub-treasurer, to whom all monies taken under the care or direction of the court are paid over directly, and whose business it is to invest the same, and to receive the interest accruing, and after deducting the commission due to the Accountant-general of the Court, to enter the same in the account of each suit respectively. It would seem that the accounts kept by the Accountant-general of the Court must be counterparts of those kept by the Accountant-general of the Company. Besides keeping these accounts, the principal duties of the Accountant-general of the Court appear to be those specified in Rules 8, 9, 12 and 13. By the two former rules he is required to add a certificate to every order of court for money to be received or paid by the Accountant-general and Sub-treasurer of the Company. By the 12th rule he is required to give six days' notice to the Accountant-general and Sub-treasurer of interest becoming due on funds in their hands, and

by

by the 13th, he is to give a cheque or order for the payment of the same. These forms, which must multiply business and give trouble to parties, do not appear to us to be essential as checks, and it seems to us that there would be little, if any, disadvantage, and probably some convenience from the introduction of the system which obtains at Madras and Bombay." As to the accounts, we have since ascertained that they are really mere transcripts from the books of the Treasury, it being the practice for a clerk to attend at the Treasury to make a copy from day to day of all entries connected with money or securities belonging to suitors.

16. At Bombay, according to the Chief Justice, the charge incurred in the office of the Company's Accountant-general for doing the business of the court in this department, is only about 30 rupees a month. At Madras the only fee charged in the Accountant-general's office is one or two rupees on the issue of certificates of funds standing to the credit of causes and estates received by the clerk, making the search, the average amount thereof being about 186 rupees per annum. At Calcutta, the Accountant-general's fees, according to the Schedules prepared in 1836, amount to *Rs.* 29,621. A reduction was then ordered by the court, by which it was estimated the receipt would be cut down to *Rs.* 20,551. As the fees of the Master and Accountant-general are not distinguished in the accounts lately received by us, we do not exactly know the amount now levied in the office of the latter, but we presume that it is not far short of the estimate.

Schedule (H.) and (K.)

17. The Chief Justice says, "I am not sufficiently acquainted with the mode of transacting business in the office of the Accountant-general of the East India Company, to form any opinion whether inconvenience would result here from adopting the practice prevalent at Madras and Bombay. The amount of business in the Supreme Courts at those Presidencies, and the amount of monies in the hands of the Accountants-general of those courts is, I believe, considerably less than in the Supreme Court of this Presidency. The double machinery now in use seems to be objectionable; the court must have an Accountant; the Accountant-general of the Company, if he were the Accountant of the Court, would be subject to the general jurisdiction of the court over him, as its officer. This might be deemed inconvenient. It has been suggested by the Master of our court, that the simplest course would be to retain the office of Accountant on its present footing, and to make the Bank of Bengal the bank of the court, in like manner as the Bank of England is the Bank of the Court of Chancery. Upon this subject, I expect to receive shortly a report of the Master, which shall be forwarded to you as soon as it reaches me."

18. We have not received the report of the Master, but having maturely reconsidered the subject, we think it advisable to adopt the arrangement which experience at the other Presidencies has proved to answer well, and which will at once promote the convenience of parties concerned in the funds held under orders of the court, and relieve them from a heavy charge for fees, now paid for merely formal observances; we therefore recommend, that the Accountant-general of Government be constituted, *ex officio*, Accountant-general of the Court.

Recommendation that the Accountant-general of the Government be Accountant-general of the Court at Calcutta, as at Madras and Bombay.

19. We do not apprehend that there will be any difficulty, from the amount of funds to be managed being greater here than at Madras and Bombay, for we believe that in fact there will be little or no additional business imposed upon the Company's Accountant-general by the proposed arrangement. The difference in practice will be, that he will act immediately in pursuance of the orders of the court, instead of upon certificates, instructions and notices from the Accountant-general of the Court, founded upon such orders. The Company's Accountant-general being *ex-officio* Accountant-general of the Court, must of course be subject to its jurisdiction, *quoad hoc*, but we do not anticipate any inconvenience from this circumstance.

20. According to the scheme proposed by the Judges in 1836, and approved by the Government, the office of Master was to be held in conjunction with those of Accountant-general, Examiner in Equity and Examiner in the Insolvent Court. In their letter under date the 14th September 1842, the Judges said, "We propose to detach from this officer (Master) the duties of the Examiner in the Insolvent Debtors' Court, which we think it will be more convenient to have performed by the chief officer of that court, and to confer on the Master the office of Taxing Officer at Law and in Equity, which was formerly held in conjunction with the office of Master, and was, for some temporary reason, disunited from it. This is a much more onerous and important office than that of Examiner in the Insolvent Debtors' Court, and the labours of the Master will be increased by the alteration."

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But for reasons stated in the minute of the Chief Justice, they afterwards thought it proper to make a different arrangement. The Master at present is also Accountant-general and Examiner in Equity; the duties of the latter office occupy a very small portion of his time, and when he is relieved, as we propose, from the office of Accountant-general, we think that he may be charged with the duties of Registrar in the Equity, Admiralty and Ecclesiastical departments, that is the proper ministerial functions of the Registrar (those of Official Administrator being provided for separately, as above suggested), and the duties also of the Sworn Clerk so far as they are necessary.

Recommendation that the Master be also the Registrar of the Court.

21. From the information we have of the proper ministerial business of the Registrar and Sworn Clerk, we think there is no reason to fear that, added to the business of the Master and Examiner in Equity, it will be more than can be easily performed by one person. It will be perceived, that the Chief Justice contemplates a similar conjunction of offices, with the addition of that of Accountant-general. It is true that the Chief Justice anticipates arrangements, by which the duties of the Master will be reduced in importance and difficulty, but we are persuaded that, taking them as they are, the arrangement we propose is perfectly feasible, and we have the authority of the Chief Justice that the duties of the Registrar are quite compatible with those of Master.

22. The offices of Prothonotary and Clerk of the Papers, Clerk of the Crown and Sealer, are at present conjoined, and the Chief Justice proposes to add to them the office of Keeper of the Records; he suggests that one officer may perform all the duties now discharged by the Chief Clerk, Common Assignee and Examiner of the Insolvent Court; that this officer should be an attorney, and that he should be charged also with the duties of the Attorney for Paupers and those of Taxing Officer of the court in all its departments. We entirely concur in these suggestions, and recommend that they be adopted.

Calcutta. Three principal officers required for the service of the court, exclusive of the administration of estates, &c.

23. Thus all the necessary services of the court, that is to say, those essential to the due conduct of its proceedings, and the recording thereof, may be performed by three principal officers; viz.—

One, performing the duties of Master and Examiner in Equity and the ministerial duties of Registrar in all departments, including the duties now assigned to the Sworn Clerk.

The second, the duties of Prothonotary and Clerk of the Papers, Clerk of the Crown and Sealer, and Keeper of the Records.

The third, all the ministerial duties of the Insolvent Court, and the duties of Taxing Officer, all departments, also those of Attorney for Paupers.

Madras and Bombay.

24. At Madras and Bombay, as we have already observed, it will not be practicable to adopt the arrangement regarding the official administration of estates which is advocated by Sir Lawrence Peel, and which we have recommended for Calcutta, because, if the rate of commission be reduced, as is very desirable, the receipts will not afford a sufficient remuneration to induce a qualified person to undertake the trouble and responsibility of the office by itself. By the last returns, the average net receipt of the Official Administrator at Madras, was *Rs.* 8,258; at Bombay, *Rs.* 18,957. But continuing this duty* as a function of the Ecclesiastical Registrar, it appears to us that the whole of the proper ministerial business of the court, together with the extra business of Administrator, may be well performed by three principal officers at each of those Presidencies.

25. As we cannot adopt for Madras and Bombay the arrangement recommended for Calcutta, of conjoining the office of Registrar with that of Master, because of the duty which the Registrar will have to perform as Administrator, we propose that the convenient arrangement which now obtains at Madras, by which the duties of Prothonotary and Registrar, that is to say, all the duties of a ministerial character connected with the proceedings of the court, on the Plea side and in Equity, and in the exercise of its Admiralty and Ecclesiastical jurisdiction, are discharged by one person, be continued at Madras, and adopted at Bombay, and that the same officer be also charged with the duty of Sealer.†

26. The Judges at Calcutta, in letter dated 25th September 1836, said, "We consider the Sealer an unnecessary officer; the abolition of this office was long ago

* Also the occasional duty of Curator, under Act XIX. of 1841, which falls to the Registrar *ex-officio*, and that of Receiver.

† At Bombay the Prothonotary discharges the duties of Registrar in Equity and Admiralty. The office of Ecclesiastical Registrar is held conjointly with those of Examiner in Equity and Common Assignee.

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ago recommended by Chief Justice Anstruther, aud we can see no reason why its duties should not be annexed to the office of Prothonotary." The duties are now accordingly discharged by the Prothonotary at Calcutta.

27. Sir E. Gambier, now Chief Justice at Madras, in a former letter suggested, that the seal of the court should be delivered to the Registrar or his department; and in his last communication, under date the 15th August 1843, he observes, that the duties of Sealer may, without inconvenience, be performed in the Registrar's office; and though he mentions some reasons against it, they do not appear to us of much moment.

To Madras Government, 21 May 1839.

28. The Chief Justice at Madras formerly suggested, that the functions of Clerk of the Crown might, without inconvenience, be performed by the Registrar and Prothonotary; but in his letter of 15 August 1843 he states, that from his subsequent experience he is inclined to question the propriety of uniting the ministerial duties of the criminal side of the court with those of the civil side, apprehending, we think with reason, that jointly (the business of Official Administrator being left to the Registrar) they would cast an undue proportion of labour on a single person.

21 May 1839.

29. We propose that there shall be one officer for all the duties of the Insolvent Court at each of these Presidencies, and to the person holding this office we would assign the duties of Clerk of the Crown. He should be also Attorney for Paupers, and at Bombay should officiate as Clerk of Small Causes.

Minute of Sir E. Perry, Puisne Justice, Bombay, para. 41.

30. At both Madras and Bombay, the Master is also Taxing Officer of the court. We would continue this arrangement, adding the duty of Examiner in Equity.

31. The business of the courts at Madras and Bombay would then be transacted uniformly by three principal officers as follows:—

Three principal officers required at Madras and Bombay for the service of the court, and for administration of estates, &c.

One performing the duties of Master and Examiner in Equity and Taxing Officer.

The second discharging the ministerial duties of Prothonotary and Registrar in all departments, together with those of Sealer, and acting *ex-officio* as Administrator of the Estates of Intestates, and occasionally as Curator and Receiver.

The third discharging all the ministerial duties of the Insolvent Court, and officiating as Clerk of the Crown, and at Bombay as Clerk of small Causes, acting besides as Attorney for Paupers at both Madras and Bombay.

Remuneration of officers.

32. We proceed now to consider what will be a proper remuneration to the principal officers of the several courts for the duties we propose to assign to them respectively, with reference to the circumstances adverted to above in para. 3, as far as we have knowledge of them; and we shall first observe, that the circumstances of the three Presidencies appear to us to be too various to admit of the adoption of a uniform scale of salaries. To notice only one point of those mentioned in para. 3, the average remuneration to be gained by professional practice, or according to Sir Lawrence Peel's standard, the remuneration arising from a moderate practice at the bar; it is certain that what would be at Calcutta a fair estimate, would be quite out of proportion for Madras and Bombay. It is to be remembered, also, that the civil allowances at Calcutta generally exceed those payable at Madras, while the Madras allowances exceed those of Bombay; for example, the salary of a Judge of the Sudder Court at Calcutta is rupees 52,200 per annum.

At Madras - - - - - -	49,000
At Bombay, the senior Judge has - -	40,000
The second - - - - - -	36,000
The others - - - - - -	35,000

33. In the letter dated 15th September 1842, the Judges at Calcutta proposed that rupees 48,000 per annum should be fixed as the salary of a Master, being also Examiner in Equity, Accountant-general and Taxing Officer. In his minute of 13th February 1844 the Chief Justice observes, that this "was meant as the maximum which the Judges should be empowered to offer, and that it would be their duty to propose a smaller salary, if the smaller salary would secure the services of a barrister in practice well qualified for the office." He adds, "Upon re-consideration of this subject, I am disposed to think that a salary somewhat less than the one proposed in the scheme referred to, would enable the court to secure the services of one so qualified. It is difficult to say beforehand what

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salary would suffice; but I think that a salary of 3,500 Company's rupees per month, or perhaps 3,000, would be sufficient to induce the relinquishment of the first practice at the bar."

34. The Master being "in some mode a Judge," the office must be held by a barrister, and it is proper that it should be one who has gained experience in the practice of his profession. To secure the services of such a one as Master and Registrar, we believe that a salary of rupees 3,000 per mensem, or rupees 36,000 per annum, will be amply sufficient. It is to be observed, that this exceeds the salary of the Registrar of the Sudder Court, an officer whose duties we take to be of equal importance. But it is only such an excess as seems to be fairly allowable with reference to the advantage which the Registrar of the Sudder Court enjoys as a member of the civil service. We recommend, therefore, that 3,000 rupees per mensem, or 36,000 rupees per annum, be fixed as the maximum salary to be allowed to an officer of the Supreme Court at Calcutta, and that it be assigned to the Master and Registrar, being also Examiner in Equity.

25,000 rupees per mensem.

35. For the second officer of the court, who is to officiate as Prothonotary, Clerk of the Papers, Clerk of the Crown, Sealer and Keeper of the Records, we recommend the salary proposed by the Chief Justice, rupees 2,000 per mensem, or rupees 24,000 per annum.

36. The Chief Justice proposes for the third officer of the court, who is to be Chief Clerk and sole officer of the Insolvent Court, and to discharge the duties of Taxing Officer in all departments, and also to officiate as Attorney for Paupers, a salary of rupees 1,800 per mensem. This being the salary which we propose to allow to the Master at Bombay, as first officer of the court, we think it would be out of proportion to give the same to the third officer at Calcutta. We recommend that the salary of this officer be fixed at rupees 1,500 per mensem, or rupees 18,000 per annum.

37. We are of opinion, that the net sum of rupees 30,000 per annum will be a sufficient remuneration for the duties of Official Administrator of Intestate Estates, Receiver, Assignee of Insolvent Court and Curator, under Act XIX. of 1841, which we propose to commit to a single officer unconnected with the court. We think that four-fifths of the proposed remuneration, or rupees 24,000, should be assured to him as salary, and that he should be allowed such a proportion of the commission upon the estates and funds under his management, as upon a fair estimate may be expected to make good the balance, rupees 6,000 per annum.

38. With respect to Madras, the President in Council suggested,* that the remuneration of the higher officers should be fixed, for the present, at a medium between those of the corresponding officers at Calcutta and Bombay. Hitherto the emoluments of the Master and the Registrar at Madras have been more than double those of the corresponding officers at Bombay. We propose to fix the maximum salary in the Bombay Court, at rupees 1,800 per mensem, or rupees 21,600 per annum, which is the rate suggested by Sir E. Perry. It seems to us, taking into consideration the higher rates of remuneration for official services allowed generally at Madras, that it would be too great a retrenchment to cut down the maximum salary in the court at that Presidency to the rate proposed for Bombay. We propose to fix it at rupees 26,250 per annum, which is the salary of the Registrar of the Sudder Court. We recommend that this salary be assigned to the Master and Taxing Officer, being also Examiner in Equity, as the first officer of the court, to whom, we think, it will be an ample recompense for the duties he will have to perform, which, we believe, will be considerably less onerous than those of the Registrar of the Sudder.

	Madras.		*Bombay.*
Master	52,354	- - - -	21,773
Registrar and Prothonotary	52,848	Prothonotary and Registrar in Equity and Admiralty, and Examiner Insolvent Court	21,318
		Ecclesiastical Registrar, Examiner in Equity and Common Assignee -	24,153

Per mensem, 2,187. 8.
Per annum, 26,250.

39. To the second officer, who is to perform the duties of Prothonotary, Registrar and Sealer, and to administer *ex-officio* to intestate estates, &c., we propose to give the same remuneration as is recommended for the second officer at Calcutta, viz. 24,000 rupees per annum, assuring to him a salary in the proportion of four-fifths, or 19,200 rupees; and allowing him a proportion of the commission chargeable

* Letter addressed to the Secretary to the Government of India with the Governor-general, dated 23d December 1842.

able upon estates, &c., estimated as equivalent on an average to the remaining one-fifth, or rupees 4,800.

40. The remuneration of the second officer at Bombay, we think, should be rupees 1,600 per mensem, or rupees 19,200 per annum, of which four-fifths, or rupees 15,360, should be given as salary, and the remainder should be derived from commission.

41. For the third officer, at both Madras and Bombay, we recommend a salary of rupees 1,250 per mensem, or rupees 15,000 per annum.

42. At both Madras and Bombay there is a Deputy Clerk of the Crown, an office which does not exist at Calcutta, and which, no doubt, can be dispensed with. The salary at each Presidency is rupees 2,100 per annum.

See opinions o Madras Judges letter dated 21 May 1839.

43. The Office of Counsel for Paupers, which exists at Madras alone, was abolished at Calcutta under the arrangement agreed upon between the Judges and the Government in 1836. The late Chief Justice at Madras opposed the abolition of this office. But, referring to the explanation given by him of the excellent system pursued at Madras in regard to pauper cases,* it appears to us, that, from the pains taken by the Judges themselves in the preliminary investigation of such cases, there is no more need for a Pauper Counsel than there was at Calcutta. It has not been suggested that any inconvenience has arisen from the abolition of the office at Calcutta, and, as it has never been found necessary at Bombay, we are led to conclude that it may be safely dispensed with at Madras; the salary is rupees 4,800 per annum.

44. The fees of the office of Sealer, which we propose to abolish at Madras and Bombay, amount on an average to rupees 2,842 per annum at Madras, and to rupees 3,458 at Bombay.

45. At Calcutta, the Chief Justice suggests that the salaries of the Clerks of the Judges may be cut down, on vacancies, from 700 to rupees 500 per mensem each, which we recommend.

$700 \times 3 = 2{,}100 \times 12 = 25{,}200$
$500 \times 3 = 1{,}500 \times 12 = 18{,}000$

46. At Madras and Bombay, the Judges' Clerks are paid partly by salary and partly by fees, the average income at Madras being rupees 5,376, less rupees 311 for expenses, and at Bombay 4,731; we propose that they shall have a fixed salary of rupees 4,800 each per annum.

47. The financial results of these arrangements at the several Presidencies will be as follows:—

CALCUTTA.

Present Arrangement.		Proposed Arrangement.	
Master, Accountant-general and Examiner in Equity of the Supreme Court, and Accountant-general of the Insolvent Court, per annum	48,000	First Officer of the Court: Discharging the functions of Examiner in Equity, Registrar in all departments and Sworn Clerk	36,000
Prothonotary, Clerk of the Papers, Clerk of the Crown and Sealer	36,000	Second Officer: Discharging the functions of Prothonotary, Clerk of the Papers, Clerk of the Crown, Sealer and Keeper of the Records	24,000
Taxing Officer, Chief Clerk of the Insolvent Court and Record Keeper	19,200		
Sworn Clerk and Receiver	27,600		
Examiner, the Insolvent Court, Common Assignee and Commissioner for taking Affidavits in Gaol	9,000	Third Officer: Discharging all the ministerial duties of Insolvent Court, Taxing Officer and Attorney for Paupers	18,000
Attorney for Paupers	4,800		
	1,44,600		
Judges' Clerks	25,200		
	1,69,800		8,000
	96,000		78,000
Net saving	73,800		96,000

MADRAS.

* "Once in every week, one of the Judges sits in his chamber, and all paupers desirous of prosecuting or defending actions, appear and state their claims and defences. If the Judge thinks their statement entitled to credit, the case is referred to the Pauper Attorney, who further investigates the matter, and on being satisfied of the validity of the claim or defence, he is directed to lay the case before the Pauper Counsel for his certificate; no action is thus allowed to be commenced without a certificate from counsel, and no defence can be set up without the sanction of the like certificate."

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MADRAS.

Present.		Proposed.	
Net Salary and Fees:		First Officer:	
Master and Taxing Officer	44,358	Discharging the functions of Master and Examiner in Equity and Taxing Officer	26,250
Clerk of the Crown	7,415		
Deputy ditto	2,100		
Registrar and Prothonotary, fees	42,044	Second Officer:	
Ditto, commission on estates	8,256	Discharging the functions of Prothonotary, Registrar and Sealer, and *ex officio* Administrator to Intestate Estates, &c.,* salary, 19,200 + 4,800 commission	24,000
Examiner in Equity	7,966		
Sealer (full)	2,540		
Counsel for Paupers (full)	48,000		
Attorney for Paupers	3,116	Third Officer:	
	1,22,597*	Discharging all ministerial duties of Insolvent Court, Clerk of the Crown and Attorney for Paupers	15,000
Judges' Clerks	10,130		
	1,32,727		65,250
	74,850	Judges' Clerks	9,600
Saving	75,877		74,850

* *Note.*—This is the amount (omitting fractions) available to the officers for their personal benefit, after providing for the establishments and all other charges, except in cases of the Sealer and Counsel for Paupers, in which the full receipt is given, as the offices are not to be continued.

* This officer, both at Madras and Bombay, will also officiate occasionally as Curator and and Receiver. The average commission will be carried to the account of Government: the amount cannot be estimated.

BOMBAY.

Present.		Proposed.	
Net Salaries:		First Officer:	
Fees, Master and Taxing Officer	21,773	Master and Taxing Officer, and Examiner in Equity	21,600
Ecclesiastical Registrar	18,957		
Prothonotary and Registrar in Equity and Admiralty	19,414	Second Officer:	
Examiner in Equity	3,947		
Clerk of Crown	7,720	Prothonotary, Registrar and Sealer, and *ex officio* Administrator, &c.,* salary, 15,360 + 3,840 commission	19,200
Deputy ditto	2,100		
Sealer	3,458		
Chief Clerk, Insolvent Court	2,223		
Common Assignee, ditto	1,249		
Examiner, ditto	1,904		
Clerk of Small Causes	11,540	Third Officer:	
Paupers' Attorney	5,594		
Net amount available to the officers, after providing for the establishment, &c. (fractions omitted)	99,879	Sole Officer, Insolvent Court, Clerk of the Crown, Clerk of Small Causes, Attorney for Paupers	15,000
			55,800
Judges' Clerks	9,462	Judges' Clerks	9,600
	1,09,341		65,400
	65,400		
Saving	43,941		

* See note on the statement for Madras.

Fees, 31 January 1845, in letter from Judges, 28 February.

48. We proceed to the subject of fees, and we shall first notice the Report of the Registrar of the Supreme Court at Calcutta, showing the effect of the various rules introduced by the Judges since 1836, in reducing the expense of proceedings, and the result thereof in the diminution of the fee fund.

49. The

49. The Judges of the Supreme Court, in their letter dated 25th April 1836, and the Schedules annexed to it, assumed the total average amount of fees (allowing for the substitution of the Company's rupees for the Sicca), to be *Rs.* 3,56,541. Registrar's Report, para. 4. Estimate at *Rs.* 21,832, Schedule (K.)

50. They estimated that this amount would be reduced by *Rs.* 85,216 * in consequence of the full execution of the measures they recommended in that Report, and that the remainder available to Government as a compensation for the salaries to be paid from the Treasury, would be *Rs.* 2,71,324, or, with the Interpreter's fees afterwards added, *Rs.* 2,81,499.

51. The Judges, as the Registrar observes, contemplated a further reduction of the fee fund, as likely to arise from considerable alterations in the practice of the Court which they then had in view, and which were carried into effect in October 1837. Report, p. 7. Order 15 June, to take effect 22 October 1837.

52. The Registrar, by way of example, shows the great relief afforded to suitors by the new rule, under the head of "Decrees and Orders in Equity."

Formerly "final decrees generally ran to the extent of 200 folios, at 10 annas the folio, 125 rupees, of which five copies were always paid for; many final decrees ran to 800 folios, charge 500 rupees, of which the suitor was always debited with five copies."

"Under the present practice of the court, the largest decree seldom, if ever, runs 40 folios, at 5 annas the folio, *Rs.* 12. 8., and of which three copies are in general taken, but cannot compel any party to take a copy. The smallest decree runs about eight folios, at 5 annas the folio, *Rs.* 2. 8.

53. Hence it appears, that for the largest decree, a party under the present rules has to pay only *Rs.* 37. 8., where under the former rules he would have had to pay 2,500 rupees, the saving to him being no less than *Rs.* 2,462. 8.†; viz. 40 folios instead of 800 at five, instead of 10 annas per folio, *Rs.* 12. 8.; instead of 500 rupees per copy, three copies instead of five.

54. The reduction in the charge for writing, paid for by the folio, from 10 annas to five, which is here noticed, was one of the measures proposed by the Judges in their letter dated 25 April 1836.

55. The Government, in their answer, observed, that the proposed allowance of five annas per folio seemed unnecessarily high, and suggested that the copying charges of the court should be assimilated as nearly as possible to the rates of the Government's offices. The Judges replied, that to assimilate the charges for copying as proposed, would introduce a saving very desirable for the relief of the suitors, but that it could not be effected without occasioning a deficiency in the fee fund, which would probably endanger the surplus they had calculated upon in their estimates. The Government, notwithstanding, intimated that they would not object to some reduction of the proposed surplus, for the purpose contemplated, but the charge was not reduced. 14 November 1836, Para. 15. 21 November 1836.

56. By introducing the Government rate, three copies of the largest decree would cost *Rs.* 7. 8., instead of *Rs.* 37. 8., or one-fifth of the present charge, viz. 1,440 words for a rupee.

40 folios,
90 words per folio,

3,600
3 copies.

10,800 words ÷ 1,440 = *Rs.* 7. 8.

57. The Registrar mentions further extensive alterations in the practice on the Equity side of the court, introduced by orders dated respectively the 27th October 1841 and 7th January 1842, curtailing the length of each proceeding in every stage of a suit, and abolishing a number of useless processes. He shows "that a complainant Report, para. 15. Report, para. 18.

	Rs.
* By the measures mentioned in Registrar's report, paras. 5 & 6	76,527
Reduction of commission to Accountant-general, not mentioned by the Registrar	8,689
	85,216
† Costs under former rule	2,500 –
Costs under present rule	37 8
Saving	2,462 8

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complainant in an equity side was put to the expense in almost every cause of about *Rs.* 165. 3. to the office of the court alone, independent of the charges of his own solicitor, before he could either compel an appearance and answer, or have his bill taken *pro confesso* against the defendant; whereas by the present practice, under the rules last quoted, the same object is now effected at the comparatively trifling cost of *Rs.* 35. 7."

Schedule (D.)

58. He shows also, that where under the former practice it cost 115 rupees to carry a decree of the court into execution, it will now cost only *Rs.* 36. 2.

1837, 2,29,500; 1838, 2,56,841.

59. The effect of the alterations made in the beginning of 1837 and in the course of that year must have been developed fully in 1838, but the receipts of the latter year actually exceeded those of the former.

60. Taking the average of the three years, 1838 to 1840, before a further change was made, we find the amount to be 241,708 rupees, falling short of the estimate made by the Judges in 1836, by 39,790 rupees.*

61. This reduction may probably be ascribed to the changes in practice effected in October 1837, as described by the Registrar.

Report, para. 20.

62. The changes made by the orders of October 1841, and January 1842, the Registrar observes, "came into full operation in 1842, and will at once account for the diminution which appears" in that year.

63. But in 1843 there was a great increase again,† and it will probably bring us nearer the mark to compare the average of these two years with the average from 1838 to 1840.‡ The difference which probably results from the changes adverted to, is 19,239 rupees.

(E.) and (F.)

64. The schedule submitted by the Registrar include only the salaries of officers who account to Government for their fees, omitting the payments to officers who have always been remunerated by salaries without fees. This appears to account mainly for the difference between those schedules § and the statements furnished by the Accountant-general, in which the whole amount of salaries to all officers of the court is entered; on the other hand, in the Registrar's schedules ‖ there is a corresponding reduction under the same head of salaries paid prior to 1837.

2,55,743
2,22,469
33,274
51,907
18,633

65. Taking the annual amount of fees at the average of 1842–43; viz. 2,22,469 rupees, and the amount of salaries to officers formerly paid by fees at 2,55,743 rupees, the sum paid in 1843, the fee fund appears to be short of the annual charge upon it by 33,274 rupees; but allowing for salaries paid to the same officers prior to 1837, the Government is a gainer by 18,633 rupees. On the whole, from 1st January 1837 to 1st January 1844, there was a net gain to Government by the

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* 1838 - - - - - - - - - - - - - - 2,56,841 3 11
1839 - - - - - - - - - - - - - - 2,39,470 7 6
1840 - - - - - - - - - - - - - - 2,28,814 14 5

3)7,25,126 9 10

Average Estimate - - - - 2,41,708 13 11

Including Interpreter's fees - - - 2,81,499 11 5

39,790 13 6

† 1841, 2,12,978; 1842, 2,05,036; 1843, 2,39,903.

‡ Average from 1838 to 1840 - - - - - - - - - - - - 2,41,708
Average of 1842, 1843 - - - - - - - - - - - - 2,22,469

19,239

§ 1842: Accountant-general - - - - - - - - - - - - 2,39,877
Registrars - - - - - - - - - - - - - 2,63,069

26,808

‖ Total amount of salaries prior to 1837, as per schedule (D.) in letter dated 25th March 1836 - - - - - - - - - - - 79,815 11 5
In Registrar's Schedules (E.) and (F.) - - - - - - - - 51,907 9 2

27,908 2 3

the fee fund of 43,172 rupees, which, distributed over the seven years, gives an average of 6,167 rupees per annum.*

66. Supposing the fees to amount, on the average, to 2,22,469 rupees, as above, and that there has been no falling off in the business of the court, the saving to suitors by the changes made subsequently to January 1837 may be reckoned at 59,030 rupees,† which, added to the saving by the introduction of the Company's rupee instead of the Sicca (21,832 rupees), and by the other measures effected up to January 1837 (85,216 rupees), makes a total of 1,66,078 rupees in favour of the suitors in the Supreme Court; and a further relief, the Registrar states, will result from certain new rules passed last year.

67. But it would seem, from the statements furnished to us, that there was a diminution in the business of the Supreme Court at Calcutta, and of the courts at the other Presidencies also, in the period from 1840 to 1842, compared with former years at Calcutta, on both the Plea and Equity sides at Madras, and Bombay on the Plea side only. 15, 21 and 24 June, 27 July 1844.

68. In the following abstract the number of suits instituted on the Plea side of the Calcutta Court, in 1830, is compared with the number instituted in 1840, 1841 and 1842 respectively, and with the average, showing a decrease on the average of about 22 per cent.

1830 - - 840	1830 - - 840	1830 - - 840	1830 - - - 840
1840 - - 640	1841 - - 572	1842 - - 752	Average, 1840 to 1842 - - 654
200	- - - 268	- - - 88	Decrease - - 186
			About 22 per cent.

69. In the next following abstract, the comparison is made with 1835, the result being a decrease on the average of about 15 per cent.

1835 - - 772	1835 - - 772	1835 - - 772	1835 - - - 772
1840 - - 640	1841 - - 572	1842 - - 752	Average, 1840 to 1842 - - 654
132	- - - 200	- - - 20	- - - - 118
			About 15 per cent.

70. In the Madras Court, the following are the results of similar comparisons:

1830 - - 278	1830 - - 278	1830 - - 278	1830 - - - 278
1840 - - 151	1841 - - 166	1842 - - 231	Average, 1840 to 1842 - - 182
127	- - - 112	- - - 47	- - - - 96
			8 per cent.

1835

* Registrar's Schedule (F.)—Both the Registrar's schedules, and those furnished by the Accountant-general, differ from the abstract purporting to show the state of the account for 1843, between the East India Company and the officers of the court, accounting for their office fees, prepared by the Taxing Officer, and transmitted to Government by the Chief Justice, under date the 3d June 1844. The latter states the amount received from Government in 1843 at 2,47,960 rupees, instead of 2,55,743 rupees, as per Registrar's schedule, and charges 5,004 rupees against the Government, as if it had been collected and paid into the treasury, whereas it consisted of arrears expected to be realized.

† Estimate of fees after the reductions, made up to January 1837 - - - 2,81,499
Present average - - - - - - - - - - - - 2,22,469

59,030
21,832
85,216

1,66,078

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1835 - - 258	1835 - - 258	1835 - - 258	1835 - - - 258
1840 - - 151	1841 - - 166	1842 - - 231	Average - - 182
107	- - - 92	- - - 27	- - - - 76
			or 29-4 per cent.

71. Sir Erskine Perry stated in his Minute, that the number of plaints filed on the Common Law side had fallen off 20 per cent. during the last three years (1840 to 1842), as taken on an average of the preceding 10 years.

72. The Chief Justice questioned his statement; but it appears, from the schedule submitted by him, that the decrease was 30 per cent.*

73. In the Calcutta Court, the average of Equity suits instituted duriug 1840, 1841 and 1842, falls short of the number instituted in 1830 and 1835 respectively.

1830 - - - - - - 62	1835 - - - - - - 70
Average of 1840 to 1842 - - - 54⅔	Average - - - - - - 54⅔

74. In the Madras Court, the average of 1840 to 1842 exceeds the number instituted in both 1830 and 1835.

Average of 1840 to 1842 - - - 34⅔	Average - - - - - - 34⅔
1830 - - - - - - 25	1835 - - - - - - 34

75. In the Bombay Court also, the Equity suits have rather increased of late years:

Average of 1840 to 1842	26
„ 1830 to 1839	24 4/10

76. According to Sir E. Perry, the number of defended causes tried on the Plea side of the Bombay Court during 1840, 1841 and 1842, was as follows:

1840:	1841:	1842:
27	23	42

Average 30⅔.

77. The following shows the number of such causes determined in the courts at Calcutta and Madras respectively in the same years:

Calcutta.			Madras.		
1840:	1841:	1842:	1840:	1841:	1842:
82	60	79	13	16	20
Average 73⅔.			Average 16⅓.		

78. Below

* Average of causes set down for trial from 1830 to 1839, both inclusive - - - 113
Average of 3 years, 1840 to 1842 - - - - - - - - - - 79
Decrease - - - - - - 34
Per cent. - - - - - - 30

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78. Below are stated the number of decrees made in Equity on argument in the several courts during the same period.

	1840.	1841.	1842.	Average.
Calcutta - - -	14	10	6	10
Madras - - -	6	15	11	$10\frac{2}{3}$
Bombay - - -	7	18	15	*$13\frac{1}{3}$

* According to Sir E. Perry, by Schedule (B.) of Chief Justice, 12.

79. In each of the courts at Calcutta and Madras only, one Ecclesiastical cause was decided during the three years from 1840 to 1842, and no Admiralty cause was decided in either.

There is no report for Bombay.

80. There is reason to believe that the business of the Supreme Court has increased at Calcutta since 1842. On the other hand, it is stated in the public prints, that at Madras it has still farther declined. These fluctuations dictate the expediency of keeping a margin for contingencies, in framing an estimate of the income from fees which will accrue to Government to meet the expense to be incurred for salaries.

81. At Calcutta we reckon upon a saving, by the proposed arrangements, of 73,800 rupees per annum, besides the present surplus from fees, estimated above at 18,633 rupees per annum, the total being 92,433 rupees, independent of the commission on estates, &c. Here, then, is room for further reducing the charges on proceedings in court to a great extent. Taking the present court fees to amount on the average to 2,22,469 rupees, as above stated, it would seem that they might be reduced in the proportion of 37 per cent., or to about 1,40,000 rupees, and that there would still remain a surplus of 10,000 rupees* to secure the Government against loss. Referring to the amount of fees leviable at the beginning of 1837, the reduction in favour of the suitors would then be above 60 per cent.†

	2,22,469
37 p' ct. -	82,313
	1,40,156

82. At Madras and Bombay, the objects of remunerating the officers of the Supreme Court by moderate salaries instead of fees, may be effected, as we have seen, not only without a loss to Government, but with a considerable saving, supposing the fees to be continued as heretofore. It is not the intention of Government, however, to save, but to relieve the suitors to the greatest extent that is possible, without increasing the charge upon the Treasury. It will be possible, under the proposed arrangement, to guarantee the Government against loss, and yet to make a considerable reduction in the fees of court at both Presidencies.

83. Taking the present net emolument of the above-mentioned officers of the court at Madras, or the residue of the aggregate amount of salaries and office allowances, fees and commission now received by them, after defraying the charges of their offices, and setting off the aggregate of their proposed future allowances, there remains, as above stated, a surplus of 57,877 rupees.‡ Throwing out for the present the net commission on estates under the management of the Official Administrator, and setting off only the salaries to be paid by Government, deducting

* Expected saving - - - - - - - - - - - - -	92,433
Reduction - - - - - - - - - - - - -	82,313
Surplus - - - - -	10,120
† Fees in 1837 - - - - - - - - - - - - -	3,56,541
Amount estimated to remain after the deduction now proposed - - -	1,40,000
	2,16,541
‡ Amount of present net emoluments of officers - - - - - -	1,32,727
Proposed salary and commission - - - - - - - -	74,850
	57,877

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The gross amount of the fees we calculated at 1,27,770 rupees.

deducting that portion of the Registrar's emolument which is to be derived from commission, the surplus is 54,421 rupees.*

84. To guard the Government against loss, it may be proper at first to reserve a surplus equal to about 10 per cent. of the salaries to be paid; say 70,000 rupees. There will then remain 47,400 rupees, as the amount of reductions in the fees of court in the offices above-mentioned, which may be safely effected, being 37 per cent. of the whole.

85. At Bombay, reckoning in the same way, there will remain 22,668 rupees,† as the amount of reduction which can safely be made in the fees of the offices in question, being 25 per cent. of the whole.

86. Should reductions be made to the extent above suggested at Madras and Bombay, the relief to suitors will be greater in proportion than was afforded in the first instance at Calcutta, where the reductions effected in 1837 were not quite 24 per cent., exclusive of the relief resulting from the substitution of the Company's rupee for the Sicca, in which respect no alteration is necessary at the other Presidencies, where the Sicca rupees have never been known.

87. The reductions effected at Calcutta in 1837, and subsequently up to the present time, with the same exception, come to about 37 per cent., or the same as is now proposed to be given up at Madras, and rather more than 11 per cent. over what is proposed to be given up at Bombay.

88. Sir C. Gambier, the Chief Justice at Madras, declined to comply with our request to him, to state to us his views of the alterations which may properly be made in the present table of fees in the Supreme Court at that Presidency; but the late Puisne Judge, Sir J. D. Norton, sent us a table exhibiting both the present rates and those proposed by the Chief Justice to be substituted for them, with copy of a correspondence between himself and the Chief Justice, to which he referred, as showing his own views on the subject, and his reasons for not agreeing to the reductions proposed by the Chief Justice; he communicated to us at the same time copy of a letter containing some queries on the subject, which he had addressed to the Master, and the answer of the latter.

89. The Chief Justice at Bombay did us the favour to transmit a statement of the fees of his court, contrasted with those levied at Calcutta, observing that, on the whole, it appeared to him that the fees were lower at Bombay than at Calcutta, and that in the few instances in which they were higher, they might well be reduced.

90. We are not in possession of the rules of the courts at Madras and Bombay, but we believe that little has been done in the way of curtailing proceedings by which chiefly the suitors have been relieved from expense in the court at Calcutta, as shown in the Report of the Registrar. On this subject Sir J. D. Norton, in one of his letters to the Chief Justice at Madras, observed as follows:—"It seems to me, that it will be advisable to consider the recent alterations in the pleadings and practice of the Court of Chancery at home, with a view to the introduction of such of them as may be suitable to this country. By curtailing proceedings and simplifying practice, we have an obvious and just mode of diminishing expense, and it is to these means rather, and not to the diminution of court fees, that I look for the relief of the burthen of the suitors. It is clear that in any possible reduction of fees, the saving must be very small."

22 June 1842.

91. Concurring

		Proposed allowance.
* Present net emolument as per Schedule in para. 47,	4,32,727	74,850
Deduct net commission - - - - - - -	8,256	
	1,24,471	Deduct Registrar's share of commission - - 4,800
	70,050	
	54,421	70,050
† Amount of present net emolument of officers - - - - - - - -		1,09,341
Deduct commission on estate - - - - - - - - -		18,957
		90,384
Proposed amount of salaries, exclusive of commission - - - - - -		61,560
		28,824
Reserve, 10 per cent. upon salaries - - - - - - - - - -		6,156
		22,668
Assumed Gross Amount of Fees - - - - - - -		*Rs.* 90,078

91. Concurring in these views, it appears to us that the first step to be taken at Madras and Bombay respectively, is to introduce the improvements in practice which have been adopted at Calcutta after the example of the courts at home, and which, as shown by the Registrar, have been so signally efficacious in reducing expense. We apprehend that all those improvements may be carried into effect without exhausting the saving which we expect to result from the official arrangements above proposed, and that there will still be room for a reduction of charges.

92. If it were necessary to frame immediately a uniform scale of fees for all the courts, we think that the nearest approximation to a fair standard would probably result from an adjustment, on the principle of reducing the fees at Madras and Bombay, wherever, for precisely the same services, they exceed those charged at Calcutta, and, on the other hand, reducing the fees at Calcutta where they exceed those leviable at Madras and Bombay, taking the lower of the two as the standard; but it is quite impossible to foresee what would be the effect of such changes in diminishing the fee fund, out of which the salaries are to be paid; and as it is not the present purpose of Government, as we understand, to allow of reductions beyond the saving which may be expected from the reformation of the ministerial offices, and there is no urgent occasion for concluding a general arrangement at once, we think it advisable to postpone any attempt at it, until the first step above suggested has been taken at Madras and Bombay, and the practice of the courts has been so far assimilated.

93. But there is one item of charge which we have no hesitation in recommending to be reduced immediately, namely, the charge for writing. The Registrar of the Calcutta Court observes, that by the alteration on this head,* which was introduced there in 1837, as above noticed, together with the abolition of the practice of engrossing depositions taken by the Examiner in Equity, "a reduction of 50 per cent. was at once made in all the offices of the court, in the heaviest item of charge which the suitors had to pay under the old system." We have remarked how much greater relief would be afforded by adopting the suggestion of Government, that the charges for copying should be assimilated to the rates observed in the Government offices; we recommend that this arrangement be now introduced in all the courts at Madras and Bombay. The rule as to the number of words to be contained in the folio already agrees with that which obtains at Calcutta, but at Madras the ordinary charge for writing per folio is one rupee;† at Bombay it is eight annas.

94. When the proposed assimilation of practice has been accomplished, if, notwithstanding the diminution of court charges by the abolition of useless proceedings, and the general retrenchment of superfluous matter in the records of suits, and by the direct reduction in the charge for writing, the saving by the proposed reform of the ministerial establishments at Madras and Bombay should still admit of further reduction, it will be comparatively easy, with the assistance of the Judges, and profiting by the experience gained in the meantime in the court at Calcutta, to determine what can be further done to relieve the suitors, and towards the object of equalizing the cost of proceedings in the several courts.

95. We may here observe, that it appears, by the public newspapers, that an order has been lately passed by the Judges of the Supreme Court at Madras, disallowing certain fees, "not sanctioned by the table of fees, settled and approved under the charter," which have been taken by the Sheriff, Master, Registrar and Prothonotary, Examiner and Judges' Clerks respectively. Ordo Curiæ, 5 April 1845.

96. We have applied for a copy of any correspondence which may have passed between the Government of Madras and the Judges on this subject, but we have not thought it necessary to wait for it.

97. In answer to our request to the Judges at Calcutta, to favour us with a statement of the further reductions of fees which they had in contemplation, as intimated in the letter to Government, under date the 14th September 1842, the Chief Justice states, that the Judges have made no further effort to reduce the fees of court, in consequence of the letter referred to not having been replied to by the Government. He adds, that "the Judges are not officially acquainted with the views of the Government relative to the proposal, that the Government should permit the reduction Minute, 13 Feb. 1844.

* The folio to contain 90 words instead of 72, and the charge for writing reduced from 10 to 5 annas per folio.

† Present charge 1 rupee for 90 words; proposed 1 rupee for 1,440.

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reduction of some of the fees of court, of which the Government are now the recipients, but that their desire to effect all practicable reductions of the cost of the establishment, at the earliest period, has not suffered any abatement."

98. Since the date of this communication from the Chief Justice, the Judges,* with the concurrence of Government, have made a change in the practice on the Equity side,† calculated, they say, to produce some, though not an important reduction, in the receipts of the Government from the fees of court. "This charge is thus explained by the Judges:—The practice which has hitherto prevailed here requires that, when a motion is made, all documents on grounds on which it is made be filed in court, and that, when filed, they remain in court; if the opposite side requires, as he usually does, to make use of them, he must take office copies of them, and these office copies must again be filed by him as part of his grounds of opposition; and if, in after stages of the cause, fresh motions are made which require these same documents to be again submitted to the court, fresh office copies are required, which office copies are again to be filed. In the case, therefore, of a protracted Equity suit, much needless delay and expense is incurred in consequence of a practice at variance in this respect with the practice of the Court of Chancery, and the grievance becomes still greater in case of an appeal, upon which not only the transmission, but the printing of all documents is required. The order passed by the Judges dispenses with office copies in such cases, and doubtless, as they observe, it is one whereby material improvement will be made in the administration of justice, and whereby the suitor will receive an important relief."

99. The decrease in the income from fees in consequence of the change of practice, the further reduction proposed in the charge for transcription, and the abolition of the fees for services now performed by the Accountant-general of the court, which will be unnecessary under the arrangement we have recommended, that the Accountant-general of the Government shall act in the same capacity to the court, will absorb a part of the saving we anticipate from the new organization of the ministerial department of the court, but there will be scope for further reductions to a considerable extent, and with reference to the disposition which the Judges have always evinced to effect every practicable alleviation of the burden upon the suitors, and to their means of ascertaining what charges are most oppressive, there can be no doubt of the expediency of leaving to them to determine where further retrenchments that will be possible, by means of the said saving, can be best applied.

100. There are some suggestions, however, which may be offered for their consideration. First, whether the office of the Clerk of the Papers, &c., being conjoined with that of Prothonotary, some of the fees paid to one or other may not be dispensed with, and so also, when the office of Sworn Clerk shall be conjoined with that of Registrar in Equity. Second, whether the charges for attendance upon the Master may not be modified. At present, for attendance upon ordinary occasions, where there is only one party upon whom such attendance can be charged, the fee is five rupees. For every effectual and necessary attendance upon matters referred to the Master, and upon which he has to make his report, the fee taken from each side is 16 rupees; we understand that the attendance is charged for as effectual, when the time of attendance is one hour, and that when a longer time is occupied, there is a further charge by the hour. The latter charge is not allowed either at Madras or Bombay.

101. Again, the Taxing Officer charges for attendance upon the taxation of every attorney's bill a fee of five rupees, and besides that, for every hour actually employed in the taxation of the bill, 16 rupees, and for any time less than an hour, at the same rate. At Madras the fee of five rupees is allowed for taxing a bill of costs, "exclusive of charges for warrants, attendance and registering;" what these items amount to, does not appear in the table of costs, but the Master observes, that where 16 rupees is charged as above at Calcutta, the charge at Madras is only *Rs.* 3. 8. At Bombay the charge for taxing every bill of costs not exceeding six folios, is four rupees, and for every other folio 12 annas.

102. The

* From Judges to Government, 31st May 1844. To Judges from Government, 8th June. From Judges to Government, 21st June. To Judges from Government, 6th July. From Chief Justice to Government, 3d June.

† It appears from the communication of the Master at Madras to Sir J. D. Norton, above referred to, that this practice never obtained there, at least in showing cause against a rule nisi.

Letter to Sir J. D. Morten, P. J.

102. The Master at Madras appears to question whether, notwithstanding the changes which have been made in practice in favour of suitors at Calcutta, the costs are not greater in the court there than they are in the Madras court. But from such information as we have been able to obtain, it appears to us that, generally speaking, the costs are much less to suitors at Calcutta than at Madras, and less also than at Bombay, on the Plea * side.

* We have no particular account of costs in Equity at Bombay.

103. Sir E. Perry shows, on the average of three years, 1840, 1841, 1842, that a defended cause on the Plea side of the Bombay court, costs the losing party (paying both his own and his adversary's charges) about 1,200 rupees; that an undefended cause costs about 450 rupees; and that even in causes where the defendant confesses the claim, or gives a cognovit on the first opportunity, the expenses amount to no less than 189 rupees.

104. We have obtained statements of the causes disposed of in the courts at Calcutta and Madras in 1842; in the Madras statement we have the taxed costs payable by the losing party to his adversary, that is, the costs of one side only, and we find that in simple assumpsit cases defended, the average is 882 rupees, the maximum being 1,242 rupees, the minimum 492 rupees; on the whole of the defended cases the average appears to be 1,090 rupees. In a case of libel the plaintiff's costs, payable by the defendant, were taxed at 1,312 rupees; in a case of trespass, defended, at 1,197 rupees; in a case of assessment of damages, at 1,274 rupees.

105. In assumpsit cases undefended, the average of the taxed costs of plaintiff payable by defendant, is 528 rupees, the maximum being 1,068 rupees, and the minimum 439 rupees. In some of these cases the costs of the plaintiff exceed the amount of principal sued for.

106. In the court of Calcutta, the average in 1842 upon all the defended causes, taken together, in which the costs payable by the losing party to his adversary (exclusive of his own costs), are† stated in the schedule furnished to us, is 713 rupees (or for both sides, say, 1,426 rupees) exceeding the general average at Bombay, but falling much short of the average at Madras.

† The number in which the costs are stated bears a small proportion to the whole.

107. The highest amount of costs of one side, taxed in a defended case, was 3,136 rupees, exceeding the maximum at Madras, but on the other hand, the minimum falls much short of the minimum at Madras; viz. at Calcutta, 138 rupees, at Madras, 492 rupees.

108. In undefended cases the difference is very great, for the most part, indeed with very few exceptions the whole amount of costs given, payable by defendant in a confessed case in the Calcutta court, is *Rs.* 45. 2. 9.;‡ while at Madras the minimum, as above stated, is 439 rupees. At Bombay, the charges in such cases come on the average to 189 rupees.

109. Sir E. Perry observes with respect to Bombay, that high as are the expenses of suing on the Common Law side, they are trifling when compared with those on the Equity side; "it is perhaps sufficient to say (he adds) that as the length of an equity suit, when compared with a common law cause, may be reckoned by years almost, instead of months; so the costs of such suits may be counted in thousands instead of hundreds of rupees, as in the other case."

110. The remark as to expense is probably applicable also to suits on the Equity side, both at Calcutta and Madras. We have not the means to make any thing like an accurate comparison of the costs in Equity at these Presidencies, but we are inclined to think, that on the same proceedings they are less in the Calcutta court than in that of Madras, as was to be expected from the improvements in practice introduced in the former. Referring to the schedules furnished to us, of the Equity suits disposed of at both Presidencies in 1842, we find that at Madras, in the suit in which the amount of taxed costs on one side payable by the opposite party was lowest, the sum was 3,410 rupees, the subject being, "specific performance of a contract in respect of land in the Neelgheiries, sold by auction to the plaintiff for 3,870 rupees;" the case was heard on bill, answer and evidence. In another case heard on the same proceedings, in which the value on the matter in dispute was 5,356 rupees, the costs of the plaintiff allowed on taxation amounted to 5,881 rupees. In a case heard on bill and answer, and again on further

‡ We have some doubt about these, for we have seen bills of costs in cognovit cases, in the lowest of which the amount allowed is *Rs.* 132. 9. In this case there was no fee to counsel: the court fees amounted to *Rs.* 36. 9. In another case, in which the costs were taxed under a certificate of judgment confessed, the amount allowed was *Rs.* 87. 15. 6., of which *Rs.* 24. 8. was the amount of court fees.

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further directions, in which the subject was the will of the plaintiff's father, and the respective rights of the plaintiff (son), and the defendant (widow), under the same, the property involved being more than a lac of rupees, the taxed costs of the plaintiff amounted to 3,996 rupees, and of the defendant, to 3,029 rupees. In another family suit, in which a bill was filed in the names of certain infants, praying that their fortune, under the will of their father, in the hands of the defendants, might be secured to them, and the trusts of the will executed, the defendants apparently admitting the claim, and one of them being by the decree appointed guardian of the infants, the taxed costs of the plaintiff amounted to 7,705 rupees, and those of the defendant to 6,637 rupees, the case having been heard on bill and answer, and on further directions, after report made by the Master. Again, in a suit brought by the executor of a party deceased, praying that the will of the deceased might be established, and the trusts thereof carried into execution by the court, and the clear residue secured for the benefit of the defendant, and the children of the deceased, heard upon bill and answer, and reading the will and probate, and on further directions, on the report of the Master, the taxed costs of the plaintiff amounted to 8,612 rupees.

111. In the Calcutta court we find a suit for participation of family property valued at 60,000 rupees, heard on bill and answer, and disposed of on consent, the taxed costs of the plaintiff being 484 rupees, and of the defendant 592. In a case heard on bill and answer, and evidence, in which the bill was dismissed with costs, the amount of the plaintiff's costs, allowed on taxation, was 2,136 rupees, and the amount of the defendant's 3,974 rupees. In another case heard on bill and answer, and evidence, and disposed of by a final decree (the original bill having been filed in 1818, the answer in 1819, and the evidence taken in 1820, and the suit revived by a new bill filed in 1841), the taxed costs of the plaintiff came to 2,940 rupees, and of the defendant to 2,137 rupees.

112. On a bill in a mortgage case, disposed of by a decree *ex parte*, for foreclosure of the mortgage, the plaintiff's taxed costs amounted to 2,216 rupees. In a suit for a mortgage debt of 20,000 rupees, disposed of by a decree *pro confesso*, the plaintiff's costs, as taxed, amounted to 2,766 rupees.

113. In a suit for a mortgage debt of 16,332 rupees, heard on the pleadings, the plaintiff's costs (taxed), amounted to 1,727 rupees, and those of the defendant to 1,051 rupees.

114. In a suit amicable, it would seem, to declare rights under a marriage settlement and will, the taxed costs of the plaintiff amounted to 3,060 rupees, and of defendant to 634 rupees.

115. But while we notice these cases as carrying less costs probably than would have been incurred at Madras, we must mention another, in which the charges appear to be enormous; the case we refer to is entitled, "Ranee Hurro Sundery Dossee and others *v.* Cowar Kistnonauth Roy Buhadoor and others," and "Cowar Kistnonauth Roy Buhadoor *v.* Hurro Sundery and others," for performance of trusts in the will of the father of the defendant in the original suit, and plaintiff in the cross-suit, and for maintenance of widow and family. The two bills were filed respectively on 27th and 28th September 1839, and upon the bills and answers, references were made to the Master. The Master appears to have reported upon one subject of reference, 31st May 1841. He made a separate report, 3d March 1842. To this separate report exceptions were filed, which were heard, and overruled with costs, 30th March 1842.* The costs of the plaintiff† allowed on taxation, according to the schedule furnished to us, amounted to 49,306 rupees. The first reference to the Master was dated 30th January 1840, amended 18th June 1840. The last reference was dated 1st March 1841.

Commission upon the administration of estates of intestates.

116. We come now to the question of the commission to be charged on the official administration of the estates of intestates.

117. We consider it settled, that the officer charged with this duty, whether attached to the court, as at Madras and Bombay respectively, or separate, as, on the suggestion of the Chief Justice, we recommended with regard to Calcutta, shall be remunerated, partly by a fixed salary, and partly by a proportion of the commission chargeable upon the estates. It has been suggested, by both Sir J. D. Norton and Sir E. Perry, that the objects in view in this arrangement may be obtained,

* This is the matter which is noted as disposed of, in the schedule for 1842. But the proceedings before the Master is, as to other matters, continued till towards the end of May 1843.

† The Defendant's costs were not taxed.

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obtained, without depriving the officer of a personal interest to stimulate his activity, by allowing him a small per centage (Sir E. Perry says, half per cent.), upon every estate administered by him, in addition to his salary. Upon this principle, we propose that four-fifths of the intended remuneration shall be given as salary, and the rest shall be made to depend on the amount realized by the Administrator, by allowing him a certain proportion of the commission chargeable thereon, calculated on an average to the equivalent to the remaining one-fifth. This we think will be sufficient to supply a motive to the Administrator to exert himself with all due diligence, without exciting him to grasp too eagerly at opportunities for exercising his functions, when there is no necessity for his interference.

118. The President in Council, with the concurrence of the Governor-general, on the 5th August 1842, addressed a letter to the Judges of each of the Supreme Courts, requesting their opinion, among other things, upon the expediency of reducing the commission to be drawn by the Ecclesiastical Registrar upon the administration of the estates of intestates, suggesting that it might be fixed at one per cent. upon invested property, when the amount is considerable, with an increasing rate for smaller sums, leaving five per cent. to be charged as at present on other descriptions of property.

119. The Judges appear to have agreed generally as to the propriety of reducing the commission, but they offered various suggestions on the subject.

120. The Judges at Calcutta said, that "the remuneration by commission must be by giving a general commission upon the principle of an average. As the commission now is, the commission of five per cent. attaches on the assets realized; that is, on the value of what may be termed the principal of the fund, of whatever it may consist. If the circumstances of an estate require a continuing administration, and the investment of funds, and the receipt of the proceeds of the same, whether dividends, interest, rent, &c., a further commission of five per cent. on the amount of such recurring receipts is received. The best course to be adopted, as it appears to us, would be to reduce the commission, on a future vacancy, from five per cent. to three-and-a-half per cent., and on recurring receipts, to reduce the commission to two-and-a-half per cent., except as to houses and buildings, which are very troublesome, and an expensive item of administration in the office, that we think the full reduced commission, viz. three-and-a-half per cent. should still be payable on these receipts."

121. The following are the observations of the Chief Justice at Bombay, Sir H. Roper:—"The Honourable the President in Council suggests, that the charge for administration of invested property (by which, I presume, is intended money invested in Government securities), be fixed at one per cent. where the amount is considerable, with an increasing rate for smaller sums, leaving five per cent. to be charged, as at present, on other descriptions of property. It appears to me that no more than one per cent. commission should be allowed for administering invested property, of whatever amount. To this might be added a trifling charge for what natives term petty brokerage, if actually and properly incurred. On other descriptions of property, I think the commission should be not five per cent. as at present, but two or two-and-a-half, or at the utmost three per cent.; merchants here transact the like business at such rates, except where they act as administrators. If the rate of commission payable to the Ecclesiastical Registrar were reduced, the rate of commission granted to administrators in India generally might at once be put upon the same footing, a most valuable boon to the public."

122. Sir E. Perry recommended that the commission should be reduced to two or two-and-a-half per cent.

123. Sir E. Gambier and Sir E. Perry concurred in recommending that commission should be disallowed to private executors and administrators. This measure Sir J. D. Norton thought objectionable; he said it would, in his opinion, be "better at once to declare that the Registrar should be the sole administrator."

124. Upon a review of the various suggestions of the Judges, the President in Council came to the conclusion, that commission on the administration of intestates' effects, whether by the official or common administrator, should be reduced, and thought that a distinction might be made between vested and uninvested effects, and, perhaps, between houses and other vested property, or with reference to the amount of assets obtained. He was of opinion, that the commission now received

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in India by executors should be reduced, or, perhaps, altogether prohibited. With suggestions to the above effect, but without any definite proposal as to the rate of commission to be allowed, he submitted the subject for the consideration of the Governor-general.

125. The opinion of the Governor-general was expressed as follows:—"The Governor-general entirely agrees with those who think that the commission upon administrators of intestate property should be much reduced. The present per centage is extravagant, and should be reduced to two per cent., with this exception, that the per centage upon the administration of funded property should not exceed one per cent., for it gives no trouble."

"The Governor-general doubts whether it would be expedient to take away altogether the per centage now received by executors. In India, the executor can rarely be a relative of the deceased person, frequently not even a very intimate friend; further, in India, every man has some employment, and whatever he does as executor must be in the rare and short intervals of his own business. There would be a danger of executors renouncing executorship, if there were no emoluments attached to the duty; and the Governor-general would not object to allowing to executors a per centage of one per cent."

126. The established charge of agents on the management of estates for executors or administrators is two-and-a-half per cent., and this, we think, would be a proper charge upon estates managed by the Official Administrators; but a reduction to this extent could not be made generally, without subjecting the Government to extra expense. At Madras, for example, if the commission were reduced one-half, the remainder would not pay even the charges at the rate of late years. At Bombay there would remain, after defraying the charges, 4,446* rupees per annum; reducing the commission to three per cent., or three-fifths; the amount at Madras would be 11,014 rupees, and at Bombay 12,227; and, taking the Bombay charges as at present, there would be a surplus there of 6,384 rupees.† At Madras the charges are unaccountably large compared with those at Bombay, being at the former 55 per cent. of the commission, while at the latter they are only 28 per cent. We have no doubt that the charges at Madras may be reduced, if not to a parity with those of Bombay, at least in a proportion near to that which the commission is proposed to be reduced. Supposing the charges to be retrenched by two-fifths, the amount would then be something more than 6,000 rupees, or about 33 per cent. of the commission realized, which, paid out of the reduced commission, estimated at 11,014 rupees, would leave about 5,000 rupees, exceeding by a trifle the balance expected to accrue to the Registrar from this source.

6,062 rupees.

4,800 rupees.

127. Upon the whole, we think with the Judges at Calcutta, that it is best to allow a general commission upon the principle of an average, instead of a commission varying in rate according to circumstances; and seeing that three per cent. is the lowest rate which would be suitable at Madras and Bombay, we would recommend that it be adopted as the general rate for all the Presidencies.

128. At

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* Average commission - - - - - - - - - - 18,364
One-half - - - - - - - - - 9,182

Average charges - - - - - - - - - - 10,102
Average commission - - - - - - - - - - 20,379

Half - - - - - - - - - - 10,189
Average charges - - - - - - - - - - 5,743

4,446

† Madras.—Present commission - - - - - - - - 18,364
Deduct 2-5ths - - - - - - - - - 7,350

Remainder - - - - - - - - - - 11,014

Bombay.—Present commission - - - - - - - - 20,379
Deduct 2-5ths - - - - - - - - - 8,152

Remainder - - - - - - - - - 12,227
Deduct charges - - - - - - - - - 5,743

Surplus - - - 6,384

128. At Calcutta the gross amount of the commission on estates administered by the Ecclesiastical Registrar during the last three years appears to have averaged 84,091 rupees. At two per cent. the amount would have been 50,455 rupees; the charges on the average amounted to 23,979 rupees; the surplus, therefore, would have been only 26,476 rupees, or 3,524 rupees less than the proposed remuneration of the officer; but the commission of the Receiver and the Assignee of the Insolvent Court are to be added. The average at the present rate of the Receiver's commission is 13,315 rupees, and of the Assignee's 23,347 rupees; total 36,662 rupees; but we would recommend that the commission of those offices be reduced in the same ratio as the commission of the Official Administrator, viz. to three per cent. At this rate the amount would be 21,994, from which is to be deducted the charges, which are stated to amount on the average to 10,128 rupees, leaving a surplus of 11,886 rupees, which, added to the surplus commission on estates, 26,476 rupees, makes a total of 38,342 rupees, exceeding the proposed allowance to the officer by 8,342 rupees.*

From the Registrar, 30 June 1845.

	50,455
	23,979
	26,476

129. We are of opinion, that the rate of commission allowed to the Official Administrator should be applicable equally to private administrators and executors. We do not think it expedient to deny commission to all but the Official Administrator, or to enact that the administration of the estates of intestates shall be committed to the Official Administrator exclusively.

130. It appearing to us that it would be an advantageous arrangement to make the Sheriff of each of the Supreme Courts a permanent officer, and that in such case the Deputy Sheriff might be dispensed with, we requested the Judges to favour us with their opinion as to the propriety and expediency of this measure, and if they should consider it to be free from objection, to suggest what would be an adequate remuneration for the office, if it should be held by itself, and also to state whether it could properly be held united with any other office connected with the court.

Sheriff.

131. The Chief Justice at Calcutta (the other Judges concurring) recommends the proposed arrangement, and suggests that the office of Sheriff may be united to that of Coroner.

132. The Judges at Bombay also recommend it, and no objections are offered by the Judges at Madras.

133. The duties of Sheriff are at present performed generally by the Deputy; and the Puisne Judge at Bombay (the Chief Justice apparently agreeing), adverting to this fact, suggests that the latter officer should be constituted the permanent Sheriff, with the present salary of the High Sheriff, and half of the fees, which would give him

Fees	2,541
Salary	4,200
	6,741

being an increase upon his present income of 1,941 rupees. This adjustment, he observes, would produce a saving to Government of 3,600 rupees, the present salary of the Deputy, and at the same time would afford a considerable benefit to suitors in the saving of half of the fees in the execution of process.

134. At

* Charges of Assignee 7,596
Charges of Receiver 2,532

Take	10,128
From	21,994
Surplus	11,866
	26,476
	38,342
	30,000
	8,342

It is necessary to keep a margin for contingencies, and to meet extraordinary charges, such as are mentioned in the report of the Assignee of the Insolvent Court; there will probably be some receipt occasionally in the office of Curator, under Act XIX. of 1841, but the amount, it is supposed will not be considerable on the average.

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134. At Madras, the High Sheriff has a salary of 4,200 rupees for his duties as an officer of the Supreme Court, and his fees amount on the average to 7,487 rupees - - - - - - - Total - - *Rs.* 11,687
And allowance for execution of mofussil process - - - 2,400

14,087

The Deputy Sheriff has a salary of - -	*Rs.* 2,520	
Palankeen allowance - - - - -	504	
	3,024	
And fees averaging - - - - -	712	
		3,736
Total emoluments of Sheriff and Deputy, exclusive of allowance for establishment - - - - -		17,823

Sheriff, fees, 7,487
Deputy, ditto 712
8,199
Half - 4,099

135. Supposing the fees to be reduced one-half, as suggested for Bombay, there would remain 4,099 rupees, which, with the present salary of the High Sheriff, 4,200 rupees, would give 8,299 rupees per annum for the remuneration of the permanent Sheriff, and Government would save the allowance now made to the Deputy Sheriff, 3,024 rupees, and 2,400 rupees, the extra allowance to the Sheriff; total 5,424 rupees, while the suitors would be benefited by a saving of 4,099 rupees on the execution of process.

136. At Calcutta the Sheriff has a salary of *Rs.* 1,167. 8. 5. per annum, and the Deputy an allowance of 1,800 rupees per annum, for the execution of mofussil process; total salary *Rs.* 2,967. 8. 5. The fees amount, on the average, to *Rs.* 19,492. 3. 7., but the charges it is stated are very high, the average being *Rs.* 15,997. 12., exceeding the Government allowance for establishment by *Rs.* 11,400. 12. 3., the net income from fees is therefore only *Rs.* 8,091. 7. 4., which, added to the Sheriff's salary, makes a total of *Rs.* 9,258. 15. 9., out of which he has to pay the Deputy for his services.*

Rushton's Gazetteer, 1841, vol. 21, Part III., p. 244.

137. We think that the suggestion of the Chief Justice, to unite the office of permanent Sheriff with that of Coroner, should be adopted; the allowance to the Coroner, we understand, is *Rs.* 574. 12. per mensem; a consolidated allowance of 1,000 rupees per mensem, we think, would be a proper remuneration for the duties of the two offices at Calcutta.

138. Supposing the fees to be reduced one-half, the remainder would be 9,746 rupees, and if no reduction could be made in charges, the financial result of the proposed arrangement would be unfavourable to Government, for against the salary of 12,000 per annum for the combined offices of Sheriff and Coroner, there would be only *Rs.* 9,864. 8., the amount of the salaries saved, leaving a deficiency of *Rs.* 2,135. 8., and the reduced fees would not meet the charges in excess of the Government allowance for establishment.†

139. The charges, however, appear to be excessive, and we are inclined to think that

* - - - - - - - - - - - - - - - 15,997 12 -
Average allowance for establishment - - - - - - 4,596 15 9

Take	- - - - -	11,400	12 9
From	- - - - -	19,492	3 7
Remains	- - - -	8,091	7 4
Salary	- - - - -	1,167	8 5
		9,258	15 9

† Salary of Coroner - - - - - - - - - - 6,897 - -
Ditto of Sheriff - - - - - - - - - 1,167 8 -
Ditto for Deputy for mofussil process - - - - - 1,800 - -
9,864 8 -

Present average of charges - - - - - - -	15,997	12 -
Deduct allowance for establishment - - - - - -	4,596	15 9
	11,400	12 3
Half of present fees - - - - - - - - -	9,746	- 9
	1,654	12 3

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that a permanent officer would be able to reduce them; an opinion in which the present Sheriff concurs. If they could be retrenched in the proportion of 25 per cent. it would be sufficient to balance the account; if not, a portion of the saving in other offices might be applied, to admit of the fees on execution of process being reduced as proposed, uniformly at Calcutta, as well as the other Presidencies, to one-half. At Madras and Bombay we would likewise combine the office of Coroner with that of Sheriff, and remunerate the officer by a fixed salary; the sum of 800 rupees per mensem, we think, would be sufficient allowance. The account would then stand as follows:—

140. At Madras, in favour of Government:—Half of the fees at present received by the Sheriff - - - - - - - - - - 4,099

Salaries saved:

Sheriff - - - - - - -	4,200	
Extra - - - - - - -	2,400	
Allowance to Deputy - - - - -	3,024	
Coroner - - - - - - -	4,560	
		14,184
		18,283
Deduct salary of Sheriff to be paid by Government - -		9,600
Saving to Government - - - -		8,683

141. At Bombay in favour of Government:—Half of the present fees of Sheriff - - - - - - - - - 2,541

Salaries saved:

Sheriff - - - - - - - - -	4,200
Deputy - - - - - - - - -	3,600
Coroner (unknown), assumed to be the same as at Madras	4,560
	14,901
Deduct salary to be paid by Government - - -	9,600
Saving to Government - - - -	5,301

142. It might, perhaps, be advisable to follow the arrangement proposed with regard to the Official Administrator, by leaving a fifth part of the remuneration of the Sheriff to depend upon the fees collected. The salary at Calcutta would then be 800 rupees a month, and at Madras and Bombay respectively, 640 rupees. The financial result would be the same either way.

143. Sir L. Peel suggests, "that all process out of all courts within the local jurisdiction, should be executed under one and the same officer, and issue from one and the same office, observing that fewer abuses would prevail, and it would be the cheapest mode of executing process."

144. We would recommend that the Sheriff of each Presidency town should be charged with the duty of executing all process out of all courts within and without the local jurisdiction, to be executed within the limits thereof.

The proposed change in the mode of remunerating the officers of court at Madras and Bombay, an object of the first importance.

145. We have shown how the object of remunerating the officers of the Supreme Courts at Madras and Bombay by salaries instead of fees may be accomplished, with a saving which will admit of a large reduction in the fees of court. The proposed change in the mode of remunerating the officers we consider to be of the first importance. The expediency of it, we think, is strikingly manifested by the proceedings which have lately taken place in the Supreme Court of Madras, when the practice of the Master and Taxing Officer came under the review of the Judges. We would refer particularly to the observations of the Judges upon the appeal of the Master against the order of the court (noticed above in para. 95), disallowing the fees which that officer had been accustomed to charge beyond what were sanctioned by the authorized Table of Fees. The evils of a system like that which now obtains, are well exposed in the following extract from Sir E. Perry's letter to the President in Council, under date the 5th October 1842.

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"Under the present system, whenever a question arises on which it is necessary to obtain the decision of a court of justice, the interests of the suitor and the interests of those to whom he is forced to entrust the conduct of his cause, appear to run, for the most part, in opposite channels. The former, of course, desires to obtain the judgment of the court in as short a period and with as little expense as is compatible with bringing his case fully before the Judge. The interests of the latter (with the exception, perhaps, of counsel, to whom the reputation derivable from success supplies a different set of motives) will be found to consist in making the cause last for as long a period as the client can furnish money to keep the suit alive."

"One example of the mode in which this operates may be taken from the common case of an account before the Master. At a termination of a partnership, for instance, one of the partners brings a suit for his share of the profits, and as a long investigation of accounts in such case is usually necessary, the difficulty, or rather impossibility, of taking these accounts in a public court of justice has rendered the reference of such matters to the Master's office imperative; now, in all such cases, under the system of remuneration by fees, the Master is paid so much an hour for such attendance upon him; the attornies on each side are also paid so much an hour; every summons for witnesses issued by the Master entitles him to an additional fee, every oath administered, depositions taken, deed perused, bring in each its fee respectively; and at every stage the claim of the attorney to fees proceeds *pari passu* at least."

Recapitulation.

146. To recapitulate.—The reduction in the fees of court, which we consider to be practicable in consequence of the official arrangements we have proposed, will give a relief to the suitors, which, upon the estimate we have given above, will amount, at Madras, to 47,400 rupees, or 37 per cent. of the gross amount now paid, and at Bombay to 22,668 rupees, or 25 per cent.; and we anticipate a further reduction of fees in the court at Calcutta, to the amount of 82,000 rupees, or 37 per cent. of what is now paid; besides this, we contemplate the retrenchment of one-half of the expenses incurred in the execution of the process of the Supreme Courts at all the Presidencies, by the arrangements we have proposed for the office of Sheriff. Lastly, we propose to reduce the commission upon the administration of the estates of intestates, and upon estates and funds in charge of the Receiver of the Supreme Court, and the Assignee of the Insolvent Court from five to three per cent., being in the proportion of 40 per cent.

The court fees but a small part of the costs of a suit, and the saving by the proposed reduction comparatively insignificant.

Total costs - 8,000
One-eighth court fees - 1,000

Effectual relief can be afforded only by a reform of the system of procedure.

On the principle advocated in the Report, 15 Feb. 1844.

147. The relief that would be afforded to suitors in the Supreme Courts by reducing the court fees to the extent indicated, appears to be considerable by itself; but the court fees form only a small part of the costs of a suit, the proportion varies according to circumstances, but the average in the heavier cases will probably be found to be about one-eighth. The saving of a third, or even a half of the court fees in a case in which the total costs of the suit amount say to 8,000 rupees, would be comparatively insignificant, at the most 500 rupees, or $\frac{1}{16}$ an anna in the rupee, leaving the enormous charge of 7,500 rupees still to be borne by the suitor. To give effectual relief in this matter, we believe that a thorough reform of the system of procedure is absolutely necessary. We willingly admit that the alterations proposed by the Chief Justice of Calcutta, with the concurrence of his colleagues, are calculated to effect much good in this way, by simplifying and expediting the proceedings of the court. But the remedy would be far from complete, and we are more and more convinced that the end cannot be perfectly accomplished, without resorting to a system of judicature founded on the principles advocated in our Report, under date the 15th February 1844.

148. If the arrangements we have recommended are approved by Government, we think that they should be carried into effect, as far as present circumstances admit, without delay, and that such as cannot be introduced immediately by reason of impediments arising from existing circumstances, should be expedited by all means that can be devised, as opportunities offer.

Calcutta.

149. At Calcutta, we would suggest that the present Registrar, Sir Thomas Turton, be appointed to the joint offices of Administrator to the Estates of Intestates, Receiver and Assignee of the Insolvent Court, as soon as an Act can be passed to legalize the measure as respects the administration of estates; that at the same time the duties of Accountant-general of the Supreme Court be transferred from

from the Master to the Accountant-general of the Government, and that the Master be then charged with the proper functions of Ecclesiastical, Equity and Admiralty Registrar, leaving the duties of Sworn Clerk to be superadded eventually, when that office shall be vacated by Mr. O. Dowda the present incumbent.

150. It is stated in the letter of the Judges, under date 18th September 1842, that upon the appointment of Mr. (now Sir Thomas) Turton to the office of Registrar in the early part of 1841, it was agreed between him and the Judges of the court at that time, that he should discharge all the duties attached to the office, and also those of the Sworn Clerk when that office should be vacated by Mr. O. Dowda, and that he should be remunerated for those services by the receipt of the commission as Ecclesiastical Registrar. The Judges said they considered this agreement as standing entirely on the footing of a bargain or contract, which ought not to be broken without compensation; and in expectation of a reduction in the commission, they proposed that what the Registrar might lose in that shape should be made up to him by an equivalent salary.

151. Upon the above representation of the circumstances attending the appointment of Sir Thomas Turton to the office of Registrar, we are of opinion that his remuneration under the proposed arrangement should not fall short of the amount at which the commission on estates was estimated in the schedule prepared by the Judges in 1836, viz. 54,000 rupees per annum, which the Government may be considered to have recognized as the intended emolument of the Registrar. We think that it will be equitable to assign to Sir Thomas Turton an allowance of 54,000 rupees, to be made up partly of a salary in the proportion of four-fifths, or 43,200 rupees, and of a share of the commission on the sums realized by him in his several offices, estimated to be equivalent to the remaining one-fifth, or 10,800 rupees.*

Report of Judges, 25 April 1836, Schedule (E.) of proposed final arrangement of office.

152. With respect to the scheme proposed by the Judges, and agreed to by the Government in 1836, for remunerating the other officers of the court by salaries instead of fees, it is to be observed that the Government, in signifying their consent to the scheme, declared in express terms that it must be distinctly understood, that no officer of the "court shall be considered as possessing a vested interest in his allowances, and that the power will always rest with the Government to revise the arrangements now sanctioned, so as to prevent any further charge being incurred by the public." Subsequently, under date the 5th August 1842, the Government of India made a communication to the Judges at all the Presidencies, in which the intention of revising and altering the establishments of the ministerial officers was explicitly intimated. From this last date at least, we think that every person who has taken office in any of the courts, must be held to have taken it subject to any arrangements that might be determined upon between the Court and the Government for modifying the establishment, by abolishing offices or otherwise, and for regulating the allowances of the officers.

To the Judges, 14 November 1836, para. 9.

153. This, it appears from the minute of the Chief Justice, was the understanding upon which the appointments were made in the Calcutta court in succession to the late Mr. Vaughan, as notified in the letter of the Chief Justice dated 27th February 1843, and the appointment made subsequently must be taken as alike conditional.

15 February 1844.

154. Mr. O. Dowda being relieved under the proposed arrangement from the offices of Receiver and Assignee of the Insolvent Court, to which he was thus conditionally appointed, will, of course, again receive the full salary of Sworn Clerk, which was temporarily reduced on his appointment to the assigneeship.

From the Judges, Calcutta, 18 December 1844.

155. From the necessity of giving to Sir Thomas Turton an allowance so much exceeding what is proposed as the permanent remuneration of the officer discharging the duties of Administrator, &c., it will not be possible at first to reduce the commission to the extent intended. It might be reduced, however, at once to four per cent., which would leave a surplus, after paying the said allowance and

* The Judges in 1842 estimated the net commission as averaging 60,000 rupees annually, and it appears from a statement furnished by the Registrar, under date the 30th ultimo, that the average of the last three years is 61,446 rupees. But it is stated by the late officiating Registrar, in his report of 3d May last, that the emoluments have been recently diminished by the estates of deceased officers of the Company's army being generally wound up by the regimental committees. He estimates the diminution at 10,000 or 12,000 rupees per annum.

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and the charges of the several offices.* The Act should provide for reducing the commission to three per cent. at the discretion of the Governor-general in Council.

156. The Master, under the new arrangement, will, of course, retain his present salary, and as this exceeds the permanent salary proposed for future Masters discharging the same duties, the fees cannot be reduced to the full extent intended till a vacancy occurs. Still the fees payable to the Accountant-general may be dispensed with immediately.

157. The principal part of the duties which we proposed to assign to the third officer of the court, those of Taxing Officer and Chief Clerk of the Insolvent Court, are now discharged by one person, who was appointed conditionally as above-mentioned; but the arrangement intended cannot be carried into effect completely until the offices of Examiner and Attorney for Paupers shall become vacant.

Mr. Ryan.

158. At all the Presidencies the arrangement we propose for the office of Sheriff may be carried into effect at the end of the current year,† and the fees may thereupon be reduced at once.

Madras.

159. At Madras, the office of Master appears to have become vacant, and we think it very desirable to take the present opportunity to put this office, with which that of Taxing Officer is united, on the footing proposed, suspending a portion of the salary we have recommended, until the office of Examiner in Equity, which we proposed to be conjoined with the Mastership, shall fall in.

160. The office of Registrar was held in August 1843, as appears by the schedule furnished to us, "by W. A. Serle, Esq., during the absence of N. B. Ackworth, Esq." Mr. Ackworth is still absent, and if he shall not return, there will be an opportunity with regard to this office also, to carry into effect the arrangement we propose.

Bombay.

161. We do not know when it is likely that any of the arrangements we have proposed, except that for the office of Sheriff, can be carried into effect at Bombay.

Minute, 3 June 1843.

162. In conclusion, we would draw the attention of Government to the suggestion offered by Sir E. Perry as to the applicability of the unclaimed estates in the hands of the Ecclesiastical Registrars to the maintenance of the Supreme Courts. This suggestion appears to us to be well worthy of consideration. There can scarcely be a doubt of the expediency of appropriating this fund at some time or other, instead of permitting it to accumulate indefinitely, by investment at interest in Government securities, and we think that the fitness of the proposed appropriation will be generally admitted. The Legislature has already provided for the appropriation of unclaimed dividends on insolvent estates, after the lapse of "a reasonable time," which the Act is defined to be six years. We think the period should be longer in the case of unclaimed estates. The "reasonable time" to be allowed in this case, it appears to us, should correspond with the period of limitation for suits for the recovery of legacies, whether that be 12 years, as proposed in our report upon proscription, or 20 years, according to the English statute 3 & 4 Will. IV., c. 27, s. 40. There should be the same provision for previous publication, as is prescribed in section 2, Act XXVII. of 1840, in respect to unclaimed dividends on insolvent estates.

Act No. XXVII. of 1840.

25 February 1842.

163. As

* Gross commission and administration of intestate estates at present		84,091
Receiver		13,315
Assignee		23,374
		120,780
Deduct 1-5th		24,156
Amount of reduced commission, at 4 per cent.		96,624
Allowance of officer		54,000
Charges		42,624
On administration	23,979	
Receiver	2,532	
Assignee	7,596	
		34,107
Surplus		8,517

† Supposing the Coroner to be a fit person to undertake the duties of Sheriff at Madras and Bombay, as he is at Calcutta, according to the Chief Justice.

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On Fees and Salaries of the Officers of the Supreme Courts.

From the Registrar Supreme Court, 30 June 1845.

163. As the Crown may be held to have an interest in the unclaimed estates referred to, it would be proper to apply for a waiver thereof in the first instance.

164. We have to express our regret that this report was delayed from the necessity of waiting for returns and answers to references, some of which have been received very recently, the last within a few days.

We have, &c.

(signed) *C. H. Cameron.*
D. Elliott.

Indian Law Commission, 3 July 1845.

No. 695.

From *E. P. Thompson*, Esq., Secretary to the Government of Fort St. George, to *G. A. Bushby*, Esq., Secretary to the Government of India; dated 20 September 1845.

Sir,

Judicial Department.

REFERRING to your letter of the 23d April last, No. 268, and to my reply of the 30th June following, No. 502, I am directed by the Most Noble the Governor in Council to transmit copy of a correspondence * which has since passed with the Supreme Court on the subject of a revised table of fees for the practitioners and officers of that court, forwarded by the Judges for the approval of this Government.

I have, &c.

(signed) *E. P. Thompson*,
Secretary to Government.

Fort St. George,
20 September 1845.

From the Honourable the Judges of the Supreme Court, Madras, to the Most Noble the Marquis of *Tweeddale*, Governor in Council, &c. &c. &c. Fort St. George; dated 21 July 1845.

My Lord,

WE have the honour to forward your Lordship a Table of Fees for the practitioners and officers of the Supreme Court, containing such variations from the former table as we have judged it expedient to submit for your Lordship's approval, such approval being required by the charter establishing the court, in order to give effect to any alteration or variations introduced into the original table.

2. In settling the fees which are now brought under your Lordship's consideration, we have endeavoured to give fair and reasonable remuneration for services actually performed, taking away altogether such fees as we judged wholly unnecessary, and reducing others which appeared to us out of proportion to the business performed.

3. The charge for copies, a charge which forms an important ingredient in proceedings on every side of the court, we have reduced 25 per cent. By the alterations introduced into the table of fees, combined with new rules and orders which we have lately framed, the expense of obtaining probate and letters of administration will be reduced above 30 per cent. The expenses of law proceedings in all branches of the court's jurisdiction will, we expect, be diminished very considerably, probably not less than from 30 to 40 or 50 per cent.; and in the most usual and useful forms of action on the Plea side of the court, where the value of the matter in dispute does not exceed 500 rupees, the whole costs of suit will be little more than one-third of what they have heretofore amounted to.

4. By

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* From the Supreme Court - - 21 July 1845.
From the Supreme Court - - 4 August 1845.
Extract Minutes of Consultations, 6 August „ No. 587.
To the Supreme Court - - - 6 August „ No. 588.
From the Advocate-general - - 13 August „ „
To the Supreme Court - - - 3 September „ No. 652.
From the Registrar - - - - 5 September „
From the Supreme Court - - - 9 September „
Extract Minutes of Consultations, 20 September „ No. 694.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

4. By the new tables the solicitors and officers of the court will thus all of them suffer a considerable diminution in their emoluments, for which it may be uncertain whether the increase of business likely to be the consequence of this change will be sufficient in the course of time to afford them adequate compensation. But, while this may be doubtful and contingent, the benefit to the public, as your Lordship cannot fail to observe, will be certain and immediate.

5. The former Table of Fees was drawn up in rupees and fanams, 12 fanams being reckoned to the rupee. In the table now presented to your Lordship, the existing currency has been adopted.

6. We have, in conclusion, to observe to your Lordship, that very great inconvenience is now felt in consequence of the very defective state of the existing Table of Fees, and that it is extremely desirable, therefore, not only on account of those who conduct business in the court, but for the suitors also, that an amended table should be issued with as little delay as possible.

(signed) *Edward J. Gambier.*
Madras, 21 July 1845. *W. W. Burton.*

(A true copy.)
(signed) *E. P. Thompson,*
Secretary to Government.

(No. 1.)

ORDO CURIÆ.

1. IT is ordered, with the concurrence and approval of the Most Noble the Governor of Fort St. George in Council, that the Table of Fees heretofore in use be varied and altered, by substituting the fees hereinafter mentioned for the fees heretofore sanctioned and allowed, and that on and after the day of the following fees and no other shall be demanded and received by the several undermentioned officers, and by the practitioners of this court, for business transacted therein.

2. The folio shall be deemed to consist of 99 words on the Equity and Ecclesiastical sides, and of 72 words on the Plea and Crown sides of the court; the sheet or brief sheet of five such folios; and seven figures shall be calculated as equal to one word.

ATTORNEYS, SOLICITORS and PROCTORS.

	Rs.	*a.*	*p.*
For warrant to sue or defend, and for every proxy	2	6	–
„ letter of demand	3	8	–
„ every other necessary letter	2	4	–
„ endorsing on writ the amount of debt and costs	2	4	–
„ every necessary attendance, except at the public offices, and except in cases otherwise provided for	3	8	–
For every attendance at Judge's chambers or on the officers of the court at their offices in the court-house, on matters of course	1	4	–
For attendance before a Judge at chambers or the Master on special business	3	8	–
„ every effectual attendance before the Master, upon reference of matters on which he has to make his report, if no counsel is employed by him	7	–	–
For every additional hour so employed	7	–	–
„ attendance at a Judge's house when necessary	15	–	–
„ every attendance at the Accountant-general's and Sub-treasurer's office	5	–	–
„ attendance taking instructions for bills, libels, answers, allegations, interrogatories and examinations between party and party	5	–	–
For attending the court on common motions	3	8	–
„ attending the court on special motions	7	–	–
„ attending the court on trial of causes, civil, ecclesiastical or criminal, each day the cause is called on	10	–	–
For attendance on the Grand Jury, including attendance on swearing the witnesses	5	–	–
„ attending the Sheriff to receive amount of judgment, and giving receipt	3	8	–
„ drawing, per folio, every plaint, bill, libel, answer, plea or other pleading, and every other proceeding in the court, civil, ecclesiastical or criminal, and every other matter or thing not otherwise provided for, the first folio	2	–	–
For every other folio	1	–	–
„ engrossment or fair copy for filing, and for every other copy when necessary, per folio	–	12	–

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

	Rs.	a.	p.
For every affidavit of service, including all attendances	3	8	–
„ copies of warrants and other papers requiring service, and not otherwise provided for, per folio	–	12	–
For short notices, including copy and service, when within the Black Town and Fort	2	8	–
For every other service within the Black Town and Fort	1	4	–
„ For every mile beyond the Black Town and Fort, in the case of all services whatsoever	1	–	–
Where the service is required to be personal, an additional fee of	1	4	–
For perusing papers preparatory to trial and examining witnesses, &c., as instruction for brief, subject to be increased in extraordinary cases	3	8	–
For short instructions to counsel to move	1	4	–
„ special instructions to ditto	3	8	–
„ drawing briefs, each brief sheet of five folios	4	–	–
„ fair copy of ditto, each sheet	3	–	–
„ close copies of pleadings and other papers, per folio	–	6	–
„ abbreviated copy of bill and pleadings in equity for counsel, each brief sheet	3	8	–
„ every bill of costs, including copy and service, per folio	1	–	–

In actions of assumpsit, debt, trover, detinue and ejectment, in which the value of the matter in dispute does not exceed 500 rupees, one-half of the fees above allowed.

On the Admiralty side of the court, the same fees as are allowed to Proctors in the Courts of Vice-Admiralty in Her Majesty's possessions abroad, by any table or tables of fees established under the authority of stat. 2 Will. 4, c. 51.

SHERIFF:

For executing every writ (except summons and subpœna), and every citation or other mandatory process, and for drawing and taking every bail-bond	2	4	–
For executing every summons or subpœna	1	4	–
„ every commitment charging a defendant in custody or execution, or discharging him out of custody	1	4	–
For endorsing the bail-bond	1	–	–
„ return of every writ, citation, &c., and for each certificate on partial return	1	–	–
„ every other certificate	1	4	–
„ every special return	2	–	–
„ every bill of sale of goods on execution and sequestration, with the inventories annexed	5	–	–
For every search in his office	–	12	–
„ necessary translation of any process, notice or order	–	12	–
„ poundage on every debt levied not exceeding 1,000 rupees, five per cent., and on every sum after the first sum of 1,000 rupees, two-and-a-half per cent.			
Upon every writ of possession executed, for every 10 rupees of the yearly value of the premises of which possession is given	–	12	–
For execution of process or other matters belonging to his office beyond the Fort and Black Town of Madras, (in addition to the other fees) per mile	1	–	–
For keeping possession of property seized, for every 24 hours	3	–	–

If property is removed from the premises and placed in the hands of the Sheriff's Broker, store-hire or warehouse-room, and the necessary expense of removal, to be paid in addition.

Upon all sales by auction, the necessary expenses incidental to that mode of sale to be assessed by the Master.

For Bailiffs, on return of cepi corpus, to be paid by the plaintiff	2	–	–
„ every advertisement, besides the cost of insertion	2	8	–
„ forwarding any process by letter when required (in addition to all other fees and postage)	2	4	–
For copies of all papers from his office, per folio	–	12	–

In actions of assumpsit, debt, trover, detinue and ejectment, in which the value of the matter in dispute does not exceed 500 rupees, one-half of the above fees.

MASTER:

For every necessary summons or warrant	2	–	–
„ every notice attached to a subpœna ad testificandum			
„ every effectual and necessary attendance upon matters referred to him by the court, and on which he has to make his report or certificate, from each side	10	–	–
For every oath administered or affidavit sworn	2	–	–
„ receiving and marking every document or paper left with him, except exhibits	1	–	–
„ signing and certifying every exhibit produced in evidence, and allowing and signing every account or other matter requiring his allowance, and not otherwise provided for	1	–	–
For signing every receipt for books, deeds or other papers	1	–	–
„ each bidding on sales of estates	1	–	–
„ all copies from his office, per folio	–	12	–
„ every certificate on passing the accounts of the Registrar, of a Guardian, Receiver or Committee, and in all cases not otherwise provided for	5	–	–

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On Fees and Salaries of the Officers of the Supreme Courts.

	Rs.	a.	p.
For every report or certificate upon other matters referred to him by the court, not exceeding 10 folios	12	–	–
For every folio exceeding 12	1	4	–
„ certificate of proceedings, per folio	1	–	–
„ perusing, settling and signing deeds, conveyances or other writings, by order of court	16	–	–
For settling each set of interrogatories and cross interrogatories at any other time than during the attendance of parties before him	10	–	–
For allowing and signing every advertisement	3	8	–
„ taking security in appeal or on writ of Ne exeat regno (all charges included, except warrant or summons and certificate)	40	–	–
For taking security in other cases when necessary (the like charges being included)	35	–	–
„ attending to pass every account of the Registrar or Administrator of the Estates of deceased persons	10	–	–
For attending to pass the account of a Guardian, Receiver or Committee	10	–	–
„ passing and certifying the Registrar's half-yearly schedules, each estate	5	–	–
„ every voucher exhibited on passing the accounts of Registrar, Guardian, Receiver or Committee	–	8	–
For expunging scandal or impertinence out of every such record, on every such record or document	10	–	–
For every search in his office	2	–	–
„ taxing and allowing every bill of costs not amounting to 200 rupees	5	–	–
„ taxing and allowing every bill of costs amounting to 200 rupees (when not more than an hour is actually employed in the taxation)	10	–	–
And for every succeeding hour or portion of an hour, at the same rate.			
For attending out of his office to transact any business incidental thereto (if within the limits of Madras), an additional fee of	30	–	–
For every mile beyond the limits, in addition to the above	5	–	–
Registrar in Equity:			
Upon swearing in any Chief Justice	14	–	–
„ swearing in any Judge	10	–	–
„ swearing in any officer on the Equity side of the court	5	–	–
For filing every bill of complaint, plea, demurrer, answer, replication, rejoinder, set of exceptions and traversing note, and for entering the memorandum required by Order XXII. of 15th March 1843, including in each case the entering the same in his book	3	–	–
For every subpœna, appearance of every defendant by a solicitor, entering name and place of abode of a party when he acts in person, filing every warrant of attorney, writ, petition, set of interrogatories or cross interrogatories, deposition, affidavit, report, certificate and every other paper required by the practice of the court to be filed with the Registrar, including entry in his book	2	–	–
For every oath administered or affidavit taken in court, or before him as a Commissioner	2	–	–
For every capias or commitment by court	2	–	–
„ minuting every motion, whether granted or not	2	–	–
„ every caveat entered, and search in his office	2	–	–
„ every certificate not exceeding two folios	2	–	–
„ every other folio	1	–	–
„ reading and marking every answer, deposition, record and exhibit given in evidence at the hearing	1	–	–
For amending bill of complaint where no new engrossment is necessary, and where the amendments do not exceed 10 folios	10	–	–
For every additional folio	1	–	–
„ amending the defendant's office copy of bill, half the above fees.			
„ preparing and issuing every attachment or other process to enforce the subpœna, every Ne exeat regno, habeas corpus, injunction or execution	4	–	–
For every commission	5	–	–
„ entering all pleas, demurrers and exceptions to be argued, each side	1	–	–
„ every order of court not exceeding four folio	3	8	–
„ every other folio	1	–	–
„ entering all others, per folio	–	12	–
„ entering cause for hearing	2	–	–
„ every cause called on	2	–	–
„ every plea, demurrer and exceptions called on	2	–	–
„ every bill dismissed and decree pronounced	5	–	–
„ enrolling a decree when required, to be paid by the party requiring it, per folio	1	–	–
„ minuting decree in minute book, per folio	1	–	–
„ drawing up and engrossing every decree, per folio	1	–	–
„ entering every decree, per folio	–	12	–
„ copies of all papers, per folio	–	12	–
„ attending with any paper or proceeding at the Master's or Examiner's office, in pursuance of a notice	3	8	–
And for every other paper produced at the same time an additional	1	–	–
For all deposits above 20 rupees, per cent.	5	–	–
„ filing and entering petition of appeal, and every security on appeal	3	8	–
„ minuting allowance of petition of appeal	7	–	–
„ attending the Judges with appeal papers, and returns to mandamuses or commissions from England	3	8	–

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	Rs.	a.	p.
The drawing Judge's certificate of return mandamus or commission from England, where such certificate is required	5	–	–
Registrar on the Ecclesiastical Side:			
For every citation or other process	2	–	–
„ filing every libel or pleading, and every personal answer, including entry in book	3	–	–
„ filing every proxy, caveat, petition, affidavit, inventory, account, bond or other paper, which, by the practice of the court is required to be filed, including entry in the book	2	–	–
For filing every will	2	–	–
„ drawing and engrossing every probate, per folio	1	–	–
„ registering will or probate, per folio	–	12	–
„ every exemplification, per folio	1	–	–
„ letters of administration	5	–	–
„ registering letters of administration and administration bond, per folio	–	12	–
„ copy of will annexed to letters of administration, per folio	1	–	–
„ copies of inventories and accounts, and for lists of papers required to be deposited in the Master's office, per folio	–	12	–
For copies of all other papers, per folio	–	12	–
For other unspecified services arising on this side, the corresponding fees on the Equity side.			
On the Admiralty Side:			
The same fees as those allowed in the Courts of Vice-Admiralty in Her Majesty's possessions abroad by any Table or Tables of Fees established under the authority of Stat. 2 Will. 4, c. 51.			
Prothonotary:			
On swearing in every officer on the plea side of the court	6	–	–
„ swearing in every advocate	6	–	–
„ swearing in every attorney	5	–	–
For filing and docketing every plaint	2	8	–
„ every capias, writ of sequestration, writ to sell goods sequestered, writ of execution or possession, habeas corpus, mandamus, certiorari, scire facias, attachment for contempt, writ of prohibition, special commission, judgment pronounced	5	–	–
For filing every warrant of attorney			
Preparing and issuing every summons			
Every appearance entered by attorney			
Entering name and place of abode of a party when he acts in person, subpœna to each witness			
Every person sworn, or affidavit taken in court or before him as a commissioner			
„ bail taken in court	1	4	–
Filing every writ, petition, deposition, bail-piece, affidavit, cognovit, and every other paper required by the practice of the court to be filed			
Every justification of bail			
Surrender or discharge of bail			
Counter warrant			
Every motion minuted			
„ non-pros. or nonsuit		—	
Committitur		—	
Supersedeas		—	
Every rule or order of court entered on the minutes		—	
„ certificate granted		—	
Search in his office		—	
For preparing and entering every rule to plead, reply, &c.	2	8	–
„ filing and docketing every plea or other pleading, whether general or special, and for every issue joined	2	8	–
For setting down each cause for trial or argument	2	8	–
„ every rule or order of court not exceeding two folios	2	–	–
„ every other folio	1	–	–
„ entering ditto, per folio	–	12	–
„ amending plaint or any other pleading where the amendments do not exceed two folios	2	–	–
For every other folio	1	–	–
„ calling on every case for trial or argument	2	–	–
„ reading every charter, record or Act of Parliament	1	–	–
„ reading and marking every other exhibit	–	12	–
„ reducing into writing and filing deposition of witness, if not exceeding three folios	3	–	–
For every additional folio	1	–	–
„ entering every cognovit and warrant of attorney to confess judgment	–	8	–
„ rule to sign judgment	2	–	–
„ entering the judgment	1	–	–
„ making up record, when required, to be paid by the party requiring it, per folio	1	–	–
„ copies of all papers, per folio	–	12	–
„ custody of money paid into court above 20 rupees, per cent.	5	–	–
„ filing and entering petition of appeal, and every security in appeal	3	8	–
„ minuting allowance of petition of appeal	7	–	–

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	Rs.	a.	p.
For attending with any paper or proceeding at the Master's or Examiner's office in pursuance of a notice	3	8	–
And for every other paper produced at the same time, an additional	1	–	–
For attending the Judges with appeal papers and returns to mandamuses or commissions from England	3	8	–
For drawing Judge's certificate of return to mandamuses, commissions from England where such certificate is required	5	–	–
In actions of assumpsit, debt, trover, detinue and ejectment, in which the value of the matter in dispute does not exceed 500 rupees, one-half of the above fees.			
Fees to be taken by the CLERK OF THE CROWN, subject, in case of prisoners and defendants, to be remitted by the court:			
For every attendance before a Judge at the instance of a party	2	–	–
„ minuting and motion	1	4	–
„ a certificate	1	4	–
„ filing every Judge's order, indictment in misdemeanor, affidavit or other proceeding required to be filed	1	–	–
For drawing an order of court	2	8	–
„ office copies of all papers other than depositions for the use of prisoners, per folio	–	12	–
For copies of depositions under Act XXII. of 1839, per folio	–	2	–
„ every recognizance, each	2	8	–
„ every appearance	1	4	–
„ swearing in any judicial or ministerial officer	5	–	–
„ attendance on striking a Special Jury	10	–	–
„ every search in his office	1	–	–
„ issuing every habeas corpus, mandamus, certiorari, attachment, search warrant and commission to take affidavits	5	–	–
For every commitment, including filing, when necessary	2	8	–
„ every witness sworn in private prosecution	1	4	–
„ every subpœna for witnesses	1	4	–
„ every rule to plead, reply or return a writ	2	–	–
„ signing every information granted by the court	5	–	–
„ issuing a subpœna to answer information, &c.	2	8	–
„ taking down the examinations of witnesses under a mandamus, including engrossment, per folio	1	–	–
For reading and marking each exhibit at the examination under a mandamus	1	–	–
„ drawing Judge's certificate of return to a writ of mandamus, where such certificate is required	5	–	–
For drawing Clerk of the Crown's certificate of like return where such certificate is required	7	–	–
For every examination in interrogatories	10	–	–
„ enrolling interrogatories and answers, per folio	1	–	–
„ the report	10	–	–
„ minuting and recording every acknowledgment of contempt	5	–	–
EXAMINER:			
For notice upon every subpœna	2	–	–
„ notice to the Registrar or other officer of the court to produce documents	2	–	–
„ every six days' notice to the opposite party	1	–	–
„ each notice to the opposite party of the production of a witness for examination	1	–	–
„ every oath administered	1	4	–
„ every deposition taken, including engrossment or fair copy, per folio	1	4	–
„ attesting every exhibit	1	–	–
„ office copies of depositions, interrogatories and all other papers, per folio	–	12	–
„ every certificate	2	–	–
„ attending out of office within the limits of Madras, an additional fee of	20	–	–
And for every mile beyond the limits, in addition to the above	5	–	–
SEALER:			
For the seal of the court to every writ, rule, order or other paper requiring the same, and not otherwise provided for	1	8	–
For the seal of the court to every decree, decretal order, commission and extraordinary writ, and to every money order, except for payment of money to the Ecclesiastical Registrar in administration cases	2	8	–
For the seal of the court to probates or letters of administration	2	–	–
„ the seal of the court to appeals to Her Majesty in Council, and to the return to mandamuses or other commissions from England	14	–	–
For the seal of the court to all certificates and other papers to be sent to England	7	–	–
In actions of assumpsit, debt, trover, detinue and ejectment, in which the value of the matter in dispute does not exceed 500 rupees, one half of the above fees.			
JUDGE'S CLERKS:			
For every Judge's summons, warrant or order, and for every Judge's signature to a decree or other instrument or paper whatsoever	1	4	–
For every affidavit sworn on oath administered, whether before a Judge or before themselves as Commissioners	1	4	–

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	Rs.	a.	p.
For entry of bail in bail-book, and for new bail added, justification at chambers, and every acceptance of exception to or surrender in discharge of bail	1	4	–
For carrying every decree, affidavit, bail-piece or other paper to be filed	1	4	–
„ every certificate	1	4	–
„ every necessary attendance on the business of the suitors, either in court or at public office, not otherwise provided for	1	4	–
For every recognizance or security	1	4	–
House, in addition to all other fees	7	–	–
For reducing into writing any depositions, de bene esse or otherwise, at chambers, per folio	–	12	–
For every copy of ditto, per folio	–	12	–
In actions of assumpsit, debt, trover, detinue and ejectment, in which the value of the matter in dispute does not exceed 500 rupees, one-half of the above fees.			
INTERPRETERS (except the ARMENIAN INTERPRETER):			
For interpreting affidavits other than affidavits of debt, or of service of process or notice, per folio	–	11	–
For interpreting ordinary affidavits, as above specified	1	4	–
„ interpreting interrogatories, answers and depositions, and all documents required to be interpreted, per folio	–	11	–
For interpreting before the Master in the case of vivâ voce examinations reduced into writing, per folio	–	11	–
For interpreting every oath	1	–	–
„ translation of papers, per folio	1	12	–
„ attendance on the business of the suitors out of the court-house, if within the limits of Madras, an additional fee of	7	–	–
For every mile beyond those limits, an additional	1	–	–
„ attendance of the swearing Moolah or swearing Brahmin with the Interpreters out of the court-house	1	–	–
For all necessary copies, per folio	–	12	–
In actions of assumpsit, debt, trover, detinue and ejectment, in which the value of the matter in dispute does not exceed 500 rupees, one-half of the above fees.			
ARMENIAN INTERPRETER:			
For interpreting affidavits of debt, or of service of process or notice, per folio	1	–	–
„ interpreting all other affidavits, per folio	1	4	–
„ interpreting interrogatories, answers and depositions, and all documents required to be interpreted, per folio	1	–	–
For interpreting before the Master in the case of vivâ voce examinations reduced into writing, per folio	–	11	–
For interpreting every oath	1	–	–
„ translation of papers, per folio	3	8	–
„ attendance on the business of the suitors out of the court-house, if within the limits of Madras, an additional fee of	7	–	–
For every mile beyond those limits an additional	1	–	–
„ all necessary copies, per folio	–	12	–

Examined. (signed) *W. A. Serle,*
Registrar.

(A true copy.)

(signed) *E. P. Thompson,*
Secretary to Government.

From the Judges of the Supreme Court of Fort St. George, to the Most Noble the Marquis of *Tweeddale*, Governor in Council, &c. &c. &c.

My Lord, Fort St. George, 4 August 1845.

WE had the honour on the 21st ultimo, of forwarding to your Lordship, and of submitting for your Lordship's approval, a Table of Fees for the practitioners and officers of the Supreme Court, and not having received your Lordship's decision thereon, we fear that in the urgency of other matters it may not yet have come under your Lordship's notice, and inasmuch as it is of vital importance to the Court and its suitors, whose business is meanwhile impeded, and to the parties interested, whose fair emoluments of their labour are suspended, that an amended Table of Fees, such as that we have with much consideration and care framed for their guidance, should be issued with as little delay as possible, we take

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On Fees and Salaries of the Officers of the Supreme Courts.

the liberty of bringing our former letter, with the Table of Fees accompanying it, to your Lordship's recollection, with our request, that we may be honoured with your Lordship's decision thereon.

(signed) *E. J. Gambier.*
W. W. Burton.

Madras, 4 August 1845.

(A true copy.)

(signed) *E. P. Thompson,*
Secretary to Government.

JUDICIAL DEPARTMENT.

Enclosure No. 4, in a letter dated 20 September 1845.

(No. 587.)

EXTRACT from the Minutes of Consultation, under date the 6th August 1845.

READ the following letters from the Honourable the Judges of the Supreme Court of Judicature at Madras.

(Here enter 21st July and 4th August 1845.)

Resolved, That the Table of Fees which accompanied the letter from the Judges of the Supreme Court, dated 21st July 1845, be transmitted to the Advocate-general for any observations he may desire to offer with respect to the proposed charges, with a request that he will submit his reply on an early date.

(signed) *E. P. Thompson,*
Secretary to Government.

(A true extract.)

(signed) *E. P. Thompson,*
Secretary to Government.

JUDICIAL DEPARTMENT.

Enclosure, No. 5, in letter dated 20 September 1845.

(No. 558.)

From the Government of Fort St. George, to the Honourable Sir *E. J. Gambier*, Knight, Chief Justice, and the Honourable Sir *W. W. Burton*, Knight, Puisne Judge of the Supreme Court of Judicature at Madras; dated the 6th August 1845.

Honourable Sirs,

WE have the honour to acknowledge the receipt of your letters of the 21st ultimo and 4th instant, and to acquaint you in reply, that the Table of Fees which accompanied your first communication is at present under our consideration, and will be forwarded to you on as early a date as the importance of the subject which it embraces will permit.

(signed) *Tweeddale.*
H. Chamier.
H. Dickenson.

Fort St. George,
6 August 1845.

(A true copy.)

(signed) *E. P. Thompson,*
Secretary to Government.

Enclosure No. 6, in letter dated 20 September 1845.

From the Advocate-general, to the Secretary to Government in the Judicial Department; dated 13 August 1845.

Sir,

I HAVE the honour to acknowledge the receipt of an extract from minutes of consultation, No. 587, dated 6th instant, referring for any observations I may offer (at an early date) on the Table of Fees submitted by the honourable Judges of

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On Fees and Salaries of the Officers of the Supreme Courts.

of the Supreme Court, for the approval of Government. The Table I herewith return.

2. This Table of Fees, framed as it is with more detail than the existing Table, appears to me well adapted to repress the more enormous abuses which have prevailed among the officers of court, and which have recently been to so great an extent exposed by the judgments and orders of the court; for a great facility to those abuses, if not their main origin, seems to have arisen from the generality of the language of the existing Table of Fees; and from the omission of many matters upon which charges might be reasonably founded, although neither within the general nor particular provisions of the table, my doubt is, whether the details and specifications are sufficiently extensive. For if the attornies and officers are all to be held strictly to the specific charges in the table, and no other and no higher, then the table ought to contain a distinct item for every possible duty performed. Otherwise some occasion and some scope is given to obtaining fees by custom and analogy, without authoritative restriction, or else temptations arise for secret remuneration, or for abandonment of duties unremunerated. I am persuaded that there are many duties required to be performed by attornies in the progress of a suit, for which no fees are here set down. I learn so from the Honourable Company's solicitor, though, as he informs me, the Judges are to be addressed on this subject, I have not sought to learn the particulars from him. It appears to me impossible that any table should contain every specific item of an attorney's bill of costs; but I am inclined to think that several others might be comprehended within the proposed table. And I also think it may be expedient to give the Master or Taxing Officer some discretion (under express limitations) to allow under a special head for any extra duties, such allowance being governed by strict analogy to the duties and fees expressed in the table. These, however, are points which I may presume Government would rather leave to the consideration of the Judges, than interpose its own distinct opinion upon.

3. I have not examined these fees with any view of considering whether any are too small; deeming Government's inquiry will be directed to ascertaining that none are too high or improper altogether. There are a few which seem to me to call for observation on the latter account.

4. Among the attorney's fees is one "for every effectual attendance before the Master, upon reference of matters on which he has to make his report, if no counsel is employed by him, seven rupees." Now there is just before this a fee, *Rs.* 3. 8. for every attendance on special business (i. e. in other matters than reference), and I believe nine times in ten an attendance on a reference will occupy no more time or labour than an attendance on any other special business. Such attendances often do not occupy five minutes, sometimes even less. The higher charge of seven rupees instead of *Rs.* 3. 8. seems to have some dependence on the term "effectual," but I cannot help thinking that term too vague on which to establish the distinction, and that all attendance would soon be considered effectual. I think the words, "occupying one full hour," should be added to this charge; *Rs.* 3. 8. may be too little for half or three-quarters of an hour, but then it is too much for a few minutes, so that on the whole I consider that fee for less than the full hour an adequate one.

5. Among the Master's fees, I observe one—"For every effectual and necessary attendance upon matters referred to him by the court, and on which he has to make his report or certificate, from each side, 10 rupees;" some of the preceding observations I would apply also to this charge. But the sum of 20 rupees at the least (10 for each side), seems to me too high in nine cases out of ten. In many cases, such as creditors' and administrators' suits, there are from three to many more parties. In many cases therefore the Master would receive from 30 to 50, possibly 100 rupees, for a few minutes attendance. I cannot but think that 15 rupees would be a sufficient fee upon the average, and that it ought to be paid by that party only, in the first instance, who takes out the warrant or summons for proceeding, and so come into the general costs, to be paid by one or the other party, or the estate, as the court may finally direct. The Master may indeed be occupied an hour, and if more, then the charge for a new attendance, a second fee. But for the first (and generally the only) attendance, sometimes occupying one hour, and much oftener less, I conceive 15 rupees is enough.

6. There are two charges, "for attending to pass the accounts of the Registrar as Administrator of the estates of deceased persons, 10 rupees, and for attending to pass the account of a guardian, receiver or committee, 10 rupees." If these

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charges are intended to include the actual passing of such accounts (as I am inclined to suppose), then I do not see any objection to it, save that it does not seem to me to be expressed with sufficient certainty, and save that I think it should be an allowed charge by the hour, as in cases of taxing bills; for I can suppose that the passing these accounts may occasionally occupy more than an hour. But if the attending to pass is to be considered as entitled to one fee, and the actual passing is to be remunerated by another, then this second fee is not provided for in the table, and the two fees together would be, I conceive, too much, and the attendance fee would be for a nominal duty. However, I do not suppose it is intended to allow two fees.

7. Another fee to the Master is, "for receiving in deposit copies of inventory and account, and other papers from the Ecclesiastical Registrar (including all charges) in each estate, *Rs.* 3. 8. There is also a correspondent charge among the Ecclesiastical Registrar's fees, "for copies of inventories and accounts, and for lists of papers required to be deposited in the Master's office, per folio, 12 annas." These charges appear to me to be altogether objectionable.

8. What is the requisition to deposit these documents with the Master, which this charge refers to, does not appear. There are some new rules of court, as I understand, under preparation by the honourable Judges, one of which may perhaps direct this; but whether under the present or under any future rules, the objection appears to me equally to apply. I do not know whether these copies are confined to those estates only to which the Registrar officially administers. If so, then there would be a fee both for copying and depositing; whereas, if it was expedient that a copy should be kept at all, besides having the original filed among the records, an entry in the Registrar's books, without any further depositing a copy among the Master's records, would suffice, and thus the fee for depositing would be saved. But there does not seem to me any occasion for a copy of the Registrar's accounts being filed at all. The original is filed. All parties entitled to the estate may call for and see it, or hand a copy of it, and the estates are usually administered in a few years, or else not at all; and, at all events, no accounts would be called for after any longer lapse of years. The only object I can perceive would be to preserve duplicates, in case of fire or accident; but this reason would apply to documents of every kind, and would require that one copy should be preserved at a different building or locality. Besides this, there seems an incongruity and an anomaly in making one court (that of Equity) a court of record for the proceedings of another court (the Ecclesiastical).

9. If the object is to require the deposit in the Master's office of inventories and accounts in all cases of private administration, then I think the objection to these items of charge in both offices as much more serious. It is especially expedient that the Registrar should file both inventories and accounts in his office of his administrations, and I think he is paid for this duty of keeping them and passing them before the Master, by his per centage on the estates. There is no one on the spot to call him to account; and, as a public officer, he should afford, without being called upon, full accounts and *primâ facie* evidence that they are correct. But a private administrator cannot be obliged to file inventories, certainly not accounts, unless they are called for by a party interested. Rules of court were passed in 1843 for enforcing, on the demand of the Registrar, and under penalties of official suits by the Registrar for such purpose, the filing of these accounts; but I learn, from the result of a suit brought under these rules by the Registrar against Mrs. Kerakoose (which was appealed to the Privy Council, and the orders of this court authorizing such a suit reversed), that these rules are illegal. On this subject, and the evils of these rules, I reported to Government, under date 16th May and 31st July 1843; but although the filing of these inventories and accounts cannot be enforced against private administrators, except at the instance of a party interested, yet I hold it to be very proper and expedient that they should be voluntarily filed, and that parties should be encouraged to file them. It is very certain, however, that when it becomes known that these rules of court for enforcing the filing of them by suits of the Registrar are not valid, they will not file them, and no blame can attach to the parties neglecting it, if serious charges, such as for these copyings and depositing, arise out of the performance of such duties to estates. I am inclined to believe, that the custom formerly prevailing of filing such accounts ceased on account of the heavy charges of receiving and copying them. I therefore think, that the lowest possible charge should be fixed for filing inventories and accounts, and that no charges should be made per

folio

folio or otherwise for copying them, and no depositing should be required of them in the Master's office.

10. Among the Equity Registrar's fees are two for amending a bill of "complaint where no new engrossment is necessary, and where the amendments do not exceed 10 folios, 10 rupees, and for every additional folio, one rupee." In many cases the amendments consist of only a few words, and I think 10 rupees for every amendment is too high. I think it would be sufficient if it was, for every amendment not exceeding five folios, five rupees, and every additional folio, one rupee.

11. Two other items are, "for entering cause for hearing, two rupees," and "for calling cause on, two rupees." By the former table, but one fee (two rupees four fanams) was allowed for both entering and calling on, and I think one fee of two rupees eight annas for both, or one rupee for each item, is enough. Calling a cause on, consists only in calling out the names in the suit.

12. Another fee to the Registrar in Equity, and a corresponding one for the Prothonotary, is, "Minuting allowance for an appeal, seven rupees." This appears to me much too high. The duty is scarce more than nominal, consisting only in taking a note that a petition for allowing an appeal has been granted.

13. Among the Prothonotary's fees is one "for subpœna to each witness, one rupee four annas;" but I think that, as in England, the subpœna should (if so required) contain four names at the same single charge, and then a service of a copy to the witness, showing the original, is sufficient. As the services are different, as regards Europeans who may be subpœnaed, although not inhabitants of Madras, and as regards natives, the subpœna of four names should be distinguished, when for Europeans and when for natives.

14. Another fee to the Prothonotary, "for copies of all papers, per folio, 12 annas," should have the additional words "when required," as it seems to me, otherwise it is impossible to foresee what copies may not be charged for, however unnecessary and uncalled for.

15. Another fee to the Prothonotary, "for custody of money paid into court, above 20 rupees, per cent. five rupees," seems to me greatly too high. There is scarce any trouble, and but little and very temporary responsibility. It seems to me enormous to charge 100 rupees for receiving into custody a sum of 2,000 rupees, for the mere purpose of holding the money till the trial of a cause is over, and 500 rupees for 10,000 rupees. One per cent. would be ample; but five rupees, I think, is sufficient for receiving any sum, which is usually a small one, and hardly ever amounts to more than 2,000 rupees.

16. Among the fees of the Clerk of the Crown are these:—"For filing every Judge's order, indictment for misdemeanor, &c., one rupee;" "for every appearance, one rupee four annas;" "for every witness sworn in a private prosecution, one rupee four annas." These are new fees; at least they are not in the former table, and I very much question their expediency. I suppose they are intended to apply only to proceedings which are termed "private prosecutions;" but I do not understand what proceedings are meant to come under that denomination. If all misdemeanors are meant, and that these fees are to be charged to the prosecutor or the party appearing to answer such a prosecutor's charge, then I conceive there are many which, proceeding before a magistrate and upon his commitment, and in which parties are bound over to prosecute or give evidence, should entail no such charges either on the prosecutor or the defendant. Neither do I see any reason why parties who prosecute felonies voluntarily, by going before a grand jury with an indictment, and not before a magistrate in the first instance, and then being bound over by him to prosecute or give evidence, should not pay these fees, as well as prosecutors for misdemeanors. If those cases are to be termed "private prosecutions" in which parties prefer their own indictments, as prepared by their own legal advisers, or prosecute in court by counsel, then I conceive there is as much reason for the charge for filing indictments for felonies as there is in charging it in misdemeanors. I very much question the policy of any such fees. I conceive all prosecutors should be *primâ facie* considered as doing a public duty, and it would be very difficult to distinguish with propriety those which are not to be so considered. If they are in the performance of a public duty, there should be no extra burthen upon them, and least of all, for performing it more effectually than others. Neither is the fee for a party's "appearing" under compulsion of law, a fair ground for his being charged with a fee in one case more than another. But, at all events, it appears to me that it should be more distinctly pointed out

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what particular cases are meant in which these fees are chargeable, and what cases are meant under the terms "private prosecutions."

17. There is a fee to the Clerk of the Crown, "for every examination or interrogatories, 10 rupees," and another, "for enrolling interrogatories and answers, per folio, one rupee." These examinations ought not, as it appears to me, to be taken by the Clerk of the Crown. That officer has to report upon these examinations, whether a party has been guilty of a contempt or not; and it appears to me improper (as it is contrary to the practice in England), that this same officer should act ministerially in examining, and then judicially in reporting his judgment of the result.

18. I am at a loss to account for the high fees allowed to the Sealer for affixing the court's seal, or for the great difference between one fee and another in several cases for the self-same act; the act in the merest ministerial form conceivable requiring little more than the physical use of a party's fingers. The office is not necessarily to be filled by a person having any rank in society, although it often is filled as a sinecure almost by persons of that quality. It must be said, for the credit of the proposed table, that these Sealers' charges are generally lower than in the existing table, but still they all appear to me to be too high. Certainly the Sealer must be in almost daily attendance, but still I think his remuneration, even if he held this office alone, would be adequate at lower fees. But in truth it is generally held by a party who also holds some other office, such as Judge's Clerk, and as an additional duty, that of sealing is but nominal. The fees of 14 rupees and seven rupees, one five times and the other 10 times as much as another fee for the self-same sealing, with the difference only of the document on which it is fixed, seems founded on no principle. I cannot help thinking, that one rupee is enough for all sealings; and, if I recollect right, this is the amount of the fee at Bombay.

19. The amount of the Interpreters' (other than the Armenian) fees seem to me, I confess, enormous. I believe they produce an income to the Head Interpreter of 600 or 700 rupees per month at least, besides good salaries (I believe 40 pagodas per month). I am very certain that Interpreters may be had beyond any comparison to those now engaged, who would deem themselves well paid at half their emoluments. These fees are not higher, certainly, than in the now existing table, and it may be thought unfair to lower them to the present incumbents, but if they are now fixed at a lower scale, reserving the present charges to the present incumbents, I am persuaded good Interpreters (if competition is opened) will be found at that lower rate of remuneration. I suppose the high fees reserved to the Armenian Interpreter arises from the scantiness of his employment, and may, therefore, be justified by the necessity; they are very high in themselves, and it might be better to increase his salary, if necessary, than allow such high fees to be paid by suitors.

20. In conclusion, I would only beg to observe, in reference to the concluding clause of many of the heads of officers' fees, viz. that in actions of assumpsit, debt, trover, detinue and ejectment, in which the value of the matter in dispute does not exceed 500 rupees, one-half of the assigned fees are to be taken; the action of ejectment seems to me to be improperly included. I think it will be almost always very difficult to find out the value of a parcel of landed property sued for, and it is very seldom that, for some reason or other, the value, intrinsic or extrinsic, is not beyond 500 rupees. Moreover, in contested suits these are usually amongst the most laborious causes for professional men, and they would not be undertaken by such as would best conduct them at such prices. The rules, on the same principles, in England, confirm these small fees to actions of assumpsit, debt and covenant only, in which the value is almost always certain or easily calculated. And besides this, to provide for the due undertaking and remuneration of difficult causes, and those in which rights of ulterior value than the amount sued for are in question, those rules provide for the Judges especially certifying for full costs in proper cases, and I think such a provision should be made in this table.

(signed) *George Norton*,
Advocate-general.

Fort St. George, 13 August 1845.

(A true copy.)
(signed) *E. P. Thompson*,
Secretary to Government.

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JUDICIAL DEPARTMENT, No. 7.

(No. 652.)

From the Government of Fort St. George to the Honourable Sir *Edward J. Gambier*, Knight, Chief Justice, and the Honourable Sir *William W. Burton*, Knight, Puisne Justice of the Supreme Court of Judicature at Madras; dated 3 September 1845.

Honourable Sirs,

Para. 1. WITH reference to our letter of the 6th instant, we have the honour to acknowledge the receipt of the revised table of fees for the practitioners and officers of the Supreme Court, which was forwarded for our consideration with your communication of the 21st ultimo.

2. We beg to convey to you our approval and confirmation of the new table of fees, and we take this opportunity of expressing the high value we entertain of the benefit conferred on the public by the revision of this class of payments.

3. Being unable ourselves to calculate precisely the amount of labour and time necessary for the discharge of the several duties of the practitioners and officers of the Supreme Court, we applied for information on these points to our legal adviser, and it would be matter of much gratification to us if the modification suggested by that officer in his reply to our requisition, a copy of which is herewith forwarded, were to meet with your consideration, and should be deemed by you calculated to improve the table of fees forwarded for our review.

(signed) *Tweedale.*
H. Chamier.
H. Dickinson.

Fort St. George, 3 September 1845.

(A true copy.)

(signed) *T. P. Thompson,*
Secretary to Government.

(No. 8.)

From *W. A. Serle*, Esq., Registrar, to the Chief Secretary to Government, Fort St. George; dated 5 September 1845.

Sir,

I HAVE the honour, by order of the Honourable the Chief Justice, to annex, for the information of the Most Noble the Governor of Fort St. George in Council, a copy of the order of court passed this day regarding the new table of fees.

(signed) *W. A. Serle,*
Registrar.

Supreme Court, Madras, Registrar's Office,
5 September 1845.

(A true copy.)

(signed) *T. P. Thompson,*
Secretary to Government.

Supreme Court, Madras,
5 September 1845.

(No. 9.)

ORDO CURIÆ.

1. IT is ordered, with the concurrence and approval of the Most Noble the Governor of Fort St. George in Council, that the table of fees heretofore in use be revised and altered by substituting the fees hereinafter mentioned for the fees heretofore sanctioned and allowed, and that on and after this 5th day of September 1845, the following fees, and no other, shall be demanded and received by the several undermentioned officers, and by the practitioners of this court, for business transacted therein.

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2. The folio shall be deemed to consist of 90 words on the Equity and Ecclesiastical sides, and of 72 words on the Plea and Crown sides of the court, the sheet or brief sheet of five such folios and seven figures shall be calculated as equal to one word.

By the Court,

(signed) *W. A. Serle,*
Registrar and Prothonotary.

Here enter the table of fees, as approved and confirmed by the Most Noble the Governor of Fort Saint George in Council, under date the 3d September 1845.

(A true copy.)

(signed) *W. A. Serle,*
Registrar.

(A true copy.)

(signed) *E. P. Thompson,*
Secretary to Government.

(No. 10.)

From the Judges of the Supreme Court at Fort St. George to the Most Noble the Marquis of *Tweedale*, Governor in Council, &c. &c. &c.

My Lord, Fort St. George, 9 September 1845.

1. We have the honour to acknowledge the receipt of your Lordship's letter of the 3d September, approving and confirming the table of fees as revised and altered by us, and return our best thanks for the manner in which that approval has been conveyed.

2. In reference to the third paragraph of your Lordship's letter, we have the honour to assure your Lordship, that the suggestions of the Advocate-general there referred to, and with a copy of which we have been favoured, shall meet with all the attention and consideration that are due to his station and great experience.

3. As at present advised, we do not concur in the opinion of the Advocate-general, with regard either to supposed omissions in the table, or to the excess of certain of the fees to which he alludes. But should time and a fair trial of the table which has now been sanctioned by your Lordship prove to our satisfaction that any defects are to be found in it, on the one hand, or that any reductions can with propriety be made, on the other, we shall not fail to bring the subject under your Lordship's consideration, by suggesting such further charges as may, in our opinion, be just towards the practitioners and officers of the court, and beneficial to the suitors and to the public.

(signed) *Edward J. Gambier.*
W. W. Burton.

(A true copy.)

(signed) *E. P. Thompson,*
Secretary to Government.

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No. 694.

JUDICIAL DEPARTMENT.

(No. 11.)

EXTRACT from the Minutes of Consultation, under date the 20th September 1845.

READ the following letters from the Registrar of the Supreme Court. (Here enter 5th September 1845, No. 840.)

From the Honourable the Judges of the Supreme Court.

(Here enter 9th September 1845.)

Resolved, That the correspondence which has taken place on the subject of a revised table of fees for the practitioners and officers of the Supreme Court, be transmitted to the Government of India, with reference to the letters noted in the margin.

From Government of India, 23 April 1845, No. 268, to ditto, 30 June. No. 502.

(A true extract.)

(signed) *E. P. Thompson*,
Secretary to Government.

No. 780.

From *G. A. Bushby*, Esq., Secretary to the Government of India, Home Department, to the Members of the Indian Law Commission; dated the 7th November 1845.

Gentlemen,

WITH reference to your Report, dated 3d July last, I am directed by the Honourable the President in Council to forward to you in original, for information, a letter from the Secretary to Government of Fort St. George, dated the 20th September last, and its enclosures, containing a revised table of fees for the practitioners and officers of the Supreme Court of that Presidency.

You will be pleased to return these papers after perusal.

I have, &c.

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

Council Chamber,
7 November 1845.

From the Indian Law Commissioners to the Honourable the President in Council; dated 4 December 1845.

Honourable Sir,

IN returning the revised table of fees for the practitioners and officers of Her Majesty's Supreme Court at Madras, and the accompanying papers, which were transmitted to us with Mr. Secretary Bushby's letter, dated the 7th instant, we beg to call the attention of your Honour in Council to the charge for engrossing which is authorized by the new table, with reference to the observations and recommendation contained in pages 54 to 56 and page 93 of the Report which we had the honour to submit to Government under date the 3d July last.

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It will be observed that the charge now authorized in the Supreme Court at Madras is 12 annas per folio of 90 words. The former charge in the Supreme Court at Calcutta was 10 annas, which was reduced in 1837 to 5 annas, the present rate. At Bombay, the authorized rate is 8 annas. The allowance for copying in the Government offices at Calcutta is 1 rupee for 1,440 words. We have recommended, in pursuance of a suggestion made by the Government in 1836, that the charges for copying in the Supreme Courts should be assimilated to the rates observed in the offices of Government at the several Presidencies.

We have, &c.

(signed) *C. H. Cameron.*
D. Eliott.

Indian Law Commission,
4 December 1845.

(No. 888.)

From *G. A. Bushby*, Esq., Secretary to the Government of India, Home Department, to the Honourable the Judges of the Supreme Court of Calcutta; dated 20 December 1845.

Honourable Sirs,

WE have the honour to forward to you in original the papers noted below,* and to request that you will be pleased to favour us with your opinion on the propositions submitted by the Law Commission in their letter of the 4th instant, for assimilating the charges for copying in the Supreme Courts to the rates observed in the offices of Government at the several Presidencies.

2. We request that you will have the goodness to return the original papers with your reply.

We have, &c.

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

Council Chamber,
20 December 1845.

From the Honourable Sir *J. P. Grant* to the Honourable the President in Council; dated 10 January 1846.

Honourable Sirs,

I HAVE read the letter you have done Her Majesty's Judges the honour to address to them, under date the 20th ultimo, and the documents with it, in which letter you desire our opinion on the proposition submitted by the Law Commission, in their letter to you of the 4th ultimo, for assimilating the charges for copying in the Supreme Courts to the ratio observed in the offices of Government at the several Presidencies.

In considering the alteration proposed, it is necessary to keep in view the object and operation of the existing practice. The charges referred to are not allowed as a mere remuneration for the expense of writing so many words from a paper to be copied, but they are, and always have been, well known to considerably exceed it, and are sustained for the avowed purpose of indirectly increasing the emoluments of the officers and attornies of the courts, in order to bring them up to what is deemed an adequate remuneration for their services.

In

* Letter from Secretary to Fort St. George, dated 20th September 1845, and 11 Enclosures.
Ditto to Members of the India Law Commission, dated 7th November 1845.
Ditto from ditto, dated 4th December 1845.

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In our court the officers and the attornies, since the sanction of the fee fund, stand in totally different positions with regard to the fees charged to the suitor. The officers are now paid stated salaries by the Government, and stated allowances for the expense of their offices, the fees charged in those offices forming a fund for reimbursing the Government. It is therefore immaterial to the officers at what amount those fees in future be fixed; if the Government feels itself in a position to remit a portion or the whole of any of them, I cannot doubt that it will do so on a careful examination of the matter in all its bearings, and I incline to think that a remission of part of the profit the Government now derives from the charges for copying would be a most beneficial relief to the suitor. Being of opinion that all the officers of courts of justice, as well as the Judges, ought to be paid by the public, and not by taxes on the suitors, I should be very glad to see all these remitted; but being a member of a court which was party to an agreement with this Government, that the Government should receive the fees without reduction until it was fully indemnified against loss by paying the new salaries, I am not at liberty to propose it till I know from investigation that the indemnity is sufficient without the aid of the four-fifths of the fees for copying, which the Commissioners propose to abolish; I must, therefore, leave this matter in the hands of the Government.

The question with the attornies stands on a totally different footing. The system followed by the court here is founded on the system followed by the Courts of Westminster Hall from a remote period, which, though not theoretically perfect, has been found to answer all practical purposes tolerably well, while the difficulties in the way of establishing a better are very great. There is a great variety of business in the conduct of a cause which it is impossible to state accurately in a bill, and the fit remuneration for which does not admit of its being set out in a table of fees. There are but two ways of dealing with matters of this sort on any plan of taxation; either the remuneration in each case must be left to the arbitrary discretion of the taxing officer upon the statement of the attorney, frequently inaccurate from necessity, and almost always without the ability of competent proof, or to set forth in a fixed table for business which may always occur, charges upon such a scale as will remunerate the attorney for the knowledge, labour and capital necessary to his vocation, whether employed upon those matters set forth in the table, or upon those which it is found impossible to set forth in it; so that, taking the whole bill of costs together, the attorney shall be so rewarded as that honourable and intelligent men may be encouraged to devote themselves to the profession, and the suitor not be overcharged for the business usually necessary to be done in such a suit as his.

The latter is the course the courts have adopted; it may not be perfect, but on the whole its practical result answers the purpose. It were manifestly inequitable to fix, in a table of fees constructed upon this principle, on this or that item as charges which ought to be reduced, without regard to the effect upon the total amount of the bill in the average number of suits instituted and conducted to an end, and without substituting some other method for the attorney's adequate remuneration.

In truth, this system, founded on a consideration of averages, works injustice in some cases to the attorney, who has to perform laborious duties which he cannot charge for; and of this, when Sir Edward Ryan, Sir Benjamin Malkin and myself were on the bench, an instance was brought before us, attended with great hardship, which we could remedy; but it can seldom, if ever, work any injustice to the suitor.

There is no resemblance between the remuneration of an attorney and a section writer in a Government office. An attorney never, or on very rare occasions, employs such a person as section writer, but a clerk at an adequate salary, who must be a person of a certain degree of intelligence and experience, and who has duties of some importance to perform, besides which he has leisure to copy. The attorney has a right to a profit on his clerk's services, as well as his own, and great part of his profits on both he receives from his charges for copying.

No. 1.
On Fees and Salaries of the Officers of the Supreme Courts.

I believe that my learned colleagues and myself are agreed that the whole amount of charges as allowed by our table of fees, in the bill of an attorney or proctor in our court, for business done in his office, are adequate, but not excessive, and that the proposed change would produce no results to the suitor of any beneficial nature.

I have authority from both my learned colleagues to say that they agree entirely in all that I have above stated, and the Chief Justice being unwell, and absent for a few days, I have the honour to send this letter as our joint opinion on the matter referred to us.

I have, &c.

Supreme Court,
10 January 1846.

(signed) *J. P. Grant.*

No.

— No. 2. —

ON THE NEW ARTICLES OF WAR FOR THE EAST INDIA COMPANY'S NATIVE TROOPS.

LEGISLATIVE DEPARTMENT.

(No. 8 of 1840.)

Our Governor-general of India in Council.

No. 2. On the New Articles of War for the East India Company's Native Troops.

1. YOUR letter of the 12th August last informed us, that "in consequence of the different views taken by the Members of your Council, as to the course to be adopted with regard to the particular question of corporal punishment, it had been found necessary to postpone passing a law for the better government of the native officers and soldiers in the military service of the East India Company, until that question had been submitted to us."

2. The question is, whether to give a more formal sanction to the General Order of the 4th February 1845, by omitting all mention of corporal punishment in the new law, or to rescind that order by making corporal punishment one of the penalties imposed by the new law.

3. We took your letter and its accompanying documents into our immediate consideration, but while we were in anxious deliberation upon it, we received your further despatch of the 30th September, in which you apprised us of the passing of the Act XXIII. of 1839, "for authorizing Sentences of Imprisonment with or without Hard Labour, by Courts Martial, in certain Cases." You stated that "a short time would enable you to judge how far the punishment of imprisonment with labour systematically inflicted, would prove an efficacious substitute for flogging," and that a report on this point would be furnished to us.

4. We are, therefore, now disposed to wait for that report; when you are preparing to send it, you will take the whole subject again into your consideration; and we shall pay the utmost attention to the result of your inquiries.

We are, &c.

(signed)	*W. B. Bayley.*	*P. Vans Agnew.*	*M. T. Smith.*
	G. Lyall.	*R. Jenkins.*	*H. Alexander.*
	W. Astell.	*J. P. Muspratt.*	*J. Thornhill.*
	H. Lindsay.	*Russell Ellice.*	*H. Willock.*
	J. Lushington.		

London, 1 July 1840.

(No. 17.)

READ a despatch from the Honourable the Court of Directors, dated 1 July 1840, No. 8. Legis. Cons. 7 Sept. 1840. No. 1.

Ordered, That a copy of the foregoing despatch be forwarded to the Military Department, with a request that a report on the effect of imprisonment with labour in lieu of flogging, as authorized by Act XXIII. of 1839, may be furnished with all practicable expedition.

(No. 52.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the Military Department, under date the 1st December 1841. Legis. Cons. 20 Dec. 1841. No. 27.

Ordered, That the original documents detailed hereunder, relating to Native Courts Martial, general and inferior, from 1833 to 1840, and to punishments in the

No. 2.
On the New Articles of War for the East India Company's Native Troops.

the army, be transmitted to the Legislative Department, with reference to extract thence received, No. 17, dated 7th September 1840 :—

Letter, No. 1272, from the Adjutant-general of the Army, dated 6th November 1840, with five enclosures.
Letter, No. 4176, from the Secretary to Government in the Military Department, Fort St. George, dated 10th November 1840.
Letter, No. 2877, from the Secretary to Government in the Military Department, Bombay, dated 4th August 1841.
Minute by the Commander-in-Chief, dated 30th August 1841.
Minute by the Governor-general, dated 28th October 1841.
Minute by Sir W. Casement, dated 6th November 1841.
Minute by Mr. Bird, dated 12th November 1841.
Minute by Mr. Prinsep, dated 16 November 1841.

Ordered also, That the above-mentioned documents be returned to this department when no longer required.

(True extract.)

(signed) *J. Stuart*, Lieutenant-colonel,
Secretary to the Government of India,
Military Department.

(No. 1272.)

Legis. Cons. 20 Dec. 1841. No. 28.

From the Adjutant-general of the Army to the Secretary to the Government of India, Military Department.

Sir,

In conformity with the instructions conveyed in your despatch, No. 451, dated the 23d of September last, I have the honour, by direction of his Excellency the Commander-in-Chief, to forward to you, for the purpose of being laid before the Right honourable the Governor-general of India in Council, the following papers, which have been compiled from the records in this department :—

No. 1. Shows the sentences, and their nature, passed by Native General Courts Martial, from 1833 up to the 1st of September 1840, those of each year and kind being given separately.

No. 2. Exhibits the numbers of sentences of corporal punishment passed by Native Courts Martial, inferior to general, from 1833 up to February 1835, when corporal punishment was abolished.

No. 3. Shows the number of sentences passed by Native Courts Martial, inferior to general, from February 1835, when dismissal was substituted for corporal punishment, until Act XXIII. of 1839 came into operation.

No. 4. Shows the number of sentences of imprisonment with hard labour, and of dismissal, passed by Native Courts Martial, inferior to general, from the period Act XXIII. of 1839 came into operation, until the 1st September 1840.

No. 5. Is an abstract return of the whole, the occurrences of each year being separately defined.

His Lordship in Council will perceive from a review of these Papers, that, whilst corporal punishment was allowed, about 200 men were annually sentenced; for the first three years after dismissal was substituted, the annual number was not greatly increased; but in 1839, the number of sentences passed in nine months amounted to 370; and on imprisonment with hard labour being introduced, the number of convictions rose to 643 in about 11 months.

I have, &c.

(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

Head Quarters, Calcutta, 6 November 1840.

No. 1.

No. 1.

RETURN of GENERAL COURTS MARTIAL held in the Native Army of the Bengal Presidency, from 1833 to September 1840.

Year.	Date.	CORPS.	Punishment Awarded.					Suspension in the case of Native Officers.	—
			Corporal.	Imprisonment with Labour.	Simple Imprisonment.	Dismissal.	Capital.		
1833	20 Feb.	Camp Follower	-	-	-	-	1	-	Commuted to 14 years' hard labour.
„	29 April	3d Brigade Horse Artillery	-	-	-	-	1	—	
„	3 June	Camp Follower	-	1	—				Discharged.
„	10 „	43d Native Infantry	-	1	-	-	-	-	
„	13 „	Camp Follower	-	1	—				
„	25 „	Arracan Light Battalion	1	—					
„	29 July	55th Native Infantry	1	—					
„	25 „	Camp Follower	-	2	—				
		TOTAL	2	5	-	-	2	—	
1834	22 Feb.	65th Native Infantry	1	—					
„	2 April	Camp Follower	-	-	-	-	1	—	
„	2 „	43d Native Infantry	-	-	-	-	1	—	
„	23 May	43d - ditto	-	-	-	-	1	—	
„	27 „	43d - ditto	-	-	-	1	—		
„	30 „	43d - ditto	1	—					
„	2 June	43d - ditto	1	—					
„	5 „	43d - ditto	-	-	-	1	—		
„	7 July	Camp Followers	-	-	2	—			
„	18 „	Camp Follower	-	1	—				
„	7 Aug.	Sylhet Light Infantry	-	-	-	1	—		
„	16 „	Camp Follower	-	1	—				
„	23 „	4th Light Horse	-	1	—				
„	31 Oct.	22d Native Infantry	-	-	-	-	1	—	
„	9 Dec.	27th - ditto	-	-	-	-	1	—	
„	9 „	62d - ditto	-	-	1	—			
„	13 „	61st - ditto	-	1	—				
„	13 „	Dak Hurkaras	-	2	—				
„	13 „	Camp Follower	-	1	—				
„	29 „	7th Light Cavalry	1	—					
		TOTAL	4	7	3	3	5	—	
1835	19 March	51st Native Infantry	-	-	-	1	—		
„	19 „	11th - ditto	-	-	-	2	—		
„	18 April	67th - ditto	-	-	-	1	—		
„	10 Aug.	56th - ditto	-	-	1	—			
„	6 Oct.	22d - ditto	-	2	—				
„	9 „	9th - ditto	-	-	-	1	—		
„	17 „	48th - ditto	-	-	-	-	1	—	
		TOTAL	-	2	1	5	1	—	
1836	8 Feb.	47th Native Infantry	-	1	—				
„	17 „	Camp Follower	-	1	—				
„	18 March	53d Native Infantry	-	-	1	-	-	-	Commuted to dismissal.
„	3 May	Ramghur Light Infantry	-	-	-	1	-	-	Commuted to suspension.
„	23 „	17th Native Infantry	-	-	-	-	-	1	
„	31 „	73d - ditto	-	3	-	-	-	1	
„	4 July	Camp Follower	-	-	1	—			
„	24 Aug.	28th Native Infantry	-	1	—				
„	21 Oct.	28th - ditto	-	1	—				
„	26 Nov.	73d - ditto	-	-	-	-	-	1	
„	12 Dec.	10th Light Cavalry	-	-	-	1	—		
		TOTAL	-	7	2	2	-	3	

No. 1.—General Courts Martial held in the Native Army of the Bengal Presidency—*continued.*

Year.	Date.	CORPS.	Punishment Awarded.					Suspension in the case of Native Officers.	——
			Corporal.	Imprisonment with Labour.	Simple Imprisonment.	Dismissal.	Capital.		
1837	23 Jan.	6th Battalion Artillery	-	1	—				
„	4 July	Camp Follower	-	1	—				
„	17 Aug.	65th Native Infantry	-	1	—				
„	8 Dec.	31st - ditto	-	1	—				
„	9 „	28th - ditto	-	1	—				
		TOTAL	-	5	—	—	—	—	
1838	1 Jan.	11th Native Infantry	-	1	—				
„	9 „	5th - ditto	-	1	—				
„	15 Feb.	71st - ditto	-	1	—				
„	19 „	48th - ditto	-	1	—				
„	12 March	69th - ditto	-	1	—				
„	20 April	54th - ditto	-	- -	- -	1	-	- -	Restored.
„	3 May	3d Light Horse	-	- -	- -	- -	2	- -	Commuted to transportation.
„	21 „	11th Native Infantry	-	- -	- -	- -	1	—	
„	21 „	25th - ditto	-	1	—				
„	28 „	Hill Rangers - -	-	- -	- -	1	—		
„	5 June	48th Native Infantry	-	- -	- -	1	—		
„	28 „	Sylhet Light Infantry	-	1	- -	1	—		
„	15 Aug.	51st Native Infantry	-	1	—				
„	15 „	Hill Rangers - -	-	3	- -	- -	-	- -	1 commuted to dismissal.
„	28 „	68th Native Infantry	-	- -	- -	1	-	- -	Restored.
„	29 Sept.	55th - ditto	-	1	—				
„	20 Oct.	Calcutta Militia	-	5	—				
„	23 „	10th Native Infantry	-	1	—				
„	15 Dec.	16th - ditto	-	1	—				
		TOTAL	-	19	- -	5	3	—	
1839	11 Jan.	39th Native Infantry	-	1	—				
„	12 „	10th Light Cavalry -	-	1	—				
„	16 „	53d Native Infantry	-	- -	- -	1	—		
„	21 „	50th - ditto	-	1	—				
„	22 „	55th - ditto	-	- -	- -	1	—		63 pardoned and restored, 1 to undergo hard labour, and 3 dismissed.
„	31 „	28th - ditto	-	- -	- -	67	-	- -	
„	5 Feb.	68th - ditto	-	1	—				
„	12 „	2d - ditto	-	1	—				
„	18 „	23d - ditto	-	1	—				
„	18 „	Hill Rangers - -	-	2	—				
„	23 „	10th Cavalry - -	-	1	—				
„	25 „	32d Native Infantry	-	1	—				
„	7 March	62d - ditto	-	- -	- -	- -	1	—	
„	11 „	Hill Rangers - -	-	1	—				
„	12 „	6th Battalion Artillery	-	1	—				
„	12 „	Camp Followers -	3	—					
„	16 „	63d Native Infantry	-	2	—				
„	22 „	Sylhet Light Infantry	-	- -	- -	1	—		
„	1 April	Hurrianah Light Infantry	-	5	—				
„	1 „	73d Native Infantry	-	1	—				
„	10 „	60th - ditto	-	1	—				
„	29 „	19th - ditto	-	1	—				
„	6 May	27th - ditto	-	3	—				
„	13 „	Joudpore Legion	-	4	—				
„	27 „	71st Native Infantry	-	1	—				
„	27 „	Camp Follower	-	1	—				
„	31 „	Shah Soojah's Levy	-	1	—				
„	24 June	2d Light Cavalry	-	1	—				
„	1 July	39th Native Infantry	-	1	—				
„	3 „	20th - ditto	-	1	—				
„	3 „	Hurrianah Light Infantry	-	1	—				Pardoned and restored.
„	9 „	31st Native Infantry	-	1	- -	- -	-	- -	

No. 1.—General Courts Martial held in the Native Army of the Bengal Presidency—*continued.*

Year.	Date.	CORPS.	Punishment Awarded.					Suspension in the case of Native Officers.	——
			Corporal.	Imprisonment with Labour.	Simple Imprisonment.	Dismissal.	Capital.		
1839	22 July -	60th Native Infantry -	-	1	—				
„	29 „ -	41st - ditto - -	-	1	—				
„	5 Aug. -	Calcutta Militia - -	-	2	—				
„	6 „ -	10th Cavalry - - -	-	1	—				
„	9 „ -	47th Native Infantry -	-	1	—				
„	20 „ -	3d Cavalry - - -	-	1	—				
„	24 „ -	Hurrianah Light Infantry -	-	2	—				
„	9 Sept. -	6th Battalion Artillery -	-	1	—				
„	14 „ -	Calcutta Militia - -	-	1	—				
„	14 „ -	3d Native Infantry - -	-	1	—				
„	16 „ -	57th - ditto - - -	-	2	—				
„	27 „ -	10th - ditto - - -	-	1	—				
„	8 Oct. -	54th - ditto - - -	-	1	—				
„	14 „ -	15th - ditto - - -	-	1	—				
„	24 „ -	44th - ditto - - -	-	- -	1	—			
„	25 „ -	59th - ditto - - -	-	1	—				
„	4 Nov. -	39th - ditto - - -	-	1	—				
„	11 „ -	Camp Follower - -	-	- -	- -	- -	1	- -	Commuted to Seven years' imprisonment.
„	18 „ -	62d Native Infantry -	-	1	—				
		TOTAL - - -	3	57	1	70	2	—	
1840	4 April -	47th Native Infantry -	-	2	—				
„	4 „ -	58th - ditto - -	-	5	—				
„	10 „ -	7th Battalion Artillery -	-	6	—				
„	24 „ -	7th - ditto - -	-	- -	- -	- -	-	2	
„	2 May -	49th Native Infantry -	-	- -	- -	- -	-	1	
„	5 „ -	35th - ditto - -	-	2	—				
„	6 „ -	35th - ditto - -	-	- -	- -	- -	1	—	
„	18 „ -	37th - ditto - -	-	1	—				
„	19 „ -	37th - ditto - -	-	5	—				
„	20 „ -	37th - ditto - -	-	18	- -	- -	-	- -	17 pardoned and restored.
		TOTAL - - -	-	39	- -	- -	1	3	
		TOTAL - - - - - -	9	141	7	85	14	6	
		Deduct - - -	-	17 Restd.	- -	65 Restd.	—	—	
		Remaining - -	9	124	7	20	14	6	

(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

No. 2.

STATEMENT of the Number of CORPORAL PUNISHMENTS awarded by Courts Martial, Inferior to General, held in the Native Army of Bengal during the years 1833, 1834, and up to February 1835, on which date Corporal Punishment was abolished.

	1833.	1834, and up to February 1835.
4th Troop, 1st Brigade Horse Artillery	–	–
4th Ditto 2d - ditto - ditto	–	13
4th Ditto 3d - ditto - ditto	–	–
6th Battalion Foot Artillery	1	6
7th Ditto - ditto	7	7
Gun Lascars	20	10
Ordnance Drivers	–	2
1st Regiment of Light Cavalry	–	1
2d Ditto - ditto	1	4
3d Ditto - ditto	5	–
4th Ditto - ditto	1	1
5th Ditto - ditto	–	–
6th Ditto - ditto	1	–
7th Ditto - ditto	–	–
8th Ditto - ditto	1	–
9th Ditto - ditto	2	3
10th Ditto - ditto	2	3
Sappers and Miners	3	2
1st Regiment of Native Infantry	3	1
2d Ditto - ditto	4	–
3d Ditto - ditto	4	–
4th Ditto - ditto	–	–
5th Ditto - ditto	–	–
6th Ditto - ditto	2	1
7th Ditto - ditto	–	–
8th Ditto - ditto	–	3
9th Ditto - ditto	1	1
10th Ditto - ditto	1	–
11th Ditto - ditto	2	–
12th Ditto - ditto	1	1
13th Ditto - ditto	3	2
14th Ditto - ditto	1	1
15th Ditto - ditto	3	–
16th Ditto - ditto	–	–
17th Ditto - ditto	–	–
18th Ditto - ditto	1	2
19th Ditto - ditto	–	3
20th Ditto - ditto	2	1
21st Ditto - ditto	–	2
22d Ditto - ditto	2	–
23d Ditto - ditto	2	5
24th Ditto - ditto	1	–
25th Ditto - ditto	8	3
26th Ditto - ditto	4	1
27th Ditto - ditto	–	1
28th Ditto - ditto	1	3
29th Ditto - ditto	–	3
30th Ditto - ditto	2	4
31st Ditto - ditto	3	–
32d Ditto - ditto	4	–
33d Ditto - ditto	–	1
34th Ditto - ditto	–	1
35th Ditto - ditto	–	4
36th Ditto - ditto	–	2
37th Ditto - ditto	1	2
Carried forward	100	100

	1833.	1834, and up to February 1835.
Brought forward	100	100
38th Regiment of Native Infantry	–	–
39th Ditto - ditto	1	2
40th Ditto - ditto	–	4
41st Ditto - ditto	6	3
42d Ditto - ditto	3	–
43d Ditto - ditto	2	–
44th Ditto - ditto	1	1
45th Ditto - ditto	1	–
46th Ditto - ditto	1	3
47th Ditto - ditto	7	11
48th Ditto - ditto	–	1
49th Ditto - ditto	–	1
50th Ditto - ditto	2	3
51st Ditto - ditto	1	1
52d Ditto - ditto	–	–
53d Ditto - ditto	–	–
54th Ditto - ditto	2	3
55th Ditto - ditto	–	–
56th Ditto - ditto	–	1
57th Ditto - ditto	3	1
58th Ditto - ditto	1	3
59th Ditto - ditto	3	2
60th Ditto - ditto	3	–
61st Ditto - ditto	2	2
62d Ditto - ditto	–	1
63d Ditto - ditto	2	3
64th Ditto - ditto	3	2
65th Ditto - ditto	6	–
66th Ditto - ditto	1	1
67th Ditto - ditto	2	5
68th Ditto - ditto	2	3
69th Ditto - ditto	1	–
70th Ditto - ditto	3	5
71st Ditto - ditto	4	3
72d Ditto - ditto	–	3
73d Ditto - ditto	1	5
74th Ditto - ditto	–	3
1st Local Horse	–	–
2d - ditto	–	–
3d - ditto	–	–
4th - ditto	–	–
Arracan Local Battalion	5	4
Assam Light Infantry	7	4
Ditto Sebundies	–	–
Bheel Corps	–	–
Calcutta Native Militia	2	3
Hill Rangers	–	1
Hurrianah Light Infantry	–	–
Kemaon Local Battalion	1	2
Mhairwarra ditto	–	1
Nusseree - ditto	–	–
Ramghur Light Infantry	10	4
Sirmoor Battalion	–	1
Sylhet Light Infantry	3	–
TOTAL	192	196

(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

No. 3.

No. 3.

STATEMENT of the Number of SENTENCES of Dismissal awarded by Courts Martial, Inferior to General, held in the Native Army of Bengal, during the period from February 1835, up to the Promulgation of Act XXIII.

	From February 1835.	1836.	1837.	1838.	To Act XXIII. of 1839.
4th Troop, 1st Brigade Horse Artillery	1	1	2	—	—
4th „ 2d ditto ditto	-	1	-	1	—
4th „ 3d ditto ditto	1	—	—	—	—
6th Battalion Foot Artillery	2	4	2	1	1
7th Ditto - ditto	8	4	3	7	4
Gun Lascars	23	7	9	8	5
Ordnance Drivers	-	3	5	3	—
1st Regiment Light Cavalry	1	9	3	8	4
2d Ditto - ditto	2	-	1	1	6
3d Ditto - ditto	6	-	1	-	1
4th Ditto - ditto	-	-	1	2	—
5th Ditto - ditto	-	1	1	1	2
6th Ditto - ditto	3	3	2	4	3
7th Ditto - ditto	2	1	1	-	3
8th Ditto - ditto	-	3	3	2	—
9th Ditto - ditto	-	2	3	3	2
10th Ditto - ditto	-	-	3	8	1
Sappers and Miners	1	2	3	4	—
1st Regiment Native Infantry	4	3	3	3	1
2d Ditto - ditto	2	1	5	6	1
3d Ditto - ditto	1	1	1	1	1
4th Ditto - ditto	2	3	2	1	4
5th Ditto - ditto	2	-	1	1	—
6th Ditto - ditto	-	3	2	1	4
7th Ditto - ditto	1	6	2	—	—
8th Ditto - ditto	1	2	1	3	3
9th Ditto - ditto	3	3	1	2	2
10th Ditto - ditto	1	-	3	4	2
11th Ditto - ditto	1	1	1	1	—
12th Ditto - ditto	1	1	2	1	—
13th Ditto - ditto	-	-	2	2	2
14th Ditto - ditto	1	-	1	1	—
15th Ditto - ditto	1	2	1	1	1
16th Ditto - ditto	2	-	1	1	6
17th Ditto - ditto	-	1	8	-	4
18th Ditto - ditto	1	1	-	1	2
19th Ditto - ditto	-	2	4	3	4
20th Ditto - ditto	-	1	1	1	1
21st Ditto - ditto	1	1	—	—	—
22d Ditto - ditto	-	-	1	1	6
23d Ditto - ditto	1	-	2	2	3
24th Ditto - ditto	1	2	3	7	8
25th Ditto - ditto	1	1	7	2	—
26th Ditto - ditto	2	5	2	3	3
27th Ditto - ditto	-	2	1	-	2
28th Ditto - ditto	3	5	3	3	7
29th Ditto - ditto	1	-	2	—	—
30th Ditto - ditto	-	-	-	-	1
31st Ditto - ditto	1	2	1	2	—
32d Ditto - ditto	-	-	-	2	—
33d Ditto - ditto	2	3	1	-	3
34th Ditto - ditto	2	1	5	—	—
35th Ditto - ditto	4	-	2	4	3
36th Ditto - ditto	1	5	1	3	1
37th Ditto - ditto	3	2	2	4	1
38th Ditto - ditto	1	-	-	4	6
39th Ditto - ditto	-	3	4	4	—
Carried forward	98	104	120	128	115

No. 2.
On the New Articles of War for the East India Company's Native Troops.

No. 3.—Number of Sentences of Dismissal, &c.—*continued.*

	From February 1835.	1836.	1837.	1838.	To Act XXIII. of 1839 in G. G. O. 174 of 1839.
Brought forward	98	104	120	128	115
40th Regiment Native Infantry	2	2	—	—	1
41st Ditto ditto	1	2	—	1	2
42d Ditto ditto	—	—	—	1	—
43d Ditto ditto	—	1	2	3	1
44th Ditto ditto	4	2	1	1	—
45th Ditto ditto	—	4	3	2	3
46th Ditto ditto	6	2	2	—	—
47th Ditto ditto	2	3	—	2	5
48th Ditto ditto	1	—	—	3	3
49th Ditto ditto	—	—	1	—	4
50th Ditto ditto	5	1	2	2	1
51st Ditto ditto	—	2	4	—	2
52d Ditto ditto	—	—	2	1	3
53d Ditto ditto	2	—	1	2	—
54th Ditto ditto	—	2	1	2	—
55th Ditto ditto	—	9	1	2	2
56th Ditto ditto	1	3	1	1	2
57th Ditto ditto	—	—	1	1	3
58th Ditto ditto	—	1	6	—	4
59th Ditto ditto	4	6	1	—	2
60th Ditto ditto	2	1	3	2	15
61st Ditto ditto	—	1	3	3	1
62d Ditto ditto	1	1	3	4	4
63d Ditto ditto	7	1	4	1	—
64th Ditto ditto	1	1	2	2	4
65th Ditto ditto	2	2	1	3	2
66th Ditto ditto	3	4	12	3	2
67th Ditto ditto	2	4	10	4	6
68th Ditto ditto	2	6	5	3	1
69th Ditto ditto	—	2	1	—	3
70th Ditto ditto	2	5	2	6	2
71st Ditto ditto	2	4	2	1	5
72d Ditto ditto	—	2	—	1	1
73d Ditto ditto	—	2	5	—	5
74th Ditto ditto	1	4	7	4	4
1st Regiment Local Horse	—	—	—	—	—
2d Ditto ditto	—	—	—	—	—
3d Ditto ditto	—	—	—	—	—
4th Ditto ditto	—	—	—	—	—
Arracan Local Battalion	4	—	—	—	2
Assam Light Infantry	1	1	3	2	1
Ditto Sebundies	—	—	—	—	—
Bheel Corps	—	—	—	—	—
Calcutta Native Militia	4	2	2	6	3
Hill Rangers	—	—	—	—	3
Hurrianah Light Infantry	—	—	1	—	—
Kemaon Local Battalion	—	2	—	1	—
Mhairwarrah Local ditto	—	—	—	4	—
Nusseree Battalion	1	—	1	1	—
Ramghur Light Infantry	8	7	3	4	10
Sirmoor Battalion	1	—	—	—	—
Sylhet Light Infantry	1	4	1	6	4
TOTAL	171	200	220	213	237

(signed) *J. R. Lumley*, Major-gen^{l},
Adjutant-gen^{l} of the Army.

No. 4.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

No. 4.

STATEMENT of the Number of SENTENCES of Dismissal, of Imprisonment, and Imprisonment with Hard Labour, awarded by Courts Martial, inferior to general ones, held in the Native Army of Bengal, from the Promulgation of Act XXIII. of 1839, in G. O. G. G. 174, dated 2d October last, up to 1st September 1840.

	Dismissal.	Imprisonment.	Imprisonment with Hard Labour.
4th Troop, 1st Brigade Horse Artillery	1	-	1
4th „ 2d ditto ditto	—	—	—
4th „ 3d ditto ditto	—	—	—
6th Battalion Foot Artillery	3	1	4
7th Ditto - ditto	5	4	12
Gun Lascars	4	2	9
Ordnance Drivers	2	1	2
1st Regiment Light Cavalry	1	-	7
2d Ditto - ditto	-	-	1
3d Ditto - ditto	1	-	1
4th Ditto - ditto	1	-	1
5th Ditto - ditto	-	2	2
6th Ditto - ditto	1	1	1
7th Ditto - ditto	4	-	4
8th Ditto - ditto	-	-	1
9th Ditto - ditto	—	—	—
10th Ditto - ditto	-	-	1
Sappers and Miners	2	2	4
1st Regiment Native Infantry	3	2	8
2d Ditto - ditto	-	1	1
3d Ditto - ditto	-	3	1
4th Ditto - ditto	-	-	1
5th Ditto - ditto	-	-	3
6th Ditto - ditto	-	1	6
7th Ditto - ditto	1	-	4
8th Ditto - ditto	1	-	1
9th Ditto - ditto	-	1	7
10th Ditto - ditto	-	-	1
11th Ditto - ditto	1	2	5
12th Ditto - ditto	1	2	2
13th Ditto - ditto	4	-	3
14th Ditto - ditto	-	1	2
15th Ditto - ditto	1	1	1
16th Ditto - ditto	4	1	3
17th Ditto - ditto	6	-	4
18th Ditto - ditto	1	-	2
19th Ditto - ditto	-	2	5
20th Ditto - ditto	-	-	1
21st Ditto - ditto	-	-	1
22d Ditto - ditto	1	-	2
23d Ditto - ditto	-	-	2
24th Ditto - ditto	3	2	3
25th Ditto - ditto	-	2	5
26th Ditto - ditto	-	-	3
27th Ditto - ditto	-	-	7
28th Ditto - ditto	2	4	4
29th Ditto - ditto	—	—	—
30th Ditto - ditto	1	1	2
31st Ditto - ditto	-	-	2
32d Ditto - ditto	1	-	1
33d Ditto - ditto	2	1	1
34th Ditto - ditto	-	1	7
35th Ditto - ditto	1	2	2
36th Ditto - ditto	1	2	4
Carried forward	60	45	158

No. 2.
On the New Articles of War for the East India Company's Native Troops.

No. 4.—Number of Sentences of Dismissal, of Imprisonment, &c.—*continued.*

	Dismissal.	Imprisonment.	Imprisonment with Hard Labour.
Brought forward - - -	60	45	158
37th Regiment Native Infantry - - - - - -	2	- -	2
38th Ditto - ditto - - - - - - -	1	1	6
39th Ditto - ditto - - - - - - -	- -	2	3
40th Ditto - ditto - - - - - - -	- -	- -	7
41st Ditto - ditto - - - - - - -	4	- -	8
42d Ditto - ditto - - - - - - -	- -	- -	1
43d Ditto - ditto - - - - - - -	1	1	1
44th Ditto - ditto - - - - - - -	- -	- -	4
45th Ditto - ditto - - - - - - -	2	3	3
46th Ditto - ditto - - - - - - -	- -	1	3
47th Ditto - ditto - - - - - - -	- -	- -	4
48th Ditto - ditto - - - - - - -	1	- -	1
49th Ditto - ditto - - - - - - -	1	- -	3
50th Ditto - ditto - - - - - - -	- -	- -	2
51st Ditto - ditto - - - - - - -	—	—	—
52d Ditto - ditto - - - - - - -	4	- -	3
53d Ditto - ditto - - - - - - -	2	- -	4
54th Ditto - ditto - - - - - - -	2	- -	7
55th Ditto - ditto - - - - - - -	- -	- -	7
56th Ditto - ditto - - - - - - -	- -	- -	3
57th Ditto - ditto - - - - - - -	1	- -	2
58th Ditto - ditto - - - - - - -	1	- -	1
59th Ditto - ditto - - - - - - -	- -	- -	3
60th Ditto - ditto - - - - - - -	3	4	6
61st Ditto - ditto - - - - - - -	1	2	3
62d Ditto - ditto - - - - - - -	2	- -	2
63d Ditto - ditto - - - - - - -	2	- -	2
64th Ditto - ditto - - - - - - -	1	1	9
65th Ditto - ditto - - - - - - -	1	7	4
66th Ditto - ditto - - - - - - -	4	- -	5
67th Ditto - ditto - - - - - - -	- -	- -	7
68th Ditto - ditto - - - - - - -	- -	- -	1
69th Ditto - ditto - - - - - - -	2	- -	1
70th Ditto - ditto - - - - - - -	3	1	6
71st Ditto - ditto - - - - - - -	2	- -	3
72d Ditto - ditto - - - - - - -	- -	- -	5
73d Ditto - ditto - - - - - - -	1	- -	4
74th Ditto - ditto - - - - - - -	2	- -	6
1st Depôt Battalion (Jawnpore) - - - - -	1	- -	5
2d Ditto ditto (Futtehgurh) - - - - -	1	- -	6
3d Ditto ditto (Allygurh) - - - - -	- -	- -	5
4th Ditto ditto (Bareilly) - - - - - -	2	- -	2
Arracan Local Battalion - - - - - - -	7	3	18
Assam Light Infantry - - - - - - -	- -	- -	1
Ditto Sebundies - - - - - - -	2	- -	4
Bheel Corps - - - - - - - -	—	—	—
Calcutta Native Militia - - - - - - -	- -	- -	5
Hill Rangers - - - - - - - -	- -	- -	10
Hurrianah Light Infantry - - - - - - -	2	1	8
Kemaon Local Battalion - - - - - - -	1	1	4
Mhairwarra ditto ditto - - - - - - -	2	- -	2
Nusseree Battalion - - - - - - - -	—	—	—
Ramghur Light Infantry - - - - - - -	4	1	9
Sirmoor Battalion - - - - - - - -	- -	- -	1
Sylhet Light Infantry - - - - - - -	5	2	11
TOTAL - - -	133	76	391

(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

No. 5.

No. 5.

ABSTRACT.

YEAR.		PUNISHMENT AWARDED.						
		Corporal.	Imprisonment with Labour.	Imprisonment.	Dismissal.	Capital.	Suspension.	
See Return, No. 1.—1833.	By General Court - -	2	5*	- -	- -	2†	—	* 1 Commuted to 14 years' hard labour.
See - ditto, No. 2.—	By Inferior Court - -	192	—	—	—	—	—	† 1 ditto to dismissal.
	Total - - -	194	5	- -	- -	2	—	
See Return, No. 1.—1834.	By General Court - -	4	7	3	3	5	—	
See - ditto, No. 2.—	By Inferior Court, up to February 1835 - - -	196	—	—	—	—	—	
	Total - - -	200	7	3	3	5	—	
See Return, No. 1.—1835.	By General Court - -	- -	2	1	5	1	—	
See - ditto, No. 3.—	By Inferior Court, from February - - -	- -	- -	- -	171	—	—	
	Total - - -	- -	2	1	176	1	—	
See Return, No. 1.—1836.	By General Court - -	- -	7	2*	2†	- -	3	* 1 Commuted to dismissal.
See - ditto, No. 3.—	By Inferior Court - -	- -	- -	- -	200	—	—	† 1 ditto - - to suspension.
	Total - - -	- -	7	2	202	- -	3	
See Return, No. 1.—1837.	By General Court - -	- -	5	—	—	—	—	
See - ditto, No. 3.—	By Inferior Court - -	- -	- -	- -	200	—	—	
	Total - - -	- -	5	- -	200	—	—	
See Return, No. 1.—1838.	By General Court - -	- -	19*	- -	5†	3‡	—	* 2 Restored.
See - ditto, No. 3.—	By Inferior Court - -	- -	- -	- -	213	—	—	† 1 Commuted to dismissal.
	Total - - -	- -	19	- -	218	3	—	‡ 2 ditto - - to transportation.
See Return, No. 1.—1839.	By General Court - -	3	57*	1	70†	2	—	* 63 forgiven and restored. 1 to undergo hard labour. 3 dismissed.
See - ditto, No. 3.—	By Inferior Court - -	- -	- -	- -	237	—	—	† Pardoned and restored.
	Total - - -	3	57	1	307	2	—	
See Return, No. 1.—1840.	By General Court - -	- -	39	- -	- -	1	3	
See - ditto, No. 4.—	By Inferior Court, from 2d October 1839 to 6th September 1840 - -	- -	391	76	133	—	—	
	Total - - -	- -	430	76	133	1	3	
See Return, No. 1.—	By General Court - -	9	141	7	85	14	6	
See - ditto, No. 2, 3 & 4.	Total by Inferior - -	388	391	76	1,174	—	—	
	GRAND TOTAL - - -	397	532	83	1,259	14	6	
	Deduct - - - -	- -	17	- -	65	—	—	
	Remaining - - -	397	515	83	1,194	14	6	

N. B.—34 Christian drummers flogged after the prohibition, by Inferior Court Martial, not inserted in Return No. 3, nor in this paper.

(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

Legis. Cons. 20 Dec. 1841. No. 29.

MILITARY DEPARTMENT.

(No. 4176.)

To the Secretary to the Government of India, Military Department.

Sir,

WITH reference to your despatch of the 23d September last, No. 449, 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, the accompanying transcript of a letter from the Adjutant-general of the Army, dated the 4th instant, No. 891, together with the return of courts martial in the Madras Army during the last seven years, to which it gave cover.

I have, &c.

(signed) *S. W. Steel*, Lieut.-col.,
Secretary to Government.

Fort St. George, 10 November 1840.

(No. 891.)

To the Secretary to Government, Military Department.

Sir,

I AM directed by the Commander-in-chief to acknowledge extract from the Minutes of Consultation, No. 3696, dated 3d ultimo, and have the honour to forward for submission to the Right honourable the Governor in Council the return of courts-martial thereby called for.

2. His Excellency instructs me to point out, that the cases in which corporal punishment was awarded after 13 March 1835, occurred on foreign service, before receipt of the orders for its abolition, which were promulgated to the army on that date.

I have, &c.

(signed) *R. Alexander*, Lieut.-col.,
Adjutant-general of the Army.

Adjutant-general's Office,
4 November 1840.

RETURN of Courts Martial in the Madras Army.

MONTHS.	Awarding Corporal Punishment.				Awarding Simple Imprisonment and Discharge.						Awarding Imprisonment with Hard Labour and Discharge.		
	1833.	1834.	1835.	TOTAL.	1835.	1836.	1837.	1838.	1839.	TOTAL.	1839.	1840.	TOTAL.
January	18	17	12			25	27	32	46			26	
February	18	29	19			39	31	25	83			24	
March	27	22	18		2	34	36	27	27			38	
April	22	24	1		14	9	26	17	37			19	
May	28	27			13	22	36	33	41			18	
June	25	24	1		21	24	32	39	40			31	
July	30	22			18	37	34	28	39			31	
August	30	19			16	28	37	36	42			16	
September	20	18			17	33	32	29	40			24	
October	29	26			18	18	31	30	40				
November	30	25			29	24	26	33			31		
December	16	25			17	30	27	29			25		
TOTAL Annually	293	278	51	622	165	323	395	358	435	1,676	56	227	283

Adjutant-general's Office, Fort St. George,
4 November 1840.

(signed) *R. Alexander*, Lieut.-col.,
Adjutant-general of the Army.

(True copies.)

(signed) *S. W. Steel*, Lieut.-col., Secretary to Government.

(No. 2877

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 2877 of 1841.)

MILITARY DEPARTMENT.

To the Secretary to the Government of India.

Sir,

WITH reference to your letter, No. 450, dated 23d September last, and to mine of the 20th ultimo, No. 2685, I am directed to transmit the accompanying return of courts-martial held under this Presidency during the last seven years, in all cases in which corporal punishment has been awarded, or in which the substituted punishment of dismissal or imprisonment with labour has been adjudged, together with copies of letters from the Adjutant-general, dated 21st ultimo, and from the Judge Advocate-general, dated 20th idem, in explanation of the delay which has occurred in furnishing this return for the satisfaction of his Lordship the Governor-general in Council.

Legis. Cons. 20 Dec. 1841. No. 30.

I have, &c.

(signed) *P. M. Melvill*, Lieut.-colonel,
Secretary to Government.

Bombay Castle, 4 August 1841.

GENERAL RETURN of Courts Martial holden on Non-commissioned Officers and Privates in the Bombay Army during the last Seven Years, in all cases in which Corporal Punishment has been awarded, and in which the substituted Penalties, Dismissal or Imprisonment, have been adjudged.

1st.—Number of Trials during the Years 1833 and 1834 - -	352
2d.—Ditto from February 1835 to the date of the Promulgation of the Act No. XXIII. of 1839 - - - - - -	760
3d.—Ditto from the passing of the above Act to the 23d September 1840 - - - - - - - - - -	221
GRAND TOTAL - - -	1,333

(signed) *W. Ogilvie*, Major,
Judge Advocate-general.

(No. 621.)

To Lieut.-colonel *P. M. Melvill*, Secretary to Government, Military Department.

Sir,

WITH reference to your letters of the 12th October last and 28th ultimo, I am directed by his Excellency the Commander-in-chief to transmit to you the accompanying return, prepared by the Judge Advocate-general, of courts martial held under this Presidency during the last seven years, in all cases in which corporal punishment was awarded, or in which the substituted punishment of dismissal or imprisonment with labour has been adjudged; also a communication from that officer of yesterday's date, explaining the cause of the delay which has occurred in furnishing the return called for.

I have, &c.

(signed) *S. Powell*, Lieut.-col.,
Adjutant-general of the Army.

Adjutant-general's Office, Poona,
21 July 1841.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

To the Adjutant-general of the Army.

Sir,

I HAVE now the honour to forward a general return of the trials of non-commissioned officers and privates in the army of this Presidency during the last seven years, divided into three several periods; and, in transmitting this document, I beg to intimate that the dispersed nature of the stations of the respective regiments prevented the early receipt of the necessary information, and the return from the 16th regiment, N. I., stationed in the Persian Gulf, with which the communication is very uncertain, has not yet been received.

I have, &c.

(signed) *W. Ogilvie*, Major,
Judge Advocate-general.

Judge Advocate-general's Office, Poona,
20 July 1841.

Legis. Cons.
20 Dec. 1841.
No. 31.

MINUTE.—Commander-in-Chief.

THE arrival of the return called for from Bombay at length enables me to offer to Government some opinions upon the changes made in the Native Army of India, by the substitution of dismissal from the service in 1835, and of imprisonment with labour in 1839, for the corporal punishment by which discipline was formerly enforced in India, and which still remains (though a dead letter) in our Articles of War.

The returns of the three Presidencies enable me to give the following figures in contrast:—

—	Corps.	First Period, 26 Months.	Second Period, 56 Months.	Third Period, 11 Months.
Bombay - -	35	- 352 Trials -	- 760 Trials -	- 221 Trials.
		10 for each corps; average of each nearly five per annum.	22 for each corps; not quite five per annum.	$6\frac{1}{3}$ for each corps; seven per annum.
Madras - -	63	622 Courts Martial -	1,676 Courts Martial	283 Courts Martial.
		not quite 10 for each corps; average of each nearly five per annum.	$26\frac{1}{2}$ for each corps; not quite $6\frac{1}{2}$ per annum.	$4\frac{1}{2}$ for each corps; five per annum nearly.
Bengal - -	104	- 419 Sentences -	- 1,229 Sentences -	- 643 Sentences.
		four for each corps; average of each nearly two per annum.	$11\frac{3}{4}$ for each corps; $2\frac{1}{2}$ per annum.	$6\frac{1}{6}$ for each corps; $6\frac{3}{4}$ per annum.

I must here remark that there may be serious discrepancies in the three returns, for one trial may include (as it did in Bengal in 1839) 67 prisoners, and one court martial may be charged with five or six trials. The Bengal returns include every man who was brought to trial during the three periods. (*See* Note at the end).

It will be observed, also, that the Adjutant-general deducts 82 men, who were pardoned or restored; not knowing whether this was done at Madras and Bombay, I have allowed them to stand.

The first deduction to be made from the above is, that the Bombay corps had each five trials per annum in the first period, which was not increased when corporal punishment was abolished and dismissal substituted, but has risen to seven trials per annum since imprisonment with labour was rendered legal in 1839.

From

No. 2.
On the New Articles of War for the East India Company's Native Troops.

From this we are to suppose, that the fear of the lash and the apprehension of discharge were equally available and salutary punishments; provided, however, that the regiment be not on service, for then discharge or dismissal may be most unsuitable, and at times impracticable.

It is more difficult to explain why imprisonment with labour (which involves dismissal) should be less feared than simple dismissal; yet the increase from five trials to seven appears to establish the fact.

At Madras they feared dismissal less than corporal punishment, and crime was more frequent; the recurrence to imprisonment with labour seems to have brought the corps of this establishment back to their former average of trials, or, more correctly, of courts martial.

The Bengal analysis is at once the most perfect and the most extraordinary. In the days of corporal punishments the annual average was two inflictions; when dismissal was substituted it rose a little, viz., to two and a half for each corps; but since two punishments have been legalized, imprisonment with labour and dismissal, the sepoys seem to fear the sentence of a court less than they ever did. The men brought to trial are threefold as numerous as they were in 1833 and 1834. I particularly request attention to the concluding para. of the Adjutant-general's letter of the 6th November last on this head.

The numbers, I am aware, are increased in this manner:—a sepoy (of Bengal) feeling himself aggrieved, and not at once receiving the redress he thinks due, in the absence of corporal punishment, becomes insubordinate, and he is of course confined, some 20, 30, even 50 men, accompanying him to the guard-house or quarter guard, and say they will share his crime and punishment; such combinations are most unmilitary, and may become dangerous.

I have had four such cases, and met them by ordinary, six, seven or eight of the most forward, or the senior sepoys, to be tried with the ringleader. This has been sufficient in these corps, but the spirit still exists, I believe. Golundauze; Volunteer Batt. 37th N. I. 38th N. I.

The 37th and 38th regiments being in Affghanistan, the transfer of the men, after sentence, to the civil authority, was fraught with delay and difficulty.

The following abstract will place the results possibly in a clearer point of view.

When these punishments were legal, the annual average was, for each corps:—

	Corporal Punishment.	Dismissal.	Imprisonment with Labour.
Bombay - - - - - -	5	5	7
Madras - - - - - - -	5	6 ½	5
Bengal - - - - - - -	2	2 ½	6 ¾
Giving for the Three Periods -	12	14	18 ¾

The question is now nearly narrowed to this:—Whether is it better to inflict corporal punishment on 200 men each year in Bengal, and 400 at the other two Presidencies, or to discharge 1,500 trained soldiers annually, after dooming them to many months of hard labour, and their families, in many instances, to destitution?

It should be remembered that, to a high-caste sepoy, working in a gaol gang involves great, perhaps irretrievable, ignominy.

In 1830, after nearly three years' experience of Lord Combermere's Order of 1827, I thought the discipline of this army was very well enforced, and the system as unobjectionable as could have been devised. On account of Madras and Bombay, I should like to see that order again brought into operation; but as for Bengal, I anticipate no great difficulty in supporting discipline under the present law. 19 March.

(signed) *J. Nicholls.*

30 August 1841.

Referring to para. 3, I am disposed to think that individual cases are meant, though under different titles.

(signed) *J. N.*

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Military Dep.

MINUTE.—Governor-general.

IT is clearly necessary that these Returns, which have been called for by the Honourable Court, should go home; but I would say that I am not inclined to draw from them the same deductions which have been drawn by his Excellency the Commander-in-chief; nor do I think that they give us any important results. I would indeed add, that no inferences, of whatever kind, drawn from the experience only of the two years during which the system now in force has existed, can be regarded, in my opinion, as in any degree conclusive.

2. There has been a change from the punishment of flogging to that of dismissal from the service, and to dismissal from the service has lately been superadded the punishment of hard labour on the roads. At Madras, upon the abolition of flogging, the number of offences in the army seems to have increased, and they became less upon the institution of punishment by hard labour on the roads; but in the same period, and under the same changes, the number of offenders has, at least apparently upon their returns, increased in Bengal and Bombay. Assuredly the increased number of offenders cannot be ascribed to the increased severity of punishment; and we may probably find some ground for the seeming anomaly in the circumstance, that the army of Madras has been comparatively quiet in cantonment, whilst large portions of the armies of Bombay and Bengal have been actively employed, under the inducements to misconduct to which all soldiers are exposed in active service, or under frequent movements, and at a time immediately following that when large additions had been made to the army, and when the soldier was yet unused to discipline, and as it appears to me, that estimate has been made upon each corps, without adverting to the circumstance, that for the last two years a corps has consisted of 900 instead of 640 men; and without directing notice to cases in which numerous delinquencies in two or three regiments have greatly affected the average of the whole army.

3. It may be, however, that these circumstances are not sufficient to account for the whole increase exhibited, and there has been probably less repugnance in courts martial to condemn soldiers to the punishments of dismissal or hard labour, than there would have been to the infliction of the lash. I see, in one instance, that 67 soldiers of one regiment were sentenced to dismissal; it could hardly be that these 67 soldiers would have been sentenced to corporal punishment.

4. In all these speculations, even so far as, upon our brief period of experience, they can yet be hazarded, I may be more or less mistaken; and I should scarcely have recorded them, if I had not been at the same time anxious to express my dissent from the position laid down by his Excellency the Commander-in-chief, that the question is nearly narrowed to "Whether it is better to inflict corporal punishment on 200 men each year in Bengal, and 400 at the other two Presidencies, or to discharge 1,500 trained soldiers annually, after dooming them to many months of hard labour, and their families in many instances to destitution?" I would not entertain, nor agitate, nor submit to superior authority any such question. I strongly hold that no such alternative is open to our choice. Even if we might think, as matter of immediate expediency, that the more revolting and more degrading, but more effective punishment, is to be preferred to that which is less effective and less revolting, the time has passed for the discussion. We have allowed from 50,000 to 60,000 recruits to enter an army in which it had been proclaimed that the most hateful form of punishment had ceased to exist, and we cannot revert to the former system. I adhere, therefore, to what I wrote two years ago on this subject, that "it is far wiser that the attention of every officer should be directed to the best means of maintaining discipline without the infliction or the terror of corporal punishment, than that men's minds should be agitated by the contemplation of its renewal;" and I would refer the Honourable Court to the minutes which were recorded on this subject in 1839, and upon other occasions.

5. If we omit two regiments only, the 28th and the 37th, from the list upon which the calculation has been formed, we shall take 104 from the number of punishments, or nearly one and a half from the average for each corps, and the calculation would stand for the first period, five; for the second period, five; for the third, four and a half, instead of six; but five such punishments for 640 men, is one for every 117, and four and a half for 900 men is one only for every 200; or if the whole number of six be taken for the last period, it is one only in every 150.

I cannot

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I cannot think, therefore, that the facts bear out the deductions of the Commander-in-chief. My only desire would be, that the effects of the new mode of punishment be carefully watched, and that if at any station or any regiment the punishments should be in excess of ordinary average, inquiries be instituted into the local circumstances of the station, or the internal management of the regiment. The qualities of the native soldier are excellent, in my firm belief, in a degree far beyond what many of those who have not seen them on service, or in times of difficulty, can believe, or are disposed to admit; but his excellence greatly depends upon the conduct of his officers: he will bear exactness, and even severity of discipline; but to make him contented, there must also be justice and kindness, and a communion of language and of feeling between him and those who command and lead him. Even with my imperfect observation of the Indian army, I have seen great inequalities in these respects, and I would attach far more importance to attention on these subjects, than I would to new devices for military punishment. I have been sorry to remark, upon looking over the Army List, that of our 370 ensigns, scarcely ten have passed an examination in the native languages, and in the medical branch of the service, to the members of which, whether attached to our regiments or our civil stations, a knowledge of the languages would seem to be most essential, I am not aware that a single officer has claimed the distinction of passing an examination. Many, no doubt, speak the language fluently and colloquially, who could not stand the test of a critical examination; but to all officers an accurate knowledge of the languages, and a familiarity with the character in which they are written, would be useful as well as creditable. I am sorry to presume that there is much indifference on this subject, and I have therefore readily concurred with the Council in directing the republication of the General Order of 1837, which does apparently all that is in our power in regard to the subalterns of the army. In respect to the officers of the medical service, I would invite suggestions from his Excellency the Commander-in-chief, and hope also for an expression of the opinion of Sir William Casement, that the subject may be specially submitted, if necessary, for the consideration of the Honourable Court.

(signed) *Auckland.*

28 October 1841.

MINUTE.—Sir *William Casement.*

I HAVE perused the Commander-in-chief's Minute, and the returns to which it refers, with deep attention, and see nothing either in the arguments advanced by his Excellency, or the facts exhibited in the returns, to shake the opinions I have before expressed, both as Secretary to Government in the Military Department and as a Member of the Council of India, that it would be unwise to restore the punishment of the lash in the native army, even if the insuperable objection stated by the Governor-general to such measure, the enlistment into the service of from 50,000 to 60,000 recruits, since the abolition of corporal punishment was proclaimed, had no existence.

I most fully concur in the high opinion expressed by the Governor-general of the qualities of the native soldiery; they are indeed most excellent, but as his Lordship observes,, that excellence greatly depends on the justice, consideration and kindness with which they are treated by their European officers, and I grieve to say, that occasional, though rare, instances do occur, of a regiment being goaded into insubordination by a series of conduct on the part of the officer commanding it, the very reverse of that which might be expected from any one who had passed the greater part of his life in daily intercourse with the natives of this country. An unfortunate instance of this nature took place in a regiment when on march to join the army of the Indus in October 1838, but as the officer who commanded the corps, and who was a most zealous though a most mistaken disciplinarian, died shortly after the occurrence happened, I shall refrain from a more distinct specification of the circumstance.

I consider that the Governor-general's recommendation that "the new mode of punishment be carefully watched, and that if, at any station or any regiment, the punishments should be in excess of ordinary average, inquiries be instituted into the local circumstances of the station, or the internal management of the regiment," as most judicious, and I would suggest that the Commander-in-chief's

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special attention should be solicited to the subject, with a view to such instructions being issued by his Excellency to officers commanding divisions and stations, as may ensure full effect being given to a measure calculated to check minor offences in the army.

The practice of Sepoys in Bengal, when a comrade is confined for insubordination, accompanying him to the guard-house, and saying they will share his crime and punishment, though of very rare occurrence in the present day, has occasionally taken place ever since I entered the service, and though decidedly unmilitary, there is in reality nothing in it of a dangerous character. It is always to be overcome by a little firmness and judicious decision, and in truth generally originates in a mistaken sense of honour on the part of those who accompany the prisoner to the guard-house, considering themselves as equally implicated in the offence, whatever it may be, as their incarcerated fellow soldier. The practice, so far from being of recent introduction, as his Excellency seems to think, is a remnant of the olden times, when neither the discipline of the army, nor the justice which the native soldier had a right to expect of his European commander, were very rigidly attended to, and consequently a relaxation in the former followed, as a matter of course, a disregard of the latter, which previously to the re-organization of the Indian army, in 1796, was not of unfrequent occurrence, as I understood from my seniors on first joining a regiment.

The Governor-general, in the concluding part of his Minute of the 28th ultimo, justly remarks on the evident indifference shown by the young officers of the army to qualifying themselves by a study of the native languages for unreserved and friendly communications with the native soldiery placed under their command, without which all other qualifications must be more or less nugatory. His Lordship apprehends, however, that the restrictions laid down in general orders of January 1837, recently republished, embrace all that is in the power of Government to effect in this important matter. It is clear that these orders have been looked upon as a dead letter ever since their first publication, and I anticipate but little good from them in future, unless some positive deprivations be superadded which will be felt, even with their regiment, by those who will not be at the trouble to fit themselves by study for that intercourse with the Sepoys which their duty requires them to hold, and unless they can hold which with facility, the comfort of the men is greatly deteriorated, and their confidence in receiving justice and due appreciation almost wholly undermined. I would, therefore, suggest for consideration the following additional rules:—

1st. That no officer who has entered the service since January 1837, or who may hereafter enter it, be allowed the charge of a troop of cavalry or company of native infantry, until he shall have passed an examination in the Oordoo language, either before a competent station committee of examination, or the college examiners in Calcutta, nor should he be considered eligible for even an aide-de-campship, nor permitted to have any leave of absence even between masters, except on medical certificate, nor any indulgence that might give him holiday from his regimental duty.

2d. That all officers, after two years' service, be made to appear before a station committee of examination, or the college examiners in Calcutta, and that the extent of actual proficiency attained by each be published periodically, in orders by the Commander-in-chief.

The above are the principal points that have occurred to me for ensuring, to a certain extent, a universal proficiency in the native languages, at least the Oordoo, which is most essential, and (for writing) the Persian and Nagree; and I would strongly recommend a degree of publicity being given to the examinations by station committees; that they be held at the division general officer's quarters, and notification previously made in station orders, that officers desirous of being present may attend, and that the presence of all staff officers and commandants of corps at the station be officially required, which I think, in other respects also, would have a very good effect.

With respect to medical officers, measures should certainly be taken to secure their attention to this study also, for four-fifths of them are incompetent, I apprehend, to the thoroughly conversing with the Sepoys regarding their complaints. The comparative paucity of medical officers, however, renders it more difficult to deal with them, and the nature of their duties likewise is such, that they must be kept comparatively idle if they are not allowed a charge, otherwise no surgeon

surgeon should be held competent to have the charge of a regiment or detachment, or anything that would give emolument beyond his ordinary pay and allowances, until he has passed an examination in Oordoo, the same as his military brother; and of course none such should be placed on the Governor-general's or Commander-in-chief's staff, nor appointed to any of the many highly paid situations in Calcutta, nor in fact have any extra-regimental employment whatever; and when a surgeon might be posted to the medical charge of a native corps, which had already an unpassed assistant, the guard order should assign as a reason, that the latter, not having qualified himself in the languages, was deprived of or not permitted to assume the charge; thus a fear of shame would be called into powerful operation.

Calcutta, 6 November 1841. (signed) *Wm Casement.*

MINUTE.—Mr. *Bird.*

THE returns now made of the effects of dismissal from the service and of imprisonment with labour, as substitutes for corporal punishment, exhibit unfavourable results. These results may, indeed, be partly accounted for by other circumstances, and the returns themselves are not free from serious discrepancies; but still the fact is indisputable that the change, as far as a judgment can yet be formed, has not succeeded, and that it has been attended with great inconveniences.

2. I agree, however, that sufficient time has not elapsed to enable us to come to any correct conclusion on the subject. That dismissal from the service, together with imprisonment with hard labour, should be less effectual than dismissal alone, is unaccountable, and can only be explained by circumstances which remain to be developed. I think, therefore, that the new mode of punishment should, as suggested by the Governor-general, continue to be carefully watched, and every incident of importance connected with it periodically reported for the information of Government.

3. Much stress has been laid upon the inexpediency of introducing corporal punishment into the new Articles of War for the Native Army in consequence of so large a portion of it, viz. 50,000 or 60,000 men, having been enlisted since that mode of punishment was suspended; but I am not sure that it is more objected to by the higher classes of Mahomedans or Hindoos than imprisonment with hard labour and in irons, or considered as a greater degradation. Be this, however, as it may, I entirely concur that it is not by the fear of punishment alone that the good conduct of the native soldier can be best secured, but that to render him contented and happy there must also be a communion of feeling and of language between him and his European officers, which I fear does not exist so generally as it formerly did, and that he must be treated with justice and kindness. Something may no doubt be done by insisting upon every officer being declared by competent examiners qualified in the native languages, especially if attended with deprivations, such as are suggested by Sir W. Casement, in case of non-qualification; but little progress will be made in restoring the good feeling in question until the interests of the officers and men shall, as in former times, be more closely united.

4. The first aim of a young officer on joining his corps is now as soon as possible to get away from it; and as long as it is his interest to do so, it is in vain to expect that it should be otherwise. The exigencies of the public service are such as to hold out to every one possessed of ability and talent a fair prospect, sooner or later, of obtaining civil or political employment; and while this is the case the feelings of mutual regard which spring up amongst those who are engaged in the same objects, and who know that success is only attainable by co-operation, can have no existence. The best security against misconduct is to re-establish that system which made the officer look upon an injury done to a Sepoy as to himself, and a Sepoy to look upon the officer as a sure protector against all injustice.

12 November 1841. (signed) *W. W. Bird.*

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MINUTE by Mr. *Prinsep*.

As some expression of opinion will be expected from every member of the Government, at the time of submitting to the Court of Directors the returns called for, to show the effect of abolishing corporal punishment in the Native Army, I should not be warranted in passing these papers without remark.

I do not think that those returns afford ground for concluding that any material effect has yet been produced in either of the three Native Armies, more especially when it is considered that the number of men in every infantry corps has been increased from 640 to 900 during the period embraced in them. There will of course be more trials and punishments in the larger number than in the smaller; and the average, upon a computation *by corps*, is nowhere increased in the ratio of this augmentation.

But though I do not regard the returns as affording yet any evidence of deterioration or injury to discipline, I am far from admitting that they justify an opposite inference, and may be cited in proof that the abolition of corporal punishment was a wise and salutary measure. I think the order was hastily passed on no sufficient grounds, and that the rarity of the punishment, which was the principal fact relied upon as an argument that they could altogether be dispensed with, ought to have been regarded rather as evidence of the discretion and tenderness with which the power was used, and as conclusive upon the one material point, that an *honest well-disposed* man might enter our army in full assurance of immunity from the disgraceful punishment of the lash during his whole career.

The punishment was never inflicted, except after court martial, that is, under sentence by fellow-soldiers, for degrading offences. It is for the protection of the good soldier against the unprincipled violence and misconduct of an ill-conditioned comrade, that some prompt example of penal severity is particularly needed.

The summary vengeance of the offended men is always naturally by corporal infliction, and the formality of a court martial and public punishment is in such cases only a substitution for the sake of justice and moderation; under the safeguard of these forms, corporal punishment might, and I think ought, to be left as an ulterior punishment, to be dreaded by the low and unprincipled men, who must occasionally find entrance into our ranks, and who now will do so with more readiness because with less dread than before.

The power of inflicting this punishment by sentence of court martial should, therefore, I think, remain in the Mutiny Act and code of the army, like the punishment of death for extreme cases. The same precise arguments which influenced the abolition of corporal punishment have even greater weight as respects capital sentences; but these remain in the code, because no party in England has yet preached against them as revolting, and no popular feeling would be flattered by yielding also this point. The idea that imprisonment with or without labour and irons can ever in an army supersede the necessity for corporal punishment of some sort, presupposes the existence of gaols at all army stations, or imposes the necessity for constructing them at enormous expense, as we have recently witnessed at Cabool. But the essence of an efficient army lies in its ubiquity of movement and location, and our military code should be framed upon the assumption that the place for the army is where there is no regular civil administration.

It is true that the order abolishing corporal punishment* excepted the case of troops actually in the field; but by making this the exception, instead of the rule, has reversed the case, and the Sepoy being accustomed to the exemption of cantonments, and encouraged to look upon residence there as his ordinary natural station, will with difficulty be reconciled to the change; that is, the Native courts martial will not readily pass the different sentence.

It would have been much better, in my opinion, even with a view to discontinuance of the punishment, that the sentences should have run as before, commutable, where there might be gaols, into imprisonment in them, with or without labour and irons, according to the offence.

The

* *Note.*—I find I am mistaken in supposing this exception to be in the General Orders for abolishing corporal punishment. Such a sentence cannot anywhere be now passed on a soldier; it is only a camp follower who can be punished with the lash in the field.

(signed) *H. T. P.*

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The question before the Court of Directors, and with a view to which these returns have been called for, is, whether to insert or exclude the clause allowing corporal punishment by sentence of court martial in the Mutiny Act framed and sent home for approval preparatory to its being passed for India. I think, quite independently of what appears in these returns, that it should be inserted, and I do not attach weight to the objection noticed in the minute of the Governor-general, in regard to the enlistments of date subsequent to the order of abolition. If this objection were allowed, we must admit a soldier's right to claim his discharge upon every change that may be made in the Mutiny Act, as if his enlistment was conditional upon its continuing exactly as it might then stand.

If we consider the restoration of the punishment necessary for the good of the army and its discipline, it is for the benefit of the good soldier that we should restore it, not for any purpose of the Government, as opposed to the comfort or well-being of the troops. We must not assume that the 50,000 men enlisted during the experimental discontinuance are all men of the class to fear the lash, who entered the army with the intention of misconducting themselves under the promise held out of immunity from this particular penal consequence.

I think that the idea of respectable persons being withheld from enlisting by any fear of the lash, in case of its being restored to the code, is very much exaggerated; for I have not learned that enlisting is easier now, or is extended to different and superior classes of men, because of the temporary change of system. I have no apprehension, therefore, of evil consequences or of disaffection amongst the troops from the revival of the punishment, under the condition, of course, that it shall only be inflicted under sentence of comrades sitting in court martial.

With respect to measures proper to improve the footing of the European officers in their relation with the men, I look upon this question as quite distinct from that before the Court of Directors. Undoubtedly the Government is bound to do all it can to promote good feelings, and to encourage study of the languages of inter-communion between officers and those who fill the ranks of our Native Army; but I am not quite sure that it would be right to go the length suggested by Sir William Casement, and refuse the advantage of a troop or company until examination shall have been passed according to the present forms.

I think it may be advantageous to require a qualification for this benefit; but the young officers should possess the certificate of the commanding officer and senior captain that he can converse and understand the common language of the men of his company. A more strict examination might exclude many very deserving officers, whose services could ill be spared, and might operate to increase the dislike for regimental duty, by exhibiting too many as under the cloud of disqualification. This question, however, we may separately consider; it is not, as I have observed, a necessary part of that under reference to the Court of Directors.

(signed) *H. T. Prinsep.*

16 November 1841.

MINUTE by the Honourable *A. Amos*, Esq.

Legis. Cons. 20 Dec. 1841. No. 32.

CORPORAL PUNISHMENT.

THIS is a subject upon which I have always forborne to enter at any length, feeling at almost every step a deficiency in the knowledge of the native character and of the feelings of the native soldiers, which is essential for forming a judgment upon most of the matters discussed.

It appears to me that, considering the question apart from the General Order prohibiting flogging, and consequent practice, it is made out that the power of inflicting corporal punishment in many cases, and its infliction in some, is a means of supporting discipline, which is but inadequately supplied by dismissal, imprisonment and labour in irons on the roads. It is obvious, also, that these substitutionary punishments are attended with various evil consequences, from which the punishment of flogging is exempt; amongst others, the annual loss of many trained soldiers; and, moreover, it may not unfrequently happen that there may be difficulty in procuring the means for a due enforcement of these substitutionary punishments.

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The arithmetical increase of offences occasioned by the change of system, especially since imprisonment and labour in irons have been added to the punishment of dismissal, cannot, I think, be satisfactorily judged of from the returns, since the increase of offences is liable to be occasioned by various other circumstances, of which it is difficult to calculate the effect numerically. It may, however, I think, be inferred that a considerable increase in the number of offenders is to be found within the period in question, and that the change of system is, at least, not an unreasonable mode of accounting for that increase.

I am not satisfied with the suggestion, that, reverting to the practice of flogging (the discontinuance of which practice is, perhaps, not widely distinguishable from a legislative proceeding, as regards the general understanding of the troops,) would be a breach of faith to the new recruits. The infliction of the punishment of labour on the roads, the stoppages of pay and pension, under certain circumstances, and other like legislative measures, adopted since the enrolment of the greater part of the Native Army, might equally be regarded as breaches of faith. I do not think the objection tenable in principle, though it may be very important in the next point of view, to which I shall advert.

I incline to think that the question mainly depends upon the feelings of the native troops themselves. If the removal of corporal punishment would create among the native troops general dissatisfaction, whether reasonable or unreasonable; if the late recruits were in fact influenced by the circumstance that they were to be exempted from corporal punishment; and if, rightly or wrongly, they would generally feel aggrieved if the practice were resumed; I should say that the resumption would be dangerous and unwise. My opinion on these points would not be worth recording; but I may observe, that if the late Act about labour in irons on the roads were duly explained to the soldiers of the Native Army, their reception of it should not be overlooked in considering this subject; their being placed, in respect of flogging, in the same condition with the Queen's troops, is also a consideration of some importance in this point of view.

9 December 1841. (signed) *A. Amos.*

Legis. Cons., 7 Sept. 1840. No. 1. 20 Dec. 1841. No. 33.

LEGISLATIVE DEPARTMENT.

(No. 24 of 1841.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WE have now the honour to forward returns on the effect of imprisonment with labour in lieu of flogging, as authorized by Act XXIII. of 1839, which we called for on receipt of your Honourable Court's despatch in this department, dated the 1st July 1840, No. 8. In transmitting these returns, we have the honour at the same time to submit to your Honourable Court the several minutes, as below,* which have been recorded by the Members of this Board.

2. Your Honourable Court will perceive that the results are viewed in different lights, but that we are nearly all agreed in opinion that sufficient time has not elapsed to enable us to arrive at any correct conclusion as to the effect of the system now in force. Although our opinion still remains divided as to the course to be adopted with regard to the particular question of corporal punishment, we trust your Honourable Court will favour us with early orders of such a nature as will allow of legislative effect being given to the code of military law which has been prepared, and of which this is only one provision.

We have, &c.

(signed) *Auckland.* *W. W. Bird.*
W. Casement. *H. T. Prinsep.*
Fort William, 20 December 1841. *A. Amos.*

LEGISLATIVE

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* Minute by his Excellency the Commander-in-chief, dated 30 August 1841;
Ditto by the Right honourable the Governor-general, 28 October 1841;
Ditto by the Honourable Sir W. Casement, 6 November 1841;
Ditto by the Honourable W. W. Bird, Esq., 12 November 1841;
Ditto by the Honourable H. T. Prinsep, Esq., 16 November 1841;—In the Military Department.
Minute by the Honourable A. Amos, Esq., dated 9 December 1841; in the Legislative Department.

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LEGISLATIVE DEPARTMENT.

(No. 9. of 1842.)

Our Governor-general of India in Council.

REPLY to Letter dated 20th December 1841, No. 24.

1. IN your letter of the 30th September 1839, you held out to us the expectation that "a short time would enable you to judge how far the punishment of imprisonment with labour, systematically inflicted, would prove an efficacious substitute for flogging," and that "a report on this subject would be furnished to us."

2. In consequence, in our letter of the 1st July 1840, we stated that we were then "disposed to wait for that report," and we directed that when you are "preparing to send it, you would take the whole subject again into your consideration," adding that we should "pay the utmost attention to the result of your inquiries."

3. You have now, after an interval of more than two years, furnished us with the returns of the number of sentences of dismissal and imprisonment, and imprisonment with hard labour, for a period of about 11 months only; viz., from 2d October 1839 to 1st September 1840; together with returns of corresponding sentences for the preceding seven years.

4. It is to be regretted that the returns should have been 15 months in arrear of the date of your letter; returns, too, which with ordinary attention might have been promptly brought up to a date within a month or two of that letter.

5. Considering the rapidity with which information can now be transmitted to us, and the importance of our possessing complete particulars, reaching up to the latest date, when deciding on questions of great moment, we feel compelled to postpone taking any step which shall have the effect of finally settling the system of punishments in the Native Army, until you shall have provided us with ample and complete details of the results of the present experimental system, and also with your matured and final opinions on the whole subject.

We are your affectionate friends,

(signed) *J. L. Lushington.* *R. Campbell.* *H. Shank.*
John Cotton. *H. Lindsay.* *J. W. Hogg.*
Rd. Jenkins. *Arch. Robertson.* *H. Willock.*
Jno. Loch. *W. H. C. Plowden.* *A. Galloway.*
W. B. Bayley.

London, 1 June 1842.

(No. 347.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the Military Department, under date the 21st July 1841.

Legis. Cons. 2 August 1841. No. 7.

READ a letter, No. 277, dated 6th instant, from the Judge Advocate-general of the Army, expressing the request of his Excellency the Commander-in-chief to be favoured with the decision of Government on the nature of the amenability of public camp followers to punishment, with reference to existing regulations and to certain acts of the Supreme Government.

ORDER.

Ordered, That the above-mentioned letter from the Judge Advocate-general be transmitted (together with a Minute, in original, by the Honourable Mr. Amos, on the subject) to the Legislative Department, for consideration, and such orders as may be necessary, and that the enclosures be returned to this department when no longer required.

(True extract.)
(signed) *J. Stuart*, Lieut.-col.,
Secretary to the Government of India,
Military Department.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

Legis. Cons. 2 August 1841. No. 8.

(No. 277.)

From the Judge Advocate-general to the Secretary to the Government of India, Military Department.

Sir,

I AM directed by his Excellency the Commander-in-chief to request that you will do him the favour to obtain the decision of the Right honourable the Governor-general of India in Council, on the nature of the amenability of public camp followers to punishment, with reference to existing regulations, and to certain Acts of the Supreme Government.

2. The followers to whom allusion is made are those comprised in Section II. of Reg. XX. of 1810, copy of which is annexed. In Section III. of that regulation (copy of which is also annexed) it is laid down, that these individuals shall not be sentenced "to any other or heavier punishment than may now be lawfully inflicted on enlisted soldiers;" the word "now," as here used, pointing to the year 1810, when the regulation was passed, and to certain Articles of War at that time in force (of which copies accompany this letter), has created the difficulty which occasions the present reference.

3. As regards "enlisted soldiers," the law has undergone considerable change since the date of the regulation. By G. G. O., 24 February 1835, corporal punishment was abolished, and dismissal substituted for it. By Act No. 23 of 1839, imprisonment with or without labour was authorized. In both these enactments (of which transcripts are annexed) the term "soldier of the Native Army" is used; a term which appears to be inapplicable to camp followers; and therefore, unless it be the pleasure of Government to declare that camp followers of the descriptions mentioned in Sec. II. of Reg. XX. of 1810, shall be amenable to the same punishment to which soldiers of the Native Army are liable, it would seem that the law, as it existed in 1810, is still to be applied to offences committed by such camp followers.

4. I apprehend that the spirit of the regulation of 1810 is to subject these persons to the punishments awardable for the time being to the native soldiery; but the letter of that regulation will not admit of this construction, and his Excellency the Commander-in-chief is therefore desirous of being favoured with the instructions of Government on the subject.

I have, &c.
(signed) *R. J. H. Birch*, Major,
Judge Advocate-general.

Judge Advocate-general's Office,
Head Quarters, Calcutta.

Section II.—ALL persons serving with any part of the army, and receiving public pay drawn by any officer in charge of a public department appertaining to the army, whether as Lascars, magazine-men, klassies attached to magazine, or any other department or establishment, native doctors, writers, chusties, puckallies, syces, grass-cutters, mahouts, surwans, or other subordinate servants attached to public cattle, bildars, artificers, or in any other capacity, shall (provided they are borne upon the fixed establishment of the department in which they are employed, and not otherwise) be subject to be tried by a court martial for all breaches of their respective duties, and for all disorders and neglects to the prejudice of good order and of the local regulations established by the commanding officer or other competent authority in the cantonment, garrison, station or other places where the troops to which they are attached may be serving.

(True copy.)
(signed) *R. J. H. Birch*, Major,
Judge Advocate-general.

Section III.—PROVIDED, that it shall not be competent for such court martial to sentence any persons of the above description to any other or heavier punishment than may now be lawfully inflicted on enlisted soldiers under the 2d article of the 24th section of his Majesty's, or the 2d article of the 15th section of the

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the Honourable Company's Articles of War, unless where the forces are serving in the field, for which case provision is already made by the existing Articles of War, from which nothing in this regulation is to be understood to derogate.

(True copy.)

(signed) *R. J. H. Birch*, Major,
Judge Advocate-general.

Her Majesty's Forces, Sect. 24.

Article 2.—But all crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of to the prejudice of good order and military discipline, though not specified in the said rules and articles, are to be taken cognizance of by a general or regimental court martial, according to the nature and degree of the offence, and to be punished at their discretion.

(True copy.)

(signed) *R. J. H. Birch*, Major,
Judge Advocate-general.

Company's Forces, Sect. 15.

Article 2.—All crimes not capital, and all disorders or neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline (though not mentioned in the above Articles of War), are to be taken cognizance of by a court martial, and to be punished at their discretion.

(True copy.)

(signed) *R. J. H. Birch*, Major,
Judge Advocate-general.

Governor-general's Order, 24 February 1835.

The Governor-general of India in Council is pleased to direct that the practice of punishing soldiers of the Native Army by the cat-o'-nine-tails or rattan be discontinued at all the Presidencies, and that it shall henceforth be competent to any regimental detachment or brigade court martial to sentence a soldier of the Native Army to dismissal from the service for any offence for which such soldier might now be punished by flogging, provided such sentence of dismissal shall not be carried into effect, unless confirmed by the general or other officer commanding the division.

(True copy.)

(signed) *R. J. H. Birch*, Major,
Judge Advocate-general.

Act No. XXIII. of 1839.

An Act for authorizing Sentences of Imprisonment, with or without Hard Labour, by Courts Martial, in certain cases.

It is hereby declared and enacted, That in all cases in which, by a General Order of the Governor-general of India in Council, dated the 24th of February in the year of our Lord 1835, it is made competent for courts martial to sentence soldiers of the Native Army in the service of the East India Company to the punishment of dismissal from such service, it is and shall be lawful to sentence such soldiers to be imprisoned, with or without hard labour, for any period not exceeding two years, if the sentence be pronounced by a general court martial, or not exceeding one year, if the sentence be pronounced by a garrison or line court martial, or not exceeding six months if the sentence be pronounced by a regimental or detachment court martial; and every soldier so sentenced to

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imprisonment with hard labour for any period whatever, or to imprisonment without hard labour for any period exceeding six months, shall, after confirmation of his sentence, be dismissed from such service; provided always, that all sentences under this Act pronounced by any court martial inferior to a general court martial, shall require the confirmation of the general or other officer commanding the division or field force to which the person convicted belongs.

(True copy.)

(signed) *R. J. H. Birch*, Major,
Judge Advocate-general.

MINUTE by the Honourable *A. Amos*, Esq., dated 14 July 1841.

As Regulation XX. of 1810 expressly distinguishes between camp followers and "enlisted soldiers," and the general order of 1835 and Act No. XXIII. of 1839 specify only "soldiers," I think that camp followers are punishable only under Regulation XX. of 1810, *i. e.*, that they may be flogged, and cannot be dismissed or imprisoned with hard labour. I should think that the Government Order and the Act, though they omit the word "enlisted" before "soldiers," did not apply to camp followers, or at least that such application was too doubtful to act upon. My opinion would, however, be shaken should I hear that among military men there was a well-known distinction between soldiers and enlisted soldiers, and that the former term, in military parlance, included camp followers. It may be observed that many of the persons designated as camp followers, *e. g.*, grass-cutters, &c., could not perhaps be said to be "dismissed from the service," which is the punishment substituted for flogging by the general order; nor would dismissal in their case be spoken of as an equivalent for flogging, or require the sentence of a court martial. If the general order does not provide for camp followers, then the Act does not, for it follows the general order.

If it is desirable to have the same rule for camp followers as for soldiers, an Act to this effect seems desirable; it will not be necessary to advert in terms to corporal punishment.

AN ACT for extending Act No. XXIII. of 1839 to Camp Followers.

IT is hereby enacted, That in cases in which an offender, being a soldier, is punishable under Act No. XXIII. of 1839, any person committing the like offences provided for in that Act, and being a camp follower, as defined by Section 2, Regulation XX. of 1810, shall be punishable according to that Act, and Act No. — of —, shall be applicable to camp followers imprisoned under this Act.

Legis. Cons.
2 Aug. 1841.
No. 9.

FORT WILLIAM.

LEGISLATIVE DEPARTMENT, the 2d August 1841.

The following Draft of a proposed Act was read in Council, for the first time, on the 2d of August 1841.

(Act No. — of 1841.)

AN ACT for extending Act No. XXIII. of 1839 to Camp Followers.

1. IT is hereby enacted, That in cases in which an offender, being a soldier, is punishable under Act No. XXIII. of 1839, any person committing the offences provided for in that Act, and being a camp follower, as defined by Section 2, Reg. XX. of 1810, of the Bengal Code, shall be punishable according to that Act, as well as otherwise according to law, and Act No. II. of 1840, shall be applicable to camp followers imprisoned under this Act.

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

Ordered,

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On the New Articles of War for the East India Company's Native Troops.

Ordered, That the said draft be re-considered at the first meeting of the Legislative Council of India, after the 2d day of November next.

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

(No. 102.—Fort St. George.) (No. 103.—Bombay.)

To Chief Secretaries, Governments of Fort St. George and Bombay.

Legis. Cons. 2 Aug. 1841 No. 10.

Sir,

I AM directed by the Governor-general in Council to transmit to you, for submission to the the accompanying copy of a proposed draft of Act for extending Act No. XXIII. of 1839 to camp followers, this day read in Council for the first time, and to request that should in communication with the Commander-in-chief of the Presidency of feel desirous to offer any remarks on its provisions, they be communicated to me for the information of the Supreme Government before the expiration of the period set down for its re-consideration.

I have, &c.

(signed) *F. J. Halliday*,
Fort William, 2 August 1841. Secretary to Government of India.

(No. 94.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the Military Department, under date the 1st September 1841.

Legis. Cons. 15 Nov. 1841. No. 16.

READ Letter, No. 346, dated 24th ultimo, from the Judge Advocate-general of the Army, returning the copy of the draft Act for extending Act No. XXIII. of 1839 to camp followers, with an amendment introduced in red ink, for the consideration of Government.

Ordered, That the Judge Advocate-general's letter, with the copy of the draft Act, be transmitted to the Legislative Department, for consideration, and such orders as may be necessary with reference to the extract thence received, No. 23, under date the 2d ultimo, and that the papers transmitted be returned to this department when no longer required.

(True extract.)

(signed) *J. Stuart*, Lieut.-col.
Secretary to Government of India, Military Department.

(No. 346.)

From the Judge Advocate-general to the Secretary to the Government of India, Military Department.

Legis. Cons. 15 Nov. 1841. No. 17.

Sir,

I HAVE had the honour to receive and lay before his Excellency the Commander-in-chief your letter, No. 406, dated 18th instant, together with the extract therewith enclosed from the proceedings of Government in the Legislative Department, No. 23, dated 2d instant, and copy of a draft Act for extending Act No. XXIII. of 1839 to camp followers.

The Commander-in-chief, having considered an amendment of the wording of the draft Act laid before his Excellency by me, has directed me to return the

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copy of the draft, with that amendment introduced in red ink, and to request that you will do him the favour to submit it to the consideration of Government.

The extract received with your letter is herewith returned.

I have, &c.

(signed) *R. J. H. Birch*, Major,
Judge Advocate-general.

Judge Advocate-general's Office, Head Quarters,
Calcutta, 24 August 1841.

Fort William.

Legislative Department, the 2d August 1841.

Legis. Cons. 15 Nov. 1841. No. 18.

The following Draft of a proposed Act was read in Council for the first time on the 2d of August 1841.

(Act No. — of 1841.)

An Act for extending Act No. XXIII. of 1839 to Camp Followers.

1. It is hereby enacted, That in all cases in which an offender, being a soldier, is punishable under Act No. XXIII. of 1839, in such cases an offender being a camp follower, as defined by Section 2, Reg. XX. of 1810 of the Bengal Code, shall be punishable according to that Act, as well as otherwise according to law; and Act No. II. of 1840 shall be applicable to camp followers imprisoned under this Act.

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

Ordered, That the said draft be reconsidered at the first meeting of the Legislative Council of India after the 2d day of November next.

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

Camp Followers. Legis. Cons. 15 Nov. 1841. No. 19.

There is no objection to erasing the words erased in red ink, and inserting simply the words "an offender." It will be observed that the alteration has no substance in it. The offences in question are provided for by the Act in question. But it is by reference, and not in terms; it having been thought inexpedient to introduce the mention of "flogging" into our Military Acts, under existing circumstances.

15 September 1841. (signed) *A. Amos.*

(No. 782.)

Legis. Cons. 15 Nov. 1841. No. 20.
Jud. Dep.

To *T. H. Maddock*, Esq., Secretary to Government of India.

Sir,

I am directed by the Right honourable the Governor in Council to acknowledge the receipt of your letter of the 2d August last, No. 102, and to request you will lay before the Right honourable the Governor-general of India in Council the accompanying extract from the Minutes of Consultation in the Military Department, and copy of the letter therein referred to from the Adjutant-general of the Army, conveying the opinion of the Officer commanding the Army in chief on the proposed draft Act for extending Act No. 23 of 1829 to camp followers.

I have, &c.

(signed) *Walter Elliott*,
Acting Secretary to Government.

Fort St. George, 15 October 1841.

(No. 3929.)

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Legis. Cons. 15 Nov. 1841. No. 21.

(No. 3929.)

MILITARY DEPARTMENT.

EXTRACT from the Minutes of Consultation, under date the 12th October 1841.

READ again Extract from the Minutes of Consultation in the Judicial Department, dated the 30th August 1841, No. 643.

Read the following Letter:—"From the Advocate-general of the Army."

(Here enter 30th September 1841, No. 883.)

THE Right honourable the Governor in Council concurs in opinion with the Major-general commanding the Forces, that as Sect. 2 of Reg. XX. of 1810 of the Bengal Code is not applicable to this Presidency, it will be preferable in the present Act to specify that the provisions of Reg. XXIII. of 1839, and of Act II. of 1840 are generally applicable to all persons amenable to the Native Articles of War, except commissioned officers.

Ordered, That this Minute, together with a Letter from the Adjutant-general of the Army, above recorded, be communicated to the Judicial Department for transmission to the Government of India, in reference to an extract from the Minutes of Consultation in that department, dated the 30th August 1841, No. 643.

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

(No. 883.)

To the Secretary to Government, Military Department.

Sir,

I HAVE the honour to acknowledge Extract from Minutes of Consultation of the 1st instant, No. 3291, and am directed by the Officer commanding the Army in chief to submit the following remarks upon the subject thereof:—

2. The extension of the Act XXIII. of 1839 to the class of persons indicated, appears unobjectionable; but it may not be misplaced to observe, that in this army, since the promulgation of Government Order, 24th February 1835, corporal punishment has been altogether disused as a military punishment without distinction of persons, as it was considered that the spirit and intent of the order in question prohibited corporal punishment being inflicted on any individual tried under the general provisions of the Native Articles of War.

3. The term "Camp Followers" (used in the draft Act) appears in its general acceptation to be more applicable to persons not usually subject to military jurisdiction, but who for their own ends have followed the troops into the field, and continue to reside with them, under their protection, and who, by having placed themselves beyond the pale of the civil law, become amenable to the laws of the camp in which they reside, by the customs of war, rather than to the public followers alluded to in Section 2 of Reg. XX. of 1810 of the Bengal Code, who are generally subject to military law, according to the Native Articles of War of this Presidency.

4. In an Act which is to be generally applicable to the whole Native Army in India, a reference to the particular code of one Presidency with which the publi at the other Presidencies are for the most part unacquainted, appears objectionable. The public followers alluded to in Sect. 2, Reg. XX. of 1810, are generally amenable to military law; it might, therefore, avoid circumlocution, and the necessity of reference, if the provisions of Act XXIII. of 1839 and Act II. of 1840 were declared to be generally applicable to all persons other than commissioned officers amenable to the Native Articles of War. Were this mode, however, adopted, it would be necessary to observe whether, among the persons subject to military law, there were other exceptions required to be made besides com-

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missioned officers. In such case it might perhaps be better to mention in the body of the Act the class of persons who were to be affected by it.

(signed) *R. Alexander*, Lieut.-colonel,
Adjutant-general of the Army.

Adjutant-general's Office,
Fort St. George, 30 Sept. 1841.

(True extract and copy.)

(signed) *Walter Elliott*,
Acting Secretary to Government.

(No. 3431 of 1841.)

JUDICIAL DEPARTMENT.

Legis. Cons. 15 Nov. 1841. No. 22.

To *T. H. Maddock*, Esq., Secretary to Government of India in the Legislative Department.

Sir,

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 2d of August last, No. 103, and in reply to transmit to you, for the purpose of being laid before the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the Adjutant-general of the Army, dated the 7th instant, conveying the opinion of his Excellency the Commander-in-chief, on the proposed Act for extending the provisions of the Act XXIII. of 1839 to camp followers.

I have, &c.

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

Bombay Castle, 14 October 1841.

(No. 831.)

Legis. Cons. 15 Nov. 1841. No. 23.

To the Secretary to Government, Judicial Department, Bombay.

Sir,

I HAVE had the honour to lay before the Commander-in-chief your letter of the 30th August last (No. 2785), with its accompanying draft of a proposed Act, extending the provisions of Act XXIII. of 1839 to camp followers.

His Excellency, having fully considered the purport and intention of the proposed enactment, desires me to acquaint you, for the information of the Honourable the Governor in Council, that it appears to him that the extension will be beneficial in its effects; but the Commander-in-chief would beg to suggest that the respective classes of persons whom the Act will affect should be specifically defined, as the provisions of Regulation XX. of 1810 of the Bengal Code cannot, he conceives, be sufficiently known within the limits of the other Presidencies, or they may be otherwise designated.

I have, &c.

Adjutant-general's Office,
Poonah, 7 Oct. 1841.

(signed) *S. Powell*, Lieut.-colonel.

(True copy.)

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

ACT

Act No. XXVIII. of 1841.

Passed by the Right honourable the Governor-general of India in Council, on the 15th November 1841.

Legis. Cons. 15 Nov. 1841. No. 24.

An Act for extending Act No. XXIII. of 1839 to Camp Followers.

1. It is hereby enacted, That in cases in which an offender, being a soldier, is punishable under Act No. XXIII. of 1839, any offender amenable to any Articles of War for the East India Company's Native Forces, not being a commissioned officer, shall be punishable according to that Act, as well as otherwise according to law; and Act No. II. of 1840 shall be applicable to offenders imprisoned under this Act.

Extract from a Despatch to the Honourable the Court of Directors, in the Legislative Department, No. 9, of 1842, dated 22d April 1842.

Legis. Cons. 2 Aug. 1841. No. 7 to 10. 15 Nov. 1841. No. 16 to 24.

Para. 3. Sect. 3, Reg. XX. of 1810, of the Bengal Code, prescribed that camp followers, described in Section 2, shall not be sentenced "to any other or heavier punishment than may now be lawfully inflicted on enlisted soldiers." The general order of 24th February 1835, abolished corporal punishment in regard to soldiers of the Native Army, and substituted dismissal from the service in place of such punishment. The Act XXIII. of 1839 provided, that instead of dismissing from the service, courts martial may sentence native soldiers to imprisonment and hard labour; and Act II. of 1840 authorized the execution of such sentences by the civil authorities. These changes having occurred in regard to "enlisted soldiers," it became a question how camp followers should be punished. The spirit of general order of 1835, abolishing corporal punishment, which was the punishment in existence when the Regulation of 1810 was passed, was considered to include every individual tried under the general provisions of the Native Articles of War. The spirit of the Regulation of 1810, was taken to be, that camp followers should be subject to punishments awardable for the time being to the native soldiery; but the letter of the Regulation was opposed to this consideration.

4. It became necessary, under these circumstances, to extend Acts XXIII. of 1839, and II. of 1840 to the cases of offenders other than soldiers, and who, not being commissioned officers, were amenable to the Articles of War for the East India Company's Native Forces. This was done by Act XXVIII., passed on the 15th November 1841, and the terms of the Act were made general, in order to apply to all the Presidencies.

Extract from a Despatch from the Honourable the Court of Directors, in the Legislative Department, No. 1 of 1843, dated 1st February 1843.

2.* The whole of the subject to which this relates is at present under reference to your Government.†

(No. 558.)

Extract from the Proceedings of the Right honourable the Governor-general of India, in Council, in the Military Department, under date the 27th October 1841.

Legis. Cons. 22 Nov. 1841. No. 5.

Read Letter, No. 3514, dated the 30th ultimo, from the Secretary to Government, Military Department, at Bombay, requesting instructions of the Supreme Government with reference to a despatch of the 19th May 1837, recommending that a legislative enactment might be passed, to the effect of the draft submitted by the Judge Advocate-general, depriving native soldiers who may be convicted by courts martial of their pay while in confinement.

Ordered,

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* 3 & 4 Act XXVIII. of 1841, extending Acts XXIII. of 1839, II. of 1840, for the punishment of camp followers.

† Letter dated 1 June 1842, No. 9.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

Ordered, That a copy of the foregoing letter, together with one of the Despatch No. 1456, of the 19th May 1837, and the draft referred to therein, be transmitted to the Legislative Department, for consideration, and such orders as may be deemed necessary.

(True extract.)

(signed) *J. Stuart*, Lieut.-colonel,
Secretary to Government of India,
Military Department.

(No. 3514.)

MILITARY DEPARTMENT.

Legis. Cons. 22 Nov. 1841. No. 6.

To the Secretary to the Government of India, Fort William.

Sir,

WITH reference to the letters from this department of the 19th May 1837, No. 1456, and accompaniments, conveying the recommendation of this Government, that a legislative enactment might be passed to the effect of the draft submitted by the Judge Advocate-general, depriving native soldiers who may be convicted by courts martial of their pay while in confinement; I am instructed by the Honourable the Governor in Council to request you will have the goodness to bring the subject again to the notice of the Government of India, and to solicit their instructions on the matter.

I have, &c.

(signed) *P. M. Melvill*, Lieut.-col.
Secretary to Government.

Bombay Castle, 30 Sept. 1841.

(True copy.)

(signed) *J. Stuart*, Lieut.-Col.
Secretary to Government of India, Military Department.

(No. 1456.)

MILITARY DEPARTMENT.

To the Secretary to the Government of India.

Sir,

I AM directed by the Right honourable the Governor in Council to transmit to you the accompanying copies of the papers specified below,* and to convey the recommendation of this Government, that a legislative enactment to the effect of the draft submitted by the Judge Advocate-general may be passed.

I have, &c.

(signed) *E. M. Wood*, Lieut.-colonel,
Secretary to Government.

Bombay Castle, 19 May 1837.

(No. 80 of 1837.)

MILITARY DEPARTMENT.

To the Right honourable Sir *Robert Grant*, G. C. H., President and Governor in Council.

Right Honourable Sir,

I DO myself the honour to lay before your Honourable Board a retrenchment made of the pay of a private of the 8th Regiment, who was sentenced by a court martial

* Letter from Advocate-general, dated 5 April 1837.
Ditto from Judge Advocate-general, dated 24 April 1837, with Enclosures.

martial to confinement in the house of correction, with hard labour, for two months, for a military offence;* the object of the retrenchment, as will appear from its tenour, is to recover, on account of Government, the actual expense of the subsistence of the sepoy during the period of his confinement.

* See Extract of Court martial.

When soldiers are confined for a criminal offence, or for debt, the regulation† is perfectly clear that their pay becomes a saving to Government; but when confined for military offences it appears that no stoppage can be made from the pay of sepoys, until such a measure receive the sanction of the supreme legislative authority in India; thus entailing on Government not only the whole expense of their pay, but of their subsistence also.

† Military Code, Sec. LII., para. 18, Reg. 495.

In consequence of the letter from the Adjutant-general to the Commandant of the Garrison, 22d January 1836, No. 91, a copy of which is given in reply to my retrenchment, I beg to suggest that I may be authorized to remit the check, pending a definite regulation on the subject, which is very desirable, to prevent Government being subject to an additional expense for every sepoy ordered into confinement for a military offence; and it appears to me in every respect equitable that a man placed in confinement should, under any circumstances, pay the actual expense of subsistence, even if it should not be considered advisable that he should forfeit his pay.

It may perhaps be worthy of consideration whether courts martial have not the power of awarding the forfeiture of the whole or any portion of a man's pay in addition to the sentence of confinement, so in that case the extent of forfeiture could in every instance be apportioned to the nature of the offence committed.

I have, &c,

(signed) *D. Barr*, Colonel,
Military Auditor-general.

Bombay, Military Auditor-general's Office
5 April 1837.

To Lieutenant-colonel *E. M. Wood*, Secretary to Government of Bombay.

Sir,

I HAVE the honour to acknowledge the receipt of your communication of the 20th instant, with its several accompaniments, and having duly considered the subject to which they refer, I beg to submit, for the consideration of the Right honourable the Governor in Council, my opinion, that although no specific enactment exists by which native soldiers can be deprived of their pay whilst imprisoned for military offences, their subsistence must be regulated, as a matter of prison discipline, by the rules in force on that point, in the place of their confinements; and whether the prison allowance be issued in money or in kind, it must be considered as an advance to the sepoy receiving it, and the amount so expended may, I conceive, be legally and equitably received on the adjustment of his accounts. A contrary arrangement would not only be inconsistent with the end and intention of the punishment in question, but might lead to a dangerous increase of crime by placing delinquents in higher pecuniary receipts than their comrades who continue in the regular and honourable discharge of their professional duties.

For the purpose, therefore, of preventing such an evil, and of forwarding the object which the Right honourable the Governor in Council has in view, of rendering the system of imprisonment in the Native Army more efficacious, I beg to suggest the early promulgation of a legislative enactment to the effect of that annexed to my letter of the 6th December last, to the address of the Adjutant-general of the Army, copy of which I now subjoin; and it will, I hope, be found to embody both the existing and required regulations on the subject under reference.

I have, &c.

(signed) *W. Ogilvie*, Captain,
Judge Advocate-general.

Judge Advocate-general's Office, Bombay,
24 April 1837.

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On the New Articles of War for the East India Company's Native Troops.

EXTRACT of Court Martial.

THAT no native soldier shall be entitled to pay, or to reckon service towards pay or pension, when in confinement under any sentence of any court, or during any absence from duty by commitment under the civil power, or a charge of any offence cognizable by a civil or criminal court, or by reason of any arrest for debt, or as a prisoner of war, or while in confinement under any charge of which he shall afterwards be convicted; provided that any native soldier acquitted of the offence for which he was committed shall, upon return to his duty in his corps, be entitled to receive all arrears of pay growing due, and to reckon service during his absence or confinement, and upon rejoining the service from being a prisoner of war, due inquiry shall be made by a court martial; and if it shall be proved to the satisfaction of such court that the said soldier was taken prisoner without neglect of duty on his part, and that he hath not served with or under, or in any manner aided the enemy, and that he hath returned as soon as possible to the service, he may thereupon be recommended by such court to receive either the whole of such arrears of pay or a proportion thereof, and to reckon service during his absence; provided that it shall be lawful for the Governor in Council to order or withhold the payment of the whole or any part of the pay of any officer or soldier during the period of absence by any of the causes aforesaid.

(True copies.)

(signed) *E. M. Wood*, Lieutenant-colonel,
Secretary to Government.

(True copy.)

(signed) *J. Stuart*, Lieutenant-colonel,
Secretary to Government of India,
Military Department.

ACT No. —, of 1841.

FORT WILLIAM, LEGISLATIVE DEPARTMENT, the 22d November 1841.

Legis. Cons. 22 Nov. 1841. No. 7.

The following Act, passed by the Right honourable the Governor-general of India in Council, on the 22d of November 1841, is hereby promulgated for general information.

ACT No. —, of 1841.

AN Act concerning the reckoning of service towards pay or pension by soldiers belonging to the Native Forces of the East India Company during confinement.

It is hereby enacted, That no native soldier shall be entitled to pay, or to reckon service towards pay or pension, when in confinement under any sentence of any court, or during absence from duty by commitment under the civil power, on a charge of any offence cognizable by a civil or criminal court, or by reason of any arrest for debt, or as a prisoner of war, or while in confinement under any charge, of which he shall afterwards be convicted.

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

Ordered, That the said draft be re-considered at the first meeting of the Legislative Council of India after the 22d of February next.

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

(No. 292.)

Legis. Cons. 1 Feb. 1842. No. 19.

EXTRACT from the Proceedings of the Right honourable the Governor-general of India, in Council, in the Military Department, under date the 12th January 1842.

READ a letter from the Secretary to Government, Military Department, Fort St. George, No. 4082, dated 21st ultimo, submitting copies of a letter and its enclosures

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enclosures from the Adjutant-general of the Madras Army, and suggesting that criminal offences committed within military cantonments by the Madras native troops and their followers serving in the Bengal territories, may be declared cognizable by the civil courts of that Presidency, such offences not being by the Madras Regulations punishable within the Company's territories by military courts while under this Presidency, it would appear the parties are amenable to military law; and referring to Act 13, of 1835:

Ordered, That the above-mentioned despatch from the Secretary to Government in the Military Department at Fort St. George be transmitted in original to the Legislative Department for consideration, with a request that it may be returned when no longer required.

(True extract.)

(signed) *J. Stuart*, Lieut.-colonel,
Secretary to Government of India,
Military Department.

(No. 4802.)

MILITARY DEPARTMENT.

To the Secretary to the Government of India, Military Department.

Legis. Cons. 1 Feb. 1842. No. 20.

Sir,

1. IN forwarding to you for submission to the Right honourable the Governor-general of India in Council the accompanying copies of a letter and its enclosures from the Adjutant-general of the Army, I am directed by the Right honourable the Governor in Council to suggest, should the measure meet with the approval of the Supreme Government, that criminal offences committed within military cantonments by the Madras native troops and their followers serving in the Bengal territories may be declared cognizable by the civil courts of that Presidency; such offences not being by the Madras Regulations punishable within the Company's territories by military courts, while under the Bengal Presidency it would appear the parties are amenable to military law.

1 Dec. 1841. No. 1067.

2. The difficulty is not in the cases of Madras native troops, &c., serving within the Bombay territories by Act 13 of the Governor-general in Council, passed on the 3d August 1835.

I have, &c.

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

Fort St. George,
21 December 1841.

(No. 1067.)

To the Secretary to Government, Military Department.

Sir,

BY order of the Commander of the Forces, I have the honour to forward a correspondence from the Nagpore Subsidiary Force, of which the letters are enumerated below,* and am directed to request that you will be good enough to submit the

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* Letter from Officer commanding Nagpore Subsidiary Force to Adjutant-general of Army, dated 18 November 1841, No. 643. Proceedings of a garrison court martial on trial of Deah, camp follower.
Letter from Lieutenant-colonel Newell, commanding 42d N. I., to the Assistant Adjutant-general, Nagpore Subsidiary Force, dated 2 October 1841, No. 338.
Letter from Officiating Pol. Comm., Hoosingahbad, to the Officiating Comm. 42d N. I., dated 25 August 1841, No. 109.
Letter from Officiating Comm. Hoosingahbad, to the Principal Assistant Comm., 24 September 1841, No. 17.
Letter from Officiating P[l] Assistant Comm. to Lieutenant-colonel Newell, commanding 42d N. I., 24 September 1841, No. 70.
Letter from Lieutenant-colonel Newell, commanding 42d N. I., to the Principal Assistant Comm., 27 September 1841, No. 327.

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the subject to the consideration of the Right honourable the Governor in Council, in order that an arrangement may be made similar to that consequent upon the letters from the Adjutant-general of the Army, Nos. 267 and 302, dated 8th and 20th April 1839, having reference to an inconvenience of the same kind that existed in the Bombay territories.

I have, &c.

(signed) *R. Alexander*, Lieut.-colonel,
Adjutant-general of the Army.

Adjutant-general's Office, Fort St. George,
1 December 1841.

(No. 643, 1841.)

To the Adjutant-general of the Army, Fort St. George.

Sir,

The Judge of Hoosingahbad having refused to take cognizance of offences committed by non-military persons within the limits of the cantonment, and as such are not cognizable by a military court under the regulations of the Madras Presidency, I have the honour to request you will acquaint me, with reference to the accompanying correspondence, how the offenders of this nature are in future to be dealt with.

I have, &c.

(signed) *J. T. Trewman*, Brigadier,
Commanding Nagpore Subsidiary Force.

Head Quarters, Nagpore Subsidiary Force,
Kamptee, 18 November 1841.

At a Native Garrison Court Martial, held at Hooshungabad, on Friday, the 27th day of August 1841, by order of Lieutenant-colonel Thomas George Newell, commanding Hooshungabad, for the trial of all such prisoners as may be brought before it:—

President:—Subadar Pollunah, of the 42d regiment Madras Native Infantry.

Members:—Subadah Bawah Sahab, of 42d regiment Madras Native Infantry; Jemadar Rungashy, of 42d regiment Madras Native Infantry; Jemadar Mahomed Esoph, of 42d regiment Madras Native Infantry; Jemadar Sheik Hoossein, of 42d regiment Madras Native Infantry; Lieutenant William Henry Tanner, of 42d regiment Madras Native Iufantry.

Conducting the Proceedings:—Captain-colonel M'Leod, of the 42d regiment Madras Native Infantry.

Interpreter to the Court:—

The Court having assembled, pursuant to order, the President, Members, Superintending Officer and Interpreter, all present.

Deah, camp follower, a prisoner, is called into Court.

The station order directing the Court's assembly is read.

The President and Members make the prescribed affirmation.

The Interpreter is duly sworn.

The Court proceeds to the trial of Deah, camp follower, placed in confinement by order of Lieutenant-colonel Thomas Newell, commanding Hooshungabad, on the following charge.

Charge.

For conduct to the prejudice of good order and military discipline, in having, at Hooshungabad, on the evening of the 21st day of August 1841, placed under the cot

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Letter from Officiating Pol. Assist Commr to Lieutenant-colonel Newell, commanding 42d N.I., 27 September 1841, No 135.

Letter from Lieutenant-colonel Newell, commanding 42d N. I., to the Assistant Adjutant-general, Nagpore Subsidiary Force, 9 October 1841, No. 351.

Letter from the Officiating Deputy Judge Advocate-general, Saugor Division, to Lieutenant-colonel Newell, commanding Hoosingahbad, 5 October 1841, No. 35.

cot of private Ramjee, of the G. company of the 42d regiment of Madras Native Infantry, one brass kutorah and one brass lotah, and afterwards reported to Subadar Seetiah, of the G. company of the 42d regiment Madras Native Infantry, that these articles had been stolen from him; thereby attempting to throw suspicion of theft on the said private Ramjee; the above being in breach of the articles of war.

Hooshungabad, 26 August 1841.

(signed) *E. V. P. Holloway,* Brevet Captain, Station Staff.

(signed) By Order,
E. V. P. Holloway,
Brevet Captain, Staff Station.

Proof of the Prisoner's Liability.

Mahomed Gallah, havildar in the G. company of the 42d regiment Madras Native Infantry, being called into Court, and having made the prescribed affirmation;

Question by the Superintending Officer.—Do you know the prisoner, and does he reside in the lines of the regiment to which you belong?

Answer.—Yes.

[The Witness retires.

Opening Statement.

Subadar Pullunnah and members of this court,—The prisoner is brought before you for having, on the evening of the 21st day of August 1841, taken one brass kuttorah and one brass lotah from the house of private Moonah, of the G. company of the 42d regiment of Madras Native Infantry, where he concealed the said kuttorah and lotah underneath a cot of the said private Ramjee without his knowledge: he afterwards reported to Subadar Seetiah, of the same company and regiment, that he had found these said articles concealed in the house of the said private Ramjee, for the purpose of making Subadar Seetiah believe that they had been stolen from him by the above-mentioned private Ramjee. I shall now bring evidence to prove the same.

First Witness in support of the Prosecution.

Lieutenant *Charles Roper,* of the 42d regiment of Madras Native Infantry, a witness in support of the prosecution, being called into Court and duly sworn, the charge is read to him.

Question by the Superintending Officer.—State to the Court all that you know of your own knowledge relating to the charge now read to you.

Answer.—On the 22d instant, Soobadar Seetiah, of the G. company, reported to me, as the Company's officer, that the prisoner, Deah, had placed in the house of two privates of the G. company, viz. Ramjee and Baldee, a brass kuttorah and lotah, but that he had formerly reported to him that these things had been stolen from him; I consequently sent for the prisoner, and requested him to tell me the truth: he then said that at the instigation of Monah, a private in the G. company, now a prisoner in the barrack guard, he had taken the said kuttorah and lotah, and concealed them under a cot in the house of privates Ramjee and Baldee. I asked him for what purpose he did so: he replied, he did not know what Monah intended by it, but that he had ordered him to do so. I sent Soobadar Seetiah to the lines of the company for the purpose of searching the house of the said privates Ramjee and Baldee, who went, and in a short time returned, bringing with him the kuttorah and lotah now before the court, which he said he had found in the said house, with the assistance of the prisoner, and in the place named by him. I immediately sent the prisoner to be confined in the Kotwal's Choultry, and reported the same to the Adjutant.

[The Witness retires.

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Second Witness in support of the Prosecution.

Subadah Seetiah, of the G. Company of the 42d regiment M. N. I., a witness in support of the prosecution, being called in court, and having made the prescribed affirmation, the charge is read to him.

Question by the Superintending Officer.—State to the court all that you know of your own knowledge relating to the charge now read to you.

Answer.—At about (8) eight o'clock on the morning of the 22d instant, Mahomed Gallah, the orderly havildar, of the G. Company, came to me, accompanied by the prisoner. The prisoner informed me that property belonging to private Mohim had been stolen, and amongst other things a brass kuttorah and lotah. I told him to endeavour to find out some trace of the thief, and let me know; he replied, that "I have a suspicion of two or three people, viz., Ramjee, Baldee and Navoo, and I wish to search their houses." I told him he was a man of low caste, and could not enter their houses; but if he would find out any trace of the thief, I would go and endeavour to find him out. I then told the prisoner to go away, which he did. On the evening of the same day, the prisoner again came to me, accompanied by the orderly havildar, and told me that he had positively seen the kuttorah and lotah in question underneath the cot of private Ramjee; I said, "How could you see what was inside the house?" He replied, "I went to the house for fire, and I requested Baldee to give me some, but he told me to go and take it." I immediately ordered Baldee to be called, and when I asked him if he had told the prisoner to take fire from inside his house, Baldee replied, "I do not know the man, and I was asleep at the time you allude to." I then told the prisoner that his story was a very lame one, and that he had better tell the truth, for he would be punished if his falsehood was found out; he replied, "Excuse my fault, but private Monah told me to go and put the kuttorah and lotah under the cot of Ramjee, and I did so." I asked when he had put them there? He replied, at six o'clock on the evening of yesterday. I asked him where private Ramjee was at the time? he answered, that he had gone to roll call. I then took the prisoner to Lieutenant Roper, and reported the circumstance. By Lieutenant Roper's order I proceeded with the prisoner, the orderly havildar and private Baldee, to the house belonging to Ramjee and Baldee. On arrival there, I desired private Baldee to look under the cot, and see if there was a brass kuttorah and lotah there; he searched, and found them, and brought the said kuttorah and lotah from under the cot. Agreeably to orders received from Lieutenant Roper, I had the prisoner confined in the Kotwall's Choultry-yard, and the kuttorah and lotah taken to the barrack guard.

Question by the Superintending Officer.—Did you see private Baldee take the kuttorah and lotah from underneath the cot referred to?

Answer.—I did.

[The Witness retires.

The evidence on the prosecution is here closed.

The prisoner having nothing to say in his defence, throws himself on the mercy of the Court.

The Court is shut.

The Court having most maturely weighed and considered the whole of the evidence brought forward in support of the prosecution, and the prisoner Deah, camp follower, not having urged any thing in his defence, is of opinion,—

Finding on the Charge.

That the prisoner is guilty of the charge.

Sentence.

The Court having found the prisoner guilty as above stated, doth sentence him, the said Deah, camp follower, to suffer imprisonment with hard labour in irons for

for the space of nine lunar months, at such place as the officer confirming these proceedings may be pleased to direct.

(signed) *Wm. H. Tanner,*
Lieut. 42 Reg. M. N. I., conducting the Proceedings.

The × mark of Subadar *Pollannah*, President.

(signed) *C. M'Leod*, Capt. 42 Reg. M. N. I.,
Interpreter to the Court.

The Court is adjourned until further orders.

I approve.

(signed) *T. G. Newell*, Lieut.-col.,
Kamptee, 3 September 1841. Commanding 42 Reg. M. N. I.

I am unable to confirm this sentence or trial, as the prisoner, Deah, does not appear amenable to military jurisdiction, and should accordingly have been handed over for investigation to the civil authorities.

(signed) *J. V. Trewman*,
Brigadier commanding N. S. F.

(No. 338.)

To the Assistant Adjutant-general, Nagpore Subsidiary Force, Kamptee.

Sir,

WITH reference to the Brigadier's disapproving of Deah, camp follower, having been brought to trial before a military tribunal, and not confirming the sentence passed upon him, I have the honour to state for his information, that the said individual was in the first instance forwarded to the civil authority here, and was returned for the reasons expressed in the annexed copy of a letter (No. 1.)

2. Since the receipt of the proceedings of the above court martial, with the Brigadier's remark, I forwarded to the civil power here another delinquent of the same description, and the annexed copies of a correspondence (Nos. 2, 3, 4 and 5), will prove the result; and as this places me in a very awkward dilemma, how to act on future occasions, I have to request you will be good enough to solicit the Brigadier's further instructions on the subject; at the same time I beg leave to state that all cantonments under the Bengal Presidency are under military jurisdiction, and their limits are regularly defined by large white stones or pillars, within which the civil authorities have no jurisdiction.

I have, &c.

(signed) *T. G. Newell*,
Hussingabad, 11 October 1841. Commanding 42d Reg. N. I.

(Copies.)

(No. 109.)

To the Officer commanding 42d Reg. M. N. I., Hussingabad. No. 1.

Sir,

I REGRET to be obliged to return the parties forwarded to me with your letter of this date; but I cannot receive charge of a prisoner who is charged with no specific offence. You are, of course, aware that the Criminal Court of the district is not one for the investigation of transactions occurring in cantonments, but for the trial of persons amenable to it, on specific charges preferred by the prosecutor.

 I beg

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I beg also to observe that your letter of this date does not name the prosecutor, and leaves me to infer that Deah (not being a witness) is the defendant.

I have, &c.

(signed) *W. Murray,*
Officiating Pol. Assist. Comm.

Hoshungabad, Office Pol. Assist. Comm.
25 August 1841.

(No. 17 of 1841.)

To the Principal Assistant Commissioner, Hussingabad.

Sir,

I HAVE the honour to forward a prisoner, Moomahah (who was on the 20th instant caught in the act of smuggling arrack into the cantonment), in order that he may be punished.

2. The prosecutor and witnesses also accompany, names as below.*

I have, &c.

(signed) *T. G. Newell,* Lieut.-colonel,
Commanding, Hossingabad.

Hoshungabad, 24 September 1841.

No. 3.

(No. 70.)

To Colonel *Newell,* Commanding 42d Regiment, M. N. I., Hossingabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter (No. 17) of the 24th September 1841.

2. On examination, it appears that the arrack was bought at a licensed shop, and there being no infraction of the Abkarre law in this case, there can be no punishment awarded by me.

3. Any infraction of cantonment rules will be of course punishable under your own authority.

I have, &c.

(signed) *W. Murray,*
Officiating Ass^{t} Comm^{r}.

Hossingabad, Office of P^{l} Ass^{t} Comm^{r},
24 September 1841.

(True copies.)

(signed) *T. G. Newell,* Lieut.-colonel,
Comm^{g} 42d Reg^{t} N. I., Hossingabad.

No. 4.

(No. 327.)

To the Principal Assistant Commissioner, Hossingabad.

Sir,

WITH reference to your letters of the 25th ultimo, No. 109, and 24th instant, No. 70, I have the honour to enclose the proceedings of a garrison court martial, held

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* Hera, arrack contractor, Prosecutor; Kooman, Ausseo Laul Khan, Witnesses.

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held on camp follower Deah, the person alluded to in your letter (No. 109), in order that you may see the remark by the Brigadier commanding the Nagpore Subsidiary Force, and to request that you will kindly inform me what practice obtains on the Bengal side with regard to the trial and punishment of camp followers, not in respect of government pay, as I have no Bengal Regulations to refer to, and from the Brigadier's remark, it appears he considers they are not under military control.

I have, &c.

(signed) *T. G. Newell*, Lieut.-colonel,
Comm^g 42d Reg^t M. N. I.

Hossingabad, 27 Sept. 1841.

(No. 135.)

No. 5.

To Lieut.-colonel *Newell*, commanding 42d Regiment M. N. I., Hossingabad.

Sir,

In reply to your letter of this morning's date, I beg to inform you, that any retainer of the army committing an inconsiderable breach of the peace, or a theft not exceeding 100 *Rs.*, within the limits of cantonments, is punishable by the sentence of a court martial.

2. I have the honour to transmit for your inspection the Reg. No. 20, of 1810, sections 13, 15 and 16 of which apply to this point.

3. I have the honour to return original proceedings of the court martial, and to be,

Sir, &c.

(signed) *W. Murray*,
Officiating Pol. Ass^t Comm^r.

Hossingabad, Office, Pol. Ass^t Comm^r,
27 September 1841.

(True copies.)

(signed) *T. G. Newell*, Lieut.-colonel,
Commanding 42d Regiment.

(No. 351.)

To the Assistant Adjutant-general, Nagpore Subsidiary Force, Kamptee.

Sir,

With reference to my letter of the 2d instant, No. 338, I have the honour to forward, for the information of the Brigadier commanding the force, copy of a letter from the Deputy Judge Advocate-general, Saugor division, in reply to one I addressed to him regarding the trial of persons residing within the military limits in the Bengal Presidency, but not in receipt of Government pay.

I have, &c.

(signed) *T. G. Newell*, Lieut.-colonel,
Commanding 42d Regiment, N. I.

Hussingabad, 9 October 1841.

(No. 35.)

To Lieut.-colonel *Newell*, commanding at Hossingabad.

Sir,

I have the honour to acknowledge the receipt of your letter, No. 19, dated 1st instant, and in reply to inform you, that, according to the Regulations of the

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Bengal Presidency, all persons resident within the limits of a military cantonment, whether in Government pay or not, are amenable to military law.

I have, &c.

(signed) *H. Cotton*, Captain,
Officiating D. J. A. Gen[l] Saugor Division.

Saugor, 5 October 1841.

(True copy.)

(signed) *T. G. Newell*, Lieut.-col.,
Commanding 42d Reg[t] N. I.
Hossingabad.

(True copy.)

(signed) *S. W. Steel*, Lieut.-col.,
Secretary to Government.

(No. 391.)

Legis. Cons. 1 Feb. 1842. No. 21.

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the Military Department, under date the 19th January 1842.

READ despatch, No. 4883, dated the 29th December last, from the Secretary to Government, Military Department, at Fort St. George, relative to the draft of an Act passed by the Supreme Government in the Legislative Department, on the 22d November last, concerning the reckoning of service towards pay or pension by native soldiers during confinement; likewise, a letter, No. 13, from the Adjutant-general of the Bengal Army on the same subject, with the opinion and suggestions of his Excellency the Commander-in-Chief in India.

Ordered, That the above-mentioned despatch and letter in original be transmitted to the Legislative Department for consideration.

(True extract.)

(signed) *J. Stuart*, Lieut.-colonel,
Secretary to the Government of India,
Military Department.

Legis. Cons. 1 Feb. 1842. No. 22.

(No. 4883.)

To the Secretary to the Government of India, Military Department.

Sir,

Para. 1.—I AM directed by the Right honourable the Governor in Council to request you will submit for the consideration of the Right honourable the Governor-general of India in Council the accompanying transcript of a letter from the Adjutant-general of the Army, 14 December 1841, No. 1111, containing observations by the Major-general commanding the forces at this Presidency, on the draft of an Act passed by the Governor-general in Council in the Legislative Department, on the 22d November 1841, declaring that "no native soldier shall be entitled to pay or reckon service towards pay or pension when in confinement under any sentence of any court," &c.

Calcutta Gazette, 27 Nov. 1841. p. 944.

2. I am further directed to add, that this Government concurs generally in the sentiments of the Major-general commanding the Forces, and especially in that expressed in the last para. of the Adjutant-general's letter.

I have, &c.

(signed) *S. W. Steel*, Lieut.-col.,
Secretary to Government.

Fort St. George, 29 December 1841.

(No. 1111.)

(No. 1111.)

No. 2.
On the New Articles of War for the East India Company's Native Troops.

To the Secretary to Government, Military Department.

Sir,

THE Commander of the Forces having observed in the Calcutta Gazette the draft of an Act of 1841, concerning the reckoning of service towards pay or pension, &c., and setting forth, that "no native soldiers shall be entitled to pay, or reckon service towards pay or pension, when in confinement under any sentence of any court," &c., he has entrusted me to bring the subject to the consideration of the Right honourable the Governor in Council, with his anxious recommendation that no law may be enacted to deprive the native soldier of his pay during any period of his service for any military offence.

2. It has been already so fully brought before his Lordship in Council that the sepoys of this army, liable to serve in other Presidencies, and to the consequences of long marches and fluctuations in the price of their peculiar food, have often to encounter pecuniary difficulty, that it may appear almost unnecessary to observe that a military offence, for which simple imprisonment would be an adequate punishment, will, under the operation of the proposed Act, entail upon our old soldiers with a large family inevitable ruin.

3. During the period of the sepoy's confinement, his family, deprived of the means of subsistence, must live upon credit, if it can be obtained, or ensure the misery of want if it cannot; under the most favourable circumstances, the soldier will return to his duty oppressed with a debt at Indian interest, and may thus suffer through life a penalty that the court which adjudged his imprisonment had it not in contemplation to inflict.

4. But if to strengthen discipline be the end intended, it is to be feared that the proposed law will defeat the purpose of its enactment; when the punishment of a military offender falls so severely upon aged parents, women and children, it is not unreasonable to anticipate sympathy that will render subordinate officers unwilling to bring offences to notice, and induce them to screen what would entail suffering upon a family.

5. While the proposed law would thus operate to the prejudice of discipline, it can hardly be doubted that the enduring severity of its consequences would tend to alienate the feelings of the men from the service.

6. The Commander of the Forces does not extend this reasoning to the clause that would deduct from a native soldier's service the period of time passed in confinement. He would, however, impress upon his Lordship in Council, that as a sepoy is never entitled to pension for mere length of service, unless found by a medical committee to be totally unfit for duty, the possible loss of a pension, during the remainder of a life of sickness and infirmity, by the deduction of a few months' or weeks' service for a fault, committed, perhaps, in the indiscretion of youth, may prove to be a punishment of the heaviest degree. The Major-general would lay more stress upon this, were it not that a pension may be attained by a man of 31 years of age after 15 years' service.

7. I am instructed to suggest for consideration, that the Act might be so modified that no native soldier who should become liable to discharge from the service by sentence of a military court should receive more than his subsistence from the date of his commitment to custody until that of his being struck off the strength of the army; it is also suggested that a clause be introduced empowering the Commander-in-chief to grant a restoration of lost service in cases of continued subsequent good conduct. G. O. C. C. 9 Feb. 1839.

8. In conclusion, the officer commanding the forces would beg to urge upon his Lordship in Council the policy of leaving as much as is now possible undisturbed the confidence of the Native Army in the inviolability of pay and pension.

I have, &c.

(signed) *R. Alexander*, Lieut.-colonel,
Adjutant-general of the Army.

Adjutant-general's Office, Fort St. George,
14 December 1841.

(A true copy.)

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 13.)

From the Adjutant-general of the Army to the Secretary to the Government of India.

Sir,

I HAVE had the honour to submit to his Excellency the Commander-in-chief your letter, No. 381, of the 15th ultimo, forwarding an extract from the proceedings of Council, in the Legislative Department, containing a draft of a proposed Act concerning the reckoning of service towards pay or pension by native soldiers during confinement.*

His Excellency has directed me, in reply, to beg you will offer to the Right honourable the Governor-general of India in Council his opinion that it will be just and proper to follow up the provision of the 33d clause of the Military Act,† which prescribes inquiry on the return of a prisoner of war, and that if his Lordship in Council does not consider it necessary or expedient to insert a provision to that effect in the Act now under consideration, the Commander-in-chief would suggest the propriety of the measure being ordered from head quarters under the sanction of the Government.

The enclosure received with your despatch is, as requested, herewith returned.

I have, &c.

(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

Head Quarters, Camp Kurnaul,
7 January 1842.

(No. 2.)

Legis. Cons.
1 February 1842.
No. 23.

Fort William Legislative Department, the 1st February 1842.

RESOLUTION.

READ Extracts Nos. 292 and 391, dated respectively the 12th and 19th January 1842, from the proceedings of the Governor-general of India in Council in the Military Department, with enclosures, the first containing a suggestion from the Government of Fort St. George, that criminal offences committed within military cantonments by the Madras native troops and followers serving in the Bengal territories, be declared cognizable by the Civil Courts of that Presidency, such offence not being punishable by the Military Courts, and the second forwarding letters from the Adjutant-general of the Bengal Army and the Government of Fort St. George, containing observations on the draft Act concerning the reckoning the service towards pay or pension by native soldiers during confinement.

Ordered, That the papers received with the foregoing extracts be returned, with a request to the military department, that the despatch from Lieutenant-colonel Secretary Steel of 21st December 1841 be forwarded to the Judge Advocate-general for his opinion on the suggestions therein contained, and that of the 29th idem to the Adjutant-general of the Bengal Army, for submission to the Commander-in-chief, with reference to his Excellency's opinion, contained in Major-general Lumley's letter, No. 13, of 7th January 1842, on the draft Act in question.

(No. 427.)

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* In reply, conveys the opinion of the Commander-in-chief on the proposed Act regarding the reckoning of service towards pay or pension of native soldiers during confinement.

† Extract, sec. 33, 3 & 4 Vict., cap. 37: "And upon rejoining the service from being a prisoner of war, due inquiry shall be made by a Court Martial; and if it shall be proved to the satisfaction of such Court that the said soldier was taken prisoner without wilful neglect of duty on his part, and that he hath not served with or under or in any manner aided the enemy, and that he hath returned as soon as possible to the service, he may, therefore, be recommended by such Court to receive," &c.

(No 427.)

EXTRACT from the Proceedings of the Honourable the President in Council in the Military Department, under date the 27th May 1842.

Legis. Cons. 10 June 1842. No. 26.

READ letters Nos. 344 and 365, dated respectively the 23d and 30th ultimo from the Deputy Adjutant-general of the Army, the first expressing the sentiments of the Commander-in-chief on the draft Act concerning the reckoning of service towards pay or pension by native soldiers during confinement, and the second, forwarding copy of a letter from the Judge-Advocate-general, containing the opinion of that officer on the subject of the trial by the Civil Courts of Madras native troops and followers serving in the Bengal territories, as suggested in despatch from the Secretary at Fort St. George.

ORDER.

Ordered, That the above-mentioned letters, together with the several papers connected therewith, be transmitted in original to the Legislative Department, with reference to extract from that department No. 2, under date 1st February last.

Ordered, likewise, That the original enclosures be returned when no longer required.

(True extract.)

(signed) *W. M. W. Sturt*, Major,
Officiating Secretary to the Government of India,
Military Department.

MEMORANDUM by Colonel *J. Stuart*, Secretary to the Government of India in the Military Department, dated the 4th May 1842.

Legis. Cons. 10 June 1842. No. 27.

Two points were referred for the opinion of the Commander-in-chief, by desire of the Legislative Department; viz., 1st, The proposal of the Madras Government that their native troops serving in the Bengal Presidency should be placed within the jurisdiction of the civil courts when guilty of offences not cognizable by courts martial.

To this reference no answer has been returned, the subject being under the consideration of the Judge Advocate-general.

2d. A remonstrance from the Madras Government against the draft Act, published on the 22d November 1841, declaring that "No native soldier shall be entitled to pay, or reckon service towards pay or pension, when in confinement under sentence of any court," &c.

To this it is objected that at Madras, when the families of Sepoys accompany them and depend on their pay for support, starvation of the family or the incurring of ruinous debt would be the consequence of stopping the pay of a confined Sepoy; that is, of a Sepoy confined for a military offence under a sentence which does not involve dismissal from the service.

The Commander-in-chief inclines to the view of the subject taken by the Madras Government.

4 May 1842. (signed) *J. Stuart.*

(No. 344.)

From the Deputy Adjutant-general of the Army to the Secretary to the Government of India, Military Department, with the Right Honourable Governor-general.

Sir,

I HAVE had the honour to submit to his Excellency the Commander-in-chief your despatch, No. 471, of the 16th of February last, forwarding an extract from the proceedings of Government in the Legislative Department, No. 2, of the 1st of the same month, returning the papers noted in the margin, received from the Madras Government; the first having reference to a suggestion that criminal offences committed within military cantonments by the Madras native troops and

No. 4802, 21 Dec. 1841.
No. 4883, 29 Dec. 1841.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

followers serving in the Bengal territories, be declared cognizable by the civil courts of that Presidency; and the second containing the observations of the Commander of the Forces at Madras on the draft Act, concerning the reckoning of service towards pay or pension by soldiers belonging to the native forces of the East India Company during confinement.

The first paper has, as required by Government, been transmitted for opinion to the Judge Advocate-general, and I shall hereafter have the honour to return it to you with the sentiments of that officer rendered upon it. In the mean time I have been required to beg you will communicate to the Right honourable the Governor-general that, in the judgment of his Excellency the Commander-in-chief, the letter from the Adjutant-general of the Madras Army, dated the 14th December 1841, in which it is shown that the Commander of the Forces at that Presidency deprecates the stoppage of pay from the native soldiers during imprisonment, is worthy of earnest attention.

The families of the native soldiers on the establishment of Fort St. George, his Excellency observes, travel with them, and would be exposed to the deepest distress if the pay should, under any circumstance, be withheld.

The principle of the proposed Act is, the Commander-in-chief considers, good, but his Excellency doubts if it could be carried into operation without exciting discontent and ill-will.

The native soldier could never be made to understand the necessity for the adoption or the true intent of such a measure, and all charges having influence on pay and pension are apt to shake the confidence of the troops.

It seems to the Commander-in-chief that the punishment attending imprisonment might be sensibly increased by the period passed in confinement, and this loss to the State being deducted from the period of service, when establishing a claim to pension on becoming worn-out; but the pay, the Commander-in-chief thinks, ought to be left unlimited.

Allusion is made, in your despatch above quoted, to the sentiments expressed in the Adjutant-general's letter,* No. 13, of the 7th of January last; his Excellency is desirous that the views therein developed should receive the attention of Government, and that nothing which has been now stated should be considered to militate against his opinion of the necessity which exists for proceedings being held before a competent tribunal, before a prisoner of war, on his release from confinement, shall be held entitled to his arrears of pay, and to reckon in his service the period passed by him in captivity.

The original documents received with your despatch No. 471 of the 16th of February, with the exception of the paper still in the hands of the Advocate-general, are, as requested, herewith returned.

I have, &c.,
(signed) *R. Craigie*, Major,
Dy. Adjt.-general of the Army.

Head Quarters, Simla,
23 April 1842.

(No. 365.)

From the Deputy Adjutant-general of the Army to the Secretary to the Government of India, Military Department, with the Right Honourable the Governor-general.

Sir,

In continuation returns, the despatch from the Government of Fort St. George, relative to the trial of Madras troops serving in the Bengal Presidency, with copy of the Judge Advocate-general's opinion on the case.

WITH reference to the letter which I had the honour to address to you on the 23d instant, No. 344, I am directed by his Excellency the Commander-in-chief to return the despatch from the Secretary to the Government of Fort St. George, dated the 21st December 1841, with enclosure, on the subject of the trial by the civil courts of Madras native troops and their followers serving in the Bengal Presidency, and, as instructed, beg to forward a copy of a letter from the Judge Advocate-general, dated the 22d instant, No. 105, containing the opinion of that officer on the question.

I have, &c.,
(signed) *P. Craigie*, Major,
Dy Adjt Genl of the Army.

Head Quarters, Simla,
30 April 1842.

(No. 105.)

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* A copy of which, for more early reference, is herewith enclosed.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 105.)
From the Judge Advocate-general to the Adjutant-general of the Army; dated 22 April 1842.

Sir,

I HAVE the honour to acknowledge the Deputy Adjutant-general's official letter of the 20th instant, the number and subject as below*.

2. By Regulation 20, of 1810, petty offences, in disobedience of station regulations, petty thefts, inconsiderable assaults and affrays, or acts tending to an immediate breach of the peace, if committed by camp followers, are triable by courts martial; but the designation of camp follower, and the consequent amenability to military jurisdiction, does not apply to parties who are merely resident in their cantonments, and unconnected with the army; people of this description are, by sections 17 and 18 of the Regulation, to be sent to the civil power for trial and punishment. It appears that the man, Deah, whose case has partly caused the present reference, was not amenable to military jurisdiction; and he, having in the first place properly been delivered over to the civil authorities, cognizance might have been taken of his offence, were the judicial powers conferred by Regulation 6, of 1831, a Regulation expressly enacted for the Saugor and Nerbudda territories. Captain Murray's refusal to receive the prisoner appears, by his letter of the 25th August 1841, to have principally arisen from no specific charge having been preferred against him, as well as from a doubt of his jurisdiction, into which doubt, with reference to the provisions of sections 17 and 18 of Regulation 20, of 1810, he may have been misled by the designation "camp followers;" now, by Lieutenant Newell's letter, in regard to this delinquent, the prisoner Momatah, subsequently sent to Captain Murray, seems to have been sent back on an opinion that he was punished under Lieutenant-colonel Newell's authority, which, if he was a retainer of the army, was correct; but it does not appear whether he was a retainer or not; and from an expression in the officer's letter, that this individual was of the same description as the man, Deah, I infer that he was not.

3. The reference from the Madras Government appears to be based on the opinion given by Captain Cotton, Officiating Deputy Judge Advocate-general, Saugor division, that all persons resident within the limits of a military cantonment, whether in Government pay or not, are amenable to military law; and perhaps, also, on the observation with which Lieutenant-colonel Newell's letter, No. 338, dated 2 October 1841, concludes, that all cantonments under the Bengal Presidency, and under military jurisdiction and their limits, are regularly defined by large white stones or pillars, within which the civil authorities have no jurisdiction. But those statements are equally erroneous, Captain Cotton and Lieutenant-colonel Newell having entirely overlooked the 17th and 18th clauses of Regulation 20, of 1810.

4. The fact is, that within the Company's territories in the Bengal Presidency all criminal offences committed by native soldiers, followers, &c., are cognizable by the civil power alone; and it is only in places where the ordinary civil tribunals do not exist that such offences are tried before courts martial. The regulations of the Bengal and Madras Presidencies appear, therefore, to be similar in this respect; the jurisdiction given to the courts martial by Regulation 20, of 1810, over petty thefts and small offences committed in cantonments by native soldiers, retainers of the army, menial servants, officers and persons registered as attached to bazars, is a very salutary provision, and has operated very conveniently for the good order of military stations; and I can perceive no reason for interfering with the usual course of that Regulation at any station of the Bengal Presidency temporarily occupied by troops from the other Presidencies.

5. The enclosures returned with the Deputy Adjutant-general's letter are herewith returned.

(True copy.)

(signed) *P. Craigie*, Major,
D^y^ Adjutant-general of the Army.

MINUTE

* No. 726; with reference from Madras on the subject of trying camp followers by courts martial for criminal offences committed in cantonments.

Legis. Cons.
10 June 1842.
No. 28.

MINUTE by the Honourable *A. Amos*, dated 5 June 1842.

1. Stoppage of Pay during Confinement.
2. Punishment of Madras Troops within Bengal.

THESE papers relate to two matters; the first regards a draft Act proposed by the Commander-in-chief, for stopping pay, pension, &c., during imprisonment. I collect that, in consequence of the communications from Madras, the Commander-in-chief now wants to withdraw that draft Act. To this there can be no objection; and it may be added, that it would be very inexpedient at present to be altering such matters. The Judge Advocate, indeed, seems to confine his remarks to the pay, and not to the pension; but as the Commander-in-chief seems to assent generally to the Madras letter, though he mentions pay only, and does not press the passing of the Act for the pension alone, and as the Madras authorities contend strongly for "the inviolability of pension," it does not seem desirable at this juncture to pass the Act for the pension only.

The second subject is a reference from Madras, to which, I think, we had better return explanatory letter of the Judge Advocate, who is of opinion that there has been a misconception of law within the Bengal territories, and that an explanation of how this matter really stands will remove the ground of complaint.

(signed) *A. Amos.*

5 June 1842.

(No. 10.)

FORT WILLIAM, Legislative Department, 10 June 1842.

Legis. Cons.
10 June 1842
No. 29.

READ extract, No. 427, dated the 27th ultimo, from the proceeding of the Supreme Government in the Military Department, communicating the statements of the Commander-in-chief on the proposed Act concerning country service for pay or pension by native soldiers during confinement, and of the Advocate-general on the subject of the trial by the civil courts of Madras native troops and followers serving in the Bengal Presidency.

RESOLUTION.

The Honourable the President in Council collects, that in consequence of the communications from the Government of Fort St. George, his Excellency the Commander-in-chief of India is now desirous to withdraw the proposed draft of Act concerning the reckoning of service towards pay or pension by soldiers belonging to the native forces of the East India Company during confinement, inasmuch as with regard, at least, to the stoppage of pay, he is satisfied of the objections urged by the Madras military authorities; those authorities also urge very strongly the inexpediency of interfering with persons. His Honour in Council is, under these circumstances, of opinion that to legislate on such subjects at present would not be expedient.

2. As regards the reference from the Government of Fort St. George on the subject of punishment of Madras troops, or the Bengal, the Honourable the President in Council is of opinion, that a copy of the Judge Advocate-general's explanatory letter, dated 22 April 1842, who is of opinion that there has been a misconception of the law within the Bengal territories, shall be communicated to the Government of Fort St. George.

Ordered, That a copy of the foregoing resolution be forwarded to the Military Department, in reply to the extract from that department, No. 427, dated the 27th ultimo, and that the original papers received with it be returned.

EXTRACT from a Despatch to the Honourable the Court of Directors in the Legislative Department, No. 25, of 1842, dated 16 September 1842.

Proposed Laws concerning counting service for pay or pension by Native Soldiers during confinement, and for the trial by Civil Courts of Madras Native Troops and Followers serving in the Bengal Presidency.
Legis. Cons. 22 Nov. 1841. 5 to 7.
— 1 Feb. 1842. 19 to 23.
— 10 June 1842. 26 to 29.

Para. 36.—IT was represented by the Bombay Government, on the occurrence of a case in which the opinion of the Judge Advocate-general was taken, that the pay of a sepoy confined for a military offence could not be retrenched, although there was authority for such retrenchment, when the sepoy might be imprisoned for a criminal offence or for debt. Such a state

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state of things entailed on Government the expense not only of the pay, but of the subsistence of the prisoner; and it was feared it would operate as an encouragement to crime, by placing delinquents in higher pecuniary receipts than their comrades who continued in the regular and honourable discharge of their professional duties.

Para. 37. As a temporary measure, pending the enactment of the new Articles of War, we read the draft of an Act on the 22d November last, entitled, "An Act concerning the reckoning of Service towards Pay or Pension by Soldiers belonging to the Native Force of the East India Company during Confinement."

Para. 38. While this draft was under consideration, a suggestion was received from the Government of Madras, to the effect that the native troops of that Presidency, serving in the Bengal Presidency, should be placed within the jurisdiction of the Civil Courts, when guilty of offences not cognizable by courts martial. On this suggestion, the opinion of the Judge Advocate-general at Bengal was invited; from whose report it appeared that there had been a misconception of the law on this point within the Bengal territories, and that a new law was not immediately required for the object noticed.

Para. 39. On the draft Act relating to the reckoning of service of pay or pension by native soldiers during confinement, we collected from the opinions forwarded to us from the Military Department, that in consequence of communications from the Government of Madras, his Excellency the Commander-in-chief of India, who had recommended the law in the first instance, was desirous of withdrawing the draft Act, inasmuch as, with regard at least to the stoppage of pay, he was satisfied of the objections urged by the Madras military authorities; these authorities having also urged very strongly the inexpediency of interfering with pensions, we thought it best for the present to refrain from any legislative proceedings on these subjects.

EXTRACT from a Despatch from the Honourable the Court of Directors in the Legislative Department. No. 11 of 1843, dated 24th May 1843.

(36 to 39.) Draft Act concerning the reckoning of service towards pay or pension by Soldiers belonging to the native forces of the East India Company during confinement, and jurisdiction over Madras native soldiers and followers serving in Bengal.

Para. 10. THE Madras authorities strongly deprecated any provision depriving native soldiers of the right to pay and pension, and on the grounds urged by them, and assented to by the Commander-in-chief in India, we approve of your having withdrawn the proposed Act on the subject. With regard to jurisdiction over Madras troops serving in the Bengal territories, some misapprehension appeared to have existed; so that no further provision relative thereto was considered necessary.

(No. 63.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the Military Department, under date the 1st September 1841.

Legis. Cons. 20 Sept. 1841. No. 12.

READ letter, No. 3086, dated the 10th ultimo, from the Secretary to Government, Military Department, at Fort St. George, transmitting extracts from the Minutes of Consultations, relative to civil inhabitants residing as shopkeepers within the limits of a military cantonment, without being registered as military bazarmen, and therefore not being liable to the penalties attached to a breach of the regulations, nor subject to the provisions of the General Order of 25th March 1840.

Ordered, That the above-mentioned letter and its accompaniments be transmitted to the Legislative Department for consideration; and such orders as may be necessary, and that it be returned to this department, when no longer required.

(True extract.)

(signed) *J. Stuart*, Lt-Col[l],
Secy to the Govt of India, Military Department.

(No. 3086.)

MILITARY DEPARTMENT.

Legis. Cons. 20 Sept. 1841. No. 13.

To the Secretary to the Government of India, Military Department.

Sir,

I AM directed by the Right honourable the Governor in Council to forward to you, for the purpose of being laid before the Right honourable the Governor-general of India in Council, the papers noted below* (to be returned), relative to civil inhabitants residing as shopkeepers within the limits of a military cantonment, without being registered as military bazarmen.

2. It will be observed that the Court of Sudder Adawlut are of opinion that the civil inhabitants residing as bazarmen within the limits of any military cantonment, not beyond the frontier, are not liable to the penalties attached to a breach of the regulations framed for the purpose of limiting the amount of credit to be granted to sepoys in military bazars, and that the provisions of the General Order issued by this Government, under date the 4th September 1840, No. 149, founded on General Orders by the Governor-general of India in Council, 25th March 1840, No. 69, may be infringed with impunity.

3. The Right honourable the Governor in Council views this as a serious evil, affecting the discipline and efficiency of the Native Army, and he requests to be informed in what manner it would be met under the Bengal Presidency.

I have, &c.

(signed) *S. W. Steel*, Lt-Colt, Secy to Govt.

Fort St. George, 10 August 1841.

(No. 837.)

MILITARY DEPARTMENT.

EXTRACT from the Minutes of Consultation, 2 March 1841.

READ the following letter :

[From the Adjutant-general of the Army; submits a letter from the Officer commanding centre Division, and recommends that the bazars at Arcot may be brought entirely under military jurisdiction, and that none but registered persons be allowed to keep dookans therein.]

Here enter No. 5631, 26th December 1840, No. 1056.

Ordered to be referred through the Judicial Department for the opinion of the Judges of the Court of Sudder Adawlut, upon the following points, relative to the shops in Arcot bazar, described in the Adjutant-general's letter above recorded :—

1. Whether the ground upon which the shops are built, being within military limits, can be claimed by the Government, upon payment of a fair valuation for the building, if no property in, or regular grant of, such ground can be produced.

2. Whether the ground upon which the shops stand, being within military limits, can be resumed by the Government, on payment of a fair valuation for the building, being the tenure upon which all officers and others hold land within military cantonments, and which resumption they are liable to when the ground is required by the Government.

(No. 1056.)

To the Secretary to Government, Military Department.

Sir,

BY order of the Commander-in-chief, I have the honour to forward, for submission to the Right honourable the Governor in Council, a letter from the officer commanding the centre division of the army, No. 260, dated 21st instant, with

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* Extract fromthe Minute of Cons., 2d March 1841, with papers recorded; ditto, 20th April 1841, No. 1633, with papers recorded; ditto, 22d June 1841, No. 2373, with papers recorded.
Extract from the Minutes of Cons., Jud. Dept., 20th July 1841, No. 547.

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with enclosures, as below*; and am instructed by his Excellency to solicit the particular attention of his Lordship and the Board to the daily and practical inconveniences that arise from the subjects of civil jurisdiction being allowed to inhabit military bazars, to the detriment of marching efficiency, and subversion of the rules established for limiting the credit of the soldiery.

In referring to the correspondence now submitted, and generally to the subject of military bazars, and the imperative necessity of effecting a limitation of credit, his Excellency directs me to convey his strong recommendation that Government will be pleased to adopt such measures as may be deemed advisable in order that the bazars at Arcot may be brought entirely under military jurisdiction, and that none but registered persons be allowed to keep dookans therein.

I have, &c.

(signed) *R. Alexander*, L^t-col^l,
Adj^t-gen^l of the Army.

Adjutant-general's Office, Fort St. George,
26 December 1840.

(No. 260.)

To the Adjutant-general of the Army, Fort St. George.

Sir,

In forwarding the accompanying letters from the officer commanding the 7th regiment of light cavalry and the officer commanding Arcot, I beg leave to add my opinion of the injury which the subject of complaint from the former officer is likely to occasion in cases of emergent service, if not on all ordinary marches.

I formerly experienced much inconvenience arising from the same cause, having been left on service where the population had fled from the villages, and supplies not procurable from them, without a single bazar follower, with one load of grain. While in the course of that service, I was joined by another corps, which, from the regimental bazar establishment having been more correctly attended to, had several head of cattle loaded with supplies by its own bazar-men, rendering it independent of the country for some days' march. I was afterwards unable to correct the evil, which had its source precisely, though to a greater degree, in that state of the bazars, which the officer commanding the 7th light cavalry is now anxious to correct; because, the evil having been allowed to grow up and exist unnoticed for years, the non-registered and self-constituted occupants were considered to have a right of property in the huts or houses, and which, as they accumulated profits upon their regimental traffic, they naturally laid out money upon; and the civil authority was able, under this view of the subject, to prevent every attempt of mine to remove them, for the purpose of forming a regimental bazar establishment.

And I am inclined to believe, that from neglect in cantonment staff officers, and a want of that attention on the part of commandants which the officers, whose letters I have the honour to forward, seem disposed to give to the subject, the ground originally marked off for regimental bazars is often lost sight of, and merged into the general private property (though without any real right) of the village in the general bazar. It is not sufficiently considered, at least attended to, in the same light as that appropriated to the sepoys' huts; and whenever it becomes vacant, even for a short period, it is instantly entered upon (possibly with some promise of advantage to the minor police authorities) by frequently the lowest and worst description of people, who, if left unnoticed, soon claim the rights of occupancy and property.

When the 37th regiment marched from this, all their bazar-huts either remained improperly or became immediately occupied; and I found that, with a small establishment of peons, and a very reduced garrison, I had no means of preventing it but by having the huts pulled down, (allowing those who had any sort

* Letter from Officer commanding Arcot to the Adjutant-general, dated 17th December 1840, No. 512; Letter from Officer commanding 7th Light Cavalry to the Adjutant-general, 15th December 1840, with one Enclosure.

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sort of claim to sell the materials), and ordering the ground to be left vacant for the next regiment.

And I venture to state that I think it would be beneficial if Government were to issue an order, deciding that no length of occupancy should be considered as giving any right or claim of property in any hut or building erected on ground appropriated at military stations for regimental bazars, or be deemed to interfere, in any degree, with the power of the regimental or station commandant to remove, at any time, any person from such location who is not a registered bazar-man in the regiment stationed in the lines to which such bazar ground is attached. In short, that all huts in the bazar lines should be considered precisely as those of the sepoys' lines, to be occupied only by those belonging to or connected with the regiment, and subject to the control of the commanding officer.

This would at once put a stop to the practice of village dealers establishing themselves in regimental bazar lines, and of regimental bazar-men remaining behind, and setting up as permanent residents and dealers, which must seriously impede, if not destroy, every effort to keep up a good regimental bazar which would follow a regiment under all circumstances (except beyond sea), and which, it is presumed, was contemplated in forming the regulations on that subject.

I have, &c.

(signed) *R. L. Evans*, Brigadier,
Commanding Centre Division.

Palaveram, 21 December 1840.

(No. 228.)

To the Adjutant-general of the Army.

Sir,

I HAVE the honour to forward a petition from the bazar-men of the regiment under my command. In reference to extracts from the Minutes of Consultation of the 18th August 1840, I have the honour to state, that the 13 bazar-men who have located themselves in the lines of the 7th light cavalry, under the denomination of civil bazars, have refused, one and all, to register themselves in the bazar of the regiment, and still continue to sell their produce, to the detriment of the regimental bazar-men, who have been in and followed the regiment on all occasions. The former being allowed to remain in the bazar I consider detrimental to the good of the regiment, for the following reasons:—

1. They consider themselves not under the control of the officer commanding, although being in his bazar, and refuse to obey all orders emanating from him or the cutwall of the regiment.

2. It is a place for dissolute people; and when the sepoys can get no further credit at the regimental shops, they go off to these, and thereby make null and void the G. O. of Government of the 4th September 1840, as the officer commanding the regiment has no control over this bazar.

3. It makes null and void the greater portion of Section LVII. of the Army Standing Orders, and has the effect of destroying the efficiency of the regimental bazar when about to march, as the bazar-men have complained they can sell nothing, and have asked permission to give up their shops, and be allowed to return to their country.

I beg you will have the goodness strongly to bring the case to the notice of his Excellency the Commander-in-chief, and procure me permission to turn these people out of my bazar, in order that I may keep up an effective establishment, ready and well able to supply the regiment when ordered to move.

I have, &c.

(signed) *A. W. Lawrence*, Major,
Comm^{g} 7th L^{t} Cavalry.

Arcot, 16 December 1840.

G. Sandys, L^{t}-col.,
Commanding Arcot.

(No. 976.)

Head Quarters, Centre Division, Palaveram, 19 December 1840.

(signed) *R. L. Evans*, Brig^{r},
Comm^{g} Centre Division.

(No. 512.)

No. 2.
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(No. 512.)

To the Adjutant-general of the Army, Fort St. George.

Sir,

In forwarding the accompanying letter, No. 228, from the officer commanding the 7th light cavalry, for the purpose of being submitted to his Excellency the Commander-in-chief, I beg leave to observe, that some steps of a decisive character seem advisable in the matter; the present state of things, if suitable to the interests of the civil inhabitants (a small section), is ruinous in the extreme to the whole regiment, in particular, and the military bazar people, whom the regiment has to depend upon when marching and in the field, (*vide* G. O. G. 30 October 1819); and I conceive they have extraordinary claims both upon the regiment and the State in consequence.

2. I have not forwarded the petition of the bazar-men, as I do not think fit to trouble the Commander-in-chief with extraneous matter, especially as it is not quite correct in its detail, from an examination of the document. I have deemed it advisable to transmit herewith a list, marked (B.); his Excellency will observe these civil bazar people are interlopers, and are merely branch shops, not permanent dwellings (no doubt located in the first instance without license or authority), and that they have occupations and homes elsewhere, which the military bazar people have not; under which circumstances, I propose that they may be required to enlist as military followers, or sell their shops at a proper valuation, and quit; there can be no hardship in this, for it is practised in Great Britain every day.

I have, &c.

(signed) *G. Sandys*,
Lieut^{t}-col^{l}, Comm^{g} Arcot.

Arcot, 17 December 1840.

(No. 977.)

Head Quarters, Centre Division, Palaveram, 19 December 1840.

(signed) *R. L. Evans*, Brigadier,
Comm^{g} Centre Division.

Memorandum of Thirteen Bazar-men in the Regimental Lines of the 7th Regiment Light Cavalry.

N°	Names.	Abode.	Occupation.	Remarks.
1.	Goolam Moodeen	Keelaveshar -	retail bazar -	- - Three bazars in the military bazar line, a house at Keelawashar, and cultivation at Karrah.
2.	Borraundeen and Eibraim Saib.	ditto - -	ditto - -	- - Three ditto, in the ditto, a house and land, property at Kalawashar.
3.	Gouze Saib -	ditto - -	ditto - -	A house and dealings at Kalawashar.
4.	Khoodbuddeen -	ditto - -	ditto - -	- - A house, garden and cultivation at Kalawashar.
5.	Hussenally -	ditto - -	ditto - -	A house and dealings at Kalawashar.
6.	Fukeer Homed -	ditto - -	ditto - -	- - A house, garden and cultivation at Kalawashar.
7.	Mahomed Ally -	Vellore - -	ditto - -	A house at Vellore.
8.	Punchah - -	ditto - -	ditto - -	A house at Vellore.
9.	Tippoo Saib -	Rangputt -	ditto - -	- - A house at Rangputt, and one in the Military Bazar.
10.	Peer Saib - -	Hussein Poorah west to Old Arcot.	ditto - -	- - A house at Hussen Poorah, and a bazar at the Military Bazar.
11.	Yagambaram -	Rangputt -	goldsmith -	A house at Dhoheepett.
12.	Mahomed Saib -	Karrah - -	retail bazar -	- - A house at Karrah; his father is a pensioned trooper.
13.	- - -	- - -	vacant - -	The owner deserted.

Arcot,
17 December 1840.

(signed) *G. Sandys*, Lieut-col^{l},
Commanding Arcot.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 284.)

JUDICIAL DEPARTMENT.

EXTRACT from the Minutes of Consultation, 8th April 1841.

Read the following:

No. 34.—Extract from the Proceedings of the Sudder Adawlut, under date the 5th April 1841.

READ Order of Government, dated the 4th ultimo, No. 193, communicating an extract from the Minutes of Consultation in the Military Department, under date the 2d March 1841, referring for the opinion of the Court of Sudder Udalut two questions relative to the shops in the Arcot Bazar.

The first question is, "Whether the ground upon which the shops are built, being within military limits, can be claimed by the Government upon payment of a fair valuation for the building, if no property in or regular grant of such ground can be produced?"

Secondly. "Whether the ground upon which the shops stand, being within military limits, can be resumed by the Government on payment of a fair valuation for the building, being the tenure upon which all officers and others hold land within military cantonments, and which resumption they are liable to when the ground is required by the Government?"

2. The only answers which the Court of Sudder Udalut can safely give to these questions is the general one; the parties being in actual possession of lands or shops, have an apparent right of possession, of which they cannot be divested but by due course of law.

3. The Court are not aware that the ground being within military limits affects the question.

Ordered, That extract from these proceedings be forwarded to the Chief Secretary to Government for the purpose of being laid before the Right honourable the Governor in Council, and that the original papers which accompanied the order of Government of the 4th ultimo be returned.

(True extract.)

(signed) *W. Douglas*, Registrar.

Ordered, That the following extract from the proceedings of the Sudder Udalut be communicated to the Military Department, with reference to the extract from the Minutes of Consultation, dated 2d March 1841, No. 837.

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

(No. 1633.)

Order thereon.

Ordered, That the foregoing extract, together with an extract from the Minutes of Consultation in this department, dated the 2d March 1841, No. 837, be communicated to the Major-general commanding the Forces, in reference to a letter from the Adjutant-general of the Army, 26th December 1840, No. 1056.

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

Fort St. George,
20 April 1841.

To the Adjutant-general of the Army, with Extract, No. 837,
(to be continued.)

(No. 2373)

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 2373.)

MILITARY DEPARTMENT.

EXTRACT from the Minutes of Consultation, 22d June 1841.

READ the following Letter:

[From the Adjutant-general of the Army, with reference to Mily Cons. 20th inst.; submits the Officer commanding the Army in Chief's sentiments on certain points relative to shops within military limits in the Arcot Bazar.] } Here enter No. 1986, 26th April 1841, No. 396.

Ordered, That the letter above recorded be referred for the opinion of the Court of Sudder Adawlut, whether the civil inhabitants residing as bazar-men within the military limits of the cantonment of Arcot are liable to the provisions of para. 7, of G. O. G., dated 4th September 1840, No. 149, they having the option of removing from the military bazar, if indisposed to abide by the regulations which govern the regular bazar-men.

(No. 396.)

To the Secretary to Government, Military Department.

Sir,

BY order of the Officer commanding the Army in Chief, I have the honour to acknowledge extract from Minutes of Consultation of the 20th April 1841, No. 1633, and am instructed to submit to the consideration of the Right honourable the Governor in Council that the Major-general does not consider it necessary that the parties at Arcot alluded to by letter from this office, 26th December 1840, No. 1056, should be obliged to part with their houses, the object being not to remove them, but to render them amenable to the police jurisdiction of the cantonment in which they live.

2. It will be obvious to his Lordship in Council that in the present state of the bazar at Arcot the great benefit that might be derived from G. O. G. 4th September 1840, No. 149, is neutralized, and that the inhabitants, who can infringe its enactment with impunity, must either ruin the business of the military bazar-men, or tempt them to trade upon an equality, at the risk of punishment for breach of local regulation.

3. It does not appear to the Officer commanding the Army in Chief that placing all the inhabitants upon the same footing can depreciate the fair and legal value of their property, although the exemption from local regulation must necessarily give a factitious one to those houses in which trade can be carried on in a manner as injurious to the service as it is opposed to the G. O. G. above quoted. Should his Lordship be pleased to decree that all shopkeepers within military bazar limits are subject to bazar regulations, the parties concerned could either carry on trade with fair competition, or realize the value of their property and take up their residence elsewhere.

I have, &c.

(signed) *R. Alexander*, Lieut.-colonel,
Adjutant-general of the Army.

Adjutant-general's Office, Fort St. George,
26 April 1841.

(No. 547.)

JUDICIAL DEPARTMENT.

EXTRACT from the Minutes of Consultation, 20 July 1841.

Read the following Letter, Sudder Udalut:

No. 84.—To the Chief Secretary to Government.

Sir,

I AM directed by the Court of Sudder Udalut to acknowledge the receipt of the order of Government, dated the 23d ultimo, No. 467, communicating extract from the Minutes of Consultation in the Military Department, requesting the

No. 2.
On the New Articles of War for the East India Company's Native Troops.

opinion of the Sudder Udawlut whether the civil inhabitants residing as bazar-men within the military limits of the cantonment of Arcot are liable to the provisions of para. 7 of General Order by Government, 4 September 1840, No. 149.

2. The Court are of opinion that civil inhabitants residing as bazar-men within the limits of any military cantonment, not beyond the frontier, are not liable to the penalties in question unless they be "registered bazar-men," in which case they are expressly made liable by Clause 2d, Section XIII., Regulation VII. of 1832. The option of removing from the military bazar makes no difference; they have this, of course, in common with every subject of this Government who has not voluntarily bound himself by some restriction, as, for instance, registered bazar-men have.

I have, &c.
(signed) *W. Douglas*, Registrar.

Sudder Udalut, Registrar's Office,
8 July 1841.

Ordered, That the foregoing letter be communicated to the Military Department in reference to an extract from the Minutes of Consultation in that department, dated 22d June 1841, No. 2373.

(signed) *Hy Chamier*, Chief Secretary.

Legis. Cons. 20 Sept. 1841. No. 14.

LAYING DOWN CREDIT.

THE General Order, 25th March 1840, goes only to direct the authorities "to use their influence to prevent credit," thereby intimating that if credit beyond certain limits be given, all the powers which Government might possess would be exercised to discourage the practice. It was, I believe, understood that the only thing which could be done was to turn the person offending out of the cantonment, and to prevent his residing or having any shop therein, provided Government had a legal power of doing so. It was intimated that the soil and all the houses in cantonments belonged to Government; in which case the course would be plain, subject only to such notice as tenant at will, or otherwise, of ground or premises might be entitled to. I do not find any obligation for bazar-men to register themselves, nor do I see how, being registered, they could on that account be subject to penalties for not obeying the Government Order in question, though the papers intimate some opinion of the kind.

The question "how the difficulty would be met in Bengal," is what we have to answer. I think the answer should be, we should ascertain, in each case, whether we could punish the offender by legally preventing him from entering the cantonment, or having any house, shop, or enjoying any privilege therein.

15th September 1841. (signed) *A. Amos.*

(No. 29.)

Legis. Cons. 20 Sept. 1841. No. 15.

EXTRACT PROCEEDINGS.

READ Extract, No. 63, dated the 1st instant, from the proceedings of the Governor-general of India in Council, in the Military Department, with enclosures, from the Government of Fort St. George, relative to civil inhabitants residing as shopkeepers within the limits of a military cantonment, without being registered as military bazar-men, and therefore not liable to the penalties attached to a breach of the regulations, nor subject to the provisions of the General Orders of 25th March 1840.

Ordered, That the enclosures which accompanied the foregoing extract be returned to the Military Department, with a suggestion, that his Excellency the Commander-in-chief may be requested to favour the Supreme Government with his opinion as to how the difficulty would be met under the Bengal Presidency.

(signed) *F. J. Halliday.*

(No. 433.)

(No. 433.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the Military Department, under date the 24th November 1841.

Legis. Cons. 6 Dec. 1841. No. 13.

READ letter, No. 1253, dated the 7th instant, from the acting Adjutant-general of the Army, returning certain documents from the Government of Fort St. George relative to civil inhabitants residing as shopkeepers within the limits of a military cantonment, without being registered as military bazar-men, with the Commander-in-chief's observations thereon, and an expression of his Excellency's opinion, that every resident within a military bazar should be compelled to register or cease to trade.

Ordered, That the above-mentioned letter be transmitted to the Legislative Department, together with the returned documents therewith received, for consideration, and such orders as may be necessary with reference to extract from that department, No. 29, under date the 20th September 1841.

Ordered likewise, That the original enclosures be returned to this department, when no longer required.

(True extract.)

(signed) *J. Stuart*, Lt-col^{l},
Secy to Govt of India, Mily Dept.

(No. 1253.)

From the Acting Adjutant-general of the Army to the Secretary to Government of India, Military Department.

Legis. Cons. 6 Dec. 1841. No. 14.

Sir,

I HAVE had the honour to lay your letter, No. 744, of the 29th September, and its various enclosures, before the Commander-in-chief, who directs me in reply to state, that he is compelled, with great regret, to concur with the Madras authorities, that under the 7th, 8th and 12th paras. of Reg. XX. of 1810, it is not imperatively necessary that a bunnea, or any civil inhabitants residing within the limits of a military cantonment, should be registered, whether he choose it or not, as a military bazar-man, and therefore, unless registered, would not be liable to military regulations, nor subject to the provisions of General Orders, 25th March 1840.

His Excellency is quite aware that the complaint forwarded from Arcot is really well founded, and requires remedy; for sepoys are drawn away from the regimental bunneas by those irresponsible dealers who have a remedy at law for heavy claims, whilst the former incur displeasure, at least, if not a refusal to march with the regiment, if they give credit for more than a month's food; moreover, a man unwilling to march gets himself imprisoned for his debt to one of these settled dealers.

It is particularly to be borne in mind, that the regimental bazar-men, on whom the corps depend on service, are impoverished, if not driven away, by a vain and ruinous competition.

The Commander-in-chief is of opinion that every person resident in a military bazar should be compelled to register himself, and be thus rendered amenable to military rules and orders; if he declined, he should cease to trade.

The enclosures received with your letter are, as requested, herewith returned.

I have, &c.

(signed) *P. Craigie*, Major,
Acts Adjt-genl of the Army.

Head Quarters, Camp Futtehpore,
7 November 1841.

ABSTRACT.

REPLY.—Returns the documents on the subject of certain native shopkeepers, at Arcot, who have located themselves in the lines of the 7th Madras Light Cavalry, but who refuse to register themselves as military bazar-men; with the Commander-in-chief's observations thereon, and an expression of his Excellency's opinion, that every resident within a military bazar should be compelled to register, or cease to trade.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 837.)

MILITARY DEPARTMENT.

EXTRACT from the Minutes of Consultation, 2d March 1841.

READ the following letter:—

[From the Adjutant-general of the Army; submits a Letter from the Officer commanding centre division, and recommends that the Bazar at Arcot may be brought entirely under military jurisdiction, and that none but registered persons be allowed to keep Dookans therein.] Here enter No. *5631, 26 Dec. 1840,* No. 1056.

Ordered to be referred, through the Judicial Department, for the opinion of the Judges of the Court of Suddur Udalut, upon the following points relative to the shops in Arcot bazar, described in the Adjutant-general's letter above recorded:—

1. Whether the ground upon which the shops are built, being within military limits, can be claimed by the Government, upon payment of a fair valuation for the building, if no property in or regular grant of such ground can be produced?

2. Whether the ground upon which the shops stand, being within military limits, can be resumed by the Government, on payment of a fair valuation for the building, being the tenure upon which all officers and others hold land within military cantonments, and which resumption they are liable to, when the ground is required by the Government?

(No. 1056.)

To the Secretary to Government, Military Department.

Sir,

BY order of the Commander-in-chief, I have the honour to forward, for submission to the Right honourable the Governor in Council, a letter from the officer commanding the centre division of the army, No. 260, dated 21st instant, with enclosures as below,* and am instructed by his Excellency to solicit the particular attention of his Lordship and the Board to the daily and practical inconveniences that arise from the subjects of civil jurisdiction being allowed to inhabit military bazars, to the detriment of marching efficiency, and subversion of the rules established for limiting the credit of the soldiery.

In referring to the correspondence now submitted, and generally to the subject of military bazars, and the imperative necessity of effecting a limitation of credit, his Excellency directs me to convey his strong recommendation that Government will be pleased to adopt such measures as may be deemed advisable, in order that the bazars at Arcot may be brought entirely under military jurisdiction, and that none but registered persons be allowed to keep dookans therein.

I have, &c.,

(signed) *R. Alexander*, Lieut.-col.,
Adj^{t}-gen^{l} of the Army.

Adjutant-general's Office, Fort St. George,
26 December 1840.

(No. 260.)

To the Adjutant-general of the Army, Fort St. George.

Sir,

IN forwarding the accompanying letters from the officers commanding the 7th regiment of light cavalry, and the officer commanding Arcot, I beg leave to add my opinion of the injury which the subject of complaint from the former officer is likely to occasion in cases of emergent service, if not on all ordinary marches.

I formerly

* Letter from Officer commanding Arcot to the Adjutant-general, dated 17th December 1840, No. 512; Letter from Officer commanding 7th Light Cavalry to the Adjutant-general, dated 16th December 1840, with one Enclosure.

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I formerly experienced much inconvenience arising from the same cause, having been left, on service, when the population had fled from the villages, and supplies not procurable from them, without a single bazar follower with one load of grain; while in the course of that service I was joined by another corps, which, from the regimental bazar establishment having been more correctly attended to, had several head of cattle loaded with supplies by its own bazar-men, rendering it independent of the country for some days' march. I was afterwards unable to correct the evil, which had its source precisely, though to a greater degree, in that state of the bazars which the officer commanding the 7th Light Cavalry is now anxious to correct, because the evil, having been allowed to grow up and exist unnoticed for years, the non-registered and self-constituted occupants were considered to have a right of property in the huts or houses, and which, as they accumuluted profits upon their regimental traffic, they naturally laid out money upon, and the civil authority was able, under this view of the subject, to prevent every attempt of mine to remove them for the purpose of forming a regimental bazar establishment.

And I am inclined to believe, that from neglect in cantonment staff-officers, and a want of that attention on the part of commandants which the officers, whose letters I have the honour to forward, seem disposed to give to the subject, the ground originally marked off for regimental bazars is often lost sight of, and merged into the general private property (though without any real right) of the village or the general bazar. It is not sufficiently considered, at least attended to, in the same light as that appropriated to the sepoys' huts, and whenever it becomes vacant, even for a short period, it is instantly entered upon (possibly with some promise of advantage to the minor police authorities) by frequently the lowest and worst description of people, who, if left unnoticed, soon claim the rights of occupancy and property.

When the 37th regiment marched from this, all their bazar huts either remained improperly or became immediately occupied, and I found that, with a small establishment of peons and a very reduced garrison, I had no means of preventing it but by having the huts pulled down (allowing those who had any sort of claim to sell the materials), and ordering the ground to be left vacant for the next regiment.

And I venture to state, that I think it would be beneficial if Government were to issue an order deciding that no length of occupancy should be considered as giving any right or claim of property in any hut or building erected on ground appropriated at military stations for regimental bazars, or be deemed to interfere in any degree with the power of the regimental or station commandant to remove at any time any person from such location who is not a registered bazar-man in the regiment stationed in the lines to which such bazar-ground is attached; in short, that all huts in the bazar lines should be considered precisely as those of the sepoys' lines, to be occupied only by those belonging to or connected with the regiment, and subject to the control of the commanding officer.

This would at once put a stop to the practice of village dealers establishing themselves in regimental bazar lines, and of regimental bazar-men remaining behind and setting up as permanent residents and dealers, which must seriously impede, if not destroy, every effort to keep up a good regimental bazar which would follow a regiment under all circumstances (except beyond sea), and which, it is presumed, was contemplated in forming the regulations on that subject.

I have, &c.
(signed) *R. Lacy Evans*,
Brig^{r} Comm^{g} C^{e} D^{n}.

Palaveram, 21 December 1840.

(No. 512.)

To the Adjutant-general of the Army, Fort St. George.

Sir,

In forwarding the accompanying letter, No. 228, from the officer commanding the 7th Light Cavalry, for the purpose of being submitted to his Excellency the Commander-in-chief, I beg leave to observe, that some steps of a decisive character seem advisable in the matter. The present state of things, if suitable to the interests of the civil inhabitants (a small section), is ruinous in the extreme to the whole regiment in particular, and the military bazar people, whom the regiment has to depend upon when marching and in the field, (*vide* G. O. G., 30th

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October 1819); and I conceive they have extraordinary claims both upon the regiment and state in consequence.

2. I have not forwarded the petition of the bazar-men, as I do not think fit to trouble the Commander-in-chief with extraneous matter, especially where it is not quite correct in its detail; from an examination of the document I have deemed it advisable to transmit herewith a list marked (B.), his Excellency will observe these civil bazar people are interlopers, and are merely branch shops, not permanent dwellings (no doubt located, in the first instance, without license or authority), and that they have occupations and homes elsewhere, which the military bazar people have not; under which circumstances I propose that they may be required to enlist as military followers, or sell their shops at a proper valuation, and quit; there can be no hardship in this, for it is practised in Great Britain every day.

I have, &c.
(signed) *G. Sandys*, Lieut.-col.,
Commanding Arcot.

Arcot,
17 December 1840.

(No. 977.)

Head Quarters, Centre Division, Palaveram,
19 December 1840.
(signed) *R. Lacy Evans*, Brigr,
Commanding Centre Division.

(No. 228.)

To the Adjutant-general of the Army.

Sir,

I HAVE the honour to forward a petition from the bazar-men of the regiment under my command. In reference to extracts from the Minutes of Consultation of 18th August 1840, I have the honour to state that the 13 bazar-men who have located themselves in the lines of the 7th Light Cavalry, under the denomination of civil bazars, have refused one and all to register themselves in the bazar of the regiment, and still continue to sell their produce, to the detriment of the regimental bazar-men, who have been in and followed the regiment on all occasions; the former men being allowed to remain in the bazar, I consider detrimental to the good of the regiment, for the following reasons:—

1st.—They consider themselves not under the control of the officer commanding, although living in his bazar, and refuse to obey all orders emanating from him or the cutwall of the regiment.

2d.—It is a place for dissolute people, and when the Sepoys can get no further credit at the regimental shops, they go off to these, and thereby make null and void the G. O. of Government of the 4th September 1840, as the officer commanding the regiment has no control over this bazar.

3d.—It makes null and void the greater portion of Section LVII. of the Army Standing Orders, and has the effect of destroying the efficiency of the regimental bazar when about to march, as the bazar-men have complained they can sell nothing, and have asked permission to give up their shops and be allowed to return to their country.

I beg you will have the goodness strongly to bring the case to the notice of his Excellency the Commander-in-chief, and procure me permission to turn these people out of my bazar, in order that I may keep an effective establishment ready and well able to supply the regiment when ordered to move.

I have, &c.
(signed) *A. W. Lawrence*, Major,
Commanding 7th Light Cavalry.

Arcot,
16 December 1840.

(signed) *G. Sandys*, Lieut-col.

(No. 976.)
Head Quarters, Centre Division, Palaveram,
19 December 1840.
(signed) *R. Lacy Evans*, Brigadier,
Commanding Centre Division.

MEMORANDUM

No. 2.
On the New Articles of War for the East India Company's Native Troops.

MEMORANDUM of Thirteen Bazar-men in the Regimental Lines of the 7th Regiment Light Cavalry.

N°	NAMES.	ABODE.	OCCUPATION.	REMARKS.
1.	Goolam Moodeen	Keelaveshar -	retail bazar -	- - Three bazars in the military bazar line, a house at Keelavashar, and cultivation at Karrah.
2.	Boorundeen and Ebraim Saib.	ditto - -	ditto - -	- - Three ditto in the ditto, a house and land, property at Keelaveshar.
3.	Gouz Saib -	ditto - -	ditto - -	A house and dealings at Keelaveshar.
4.	Khoodbuddeen -	ditto - -	ditto - -	- - A house, garden and cultivation at Keelaveshar.
5.	Hussen Ally -	ditto - -	ditto - -	A house and dealings at Keelaveshar.
6.	Fukeer Homed -	ditto - -	ditto - -	- - A house and garden and cultivation at Keelaveshar.
7.	Mahomed Ally -	Vellore - -	ditto - -	A house at Vellore.
8.	Panchah - -	ditto - -	ditto - -	A house at Vellore.
9	Tippoo Saib -	Rangputt -	ditto - -	A house at Rangputt.
10.	Peer Saib - -	Hussenpoorah west to Old Arcot.	ditto - -	- - A house at Hussenpoorah, and a bazar at the Military Bazar.
11.	Yavumbaram -	Ranypett -	goldsmith -	A house at Dholupett.
12.	Mohamed Saib -	Karrah - -	retail bazar -	- - A house at Karrah; his father is a pensioned trooper.
13.	- - - -	- - -	vacant - -	The owner deserted.

Arcot,
7 December 1840.

(signed) *N. S. D.*
Commanding Arcot.

(No. 284.)

JUDICIAL DEPARTMENT.

EXTRACT from the Minutes of Consultation, 8 April 1841.

Read the following:—

No. 34.—EXTRACT from the Proceedings of the Sudder Adawlut, under date the 5th April 1841.

READ Order of Government, dated the 4th ultimo, No. 193, communicating an Extract from the Minutes of Consultation in the Military Department, under date the 2d March 1841, referring for the opinion of the Court of Sudder Udalut two questions relative to the shops in the Arcot Bazar.

The first question is, "Whether the ground upon which the shops are built being within military limits, can be claimed by the Government upon payment of a fair valuation for the building, if no property in, or regular grant of, such ground can be produced?"

Secondly. "Whether the ground upon which the shops stand, being within military limits, can be resumed by the Government, on payment of a fair valuation for the building, being the tenure upon which all officers and others hold land within military cantonments, and which resumption they are liable to when the ground is required by the government?"

2. The only answers which the Court of Sudder Udalut can safely give to these questions is the general one, that parties being in actual possession of lands or shops have an apparent right of possession, of which they cannot be divested but by due course of law.

3. The Court are not aware that the ground being within military limits affects the question.

Ordered, That extract from the proceedings be forwarded to the Chief Secretary to Government, for the purpose of being laid before the Right honourable the

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Governor in Council, and that the original papers which accompanied the order of Government of the 4th ultimo be returned.

(True extract.)

(signed) *W. Douglas*, Registrar.

Ordered, That the foregoing extract from the proceedings of the Sudder Adawlut be communicated to the Military Department, with reference to the extract from the Minutes of Consultation, dated 2d of March 1841, No. 837.

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

(No. 1633.)

Ordered, That the foregoing extract, together with an extract from the Minutes of Consultation in this department, dated 2d March 1841, No. 837, be communicated to the Major-general commanding the Forces, in reference to a letter from the Adjutant-general of the Army, 26 December 1840, No. 1056.

(signed) *S. W. Steel*, Lieut.-Col.,
Fort St. George, 20 April 1841. Secretary to Government.

(No. 2373.)

MILITARY DEPARTMENT.

EXTRACT from the Minutes of Consultation, 22 June 1841.

Read the following Letter:

[From the Adjutant-general of the Army, with reference to Mil. Cons. 20th inst.; submits the Officer commanding the Army in Chief's sentiments on certain points relative to shops within military limits in the Arcot Bazar.] Here enter No. 1986, 26th April 1841, No. 396.

Ordered, That the letter above recorded be referred for the opinion of the Court of Sudder Udalut, whether the civil inhabitants residing as bazar-men within the military limits of the cantonment of Arcot are liable to the provisions of Para. 7 of G. O. G., dated 4 September 1840, No. 149, they having the option of removing from the military bazar, if indisposed to abide by the regulations which govern the regular bazar-men.

(No. 396.)

To the Secretary to Government, Military Department.

Sir,

BY order of the Officer commanding the Army in Chief, I have the honour to acknowledge Extract from Minutes of Cons. of the 20th April 1841, No. 1633, and am instructed to submit to the consideration of the Right honourable the Governor in Council, that the Major-general does not consider it necessary that the parties at Arcot, alluded to by letter from this office, 26 December 1840, No. 1056, should be obliged to part with their houses, the object being not to remove them, but to render them amenable to the police jurisdiction of the cantonment in which they live.

2. It will be obvious to his Lordship in Council, that in the present state of the bazar at Arcot, the great benefit that might be derived from G. O. G., 4 September 1840, No. 149, is neutralized, and that the inhabitants, who can infringe its enactment with impunity, must either ruin the business of the military bazar-men, or tempt them to trade upon an equality, at the risk of punishment for breach of local regulation.

3. It does not appear to the Officer commanding the Army in Chief that placing all the inhabitants upon the same footing can depreciate the fair and legal value of their property, although the exemption from local regulation must necessarily give a factitious one to those houses in which trade can be carried on in a manner

as

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as injurious to the service as it is opposed to the G. O. G. above quoted. Should his Lordship be pleased to decree that all shopkeepers within military bazar limits are subject to bazar regulations, the parties concerned could either carry on trade with fair competition, or realize the value of their property, and take up their residence elsewhere.

I have, &c.
(signed) *R. Alexander*,
Lieut.-col^{l}, Adj^{t}-gen^{l} of the Army.

Adjutant-gen$^{l's}$ Office, Fort St. George,
26 April 1841.

(No. 547.)

JUDICIAL DEPARTMENT.

EXTRACT from the Minutes of Consultations, 20th July 1841.

Read the following Letter:—Sudder Adawlut.

(No. 84.)—To the Chief Secretary to Government.

Sir,

I AM directed by the Court of Sudder Adawlut to acknowledge the receipt of your order of Government, dated the 23d ultimo, No. 467, communicating extract from the Minutes of Consultation in the Military Department, requesting the opinion of the Sudder Adawlut, whether the civil inhabitants residing as bazar-men within the military limits of the cantonment of Arcot are liable to the provisions of Para. 7 of General Order by Government, 4th September 1840, No. 149.

2. The Court are of opinion that civil inhabitants residing as bazar-men within the limits of any military cantonment not beyond the frontier, are not liable to the penalties in question, unless they be "registered bazar-men," in which case they are expressly made liable by Clause 2, Section XIII., Regulation VII., of 1832. The option of removing from the military bazar makes no difference; they have this, of course, in common with every subject of this Government, who has not voluntarily bound himself by some restriction, as, for instance, registered bazar-men have.

I have, &c.
(signed) *W. Douglas*,
Registrar.

Sud^{r} Adawlut, Register's Office,
8 July 1841.

Ordered, That the foregoing letter be communicated to the Military Department in reference to an extract from the Minutes of Consultation in that department, dated 22d June 1841, No. 2373.

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

Fort William, Legislative Department, 6th December 1841.

The following Draft of a proposed Act was read in Council for the first time on the 6th December 1841.

Legis. Cons. 6 Dec. 1841. No. 15.

ACT, No. —— of 1841.

AN ACT requiring Traders within Military Cantonments to be registered.

IT is hereby enacted, That no person residing within the limits of any military cantonment shall be allowed to recover in any Military Court of Requests the amount of any debt contracted within such cantonment, by any person amenable to Articles of War, unless the person seeking to recover such debt shall, at the time of contracting the same, have been duly registered as a military bazar-man.

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

Ordered, That the said draft be re-considered at the first meeting of the Legislative Council of India, after the 6th day of March next.

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

Legis. Cons. 29 April 1842. No. 10.

(No. 310.)

EXTRACT from the Proceedings of the Right Honourable the Governor-general of India in Council in the Military Department, under date the 12th January 1842.

READ a letter, No. 461, dated 18th ultimo, from the Judge Advocate-general, stating with reference to his letter of the 21st August last, and to previous correspondence on the subject of the draft Act for rendering camp followers amenable to the Act No. XXIII. of 1839, that in the Commander-in-chief's opinion the terms in which Act No. XXVIII. of 1841 is couched are such that the case of camp followers is not provided for therein, except under an unusual and hitherto unauthorized construction, with observations, and submitting for approval an amended draft.

Ordered, That the Judge Advocate-general's letter, above referred to, be transmitted in original to the Legislative Department, for consideration, and such orders as may be necessary, in continuation of extract from this department, No. 94, dated 1st September 1841, with a request, that the papers transmitted be returned when no longer required.

(True extract.)

(signed) *J. Stuart*, Lieut.-colonel,
Secretary to the Government of India,
Military Department.

Legis. Cons. 29 April 1842. No. 11.

(No. 461.)

From the Judge Advocate-general to the Secretary to the Government of India, Military Department.

Sir,

WITH reference to my letter to your address, No. 346, dated 21st August last, and to the previous correspondence on the subject of the draft Act, for rendering camp followers amenable to the Act No. XXIII. of 1839, I am directed by his Excellency the Commander-in-chief to acquaint you, for the information of the Right honourable the Governor-general of India in Council, that in his Excellency's opinion the terms in which Act No. XXVIII. of 1841, passed on the 15th ultimo, is couched, are such that the case of camp followers is not provided for therein, except under an unusual and hitherto unauthorized construction.

2. The Act declares, that "any offender *amenable to any Articles of War for the East India Company's native forces*, not being a commissioned officer, shall be punishable according to Act No. XXIII. of 1839." But native camp followers are not amenable to the Articles of War for the Bengal Native Army, except in the field. They are made subject to the Articles of War in the field by Art. XXII. Sec. II. of the existing code, a copy of which is annexed for reference, for their trial and punishment by court martial in ordinary cases. The Regulation XX. of 1810 was passed, and the commencement of the preamble to that regulation shows that the Articles of War are inapplicable except in the field, and that the regulation itself was passed expressly to supply the deficiency. It is under that regulation only that camp followers are now tried, and unless it be by an unusual and hitherto unauthorized construction, viz. by taking a regulation of Government to be an Article of War, for the purposes of the Act, the recent enactment leaves the case of camp followers untouched.

3. I am directed by his Excellency to take this opportunity of referring to the draft Act "for requiring traders within military cantonments to be registered," promulgated on the 6th instant, and to express his Excellency's opinion, that, as regards plaintiffs, it appears to embrace the cases, not of traders only, but of all descriptions of persons residing within the limits of any military cantonment, and therefore to create difficulties for which no remedy is apparent; by an alteration of the draft Act, Military Courts of Requests established by Regulation XX. of 1810, are open to all descriptions of plaintiffs, as well as to traders, but the latter class of persons only are registered as attached to bazars, and unless all residents, of whatever description, European and native, are henceforward to be registered as military bazar-men, for which no orders at present exist, (and which appears an impracticable measure), the draft Act will exclude all plaintiffs excepting traders.

4. As

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On the New Articles of War for the East India Company's Native Troops.

4. As regards defendants, the use of the words "amenable to Articles of War" limits the application of the proposed Act to suits against officers and soldiers; native camp followers being, as above observed, not amenable to any Articles of War, except in the field. Therefore, a trader might be sued by a trader, without a breach of the Act, even though the plaintiff were not registered.

5. Again, as regards actions of debt, the draft Act appears to the Commander-in-chief to confine itself (however unintentionally) to one class of debts, all others being left untouched; up to the present time, an action may be brought before any Military Court of Requests for any debt, wherever incurred; the only conditions being, as to the amount and as to the description of the defendant. But in the draft Act, the words "contracted within such cantonment" limit its operation to debts incurred on the spot, to the apparent exclusion of all debts incurred in other places.

6. The Commander-in-chief directs me to submit for the approval of his Lordship in Council the accompanying amended draft.

7. His Excellency conceives the proposed Act to relate solely to native Courts of Requests, it being provided in Clause 54 of the Mutiny Acts, 3 & 4 Victoria, chap. 37, that actions of debt against the persons therein described shall be brought before a Military Court of Requests only, without any restriction on plaintiffs, whose claims, if they be traders, would therefore, in his Excellency's opinion, still be cognizable as against such persons, notwithstanding that such traders had not registered themselves.

I have, &c.

(signed) *R. J. H. Birch,*
Judge Advocate-general.

Judge Advocate-general's Office,
Head Quarters, Camp Peertulla,
18 December 1841.

DRAFT.

IT is hereby enacted, That no person residing within the limits of any military cantonment, and carrying on trade therein, or who shall have been a trader at any military cantonment, shall be allowed to recover in any Military Court of Requests the amount of any debt contracted by any native officer, soldier or person subject to the jurisdiction of native Military Courts of Requests, unless the person seeking to recover such debt shall, at the time of the same having been contracted, have been duly registered as a military bazar-man.

(signed) *R. J. H. Birch,* J. A. G.

Articles of War for the Bengal Native Troops.

Section XI., Article XXII.

"ALL suttlers and retainers to a camp, and all persons whatever serving with the forces in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war."

(True copy.)
(signed) *R. J. H. Birch,* J. A. G.

(No. 204.)

EXTRACT from the Proceedings of the Right Honourable the Governor-general of India in Council, in the Military Department, under date the 9th March 1842.

Legis. Cons. 29 April 1842. No. 12.

READ letter, No. 126, dated the 12th ultimo, from the Adjutant-general of the Army, transmitting for consideration (with reference to a despatch, No. 562 of the 29th December last, forwarding an extract from the proceedings of Government in the Legislative Department, No. 37 of the 6th idem, and a draft of an Act requiring traders within military cantonments to be registered,) copy of a letter from the Judge Advocate-general, with a revised draft of an Act, which, in the opinion of the Commander-in-chief, will answer the purpose contemplated, and recommending the Judge Advocate-general's suggestion regarding the last clause of the Act to the attention of Government.

 Ordered,

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On the New Articles of War for the East India Company's Native Troops.

Ordered, That the above-mentioned letter and its annexments be transmitted in original to the Legislative Department, for consideration and such orders as may be necessary, and that the original enclosures be returned to this department when no longer required.

(True extract.)

(signed) *J. Stuart*, Lieut^{t}-col^{l},
Sec^{y} to the Gov^{t} of India, Mil^{y} Department.

(No. 126.)

From the Adjutant-general of the Army to the Secretary to the Government of India, Military Department.

Legis. Cons. 29 April 1842. No. 13.

With reference to the draft of an Act requiring residents within military cantonments to be registered; forwards copy of a letter from the Judge Advocate-general with a revised draft, which the Commander-in-chief is of opinion will answer the purpose contemplated.

Sir,

WITH reference to your despatch, No. 562, of the 29th of December last, forwarding an extract from the proceedings of Government in the Legislative Department, No. 37, of the 6th of the same month, and a draft of an Act requiring traders within military cantonments to be registered, I have the honour to forward for the consideration of the Right Honourable the Governor-general of India in Council, copy of a letter from the Judge Advocate-general, with a revised draft of an Act which, in the opinion of the Commander-in-chief, will answer the purpose contemplated.

His Excellency has likewise directed me to recommend the Judge Advocate-general's suggestion regarding the last clause of the Act to the attention of His Lordship in Council.

The enclosures received with your letter are, as requested, herewith returned.

I have, &c.

(signed) *J. R. Lumley*, Major-gen^{l},
Adj^{t}-general of the Army.

Head Quarters, Camp, Loodianah,
12 February 1842.

(No. 22.)

From the Judge Advocate-general to the Adjutant-general of the Army, dated Camp, Pattarsee, 29 January 1842.

Sir,

I HAVE to acknowledge your official letter of the 28th instant, the number and subject as below.*

2. When the draft Act appeared in the Calcutta Gazette, I received the Commander-in-chief's instructions to communicate with Government on the subject, and under his Excellency's sanction, wrote the letter, of which I enclose a copy; no reply to this reference has reached me from the Military Department, but I have received a letter from the Honourable Mr. Amos, enclosing an amended draft of the Act framed in consequence of my letter to Lieut.-colonel Stuart, which had been laid before Government. A copy of the amended draft Act accompanies this communication.

3. I would suggest that the words "of the Bengal code" should be introduced into the last part of the amended draft. The Act would then, I conceive, be sufficient for the desired purpose.

4. But I submit that as by the addition of the last clause of the draft Act, the point is practically conceded, that a legislative declaration is desirable to render camp followers amenable to one Act, it would be very convenient were the concession carried a little further in the same direction, so as to include Act No. XXVIII. of 1841, as well as No. XI., the same considerations applying to them both. The grounds stated in my letter to the Secretary in the Military Department are those upon which I make this suggestion, and if it be thought worthy of attention, I would propose, in order to render the enactment more distinct, that the

* No. 161, with Draft Act requiring traders in cantonments to be registered for report.

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the last clause be omitted in the draft Act now under consideration, and that it be made into a separate Act of itself, and run as follows:

"It is hereby enacted, That the several descriptions of persons specified in the Bengal Regulation XX. of 1810, Sections II., IV. and XXII., shall be subject to the provisions of Acts No. XI. and No. XXVIII. of 1841, in like manner as established soldiers."

5. The papers received with your letter are herewith returned.

AMENDED DRAFT.

AN ACT for the better Regulation of Military Bazars, and defining the Liabilities of Camp Followers.

It is hereby enacted, That no person residing within the limits of any military cantonments shall be allowed to receive in any Military Court of Requests for the native troops of the East India Company, held within such cantonment, any debt contracted in the way of trade within such cantonment by any person subject to the jurisdiction of such court, unless the person seeking to recover the debt shall, at the time of the contracting thereof, have been registered as a military bazar-man within such cantonment.

And it is hereby declared, That the several descriptions of persons specified in Regulation XX. of 1810, Sections II., IV. and XXII., shall be subject to the provisions of Act No. XI. of 1841, in like manner as enlisted soldiers.

(True copies.)

(signed) *J. R. Lumley*, M.-gen[l],
Adj[t]-gen[l] of the Army.

MINUTE by the Honourable *A. Amos*, Esq.

CAMP FOLLOWERS.

Legis. Cons. 29 April 1842. No. 14.

WITH reference to the communication received from the Judge Advocate General, I circulate a draft, to which I will request attention, whether it does not embrace all the points adverted to by the Judge Advocate, and also some points noticed in the public press.

The term "Articles of War" is, in strictness, applicable to a law military issued not by, but under the sanction of, the legislative power of the country; so that in India the distinction between an Act or Regulation and an "Article of War" is nominal only, and in Madras and Bombay what are called Articles of War are, in fact, Reg. IV, of 1829, Madras Code, Reg. XX. of 1827, Bombay Code. In Bengal, certain persons are (1.) triable by court martial for minor offences; (2.) subject to Military Courts of Requests by Reg. XX. of 1810, who are not, in a set of military rules issued by Government (not called a Regulation, but called "Articles of War"), so subject. It seems to have been considered by the military authorities that the words in the Bengal "Articles of War," "all sutlers and retainers to a camp, followed by all persons whatever serving with the forces in the field," could not reach camp followers in a cantonment. Whether this construction be right or not, and whether camp followers, who are liable to be tried by a court martial under Reg. XX. of 1810, be not in legal description amenable in Bengal (as they unquestionably are in Madras and Bombay amenable) to "Articles of War," is useless to canvass, as we have the opportunity before us of removing all doubts on the subject.

Act XXVIII. of 1841 (which gives labour on the roads in substitution of flogging) would be inapplicable to offences punishable under Reg. XX. of 1810, unless the punishment might be whipping. That Regulation refers to 2 Act, 15 S. of Articles of War for defining the kind and amount of punishment. Now, in referring to that Article, it will be seen that the kind and amount is left discretionary, without any guide for discretion. I suppose, however, that the usage has been to flog in such cases. Could a soldier be dismissed (or before the General Order flogged) for the offences mentioned in Sec. 2, Reg. XX. of 1810, "disorders and neglects to the prejudice of good order, and of the local Regulations established in cantonments, &c." I have written to the Judge Advocate upon all these points.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

I think the debts should be confined to such as are contracted within the cantonment. This must be the ordinary mischief, and in the case of a newly established cantonment, plaintiff would have no remedy; as it appears to be thought sufficient to confine the Act to trading debts, it will be desirable not to make it more stringent than is absolutely required. I had thought that the chief mischief to provide against was that of ruinous loans by persons not trading, *i. e.*, buying to sell again.

6 January 1842. (signed) *A. Amos.*

Legis. Cons. 29 April 1842. No. 15.

MINUTE by the Honourable *A. Amos*, Esquire.

AN ACT for the better Regulation of Military Bazars, and defining the Liabilities of Camp Followers.

IT is hereby enacted, That no person residing within the limits of any military cantonment shall be allowed to recover in any Military Court of Requests for the Native Troops of the East India Company, held within such cantonment, any debt contracted in the way of trade within such cantonment by any person, subject to the jurisdiction of such Court, unless the person seeking to recover the debt shall at the time of the contracting thereof have been registered as a military bazar-man within such cantonment.

And it is hereby declared, That the several descriptions of persons specified in Reg. XX. of 1810, Sec. 2, 4 and 22, shall be subject to the provisions of Act, Reg. XI. of 1841, and No. XXVIII. of 1841, in like manner as enlisted soldiers.

Legis. Cons. 29 April 1842. No. 16.

MINUTE by the Honourable *A. Amos*, Esquire.

I CIRCULATE along with the papers a letter I have received from the Judge Advocate to the same effect as his public letter, with the addition of his agreeing to the expediency of including money-lenders.

The stringent part of the Act, which is the only point requiring much consideration, is that how a shopkeeper, a money-lender, resident in a bazar, can recover in no court at all, unless he be registered.

The draft, if approved, can be sent to Lord Ellenborough for his assent, as it has been published long ago.

25 April 1842. (signed) *A. Amos.*

Legis. Cons. 29 April 1842. No. 17.

Enclosed in a Minute by the Honourable *A. Amos*, Esq.

AN ACT for the better Regulation of Military Bazars, and defining the Liabilities of Camp Followers.

IT is hereby enacted, That no person residing within the limits of any military cantonment shall be allowed to recover in any Military Court of Requests for the Native Troops of the East India Company, held within such cantonment, any debt contracted in the way of trade, or for the loan of money within such cantonment, by any person subject to the jurisdiction of such courts, unless the person seeking to recover the debt shall, at the time of the contracting thereof, have been registered as a military bazar-man within such cantonment.

And it is hereby declared, That the several descriptions of persons specified in Reg. XX. of 1810, of the Bengal code, Sec. 2, 4 and 22, shall be subject to the provisions of Act No. XI. of 1841, and No. XXVIII. of 1841, in like manner as enlisted soldiers.

Legis. Cons. 29 April 1842. No. 18.

Enclosed in a Minute by the Honourable *A. Amos*, Esq.

My dear Mr. Amos,

I HAVE the pleasure of receiving, on the 15th instant, your letter of the 6th, with your remarks on my public and private suggestions regarding the Act XI. and XXVIII. of 1841, and the draft Act for requiring registry in bazars. I find that the Military Department sent to the Adjutant-general, for submission to the Commander-in-chief, the draft Act for registry in bazars; and, therefore, to prevent

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vent needless correspondence, I suggested that it should be sent to me for report, that I might take occasion to acquaint the Adjutant-general with the opinions expressed in my letter of the 18th December to Colonel Stuart, and make some remarks at the same time on the amended draft Act with which you have favoured me. This has been done, and I have under this day's date communicated with the Adjutant-general, to the effect that with the insertion of the words, "of the Bengal code," in the last clause of the amended draft Act, it appears to me well calculated for its purpose; but that as by the addition of that clause it has been practically conceded that an enactment was desirable to do away with any obscurity supposed to exist in the use of the term "amenable to Articles of War," in Act No. XI. of 1841, I would suggest the omission of that clause from the draft Act for bazar registry, and its promulgation as a separate Act of itself, extending to Act No. XXVIII. of 1841, also, in which the same supposed obscurity is found. This suggestion is, in fact, just what I made in the letter to you, dated 20th December last, and my reasons for now again making it will be best shown by a notice of the points you put in your letter of the 6th instant, and in the minute which it enclosed.

You ask whether a soldier could have been flogged before the General Order of 1835, for the offences specified in Reg. XX. of 1810, sec. 2. The offences there specified are breaches of duty, and violations of local regulations; the former is a very wide term. Lord Combermere, in 1827, limited the infliction of corporal punishment, as awardable against sepoys, to the offences of stealing, marauding or gross insubordination, when the individual was deemed unworthy to remain in the service. This was in March 1837; but in the month of June following, his Lordship found it necessary to enlarge the range of infliction of corporal punishment; and in a circular from the Adjutant-general's office it was stated, that the intention was that a man should only be flogged when his dismissal appeared desirable. Upon this enlargement courts martial proceeded till Lord W. Bentinck's General Order of February 1835 abolished the corporal punishment, and substituted dismissal only, which before always followed the infliction of the lash. The practice of courts martial since June 1827 is such, with regard to sepoys, that I should say that camp followers offending under section 2 of Regulation XX. of 1810, where their offences are serious breaches of duty, may with propriety be subjected, as sepoys are, to dismissal under General Order of 1835, and to imprisonment with labour under Act XXIII. of 1839; and in that case the law would not be more severe on them than on the sepoys. In practice we should keep the infliction, as regarded camp followers, within the same bounds as it is kept with regard to soldiers.

I quite agree with you, that it is very desirable that money-lenders should be required to register themselves equally with traders. As, however, you appear disposed to make them do so, I have not alluded to that point in my letter to the Advocate-general, in the belief that this mode of communicating my views to you in that matter would suffice.

Believe me, &c.

(signed) *R. J. H. Birch.*

Fort William, Legislative Department, 29 April 1842.

Legis. Cons. 29 April 1842. No. 19.

THE following Extract from the Proceedings of the Honourable the President in Council in the Legislative Department, under date the 29th of April 1842, is published for general information.

READ a second time the draft of a proposed Act, dated the 6th of December 1841, and published in the Calcutta Gazette of the 8th of the same month, for the better regulation of military bazars, and defining the liabilities of camp followers.

RESOLUTION.

The Honourable the President in Council resolves, that the following amended draft on the subject be re-published for general information:—

No. 2.
On the New Articles of War for the East India Company's Native Troops.

Act No. — of 1842.

AN ACT for the better Regulation of Military Bazars, and defining the Liabilities of Camp Followers.

1. IT is hereby enacted, That no person residing within the limits of any military cantonment shall be allowed to recover in any Military Court of Requests for the Native Troops of the East India Company, held within such cantonment, any debt contracted in the way of trade, or for the loan of money, within such cantonment, by any person subject to the jurisdiction of such court, unless the person seeking to recover the debt shall, at the time of the contracting thereof, have been registered as a military bazar-man within such cantonment.

2. And it is hereby declared, That the several descriptions of persons specified in Regulation XX. of 1810 of the Bengal code, section 2, 4 and 22, shall be subject to the provisions of Acts No. XI. of 1841, and No. XXVIII. of 1841 in like manner as enlisted soldiers.

Ordered, That the draft be re-considered at the first meeting of the Legislative Council of India after the 29th day of July next.

(signed) *F. J. Halliday*,
Offg Secy to the Government of India.

Legis. Cons. 29 April 1842 No. 20.

(No. 88.)

To *T. H. Maddock*, Esq., Secretary to the Government of India with the Governor-general.

Sir,

I AM directed to forward you, for the assent of the Right honourable the Governor-general of India, as required by sec. 70 of the Charter Act, the accompanying amended draft of a proposed Act for the better regulation of military bazars, and defining the liabilities of camp followers, read in Council on this date, and published for general information, together with the papers relating to the subject, as noted below.* These you are requested to return with his Lordship's assent.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secy to the Govt of India.

Council Chamber, 29 April 1842.

Legis. Cons. 26 Aug. 1842. No. 20.

MINUTE by the Honourable *A. Amos*, dated 15 August 1842.

I PROCEED to consider the suggestions of Lord Ellenborough concerning this draft Act.

1. Military Courts of Requests for the Native Troops. The answer to the remark upon this is, that we can only legislate for the courts for native troops; we are prohibited from altering the statutes which regulate Military Courts of Requests for the Queen's and Company's European troops.

2. "No person residing within the limits of a military cantonment;" can he not recover if he has ceased to reside? Answer: I think he may. It is observed that the Act, if it did not permit this, would be of a very violent character; all but military courts are closed against the creditor. It would be very strong to say he could never and in no way recover a lawful debt. The obliging him to vacate his residence (the courts will guard against a temporary or collusive vacating) before he can recover, must operate as a considerable check; to make his debt irrecoverable would, perhaps, be unjust.

3. The sepoy is not a "trader." As the sepoy is not a trader, the passage will be obviously read as meaning the trade of the creditor.

4. That

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* Legis. Cons., 2 August 1841, No. 7 to 10; 20 Sept. 1841, No. 12 to 15; 15 Nov. 1841, No. 16 to 24; 6 Dec. 1841, No. 13 to 15.
Extts Milv Dispts No. 310 and 204, dated 12 Jan. and 9 March 1842 with, Enclosure.
Minute by the Hon. A. Amos, Esq., dated 6 Jan. 1842, with Enclosures; Minute by the Hon. A. Amos, Esq., dated 25 April 1842, with Enclosure.

4. That the plaintiff must have been "registered." Objection: must he not have resided? I do not think he could get registered unless he resided; I do not suppose that the authorities of any cantonment would register a stranger.

5. (Sec. 11.) "This section cannot be understood without referring to those Acts; every Act ought to be intelligible in chief; nothing is gained by conciseness where it necessitates reference; state whom you mean to include, and in what." I do not agree with these opinions; I think it is matter of discretion, dependent on a variety of considerations, how far previous enactments, which are modified, should be set out at length, or merely referred to; our consideration, which has some bearing on the present case, is—Is the Act for the government of a peculiar class of the community, who are already very familiar with the few existing legal provisions on the same subject?

However, I consider it so very much a matter of detail, that although, with great deference, I should not advise making the proposed insertion, I will not object to them; I shall accordingly add them to this minute.

These papers will most probably reach Lord Ellenborough at Simla, where his Lordship can confer with the Commander-in-chief; and as we shall most probably concur in what they recommend, it may be a saving of time to receive the requisite assent along with their modifications. The Judge Advocate has written both publicly and privately on the subject of the draft, and is perfectly satisfied with it as it stands.

(signed) *A. Amos.*

15 August 1842.

Sections 2, 4, 22; that is to say, all persons serving with any part of the army, and receiving public pay, drawn by any officer in charge of a public department appertaining to the army, whether as Lascars, magazine-men, kalassies attached to magazines, or any other department or establishment, native doctors, writers, bhistees, puckalies, syces, grass-cutters, mahouts, durwans, or other subordinate servants attached to public cattle, bildars, artificers, or in any other capacity, menial servants of officers within the precincts of any cantonment, garrison of military station, or military bazar, although they shall not be in the receipt of public pay, persons registered as attached to military bazars, sudder bazars, bazars of corps.

And after "enlisted soldiers," say which? Some provisions are as follows; that is to say, (here set Act at length, the provisions of No. XI. of 1841, and No. XXVIII. of 1841.)

(signed) *A. Amos.*

15 August 1842.

(No. 208.)

Legis. Cons. 26 Aug. 1842. No. 21.

To *T. H. Maddock*, Esq., Secretary to Government of India, with the Governor-general.

Sir, 26 August 1842.

In continuation of my letter, No. 88, dated the 29th April last, I am directed by the Honourable the President in Council to transmit to you, for submission to the Right honourable the Governor-general of India, the accompanying copy of a minute by Mr. Amos, under date the 15th instant, on the subject of military bazars, recorded with reference to the queries put to him by his Lordship on the draft Act, which is returned herewith, agreeably to his Lordship's desire, together with another copy, amended according to Mr. Amos's minute.

I have, &c.

(signed) *F. J. Halliday,*
Offg Secy to the Govt of India.

Fort William, 26 August 1842.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. —.)

From the Junior Secretary to the Government of India, with the Governor-general, to *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, Legislative Department, Fort William.

Sir, Simla, 10 October 1842.

Legis. Cons. 28 Oct. 1842. No. 1.

I AM directed to acknowledge the receipt of your letter, No. 208, to the address of Mr. Secretary Maddock, transmitting, for submission to the Right honourable the Governor-general, copy of a minute by the Honourable Mr. Amos, on the subject of the Military Bazars Act.

I am further directed to transmit to you his Lordship's formal assent to the passing of an Act "for the better regulation of Military Bazars, and defining the liabilities of Camp Followers," in the form of the amended draft annexed.

I have, &c.

(signed) *C. G. Mansel*,
Junr Secy to the Govt of India,
with the Governor-general.

Legis. Cons. 28 Oct. 1842. No. 2.

UNDER Section LXX. 3 & 4 Will. IV., c. LXXXV., directing that, during the absence of the Governor-general of India from the Presidency of Fort William in Bengal, no law or regulation shall be made by the President in Council, without the assent in writing of the Governor-general; I hereby convey my assent to the passing of an Act "for the better regulation of Military Bazars, and defining the Liabilities of Camp Followers," in the form and wording of the amended draft hereunto annexed.

(signed) *Ellenborough.*

Simla, 30 Sept. 1842.

PROPOSED Draft of an Act for the better Regulation of Military Bazars, and defining the Liabilities of Camp Followers.

I. IT is hereby enacted, That no person residing within the limits of any military cantonment, and carrying on trade therein, or who shall have been a trader at any military cantonment, shall be allowed to recover, in any Military Court of Requests for the native troops of the East India Company, held within any such cantonment, any debt contracted in the way of trade or for the loan of money, within any such cantonment, by any person subject to the jurisdiction of such court, unless the person seeking to recover the debt shall, at the time of contracting thereof, have been registered as a military bazar-man within any such cantonment.

II. And it is hereby declared, That all persons serving with any part of the army and receiving public pay, in any capacity, menial servants and other camp followers of every description, shall be subject to the provisions of Act No. XI. of 1841 and No. XXVIII. of 1841, in like manner as enlisted soldiers.

(Approved.)

(signed) *Ellenborough.*

Legis. Cons. 28 Oct. 1842. No. 3.

FORT WILLIAM, LEGISLATIVE DEPARTMENT, the 28th October 1842.

THE following Act is passed by the Honourable the President of the Council of India in Council, on the 28th October 1842, with the assent of the Right honourable the Governor-general of India, which has been read and recorded.

Ordered, That the Act be promulgated for general information.

ACT

No. 2.
On the New Articles of War for the East India Company's Native Troops.

Act No. XII. of 1842.

An Act for the better Regulation of Military Bazars, and defining the Liabilities of Camp Followers.

I. It is hereby enacted, That no person residing within the limits of any military cantonment, and carrying on trade therein, or who shall have been a trader at any military cantonment, shall be allowed to recover, in any Military Court of Requests for the native troops of the East India Company, held within any such cantonment, any debt contracted in the way of trade or for the loan of money, within any such cantonment, by any person subject to the jurisdiction of such Court, unless the person seeking to recover the debt shall, at the time of contracting thereof, have been registered as a military bazar-man within any such cantonment.

II. And it is hereby declared, That all persons serving with any part of the army, and receiving public pay, in any capacity, menial servants and other camp followers of every description, shall be subject to the provisions of Acts No. XI. of 1841 and No. XXVIII. of 1841, in the like manner as enlisted soldiers.

Extract from a Legislative Despatch to the Honourable Court of Directors, dated 30 December 1842, No. 33.

Coll[n] No. 4, Act XII. of 1842. For the better regulation of Military Bazars, and defining the liabilities of Camp Followers.
Legis. Cons., 20 Sept. 1841, 12 to 15.
— 6 Dec. 1841, 13 to 15.
— 29 April 1842, 10 to 20.
— 26 Aug. 1842, 20 & 21.
— 28 Oct. 1842, 1 to 3.

Para. 20.* The Court of Sudder Adawlut, in the Madras Presidency, were of opinion that the civil inhabitants residing as bazar-men within the limits of any military cantonments not beyond frontier, were not liable to the penalties attached to a breach of the regulations framed for the purpose of limiting the amount of credit to be granted to sepoys in military bazars.

21. This opinion was regarded by the Madras Government as calculated seriously to affect the discipline and efficiency of the Native Army, as under it the provisions of the G. O. issued by the Madras Government, under date 4th September 1840, No. 149, founded on G. O. by the Governor-general of India in Council, 25th March 1840, No. 69, might be infringed with impunity.

22. On consulting the Commander-in-chief as to how the difficulty would be met under the Bengal Presidency, his Excellency expressed his concurrence with the Madras authorities that, under the 7th, 8th and 12th paras. of Regulation XX. of 1810, it was not imperatively necessary that a bunnea or any civil inhabitant residing within the limits of a military cantonment should be registered, whether he chose it or not, as a military bazar-man, and not being so registered he would not be liable to military regulations, nor subject to the provisions of G. O., 25th March 1840. His Excellency expressed his opinion that every resident within a military bazar should be compelled to register or cease to trade.

23. Under these circumstances, we read the draft of an Act on the 6th December 1841, declaring that no person residing within the limits of any military cantonment shall be allowed to recover, in any Military Court of Requests, the amount of any debt contracted within such cantonment by any person amenable to Articles of War, unless the person seeking to recover such debt shall, at the time of contracting the same, have been duly registered as a military bazar-man.

24. Shortly after the above draft was published, the Commander-in-chief brought to our notice that, according to the wording of Act XXVIII. of 1841, camp followers, whose cases were contemplated by that Act, could not be punished under it. The Act declared, that "any offender amenable to any Articles of War for the East India Company's native forces, not being a commissioned officer, shall be punishable according to Act No. XXIII. of 1839;" but his Excellency urged that native camp followers were not amenable to the Articles of War for the Bengal Native Army, except in the field; they were made subject to the Articles of War in the field by Act 22, sec. 11, of the existing code; for their trial and punishment by court martial, in ordinary cases, the Regulation XX. of 1810 was passed, and the preamble to that regulation showed that the Articles of War were inapplicable except in the field, and that the regulation itself was passed expressly to supply the deficiency. It was, his Excellency urged, under that regulation only that camp followers were tried, and unless it were by an unusual and hitherto unauthorized construction, viz., by taking a regulation of Government to be an Article of War, for the purposes of the Act, the Law XXVIII. of 1841, left the

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case of camp followers wholly untouched. The same remarks were applicable to the provisions of Act No. XI. of 1841, for the regulation of Native Courts of Request, in which the same terms, "amenable to the Articles of War," were used as referring to persons other than officers and soldiers, and therefore intended to designate camp followers.

25. Mr. Amos, in a minute, dated 6th January, showed that the distinction between an Act or Regulation and an Article of War was only nominal in India; but as the opportunity was before us of removing all doubts on the subject, he proposed to introduce into the Draft Act above noticed, for better regulating Military Bazars, a clause to extend Acts XI. of 1841 and XXVIII. of 1841 to camp followers.

26. After some correspondence with the Commander-in-chief, the draft read on the 6th December 1841 was amended and read afresh on the 29th April 1842. The form in which it was finally passed, after communicating with the Governor-general, declared that no person residing within the limits of any military cantonment, and carrying on trade therein, or who shall have been a trader at any military cantonment, shall be allowed to recover in any Military Court of Requests for the native troops of the East India Company, held within any such cantonment, any debt contracted in the way of trade, or for the loan of money within any such cantonment, by any person subject to the jurisdiction of such court, unless the person seeking to recover the debt shall, at the time of contracting it, have been registered as a military bazar-man within any such cantonment.

27. The Act also declares, that all persons serving with any part of the army, and receiving public pay in any capacity, menial servants, and other camp followers of every description, shall be subject to the provisions of Acts No. XI. of 1841 and No. XXVIII. of 1841, in like manner as enlisted soldiers.

Legis. Cons. 6 April 1842. No. 1.

(No. 725.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the Military Department, under date the 26th February 1842.

READ a letter from the Judge Advocate General, No. 32, dated 12th instant, transmitting for information, and such orders as may be expedient, copies of correspondence with Major-general Pollock, C.B., and of a reference to the late Judge Advocate General, with his reply, relating to the mode of carrying into effect sentences of imprisonment with labour, under Act XXIII. of 1839, offering observations as regards sentences of imprisonment without labour, in the provinces, and stating that the Commander-in-chief has, under the necessity of the case, authorized Major-general Pollock to carry imprisonment with labour into effect in any feasible way.

Ordered, That the above-mentioned despatch from the Judge Advocate General be transmitted in original to the Legislative Department for consideration, and such orders as may be necessary, with a request that it be returned when no longer required.

(True extract.)

(signed) *J. Stuart*, Lt-Col[l],
Secy to Govt of India, Milty Dept.

Legis. Cons.. 6 April 1842. No. 2.

(No. 32.)

From the Judge Advocate General to the Secretary to the Government of India, Military Department.

Sir,

I AM directed by his Excellency the Commander-in-chief to transmit to you, for the information of the Right honourable the Governor-general of India in Council, and for such orders as may be deemed expedient, the accompanying copies of correspondence with Major-general Pollock, C. B., commanding a body of troops in Affghanistan, and of a reference to the late Judge Advocate General, with his reply, relating to the mode of carrying into effect sentences of imprisonment with labour under Act XXIII. of 1839.

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As regards sentences of imprisonment without labour in the provinces, it is the practice to carry them into effect under military authority alone, where the period of six months is not exceeded; a practice which, though in strictness questionable with reference to Act No. 2 of 1840, has been countenanced on the understanding that the intention of Government in passing Act No. XXIII. of 1839 was, that military prisoners once confined in a gaol should not return to the rank of the army, and that, therefore, none need indispensably be made over to the civil power, except such as are to undergo imprisonment exceeding six months, or imprisonment with labour of any duration, in both which cases dismissal ensues; and it is customary to deliver to the civil power culprits sentenced in either of these two ways in conformity with Act No. 2 of 1840.

The Commander-in-chief has, under the necessity of the case, authorized Major-general Pollock to carry imprisonment with labour into effect in any feasible way, and trust that the measure will meet with the concurrence of his Lordship in Council.

I have, &c.

(signed) *R. J. H. Birch*, Major,
Judge Advocate General.

Judge Advocate General's Office,
Head Quarters, Camp Loodianah,
12 February 1842.

To Major *Birch*, Judge Advocate General of the Army.

Sir,

I BEG to forward the accompanying proceedings of a regimental court martial, with a request that I may be instructed how to act in such cases; there is no civil authority to whom I could deliver over the prisoner; he is unfit for the service, and to send him back to the provinces would require a guard, which cannot under existing circumstances be spared.

I have, &c.

(signed) *Geo. Pollock*, M. Gen[l],
Command[g] Troops at Paishawar.

Attock, the 3d February 1842.

(No. 31.)

From the Judge Advocate General to Major-General *G. Pollock*, C.B., commanding at Paishawar.

Sir,

IN reply to your letter of the 3d instant, I have the honour to state my opinion, that although, on strict construction of Act No. II. of 1840, it is essential to the infliction of sentences passed under Act No. XXIII. of 1839, that the prisoner should be transferred to the civil power in places where such power exists; yet, situated as the force under your command is, the necessity of the case must over rule any objection to sentences like that passed upon Binda Sing, sepoy of the 53d regiment Native Infantry, being carried into execution under your own authority; the culprit being kept in military custody, and employed in the construction of buildings, or any other hard labour either camp or garrison may afford. Having submitted your letter to the Commander-in-chief, I am directed to convey his Excellency's sanction to the procedure suggested, and you will, of course, cause the name of the prisoner to be struck off the rolls of the 53d regiment, as usual.

The proceedings of the regimental court martial are herewith returned.

I have, &c.

(signed) *R. J. H. Birch*, Major,
Judge Adv[te] Gen[l].

Judge Advocate General's Office,
Head Quarters, Camp Loodianah,
12 February 1842.

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(No. 42.)

The Judge Advocate General, &c. &c. &c., Calcutta.

MEMORANDUM.

THE Judge Advocate General is requested to state for the information of his Excellency the Commander-in-chief, if soldiers in Affghanistan convicted by general court martial, and sentenced to hard labour, can be legally employed upon the barracks now constructing there.

(signed) *John Luard*, Lt-Col^{l},
Mility Secretary, East Indies.

Commander-in-Chief's Office,
Head Quarters, Calcutta,
23 July 1840.

(No. 180.)

From the Judge Advocate General to Lieutenant-Colonel *Luard*, Military Secretary to the Commander-in-Chief.

Sir,

I HAVE to acknowledge the receipt of your official memorandum of the 23d instant, the number and subject as below*.

2. The punishment of sepoys by imprisonment with hard labour is authorized by Act No. XXIII. of 1839. The execution of such sentences by the civil authorities is authorized by Act No. II. of 1840. But the latter Act does not exclude the legality of the sentences being carried into effect under the orders of the military authorities which is implied in the former Act. Within the provinces, it is convenient to transfer such prisoners to the civil power; but in Affghanistan I see no objection to their being employed in the construction of barracks, or in any other hard labour.

I have, &c.

(signed) *G. Young*,
Judge Advte Genl.

Judge Advocate General's Office,
Presidency of Fort William,
24 July 1840.

Legis. Cons.
6 April 1842.
No. 1 to 3.

(No. 6.)

RESOLUTION.—Extract Proceedings.

Read Extract, No. 725, dated the 26th February 1842, from the proceedings of the Governor-general of India in Council in the Military Department, relating to the mode of carrying into effect sentences of imprisonment with labour, under Act No. 23 of 1839.

Ordered, The military department be informed in reply, that, under the necessity of the case, the Governor-general in Council approves the instructions given by his Excellency the Commander-in-chief to the general officer commanding a body of troops in Affghanistan to carry into execution the sentence of imprisonment with labour under Act 23 of 1839; his Excellency, at the same time, being requested to order the prisoners being sent to a civil prison at the first convenient opportunity.

Ordered also, That the original papers be returned as requested.

EXTRACT

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* No. 42, relating to the employment of soldiers sentenced to hard labour in Affghanistan.

EXTRACT from a LEGISLATIVE DESPATCH to the Honourable the Court of Directors, dated 30th December 1842, No. 33.

Coll^n, No. 10. Misc. Matters. Mode of giving effect to sentences of imprisonment with hard labour, under Act 23d of 1839.

96. THE question contained in these papers originated in a reference from Major-general Pollock, commanding in Affghanistan, regarding the mode in which a sentence of imprisonment, passed under Act. XXIII. of 1839, on a sepoy in the 53d Reg^t N. I., was to be carried into effect.

Legis. Cons. 6 April 1842. No. 1 to 3.

97. Act II. of 1840 directs that persons sentenced under Act XXIII. of 1839 should be transferred to the civil powers; but as this could not be done in the case under reference, his Excellency the Commander-in-chief, with the advice of the Judge Advocate-general, authorized Major-general Pollock to carry the sentence into effect in any feasible way. Under the necessity of the case, we approved of the instructions issued by his Excellency, and directed that prisoners in such situations should be sent to a civil prison at the first convenient opportunity.

EXTRACT from a LEGISLATIVE DESPATCH from the Honourable Court of Directors, dated 1st November 1843. No. 20.

(96, 97.) Instructions relative to the execution of sentence of imprisonment, passed under Act XXIII. of 1839, on a Sepoy in the 53d Reg^t N. I.

Para. 15. IT was very properly directed that the execution of the sentence, which was brought to your notice as having been passed in the force in Affghanistan, should take place in any way that was found practicable.

(No. 19 of 1844.)

From the Chief Secretary to the Government of Bombay to *F. Currie*, Esquire, Secretary to the Government of India, dated the 29th March 1844.

Legis. Cons. 9 April 1844. No. 1.

Sir,

Secret Department.

I AM directed to state, for the information of the Right honourable the Governor-general of India in Council, that some men of the 47th regiment Madras N. I., having lately been convicted before a native general court martial of mutiny, were sentenced to various periods of imprisonment with "hard labour in the Bombay gaol."

2. As there is no means of keeping these prisoners at hard labour in the Bombay gaol, the Advocate-general was, under date the 27th instant, requested to state his opinion whether these men could, under the existing regulations and under the above sentence, be removed to any other prison, in the event of this being deemed advisable.

3. I am instructed to forward for submission to the Government of India copy of the Advocate-general's reply of the same date, stating that this cannot be done without legislative enactment, and of a communication from the Judge Advocate-general of the Bombay Army, to the address of his Excellency the Commander-in-chief, dated the 26th instant, on the subject.

In forwarding these documents, I am desired to request that the Right honourable the Governor-general of India in Council will be pleased to take into his early consideration the expediency of passing an Act authorizing the removal of military convicts from one gaol to another as may be deemed advisable.

The Governor in Council is induced to recommend the measure, not only on general grounds, but also because there is reason to apprehend that legal embarrassments may arise, if the men of the 47th lately convicted of mutiny are allowed to remain within the jurisdiction of Her Majesty's Supreme Court.

I have, &c.

(signed) *J. P. Willoughby*,
Chief Secretary.

Bombay Castle,
29 March 1844.

(No. 29 of 1844.)

Legis. Cons. 9 April 1844. No. 2.

From *A. S. Le Messurier*, Esq., Advocate-general, to the Chief Secretary to Government of Bombay, dated the 27th March 1844.

Sir,

Secret Department.

In reply to your letter of this day's date, No. 228, which I have just received, I have the honour of stating, that the men of the 47th regiment, under sentence, as referred to in the 1st para. of your letter, cannot, in my opinion, be removed to any other prison, should this be deemed advisable. This can only be done by an enactment. The regulation to which you have drawn my attention in the last para. of your letter, will not authorize it, nor am I aware of any other regulation or enactment that will.

I have, &c.

(signed) *A. S. Le Messurier*,
Advocate-gen[l].

Bombay, Advocate-gen[l]'s Office,
27 March 1844.

(No. 366.)

Judicial Department.

Legis. Cons. 9 April 1844. No. 3.

From Lieutenant-colonel *S. Powell*, Adjutant-General of the Army, to *J. P. Willoughby*, Esq., Chief Secretary to Government, dated 27th March 1844.

Sir,

I am directed by the Commander-in-chief to transmit to you, for immediate submission to the Honourable the Governor in Council, the accompanying original letter from the Judge Advocate-general of the Army, under yesterday's date, suggesting the expediency of obtaining a legislative enactment by the Government of India for the removal of native military prisoners, under sentence of a court martial, from one place of confinement to another.

I have, &c.

(signed) *S. Powell*, L[t].-Col[l],
Adjutant-gen[l] of the Army.

Adjutant-gen[l]'s Office, Bombay,
27 March 1844.

To His Excellency Lieutenant-General Sir *Thomas M'Mahon*, Bart., K.C.B.,
Commander-in-Chief.

Sir,

Having given the fullest attention to the point referred to in my communication to your Excellency, dated the 21st instant, in respect to the transfer of native military prisoners, under sentence of a court martial, from one place of confinement to another, and having further conferred with the Advocate-general on the subject, I beg to state that neither that learned gentleman nor myself have, as yet, been able to trace any existing law or regulation under which the above measure could be effected.

As the matter, however, is, I conceive, one of great importance, I am induced to submit, for your Excellency's consideration and disposal, the expediency of procuring a legislative enactment by the Government of India, corresponding to the following provision contained in the 27th clause of the existing Mutiny Act for Her Majesty's Forces, into which it was first introduced in 1842, and which would, I conceive, produce the most beneficial effects, and remove all doubt of a legal nature:—

"And such gaoler shall deliver up such prisoner, at any period of his imprisonment, to the person producing an order in writing to that effect from any such commanding officer (or such authority as may be specified in the enactment) aforesaid, either for his discharge, or in order that the prisoner may be removed in military custody, to undergo the remainder of his sentence, to such other gaol or military prison, or other place of confinement, as such commanding officer may direct,

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direct, provided that the time of imprisonment in removal from one gaol to another, or while in custody for any intermediate period, shall be reckoned as part of the original period of imprisonment for which such soldiers shall have been sentenced."

I have, &c.

(signed) *W. Ogilvie*, Major,
Judge Advocate-general.

Bombay, 26 March 1844.

Fort William, Home Department, Legislative, the 9th April 1844.

Legis. Cons. 9 April 1844. No. 4.

THE following Act is brought up before the Legislative Council this day, the Governor-general of India in Council being desirous that no time should be lost in passing the Act.

Resolved, That the rule requiring that no draft of a law shall be ordered to be published, till at least one week shall have elapsed from the day on which it was first laid before the Council of India in its Legislative Department, and that the rules requiring that all Acts of the Governor-general of India in Council shall be brought up for second reading in two months, or in three months from the date of the first reading, be suspended in respect to the following proposed Act, and that it be at once passed into law.

ACT No. VIII. of 1844.

AN ACT to authorize the Governments of Fort William in Bengal, Fort St. George, and Bombay, to remove Native Officers, Soldiers and Followers imprisoned under Sentence of Court Martial from one Prison to another.

IT is hereby enacted, That whenever any native officer or soldier or follower belonging to the forces of the East India Company shall be a prisoner in any public prison or other place within the territories subject to the Government of the said Company, under sentence of any court martial, it shall be lawful for the Governor or Governor in Council (as the case may be) of the Presidency in which such public prison or other place may be situated, to give an order in writing to the gaoler thereof, or other person in charge thereof, commanding him to deliver up such prisoner to the person producing such order; and such gaoler or other person shall deliver up such prisoner, at any period of his imprisonment, to the person producing such order, either for his discharge, or in order that he may be removed in military custody, to undergo the remainder of his sentence, to such other public prison or such other place as such Governor or Governor in Council (as the case may be) may direct; provided that such other public prison or other place shall be within the Presidency subject to the government of the Governor or Governor in Council (as the case may be) who shall have given such order, and provided that the time of imprisonment, on removal from one prison to another, or while the prisoner is in custody for any intermediate period, shall be reckoned as part of the original period of imprisonment for which such prisoner shall have been sentenced.

(signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

(No. 27.)

To *J. P. Willoughby*, Esq., Chief Secretary to the Government of Bombay.

Legis. Cons. 9 April 1844. No. 5.

Sir,

THE Governor-general of India in Council having yesterday received your despatch dated the 29th ultimo, and being desirous that no time should be lost in complying with the recommendation of the Honourable the Governor in Council, his Lordship in Council has this day passed Act No. VIII. of 1844, authorizing the

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Governments of the several Presidencies to remove native officers, soldiers and followers imprisoned under sentence of a court martial, from one prison to another; and I have it in command to forward to you a copy of that Act.

I have, &c.
(signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

Council Chamber,
9 April 1844.

EXTRACT from a Legislative Despatch to the Honourable Court of Directors, dated 11th May 1844, No. 12.

Coll[n] No. 8, Act 8, of 1844, authorizing the government of the several Presidencies to remove prisoners imprisoned under sentence of a court martial from one prison to another.
Legis. Cons. 9 April 1844, Nos. 1 to 5.

21. SOME men of the 47th Madras N. I. having been convicted before a native general court martial of mutiny, were sentenced to various periods of imprisonment, "with hard labour in the Bombay gaol."

22. There were no means of keeping the prisoners at hard labour in the Bombay gaol, and they could not, in the existing state of the law, be removed to any other prison.

23. Under these circumstances, and especially as there was reason to apprehend legal embarrassments if the convicted men were allowed to remain within the jurisdiction of the Supreme Court, the Bombay Government applied to us for a law to meet the exigency.

24. The case being urgent, we resolved upon suspending the standing orders of the Legislative Council, and at once passed the accompanying Act, "authorizing the Government of Fort William, in Bengal, Fort St. George, and Bombay, to remove native officers, soldiers and followers, imprisoned under sentence of court martial, from one prison to another."

Legis. Cons. 14 Dec. 1844. No. 9.

(No. 1055.)

From the Adjutant-General of the Army to the Secretary to the Government of India, Military Department.

Sir,

Forwarding copy of the Act of the 3d & 4th of Vict., cap. 37, with the alterations and amendments which the Commander-in-chief deems advisable.

I AM directed by the Commander-in-chief to acknowledge the receipt of your letter, No. 204, of the 8th instant, and in reply to forward to you the only copy which can be furnished of the Act of the 3d & 4th of Vict. cap. 37, with the alterations and amendments which are, in his Excellency's opinion, advisable for the purpose of rendering the code for the European portion of the East India Company's army as complete as possible.

I have, &c.

Head Quarters, Camp Judgurh,
27 November 1844.

(signed) *J. R. Lumley*,
Adj[t]-gen[l] of the Army.

Note:—The Proposed Amendments (written in Red Ink in the MS.) are printed in *Italics* within Brackets, thus [*the*].

Anno ~~Tertio~~ & ~~Quarto~~ VICTORIÆ REGINÆ.

CAP. ~~XXXVII.~~

Legis. Cons. 14 Dec. 1844. No. 10.

AN ACT to ~~consolidate~~ ~~and~~ amend the Laws for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the East India Company, and ~~for providing for the observance of Discipline in the Indian Navy, and to amend the Laws~~ for regulating the Payment of Regimental Debts and the Distribution of the Effects of Officers and Soldiers dying in [*the*] Service.—~~4th August 1840.~~

4 G. 4, c. 181.

WHEREAS an Act was passed in the [*third and*] fourth year[*s*] of the reign of ~~his late~~ [*Her present*] Majesty ~~King George the Fourth,~~ intituled, "An Act to consolidate and amend the Laws for punishing Mutiny and Desertion of Officers

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Officers and Soldiers in the Service of the East India Company, and ~~to authorize Soldiers and Sailors in the East Indies to send and receive Letters at a Reduced Rate of Postage,~~ [*for providing for the observance of Discipline in the Indian Navy, and to amend the Laws for regulating the Payment of Regimental Debts and the Distribution of the Effects of Officers and Soldiers dying in Service*]," and it being requisite for the retaining of such forces in their duty, that an exact discipline be observed, and that soldiers who shall mutiny or stir up sedition, or shall desert the said Company's service, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow; be it therefore enacted, by The Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any person who is or shall be commissioned, or in pay as an officer, or who is or shall be listed or in pay as a non-commissioned officer or soldier in the service of the said Company, shall, at any time during the continuance of this Act, begin, excite, cause or join in any mutiny or sedition in the land or marine forces of Her Majesty or of the said Company, or shall not use his utmost endeavours to suppress the same, or coming to the knowledge of any mutiny or intended mutiny, shall not without delay give information thereof to his commanding officer, or shall cast away his arms or ammunition, or otherwise misbehave himself before the enemy, or shall shamefully abandon or deliver up any garrison, fortress, post or guard committed to his charge, or which he shall be commanded to defend, or shall compel the governor or commanding officer of any garrison, fortress, ~~or~~ post [*or guard,*] to deliver up to the enemy or to abandon the same; or shall speak words or use any other means to induce such governor or commanding officer or others to misbehave towards the enemy, or shamefully to abandon or deliver up any garrison, fortress, post or guard committed to their respective charge, which he or they shall be commanded to defend, or shall treacherously make known the watchword, or shall intentionally occasion false alarms in action, camp, garrison or quarters, or shall leave his post for plunder or otherwise, before relieved, or [*being a sentry*] shall ~~be found~~ sleep [*ing*] on his post, or shall hold correspondence with or give advice or intelligence to any rebel or enemy of Her Majesty or the said Company, either by letters, messages, signs or tokens, in any manner or way whatsoever, or shall knowingly harbour or protect such rebel or enemy, or shall treat or enter into any terms with such rebel or enemy, without the license of the said Company, or of the said Company's Governor-general in Council, or Governor in Council, at any of their presidencies, or without the license of the General or Chief Commander, or who shall do violence to any person bringing provisions to the [*camp or*] quarters of the forces, or shall force a safeguard, or shall strike or shall use or offer any violence against his superior officer, being in the execution of his office, or shall disobey any lawful command of his superior officer, or shall desert the said Company's service; all and every person or persons so offending in any of the matters before mentioned, whether such offence shall be committed within the dominions of Her Majesty, or the possessions or territories which are or may be under the government of the said Company, or in foreign parts, upon land or upon the sea, within or without the limits of the charter of the said united Company, shall suffer DEATH, TRANSPORTATION, or such other punishment as by a court martial shall be awarded.

Punishment for mutiny, desertion and divers other military crimes.

[2.] And be it enacted, That the General, or other officer commanding-in-chief the forces of or belonging to the Presidencies of Fort William, Fort St. George and Bombay, respectively, for the time being, may appoint general courts martial, and issue his warrant to any General or other officer not below the degree of a field officer, having the command of a body of troops of Her Majesty or of the said Company, empowering them respectively to appoint general courts martial, as occasion may require, to be holden within the territories of any foreign state, or in any country under the protection of Her Majesty or the said Company, or at any place (other than Prince of Wales Island, Singapore and Malacca,) in the territories under the government of the said Company, and situated above 120 miles from the said Presidencies respectively, for the trial of any person under his command, accused of having committed wilful murder, or any other capital crime, or of having used violence or committed any offence against the person or property of any subject of Her Majesty, or any other person entitled to Her Majesty's protection, to the protection of the respective Governments of the East India Company, or of any State in alliance with the said Company, within the territories of any foreign State, or in any country under the protection of Her Majesty or

Power to appoint general courts martial any where beyond 120 miles from the Presidencies of Fort William, Fort St. George and Bombay, except Prince of Wales Island, Singapore and Malacca, for the trial of capital offenders.

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the said Company, or at any place other than Prince of Wales Island, Singapore and Malacca, in the territories under the government of the said Company, situated above 120 miles from the said Presidencies respectively; and the persons accused, if found guilty, shall suffer Death, or be liable to Transportation [*either*] for life, or for a term of years, or to such other punishment, according to the nature and degree of the respective offences, as by such sentence of any such general court martial shall be awarded: Provided always, That any person so tried for the same offence by any other court whatsoever.*

Sic. orig.

Sentences of death or transportation not to be so carried into execution till confirmed by the Officer commanding in chief, with the concurrence of the Governor of the Presidency.

~~III.~~ [*3.*] And be it enacted, That in every case wherein a sentence of death or transportation shall be pronounced, or a sentence of death shall be commuted to transportation, for any such capital offence committed at any place situated above 120 miles from the Presidencies of Fort William, Fort St. George and Bombay respectively, and being within the territories under the government of the said Company, such sentence, whether original, revised or commuted, shall not be carried into execution until [*it shall have been*] confirmed by the General or other officer commanding in chief ~~at the Presidency, with~~ [*by whom or under whose authority the court martial by which such offender was tried was appointed, and shall have received*] the concurrence of the Governor-general in Council, or Governor in Council of the Presidency in the territories subordinate to which the offender shall have been tried, ~~although such offender may belong to the forces of another Presidency~~: ~~Provided always, that such sentence shall have been regularly reported to and approved and confirmed by the General or other Officer commanding in Chief the forces of the Presidency to which such offender shall belong, and by whom or under whose authority the Court Martial, by which such offender shall have been tried, was appointed~~: [*Provided always, That no sentence of death or of transportation of a commissioned officer shall be carried into execution until confirmed by the officer commanding in chief in the East Indies*].*

Such offenders, if apprehended by the civil authorities, to be delivered over for trial by court martial.

~~IV.~~ [*4.*] And be it enacted, That if any person liable to be tried by a court martial for any such offence alleged to have been committed within the territories of any foreign State, or in any country under the protection of Her Majesty ~~of~~ [*or of*] the said Company, or at any place (other than Prince of Wales Island, Singapore or Malacca), in the territories under the Government of the said Company, situate above 120 miles from the said Presidencies of Fort William, Fort St. George and Bombay, respectively, and for which no proceeding shall have been commenced in any court of competent jurisdiction, shall be apprehended by the authority of, or brought before any magistrate for any such offence, such magistrate shall deliver over such accused person to the commanding officer of the regiment, corps or detachment to which such accused person shall belong, or to the commanding officer of the nearest military station, for the purpose of his being tried by a court martial for such offence as hereinbefore is provided in that behalf.

The ordinary course of law not to be interfered with.

~~V.~~ [*5.*] And be it enacted, That nothing in this Act contained shall be construed to exempt any officer or soldier from being proceeded against by the ordinary course of law; and any commanding officer who shall wilfully neglect or refuse, when application is made to him for that purpose, to deliver over to the civil magistrate any officer or soldier accused of any capital crime, or of any violence or offence against the person, estate or property of any of Her Majesty's subjects, or any other person entitled to Her Majesty's protection, or to the protection of the respective Governments of the East India Company, or of any State in alliance with the said Company, which is punishable by the ordinary course of law, or shall wilfully neglect or refuse to assist the officers of justice in apprehending such offender, shall, upon conviction thereof in any prosecution in any of Her Majesty's Courts of Record in India, be deemed to be *ipso facto* cashiered, and shall be utterly disabled to have or hold any civil or military office or employment in the said Company's service in the East Indies; and a copy of the record of such conviction, subscribed and attested by the Clerk of the Crown, or other proper officer of the Court in which such conviction shall take place, shall, within two months from the time of such conviction, be transmitted to the Judge Advocate General of the Army to which such offenders shall belong; provided

* This is put in to assimilate, as far as possible, with the provisions for the confirmation of sentence on commissioned Officers of the Queen's service; but I think it sufficient that the C. in C. at any Presidency should confirm.

vided that nothing herein contained shall extend to require the delivery over to the civil magistrate of any such person accused of any offence, who shall have been tried for such offence by any court martial in manner hereinbefore provided, in respect of offences committed within the territories of any foreign State, or in any country under the protection of Her Majesty or the said Company, or at any place in or out of the territories of the said Company situate above 120 miles from the said Presidencies of Fort William, Fort St. George and Bombay respectively, or against whom any effectual proceeding shall have been taken, or ordered to be taken, for the purpose of bringing such person to trial by such court martial as aforesaid: Provided also, That no person or persons, being acquitted or convicted of any capital crime, violence or offence, by the civil magistrate or the verdict of a jury, shall be liable to be punished by a court martial for the same otherwise than by cashiering; [*and whenever any officer or soldier shall have been tried before a court of ordinary criminal jurisdiction, the clerk of the court, or other officer having the custody of the records of such court, or the diary of such clerk, shall, if required by the officer commanding the regiment to which such officer or soldier belongs, transmit to him a certificate containing the substance and effect, only omitting the formal part of the indictment, conviction or acquittal of such officer or soldier, and shall be allowed for such certificate a fee of one Company's rupee and eight annas.*]

After trial by the civil power, no other punishment than cashiering.

~~VI.~~ [*6.*] And be it enacted, That no person whatever enlisted into the Company's service as a soldier shall be liable to be arrested or taken therefrom by any process or execution whatever, other than for some criminal matter, unless an affidavit (for which no fee shall be taken) shall be made by the plaintiff, or some one on his behalf, before a Judge of the court out of which such process or execution shall issue, or before some person authorized to take affidavits in such courts, of which affidavit a memorandum shall, without fee, be endorsed upon the back of such process, that the original debt for which the action has been brought, or execution sued out, amounts to the value of 300 Company's rupees at the least, over and above all costs of suit in the action or actions on which the same shall be grounded; and any Judge of such court may examine into any complaint thereof made by a soldier or his superior officer, and by warrant under his hand discharge such soldier without fee, he being shown to be duly enlisted and to have been arrested contrary to the intent of this Act, and shall award reasonable costs to such complainant, who shall have for the recovery thereof the like remedy that the person who takes out the said execution might have had for his costs, or the plaintiff in the like action might have had for the recovery of his costs, in case judgment had been given for him with costs against the defendant in the said action; provided that any plaintiff, upon notice of the cause of action first given in writing or left at such soldier's last quarters, may file a common appearance in any action to be brought for or upon account of any debt whatsoever, and proceed therein to judgment according to the course of the court, and have execution other than against the body.

No soldier liable to arrest for debt, unless amounting to 300 Company's rupees.

Plaintiff may enter a common appearance, &c.

~~VII.~~ [*7.*] And be it enacted, That it shall be lawful for Her Majesty to make Articles of War for the better government of the said Company's forces, which Articles of War shall be judicially taken notice of by all Judges and in all courts whatsoever, and copies of the same printed by the Queen's printer shall, as soon as conveniently may be after the same shall have been made and established by Her Majesty, be transmitted by Her Majesty's Secretary at War, signed with his own hand and name, to the Judges of Her Majesty's Superior Courts at Westminster, Dublin, Edinburgh and in India respectively, and also to the Governors of Her Majesty's dominions abroad, and the territories within the limits of the charter of the said Company; provided that no person shall by such Articles of War be subject to any punishment extending to life or limb or [*to*] transportation within the dominions of Her Majesty, or the possessions or territories which are or may be under the government of the said Company, for any crime ~~committed within 120 miles distance from either of the Presidencies of Fort William, Fort St. George or Bombay,~~ which is not expressed to be so punishable by this Act, [*or shall be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which shall not accord with the provisions of this Act*]; provided also, That nothing in this Act contained shall in any manner impeach or affect any Articles of War, or any matters enacted or in force, or which hereafter may be

The Queen may make Articles of War, of which all courts shall take judicial notice; and copies to be transmitted to Judges and Governors.

enacted by the Government of India respecting officers ~~or~~ soldiers [*or followers*] being natives of the East Indies or other places within the limits of the said Company's charter, and to whom the present Act is declared not to be applicable.

Trial of native officer or soldier.

~~VIII.~~ [*8.*] And be it enacted, That on the trial of all offences committed by any native officer, or soldier, or follower, reference shall be had to the Articles of War framed by the Government of India for such native officers, soldiers or followers, and to the established usages of the service.

The Queen may authorize the Court of Directors of the East India Company to empower the Indian Governments and their commanding field officers to appoint courts martial.

~~IX.~~ [*9.*] And be it enacted, That Her Majesty may from time to time grant a commission or warrant under Her Royal Sign Manual unto the Court of Directors of the said Company, who by virtue of such commission or warrant shall have power under the seal of the said Company to authorize and empower their Governor-general in Council, and Governor in Council for the time being at the Presidencies of Fort William, Fort St. George and Bombay respectively, from time to time to appoint courts martial, and to authorize and empower the General or other officer commanding any body of the forces employed in the said Company's service to appoint general courts martial, as well as to authorize any officer under their respective commands, not below the degree of a field officer, to convene general courts martial, as occasion may require, for the trial of offences committed by any of their forces under their several commands, whether the same shall have been so committed before or after such officer shall have taken upon himself such command, all which courts martial shall be constituted and shall regulate their proceedings according to the several provisions hereinafter specified; provided that whenever any of Her Majesty's forces shall be employed to act under the authority of any of the said Company's Presidencies in the East Indies, the power of appointing courts martial, or authorizing the appointment of courts martial, for the trial of any officer or soldier of the said Company of or belonging to [*or serving under the authority of any*] such Presidenc~~ies~~ [*y*], shall be in the officer for the time being commanding in chief at such Presidency.

The Queen may authorize the convening of courts martial for trying offences against Articles of War.

~~X.~~ [*10.*] And be it enacted, That for bringing to justice offenders against such Articles of War as may be framed by Her Majesty as hereinbefore provided, it shall be lawful for Her Majesty to grant her commission or warrant to the persons and in the manner herein mentioned and expressed for convening and authorizing any officer under their respective commands, not below the degree of a field officer, to convene courts martial as well in the possessions or territories which are or may be under the government of the Company, as elsewhere, where the troops of the Company are or may be employed, as occasion may require, for the trial of offences committed by any of the forces under their several commands, whether the same shall have been committed before or after such officer shall have taken upon himself such command.

Offenders may be tried and punished in places other than where the offences have been committed.

~~XI.~~ [*11.*] And be it enacted, That any person subject to the provisions of this Act who shall, in any part of Her Majesty's dominions or the possessions or territories under the government of the East India Company, or elsewhere, commit any offence for which he may be liable to be tried by court martial by virtue of this Act, may be tried and punished for the same in any part of Her Majesty's dominions, or the possessions or territories which are or may be under the government of the said Company, or elsewhere, where he may have come after the commission of the offence, in the same manner as if the offence had been committed where such trial shall take place; [*and any person subject to the provisions of this Act who shall, within the limits of any of the said Company's Presidencies under which he may not be serving, commit any offence for which he may be liable to be tried by court martial by virtue of this Act, may be tried and punished for the same by court martial appointed by the Officer commanding in chief at such Presidency, who is hereby authorized to appoint the same in like manner as though the offender belonged to such Presidency, provided that the sentence of the court shall be reported to and confirmed by the Officer commanding in chief at the Presidency to which the prisoner shall belong, with the concurrence of the Governor-general in Council, or Governor in Council, or Governor of the said Presidency, in all cases in which the concurrence of Government in sentences of courts martial is required by this Act.*]

Composition and constitution of general courts martial.

~~XII.~~ [*12.*] And be it enacted, That all general courts martial held under the authority of this Act shall consist of not less than thirteen commissioned officers, except

except the same shall be holden in any place out of Her Majesty's dominions, or of the possessions or territories which are or may be under the government of the said Company, or at Prince of Wales Island, Singapore or Malacca, [*or the settlements on the coasts of China*], at which places such general court martial may consist of any number not less than five; and no judgment of death shall pass without the concurrence of two-thirds at least of the officers present; and the President shall in no case be the Officer commanding in chief, or Governor of the garrison where the offenders shall be tried, nor under the degree of a field officer, unless where a field officer cannot be had, nor in any case whatsoever under the degree of a captain.

Powers of general courts martial.

~~XIII.~~ [*13.*] And be it enacted, That a general court martial may sentence any soldier to imprisonment, with or without hard labour, ~~in any public prison or other place which the court or the officer commanding the regiment or corps to which the offender belongs or is attached shall appoint,~~ and may also direct that such offender shall be kept in solitary confinement for any portion or portions of such imprisonment not exceeding ~~one month at a time, or three months at different times, with intervals of not less than one month between such times in one year, of such imprisonment with hard labour,~~ [*twenty-eight days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement*]; or may sentence any soldier to corporal punishment, not extending to life or limb, for immorality, misbehaviour, or neglect of duty; and a general court martial may, in addition to any ~~such~~ [*other*] punishment ~~as aforesaid,~~ [*which may be competent to award*], sentence any offender to forfeiture of all advantage as to additional pay and pension on discharge, [*which might have otherwise accrued from the length of his former service, or to forfeiture of such advantage absolutely, whether it might have accrued from past service or might accrue from future service, according to the nature of the case*]; and whensoever any [*general*] court martial, by which any soldier shall have been tried and convicted of any offence punishable with death shall not think the offence deserving of capital punishment, such court martial may, instead of awarding a corporal punishment or imprisonment, adjudge the offender, according to the degree of the offence, to be transported as a felon for life or for a certain term of years, or may sentence him to general service as a soldier in any corps of the said Company's forces, and in any country or place (such country or place being within the limits of the said Company's charter and under the said Company's government), which the Officer commanding in chief at the Presidency ~~to~~ [*under*] which the offender ~~belongs~~ [*is serving*] shall thereupon direct, or may, if such offender shall have enlisted for a limited number of years, sentence him to serve for life as a soldier in any corps of the said Company's forces which such officer commanding in chief shall direct; ~~and the Court may, in addition to any other punishment, sentence such offender to forfeit all advantage as to increase of pay, or as to pension or discharge, which might otherwise have accrued to such offender,~~ provided that in all cases where a capital punishment shall have been awarded by a general court martial [*upon any commissioned officer,*] it shall be lawful for the Officer commanding in chief [*in the East Indies, and in the case of any soldier for the Officer commanding in chief*] the forces of the Presidency to which the offender shall belong [*or under whose authority the offender shall have been tried*], instead of causing such sentence to be carried into execution, to order the offender to be transported as a felon, either for life or for a certain term of years, as shall seem meet to the officer commanding as aforesaid.

The Queen empowered to appoint or to authorize the Indian Government to appoint places of transportation.

Indian Government to execute sentence of transportation.

~~XIV.~~ [*14.*] And be it enacted, That Her Majesty may, by any Order or Orders to be by Her from time to time made by the advice of Her Privy Council, appoint, or by any such Order or Orders in Council authorize the Governor-general of India in Council and the Governor in Council of Fort St. George and Bombay respectively to appoint, any place or places beyond the seas within Her Majesty's dominions to which felons and other offenders may be conveyed; and that when such offenders shall be about to be transported from any of the said Presidencies to such place of transportation, the [*Governor General of India or*] Governor of such Presidency shall give orders for his intermediate custody, and removal to the ship to be employed for his transportation, and shall empower some person to make a contract for the effectual transportation of the offender to the place so appointed, and shall direct security to be given for such transportation.

Transports to be subject to the convict laws of the place of transportation.

~~XV.~~ [*15.*] And be it enacted, That so soon as such offender shall be delivered to the Governor of the Colony, or other person or persons to whom the contractor or other person appointed for that purpose as aforesaid shall be so directed to deliver him, every such person shall, within the place or places to which, under or in pursuance of any such Order or Orders in Council, they shall be sent or transported, be subject and liable to all such and the same laws, rules and regulations as are or shall be in force in any such place or places with respect to convicts transported from Great Britain.

Trial and punishment for embezzlement, and similar offences.

~~XVI.~~ [*16.*] And be it enacted, That every Paymaster or other commissioned officer, or any person employed in the Ordnance or Commissariat Departments, or in any manner in the care or distribution of any money, provisions, forage or stores, who shall embezzle or fraudulently misapply, or be concerned in, or connive at the embezzlement, fraudulent misapplication or damage of any money, provisions, forage, clothing, ammunition or other military stores belonging to Her Majesty's forces or for Her use, or belonging to the East India Company or for their use, may be tried for the same by a general court martial, which may adjudge any such offender to be transported as a felon for life, or for any certain term of years, or to suffer such punishment of fine, imprisonment, dismissal from the said Company's service, and incapacity of serving the East India Company in any office, civil or military, as such court shall think fit, according to the nature and degree of the offence, and every such offender shall, in addition to any other punishment, make good at his own expense the loss and damage sustained, which shall have been ascertained by such court martial, and the loss and damage so ascertained as aforesaid shall be a debt to Her Majesty or the East India Company, as the case may be, and may be recovered accordingly; [*and every officer sentenced to be transported as a felon, when such sentence shall be duly confirmed, shall thereupon cease to belong to the said Company's service, and for ever be incapable of serving Her Majesty or the said Company in any military capacity.*]

Composition and powers of district or garrison courts martial.

~~XVII.~~ [*17.*] And be it enacted, That a district or garrison court martial shall consist of not less than ~~five~~ [*seven*] commissioned officers, [*except in any place out of Her Majesty's dominions, or of the possessions or territories which are or may be under the Government of the said Company, or at Prince of Wales Island, Singapore, Malacca, or in the settlements on the coast of China, where it may consist of not less than five commissioned officers,*] and may sentence any soldier to any imprisonment with or without hard labour, ~~in any public prison or other place which such Court, or the Officer commanding the Regiment or Corps to which the offender belongs or is attached shall appoint,~~ and may also direct that such offender shall be kept in solitary confinement for any portion or portions of such imprisonment not exceeding ~~one month at a time, or three months at different times, with intervals of not less than one month between such times in one year of such imprisonment with hard labour~~ [*twenty-eight days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement*], or may sentence any soldier to corporal punishment not extending to life or limb for immorality, misbehaviour or neglect of duty, and such court may, in addition to either of the said punishments, sentence a soldier to forfeiture of all advantage as to additional pay, and to pension or discharge [*which might have otherwise accrued from the length of his former service, or to forfeiture of such advantage absolutely, whether it might have accrued from past service, or might accrue from future service, according to the nature and degree of the case*], for disgraceful conduct,—

In wilfully maiming or injuring himself or any other soldier, at the instance of such soldier, with intent [*to deprive himself of life, or*] to render himself or such soldier unfit for service:

In tampering with his eyes:

In malingering, feigning disease, absenting himself from hospital whilst under medical care, or other gross violation of the rules of any hospital, thereby wilfully producing or aggravating disease or infirmity, or wilfully delaying his cure:

In purloining or selling stores, the property of the Crown or of the East India Company:

In stealing any money or goods, the property of a comrade [*of a military officer*], or of any military or regimental mess:

In producing false or fraudulent accounts or returns:

In

In embezzling or fraudulently misapplying money entrusted to him, belonging either to the Crown or the East India Company;

Or in committing any petty offence of a felonious or fraudulent nature, to the injury of or with intent to injure any person, civil or military;

Or for any other disgraceful conduct, being of a cruel, indecent and unnatural kind.

And such offender may be further put under stoppages, not exceeding two-thirds of his ~~daily~~ pay, until the amount be made good of any loss or damage arising out of his misconduct; and if any soldier shall be convicted of any such disgraceful conduct, and shall be [*or shall have been*] sentenced to forfeiture of his claim to pension, the court may further recommend him to be discharged with ignominy from the service; and any such court shall deprive a soldier, if convicted of a charge of habitual drunkenness of his liquor when issued in kind, or of his allowance in lieu of ~~beer or~~ liquor, or of such proportion thereof, or of such portion of his additional or regular pay for such period, not exceeding two years, as may accord with Her Majesty's Articles of War for the Company's troops, subject to restoration on subsequent good conduct; and in addition to any such punishment, the court may, if it shall think fit, sentence such offender to imprisonment, or to corporal punishment; provided that in all the foregoing cases the sentence of a district or garrison court martial shall be confirmed by the General ~~Officer, Governor~~ or Senior Officer in command of the [*troops in the*] district, garrison or island, [*and that such court martial shall not have power to pass any sentence of death or transportation*]; and the president of every court martial, other than a general court martial, ~~not being under the rank of Captain~~, shall be appointed by the officer convening such court martial, ~~provided that such court martial shall not have power to pass any sentence of death or transportation~~, [*and shall not be under the rank of Captain in the army, save in the case of a detachment court martial holden out of Her Majesty's dominions or the territories under the government of the East India Company, or on board any ship or other vessel*].

Sentences to be confirmed.

[*President.*]

~~XVIII~~. [*18.*] And be it enacted, That in case of mutiny and gross insubordination, or any offences committed on the line of march, the offence may be tried by a regimental [*or other inferior*] court martial, and the sentence confirmed and carried into execution on the spot by the officer in the immediate command of the troops, provided that the sentence shall not exceed that which a regimental court martial is competent to award; and a regimental [*or other inferior*] court martial may try any soldier for habitual drunkenness, and may sentence any soldier to imprisonment, with or without hard labour, for any period not exceeding 40 days, and to solitary confinement for any period not exceeding 20 days; ~~and whenever any such court martial shall sentence any soldier to imprisonment as aforesaid, it may (if it shall think fit) direct that he be kept in solitary confinement for a certain portion or portions of the period of such imprisonment~~ [*or may sentence a soldier to imprisonment, part thereof to be with or without hard labour, and part thereof in solitary confinement*]: Provided always, That when such court shall direct the imprisonment to be part [*in*] solitary [*confinement*] and part otherwise, the whole period of such imprisonment ~~including the solitary part thereof~~, shall not exceed 20 days, [*and the part thereof in solitary confinement shall not exceed*], ~~and shall be divided into periods not exceeding~~ 10 days ~~each~~, and a regimental [*or other inferior*] court-martial may sentence any soldier for being drunk when on or for duty or parade, or on the line of march, or be deprived of ~~a penny~~ [*eight pice*] a day of his pay for any period not exceeding 30 days, in addition to any other punishment which such court may award; and any such court shall deprive a soldier, if convicted of a charge of habitual drunkenness, of his liquor, when issued in kind, or of his allowance in lieu of ~~beer or~~ liquor, or of such proportion thereof, or of such portion of his additional or regular pay for such period, not exceeding six months, as may accord with Her Majesty's Articles of War for the Company's troops, subject to restoration on subsequent good conduct.

Certain offences may be tried and punished by regimental courts martial.

Regulations as to imprisonments and other punishments awarded by regimental courts martial.

~~XIX~~. [*19.*] And be it enacted, That every soldier who shall be found guilty of desertion by a general or district or garrison court martial, where such findings shall be duly approved, or of felony, in any court of civil judicature, shall thereupon forfeit all advantages as to additional pay, [*good-conduct pay*] and to pension on discharge, [*which might have accrued from the length of his former service,*] in addition to any punishment which such court may award, [*and in addition to any other punishment, it shall be lawful for a district or garrison court martial to sentence a soldier convicted*

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convicted of desertion to forfeiture of all advantage as to additional pay and pension on discharge which might accrue from future service]; and it shall be lawful for any court martial empowered to try the crime of desertion, [*on the first or on any subsequent conviction of desertion, to direct, if it shall think fit, that*], in addition to any other punishment, ~~to direct that~~ the offender be marked on the left side, two inches below the armpit, with the letter D., such letter not to be less than an inch long, and to be marked upon the skin with some ink or gunpowder, or other preparation, so as to be visible and conspicuous, and not liable to be obliterated.

Officers in command of troops serving in foreign countries not in alliance with the East India Company may assemble courts martial.

~~XX.~~ [*20.*] And be it enacted, That it shall be lawful for any officer commanding any district [*detachment*] or any portion of the said Company's troops which may at any time be serving in any place out of Her Majesty's dominions, or of the possessions or territories which are or may be under the government of the said Company, or of the territories of those states in alliance with the said Company, in which the said Company's forces are permanently stationed, upon complaint made to him of any offence [*of a less heinous nature than those for the trial of which provision is herein made*] committed against the property or person of any inhabitant of or resident in any such countries, by any person serving with or belonging to the Company's army, being under the immediate command of any such officer, to summon and cause to assemble a court martial, which shall consist of not less than three officers at the least, for the purpose of trying any such person, notwithstanding any such officer shall not have received any warrant empowering him to assemble courts martial; and every such court martial shall have the same powers in regard to summoning and examining witnesses, trial of and sentence upon any such offender, as are granted by this Act to general courts martial, provided that no sentence of any such court martial shall be executed until the General [*or officer*] commanding in chief of the ~~army~~ [*force*] to which the division, brigade, detachment or party to which any person so tried, convicted and adjudged to suffer punishment shall belong, shall have approved and confirmed the same.

Sentence of such courts to be confirmed.

How proceedings shall be regulated in cases of conjunction of Queen's and Company's officers on courts martial.

~~XXI.~~ [*21.*] And be it enacted, That officers of Her Majesty's land forces and of the forces in the service of the East India Company may, whenever it shall be necessary, sit in conjunction on courts martial, which shall be regulated in like manner as if consisting wholly of officers of Her Majesty's land forces, or wholly of officers in the service of the said Company, except that upon the trial of any person in Her Majesty's land forces the provisions of the Act which shall exist at the time for the punishment of mutiny and desertion in Her Majesty's forces shall be applicable, and on the trial of any officer or soldier in the service of the said East India Company, the provisions of this Act shall be applicable, notwithstanding any officer in the actual service of the said Company may have a commission from Her Majesty or any of Her Royal Predecessors.

Courts martial may be wholly composed of Queen's officers.

~~XXII.~~ [*22.*] And whereas it may sometimes happen that officers in the service of the said Company cannot conveniently be had to compose the whole or part of a court martial; be it enacted, That any officer or soldier, or person subject to the provisions of this Act, may be tried by a ~~general~~ court martial, composed of officers in Her Majesty's service alone; provided always, That the officer convening such court martial shall specify in his warrant [*or order convening the court*] that no officer in the service of the said Company could conveniently be had.

Oaths or solemn declarations to be administered.

~~XXIII.~~ [*23.*] And be it enacted, That [*at*] all general and other courts martial ~~shall administer an oath, or in case of natives of India, an oath or solemn declaration, as circumstances may require, to every~~ [*all*] person[*s*] who shall be examined before such court in any matter relating to any proceedings before the same [*shall be sworn by the court, according to the forms of their respective religions.*]

Members of ~~general~~ courts martial and officiating Judge Advocate to take the oaths mentioned in the Schedule.

~~XXIV.~~ [*24.*] And be it enacted, That in all trials by general courts martial to be held by virtue of this Act, the president and every member assisting at such trial, before any proceedings be had thereon, shall take the oath, in the Schedule to this Act annexed, before the Judge Advocate or his deputy, or person officiating as such, and on trials by other courts martial before the president of such court, who are hereby respectively authorized to administer the same; and any sworn member may administer the oath to the president, and as soon as the said oaths shall have been administered to the respective members, the president of the court shall administer to the Judge Advocate, or the person officiating as such, the

the oath in the Schedule to this Act annexed; and no proceeding or trial shall be held but between the hours ~~appointed by the officer commanding where the court martial is held,~~ [*of six in the morning and four in the afternoon*] except in cases which require an immediate example: Provided also, That every witness duly summoned or warned to attend any court martial shall, during his necessary attendance on such court, and in going to and returning from the same, be privileged from arrest, and shall, if arrested in breach of such privilege, be discharged by such court martial or any court of law, or judge of any such court, according as the case shall require, upon its being made appear to such court martial, court of law, or judge, by affidavit, in a summary way, that such witness was arrested in going to or returning from or attending upon such court martial; and that every witness so duly summoned or warned to attend as aforesaid who shall not attend on such court, or who attending shall refuse to give evidence, on oath, or solemn declaration, or to answer all such questions as the court may legally demand, shall be liable to be attached in the courts of law, upon complaint made, in like manner as if such witness had neglected to attend on any trial in any such court.

Protection to witnesses.

Witness not attending or refusing to give evidence liable to be attached.

~~XXV.~~ [*25.*] And be it enacted, That no officer or soldier, being acquitted or convicted of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence ~~unless~~ [*except*] in ~~the cases of~~ [*in which*] an appeal from a regimental [*or other inferior*] to a general court martial [*is expressly given by any of Her Majesty's Articles of War for the Company's troops,*] and that no finding, opinion or sentence given by any court martial, and signed by the president thereof, shall be liable to be revised more than once, and no witness shall be examined, nor shall any additional evidence be received by the court on such revision.

A second trial to be had only on appeal from a regimental to a general court martial, and no revision more than once.

~~XXVI.~~ [*26.*] And be it enacted, That every Judge Advocate, or person officiating as such at a general court martial, shall transmit, with as much expedition as circumstances will admit, the original proceedings, and the sentence, finding or opinion of such court martial, to the Judge Advocate-general of the Army in which such court martial shall be held; in whose office they are to be carefully preserved; and any person tried by a general court martial, or any person in his behalf, shall be entitled, on demand, to a copy of such sentence, finding, or opinion, and proceedings, (paying reasonably for the same,) whether such sentence shall be approved or not, at any time not sooner than three months, if the trial took place on the continent of India, or six months if beyond seas; provided that such demand as aforesaid shall have been made within the space of three years from the date of the approval, or other final decision upon the proceedings before such general court martial.

Original proceedings, sentence, &c. to be transmitted to the Judge Advocate-general of the army in which such court shall be held.

~~XXVII.~~ [*27.*] And be it enacted, That the government of any of the said Presidencies in India may suspend the proceedings of any court martial which may at any time be holden within such Presidencies respectively.

Indian Governments may suspend proceedings.

~~XXVIII.~~ [*28.*] And be it enacted, That all crimes and offences which have been committed against ~~the said~~ [*any former*] Act ~~of the fourth year of the reign of His Majesty King George the 4th~~ [*for punishing mutiny and desertion in the Company's forces,*] or against any of the Articles of War made and established by virtue of the same, may, during the continuance of this Act, be inquired of and punished in like manner as if they had been committed against this Act, and every warrant for holding any court martial under ~~the said~~ [*any former*] Act ~~of the 4th year of the reign of His Majesty King George the Fourth~~, shall remain in full force, notwithstanding the repeal of such Act; and all proceedings of any court martial upon any trial begun under the authority of such former Act shall not be discontinued by the repeal of the same: Provided always, That no person shall be liable to be tried and punished for any offence against [*any of*] the said Acts or this Act, or the Articles of War made or to be made by virtue of the same ~~Acts,~~ or either of them, which shall appear to have been committed more than three years before the issuing of the commission or warrant for such trial, unless the person accused by reason of his having absented himself, or of some other manifest impediment, shall not have been amenable to justice within that period; in which case such person shall be liable to be tried under such commission or warrant, at any time not exceeding two years after the impediment shall have ceased, or unless the conduct of the person accused shall have been submitted to the consideration of the Court of

Offences against former Mutiny Act[s] punishable as if committed against this, and all existing proceedings continued.

Limitation as to trial of offences.

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Directors of the East India Company by the Government of the Presidency to which such person shall belong; in which case such person shall be liable to be tried under such commission or warrant, at any time not exceeding five years after his offence shall have been committed.

Desertion shall be punishable, notwithstanding any circumstances of enlistment.

~~XXIX~~. [*29.*] And be it enacted, That every soldier shall be liable to be tried and punished for desertion from any corps into which he may have enlisted, or from Her Majesty's service, notwithstanding that he may of right belong to some corps from which he shall have originally deserted; and if such person shall be claimed as a deserter by the corps to which he originally belonged, and be tried as a deserter therefrom, or shall be tried as a deserter from any other corps into which he may have enlisted, or if he shall be tried while actually serving in some corps for desertion from any other corps, every desertion previous or subsequent to that for which he shall be under trial, as well as every previous conviction for any other offence, may be given in evidence against him; and in like manner, in the case of any soldier tried for any offence whatever, any previous convictions may be given in evidence against him; provided that no such evidence shall in any case be received until after the prisoner shall have been found guilty of such offence, and then only for the purpose of affixing punishment; and provided also that after he shall so have been found guilty, and before such evidence shall be received, it shall be proved to the satisfaction of the court that he had previously to his trial received notice of the intention to produce such evidence on the same; and provided further, that the court shall in no case award to him any greater or other punishment or punishments than may by this Act, and by the Articles of War to be framed by Her Majesty by virtue of this Act, be awarded for the offence of which he shall have been found guilty.

Admissibility of evidence of former offences.

A person acknowledging himself to be a deserter, to be deemed duly enlisted, and dealt with accordingly.

~~XXX~~. [*30.*] And be it enacted, That any person who shall voluntarily deliver himself up as a deserter from any regiment or corps of the said Company's forces, or who, upon being apprehended for desertion or any other offence, shall, in the presence of the magistrate or of the commanding officer of the place, confess himself to be a deserter from any such regiment or corps, shall be deemed to have been duly enlisted and to be a soldier, and shall be liable to serve in any such corps of the said Company's forces as the Commander ~~of~~ [*in chief of all*] the forces of the said Company shall think fit to appoint, whether such person shall have been ever actually enlisted as a soldier or not.

Punishment for inducing or assisting in desertion.

~~XXXI~~. [*31.*] And be it enacted, That every person who shall directly or indirectly persuade any soldier to desert, shall suffer such punishment by fine or imprisonment, or both, as the court before which the conviction may take place, shall adjudge; and every person who shall assist any deserter, knowing him to be such, in deserting, or in concealing himself, shall forfeit for every such offence the sum of 800 Company's rupees, and be further liable to imprisonment, not exceeding twelve months.

Regulations for musters, and penalties on false musters.

~~XXXII~~. [*32.*] And be it enacted, That musters shall be taken of every regiment, troop or company in the said Company's service, at such times as shall be appointed, and no soldier shall be absent from such musters, unless properly certified to be employed on some other duty, or to be sick, or in prison, or on furlough; and every person who shall give or procure to be given any untrue certificate whereby to excuse any soldier for his absence from any muster or any other service which he ought to attend or perform, or shall make any false or untrue muster of men or horse, or shall wittingly or willingly allow or sign the muster roll wherein such false muster is contained, or any duplicate thereof, or who shall directly or indirectly take or cause to be taken any money or gratuity for mustering any soldiers, or for signing any muster rolls or duplicates thereof, or shall knowingly muster any person by a wrong name, upon proof thereof, upon oath made by two witnesses before a general court martial, shall for such offence be forthwith cashiered, and shall thereby be utterly disabled to have or hold any civil or military office or employment within the territories under the Government of the East India Company, or in Her Majesty's service, or the service of the said Company; and if the person giving such untrue certificate shall not have any military commission, he shall forfeit for every such offence the sum of 500 Company's rupees; and any person who shall be falsely mustered, or offer himself to be mustered, or lend or furnish any horse to be falsely mustered, shall, upon oath made by two witnesses before some magistrate residing near the place where such muster

muster shall be made, forfeit the sum of 200 Company's rupees; and the informer, if he belong to the Company's service, shall, if he demand it, be forthwith discharged.

~~XXXIII~~. [*33.*] And be it enacted, That any soldier who shall absent himself without leave, or who shall desert, shall, on conviction by a general or other court martial, in addition to any punishment awarded by such court, forfeit [*the rates per diem of*] his pay for the [*day or*] days on which he has so absented himself without leave, or on which he has been absent by such desertion; and that no soldier shall be entitled to pay, or to reckon service, rewards, pay or pension, when in confinement under any sentence of any court, or during any absence from duty by commitment on a charge of any offence cognizable by a civil or criminal court, or by reason of any arrest for debt, or as a prisoner of war, or while in confinement under any charge of which he shall afterwards be convicted; and if any soldier shall absent himself without leave for any period not exceeding five days, and shall not account for the same to the satisfaction of the commanding officer, it shall be lawful for the said commanding officer (if he should think fit) to order and direct, that, in addition to such other punishment as he has authority to inflict, such soldier shall also suffer forfeiture [*of the rate per diem*] of his pay for the day or days on which he has so absented himself, and thereupon such pay shall be forfeited, and such soldier shall not be liable to be afterwards tried by a court martial for the said offence: Provided always, That any soldier who shall be so ordered to forfeit his pay shall have a right to insist on being tried by a court martial for his offence, instead of submitting to such forfeiture; and provided also, that any soldier acquitted of any offence for which he had been committed shall, upon return to his duty in his corps, be entitled to receive all arrears of pay growing due, and to reckon service during his absence or confinement, and upon rejoining the service from being a prisoner of war, due inquiry shall be made by a court martial, and if it shall be proved to the satisfaction of such court that the said soldier was taken prisoner without wilful neglect of duty on his part, and that he had not served with or under or in any manner aided the enemy, and that he hath returned as soon as possible to the service, he may thereupon be recommended by such court to receive either the whole of such arrears of pay or a proportion thereof, and to reckon service during his absence: Provided also, That it shall be lawful for the Government under which any soldier is serving to order or withhold the payment of the whole or any part of the pay of any such soldier during the period of absence by any of the causes aforesaid.

Suspension and forfeiture of pay.

~~XXXIV~~. [*34.*] And be it enacted, That every soldier entitled to his discharge, under any orders or any regulations made by the said Company, or upon the expiration of any period for which he shall have engaged to serve, or under this Act, shall be entitled to be sent to Great Britain or Ireland free of expense, and be entitled on his return to have and receive marching-money from the place of his being landed to the parish or place in which he shall have been originally enlisted, or at which he shall at the time of arrival in Great Britain or Ireland decide to take up his residence, such place not being at a greater distance from the place of his landing than the place of his original enlistment, such marching-money being at the rate and reckoning per diem fixed for victualling soldiers in Her Majesty's service on the march: Provided always, That every such soldier entitled to and claiming his discharge, and to be sent to Great Britain or Ireland, ~~be subject to~~ [*for any breach of any of*] the provisions of this Act, and the Articles of War framed or to be framed by Her Majesty for the better government of the Company's forces [*be liable, on proof of such offence before any Justice of Peace, to forfeiture of his marching-money, or of a proportion of his pension from the said Company, or of both, not exceeding in the whole Five Pounds, or to imprisonment for any period not exceeding Six Months.*]

Soldiers entitled to discharge may claim to be sent home free of expense;

but to be subject to this Act till their arrival.

~~XXXV~~. [*35.*] And be it enacted, That no paymaster or other person shall receive any fees, or make any deductions whatsoever out of the pay or allowances of any officer or soldier (without his consent be obtained thereto) other than the usual deductions, or such other necessary deductions as shall from time to time be required to be made according to the regulations of the service; and every paymaster or other officer having received any officer's or soldier's pay and allowances, who shall unlawfully detain [*the same*] for the space of One Month ~~the same~~, or refuse to pay the same when it shall become due, according to the several rates

No paymaster to receive fees or to make unusual deductions out of pay, or to retain pay.

Punishment for so doing.

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established by the regulations of the service, shall, upon proof thereof before a court martial, be discharged from his employment, and shall forfeit 800 Company's rupees, and be liable to such further punishment as shall by the court martial be awarded; one moiety of such fine to be paid to the informer, and should such informer be a soldier, he shall, if he demand it, be discharged from any further service: provided, that it shall be lawful for the Governor-general in Council, or the Governor in Council, at the said Presidencies respectively, to give orders for withholding the pay of any officer or soldier for any period during which such officer or soldier shall be absent without leave.

Indian Governments may give orders to withhold pay in cases of absence without leave.

Penalties on persons unlawfully having or purchasing military stores, &c.

~~XXXVI~~. [*36.*] And be it enacted, That any person who shall unlawfully have in his or her possession or keeping, or who shall knowingly detain, buy, exchange or receive from any soldier or deserter, or any other person, on any pretence whatsoever, or shall solicit or entice any soldier, or shall be employed by any soldier, knowing him to be such, to sell any arms, ammunition, clothes or military furniture, or any provisions, or any sheets or other articles used in barracks, provided under barrack regulation or regimental necessaries, or any article of forage provided for any horses belonging to the service, or shall change the colour of any clothes as aforesaid, shall forfeit for every such offence any sum not exceeding 40 Company's rupees (one moiety to be paid to the informer), together with treble value of all or any of the several articles of which such offender shall so become possessed; and if any credible person shall prove on oath or solemn declaration before a magistrate, or person exercising the like authority, a reasonable cause to suspect that any person has in his or her possession, or on his or her premises, any property of the description hereinbefore described, or with respect to which any such offence shall have been committed, the magistrate or person exercising like authority may grant a warrant to search for such property, as in case of stolen goods.

Recruits concealing infirmities punishable.

~~XXXVII~~. [*37.*] And be it enacted, That any person who shall enlist in the Company's forces, and who shall be discovered to be incapable of active service by reason of any infirmity which shall have been concealed by such person, or not declared before the Justice of Peace at the time of his attestation, and mentioned at the foot thereof, may be transferred into any garrison, or veteran or invalid battalion; or into Her Majesty's or [*the said*] Company's Marine forces, and notwithstanding he shall have been enlisted for any particular regiment, and shall be entitled to receive such portion or residue of bounty only as shall be allowed by the said Company by any regulation made in that behalf, in lieu and in stead of the bounty upon which such man shall have been enlisted, anything in any Act or Acts, or any rules or regulations relating to soldiers, to the contrary notwithstanding.

After embarkation, all officers and soldiers subject to this Act.

~~XXXVIII~~. [*38.*] And be it enacted, That all officers and soldiers who shall be enlisted in, or transferred to, the service of the said Company, and all officers in the said Company's service, who may proceed in charge of, or be appointed to do duty with, such enlisted or transferred officers and soldiers, shall, from and after their embarkation to go abroad to such place whereto they shall be sent in the service of the said Company, be during their passage subject to all the provisions and regulations of this Act, and to all such provisions and regulations as officers and soldiers in the pay of the said Company shall from time to time be subject to at the garrison or place to which such officers and soldiers shall be sent.

[*39. And it is hereby enacted, That the commission of every officer in the service of the said Company, who may be on board any ship or vessel on which any detachment or party of the said Company's soldiers may be embarked for conveyance to the East Indies, shall, for the purposes of this Act, and of the Articles of War to be made in virtue thereof, be deemed and considered to have as full force and effect from the time of such embarkation, in the United Kingdom, as though the said officer were at the time actually serving in the East Indies.*]

Offences during passage cognizable after arrival.

~~XXXIX~~. [*40.*] And forasmuch as it may happen that offences may be committed by the said officers and men after their embarkation, and before their arrival at their place of destination abroad, which nevertheless cannot be tried and punished during their passage in such manner as such offences ought to be tried and punished; be it therefore enacted, That in every such case every such officer or soldier may and shall, after his arrival at his place of destination abroad, be tried

tried and punished for every offence committed after his embarkation and before his arrival, in the same manner as he would have been liable to be tried and punished if such offence had been committed in any place where the offender would have been tried by any court martial held under the authority of this Act.

Divers persons besides officers and soldiers made subject to this Act.

~~XL.~~ [*41.*] And be it enacted, That the provisions of this Act shall apply to all officers and persons who are or shall be serving and hired to be employed, or who shall serve and be hired to be employed in the artillery, and in the several trains of artillery, and all conductors of stores and in the department of engineers, and all officers serving or who shall serve in the corps of engineers, and all officers and persons serving or who shall serve as military surveyors or draftsmen, or in the corps of sappers and miners or pioneers, and all persons who now are or shall be in the ordnance and commissariat departments, and all apothecaries, veterinary surgeons, medical storekeepers, hospital stewards and others serving in the medical ~~establishment~~ [*department*] of the army, licensed suttlers and followers, and all storekeepers and other civil officers employed under the ordnance, shall be at all times subject to all the penalties and punishments mentioned in this Act, and shall, in all respects whatsoever, be holden to be within the intent and meaning of every part of this Act.

Officers and soldiers raised or serving in friendly states subject to martial law.

~~XLI.~~ [*42*] And be it enacted, That all officers and soldiers of any troops, being mustered and in pay, which shall be raised or serving in any of the possessions or territories which are or may be under the government of the said Company, or places which are or may be occupied by persons subject to the government of the said Company, or by any forces of the said Company, under the command of any officer having a commission immediately from the Government of any of the Presidencies of the said Company, shall be liable to martial law, in like manner as the Company's other forces are.

For the purposes of this Act the Presidency of Fort William to comprise that of Agra.

~~XLII.~~ [*43.*] And be it enacted, That for the purposes of this Act and of any Articles of War to be made under the same, the Presidency of Fort William in Bengal shall be taken and deemed to comprise under and within it all the territories which by law are divisible between the Presidencies of Fort William, in Bengal and Agra respectively, and shall for all the purposes aforesaid be taken to be the Presidency of Fort William in Bengal.

9 G. 4, c. 72.

XLIII. And whereas the said Company, for the safety and protection of the territories under their government, in addition to their land forces, maintain a marine establishment, heretofore called "The Bombay Marine," but now called "The Indian Navy," and by an Act passed in the 9th year of the reign of King George the Fourth, intituled, "An Act to extend the Provisions of the East India Mutiny Act to the Bombay Marine," reciting the said Act of the fourth year of King George the Fourth, and that it was expedient that discipline should be enforced in the said Marine establishment in the manner provided by the said Act of the fourth year of King George the Fourth in respect to the other forces of the said Company, it is enacted, that the provisions of the said Act of the fourth year of King George the Fourth, and the Rules and Articles of War made and to be made by virtue thereof, should extend and be applied to the service of "The Bombay Marine," and that all persons in the service of the said Company belonging to the said Bombay Marine, who should be commissioned or in pay as officers, or enlisted or in pay as non-commissioned officers or soldiers respectively, in the said Company's army, should be to all intents and purposes liable to the provisions of the said Act of the fourth year of his Majesty King George the Fourth, and to the same Rules and Articles of War, and the same penalties, as the officers and soldiers of the said Company's other forces: And whereas it is expedient to provide other means for enforcing discipline in the said Marine establishment called the "Indian Navy;" Be it enacted, That for the retaining the forces of the said establishment in their duty, the Governor-general of India in Council shall have power to make laws and regulations for securing the observance of an exact discipline in the said service called "The Indian Navy," and for bringing to a more exemplary and speedy punishment than the usual forms of the law will allow all officers, engineers, soldiers, marines, seamen, and all others belonging to the said Marine establishment, who shall mutiny, or stir up sedition, or shall desert the said service, or shall commit any other offence which in its nature would be cognizable by courts martial under this Act, or which may be against good discipline in naval service, in the same and as full and ample manner, to all intents and purposes, as

Governor-general of India in Council empowered to make laws and regulations for securing discipline and punishing offences in the Indian navy, as fully as he may make other laws under 3 & 4 W. 4, c. 85.

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by virtue of an Act passed in the Session held in the 3d and 4th years of the reign of his late Majesty King William the Fourth, intituled, "Act for effecting an Arrangement with the East India Company, and for the better Government of his Majesty's Indian Territories till the 30th day of April 1854, the said Governor-general in Council now has power to make any laws and regulations whatsoever, anything in the said last-mentioned Act or any other Act or Acts to the contrary notwithstanding.

Court of Directors under control may disallow any such laws and regulations.

XLIV. Provided always, and be it enacted, That in case the Court of Directors of the East India Company, under the control of the Board of Commissioners for the Affairs of India, shall signify to the said Governor-general in Council their disallowance of any laws or regulations by the said Governor-general in Council, made by virtue of this Act, then and in every such case, upon receipt by the said Governor-general in Council of notice of such disallowance, the said Governor-general in Council shall forthwith repeal all laws and regulations so disallowed.

But until repealed they shall be in force.

XLV. Provided also, and be it enacted, That all laws and regulations made as aforesaid, so long as they shall remain unrepealed, shall be of the same force and effect, within and throughout the said territories, as any Act of Parliament would or ought to be within the same territories, and shall be taken notice of by all Courts of Justice whatsoever, within the same territories, in the same manner as any public Act of Parliament would and ought to be taken notice of; and it shall not be necessary to register or publish in any court of justice any laws or regulations made by the said Governor-general in Council.

No law to be made for sentencing to punishment of death, European-born subjects, &c.

XLVI. Provided also, and be it enacted, That it shall not be lawful for the said Governor-general in Council, without the previous sanction of the said Court of Directors, to make any law or regulation whereby power should be given to any court, other than the courts of justice established by the charters of the Crown, to sentence to the punishment of death any of Her Majesty's natural-born subjects born in Europe, or the children of such subjects.

Until such laws and regulations made, the provisions of this Act to be applicable to the Indian Navy.

XLVII. Provided also, and be it enacted, That until the said Governor-general in Council shall have made laws and regulations for the good government of the said Indian Navy, by virtue of the powers of this Act for that purpose given, all the provisions of this Act, and the Rules and Articles of War to be made by virtue thereof, shall extend and be applied to the said Marine establishment called "The Indian Navy," and that all persons in the service of the said Company belonging to the said Indian Navy, who shall be commissioned or in pay as officers, or enlisted or in pay as non-commissioned officers or soldiers respectively in the said Company's Army, shall be to all intents and purposes liable to the provisions of this Act, and to the same Rules and Articles of War, and the same penalties, as the officers and soldiers of the said Company's other forces.

[*44. And be it enacted, That any officer or soldier sentenced by a court martial to imprisonment, with or without hard labour, whether directed to be kept in solitary confinement for the whole or any portion or portions of such imprisonment or not, shall undergo such sentence in such public prison or other place as may in each case be appointed by the officer confirming the proceedings of the court martial, and in default of appointment by any such officer, then in such public prison or place as may be appointed by the officer commanding the regiment, corps or detachment to which the offender belongs or is attached.*]

[*45. And be it enacted, That it shall be lawful for the officer commanding the regiment or corps, in the case of a prisoner undergoing the sentence of a regimental court martial, of his sole authority, and in all other cases with the consent of the officer by whom the sentence of the court shall have been confirmed, to give at any period of any such imprisonment, and as often as occasion may arise, an order directing that the prisoner be discharged, or be removed to some other public prison or place of confinement, there to undergo the remainder or any part of his sentence, and such prisoner shall accordingly on the production of such order be discharged or removed, as the case may be: Provided also, That the time of removal from one public prison or place of confinement to another shall be reckoned as imprisonment under his sentence.*]

[*46. And be it enacted, That it shall be lawful for the Governor-general in Council, or the Governor in Council, or Governor at the said Presidencies respectively,*

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tively, to set apart any forts, barracks or other buildings now erected, or which may hereafter be erected, or any part or parts thereof, as places where the sentences of courts martial may be carried into execution, and as military prisons, and to declare that two or more separate and detached buildings shall be, and thenceforth such buildings shall be deemed and taken to be, one military prison for the purpose of carrying sentences of courts martial into execution, and for all other purposes whatsoever; and every military prison now existing, or which may hereafter be established, or so as aforesaid set apart or declared, shall be deemed to be a public prison within the meaning of this Act.]

[*47. And be it enacted, That in all cases the term of imprisonment under the sentence, whether original or revised, of a court martial, shall be reckoned as commencing on the day on which the original sentence and proceedings of the court martial shall be signed by the president.*]

~~XLVIII.~~ [*48.*] And whereas by an Act passed in the 6th year of the reign of His Majesty King George the Fourth, intituled, "An Act to amend two Acts of the fifty-eighth year of his late Majesty, for regulating the Payment of regimental Debts, and the Distribution of the Effects of Officers and Soldiers dying in Service, and the Receipt of Sums due to Soldiers;" and of the 4th year of his present Majesty, "for punishing mutiny and desertion of officers and soldiers in the service of the East India Company," provision is made for the care, application and distribution of the effects and credits of officers and soldiers in the said Company's service, and it is expedient to render such provisions more effectual; Be it enacted, That it shall be lawful for all persons who may be employed or required by or under the authority of any Articles of War in force for the time being for the European officers or soldiers in the service of the said Company, to take care of, collect, or superintend or direct the collection of the effects of officers or soldiers dying in the service of the said Company out of the United Kingdom, to ask, demand and receive any such effects, and to commence, prosecute and carry on any actions or suits for the recovery thereof, and to sell and dispose of the same, without taking out any letters of administration, either with any will annexed or otherwise, in every respect as if such officers or persons employed or required as aforesaid had been appointed executors, or had taken out administration of such effects; and no registrar of any court in the East Indies, or any person acting under the appointment or authority of such court, *ad colligenda*, or otherwise, shall in any manner interpose in relation to any such effects, unless required and authorized so to do by any such officer or persons employed or required as aforesaid, any Act or Acts, law, statute or usage to the contrary notwithstanding.

6 G. 4, c. 61.

Persons employed under Articles of War to collect effects of officers and soldier dying in service abroad, may do so without probate or letters of administration.

~~XLIX.~~ [*49.*] And be it enacted, That all sums of money due by deceased officers and soldiers in respect of any military clothing, appointments and equipments, servants' wages due, and household expenses during the current month, or in respect of any quarters, or of any mess or regimental accounts, and all sums of money due to any agent, or paymaster, or quartermaster, or any other officer, upon any such accounts, or on account of any advance made for any such purpose, and also any charges or expenses attending or relating to the illness or funeral of any such officer or soldier, shall be deemed and taken to be regimental debts, and shall be paid out of any arrears of pay or allowances, or out of any prize or bounty-money, or the equipage, goods, chattels and effects of any officer or soldier dying out of the United Kingdom while in the service of the said Company, in preference to any other debts, claims or demands whatsoever, upon the estate and effects of such officer or soldier; and if any doubt shall arise as to whether any claim or demand made in relation to any officer or soldier is a regimental debt or not, or whether such charges or expenses attending or relating to the illness or funeral of such officer or soldier are proper to be allowed, such question shall be decided and concluded by the order or certificate of the Military Secretary to the Government of the Presidency to which such officer or soldier shall have belonged; and all such payments shall be good and valid in law; and every person who shall make any such payments out of any such arrears of pay, effects or proceeds as aforesaid, under the provisions of this Act, or in pursuance of any such order or certificate of such Military Secretary, or into whose hands any such money shall come, shall be and are hereby indemnified for and in respect of such payments, and all other acts, matters and things done in pursuance of the provisions of this Act, or of the order or certificate of the said Military Secretary, in relation

What debts to be deemed regimental debts, and to have priority accordingly.

Military Secretary to decide doubts as to regimental debts.

relation to the distribution of such assets, any thing in any Act or Acts, or law or laws, to the contrary notwithstanding.

Regimental debts to be paid without probate or letters of administration, and the surplus only to be deemed the personal estate to be administered.

Military Secretary to administer such surplus when not exceeding 500 Company's rupees, without probate or administration, and duty-free.

~~L.~~ [*50.*] And be it enacted, That all such regimental debts shall and may be paid without probate of any will being obtained, or any letters of administration, or any confirmation of testament, or letters testamentary or dative, being taken out ~~of~~ [*by*] any person; and the surplus only of such arrears of pay or allowances, prize or bounty-money, equipage, goods and chattels, or the proceeds thereof, shall be deemed the personal estate of the deceased, for the payment of any duty in respect of any probate, or of any letters of administration or confirmation of testament, or letters testamentary or dative, or for the purpose of distribution as personal estate; and it shall be lawful for the said Military Secretary to order and direct the payment or distribution of any such surplus, in any case in which the same shall not exceed 500 Company's rupees, without any probate or letters of administration or confirmation of testament, or letters testamentary or dative, or payment of any duty of stamps, or upon legacies or otherwise; and it shall also be lawful for any paymaster or other person to issue any sum not exceeding the value of 500 Company's rupees, which may be due to any officer deceased, or to the widow or relative of any officer deceased, or to the representative or representatives of any such officer's widow or relative in India, in like manner, without any probate or letters of administration, or confirmation of testament, or letters testamentary or dative, or payment of any duty of stamps, or upon legacies or otherwise, the same to be paid to the person who shall be notified by the said Military Secretary as aforesaid as being entitled thereto; and all such payments respectively shall be as valid and effectual, to all intents and purposes, as if the same had been made by or to any executor or administrator, or under the authority of any probate or letters of administration or confirmation of testament, letters testamentary or dative, any thing in any Act or Acts, or law or laws, to the contrary notwithstanding.

Effects remitted not deemed assets in the place to which remitted, so as to render administration necessary, &c.

Military Secretary authorized to order remittance of effects to any other place in India.

~~LI.~~ [*51.*] And be it enacted, That such effects, or the proceeds or surplus of such effects, of any officer or soldier so dying, when remitted to any person under any order of the Military Secretary to the Government of any of the said Company's Presidencies, or to such Military Secretary, shall not, by reason of coming to the hands of such person or Military Secretary, be taken to be assets or effects in the place to which such proceeds or surplus may be remitted, so as to render it necessary that administration should be taken out in respect thereof; and it shall be lawful for the Military Secretary to the Government of the Presidency to which the deceased officer or soldier shall have belonged, to order that such effects, or the proceeds or surplus of any such effects, shall be remitted to any other place in India where the same can more conveniently be paid over to the person or persons entitled thereto; and the obedience to the orders of such Military Secretary, in respect to the payment and disposal of any such effects, proceeds or surplus of such effects, shall be a discharge from all actions, suits and demands in respect thereof to any person to whose hands any such effects, proceeds or surplus shall have come, and which shall have been paid and disposed of under the order of such Military Secretary.

Mode of administering surplus prescribed.

~~LII.~~ [*52.*] And be it enacted, That the effects or the proceeds or surplus of such effects of any such officer or soldier dying as aforesaid, which shall remain after satisfying such regimental debts as aforesaid, shall, with all convenient speed, be transmitted to such Military Secretary by the officer or person employed or required to take care of, collect and receive the same as aforesaid; and such Military Secretary shall cause the same, or the surplus thereof remaining after satisfying such debts, and after such payment and application as is hereinbefore authorized, to be paid to the executor or legal representative (if in India) of such officer or soldier; or if such executor or legal representative shall not be in India, or shall not, within twelve months from the death of such officer or soldier, claim such surplus, then and in that case such Military Secretary shall remit the said surplus to the Court of Directors of the said Company in London, to be by them paid to the executor or legal representative of such officer or soldier so deceased; and such remittance, at the end of twelve months as aforesaid, shall be a discharge to such Military Secretary from all actions, suits and demands in respect of such surplus: Provided always, That the Registrars of Her Majesty's several Supreme Courts in India shall not be required or entitled to take out letters of administration

Registrars of Supreme Courts not

tration with the will annexed, or otherwise, in respect of such surplus; and in all cases in which the surplus so to be remitted by the said Military Secretary to the said Court of Directors in London shall not exceed 50*l.*, it shall be lawful for the said Court of Directors to order and direct the payment and distribution thereof to the parties entitled thereto, without any probate, letters testamentary or dative, or payment of any duty of stamps upon any legacies or otherwise.

to take out administration to surplus. Court of Directors may distribute remitted surplus, if not exceeding 50 *l.*

~~LIII.~~ [*53.*] And whereas it is expedient that the benefit of provisions, similar in principle and extent of operation to those hereby enacted, respecting the collection and conversion into money of the effects of officers or soldiers dying in the service of the said Company out of the United Kingdom, and the nature and priorities of debts of such officers or soldiers, and the general administration of the proceeds or surplus of such effects, should be extended to the Indian Navy; Be it therefore enacted, That the Governor-general of India in Council shall have power to make laws and regulations ~~in manner aforesaid, to be subject to such disallowance as aforesaid,~~ for providing for the due collection and conversion into money, the priorities and discharge of debts out of, and the application, remittance and distribution of the effects and credits of officers, engineers, soldiers, marines, seamen, and all others belonging to the said Marine establishment called the Indian Navy, who shall happen to die in the service of the East India Company out of the United Kingdom; provided that such laws and regulations, so far as the nature and circumstances of the different cases will permit, shall in principle and substance be conformable to, and in extent of benefit shall not exceed the provisions hereinbefore contained respecting the administration of the effects of officers and soldiers so dying in service as aforesaid; and for the purpose of distribution of the surplus of the effects of such officers, engineers, soldiers, marines, seamen, and all others belonging to the said Indian Navy, under any such laws and regulations in cases in which their legal representatives shall not be in India, such surplus shall be remitted to the Court of Directors of the said Company in London; and in all cases in which the same shall not exceed 50*l.*, it shall be lawful for the said Court of Directors to order and direct the payment and distribution thereof to the parties entitled thereto, without any probate, letters testamentary or dative, or payment of any duty of stamps upon any legacies or otherwise; [*and provided also, That in case the Court of Directors of the East India Company, under the control of the Board of Commissioners for the affairs of India, shall signify to the said Governor-general in Council their disallowance of any such laws and regulations by the said Governor in Council, made by virtue of the authority hereinbefore given, then and in every such case, upon receipt by the said Governor-general in Council of notice of such disallowance, the said Governor-general in Council shall forthwith repeal such laws and regulations so disallowed; but so long as such laws and regulations shall remain unrepealed, they shall be of the same force and effect as any Act of Parliament would or ought to be; and it shall not be necessary to register or publish in any court of justice any such laws or regulations made by the said Governor-general in Council; provided also, That until the said Governor-general in Council shall have made such laws and regulations, all the provisions of this Act made for the care, application and distribution of the effects and credits of officers and soldiers in the said Company's service shall extend and be applied to the said Marine establishment called the Indian Navy.*]

Preceding provisions as to the effects of deceased officers and soldiers extended to the Indian Navy.

~~LIV.~~ [*54.*] And be it enacted, That in all places where the said Company's forces now are or may be employed, or where any body of Her Majesty's forces may be serving with the forces of the said Company, situate beyond the jurisdiction of the Court of Requests established at the cities of Calcutta, Madras and Bombay respectively, actions of debt, and all personal actions against officers, all persons licensed to act as sutlers to any corps or detachment, or at any station or cantonment, all persons resident within the limits of a military cantonment, or other persons amenable to the provisions of this Act, shall be cognizable before a Court of Requests composed of military officers, and not elsewhere, provided the value in question shall not exceed 400 Company's rupees, and that the defendant was a person of the above description when the cause of action arose, which Court the commanding officer of any ~~station~~ [*camp, garrison*] or cantonment is hereby authorized and empowered to convene; and the said Court shall in all practicable cases consist of five commissioned officers, and in no instance of less than three, and the President thereof shall in all practicable cases be a

Where troops are serving beyond the jurisdiction of the Court of Requests, actions of debts not exceeding 400 Company's rupees to be cognizable by a military court.

Composition and constitution of the Court prescribed;

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field officer, and in no case be under the rank of a Captain; and every member having served five years as a commissioned officer, and the President and members assisting at any such Court, before any proceedings to be had before it, shall take the following oath ~~upon the Holy Evangelists~~, which oath shall be administered by the President of the Court to the other members thereof, and to the President by any member having first taken the oath; (that is to say)

"I, , swear, That I will duly administer justice according to the evidence in the matters that shall be brought before me.

"So help me GOD."

and its powers defined.

And ~~every~~ [*all*] witnesses before any such Court shall be examined ~~on oath, which such courts are hereby authorized to administer, or if natives of the East Indies, on oath or solemn declaration, as the circumstances of the case may require~~; [*after having been sworn by such Court, according to the forms of their respective religions*] and it shall be competent for such Courts, upon finding any debt or damage due, either to award execution thereof generally, or to direct that the whole or any part thereof shall be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor in the current [*month*] or any future month [*or months*], or to be paid by instalment on sufficient security; and in case the execution shall be awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the camp, garrison or cantonment, under a written order of the commanding officer, grounded on the judgment of the Court, and the goods of the debtor, if found within the limits of the ~~Company~~'s [*camp*] garrison or cantonment to which the debtor shall belong at any subsequent time, shall be liable to be seized and sold in satisfaction of any remainder of such debt or damages; and if sufficient goods shall not be found within the limits of the camp, garrison or cantonment, the[*e*]n any public money or any sum not exceeding ~~the~~ half [*the*] pay accruing [*monthly*] to the debtor, shall be stopped in liquidation of such debt or damage, and if such debtor shall not receive pay as an officer, or from any public department, but be a sutler, servant or follower, he shall be arrested by like order of the commanding officer, and imprisoned in some convenient place within the military boundaries for the space of two months, unless the debt be sooner paid.

Punishment for giving false testimony.

~~LV.~~ [*55.*] And be it enacted, That any person wilfully and knowingly giving false testimony on oath or solemn declaration or affirmation in any case wherein an oath or solemn declaration is required to be made, shall be deemed guilty of wilful and corrupt perjury, and being thereof duly convicted, shall be liable to such pains and penalties as by any law in force in India any persons convicted of wilful and corrupt perjury are subject and liable to; and every commissioned officer convicted before a general court martial of perjury shall be cashiered, and every soldier or other person amenable to the provisions of this Act found guilty thereof shall be punished at the discretion of a general or ~~regimental~~ [*other*] court martial.

Limitation of actions.

Mode of procedure.

~~LVI.~~ [*56.*] And be it enacted, That any action which should be brought against any person for anything to be done in pursuance of this Act shall be brought within six months [*of the commission of the act on account of which such suit shall be instituted*]; and it shall be lawful for every such person to plead thereunto the general issue of not guilty, and to give all special matter in evidence to the jury which shall try the issue; and if the verdict shall be for the defendant in any such action, or the plaintiff therein become nonsuited, or suffer any discontinuance thereof, the Court in which the said matter shall be tried shall allow unto the defendant treble costs, for which the said defendant shall have the like remedy as in other cases where costs by the laws of this realm are given to defendants; and every action against any person for anything to be done in pursuance of this Act, or against any member or minister of a court martial, in respect of any sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in some of the Courts of Record at the Presidency under which such person is serving, or in the Courts of Record at Westminster, or in Dublin, or the Court of Session in Scotland, and in no other court whatsoever.

~~LVII.~~

~~LVII.~~ [*57.*] And be it enacted, That all penalties by this Act imposed for persuading or procuring any soldier to desert may and shall be sued for and be recoverable in any Court of Record at the Presidency under which such offender shall be resident; provided that no action shall be brought or prosecution carried on by virtue of this Act for the penalties aforesaid, unless the same be commenced within six months after the offence is committed. Mode of recovering penalties for procuring desertion.

~~LVIII.~~ [*58.*] Provided always, and be it enacted, That nothing in this Act contained shall in any manner affect Her Majesty's Royal Prerogative of mercy. Not to affect the Royal Prerogative.

~~LIX.~~ [*59.*] And be it enacted, That this Act shall commence and take effect from and after the ~~first day of January 1841, except where any other commencement is particularly directed,~~ [*receipt and promulgation thereof in General Orders by the Governor-general in Council or Governor in Council, at any of the said Presidencies;*] and that from and after such day all powers and provisions contained in the said Act of ~~the~~ [*the third and*] fourth year[*s*] of the reign of ~~his late~~ [*Her present*] Majesty ~~King George the Fourth~~ shall cease and determine, and that the said Act shall be and is hereby repealed. Commencement of this Act, and repeal of former Act.

SCHEDULE to which the Act refers.

Form of Oath to be taken by the President and Members of Courts Martial.

YOU shall well and truly try and determine according to the evidence in the [*case and matter, (or in the*] several cases and matters) which shall be brought before you upon the general court martial now assembled.

So help you God.

I., A. B., do swear, that I will duly administer justice as a member of the ~~general~~ court martial now assembled upon the [*case and matter (or upon the*] several cases and matters) which shall be brought before the same, according to the Rules and Articles for the better government of the forces of the East India Company, and according to an Act of Parliament now in force for the punishment of mutiny and desertion of the said forces, and other crimes therein mentioned, without partiality, favour or affection; and if any doubt shall arise which is not explained by said Articles or Act, according to my conscience, the best of my understanding, and the custom of war in the like cases; and I further swear, that I will not divulge any sentence of the court until it shall be duly approved or published in ~~general~~ orders; and I further swear, that I will not upon any account, or at any time whatsoever, disclose or discover any vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice or a court martial in due course of law.

So help me God.

Form of Oath to be taken by the Judge-Advocate or Person officiating as such.

I do swear, that I will not, upon any account whatsoever, disclose or discover any vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice, or court martial in due course of law, [*and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the court until it shall be duly approved.*]

So help me God.

~~VICTORIA~~ ~~R.~~

RULES AND ARTICLES

For the better Government of the Officers and Soldiers in the Service of the East India Company.

Legis. Cons. 14 Dec. 1844. No. 11.

~~From the 1st day of January 1841.~~

Section I.—Divine Worship.

Article 1. Any officer or soldier who shall speak against any known article of the Christian faith shall be delivered over to the civil magistrate, to be proceeded against according to law.

Article 2. Any officer or soldier who, not having just impediment, shall not regularly attend divine service and sermon, in the place appointed for the assembling of the corps to which he belongs, or who shall wilfully absent himself, or who, being present, shall behave indecently or irreverently, or who shall use

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any unlawful oath and execration, shall, if an officer, be brought before a general court martial, and on being convicted thereof be publicly and severely reprimanded, and if a soldier, shall be brought before a regimental and other court martial, and on being convicted thereof, shall, for the first offence, forfeit six annas, to be deducted out of his next pay, and, for the second offence, not only forfeit six annas, but be laid in irons for 12 hours, and for every like offence shall suffer and pay in like manner; and the money so forfeited shall be applied to the use of the sick soldiers of the troop or company to which the offender belongs.

Article 3. Any officer or soldier who shall profane any place dedicated to divine worship, or shall offer violence to a chaplain of the army or to any other minister of God's word, shall be liable, if an officer, to such punishment as by a general court martial shall be awarded, and if a soldier, to such punishment as by a general, district or garrison court martial shall be awarded.

Section II.—Crimes and Punishments.

Crimes punishable with Death, Transportation, &c.

Article 4. Any officer or soldier who shall begin, excite, cause or join in any mutiny or sedition in the regiment, troop or company to which he belongs, or in any other regiment, troop or company, either of land or marine forces, or in any party, post, detachment or guard, on any pretence whatever, or who being present at any mutiny or sedition, shall not use his utmost endeavours to suppress the same, or who coming to the knowledge of any mutiny or intended mutiny, shall not without delay give information thereof to his commanding officer; or,

Article 5. Who shall desert from the Company's service (whether or not he shall re-enter or re-enlist in the same);

Shall, if an officer, suffer death, or such other punishment as by a general court martial shall be awarded;

And if a soldier, shall suffer death, transportation, or such other punishment as by a general court martial shall be awarded.

Article 6. Any officer or soldier who shall hold correspondence with or give intelligence to the enemy, directly or indirectly, or relieve with money, victuals or ammunition, or knowingly harbour or protect an enemy; or,

Article 7. Who shall misbehave himself before the enemy, or shamefully abandon or deliver up any garrison, fortress, post or guard committed to his charge, or which it was his duty to defend; or shall compel, or speak words, or use other means to induce the governor, or commanding officer, or any other person to deliver up to the enemy or to abandon any garrison, fortress, post or guard; or,

Article 8. Who shall leave his commanding officer or his post or colours to go in search of plunder; or,

Article 9. Who shall strike a superior officer, or draw, or offer to draw, or lift up any weapon, or offer any violence against him, being in the execution of his office; or,

Article 10. Who shall disobey the lawful command of his superior officer; or,

Article 11. Who shall do violence to any person bringing provisions or other necessaries to the [*camp or*] quarters of the forces, or shall force a safeguard, or break into any house, wine-cellar, warehouse or other place for plunder; or,

Article 12. Who shall treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; or,

Article 13. Who [*in operations in the field*] shall, by discharging fire-arms, drawing swords, beating drums, making signals, using words, or by any means whatever intentionally occasion false alarms in action, camp, garrison or quarters; or,

Article 14. Who shall cast away his arms or ammunition in presence of an enemy; or,

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Article 15. Who [*being a sentry*] shall ~~be found~~ sleeping on his post, or shall leave it before regularly relieved;

Shall, if an officer, suffer death, or such other punishment as by a general court martial shall be awarded;

And if a soldier, shall suffer death, transportation, or such other punishment as by a general court martial shall be awarded.

Article 16. Any officer or soldier who shall embezzle or fraudulently misapply monies with which he may have been entrusted for any military purpose, or who shall unlawfully sell, embezzle, fraudulently misapply, or wilfully suffer to be spoiled any provisions, forage, arms, clothing, ammunition or military stores, or be concerned in or connive at the same;

Shall, on conviction before a general court martial, be liable to be transported as a felon, [*either*] for life or for any certain term of years, or to such other punishment as shall accord with the provisions of the Mutiny Act for the forces of the East India Company, and with the usage of the service.

Crimes not punishable with Death or Transportation.

Article 17. Any officer or soldier who shall use traitorous or disrespectful words against our Royal Person, or any of our Royal Family; or,

Article 18. Who shall advise or persuade any other officer or soldier to desert the said Company's or our service, or who shall knowingly receive and entertain any deserter, and shall not immediately on discovery give notice to his commanding officer, or to the Adjutant-general of the Army, or shall not cause such deserter to be apprehended by the civil power; or,

Article 19. Who shall be found drunk on any duty under arms; or,

Article 20. Who being under arrest, or in prison, shall leave or escape from his confinement before he is set at liberty by proper authority; or,

Article 21. Who shall send any flag of truce to the enemy without due authority; or,

Article 22. Who shall give a patrol or watchword different from what he received, without good and sufficient cause; or,

Article 23. Who shall, in operations in the field, spread false reports, by words or letters, or create unnecessary alarm by spreading such reports, either in the vicinity or in rear of the army; or,

Article 24. Who shall in action, or previously to going into action, use words tending to create alarm or despondency; or,

Article 25. Who shall, either verbally or in writing, disclose the numbers, position, magazines or preparations of the army for sieges or movements, and by such mischievous communications produce effects injurious to the army and our service or that of the said Company; or,

Article 26. Who shall leave the ranks in order to secure prisoners or horses, or on pretence of taking wounded officers or men to the rear, without orders from his superior officer; or,

Article 27. Who [*in operations in the field*] shall leave his guard, picquet or post, or shall be taken prisoner by any want of due precaution, or by disobedience of orders, or fall into the enemy's hands by passing through outposts; or,

Article 28. Who shall irregularly detain, seize or appropriate to his own corps or detachment, bread, spirits, forage or any supplies proceeding to the army, contrary to the orders issued in that respect; or,

Article 29. Any officer who shall behave in a scandalous, infamous manner, unbecoming the character of an officer and a gentleman; or,

Article 30. Who being in command of any garrison, fort [*cantonment,*] or barrack, shall connive at the exaction of exorbitant prices for houses or stalls let to sutlers, or lay any duty upon, or take any fee or advantage, or be in any way interested in the sale of provisions or merchandize brought into places under his command; or,

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Article 31. Any officer or soldier who shall wilfully neglect or refuse to deliver over to the civil magistrate, or to assist in the apprehension of officers or soldiers accused of crimes punishable by law, when required to do so by competent authority; or,

Article 32. Who shall impede the Provost Marshal, or any other officer legally exercising authority, or refuse to assist him when requiring his aid in the execution of his duty; or,

Article 33. Who, being concerned in any fray, shall refuse to obey any other officer (though of inferior rank) who shall order him into arrest, or shall draw his sword ~~upon~~, [*or lift up any weapon*] or offer violence ~~to~~ [*against*] such officer; or,

Article 34. Who shall protect any person from his creditors on the pretence of his being a soldier, or who shall protect any soldier not actually doing duty as such in any manner not allowed by the Act of Parliament for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and according to the true intent and meaning of the said Act;

Shall, if an officer, for each and every one of the aforesaid offences, on conviction thereof before a general court martial, be cashiered; and, if a soldier, shall, on conviction thereof before a general, district or garrison court martial, be liable to such punishments as shall accord with the provisions of the said Mutiny Act for the forces of the said Company, and with the usage of the service.

Crimes punishable with Loss of Pay, or of Pay and Pension, in addition to other Punishments.

Article 35. Any soldier who shall be found guilty of desertion by a general, district or garrison court martial, where such finding shall be duly approved, or of felony by a general court martial, or in any court of civil judicature, shall thereupon forfeit all advantages as to additional pay [*good conduct pay,*] and to pension on discharge [*which might otherwise have accrued from the length of his former service,*] in addition to any punishment which may be awarded; and moreover, in case of his being found guilty of desertion as aforesaid, shall forfeit his pay for the days on which he shall have been absent by such desertion, [*and in addition to any other punishment, it shall be lawful for a district or garrison court martial to sentence a soldier convicted of desertion to forfeiture of all advantages as to additional pay and pension on discharge, which might accrue from future service.*]

Article 36. Any soldier who shall malinger, feign or produce disease or infirmity, or be detained in hospital in consequence of materially injuring his health by his own vice or intemperance, and thereby rendering himself unfit for service, or absent himself from an hospital whilst under medical treatment, or be guilty of a gross violation of the rules of the hospital, or intentionally delay his cure, or wilfully aggravate his disease or infirmity; shall be tried for disgraceful conduct, and if convicted be liable to the punishments attached to that offence; or,

Article 37. Any soldier, whether on or off duty, who shall become maimed or mutilated by the firing off of his musket, or by any other means, shall be forthwith put upon his trial before a general or district court martial. If the court martial shall be of opinion that such maiming or mutilating was the effect of accident, and not of design, the proceedings of the court shall be transmitted through the Judge Advocate-general to the Commander-in-chief, and by him to the Government of the Presidency to which such soldier belongs, in order that the same Government may, when the case comes before it, have the best means of arriving at a just decision, according to which it may recommend to the Court of Directors of the East India Company either to grant or withhold the pension. If the court martial shall be of opinion that such maiming or mutilating was the effect of design, and not of accident, in that case the soldier shall be liable to the punishments attached to disgraceful conduct, and shall not be discharged from the said Company's service (unless specially directed by the Commander-in-chief to be discharged), but shall be retained and employed on such duties or military work as the Government of the Presidency to which he belongs may from time to time direct through the Commander-in-chief at such Presidency; or,

Article 38. Any soldier who shall be convicted of having tampered with his eyes, or of having caused a partial or total loss of sight by his vice, intemperance or other misconduct, shall not be entitled to his discharge, or to a pension, but shall

shall be subjected to the punishments attached to disgraceful conduct, and shall be detained in an eye infirmary or military hospital, or shall be discharged and sent to his parish, according to the directions given from time to time to the Commander-in-chief; or,

Article 39. Any soldier who shall be convicted of stealing money or goods, the property of a comrade, or of a military officer, or of any military or regimental mess; or,

Article 40. Any officer who shall knowingly make a false return or report to the local Government, to the Commander-in-chief, or to any superior officer authorized to call for such return of the state of any regiment, troop or company, garrison or corps under his command, or who shall, through design or culpable neglect, omit or refuse to make or send the same; or,

Article 41. Who shall make a false muster of man or horse, or shall knowingly allow or sign any muster-roll, pay-list, certificate or return, wherein such false statement is contained, or any duplicate thereof, or who shall intentionally allow to be given any untrue documents, or conceal or omit the true facts directed to be stated, whereby to excuse any officer or soldier from muster or duty, by withholding the names of absent persons, or the true reasons and time of absence; or,

Article 42. Who shall by any false statement, certificate or document, or omission of the true statement, attempt to obtain for any officer or soldier, or other person whatever, any pension, retirement, half-pay, gratuity, transfer or discharge; or,

Article 43. Any officer or soldier who shall be privy to the making of any false entries, alteration or erasure in any account, description, book, attestation, record or discharge, or other document, whereby the real services, causes of discharge or disability, wounds, conduct of or sentences of courts martial upon any person whatsoever, shall not be truly given, or who shall wilfully omit to report or record any other facts relating thereto, which it was his duty to have done in conformity with the regulations of the said Company's service; or,

Article 44. Who shall intentionally give in any false return or report or statement whatsoever of arms, ammunition, clothing, stores or any provisions belonging to the said Company, or for the use of their forces, or who shall by any false document be concerned in or connive at any fraudulent embezzlement of the stores aforesaid, or who shall, by producing any false certificates or vouchers or accounts, or in any other way, misapply the public money, for purposes other than those for which it was intended; or,

Article 45. Who shall, by any concealment or wilful omission, attempt to evade the true spirit and meaning of the said Company's orders and regulations relating to the foregoing points; or,

Article 46. Any soldier who shall commit any petty offence of a felonious or fraudulent nature, to the injury of or with intent to injure any person, civil or military; or,

Article 47. Any soldier who shall be guilty of any other disgraceful conduct, being of a cruel, indecent or unnatural kind;

Shall, if an officer, for each and every one of the aforesaid offences, on conviction thereof before a general court martial, be cashiered;

And if a soldier, shall, on conviction thereof before a general district or garrison court martial, be liable, in addition to corporal punishment, or to imprisonment, or to any other punishment which the court may be competent to award, to forfeiture ~~to~~ [*of*] all claim to pension on discharge, and of all additional pay whilst serving, [*which might otherwise have accrued from the length of his former service, or to forfeiture of such advantage absolutely, whether it might have accrued from past service or might accrue from future service, according to the nature of the case*], and be liable to be discharged with ignominy from the said Company's service; [*and if tried before a general court martial for any of the aforesaid offences, shall on proof thereof be further liable to general service.*]

Article 48. Any soldier who shall have been drunk four times within twelve months, or twice drunk when on or for duty or parade, or on the line of march, as proved by reference to the defaulter's book, or by any other satisfactory evidence,

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shall in all cases be deprived of his liquor when issued in kind, or of his allowance in lieu of liquor [*or of eight pices a day of his pay,*] for any period not exceeding six months, if convicted before a regimental [*or other inferior*] court martial; and for any period not less than six months, and not exceeding two years, if convicted before a district or garrison court martial for habitual drunkenness; and in addition to any such punishment the court may (if it shall think fit) sentence such offender to any other punishment which the court may be competent to award.

Any soldier who, at any time within six months after a conviction for habitual drunkenness, shall be drunk twice, or shall be once drunk, when [*on or*] for duty or parade, or on the line of march, shall, on proof thereof, be again convicted of habitual drunkenness, and shall over and above any former forfeiture or forfeitures of his liquor when issued in kind, or of liquor-money [*or of pay*], be further deprived of eight ~~pice~~ [*pices*] a day of his pay for any period ~~not less~~ * ~~than~~ [*exceeding*] six months, if convicted before a regimental [*or other inferior*] court martial, and for any period not less than six months, and not exceeding two years, if convicted before a district or garrison court martial; and in addition to such punishment the court may sentence such offender to any other punishment which the court may be competent to award.

But in no case shall any soldier, by reason of being drunk, on or for duty or parade, or on the line of march, or by reason of habitual drunkenness, be at any time placed under forfeitures (whether of ~~liquor or~~ liquor money [*or of pay or of both*]) exceeding in the whole the amount of two annas per diem: such soldier, nevertheless, being again convicted of being drunk on or for duty or parade, or on the line of march, or of habitual drunkenness, may be sentenced to any other punishment which the court is competent to award.

Article ~~48~~. [*49.*] Any soldier who, without leave from his commanding officer, shall absent himself from his quarters, garrison or camp, or from his troop, company or detachment, or who, without a pass or leave in writing from his commanding officer, shall be found one mile or upwards from the camp, shall, on conviction thereof be ~~furnished~~ [*punished*] according to the degree of the offence, by a regimental or other court martial; and in addition to any punishment which the court may award, shall forfeit [*the rate per diem of*] his pay for the day or days on which he shall have been guilty of the offence.

Article 49. Any soldier who shall absent himself without leave for any period not exceeding five days, and who shall not account for the same to the satisfaction of the commanding officer, may be deprived of [*the rate per diem of*] his pay for the day or days of such absence, by a direction to that effect by such commanding officer, in addition to such other punishment as such commanding officer has authority to inflict; but such soldier so ordered to forfeit his pay may insist upon being tried by a court martial for his offence, instead of submitting to such forfeiture.

Article 50. Any soldier who shall be drunk when on or for duty or parade, or on the line of march, may, on conviction thereof by a regimental or other court martial, be sentenced to be deprived of eight ~~pice~~ [*pices*] a day of his pay, for any period not exceeding thirty days, in addition to any other punishment which such court shall award.

Crimes not punishable with Forfeiture of Pay and Pension, except by General Courts Martial.

Article 51. Any officer or soldier who shall behave himself with contempt or disrespect towards the General or other Commander-in-chief of the Forces, or shall speak words tending to his hurt or dishonour; or,

Article 52. Who shall have signed certificates, returns or forms of accounts in blank, before the Paymaster, Quartermaster or other person concerned in making up the said documents has inserted therein the whole of the circumstances for which the officers' signature is to be a voucher; or,

Article

* "~~His Excellency desires that no regimental court martial shall sentence any soldier convicted as therein described to any deprivation for a period exceeding six months,~~" ~~G. O. C. C., 29 March 1841.~~

Article 53. Who, when in command of a guard, picquet or patrol, shall without proper authority release any prisoner committed to his charge, or shall suffer him to escape; or,

Article 54. Who shall not, within twenty-four hours after the commitment of any prisoner, or as soon as he shall be relieved from his guard or duty, give in writing the prisoner's name and crime, and the name and rank of the officer or other person who committed him, to the officer commanding the garrison or regiment to whom he may be ordered to report; or,

Article 55. Who shall neglect to obey any garrison or other orders; or,

Article 56. Who shall unnecessarily detain any prisoner in confinement without bringing him to trial; or,

Article 57. Who ~~shall give, send, convey, or promote a challenge to any other officer to fight a duel, or shall upbraid another for refusing a challenge, or~~ if commanding a guard, shall knowingly and willingly suffer any person to go forth to fight a duel; or,

Article 58. Any soldier who shall hire or any officer or non-commissioned officer who shall connive at a soldier hiring another person to do his duty for him; or,

Article 59. Any officer or soldier who shall fail to appear at the place of parade or rendezvous appointed by his commanding officer, or shall go from thence without leave before he shall be relieved, or who shall, without urgent necessity, quit his platoon or division; or,

Article 60. Who in any part of the territories under the government of the said East India Company, or elsewhere, [*in time of peace*,] shall by discharging fire-arms, drawing swords, beating drums, or by any other means whatever, occasion false alarms in camp, garrison or quarters; or,

Article 61. Any officer or soldier who shall permit horses, cattle or carriages pressed for baggage to be overloaded, or who shall permit the person attending them to be ill-treated, or to be forced to take upon their carriages (except on emergencies, as provided for by law) any women, or any soldiers, other than the sick and lame, or who shall refuse to certify the sums due for horses, cattle and carriages, and the name of the corps employing them; or,

Article 62. Any soldier who shall sell, lose or spoil his arms, accoutrements or necessaries, or sell, lose or ill-treat his horse; or,

Article 63. Any officer or soldier who shall commit any waste or spoil, either in walks of trees, parks, warrens, fish-ponds, houses or gardens, vineyards, olive groves, corn fields, enclosures or meadows, or shall maliciously destroy any property, whether belonging to any of our subjects or other persons entitled to our protection or to the protection of the said Company, or to inhabitants of other countries, unless the destruction of property shall be ordered by the Commander-in-chief, to annoy rebels or other enemies in arms against us or the said Company; or,

Article 64. Any officer or non-commissioned officer who shall strike or otherwise ill-treat any soldier;

Shall, if an officer, on conviction of any of the aforesaid offences, be liable to be cashiered, or suffer such other punishment, according to the nature and degree of the offence, as by the judgment of a general court martial may be awarded; and if a non-commissioned officer or soldier shall, on conviction of any of the aforesaid offences, be punished according to the nature and degree of the offence by a general, district, garrison, regimental or other court martial.

Article 65. And all crimes not capital and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not specified in the foregoing cases, or in these our Articles of War, shall be taken cognizance of by courts martial, according to the nature and degree of the offence.

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Section III.—Courts Martial.

Article 66. A general court martial, held in the territories under the Presidencies of Fort William, Fort St. George and Bombay respectively, shall consist of not less than 13 commissioned officers, if convened [*in any place out of our dominions, or of the possessions or territories which are or may be under the government of the said Company, or*] at Prince of Wales Island, Singapore or Malacca, [*or the settlements on the coast of China,*] shall consist of not less than five commissioned officers; and no judgment of death shall pass without the concurrence of two-thirds at least of the officers present; and the president shall in no case be the officer commanding in chief, or governor of the garrison where the offender shall be tried, (nor under the degree of a field officer, unless where a field officer cannot be had, nor in any case whatsoever under the degree of a captain); and no field officer shall be tried by any person under the degree of a captain.

Article 67. No sentence of a general court martial shall be put in execution till after a report shall have been made of the whole proceedings to the officer commanding in chief, or to some other person duly authorized to confirm the same, and until his direction shall have been signified thereupon.

Article 68. No offender convicted before a general court martial, shall be liable to be sentenced to any corporal punishment exceeding 200 lashes.

Article 69. Whenever any commissioned officer shall be convicted before a general court martial of any offence for which such officer may be sentenced to such punishment as may be awarded at the discretion of the court, the court may in all such cases adjudge such officer to be suspended from rank and pay and allowances for a stated period, or to [*loss of army or regimental rank, in addition to any reprimand or other punishment which it may award, by reducing him to the bottom, or to any other place, on the list of the regimental rank in which he may be serving, or to the last or any other place on the list of the army rank which he holds, and in all cases of an officer so sentenced to loss of rank, the loss of rank may be inflicted on either army or regimental rank, or in both of those ranks*], ~~lose his rank, or such portion of his rank, in the army, or in the regiment, battalion or corps, according to the date of his commission, or his seniority, at the discretion of the court, by adjudging such officer to be placed lower on the list of rank which such officer may hold in the army and in the regiment, battalion, or corps to which he may belong~~; provided that the punishment of loss of rank or standing shall not be of such a nature as may be calculated to affect injuriously the prospects of promotion of any other officer, and the court shall in every such sentence of reduction of rank, specify the extent and degree of reduction which they shall so adjudge.

Article 70. No commissioned officer shall be cashiered or dismissed from the service excepting by an order from the Court of Directors of the East India Company, or by the sentence of a general court martial, approved by some person having due authority.

Article 71.* A non-commissioned officer may be reduced to the ranks by the sentence of a regimental or other court martial, or by the order of the colonel of the regiment or by authority of the Commander-in-chief.

Article 72.* No soldier shall be discharged unless by order of the Commander-in-chief, certified by the Adjutant-general's department at head quarters; ~~except in the cases of soldiers who shall be recommended by a court martial to be discharged with ignominy from the said Company's service; in which cases the general officer commanding on the station is authorized, under such regulations and restrictions as may from time to time be prescribed by the Commander-in-chief, to direct that such soldiers shall be so discharged.~~

Article 73. A district or garrison court martial shall consist of not less than ~~five~~ [*seven*] commissioned officers, and may be composed of any officers of different corps, and officers of the general staff, whose appointments have been duly notified in general or garrison orders [*except in any place out of our dominions, or of the possessions or territories which are or may be under the government of the said Company, or at Prince of Wales Island, Singapore or Malacca, or in the settlements on the coast of China, when it may consist of not less than five commissioned officers, or except for the trial of warrant officers*], ~~or such court martial aforesaid~~, may be entirely composed of five officers of the same regiment, assembled by order of the senior officer

officer on the spot; provided that such district [*or garrison*] court martial be assembled, in conformity with the orders of the officer under whose command the corps is placed, who will previously regulate the holding of courts martial within his command, delegating or withholding the power to commanding officers to convene district [*or garrison*] courts martial, as he may deem to be most expedient, or as the Commander of the Forces in India may direct.

Article 74.* A district or garrison court martial may sentence any soldier to imprisonment, with or without hard labour, ~~or in any public prison or other place which such court or the officer commanding the regiment or corps to which the offender belongs or is attached shall appoint~~; and may also direct that such offender shall be kept in solitary confinement for any portion or portions of such imprisonment not exceeding [*twenty-eight days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement*] ~~one month at a time, or three months at different times, with intervals of not less than one month between such times, in one year, or of such imprisonment, with hard labour~~; or may sentence any soldier to corporal punishment, not extending to life or limb, for immorality, misbehaviour or neglect of duty; and such court may, in addition to either of the said punishments, sentence a soldier to forfeiture of all advantage as to additional pay, and to pension or discharge, [*which might have otherwise accrued from the length of his former service, or to forfeiture of such advantage absolutely, whether it might have accrued from past service or might accrue from future service, according to the nature of the case*], for his disgraceful conduct,—

In wilfully maiming or injuring himself or any other soldier, even at the instance of such soldier, with intent [*to deprive himself of life, or*] to render himself or such soldier unfit for the service:

In tampering with his eyes:

In malingering, feigning disease, absenting himself from hospital whilst under medical care, or other gross violation of the rules of any hospital, thereby wilfully producing or aggravating disease or infirmity, or wilfully delaying his cure:

In purloining or selling Government stores:

In stealing any money or goods the property of a comrade, of a military officer, or of any military or regimental mess:

In producing false or fraudulent accounts or returns:

In embezzling or fraudulently misapplying public money entrusted to him; or

In committing any petty offence of a felonious or fraudulent nature, to the injury of or with intent to injure any person, civil or military; or for any other disgraceful conduct, being of a cruel, indecent or unnatural kind.

And every such offender may further be put under stoppages not exceeding two-thirds of his ~~daily~~ pay, until the amount be made good of any loss or damage arising out of his misconduct; and if any soldier shall be convicted of any such disgraceful conduct, and shall be [*or shall have been*] sentenced to the forfeiture of all claim to pension, the court may further recommend him to be discharged with ignominy from the said Company's service.

~~And every soldier convicted of desertion by a district or garrison court martial, shall thereupon forfeit all advantage as to additional pay and to pension on discharge, in addition to any punishments which said court may award; and any such court shall deprive a soldier, if convicted of the charge of habitual drunkenness, of his liquor when issued in kind, or of his allowance in lieu of liquor, or of additional pay, or of such portion of his daily pay, for any period not exceeding two years, as may accord with the Articles of War, subject to restoration on subsequent good conduct~~; provided that in all the foregoing cases the sentences of a district or garrison court martial shall be confirmed by the general ~~officer, governor~~ or senior officer in command of the [*troops in the*] district, garrison, island or colony; [*and that such court martial shall not have the power to pass any sentence of death or transportation*]; and the President of every court martial, other than a general court martial, ~~not being under the rank of captain,~~ shall be appointed by the officer convening such court martial; [*and shall not be under the rank of captain in the army, save in the case of a detachment court martial holden out of our dominions, or the possessions or territories which are or may be under the government of the said Company, or on board any ship or other vessel*] ~~provided that such court martial shall not have power to pass any sentence of death or transportation.~~

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And no offender convicted before a district or garrison court martial shall be liable to be sentenced to any corporal punishment exceeding 150 lashes.

Article 75. Any officer commanding any district, detachment or portion of the said Company's troops, which may at any time be serving out of our dominions, or the territories under the government of the said Company, upon complaint made to him of any offence of a less heinous nature than those for the trial of which provision is herein made, committed against the property or person of any inhabitant of or resident in any such countries, by any person serving with or belonging to ~~our armies~~ [*the Company's army*] under his immediate command, may assemble a court martial of not less than three officers of any corps, to try any such person, notwithstanding any such officers shall not have received any warrant empowering him to assemble courts martial, and such court martial shall have the same powers as general courts martial; but no sentence of any such courts shall be executed until the ~~general~~ [*officer*] commanding in chief the army, of which the division, brigade, detachment or party to which any person so tried, convicted and adjudged shall belong, shall have approved and confirmed the same.

Article 76. The commissioned officers of every regiment may, by the appointment of their colonel or commanding officer, without other authority than these our Rules and Articles of War, hold regimental [*or other inferior*] courts martial, consisting of not less than five officers (unless it be found impracticable to assemble that number, when three may be sufficient), and may inquire into such disputes or criminal matters as may come before them, and by a majority of votes award imprisonment, with or without hard labour, for any period not exceeding forty days, or to solitary confinement not exceeding twenty-~~one~~* days [*or may sentence a soldier to imprisonment, part thereof to be with or without hard labour, and part thereof to be in solitary confinement*] or to corporal punishment not exceeding 100 lashes, or to other punishments according to the usage of the service and the character or degree of the offence; ~~and whenever any such court martial shall sentence any soldier to imprisonment as aforesaid, it may (if it shall think fit) direct that he be kept in solitary confinement for a certain portion or portions of the period of such imprisonment~~: provided that when such court shall direct the imprisonment to be part [*in*] solitary [*confinement*] and part otherwise, the whole period of such imprisonment ~~including the solitary part thereof~~ shall not exceed 20 days, and [*the part thereof in solitary confinement shall not exceed*] ~~shall be divided into periods not exceeding~~ 10 days ~~each~~; and such court may, in addition to any punishment which it may be competent to award, sentence any soldier to be put under stoppages, not exceeding two-thirds of his ~~daily~~ pay, until any loss of or damage to his horse, arms, clothes, accoutrements or regimental necessaries, or other loss or damage occasioned by his negligence or misconduct, be made good; and any such court shall deprive a soldier, if convicted of the charge of habitual drunkenness, of his liquor when issued in kind, or of his allowance in lieu of liquor, or of additional pay, or of such portion of [*the rate per diem of*] his ~~daily~~ pay, for any period not exceeding six months as may accord with these Articles of War, subject to restoration on subsequent good conduct; but no sentence shall be executed until the commanding officer (who is in no ~~other~~ case to be a member of the court martial) or the governor of the garrison shall have confirmed the same.

Article 77*. In case of mutiny or gross insubordination or other offences committed on the line of march [*or on board any ship or other vessel,*] the offence may be tried by a regimental [*or other inferior*] court martial, and the sentence confirmed and carried into execution on the spot, by the officer in the immediate command of the troops; provided that the sentence [*shall*] ~~should~~ not exceed that which a regimental court is competent to award [*and that any sentence so confirmed shall be noticed in the monthly return of courts martial sent in to the Judge Advocate-general, and be reported to the general officer commanding the division.*

Article 78*. No regimental [*or other inferior*] court martial shall try any soldier for absence without leave, if the absence has exceeded the period of 21 days, nor shall try any soldier for desertion; but any soldier absenting himself without leave for a period exceeding 21 days shall be tried for desertion by a general or district or garrison court martial; provided nevertheless, that any soldier absenting himself without leave may be tried for desertion without reference to the number of days during which he has been absent; and if any soldier shall

* ~~With reference to the 18th clause of the Mutiny Act, His Excellency directs that court martial shall not exceed twenty days. G. O. C. C., 29 March 1841.~~

shall have been illegally absent from his duty for the space of two months, a regimental court of inquiry, of three officers, shall assemble, and having received proof of the fact, declare such absence and the period thereof, and the officer commanding the corps shall record such absence, and the declaration of such court of inquiry thereon, in the regimental books; if such soldier shall have been apprehended or surrendered before such record shall have been entered, or shall subsequently be apprehended or surrender, he shall be tried by a court martial empowered to try desertion; if convicted, the sentence of any such court shall be inserted in the soldier's discharge; provided [*nevertheless, that such trial may be dispensed with in any case in which it shall appear to the officer commanding in chief at the Presidency that there are special circumstances to justify the exception.*

[*79. And whereas every soldier on conviction of desertion by court martial, or of felony in any court of civil judicature, forfeits thereupon all advantages as to additional pay, good-conduct pay, and to pension on discharge, which might have otherwise accrued from the length of his former service; and whereas a general, district or garrison court martial may sentence any soldier convicted of certain offences to forfeiture of all advantages which might have otherwise accrued from his past service, or might accrue from his future service; any such soldier, if he shall*] ~~that in case he should~~ have subsequently served and performed good, faithful or gallant services in the army, ~~he~~ may, on the same being duly certified by the Commander-in-chief, be eligible to be restored to the benefit of the whole or of any part of his service; and should the recommendation be approved by the Government of the Presideucy to which he belongs, the order for the restoration will be signified through the Commander-in-chief.

Article ~~79~~.* [*80.*] The names of soldiers of any regiment or corps who have received the especial approbation of the Governor [*General in Council, or Governor*] in Council for meritorious conduct shall be notified to the parishes to which they may belong, by the Court of Directors of the East India Company; and on the other hand, the names of the soldiers who have been dismissed with disgrace, or who have forfeited their pensions owing to misconduct, shall be equally notified to the parishes to which they belong; such notification being affixed to the outside of the door of the church or chapel on the Sunday next succeeding the receipt of the notification.

Article ~~80~~. [*81.*] Every soldier shall be liable to be tried and punished for desertion from any corps into which he may have enlisted, or from our service, although he may of right belong to the corps from which he shall have originally deserted; and if such person shall be claimed as a deserter by the corps to which he originally belonged, and be tried as a deserter therefrom, or shall be tried as a deserter from any other corps into which he may have enlisted, or if he shall be tried, while actually serving in some corps, for desertion from any other corps, every desertion previous or subsequent to that for which he shall be under trial, as well as every previous conviction for any other offence, may be given in evidence against him; and in like manner in the case of any soldier tried for any offence whatever, any previous convictions may be given in evidence against him; provided that no such evidence shall in any case be received until after the prisoner shall have been found guilty of such offence, and then only for the purpose of affixing punishment; and provided also, that after he shall so have been found guilty, and before such evidence shall be received, it shall be proved to the satisfaction of the court that he had previously to his trial received notice of the intention to produce such evidence on the same; and provided further, that the court shall in no case award to him any greater or other punishment or punishments than may by the Mutiny Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company and these Articles of War be awarded for the offence of which he shall so have been found guilty.

Article ~~81~~.* [*82.*] No commanding officer shall, by giving in against a prisoner vague and indefinite charges, try before a regimental [*or other inferior*] court martial grave offences, which are directed to be tried by a general district or garrison courts martial. But whereas it may be advisable that some of the foregoing offences, which in certain cases may admit of less serious notice, should be tried by district, garrison, ~~or~~ regimental [*or other inferior*] courts martial, in such cases the officer commanding the battalion, corps or detachment, who may deem it advisable so to proceed, shall lay a statement of the case, together with the charge

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he intends to bring before the General or other officer commanding the brigade district or garrison, with an application so to proceed.

The General or superior officer will exercise his discretion in directing the description of court by which the offender shall be tried, ~~except for offences committed on the line of march, when the officer in command of the troops shall be authorized to try any soldier by a regimental court martial, confirming and executing the sentence, and in all cases of mutiny or gross insubordination, carrying it into execution on the spot: provided that the sentence shall in no case exceed that which a regimental court is competent to award~~; but the permission ~~of the General Officer~~ to try ~~an offender~~ [*grave offences*] by a district, [*garrison,*] ~~or~~ regimental, [*or other inferior*] court martial, ~~and any sentences confirmed by the commanding officer on the line of march,~~ shall be ~~reported by the general officer, and~~ noticed in the monthly return of courts martial sent into the Judge Advocate General.

[*Article 83 a. In situations in which it may be impracticable to carry into execution sentences of solitary confinement, or of hard labour, the officer convening the court will instruct the court, that should the prisoner be found guilty, and imprisonment form a part of the sentence, it will not be expedient to direct that any portion of it should be solitary, or with hard labour, and the court will govern itself accordingly.*]

Article ~~82~~. [*84.*] The commissioned officers of any detachment or portion of the troops which may at any time be serving in any part of the dominions under the Government of the East India Company or elsewhere ~~in the East Indies,~~ or may be embarked on board [*any ship or other*] ~~transports or merchant~~ vessels, although such detachment or portion of the Company's troops shall consist of men from different regiments, may by the appointment of the senior officer in command of the district, station, garrison, barrack, [*detachment,*] island or colony, provided he be not under the rank of a [*captain*] ~~field officer,~~ or in case such troops shall be on board any [*ship or other*] ~~transport or merchant~~ vessel, may, by the appointment of the senior officer on board, whatever be his rank, without any other authority than these Articles of War, hold detachment courts martial consisting of not less than five officers (unless it be found impracticable to assemble that number, when three may be sufficient); and may inquire into such disputes or criminal matters as may come before them, according to the rules and limitations observed by regimental courts martial; but no sentences shall be executed until the superior officer on the spot, not being a member of the court, shall have confirmed the same.

Article ~~83~~. [*85.*] Where it may be necessary or expedient, the officers of our Marine Forces, and also the officers of the said Company's Marine establishment called the "Indian Navy," may sit upon courts martial in conjunction with officers of our land forces, and such courts martial shall be regulated, to all intents and purposes, in such manner as if they were composed of officers of our land forces only; and officers of our land forces, and officers in the service of the said Company, when serving together, may be associated in courts martial, which shall to all intents and purposes be regulated in like manner as if consisting wholly of officers of our land forces, or wholly of officers in the service of the said Company, except that on the trial of any person in our service, the provisions of the Mutiny Act and the oaths thereby prescribed, and our Articles of War for the government of our land forces, shall be applicable; and on the trial of any officer or soldier in the service of the said Company, the [*provisions*] of an Act passed in the ~~third and fourth~~ years of our reign, to ~~consolidate and~~ amend the laws for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, ~~and for providing for the observance of discipline in the Indian Navy,~~ and for other purposes therein mentioned, and the oaths thereby prescribed, shall be applicable, notwithstanding any officer in the actual service of the said Company may have a commission from us.

Article ~~84~~. [*86.*] In all trials by general courts martial, the Judge Advocate, or person officiating as such, shall administer to each member the following oath; and in trials by all other courts martial, the same oath shall be administered by the President to the other members, and afterwards by any sworn member to the President:—

> "You shall well and truly try and determine according to the evidence in the case and matter (or in the several cases and matters) which shall be brought before you, upon the court martial now assembled.
>
> "So help you GOD."
>
> "I, A. B.,

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"I, A. B ., do swear, that I will duly administer justice, as a member of the court martial now assembled upon the case or matter (or upon the several cases ~~or~~ [*and*] matters) which shall be brought before the same, according to the Rules and Articles for the better government of the forces of the East India Company, and according to an Act of Parliament now in force for the punishment of mutiny and desertion of the said forces, and other crimes therein mentioned, without partiality, favour or affection; and if any doubt shall arise, which is not explained by the said Articles or Act, according to my conscience, the best of my understanding, and the custom of war in the like cases. And I do further swear, that I will not divulge any sentence of the court until it shall be duly approved or published in ~~General~~ Orders; and I further swear, that I will not, upon any account, or at any time whatsoever, disclose or discover any vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness, by a court of justice or a court martial, in due course of law.

"So help me GOD."

And as soon as the said oath shall have been administered to the respective members, the President of the court shall administer to the Judge Advocate, or person officiating as such at general courts martial, an oath in the following words:—

"I, A. B., do swear, that I will not, upon any account whatsoever, disclose or discover any vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice or a court martial in due course of law; [*and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the court until it shall be duly approved.*]

"So help me GOD."

Article ~~85~~. [*86.*] [*87.*] All persons who give evidence before any court martial are to be examined [*after being sworn according to their respective religions*] ~~upon oath~~ in the following words:—

"The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth.

"So help you GOD."

~~Or in case of natives of India, on oath or solemn declaration, as circumstances may require.~~

Article ~~86~~. [*88.*] No proceedings or trials shall be carried on except between the hours of six in the morning and four in the afternoon, except in cases which require an immediate example.

Article ~~87~~. [*89.*] No person shall use menacing words, signs or gestures in presence of a court martial, or shall make any disorder or riot, so as to disturb their proceedings, under the penalty of being punished at the discretion of the [*same or of another*] ~~said~~ court [*martial.*]

Article ~~88~~. [*90.*] All the members of a court martial are to behave with decency; to take their seats according to rank, and not quit them without permission of the President, who will clear the court on any discussion; and in case of intemperate words used by any member of the court, direct the same to be taken down in writing, and reported to the officer ordering the court martial to assemble; no reproachful words are to be used to witnesses or prisoners, and the President is hereby held responsible that every person attending such court be treated with proper respect; and in taking the votes of the court, the President shall begin by that of the youngest member; [*and no one shall have more than one vote on the finding or sentence of the court.*]

Article ~~89~~. [*91.*] The officers of artillery shall, for differences arising amongst themselves, or in matters relating solely to their own corps, have courts martial composed of their own officers; but where a sufficient number of such officers cannot be assembled, or in matters wherein other corps are interested, they shall sit in courts martial with the officers of other corps in our service, or the service of the said Company, taking rank according to their commissions.

Article ~~90~~. [*92.*] A warrant officer may be tried by a district court martial, to be appointed by the ~~General~~ Officer commanding the forces in the district where

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the corps shall be situated; and such court martial shall not in any case consist of less than ~~five~~ [*seven*] commissioned officers, [*except in any place out of our dominions, or of the possessions or territories which are or may be under the government of the said Company, or at Prince of Wales Island, Singapore or Malacca, or in the settlements on the coast of China, where it may consist of not less than five commissioned officers*], of whom not more than two shall be taken from the regiment in which the warrant officer to be tried is serving; and the President shall not be under the degree of a field officer, nor shall more than two of the other members be under the degree of a Captain, and the sentence shall not be put in execution without the confirmation of the ~~General on the station~~ [*officer commanding in chief at the Presidency*], who may also suspend, mitigate or remit the same, and no court martial shall sentence a warrant officer to corporal punishment, nor shall he be reduced to serve in ~~an inferior situation~~ [*the rank*], unless he was originally enlisted as a private soldier, and continued in the service until his appointment to be a warrant officer; [*but such court martial may at their discretion sentence any such warrant officer to be dismissed from the service, or to be suspended from rank and pay and allowances for a stated period, or to be placed in a lower grade of the department to which he may belong.*]

Article ~~91~~. [*93.*] For the prompt and instant repression of all irregularities and crimes which may be committed by troops in the field and on the line of march, Provosts-marshals shall be appointed by the Government of the Presidency, or by the Commander of the Forces, or General commanding, and their powers shall be regulated according to the established usages of war and rules of the service; their duties are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, to prevent breaches of both by soldiers and followers of the army, and to punish on the spot, or the same day, those whom they may find in the immediate act of committing breaches of good order and military discipline, provided that the punishment be limited to the necessity of the case, and shall accord with the orders which the Provosts may from time to time receive from the Commander of the forces in the field; and that whatever may be the crime, the Provost-marshal shall see the offender commit the act for which summary punishment be inflicted, or if the Provost-marshal or his assistants should not see the offender actually commit the crime, but that sufficient proof can be established of the offender's guilt, a report shall be made to the Commander of the army in the field, who is hereby empowered to deal with the case as he may deem most conducive to the maintenance of good order and military discipline; the duties of Provost-marshal being limited to the punishment of offenders whom they may detect in the actual commission of any crime, the General commanding the forces in the field will cause them to exercise the powers entrusted to them in such manner and under such circumstances as he may consider best calculated to prevent and instantly to repress crimes injurious to the discipline of the East India Company's army and the public service.

Article ~~92~~. [*94.*] The General, ~~Governor,~~ or other officer having power to appoint courts martial, as occasion may require, to be holden within the territories of any foreign state, or in any country under the protection of us or the said Company, or at any place (other than Prince of Wales Island, Singapore and Malacca) in the territories under the Government of the said Company, situated above 120 miles from the Presidencies of Fort William, Fort St. George, and Bombay respectively, for the trial of any officer or soldier under his command, who shall be accused of treason, murder, theft, robbery, rape, coining or clipping the coin of our realm or of the said Company, or any foreign coin current in the place where such officer or soldier may be serving, or of any other offence which, if committed in England, would be a capital or other felony, or of having used violence, or committed any offence against the persons or property of any of our subjects, or of any others entitled to the protection of us or the Government of the East India Company, or of any state in alliance with the said Company; and ~~any~~ such officer or soldier ~~shall be tried by a general court martial appointed as aforesaid by the Governor or officer commanding in chief, in such place as aforesaid for the time being~~; ~~and,~~ if found guilty, shall suffer death, or be liable to transportation for life, or for a term of years, or to such other punishment, according to the nature and degree of the respective offences, as by ~~such~~ [*the*] sentence of any such general court martial shall be awarded; such sentence, nevertheless, to be in conformity to the common

common and statute law of England, ~~and shall not be carried into effect until approved and confirmed by the General, Governor, or other officer by whom or under whose authority such court martial was appointed~~ [*as administered in our Supreme Courts of Judicature at the said Presidencies*], provided that in all cases where such court martial shall have convicted any soldier of any offence punishable with death, it shall be lawful for such court martial, instead of sentencing the offender to death, to adjudge him to be transported as a felon [*either*] for life or for a certain term of years, [*and that in all cases where such court martial shall sentence any officer or soldier to death, it shall be lawful, in the case of any commissioned officer, for the General or Officer commanding in chief in the East Indies, and in the case of any soldier for the General or Officer by whom or under whose authority such court martial was appointed, instead of causing such sentence to be carried into execution, to order such officer or soldier to be transported as a felon, either for life or for a certain term of years*]; and in every case wherein a sentence of death or transportation shall be pronounced, or a sentence of death shall be commuted to transportation for any such capital offence committed at any place situated as herein aforesaid, such sentence, whether original, revised or commuted, shall not be carried into execution until [*it shall have been*] confirmed by the General or other Officer commanding in chief ~~at the Presidency with~~ [*by whom or under whose authority such court martial was appointed, and shall have received*] the concurrence of the Governor-general in Council, or Governor in Council, or Governor of the Presidency in the territories subordinate to which the offender shall have been tried, or ~~although such offender may belong to the forces of another Presidency; provided always, that such sentence shall have been regularly reported to and approved and confirmed by the General or other Officer commanding in chief the forces of the Presidency~~ to which the offender shall belong, and by whom or under whose authority the court martial by which such offender shall have been tried was appointed: [*Provided always, That no sentence of death or of transportation of a commissioned officer shall be carried into execution until confirmed by the Officer commanding in chief in the East Indies; and every officer transported under any such sentence shall thereupon cease to belong to the said Company's service, and for ever be incapable of serving us or the said Company in any military capacity.*]

SECTION IV.—[*Disorders, Quarrels and Frays.*]

~~Miscellaneous Duties and Obligations.~~

Article ~~93~~. [*95.*] Every commanding officer shall keep good order, and to the utmost of his power repress all disorders committed by any officer or soldier under his command; and all officers and soldiers are to behave themselves orderly in quarters and on their march, and are not to quit their camp or quarters, or to fail at parade.

Article ~~94~~. [*96.*] No officer ~~or soldier~~ shall use any reproachful or provoking speaking or gestures to another, upon pain (~~if an officer~~) of being put in arrest, ~~or (if a soldier) of being confined, and of making to the party offended, in the presence of his commanding officer, such apology or acknowledgment as shall be considered satisfactory and sufficient to such commanding officer~~.

~~Article 95. We hereby acquit officers and soldiers of any disgrace or opinion of disadvantage which might arise from their having refused to accept of challenges, as they will only have acted in obedience to our orders, and have done their duty as good soldiers, who subject themselves to discipline~~.

Article ~~96~~. [*97.*] All officers, of what condition soever, have power to quell all quarrels, frays and disorders, though the persons concerned should be of superior rank, or should belong to another corps, and either to order officers into arrest, or soldiers into confinement, until their proper superior officers shall be acquainted therewith; ~~and whoever shall refuse to obey such officer (though of an inferior rank) or shall draw his sword upon him, shall be punished~~.

[*Article 98. We hereby declare our approbation of the conduct of all those who having had the misfortune of giving offence to, or of injuring or of insulting others, shall frankly explain, apologize, or offer redress for the same; or who having had the misfortune of receiving offence, injury or insult from another, shall cordially accept frank explanation, apology or redress for the same; or who, if such explanation, apology or redress are refused to be made or accepted, and the friends of the parties*

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shall have failed to adjust the difference, shall submit the matter to be dealt with by the commanding officer of the regiment or detachment, fort or garrison; and we accordingly acquit of disgrace or opinion of disadvantage all officers who, being willing to make or accept such redress, refuse to accept challenges, as they will only have acted as is suitable to the character of honourable men, and have done their duty as good soldiers, who subject themselves to discipline.]

[*Article 99. Every officer who shall give, send, convey or promote a challenge, or who shall accept any challenge to fight a duel with another officer, or who shall be a principal, or shall assist as a second at a duel; or who, being privy to an intention to fight a duel, shall not take active measures to prevent such duel, or who shall upbraid another for refusing or for not giving a challenge, or who shall reject or advise the rejection of a reasonable proposition made for the honourable adjustment of a difference, shall be liable, if convicted before a general court martial, to be cashiered, or suffer such other punishment as the court may award.*]

[*In the event of an officer being brought to a court martial for having assisted as a second in a duel, if it shall appear that such officer had strenuously exerted himself to effect an adjustment of the difference on terms consistent with the honour of both the parties, and shall have failed through the unwillingness of the adverse parties to accept terms of honourable accommodation, then our will and pleasure is that such officer shall suffer such punishment other than cashiering as the court may award.*]

Article ~~97~~. [~~100~~.] Whenever any officer or soldier shall commit a crime deserving punishment, he shall, by his commanding officer, be put in arrest, if an officer, or if a soldier, be confined, until he shall be either tried by a court martial, or shall be lawfully discharged by proper authority; and no officer or soldier who shall be put in arrest or confinement, shall continue in his confinement more than eight days, or until such time as a court martial can be conveniently assembled.

Article ~~98~~. [*101.*] No officer commanding a guard or Provost-marshal shall refuse to receive or keep any prisoner committed to his charge by any officer or non-commissioned officer belonging to the forces, which officer or non-commissioned officer shall ~~at the same time~~ [*forthwith*] deliver an account in writing, signed by himself, of the crime with which the said prisoner is charged.

Article ~~99~~. [*102.*] Whenever any officer or soldier shall be accused of a capital crime, or of violence, or any offence against the persons or property of our subjects punishable by the known laws of the land, the commanding officer and officers of his corps are, upon application duly made on behalf of the party injured, to use their utmost endeavours to deliver over such accused person to the civil magistrate, and assist the officers of justice in apprehending and securing him, except in the cases in which it is provided that such offence may be tried by court martial.

SECTION V.—Miscellaneous Duties and Obligations.

Article ~~100~~.* [*103.*] If any person discharged from the East India Company's Forces for disability, misconduct, or for any other cause, shall subsequently re-enter the army, and shall, when questioned by the magistrate at the time of his being attested, conceal the fact or misrepresent the cause of his former discharge, he shall neither be allowed to reckon his past service, nor to receive any pension if again discharged for disability.

Article ~~101~~.* [*104.*] Soldiers having been duly enlisted and sworn, shall not be dismissed the said Company's service without a discharge or certificate granted according to the general order on that head, which shall be in force at the time of granting the discharge, regimental pay and allowances, shall not be issued to any officer or soldier who shall absent himself without leave, or shall overstay the period for which leave of absence may have been granted him, or who shall not join within any prescribed period the corps to which he may have been appointed, or who shall not on his first appointment in the army join, as directed in orders from the Adjutant-general, unless a satisfactory explanation shall have been given to the Commander-in-chief through his Colonel or commanding officer, and shall have been notified by the Commander-in-chief to the Government of the Presidency to which he belongs.

Article ~~102~~. [*105.*]

Article

Article ~~103~~. [*106.*] Every captain [*or officer commanding a troop company*] is charged with the arms, accoutrements, ammunition, clothing, or other warlike stores belonging to the troops or company under his command, for which he is to be accountable in case of their being lost, spoiled or damaged not by unavoidable accident or on actual service.

Article ~~104~~.* [*107.*] All public stores taken from the enemy, whether of artillery, ammunition, clothing, forage or provisions, shall be secured for our service; and the Officers commanding in chief are to be answerable to the said Company for any neglect in this respect.

Article ~~105~~. [*108.*] No sutler shall be permitted to sell any kind of liquors or victuals, or to keep his house or shop open for the entertainment of soldiers after nine at night, or before the beating of the reveilles; nor shall he be permitted to sell liquors of any sort during such time or times as he shall be forbidden so to do by the officer commanding the troops in the barracks to which the canteen belongs, or upon Sundays during divine service or sermon, on the penalty of being dismissed from all future suttling; but all officers, soldiers and suttlers shall have full liberty to bring into any of the said Company's [*cantonments,*] forts or garrisons, any quantity or species of provisions eatable or drinkable [*so far as may be consistent with the due preservation of good order and discipline*], except where any contracts are entered into by the said Company for furnishing such provisions, (this exception extends only to the species of provisions so contracted for); and all officers commanding in the said Company's forts, barracks or garrisons are required to see that the persons permitted to suttle supply the soldiers with good and wholesome provisions at the market price, as they shall be answerable for their neglect.

Article ~~106~~. [*109.*] If an officer shall think himself wronged by his colonel or the commanding officer of the regiment, and shall, upon due application made to him, not receive the redress to which he may consider himself to be entitled, he may complain to the General commanding in chief the forces at the Presidency to which he shall belong, in order to obtain justice, who is hereby required to examine into such complaint, and either by himself or by his Adjutant-general to make his report to the Government of the Presidency to which he belongs thereupon, in order to receive the further directions of such Government.

Article ~~107~~.* [*110.*] If a non-commissioned officer or private soldier shall think himself wronged by his captain, or other officer commanding the troop or company to which he belongs, he is to complain thereof to the commanding officer of the regiment [*or detachment*], who is hereby required to summon a regimental [*or other inferior*] court martial for the doing justice to the soldier complaining; from which ~~regimental~~ court martial either party may, if he thinks himself still aggrieved, appeal to a general court martial; ~~but if the party appealing be convicted of having made a vexatious and groundless appeal from the regimental to the general court martial, he shall be liable to such punishment as by the judgment of a general court martial may be awarded~~; [*and such court martial shall hear and determine the merits of the appeal, and after determining the same, and after allowing the appellant to show cause to the contrary by himself and by witnesses, if any, may, if it shall think fit, pronounce such appeal groundless and vexatious, and may thereupon sentence such appellant to such punishment as a general court martial is competent to award.*]

Section VI.—Returns and Accounts.

Article ~~108~~. [*111.*] The commanding officer of every corps shall on the first of every month transmit to the Commander-in-chief of the forces an exact return of the state of such corps, specifying the names of the officers absent, and the reason for and time of their absence.

Article ~~109~~. [*112.*] Exact returns of the state of the garrisons and corps stationed in them, shall be transmitted by their respective Governors or Commanders there residing, by all convenient opportunities, to the Commander-in-chief of the respective Presidencies to which they belong. The masters of every corps in the said Company's service shall be taken according to such regulations as the Government of each Presidency may think fit to establish in relation thereto.

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Article ~~110~~.* [*113.*] When any commissioned officer shall happen to die out of the United Kingdom, or be killed in the service, the Major of the regiment or battalion, or the officer doing the Major's duty, shall immediately secure all his effects or equipage then in camp or quarters, and shall, with all convenient speed, and not later than one month after the death of the officer, with the assistance of two other officers not under the rank of lieutenant, having served not less than eight years as a commissioned officer, to be appointed by the commanding officer of the regiment or battalion, make an inventory thereof, and transmit that inventory, together with an account of the debts and credits, to the office of the Military Secretary to Government of the Presidency to which such officer belonged, to the end, that after payment of such officer's regimental debts and quarters, and interment, the overplus (if any) be paid over by the said Military Secretary to the legal representatives of the officer so deceased as hereinafter mentioned.

Article ~~111~~. [*114.*] When any non-commissioned officer or private soldier shall happen to die out of the United Kingdom, or be killed in the service, the then commanding officer of the troop or company to which he may have belonged shall, in the presence of two other commissioned officers, take an account of whatever effects he dies possessed of, besides his regimental clothing, arms and accoutrements, and of his credits, and shall take care that the same be applied in the first instance to the liquidation of his regimental debts, the remainder (if any) to be paid over to his legal representative, under the directions of the Military Secretary to the Government of the Presidency to which such soldier shall have belonged; and the Major and other officers to be selected and appointed for the purposes aforesaid, who are hereby authorized and required to take upon them the said duties, shall faithfully discharge the same, and in all respects conform to the provisions and regulations of the laws in force in this behalf, particularly of an Act passed in the ~~third~~ and ~~fourth~~ ~~years~~ of our reign, chapter ~~thirty-seven,~~ intituled, "An Act to ~~consolidate~~ and amend the Laws for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the East India Company, and for ~~providing for the observance of Discipline in the Indian Navy, and to amend the Laws for~~ regulating the Payment of Regimental Debts, and the Distribution of the Effects of Officers and Soldiers dying in the Service," particularly the forty-eighth, forty-ninth, fiftieth, fifty-first and fifty-second sections of the said Act.

Article ~~112~~. [*115.*] The effects and credits of deserters shall be applied in like manner in payment of their regimental debts, and the remainder (if any) shall be brought to the credit of the said Company.

Article ~~113~~.* [*116.*] Every non-commissioned officer, trumpeter, drummer, fifer and private man of the forces shall be provided with a book, calculated to show his services, age, date of enlistment and the actual state of his accounts, in conformity with the regulations of the said Company on this head; and every commanding officer shall state, upon the monthly return of the regiment under his command, whether his men are in possession of the said books, and whether the orders on this head are properly attended to.

Section VII.—Rank.

Article ~~114~~. [*117.*] All officers doing duty with their regiments only shall take rank according to the dates of their commissions in such regiments; but when serving together with officers of other corps, each shall take rank according to his brevet, or date of any former commission.

Section VIII.—Application of the Articles.

Article ~~115~~. [*118.*] All officers, non-commissioned officers, gunners, conductors, drivers, or any other persons whatsoever, receiving pay or being hired in the service of the Artillery, shall be governed by these our Rules and Articles, and shall be subject to be tried by courts martial in like manner with the officers and soldiers of the other troops of the said Company.

Article ~~116~~. [*119.*] In like manner, also, all officers and other persons serving in the corps of Engineers, and all officers and persons serving as Military Surveyors and draftsmen, or in the corps of Pioneers, or of Sappers and Miners, or as artificers and labourers, and all master gunners and gunners under the Ordnance, and all officers and persons who are or shall be commissioned or employed in the Commisariat

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Commissariat or Ordnance departments, all veterinary surgeons, apothecaries and medical storekeepers, and hospital stewards and others serving in the Medical ~~Establishment~~ [*department*] of the army, and sutlers and followers and others serving with the army, are to be governed by these our Rules and Articles, and equally subject to trial by courts martial as officers and soldiers of the other troops.

Article ~~117~~. [*120.*] No officer or soldier shall be adjudged to suffer any punishment extending to life or limb, or to transportation beyond the seas, by virtue of these our Rules and Articles, except for such crimes as are expressly declared to be so punishable.

Article ~~118~~. [*121.*] The officers, non-commissioned officers and soldiers of any troops which are or shall be raised or serving in any of the possessions or territories which are or may be under the Government of the said Company, or places which are or may be occupied by persons subject to the Government of the said Company, by any forces of the said Company being mustered and in pay, and shall, at all times and in all places, when joined or acting in conjunction with the said Company's forces, or under the command of any officer having a commission immediately from the Government of any of the Presidencies of the said Company, be governed by these Rules and Articles of War, and shall be subject to be tried by courts martial in like manner as the officers and soldiers of the regular troops.

Article ~~119~~. [*122.*] When any of our land forces shall be employed in the East Indies, they shall, while there, duly observe and obey the Rules and Articles of War established by us for the better government of the officers and soldiers of the East India Company, and be subject to the pains and penalties therein specified for crimes or offences against the same, in all matters and in all respects in which the said Rules and Articles of War are not at variance with the Rules and Articles of War made by us for the government of all our forces.

Article ~~120~~. [*123.*] Whenever any of the Company's forces shall be embarked on board our ships of war, or any other ships which may have been regularly commissioned by us, and which may be employed in the transportation of our troops, Our will and pleasure is, that the officers and soldiers of such forces, from the time of embarkation on board any ship, as above described, shall strictly conform themselves to the laws and regulations established for the government and discipline of the said ship, and shall consider themselves for these necessary purposes under the command of the senior officer of the particular ship, as well as of the superior officer of the fleet (if any) to which such ship belongs.

Article ~~121~~. [*124.*] The first and second Sections of these our Rules and Articles of War are to be read and published once in every three months, at the head of every corps in the said Company's service, together with the following Articles in the subsequent sections (which are marked with an asterisk); viz. 71. 72. 74. 76. 77. 78. 79. 80. 81. ~~100~~. [*82.*] ~~101~~. [*113.*] ~~106~~. [*104.*] 100. ~~111~~. [*113.*] ~~113~~. [*114. 116.*]; ~~Also the following Extracts from the Act 37 Geo. III. cap. 70.~~ "~~Any~~ [*Notice under the existing law any*] person who shall maliciously and advisedly endeavour to seduce any person or persons serving in ~~His~~ [*Her*] Majesty's forces by sea or land, or from his or their duty and allegiance to ~~His~~ [*Her*] Majesty, or to incite or stir up any such person or persons to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, ~~shall~~ [*may*] on being legally convicted of such offence be adjudged ~~guilty of Felony and shall suffer death~~ [*to be transported beyond the seas for the term of the natural life of such person.*]

(I approve.)

(signed) *H. Gough*, General.

Legis. Cons.
14 Dec. 1844.
No. 12.

(No. 4370.)

MILITARY DEPARTMENT.

To the Secretary to the Government of India.

Sir,

IN reply to your letter, No. 206, dated the 8th instant, I am directed by the Honourable the Governor in Council to forward to you, to be laid before the Right honourable the Governor-general of India in Council, the accompanying copies of a letter from the Adjutant-general of the Army, of the 26th idem, and of its enclosure, together with the printed copies of the Act therein referred to.

1.
2.
3.

I have, &c.

Bombay Castle,
27 November 1844.

(signed) *P. M. Melvill*, Lieut.-col.
Secretary to Govt.

Legis. Cons.
14 Dec. 1844.
No. 13.

(No. 1126.)

To Lieutenant-colonel *P. M. Melvill*, Secretary to Government.—Military Department.

Sir,

I AM directed by the Commander-in-chief to acknowledge the receipt of your letter of the 18th instant, No. 4221, with accompaniment, from the Secretary to the Government of India; and in conformity with the instructions therein contained, His Excellency desires me to transmit to you duplicate printed copies of the Act of the third and fourth of Victoria, cap. 37, with the alterations and amendments which the Commander-in-chief considers necessary to render the code for the Honourable Company's European troops as complete as possible.

2. The Commander-in-chief also desires me to transmit the enclosed communication from the Judge Advocate-general of this army, under yesterday's date, on the same subject.

I have, &c.

Adjutant-general's Office, Bombay,
26 November 1844.

(signed) *E. Hagar*, Lt-col,
Adjutant-genl of the Army.

To the Adjutant-general of the Army.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 19th inst., with its accompaniments, from the Secretary to the Government of India, and the Secretary in the Military Department of this Presidency; and agreeably to the instructions therein conveyed, I beg to submit, for the consideration of his Excellency the Commander-in-chief, a printed copy in duplicate of the Mutiny Act and Articles of War for the Company's European troops, with such suggested alterations as will, I conceive, render the provisions of both more efficient and conformable to those in force for Her Majesty's army.

In transmitting the present enclosures, I beg to state, that, besides adhering as closely as possible to the last Act and Articles for the Queen's forces, I have had reference to the valuable opinions of the Judge Advocate-general of the Bengal Army, with which that learned officer had previously favoured me. I am, nevertheless, sensible that there are deficiencies in matter and defects in arrangement, which, I trust, will be attributed to the shortness of the intervening time since the papers have been called for.

I have, &c.

Judge Advocate-general's Office,
Bombay, 25 Nov. 1844.

(signed) *W. Ogilvie*, Major,
Judge Advocate-general.

NOTES

NOTES on the Suggestions for Alterations in the Mutiny Act for the Company's Forces, made by the Judge Advocate-general at Bombay, by the Judge-Advocate-general, Bengal Army.

THE title of the Mutiny Act should be altered; I have suggested the alteration.

Clause 1. The alterations proposed from Bombay correspond with mine, except in the insertion suggested by me of the words "or guard," in line 6, page 5, which is required to make that place in the clause correspond with the place just above it.

I have suggested also the words "being a sentry," to prevent the confounding of an officer or man not actually under arms sleeping on his post; and the words "camp or," to embrace situations to which the word "quarters" does not apply.

Clause 3. The alterations I have suggested are with a view to embrace the provisions of the new warrant. The latter part of the clause is proposed, both at Bombay and by myself, to be omitted.

Clause 4. The necessary insertion of the word "or" has been made by me.

Clause 5. The addition proposed by me to this clause is adopted from the Mutiny Act for the Queen's Troops.

Clause 7. The alterations suggested from Bombay correspond with my own, except that I have introduced the word "followers," to provide for that class of people.

Clause 9. There appears to me no occasion for the alteration at the beginning of this clause suggested from Bombay; nor do I see any sufficient ground for changing the terms of the clause, further than I have already suggested by the insertion proposed near its close, which makes it correspond with the recently received warrant.

Clause 11. To this clause I have suggested an addition necessary to make its provisions correspond with the new warrant, and I have added a provision at the close of the proposed additional paragraph, with a view to keep distinct the jurisdiction of the proper Commander-in-chief over an offender belonging to his own Presidency.

Clause 12. The words I propose to introduce are transferred from the Mutiny Act, Queen's Troops.

Clause 13. The alterations suggested from Bombay correspond with those proposed by me, excepting that in lines 14, 15, page 19, I have suggested the words "under which the offender is serving;" the words proposed at Bombay are, "to which the offender belongs or may be tried," (the words "where he" are omitted, but are necessary to give the sense). I think the words "under which he may be serving" best adapted to the purpose, and taken together with previous provisions of the Act, they comprehend every case that can arise. The same omission is observable further on in the clause; the words "of the said Company's forces," after "corps" in line 19, page 19, are in the Act, and are necessary; they are omitted in the clause suggested from Bombay.

I submit that my suggestion of alterations, as making a distinction between the cases of commanding officers and others, is necessary, and it accords with the practice in the Queen's service.

Clause 14. I think the insertion of the words "Governor-general of India" is necessary.

Clause 16. The addition proposed by me to this clause is taken from the Mutiny Act, Queen's Troops, and is necessary in the Company's service as well as in that of Her Majesty.

Clause 17. I have taken the number of officers from that in the Queen's service, and there appears to me no reason why these should not be made to correspond, since where there is a paucity of Company's officers, those of the Queen's service may be associated. The proposed insertion in the early part of the clause is taken from the Queen's Mutiny Act.

The other alterations in this clause, suggested from Bombay, correspond with those proposed by me, but I have made some additional suggestions That of the words "to deprive himself of life," was suggested by the case of a soldier

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who, having no intention to maim himself, but to deprive himself of life, did, however, so injure himself by the discharge of a pistol, as to become unfit for the service; the "intent" being different from that specified in this place in the clause, he could not be tried for disgraceful conduct; the suggested entry will embrace such cases in future.

Instead of the enumeration of vessels suggested by Colonel Ogilvie from the Act for the Queen's Army, I have proposed the equally comprehensive, less lengthy and more appropriate words, "on board a ship or other vessels," which will include fleets of boats on the river in this Presidency.

Clause 18. I have suggested the insertion of the words "or other inferior courts-martial" to include detachment courts martial also. The correction made at the place where the periods of confinement are stated is taken from the Mutiny Act, Queen's Troops. The inconsistency of making so great a difference in the periods when the confinement is mixed and when it is simple, has long been observed; but the rule is the same in the Mutiny Act for the Queen's Forces, and has been reiterated yearly now for eight years. The annual Acts before 1838 provided simple imprisonment for 30 days, and mixed for 20 days.

The alteration of a penny a day into "eight pices of the rate per diem," of the soldiers' pay, is necessary, as the Company's troops are not paid by the day. I have proposed to take out the words "beer or," because beer is not served out to the Company's troops.

Clause 19. The alterations proposed in this clause both from Bombay and by myself correspond, excepting that I have inserted the forfeiture of *good conduct pay*, as done in the Mutiny Act for Her Majesty's forces, which has been omitted in the Bombay suggestions.

Clause 20. There are no alterations proposed from Bombay; I have suggested the insertion of the word "detachment" after "district," taking it from the annual Mutiny Act. I have also proposed to insert the restriction to minor offences against person or property, to keep the line distinct between murder and other capital felonies, for which provision is made elsewhere in this Act, and which, from the tenor of the Act, appear not to be intended to come under this clause. I have inserted the words "or officer," after "General," because it is not always an officer of that rank who commands forces beyond the territories.

Clause 22. I have proposed to take out the word "*General*" before "court-martial," in order to make the provision applicable to district and detachment courts martial, which has occasionally been found necessary, but has not been hitherto practicable. The addition of the closing words follows of course upon the previous suggested alteration.

Clause 23. In prescribing an "oath," this clause militates against other enactments, by which an affirmation is allowed. It has an embarrassing effect in regard to native witnesses especially. The alteration I have suggested appears to me very necessary to obviate all inconvenience.

Clause 24. The hours of sitting are proposed from Bombay to be inserted. I had made the same suggestion. We have been placed in some difficulty by this clause being different from the 86th Article of War.

Clause 25. The alterations suggested here correspond with mine. They are taken from the annual Mutiny Act.

Clause 28. The Bombay suggestion is inappropriate, the year called 3d and 4th Victoria having gone by. I had suggested the words "any former Act for punishing mutiny and desertion in the Company's forces," which appears to me to be the best alteration.

Clause 30. I have proposed to say "Commander-in-chief of all the forces of the said Company," believing that such was the intent of the clause, though indistinctly expressed. The selection of a corps to which to transfer a sentenced soldier should obviously be given to the Commander-in-chief in India alone.

Clause 33. The words "rate per diem" are necessary; they were suggested by me, and are so from Bombay. The Act does not say "the *day* or days," but the latter only. I have proposed both, as obviously requisite.

Immediately

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Immediately after clause 33, it is suggested from Bombay to insert the 27th, 29th and 31st clauses of the annual Mutiny Act, but adapting them to the Company's service. I had made similar suggestions, nearly; but instead of placing them here, I had proposed to insert them in lieu of the 44th, 45th, 46th and 47th clauses of this Act, which it is subsequently proposed to take out. My object was to keep up the continuity of numbers, and accordingly I divided the proposed matter into clauses corresponding with those numbers. I submit that this is the best arrangement.

There is some difference, however, in the clauses as proposed by me and those proposed to be transferred from the annual Act, by the authorities at Bombay.

1st. Instead of the long detail of confirming persons specified, either by general district or inferior courts martial, I have suggested the words "by the officer confirming the proceedings of the court martial," which embrace *every* case.

2d. I have inserted "or detachment," after corps, which appears to me necessary; and I have left out "under military custody," as needless in this country.

3d. I have proposed to omit the mention of Governors and Keepers of prisons, as we have no such persons in India, except at the Presidencies.

4th. The words "and such Governor, &c.," inclusive, down to the end of the 29th and 31st clauses of the annual Mutiny Act, proposed to be inserted, are not at present applicable to India. I submit that they should be omitted. It will rest with the Government to settle the office and duties of gaolers.

5th. I have proposed to insert clause 28 of the annual Act, which is not suggested from Bombay, but I have substituted "the Governor-general in Council, or the Governor in Council, or Governor at the said Presidencies," instead of the "Secretary at War," as the authority who shall appoint buildings as places of imprisonment. It appears to me that the clause is necessary to be inserted in this Act.

Clause 34. The alteration at the close proposed from Bombay is similar to that suggested by myself, but the words are different. Those proposed by me were made on further consideration, after I had communicated the alterations to the Judge Advocate-general at Bombay, and they appear to me to be preferable.

Clause 38. I have proposed to insert after this clause a new one, giving operation to the commission of Company's officers all the way from England, when coming out with troops on board ships, in order to enable them to sit on courts martial, when to the westward of the Cape, in case of offences being committed early in the passage. The numbering of the clauses is thus advanced by me, but it is of no consequence at this part of the Act, and it is made up for afterwards.

Clause 40. I have proposed "department," instead of "establishment," as the former is the term applied officially in public documents and orders to the medical and other branches of the service.

Clause 53. The words "in manner aforesaid to be subject to such disallowance aforesaid," I have proposed to take out, because they necessarily follow the fate of the 46th clause, which it is now obviously requisite to omit. But a provision to the purport of these words is proposed by me to be added to this clause, for which purpose I have transferred to this place the 44th clause, which in its own place is struck out.

Clause 54. I have proposed to insert "camp garrison" before the word "cantonment," at line 8, page 61, in order to embrace all situations of troops, and so in subsequent parts of this clause. I have also struck out the words "upon the Holy Evangelists," because of affirmation being allowed, and of different persons having different forms of swearing. I have also proposed to alter the provision about swearing witnesses, to make it agree with the previous provision of this Act.

It has been disputed whether in using the words "any future month," authority was conveyed to mulct the pay of defendants in consecutive months; I have proposed to obviate doubts by inserting "month or months."

The word "*Company's*" is evidently a misprint for "*camp*," and I have altered it.

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Clause 56. It seems requisite to fix a date from which the six months are to be calculated. I have proposed that of the commission of the Act for which the suit is instituted.

Clause 59. I have proposed the "receipt and promulgation" of the new Mutiny Act to be the date of its coming into operation, as in the case with the annual Mutiny Act for Her Majesty's Forces.

(signed) *R. J. H. Birch*, Lt.-col.,
Judge Advocate-general,
Calcutta, 19 December 1844. Bengal Army.

Legis. Cons. 14 Dec. 1844. No. 15.

NOTE on the Articles of War for the Company's Forces, with reference to the suggested Alterations, as proposed by the Judge Advocate-general at Bombay or by myself.

Article 11. THE words "camp or" which I have proposed to insert, will make this article correspond with the 1st Clause of the Mutiny Act.

Article 13. I have suggested the insertion of the words "in operations in the field," to obviate doubts as to the true intent of this article, which appears to me to apply to service in the field exclusively.

Article 15. The words "being a sentry" will make this article correspond with the 1st Clause of the Act.

Article 19. For the same reason, I propose to omit the word "found." It is not the being discovered, but the fact of drunkenness, which constitutes the offence.

Article 27. The words I propose to insert, "in operations in the field," will distinguish this Article as applying to service; the other clauses of it, after the first, clearly do apply, and I think the whole should be so understood, which, however, is not at present the case.

Article 33. The words proposed by me, "or lift up any weapon," appear desirable, because the words "draw his sword" do not seem to include other weapons, neither does the "offering of violence," in its present connexion.

Article 69. I have thought it desirable to introduce an alteration in this Article, more clearly defining the punishment of loss of rank than has previously been done.

Article 72. The first four lines of this Article appear amply sufficient; and accordingly I have proposed to omit the remainder, especially as the latter clause of the Article is quite inapplicable to India. It has been transferred without consideration from Article 75 of those for the Queen's service, to which alone it is applicable.

Article 74. Clause 3, page 28: I propose to omit the first 16 lines of this clause, because they are only a needless repetition of the same provisions made elsewhere in these Articles.

Hitherto no suggestions have been proposed from Bombay in the Articles of War, except the few necessary to make them correspond with the Mutiny Act as proposed to be altered; but it is suggested on this clause that the last five lines should be omitted. I think the suggestion is not judicious, and I would submit in preference the adoption of the alteration proposed by me.

Article 78. I have proposed to insert a clause making it unnecessary to subject a soldier to trial whose absence is clearly accounted for to the satisfaction of the Commander-in-chief.

The Judge Advocate-general at Bombay has (as I had also done) suggested the insertion after this Article, providing for the case of soldiers convicted of felony in the criminal courts, which appears desirable.

Article 81, Clause 2, page 36. I have proposed to cancel part of this clause, and to insert in its room the provision at the close of Article 85 for the Queen's service on the same subject, which allow the commanding officer to instruct a court martial not to pass sentence of solitary confinement in certain cases.

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From Bombay it is proposed to substitute "Adjutant-general" for "Judge Advocate-general," at the close of this Article; but both these functionaries receive monthly returns of courts martial, and it would be well to insert mention of them both; but, indeed, the Adjutant-general receives a copy of the returns sent to the Judge Advocate-general.

Article 90. The punishments awardable to warrant officers have never been distinctly laid down; I have, for this purpose, suggested an addition to the Article.

Articles 94, 95. In the room of these, it is proposed to introduce the Articles on duelling from the code for Her Majesty's service.

Article 105. (now numbered 108), page 51. I propose to insert the words suggested in the brackets, because they will explain that it was not intended to interfere with the bringing of mess stores into cantonments, about which doubt has arisen in some of our larger stations, and references have been made upon them.

Article 124. Concluding notice of the Law. The alteration made in the Articles for the Queen's service, which states the actual provisions of the law of England, as now existing, has been transferred to this place.

And besides the proposals for change which I have noticed, there are several suggested throughout the Articles, the object of which is to assimilate them with the provisions of the Mutiny Act, or with those of the Articles for Her Majesty's forces, as far as they are applicable to the service of the Company.

(signed) *R. J. H. Birch*, Lieut.-col.,
Judge Advocate-gen[l].

Calcutta, 20 December 1844.

HOME DEPARTMENT, LEGISLATIVE, No. 30, of 1844.

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WE do ourselves the honour to transmit to your Honourable Court the accompanying copies of the Mutiny Act and Articles of War for the East India Company's forces, brought into operation on the 1st of January 1841, and now in force.

The great changes introduced into the annual Mutiny Act and Articles of War for the year 1844, for Her Majesty's forces, of which the greater proportion are equally applicable to the European troops in the Company's service, have made it appear to us most desirable to introduce alterations into the Act and Articles for the forces of the Company corresponding therewith; and the Commander-in-chief in India having directed the Judge Advocate-general to lay before us the suggestions for this purpose submitted to his Excellency by that officer, we transmit them herewith for the consideration of your Honourable Court.

We likewise forward copies of the Act and Articles, with alterations suggested by the Judge Advocate-general of the army, and submitted to us by the Commander-in-chief and the Government of that Presidency. Together with these, are notes upon these suggestions, made by our desire, by the Judge Advocate-general, Lieutenant-colonel Birch.

We beg to urge upon the attention of your Honourable Court the necessity of early measures being taken for passing an Act, and for obtaining Her Majesty's sanction to new Articles of War, by which the changes to which we have adverted may be made applicable to the Company's troops in the service of the Company; and we would suggest the desirableness of communication with the Right honourable the Judge Advocate-general in London in the preparation of these enactments.

We also beg to suggest, that, as it may occur that the Mutiny Act and Articles intended to be made in 1845 for the Queen's forces may contain new provisions, applicable alike to the Company's army, such provisions may be inserted in the proposed new Mutiny Act and Articles for the forces of the Company; and we submit for the consideration of your Honourable Court whether it is not desirable

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that the 43d clause in the Charter Act now in force should be modified to the extent of permitting the Government of India, from time to time, to introduce into the Mutiny Act and Articles of War made for the Company's forces such alterations as may be contained in the annual Mutiny Acts and Articles of War for Her Majesty's troops, and may appear applicable to them, and calculated to assimilate the law as respects the forces serving together in this country; an object which we cannot but consider of very great importance.

20 December 1844. (signed) *H. Hardinge.* *Geo. Pollock.* *T. H. Maddock.* *C. H. Cameron.* *F. Mellett.*

MILITARY DEPARTMENT.

Legis. Cons. 25 Jan. 1845. No. 48.

(No. 5408.)

To the Secretary to the Government of India, Military Department.

Sir,

Para. 1. I AM directed by the Most Noble the Governor in Council to acknowledge the receipt of your letter, dated 8th November last, No. 205, and, agreeably with the request therein conveyed, to transmit two printed copies of the Act 3d and 4th Victoria, cap. 37, with copy of the letter from the Acting Adjutant-general of the Army, dated 19th instant, No. 1036, forwarding them.

2. No. 1, it will be observed, contains additions and corrections which have been proposed by the Judge Advocate-general, Lieutenant-colonel Chalon, and, with the exception of those struck out, have the concurrence and approval of the Commander-in-chief, and is accompanied by an original letter and explanatory memorandum from Lieutenant-colonel Chalon.

3. No. 2 contains further additions and corrections prepared under his Excellency's own direction, together with an explanatory memorandum.

4. Duplicate copies shall be forwarded as soon as they are prepared.

I have, &c.

(signed) *G. Fryer*, Lt-col^{l},
Acting Secy to Govt.

Fort St. George, 27 December 1844.

Sep. No.—(No. 1036.)

From Major *C. B. Browne*, Acting Adjutant-general of the Army to Lieutenant-colonel *G. Fryer*, Acting Secretary to Government, Military Department, Fort St. George, 19 December 1844.

Sir,

No. 4821. WITH reference to extract minutes of consultations of the 19th November, I have the honour by order of the Commander-in-chief to forward two copies of the Mutiny Act and Articles of War for the European Troops of the Company's service.

2. No. 1 contains additions and corrections which have been proposed by the Judge Advocate-general, Lieutenant-colonel Chalon, and, with the exception of those struck out, have the concurrence and approval of the Commander-in-chief. Lieutenant-colonel Chalon's letter and explanatory memorandum connected therewith are enclosed

3. No. 2 contains further additions and corrections prepared under his Lordship's own direction, together with an explanatory memorandum.

I have, &c.

(signed) *C. A. Browne*,
Actg Adjutt-genl of the Army.

Adjutant-general's Office, Fort St. George,
19 December 1844.

(No.

(No. 269.)

From Lieutenant-colonel *T. B. Chalon*, Judge Advocate-general of the Army, to the Most Noble the Commander-in-Chief, Fort St. George.

Legis. Cons. 25 Jan. 1845. No. 49.

My Lord,

WITH reference to the minutes of consultation of 19th of November 1844, and to your Lordship's orders communicated to me by the Adjutant-general of the Army, on the same date, that I should report upon the alterations and amendments I consider necessary in the Mutiny Act and Articles of War for the East India Company's European troops, I do myself the honour to forward to your Lordship a duplicate copy of the Act and Articles, with the corrections and amendments which I consider advisable.

A great portion of the alterations which have been made are to make the provisions of the Act and Articles of War to correspond with the present annual Act and Articles of War for Her Majesty's forces: Several of the alterations show, without explanation, the reasons for which they have been made, and a memorandum accompanies, giving further explanation on the subject. This memorandum is not so perfect as I might have made it, in consequence of my anxiety to send in my report before my departure from Madras.

I trust that my report will be at least sufficient to show the alterations desirable, so as to be of some assistance to those who may have to prepare the new Act and Articles.

I have, &c.

(signed) *T. B. Chalon*,
Judge Advocate-general of the Army.

Judge Advocate-general's Office.
Fort St. George, 12 December 1844.

MEMORANDUM on the subject of the Alterations made in the Mutiny Act and Articles of War of the Company's European Troops.

Legis. Cons. 25 Jan. 1845. No. 50.

3 & 4 Vict. c. 37.

Clause II.—HEREIN is suggested the convenience that would arise from the power being given to courts martial to try all criminal offences committed at a greater distance than 10 miles from the respective Presidencies, by which means the necessity would be obviated of sending offenders and witnesses away from their stations to the Presidencies, without adequate reason, as, if the power can be entrusted to courts martial in one case, it may in the other.

VII.—The concluding provision to this clause is suggested, in order to bring regularly within the provisions of the Act and Articles of War a class of persons termed "East Indians," professing the Christian religion, whose feelings and prejudices are alike distinct from those of natives of India, and who appear entitled to be considered as European British subjects.

IX.—The word "servings" in this clause is added in order to agree with the provisions of Act 7 Vict., cap. 18, authorizing the trial of offenders at the place where they may be serving, without reference to the Presidency to which they actually belong; and the correction in the concluding proviso is made for the same purpose. It is, however, expected that the Act above mentioned will, in a modified form, make part and portion of the proposed new Mutiny Act.

XVI.—The new Clause (17) recommended, is to provide for the cases of officers sentenced to transportation for criminal offences and embezzlement.

XVII.—In this clause authority is given to a district or garrison court martial to try as disgraceful conduct any petty offence of a felonious or fraudulent nature, to the injury of, or with intent to injure, any person, civil or military. The provision is somewhat of a vague nature, and under it cases of theft of the property of civilians to large amount, and even offences amounting to forgery, have not unfrequently been tried as disgraceful conduct; but it appears to me that offences against the persons or property of civil subjects, which amount to felonies by the common or statute law, are improper to be tried under this head (except perhaps a theft to the amount of a half rupee); first, because I do not think they can be called petty offences of a felonious nature; secondly, because a civil subject, I consider, is justly entitled to look to the civil law, to which he is himself amenable

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for the protection of his person and property, and has a right to expect that the penalties of that law will be inflicted against all offenders against either; and thirdly, because a petty offence of a felonious nature cannot, in my opinion, be held to mean an actual felony, for which the punishment of transportation is awardable. The generality of misdemeanours may, I think, be tried under this head.

Under the head of disgraceful conduct, of a cruel, indecent or unnatural kind, soldiers have been tried who have stabbed each other with felonious intent. I look upon this, also, as irregular, and have therefore introduced in the paragraph of the clause the words "not amounting to felony."

XVIII.—In the proposed insertion in this clause, I have introduced a new term for the court martial, provided for by Clause XX., which I think may prevent mistakes, namely, "*general* department."

XX.—I have erased the words, "or of the territories of those states in alliance with the said Company, in which the said Company's forces are permanently stationed;" because the troops are liable to be employed frequently in these states, and in detachments at a great distance from the head quarters of the force to which they are attached; and when these states are in a state of insurrection or warfare, they may, I consider, be looked upon as foreign states, for the purposes referred to in this clause, more especially as there are no civil authorities in such friendly states to whom Europeans could be handed over for punishment.

The proposed new clause (25) is to allow of affirmations being made by Quakers, Separatists, &c.

XXV.—I have always held that this clause sanctioned appeal from a regimental to a general court martial, without any reference to the appeal allowed by the Articles of War, to which it appears to me to have no allusion.

The Regimental Court Martial referred to in the 107th Article of War has no power, and is not called upon to convict or acquit either the officer or soldier before it (its proceedings are of the nature of a court of inquiry), and it has no charge before it upon which it can exercise these judicial acts; whereas the clause has express reference to a soldier having been *convicted* or acquitted of any offence by a regimental court martial, and by implication, if not in direct terms, sanctions an appeal from the same.

I am therefore of opinion, that to take away the right of appeal, nothing more is required than to erase the words, "unless in the case of an appeal from a regimental to a general court martial;" and that doing this is better than the mode adopted in the corresponding clause in the annual Mutiny Act for this year.

XXXIV.—By this clause, as it at present stands, although men entitled to their discharge are made liable to the Act while on board ship, yet after their arrival no means of trying them for offences committed by them presents itself. It is considered, therefore, that the proposed alteration would remedy the defect.

The proposed new clause (39) is to remedy the omission which exists to authorize enlistment in this country.

The new clauses, 43, 44 and 45, seem requisite to give authority for offenders being sent to Her Majesty's gaols at the several Presidencies; and the 2d para. of clause 44, intended to provide for cases in which officers are sentenced to imprisonment for criminal offences or for embezzlement.

XLIII., XLIV., XLV., XLVI., XLVII.—The laws and regulations for the good government of the Indian Navy having been framed, these clauses will require modification.

Articles of War.

Officers are not made liable to transportation for military offences, with exception of embezzlement; it is offered for consideration whether in capital cases authority might not be given to courts martial to award transportation in the case of officers.

15. There can be no doubt, I conceive, that Article 15 alludes solely to the case of a sentry, to distinguish it from Article 27, and that the first part of the latter Article refers to situations, whether in foreign parts or elsewhere, or whether the offence be committed in time of peace or in war.

37. It is considered that when a soldier has maimed or mutilated himself by design, it should be imperative on courts martial to award forfeiture of additional pay

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pay and pension, and accordingly the word "subjected," instead of "liable," is proposed to be inserted in this Article.

66. The paragraph recommended to be added to this Article is to legalize a practice which has of late been introduced, but for which I am of opinion that there is no sufficient authority.

73. "Simmans," in his Treatise on Military Law, states that a district or garrison court martial for the trial of a warrant officer is held without a warrant. I have always been of a contrary opinion, in which I am confirmed by the insertion of the words "except for the trial of warrant officers," in the corresponding Article of War to this in the Articles of War for Her Majesty's forces for the present year. All courts martial to be held without warrant are expressly stated to be so.

84. With reference to the oath administered to the members of courts martial, it appears to me more regular that courts martial, as they act as jurors as well as judges, should be sworn on every fresh trial, more especially as that practice continues to be adopted in trials of officers and soldiers of Her Majesty's forces. The practice which at present prevails of swearing them once for all saves little time, some of the members of a court martial being generally changed after each trial; I have, therefore, proposed to revert to the old form of oath.

89. It appears to me that courts martial at any time during their deliberations have authority to change their opinions, and I think that authority should be expressly given for the purpose to prevent any doubt upon the subject.

91. The punishment to which warrant officers are liable should be expressly defined; much difference of opinion prevails upon the point.

92. With regard to this Article of War, it appears requisite that some alteration should be made therein, rendering offenders liable to be sentenced to punishments according to the law administered by Her Majesty's Courts of Judicature in India, which are governed by 9 Geo. 4, c. 74, and the Acts of the Legislative Council of India, expressly made for the regulation of criminal law. It appears anomalous that a soldier tried by a court martial beyond 120 miles from the Presidencies should be liable to a different code of laws to that which he would be liable to if tried within the specified distance. In legislating on this point, however, it will have to be considered that the European soldier of the Company's service is not always in India, but his service may be called to Persia, Egypt, China, or any other foreign country where the criminal code applicable to India might be inapplicable, and where Her Majesty's forces would be subject to the law as existing in England. It has been ruled at this Presidency that sentences passed under the 92d Article of War for the Company's, and the 102d Article of War for Her Majesty's forces, may be in accordance with 9 Geo. 4, c. 74, and the Acts of the Legislative Council which modify the former.

(signed) *T. B. Chalon,*
Judge Advocate-gen[l] of the Army.

Judge Advocate-general's Office,
Fort St. George, 12 December 1844.

ADDITIONAL NOTES upon the Mutiny Act and Articles of War.

MUTINY ACT.

Present Text.	*Proposed Alteration.*
Sec. IX. "To authorize any officer under their respective commands, not below the degree of a Field Officer."	"Not below the rank of Captain." It is of very frequent occurrence in India, that large detachments are employed on active service under Captains, and it is therefore very desirable that the Commander-in-chief should possess the power of delegation to such officer whenever circumstances may require.
Sec. X. "Field Officer."	"Captain, as above."
Sec. XVII. "Composition of district or garrison courts martial	Add, "except the same" shall be holden in any place out of Her Majesty's dominions, or of

Legis. Cons. 25 Jan. 1845. No. 51.

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Present Text.	*Proposed Alteration.*
tial of not less than five commissioned officers."	the possessions or territories which are or may be under the government of the said Company, or at Prince of Wales Island, Singapore or Malacca, or in the settlements on the coast of China, at which places such district or garrison courts martial may consist of any number not less than three, &c., &c., &c.
XVII. President "not being under the rank of Captain."	Omit. It is frequently impossible to nominate a Captain on foreign or distant service; old Lieutenants, of whom there are always many in the Company's service, should be sufficient.
Sec. XX. "Of the army to which the division, &c., to which any person so tried shall belong."	"Under whose orders the division, brigade, detachment or party may be serving, to which any person so tried, convicted and adjudged to suffer punishment shall belong, shall have approved and confirmed the same." Required to conform to the principle of Sec. III.
Sec. XXIX. "Provided that no such evidence," &c.	To be inserted after this proviso:—"And provided also that a copy of the charge and sentence for each previous conviction, certified under the signature of the commanding officer, shall be sufficient proof of such previous conviction."
Sec. XXXI. "Twelve months."	"Of 28 days each."
Sec. XXXII. "Man or horse."	"Man or beast." Bullocks, camels and elephants are used in the Indian service, as well as horses.
Sec. XXXIV. After "Great Britain or Ireland."	Add, "as also every pensioned soldier entitled to and claiming to be sent to Great Britain or Ireland."
Sec. XXXVI. "Horses."	Add, "or other beasts." Bullocks, camels and elephants are used in the Indian service, as well as horses.
Sec. XXXVII. "Bounty upon which such man shall have been enlisted."	Add, after this clause, "And be it further enacted, That any person who shall enlist into the Company's artillery, and who shall be discovered to be unfit to serve therein by reason of a defective thumb or other infirmity, may be transferred into the Company's infantry."

This is required to meet an abuse of constant occurrence in India; able-bodied recruits, enlisted for the artillery and proved unfit as above, though perfectly fit for the infantry, but refusing to serve, upon which they must be sent to England, where they again enlist, perhaps, in the artillery.

Sec. XXXIX. "Place of destination."	Add, "or elsewhere."
Sec. XL.	Substitute, "And be it enacted, That the provisions of this Act shall apply to all persons of whatsoever description receiving pay, and to all licensed sutlers and followers, who shall be at all times, &c."

This, it is submitted, would fully answer all purposes, and be far more simple than the present section.

Sec. LIV.	To be added, "Provided always, that no action of debt or personal action, by one officer or soldier against another officer or soldier, shall be cognizable before any such court."

Cases have occurred in which soldiers have preferred claims as above; the proviso is required to prevent such practice.

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ARTICLES OF WAR.

Article 2. The penalties in this Article, both for officers and soldiers, to be omitted, and the Article to come within the conclusion of Article 3.

Article 37. This whole Article is very awkward, and much too stringent for any useful purposes. It would be much better as follows:—"Any soldier who shall be convicted of having wilfully maimed or mutilated himself shall be liable to the punishments attached," &c.

Present Text.	*Proposed Alteration.*
Article 41. "Man or horse."	"Man or beast."
Article 48. "By any other satisfactory evidence."	Add, "Shall be deemed guilty of habitual drunkenness," and omit, "for habitual drunkenness," in latter part of the clause.
Article 62. "Horse."	Add, "or other beast."
Article 73. "Consist of not less than five commissioned officers."	Add, "except the same shall be holden in any place out of Her Majesty's dominions, or of the possessions or territories which are or may be under the government of the said Company, or at Prince of Wales Island, Singapore or Malacca, or in the settlements on the coast of China, at which places such district or garrison court martial may consist of any number not less than three, and may, &c."
"Five officers of the same regiment."	Substitute, "three or five."

This Article should provide for district or garrison courts being convened under the authority of the Governor, in each of the garrisons of Fort William, Fort St. George and Bombay. As the Article now stands, a garrison court cannot be convened in Fort St. George, as the Governor has no authority under this Article, and cannot receive a delegation for the purpose from the Commander-in-chief.

Article 87. "Under the penalty of," &c.	"Under the penalty of such punishment as a court martial may award."

Article 94. Sufficiently provided for by the other Articles, and useless as it stands.

Article 102. After "satisfactory explanation shall have been given."	Substitute, "in the case of officers and warrant officers to the Commander-in-chief, and in the case of all others to the officer commanding the division or force."
Article 106. After "he may complain."	Substitute, "through his commanding officer, to the officer commanding the brigade, and, if still not satisfied, to the officer commanding the division or force, and finally to the Commander-in-chief."

Article 107. Requires to be corrected and defined; the regimental court has no jurisdiction over the officer, and can only deal with the case as it concerns the private.

Article 114. After "regiments only."	Add, "and upon regimental duties."
After "other corps."	Add, "or upon general duties."

Required to prevent doubts in accordance with the practice of the service.

NOTE.—*The Mutiny Act and Articles of War, with alterations by the Judge Advocate-general and the Commander-in-chief of Fort St. George, should follow here. There are no copies in office. They formed Nos. 6 & 7 of the papers which accompanied Leg. Despatch to Court, No. 3 of* 1845.

NOTE on the Alterations in the Mutiny Act and Articles of War for the East India Company's European Troops, suggested by his Excellency the Commander-in-chief at Fort St. George, and by the Judge Advocate-general of the Madras Army.

Legis. Cons. 25 Jan. 1845. No. 52.

A GREAT portion of the proposed alterations have been made, as Lieutenant-colonel Chalon remarks, in order to make the provisions of the Act and Articles

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correspond with those of the Mutiny Act and Articles of War for 1844 for Her Majesty's Forces. These are exactly the same alterations which had previously been suggested, both by the Judge Advocate-general of the Bombay Army and by myself, and have been transmitted to England for consideration. It is therefore unnecessary to notice any of these, and the observations I now submit refer only to the suggestions made from Madras, which involve new provisions.

MUTINY ACT, Clause II. The Judge Advocate-general proposes to confer power on courts martial to try criminal offences committed at the distance of *ten* miles from the respective Presidencies, instead of 120 miles, to which their jurisdiction is limited at present. Considering that the Supreme Courts of Judicature at the several Presidencies have concurrent jurisdiction throughout those Presidencies, there appears to be no good reason for preferring the existing limitation to any other which might be made, while at the same time the power of trying criminal offences by courts martial admits of the proposed extension as being the most convenient in all respects, and as rendering to the soldiery at nearly all the stations of the army at either Presidency the same uniform process of trial. I therefore consider the suggestion made to be well worthy of adoption.

Clause VII. The additional provision proposed here, declaring Christians of European descent amenable to this Act, appears to me desirable; but the terms in which the Commander-in-chief at Madras proposes to work this provision are, in my opinion, preferable to those suggested by the Judge Advocate-general. The latter provide only for "natives" of India; the former embrace all persons of European descent professing Christianity.

There is one class of persons, however, still not specifically provided for, but consisting at present of so very small a number of individuals, that perhaps it is not necessary to make provision for them; I mean native soldiers who have embraced the Christian religion. The subadar major of one of the regiments of Bengal Native Infantry (the 65th or 56th, I am not sure which) is a Christian; yet he, and others such as himself, come within the previous provision of this clause, which declares the Act not applicable to "officers or soldiers being natives of the East Indies," without reference to their religious persuasion.

It is to be observed, however, that the native Christian officer is equally capable with the Hindoo or Mahomedan native officer of being a member of a court martial under the Articles of War; and as he may administer justice in that capacity to his fellow soldiers, there seems no reason why he should not be liable to trial by them, notwithstanding the difference of his religion and theirs.

Clauses IX., X. It is proposed to extend to *Captains* the delegated power of convening general courts martial, because, as the Commander-in-chief observes, large detachments employed on active service are frequently commanded by Captains. With deference to his Excellency, I would submit that the alteration is not *necessary*, especially as the President of a general court martial must need be of the rank of a Captain, and in all possible cases he must be a field officer; a rule showing *à priori*, that the officer convening the court should be of a higher rank than *Captain*. The occurrence which forms the ground of the suggestion is very rare in Bengal.

Clause XVII. It is proposed by the Marquis of Tweeddale to add a provision here, making *three* members sufficient for a district court martial in certain places. A provision similar to that proposed by his Lordship, with five members instead of three, was suggested by myself, taken from the Mutiny Act for the Queen's troops, and the ordinary constitution of a district court martial I propose to make *seven* members, as in Her Majesty's forces. I submit that the numbers *seven* and *four* respectively, as proposed by me, are preferable to five and three. In the first place, the adoption of those members will make this Act correspond with that for the Royal Army; and an assimilation very necessary, since more than one culprit in Her Majesty's service has escaped punishment by having been unthinkingly sent up for trial before a district court martial of five members, which had previously been convened for the trial of a Company's soldier. Secondly, there can be no want of members; for the officers of the Queen's service are capable of sitting together with Company's officers as members of district courts martial. Thirdly, the provisions of the

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the Acts for Her Majesty's and for the Company's armies correspond in the numbers of members to constitute general courts martial and inferior courts martial, and there can be no reason why, in respect to members of district courts martial, they should differ.

The Commander-in-chief at Madras proposes to allow *Lieutenants* to be presidents of courts martial other than general. I submit that my proposal of *Captains in the army*, which includes Lieutenants of long standing, though not all Lieutenants, is well adapted to the case; and indeed it does not actually differ from the suggestion of his Excellency, who speaks of "old Lieutenants," though the alteration he suggests introduces the word Lieutenants solely.

The Judge Advocate-general at Madras observes on this clause, that it is so vague that cases of theft of the property of civilians to a large amount, and even offences amounting to forgery, have not unfrequently been tried as disgraceful conduct. Such has not been the practice in Bengal; and it has not appeared to me difficult to discriminate between large thefts or forgeries and petty offences of a felonious or fraudulent nature; and the provision made in this clause for punishing thefts from military persons, omitting thefts from the property of civilians, is so remarkable that it acts as a guide in making a proper discrimination. I do not perceive clearly the force of the argument, that a civilian "looks to the civil law, to which he is himself amenable, for the protection of his person and property." Carried out, this argument would not stand for a moment, and as regards the matter between the civilian and the soldier, the natural objection of the former, in the event of an attempt to try him by military law, would be sufficient answer to the argument, that "*all* offenders against either (person or property) should be liable to the penalties of the civil (criminal) law." It is enough that the legislature has provided for the punishment of petty felonious acts under the designation of disgraceful conduct; and though it is impossible to sever the nature of *felony* from the Act committed, I see no objection to proceeding by military rather than by civil criminal law, where the offence is a petty felony, without aggravating circumstances; and such appears to be the object of this part of the clause.

Clause XVIII. I do not perceive any sufficient reason for introducing the proposed new term "General Detachment Court Martial" in this clause.

Clause XX. It does not appear to me that the alteration suggested by Lieutenant-colonel Chalon is desirable. It is proposed to omit the words "*or of the territories of those states in alliance with the said Company, in which the said Company's forces are permanently stationed.*" Granting that such a state is for a time in a state of insurrection or warfare against the said Company, it would then probably be circumstanced just as any unallied foreign state is circumstanced. But the words in question are *necessary* to prevent the application of the clause to troops within the territories of states (such as the Kingdom of Oude, for instance) in which the permanent location of the Company's troops renders ordinary general courts martial available, and therefore excludes the informal and summary procedure contemplated in this clause.

Clause XXV. I have always, just as Lieutenant-colonel Chalon has, considered this clause not to relate at all to the 107th Article of War, but to appeals of a totally different nature from those provided for in that Article. But I had thought it sufficient to introduce into this clause the alterations made in the corresponding one in the annual Mutiny Act for 1844. I did so because it did not appear to me that the alterations made any difference in the provisions of the clause, seeing that in the case of the Queen's troops (which would naturally guide the preparation of Articles of War for the Company's forces) Her Majesty has made no provision in Her Articles of War for appeals, such as this clause contemplates. I think also that the suggestion to omit the words "*unless in the case of an appeal from a regimental to a general court martial,*" would, if adopted, make not much difference in the clause. The force of the word "*liable* to be tried" seems to have escaped observation. In my opinion it implies that no one shall be *subjected* to trial by authority of the Commander-in-chief, or other competent persons, a second time after acquittal or conviction of any offence. But a second trial, solicited by the party himself in the shape of an appeal, may be permitted nevertheless; the individual, in the desire to obtain justice, being anxious, perhaps with considerable reason on his side, to submit to a new trial. Such appears to me the force of the

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word "liable;" and if it be intended to prohibit appeals altogether, I submit that it is necessary to use other terms. Of course, in all cases it rests with the Commander-in-chief to direct the release of the suffering party whenever a real hardship or injustice is shown to have occurred at his trial by an inferior court martial; and that, without sanctioning the process of a second trial. But cases may arise in which there may be no positive proof of injustice, and yet a very strong probability of its having been committed. In such a case an appeal trial is at once the most satisfactory and the most just way of disposing of the facts. I am, on these grounds, an advocate for the sanction, very rarely and discreetly to be given, of the right to appeal, and I think its total prohibition inexpedient, as tending to injustice.

Clause XXIX. I think the Commander-in-chief's suggestion would have been a very desirable alteration, but it must necessarily be limited to previous convictions for *military* offences.

Clause XXXI. I perceive no reason for making the 12 months' imprisonment provided here *lunar* months; but I would rather propose to say one year, or 12 calendar months, considering the nature of the offences of inducing or assisting soldiers to desert.

Clause XXXIV. I submit that the fact of the soldier being on board ship, on his way to Great Britain or Ireland, which the terms of this clause assume, renders unnecessary the Commander-in-chief's proposed addition here.

The Judge Advocate-general suggests an addition or alteration, making time-expired or pensioned men offending on the passage home liable to the Queen's annual Mutiny Act on their debarkation. I think the case of the Company's soldiers in the United Kingdom, such as the Sappers and Miners, which is referred to in the proposed clause, is altogether different from that of men discharged or pensioned and sent home for the purposes of trial and punishment; so much so, indeed, as to render the Mutiny Act and Articles of War inapplicable to the latter. I would, in preference, suggest the adoption of the alteration I had previously proposed on this clause of the Act, namely, forfeiture of a part or of the whole of the pension.

Clause XL. The alteration of this clause, suggested by the Marquis of Tweeddale, appears to me to be a great improvement. Perhaps the insertion of the words, "from the said Company," after the words "*receiving pay*," would render the clause more specific.

Clause LIV. If the words "*officer or*" were omitted from the proposed addition to this clause, I think it would form an unobjectionable provision. Soldiers have the captains of their companies and other authorities, whose assistance they may obtain in recovering dues from comrades, but officers have no such remedy; it is a very rare occurrence for one officer to sue another, but a case might arise in which it would be hard to shut the plaintiff out of Court of Bengal. It is considered, from the tenor of this clause, and from a comparison of it with the provisions of the late Mutiny Act, 4 Geo. 4, c. 81, that soldiers are not liable under this Clause to the jurisdiction of Military Courts of Requests. On this construction, the addition proposed to be made to the clause is unnecessary.

N.B.—In addition to the previous observations made in the consecutive order of the clauses of the Mutiny Act, I beg to observe, that the proposed insertion of the words "treason, or of any offence which, if committed in England, would be felony," in Clauses II. and V., does not appear expedient. It is, also, not in accordance with the remarks subsequently made by Lieutenant-colonel Chalon, in the 92d Article of War, in which last I beg to express my concurrence. I would submit that the provisions of these enactments might be so drawn as to place soldiers serving in India *beyond* 120 miles from the Presidencies respectively, under the same criminal law to which such soldiers are liable when *within* that distance, and the same to which all other British subjects are liable. This subject was brought under the notice of the Government of India in 1841, and a reference was then made to the Honourable the Court of Directors, with a view to obtaining an early settlement of its difficulties; but it is understood that up to this moment no decision has been returned.

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ARTICLES OF WAR.

Article 2. The suggestion of the Commander-in-chief at Madras to omit the penalties prescribed in this Article, and to subject offenders to the discretionary punishment prescribed in Article 3, appears a great improvement.

Articles from 4 to 15 inclusive. The Judge Advocate-general suggests the subjection of officers to transportation, in like manner as soldiers, for military capital offences. I do not think this change desirable; the case of officers is so different from that of the non-commissioned and of soldiers, that where transportation is *adequate* for an offence committed by the latter descriptions of persons, the same offence committed by a commissioned officer should bring down upon him either the sentence of death, considering the greater shame of such crimes when committed by officers, or the sentence of cashiering, when mitigating circumstances appear to exist; but to subject officers to transportation in like manner with common soldiers would, in my opinion, be unjust, because the suffering therefrom is so disproportionate in the two cases, and otherwise inexpedient as an unseemly novelty in military law.

Article 37. I think the word "liable," which stands in this Article, is better than the word "subjected," which the Judge Advocate-general proposes, in order to make forfeiture of pay and pension imperative in the case of a man mutilating himself.

The Commander-in-chief suggests that this Article is clumsily worded, and that it might be altered by merely providing that a man convicted of wilfully mutilating himself shall be liable to punishment as for disgraceful conduct. I submit that this alteration would be no more than a needless repetition of Article 74, as regards this particular offence. The object of Article 37 is evidently to require the investigation, by the solemn forms of trial, of cases of maiming and mutilation of soldiers, in order to a just discrimination between the sufferer by accident and the wilful agent in his own injury; I think the retention of this Article desirable. I conceive the necessity of hedging round the grant of wound pensions with as much strictness as possible to cases of unsought injury received in the course of service, is too obvious to admit of the alteration suggested in this Article.

Article 66. The practice of appointing the senior member to be President on a casualty which removes the original President, I have never known stated as of doubtful legality till now; it is one of very long standing, and mentioned by all the writers, I think without a single exception, as allowable and proper. I see no necessity for specifically legalizing this practice, as proposed by the Judge Advocate-general.

Article 73. The Commander-in-chief observes, that no provision is here made for convening garrison courts martial in each of the Presidency garrisons, and that the men cannot be tried at Fort St. George, because the Governor has no authority for that purpose, and cannot receive delegated authority from the Commander-in-chief. There has been no such difficulty experienced in Fort William; the general officer commanding the Presidency division, on a case arising, applies for the sanction of the Governor of Fort William, which is granted of course, and the General then convenes the court, and confirms the sentence, in like manner with that of any other court martial held under his orders.

The Judge Advocate-general is of opinion that district courts martial for the trial of warrant officers are and should be authorized by warrant. In Bengal the practice is otherwise. District courts martial, under the 73d Article are held under warrant, because the Commander-in-chief is empowered by warrant to issue his warrant to general officers and others to convene such courts. Warrant officers are tried under Article 90 only, and though I consider the issuing or withholding of a warrant to the President indifferent in such a trial, the practice is not to issue warrants. The only reason I can assign further is, the existence of an Article of War authorizing the trial of warrant officers by courts martial, designated "detachment" courts, to be convened by officers commanding districts (and now termed district courts martial, *to be similarly convened*) long accustomed to the institution of those now called district and garrison courts martial.

Article 87. The alteration suggested by the Commander-in-chief would render the provisions of this Article vague and inactive; I had proposed "the same and the court martial,"* which I think the better provision.

* *Sic orig.*

Article 8[illegible] It does not appear to me to be advisable to introduce the addition suggested here by the Judge Advocate-general.

Article 106. The Commander-in-chief's remark on the error in principle in this Article is very just.

(signed) *R. J. H. Birch*, Lieutenant-colonel,
Judge Advocate-general,
Bengal Army.

Judge Advocate-general's Office,
Calcutta, 13 January 1845.

Legis. Cons. 25 Jan. 1845. No. 53.

TRIAL by Court Martial of Criminal Offences committed by Officers and Soldiers.

UNDER the provisions of the Mutiny Act, 3 & 4 Vict., c. 37, Clause II., the criminal jurisdiction of courts martial is confined to places situated above 120 miles from the Presidencies of Fort William, Fort St. George and Bombay respectively. When a criminal offence is committed at any place, the proceedings of the Court of Inquiry, by which the circumstances are usually investigated, are generally transmitted to Army Head Quarters, for orders on the case. General officers commanding divisions are also empowered of themselves to issue the necessary orders in such cases; should the place where the offence is committed be within the distance of 120 miles (Berhampore, for instance), the offender is made over to the civil power, for trial in the Supreme Court, and then all the witnesses are sent down to the Presidency, and detained away from their duties, sometimes at considerable cost and inconvenience to the service.

It is proposed now from Madras to narrow the circle to 10 miles, which would bring European officers and soldiers at Barrackpore (but not those at Dum Dum), who might commit offences, under the jurisdiction of courts martial. Excepting the commissioned officers, there are so few Europeans of the military class at Barrackpore, that the occurrence of criminal offence is very rare. At Chinsurah, again, soldiers are quartered, and such offences are likely to be more frequent.

The jurisdiction of the Supreme Courts at the Presidencies extend over officers and soldiers, wherever situated, being European British subjects; but criminal jurisdiction is practically exercised over them by general court martial only. I am not aware of any case in which the jurisdiction of the Supreme Court at Calcutta has been exercised in a criminal case in the army. Since the power to try such cases was first given to courts martial, which was in 1824, by the Act 4 Geo. 4, chap. 81, was the point to be raised on a case presenting itself, in which the circumstances seemed to call for a trial in the Supreme Court (a very rare case, certainly, and scarcely likely to occur at all), it would, I presume, be referred by the Commander-in-chief to the Supreme Government to decide whether the trial by court martial or in the Court of Calcutta were preferable.

I see no objection to the contraction of the circle of limitation to 10 miles, as proposed.

(signed) *R. J. H. Birch*, Lieut.-colonel,
Judge Advocate-general.

Judge Advocate-general's Office, Calcutta,
16 January 1845.

HOME DEPARTMENT.—LEGISLATIVE.

Home Department, Legis. 20 Jan. 1845.

(No. 3. of 1845.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

IN continuation of our letter, No. 30, dated 20th December last, and transmitted by the overland mail on the 23d of that month, we do ourselves the honour to forward, for the consideration of your Honourable Court, the accompanying papers, containing suggestions made by his Excellency the Commander-in-chief, at Fort Saint George, and by the Judge Advocate-general at that Presidency, for the alteration and amendment of the Mutiny Act, for the better government

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government of the East India Company's forces, and the Articles of War made under the authority of that Act.

2d. We transmit at the same time two notes by the Judge Advocate-general, Lieutenant-colonel Birch, on the proposed alterations.

We have, &c.

(signed) *H. Hardinge.* *Geo. Pollock.*
F. Millett. *C. H Cameron.*

(No. 417.)

Legis. Cons. 8 Feb. 1845. No. 9.

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the Military Department, under date the 18th August 1843.

READ a letter, No. 718, dated 31st July 1843, from the Adjutant-general of the Army, forwarding copy of one from the officer commanding at Cawnpore, soliciting instructions in regard to the amenability to the jurisdiction of Military Courts of Request of East Indian tradesmen and others residing in that cantonment, together with a transcript of the Judge Advocate-general's opinion thereon, with the Commander-in-chief's recommendation that effect may be given to the suggestions of Lieutenant-colonel Birch.

Ordered, That a copy of the above-mentioned letter be transmitted to the Legislative Department for consideration, with reference to extract from that Department, No. 20, of the 5th July 1845, forwarding transcript of Act XI. of 1841, for regulating native courts martial.

(True extract.)

(signed) *E. Sanders,*
Officiating Secretary to the Government of India, in the Military Department.

(No. 718.)

Legis. Cons. 8 Feb. 1845. No. 10.

From the Adjutant-general of the Army to the Officiating Secretary to the Government of India, Military Department, dated 31 July 1843.

Sir,

I HAVE the honour, by direction of the Commander-in-chief, to forward to you a copy of a letter from the officer commanding at Cawnpore, No. 811, of the 18th instant, soliciting instructions as to whether the class of traders therein adverted to is amenable to the jurisdiction of Military Courts of Request.

I am also instructed to transmit to you a transcript of a communication, No. 250, dated the 27th current, from the Judge Advocate-general, to whom his Excellency caused the question to be referred for opinion, and to request you will submit the papers for the consideration of the Right honourable the Governor-general of India in Council, with the recommendation of the Commander-in-chief, that effect may be given to the suggestions of Lieutenant-colonel Birch.

I have, &c.

(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

Head Quarters, Simla, 31 July 1843.

(No. 811.)

From Major-general Sir *J. Thackwell*, K. C. B. & K. H., commanding Cawnpore Station, to the Adjutant-general of the Army, dated Cawnpore, 18th July 1843.

Sir,

I HAVE the honour to request the favour of your bringing to notice of his Excellency the Commander-in-chief, that several merchants reside in this cantonment acting as sutlers, and licensed to sell wines and liquors, who, from being

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East Indians, do not consider themselves amenable to the Military Courts of Request, in consequence of the interpretation they put on the wording of Section II. of Act XI. of 1841. In the objections made, it is set forth that they do not "carry on any trade or business in a military bazar;" and I beg, therefore, to submit whether the term "military or Sudder bazar" may be considered, in such cases, to extend to the compounds and villages in the cantonment in which the trade of these merchants or other dealers is carried on, some of the former of which are not situated near any bazar, and whether such individuals, from being "licensed sutlers," should be amenable to Military Courts of Request, though not coming under the class of British subjects.

(No. 250.)

From the Judge Advocate-general to the Adjutant-general of the Army, dated 27 July 1843.

Sir,

I HAVE to acknowledge your official letter of the 26th instant, the number and subject as below*.

2. The persons in question are not amenable to Military Courts of Request, so far as the actual provisions of the Mutiny Act or those of the Acts of Government of India are concerned. The Clause II. of Act No. XI. of 1841, alluded to by the officer commanding at Cawnpore, does not embrace the cases of such persons. But in a letter from the Secretary to Government, Military Department, No. 310, dated 30 September 1820, (circulated with the then Adjutant-general's letter of the 6th October 1820, and which arose out of the case of Mr. Duhan, merchant at Cawnpore), it was declared, that the Governor-general in Council had resolved that no European or Native Christian trader shall be permitted to reside within the limits of any military cantonments under this Presidency, who does not fully acknowledge the jurisdiction of a military court in all cases of petty* coming within the amount fixed by Regulation XX. of 1810; and that persons who seek a livelihood by carrying on business within the boundary of a military station, must understand they will not be suffered to continue there, without rendering themselves amenable in like manner with officers and others to the Regulation above quoted, their obedience thereto being one of the conditions under which their residence is sanctioned by Government.

* *Sic orig.*

3. The institution of Military Courts of Request, under the late and present Mutiny Acts, and the abrogation of Regulation XX. of 1810, by Act No. XI. of 1841, have interfered with the literal observance of the resolution above quoted; but the obvious intention of that resolution has, in my opinion, sufficient force at the present time to justify the officer commanding at any station to inform the persons in question that they shall not be permitted to continue residents within the limits of cantonments, except by submitting to the jurisdiction of Military Courts of Request held therein. But if this course is adopted at any station, a report should be made to Government; and, indeed, it seems desirable that a rule to the same effect, adapted to present circumstances, should be authoritatively promulgated, under the orders of Government, at the different stations of the army.

4. I conceive that the European Courts of Request is the more appropriate tribunal in which Christian traders, whether Europeans or East Indians, should be sued, and it might be so declared by Government.

(True copies.)
(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

(A true copy.)
(signed) *E. Sanders*,
Off. Secretary to the Government of India,
Military Department.

(No.

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* No. 1980, with copy of letter from officer commanding at Cawnpore regarding objections of East Indian tradesmen there to their liability to be sued before Courts of Request, for opinion on their amenability.

(No. 212.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the Military Department, under date the 11th October 1844.

Legis. Cons. 8 Feb. 1845. No. 11.

READ a letter, No. 859, dated the 10th September 1844, from the Adjutant-general of the Army, transmitting copy of one from the officer commanding at Meerut, relating to a decree of the European Military Court of Requests, in the case of a Mr. Vitta, a trader at that station, who appears to be liable to imprisonment under the 34th Clause of the Military Act, but against whom the penalty cannot conveniently be enforced, in consequence of no suitable place of confinement being available within the cantonment, with a doubt existing with respect to the mode in which a prisoner should be subsisted under the circumstances, and drawing attention to his letter, No. 718, of 31st July 1843, to which no reply has yet been received.

Ordered, That a copy of the above-mentioned despatch be transmitted to the Legislative Department for consideration, with the observation, that no reply has yet been received from that department to the extract from the Military Department of the 18th August 1843.

(A true extract.)

(signed) *J. Stewart*, Lieut.-colonel,
Secretary to the Gov^{t} of India,
Military Department.

(No. 859.)

From the Adjutant-general of the Army to the Secretary to the Government of India, Military Department.

Sir,

I AM directed by the Commander-in-chief to forward for submission to the Right honourable the Governor-general of India in Council, with a view to a decision on the point in question being obtained, a copy of a letter from the officer commanding at Meerut, No. 443 of the 28th ultimo, connected with a decree of the European Military Court of Requests in the case of a Mr. Vitta, a trader at that station, who appears to be liable to imprisonment under the 54th Clause of the Mutiny Act, as quoted below*, but against whom the penalty cannot conveniently be enforced, in consequence of no suitable place of confinement within the cantonment being available, and a† existing with respect to the mode in which a prisoner should be subsisted under the circumstances.

† *Sic. orig.*

I am instructed to take this opportunity of requesting you to solicit the attention of Government to the letter addressed to you from this department, under date the 31st of July 1843, No. 718, to which no reply has yet been received.

I have, &c.

(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

Head Quarters, Simla,
10 Sept. 1844.

(No. 443.)

From Major-general Sir *J. Thackwell*, K.C.B. & K.H., Commanding at Meerut, to Major *G. C. Ponsonby*, Assistant Adjutant-general, Meerut Division; dated 28 August 1844.

Sir,

A NATIVE shopkeeper of Meerut preferred a claim against a Mr. Vitta, also residing within the boundary of the cantonment, and carrying on the business of a cook to the President of the European Military Court of Requests, who registered

* "And if such debtor shall not receive pay as an officer, or from any public department, but be a sutler, servant or follower, he shall be arrested by like order of the commanding officer, and imprisoned in some convenient place within the military boundaries, for the space of two months, unless the debt be sooner paid."

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tered it in accordance with an opinion of the Judge Advocate-general, given in reply to a reference made last year in the Meerut Division by Major-general Littler. then commanding at Agra, on the subject of the amenability of the non-military residents in a cantonment to that tribunal.

Mr. Vitta was summoned, and having attended the Court, and made no objection to its jurisdiction, the case was investigated, and decided by a decree passed in favour of the plaintiff, the execution of which was awarded generally.

The defendant resides with a Mr. Ford, a shopkeeper, and has no house of his own at Meerut, and he is said to be possessed of property of more than sufficient value to cover the amount of the claim against him, and to have caused this property to be conveyed away from his residence, and secreted in some place whither it cannot be traced.

The plaintiff being unable to point out this locality, has requested that Mr. Vitta, who refuses to liquidate the debt, may be imprisoned in accordance with the provisions of the 54th clause of the Mutiny Act.

These require that the place of confinement should be within the military boundaries; but in the cantonment of Meerut there is none such, nor does the Act contain any mention of the mode in which the prisoner is to be subsisted.

Under these circumstances, having no precedent to give me, I deem it right to refer the matter to higher authority; and I beg that, with this view, it may be submitted to the Major-general commanding the division.

(True copy.)
(signed) *J. R. Lumley*, Major-general,
Adjutant-general of the Army.

(True copy.)
(signed) *J. Stewart*, Lieut.-colonel,
Secretary to the Government of India,
Military Department.

Legis. Cons. 8 Feb. 1845. No. 12. Mil. Court of Requests Martial. Ditto, Cawnpore.

MINUTE by the Honourable *C. H. Cameron*, dated the 6th December 1845.

THE first question in this reference is not one either of law or legislation. By the statute, the defendant, under the circumstances here stated, is to be imprisoned in some convenient place within the military boundaries. It is said there is no convenient place in the cantonment at Meerut; if that is so, either a convenient place must be made, or the imprisonment cannot be effected. It is not a law, but a prison, that is wanted, unless, indeed, it is *generally* inconvenient to confine debtors in cantonments, in which case it may be desirable to enact that they should be confined in the civil gaol of the district; but such general inconvenience is not alleged.

The second question is, as to the mode in which the prisoner is to be subsisted. The statute is silent on the subject; and I apprehend, therefore, the prisoner must be subsisted at the expense of the plaintiff at whose suit he is confined.

Ditto, ditto.

The question put in the reference of July 1843, to which attention is called, is whether merchants residing in the cantonment at Cawnpore, acting as sutlers and licensed to sell wines and liquors, being East Indians, are liable to the Military Courts of Request.

These persons contended that they were not liable, because they did not "carry on any trade or business in any military bazar;" and the General commanding at Cawnpore asks whether the term "Military or Suddur Bazar" may be considered in such cases to extend to the compounds and villages in the cantonment in which the trade of these merchants, or other dealers, is carried on, some of the former of which are not situated near any bazar, and whether such individuals, from being "licensed sutlers," should be amenable to Military Courts of Request, though not coming under the class of "British subjects."

The Judge Advocate-general was of opinion that the second section of Act XI. of 1841, alluded to by the commanding officer at Cawnpore, does not embrace the cases of such persons; but he suggests that (with reference to a regulation of Government, dated 30th September 1820) the officer commanding at any station would be justified in informing the persons in question that they shall not be

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be permitted to continue residents within the limits of cantonments, except by submitting to the jurisdiction of the Military Courts of Request held therein.

It seems to me, however, that the persons in question are amenable to the Military Courts of Request, independently of any express submission on their part.

They are licensed sutlers, and as such, I presume, they are persons amenable to the Articles of War for the Native Forces in the Military Service of the East India Company, which is one of the descriptions of persons made liable to the Military Courts of Request by the 2d section of Act XI. of 1841.

I have gone through the huge mass of papers which accompanied this reference, but the only matter that I find important to the question is contained in a very elaborate paper of Mr. Amos's. I have extracted it, and now append it to this minute.

Mr. Amos's paper was written when the Act XI. of 1841 was under discussion; and it will be seen by his remark upon the suggestion numbered 10, that he considered "Europeans and East Indians carrying on business in cantonments within the territories of foreign princes," to be provided for in the draft.

Now the provision in the Act (Sect. XVII.) relating to places beyond the territories of the East India Company, speaks only of "persons so amenable as aforesaid."

Mr. Amos, therefore, thought that he had provided for Europeans and East Indians carrying on business in cantonments within the *territories of the East India Company.*

Again, 14 shows that he considered camp followers in cantonments to be subject to the Articles of War, and consequently to Courts of Request.

15 needs no remark.

16 needs only the remark made upon 10.

Lastly, by Section II. of Act XII. of 1842, it is declared that camp followers of every description shall be subject to the provisions of Act II. of 1841, in like manner as enlisted soldiers.

Before I conclude this minute, I wish to say one word with reference to the apparently unreasonable time which I have taken to consider the first of these two references.

The Law Commission still subsists; I trust it will be permitted to subsist for the purposes (most useful purposes I believe them to be) described in the Charter Act. But, at all events, so long as the Legislature does not repeal those provisions of the Charter Act, I am bound to occupy part of my time with the work of the Law Commission; and as I have now but one colleague and no secretary, the time which I must give to the business of the Commission will frequently compel me to delay the consideration of questions which involve the reading of so great a mass of papers, unless I am given to understand that there is an urgent necessity for despatch.

(signed) *C. H. Cameron.*

6 December 1843.

EXTRACT from Mr. *Amos's* Minute of 17th June 1841.

SUGGESTIONS by Sir R. Dick to extension to natives (not subject to Articles of War), being subjects of the East India Company, and Europeans or East Indians carrying on business in cantonments within the territories of Foreign Princes:—

I think our own amendments of the printed draft provide for this.

SUGGESTIONS by Judge Advocate of Madras:

The Suddur Court set the Judge Advocate right, and hold that camp followers, though not in the field, but in cantonments, are subject to the Articles of War, and consequently to Courts of Request.

Registered bazar-men will, I apprehend, be included by our own amendments to the Draft Act.

Sixteen followers beyond the frontier have been considered.

Legis. Cons
8 Feb. 1845.
No. 13.

(No. 48.)

FORT WILLIAM.—HOME DEPARTMENT.

8th February 1845.

READ the following Extracts from the proceedings of the Right honourable the Governor-general in Council in the Military Department :—

No. 417, dated the 18th of August 1843.

No. 212, dated 11th of October 1844.

Read also the correspondence which accompanied the above Extracts.

RESOLUTION.

The question which forms the subject of the reference from the Adjutant-general of the Army, dated the 31st of July 1843, is, Whether merchants residing in the cantonments at Cawnpore, acting as sutlers, and licensed to sell wines and liquors, being East Indians, are liable to the Military Courts of Request? These persons contended that they are not liable, because they did not carry on any trade or business in any military bazar, and therefore did not come under Section II. of Act XI. of 1841.

With reference to this plea, the Major-general commanding at Cawnpore asks whether the term Military or Sudder Bazar may be considered in such cases to extend to the compounds and villages in the cantonments in which the trade of these merchants or other dealers is carried on, some of the former of which are not situated near any bazar, and whether such individuals, from being licensed sutlers, should be amenable to Military Courts of Request, though not coming under the class of British subjects.

The Governor-general in Council is of opinion that the persons in question are amenable to the Military Courts of Request. They are "licensed sutlers," and as such they are "persons amenable to the Articles of War for the native forces in the military service of the East India Company," which is one of the descriptions of persons made liable to the Military Courts of Request, by the 2d Section of Act XI. of 1841.

The letter from the Adjutant-general of the Army, dated the 10th of September 1844, involves two questions.

First, as to the place in which a person liable to imprisonment under the 54th Clause of the Mutiny Act shall be confined, "when there is no convenient place within the military boundaries." The Governor-general in Council observes that this is not a question involving a construction of law; if there is no convenient place within military boundaries, as required by the words of the 54th Clause of the Mutiny Act, then either such a place must not be made, or the imprisonment cannot be effected. It does not appear expedient to suggest any remedy in this department, for the difficulty which has occurred in the instance noticed in the extract from the Military Department of the 11th of October last, by procuring an alteration of the 54 Clauses of the Mutiny Act. Cases of the kind are understood to be of rare occurrence.

Secondly, as to the mode in which the prisoner is to be subsisted. The statute is silent on the subject. The Governor-general in Council, however, considers that the prisoner should be subsisted at the expense of the plaintiff at whose suit he is confined.

EXTRACT, Paras. 21 and 23, from a Letter to the Honourable the Court of Directors, No. 25, dated the 27th August 1845.

21. Two references were made to us by his Excellency the Commander-in-chief; the first on the question, Whether merchants residing in the cantonments at Cawnpore, acting as sutlers, and licensed to sell wines and liquors, being East Indians, were liable to the Military Courts of Request? These persons contended that they were not liable, because they did not "carry on any trade or business in any military bazar," and therefore did not come under Section II. of Act XI. of 1841.

22. We were of opinion that the persons in question were amenable to the Military Courts of Request. They were "licensed sutlers," and as such were "persons amenable to the Articles of War for the native forces in the military service of the East India Company," which is one of the descriptions of persons made liable to the Military Courts of Request by the 2d Section of Act XI. of 1841.

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23d. The next reference of the Commander-in-chief was in regard to the case of a Mr. Vitta, who was liable to imprisonmeut for debt in the cantonment at Meerut, and involved two questions; first, As to the place in which a person liable to imprisonment under the 54th clause of the Mutiny Act should be confined when there was no convenient place within the military boundaries? This question, we observed, did not involve a construction of law. If there were no convenient place within military boundaries, as required by the words of the 54th clause of the Mutiny Act, then either such a place must be made, or the imprisonment could not be effected.

Second, As to the mode in which the prisoner was to be subsisted? The statute is silent on the subject, but we were of opinion that the prisoner should be subsisted at the expense of the plaintiff at whose suit he was confined.

(No. 3.)

From Lieut.-colonel *R. J. H. Birch*, Judge Advocate-general, to *G. A. Bushby*, Esq., Secretary to the Government of India, Legislative Department, dated 14 February 1845.

Legis. Cons. 15 Feb. 1845. No. 1.

Sir,

By desire of the Right honourable the Governor-general of India, I have the honour to transmit to you a copy of such parts of the proposed new Articles of War, for the East India Company's native troops at the three Presidencies, as relate to the trial and punishment of criminal offences by means of courts martial, in all places where no civil judicature may be in force, with a view to their being submitted as early as possible to the consideration of the Law Commission.

I have, &c.

(signed) *R. J. H. Birch*, Lieut.-colonel, Judge Advocate-general.

Judge Advocate-general's Office, Calcutta, 14 February 1845.

Draft of Articles of War providing for Trial and Punishment of Criminal Offences.

Legis. Cons. 15 Feb. 1845.

Art. 106. In any place within the limits of the charter of the East India Company, whether in or out of the British territories, where there may be no civil judicature in force by appointment of Her Majesty or of the said Company,—

Any officer or soldier who shall be convicted of wilful murder; or,

Art. 107. Who shall be convicted of homicide, in the commission of the offence of breaking into a dwelling-house, tent, boat or other habitation, or into any building or place used for the preservation of property, with open violence, either by day or by night, or in the attempt to commit such offence; or,

Art. 108. Who shall be convicted of homicide in the commission of robbery, by open violence, or in the commission of theft, either in a house or from the person, or in the attempt to commit any such offence; or,

Art. 109. Who, with an intent to kill any person, such as if carried into effect would, on conviction, have subjected the offender to the punishment of death, shall be convicted of killing any other person;

Shall be sentenced by a general court martial to suffer death by being hanged by the neck until dead, and shall suffer accordingly.

Provided that no such sentence of death shall be carried into effect until confirmed by the Commander-in-chief, nor, if the trial shall have been held within the territories forming part of either of the Presidencies of Fort William, Fort St. George and Bombay, respectively, until such confirmation shall have been concurred in by the Government of the Presidency where such trial shall have been held.

And the Commander-in-chief is hereby authorized to confirm such sentence, or to remit the same, or to commute such sentence into imprisonment, with hard labour and transportation for life, or into imprisonment, with hard labour, for any term of years.

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Art. 110. Any officer or soldier, in any such place aforesaid, who shall be convicted of breaking into a dwelling-house, tent, boat or other habitation, or into any building or place used for the preservation of property, with open violence, either by day or by night, and of stealing therein; or,

Art. 111. Who shall be convicted of theft, whether in a house or from the person.

Art. 112. Who shall be convicted of robbery by open violence (the offence in any of the crimes above specified being attended with an attempt to commit murder, or with wounding, or other corporal injury to any person, endangering the life of such person), shall be sentenced by a general court martial to suffer imprisonment, with or without hard labour, and transportation for life.

Provided that it shall be competent to the Commander-in-chief, on confirming such sentence, to mitigate the same by directing that the offender undergo imprisonment, with or without hard labour, for any period of time.

Art. 113. Any officer or soldier, in any such place aforesaid, who shall be convicted of breaking into a dwelling-house, tent, boat or other habitation, or into any building or place used for the preservation of property, with open violence, either by day or by night, and of stealing therein, and of having in the commission of such offence wounded or inflicted other corporal injury on any person, not endangering the life of such person, or who shall be convicted of such breaking into any houses or place aforesaid, and of stealing therein, and the value of the property stolen exceeding 100 Company's rupees; or,

Art. 114. Who shall be convicted of such breaking into any house or place aforesaid, with intent to steal therein, between sunset and sunrise; or,

Art. 115. Who shall be convicted of robbery by open violence, unaccompanie with any attempt to commit murder, or with wounding, or other corporal injury to any person, endangering the life of such person; or,

Art. 116. Who shall be convicted of wounding any person, with intent to murder such person, or of intentionally maiming or mutilating any person; or,

Art. 117. Who shall be convicted of having unlawfully and maliciously intended to wound, maim or otherwise do corporal injury to any person, and of having, in the prosecution of such criminal intent, wounded, maimed or otherwise corporally injured any other person; or,

Art. 118. Who shall be convicted of rape; or,

Art. 119. Who shall be convicted of stealing children, or selling children unlawfully procured; or,

Art. 120. Who shall be convicted of having purchased or received any stolen or plundered property, knowing it to have been obtained by gang robbery, or by theft attended with aggravating circumstances, or of having purchased or received any such property so obtained, exceeding in value 300 Company's rupees, shall be sentenced by a general court martial to suffer imprisonment, with or without hard labour, for any period not exceeding 14 years.

Art. 121. Any officer or soldier, in any such place aforesaid, who shall be convicted of culpable homicide, not amounting to wilful murder, and not provided for in any of the preceding Articles; or,

Art. 122. Who shall be convicted of premeditated affray, attended with homicide or severe wounding, or injury to the person assaulted; or,

Art. 123. Who shall be convicted of breaking into any dwelling-house, tent, boat or other habitation, or into any building or place used for the preservation of property, between sunrise and sunset, with intent to steal therein; or,

Art. 124. Who shall be convicted of stealing from any habitation, or from any person, any property exceeding 300 Company's rupees in value; or,

Art. 125. Who shall be convicted of arson, or of instigating or aiding and abetting any other person or persons to commit arson; or,

Art. 126. Who shall be convicted of an unnatural crime; or,

Art.

Art. 127. Who shall be convicted of entering and taking away, or of causing to be entered or taken away, for any unlawful purpose, any unmarried woman under the age of 15 years;

Shall be sentenced by a general court martial to suffer imprisonment, with or without hard labour, for any period not exceeding seven years.

Art. 128. Any officer or soldier in any such place aforesaid, who shall be convicted of aiding and abetting when present, or of causing, instigating or procuring when absent, the commission of any of the offences specified in the preceding Articles, shall be sentenced by a general court martial to the punishment therein provided for such offences respectively.

Art. 129. It shall be competent to the Commander-in-chief, and to any officer having authority to convene district or garrison courts martial to cause offenders, not being commissioned officers, accused of any of the crimes specified in the preceding Articles of War, for which the punishments of death or imprisonment or transportation for life are not provided therein, to be tried for such offences before a district or garrison court martial; and such court shall have power, on conviction, to sentence any such offender to imprisonment, with or without hard labour, for any period not exceeding three years.

Art. 130. Any officer or soldier in any such place aforesaid, who shall be convicted of breaking into or attempting to break into a dwelling-house, tent, boat or other habitation, or into any building or place used for the preservation of property, with an intent to steal therein, but without open violence; or,

Art. 131. Who shall be convicted of stealing from any habitation or from the person, any property of value less than 300 Company's rupees, but exceeding 50 Company's rupees; or,

Art. 132. Who shall be convicted of having purchased or received any stolen property, not exceeding in value 300 Company's rupees, knowing it to have been stolen, but not under aggravating circumstances; or,

Art. 133. Who shall be convicted of having stolen property in his possession, and of having kept possession of such property after becoming aware of its having been stolen;

Shall be sentenced by a district or garrison court martial to suffer imprisonment with hard labour for any period not exceeding three years.

Art. 134. It shall be competent to any officer having authority to convene a court martial to cause offenders, not being commissioned officers, accused of any of the offences specified in the preceding Articles of War, for which no punishment exceeding imprisonment with hard labour for three years is therein provided to be tried before regimental or detachment or line courts martial; and any such court shall have power, on conviction, to sentence any such offender to suffer imprisonment, with or without hard labour, for any period not exceeding six calendar months.

Art. 135. Any officer or soldier in any such place aforesaid, who shall be convicted of stealing property to the value of 50 Company's rupees, or of less value, or of assault or affray, unattended with homicide, severe wounding or aggravating circumstances;

Shall be sentenced to suffer imprisonment, with or without hard labour, for any period not exceeding one year, by the award of a general or district or garrison court martial, or for any period not exceeding six calendar months, by the award of a regimental or detachment or line court martial.

Art. 136. Any officer or soldier in any such place aforesaid, who shall be convicted of resisting the process of a magistrate or police officer, or of having committed any offence against person or property for which provision is not already made in the preceding Articles of War;

Shall be sentenced to suffer imprisonment for any period not exceeding two years by the award of a general court martial, not exceeding one year by the award of a district or garrison court martial, and not exceeding six calendar months by the award of a regimental or detachment or line court martial.

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Art. 137. It shall be competent to any officer having authority to confirm the sentence of a general or other court martial to remit any sentence passed by such courts martial respectively, or to mitigate the same, by substituting ordinary imprisonment for imprisonment with hard labour, or by reducing the period of any imprisonment, or by directing the discharge of the offender in lieu of any imprisonment.

But no sentence of imprisonment with hard labour passed by a regimental or detachment or line court martial, and confirmed either in whole or in part by the commanding officer, and no award of discharge substituted for other punishment as aforesaid by such commanding officer, shall be carried into effect without the sanction and authority of the officer commanding the division or field force in which the offender may be serving, or of the senior officer on the spot in the field.

Art. 138. A person who may have been tried for any offence by court martial under the authority of these Articles of War, shall not be tried for the same in any other court whatsoever; and no person who shall have been acquitted or convicted of any offence by a court of civil judicature shall be punished by a court martial for the same, otherwise than by cashiering or dismissal from the service.

Art. 139. The Regulations at present in force at any Presidency, by which the office and powers of commissariat officers, or officers in charge of the police, or superintendents of bazars, are defined and controlled, or by which Punchayets are constituted and guided, or by which jurisdiction is given to courts martial over offences committed by persons amenable to the Articles of War, within certain limits beyond or around cantonments are hereby declared to be in full force, and the same shall continue to be observed at the several Presidencies respectively.

Legis. Cons. 15 Feb. 1845. No. 3.

(No. 132.)

From *G. A. Bushby*, Esq., Secretary to the Government of India, Home Department, to the Members of the Indian Law Commission, dated the 15th February 1845.

Gentlemen,

I AM directed to forward for your early report the accompanying draft of proposed new Articles of War for the East India Company's Native Troops at the several Presidencies, providing for the trial and punishment of criminal offences.

I have, &c.

Council Chamber,
15 February 1845.

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

(No. 4.)

To the Right honourable Sir *H. Hardinge*, G.C.B., Governor-general of India in Council, dated 27 March 1845.

Unrecorded.

WE have the honour to report upon the draft of proposed new Articles of War for the East India Company's Native Troops, providing for the trial and punishment of criminal offences, not of a military nature, committed in places within the limits of the charter of the East India Company, where there may be no civil judicature appointed by Her Majesty or the East India Company, referred to us by Mr. Secretary Bushby's letter, dated the 15th ultimo, and to submit a modified draft containing such alterations as appear to us advisable.

New Draft, Art. 106 to 109.

2. It will be observed, that we suggest an alteration at the beginning to introduce preliminarily a description of the tribunals by which the offences in question committed by officers or soldiers of the Native Troops in places within the British territories, but not within the jurisdiction of any civil court (wherever such may be), or in places out of the British territories, but within the limits of the charter, are to be tried and punished, determining the jurisdiction, as proposed in the draft referred to us.

New Draft, Art. 110 to 129.

3. According to this arrangement, general courts martial are to have cognizance ordinarily of offences punishable with death, transportation for life, imprisonment which may extend to 14 years, and imprisonment which may extend to 7 years.

District

District or garrison courts martial are to have cognizance *ordinarily* of offences punishable with imprisonment, which may extend to three years; and by special order of offences ordinarily cognizable by general courts martial not capital, nor liable to the punishment of transportation, with a power of punishment limited as above. New Draft, Art. 130 to 133.

Regimental detachment or line courts martial are to have cognizance ordinarily of offences punishable with imprisonment, not exceeding six months, and by special order of offences ordinarily cognizable by district or garrison courts martial, with a power of punishment limited as above. New Draft, Art. 134 to 138.

4. In the descriptions of offences and the punishments assigned to them in the draft referred to us, the regulations of the Bengal code appear to have been kept generally in view. With the Bengal code, that of Madras corresponds pretty nearly in the main points; but the code of Bombay differs considerably.

5. We have considered whether the general penal code proposed for all the British territories in India might not be better resorted to for the definition of offences, and for the punishments to be applied to them, in framing Articles which are to be in force generally throughout the Company's Native Army in all the Presidencies; but there is such a mutual relation and dependency between the different parts of that code, it would be extremely difficult to make compendious selections from it, suitable to the present purpose, which would be complete and clear enough for the object in view. Besides this, there is an objection to the adoption of the definitions of the penal code on this occasion, in the novelty of the nomenclature which is used in it. However appropriate that nomenclature may be, it appears unadvisable to introduce it for the first time in a law which is to be administered by courts martial composed of persons not likely to give much attention to the study of it. We think, therefore, that it was judicious in framing the proposed Articles to follow generally the Bengal code, as the law which has the most extensive operation in British India.

6. But the Bengal code, though it has been the general guide, has not been in all respects followed implicitly. We observe particularly that the proposed Articles differ from the Bengal code, in omitting the additional imprisonment authorized by Regulation II. of 1834, in lieu of corporal punishment, except in Articles 131 to 133, by which offences punishable under the Bengal Regulations by imprisonment for two years, and one year in addition, in lieu of stripes, are made punishable by imprisonment for three years, and in excluding pecuniary fines from the list of punishments, either as original penalties, or by way of commutation for other penalties.

7. We think that the omission of the additional imprisonment is advisable in the cases in which periods so long as seven and fourteen years are allowed.

8. We do not know for what reasons the penalty of fine, which obtains more or less in all the Indian codes, and which the framers of the penal code proposed to authorize the Courts to inflict in every case, except where forfeiture of all property is necessarily part of the punishment, is rejected entirely in these Articles.* Unless there be some substantial objection to it in a military point of view, we would advise that it be admitted pretty generally as an alternative punishment. We have not introduced it in the draft herewith submitted, but if our suggestion is approved, it can be easily modified accordingly.

9. By Article 106 in the referred draft, "wilful murder," is classed as a capital crime, distinct from homicide, in house-breaking, robbery, and theft, respectively provided for, and made capital by Articles 107 and 108. Capital offences.

10. By Clause 2, Section 8, Reg. XVII. of 1817, of the Bengal code, it is declared generally, that persons convicted of murder, in prosecution of robbery, burglary or theft, as in all other cases of wilful murder, are liable to a sentence of death, by the Court of Nizamut Adawlut, under the laws and regulations in force, which are applicable to such cases. The meaning of this clause, we apprehend, is, that the crime of murder in prosecution of robbery, &c., is to be dealt with, like any other case of wilful murder, and needs no particular provision, referring to the offence in the prosecution of which it was committed.

11. On

* Note (A.) page 5. In the Draft Act of Crimes and Punishments, appended to the Seventh Report of Her Majesty's Commissioners on Criminal Law, fine enters into 21 of the 45 clauses of penalties, in the chapter of Penalties.

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11. On this view, we think that Articles 107 and 108 are unnecessary, and we have omitted them in our draft. It is to be observed, that in the Regulation above quoted, and also in Clause 1, Section 4, Regulation LIII. of 1803, relating to robbery by open violence, the term used is "murder," not "homicide," as in these Articles.

Reg. XIV. of 1827, Chap. V.

12. Following the Bombay code, as well as the proposed penal code for India, and the Act of Crimes and Punishments prepared by Her Majesty's Commissioners on Criminal Law, we have used the simple term "murder," instead of "wilful murder." To prevent doubts, we have added to the Articles of Murder, declaratory clauses taken from the Act of Crimes and Punishments above mentioned, including under it, first, the killing of a person not intended to be killed, with the intent to cause the death of another person; secondly, the killing of any person without the intention of killing that person in particular, but with the intention of causing death to some person. The first of these clauses is instead of Article 109, of the draft referred to us, and agrees with Section 2, Regulation VIII. 1801.

New Draft, Art. 110.

Art. 113 of New Draft.

13. Following the same principle, we have framed the Article of Wounding with intent to murder so as to make it applicable, although the person wounded be not the person whom the offender intended to murder.

14. Besides the capital crimes of murder, and of treason and rebellion against the state, (the latter of which, when committed by officers or soldiers, we presume are punishable as military offences), sentence of death may be passed under the Bengal code upon persons convicted of being the heads or leaders of a gang of robbers, by whom a murder may have been committed, and upon leaders of gangs or other heinous offenders convicted of a repetition of the crime of dacoity, with wounding or other aggravating act, or without such repetition of a degree of cruelty or violence punishable with death, under the discretion allowed by the Mahomedan law, also upon police officers convicted of aiding and abetting such offence. Such offences are not specially provided for in the proposed Articles, and it does not appear to us to be necessary to provide for them specially on this occasion.

Reg. LIII. 1803.

Reg. III. 1805.

15. We have somewhat modified the Articles assigning the punishment of transportation.* We have followed the Bengal Regulation in making the *attempt* to commit any of the offences described liable to the same punishment when attended with the like aggravating circumstances. The wording of Article 110 differing in some points from the definition of the offence given in the Bengal Regulations, we have altered it to correspond with the latter.

Reg. I. 1811.
Reg. XII. 1818.
New Draft, Art. 111.

New Draft, Art. 111.

16. It does not appear to us to be necessary in this place to make a distinction in the Article of Robbery by open violence, as defined in Regulation LIII. of 1803, and other cases of robbery, such as are referred to in Clause 4, Section 8, Regulation XVII. of 1817 of the Bengal Code, as the punishment of transportation in a robbery of either description is made to depend upon the question, whether or not it was aggravated by an attempt to commit murder, or by the infliction of some injury dangerous to life.

17. Formerly † the crime of dacoity, or robbery by open violence, was generally punishable by transportation, if not liable to capital punishment, and still without the aggravation of an attempt to commit murder, or of wounding, &c. in a degree to endanger life; that punishment may be inflicted in a case otherwise of great atrocity by sentence of the Nizamut Adawlut; but we suppose that generally cases of dacoity, without such aggravation as above mentioned, are disposed of under Regulation XVI. of 1825, by sentence of the Session Judges. It seems to be proper, therefore, to include this offence in the category of those punishable with imprisonment for 14 years, as a maximum, as in Article 115 of the referred draft; but it appears to be necessary here to define the offence of dacoity, to distinguish it from such robbery as is punishable to the same extent only when attended with wounding, &c. We have therefore introduced a definition of it in our draft following, substantially the definition contained in Clause 1, Section 3, Regulation LIII. of 1803.

Art. 114.

18. We

* Offences punishable by transportation, Art. 110 to 112 of Referred Draft; New Draft, Art. 111. of Reg. LIII, 1803; Reg. XVII. 1817.

† Offences punishable by imprisonment for a period not exceeding 14 years, New Draft, Art. 112 to 117; Referred Draft, Art. 113 to 120; Reg, VIII., 1803.

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18. We are of opinion that for the following offences for which imprisonment for 14 years is allowed by the proposed Articles, the terms should be limited to seven years, with a view to conformity with the practice under the Bengal Regulation:—

Intentionally maiming or mutilating any person.*

Accidentally maiming or mutilating any person with the intention of so injuring another person, and rape.†

19. We think also that the offence of purchasing stolen property of a value exceeding 300 rupees, should not be liable to a higher punishment than the stealing thereof; namely, imprisonment for seven years.‡

20. The offences of stealing children and of selling children§ unlawfully procured, are not specifically provided for by the Bengal Regulations. By the Bombay Code the former of these offences is punishable by imprisonment not exceeding 10 years.‖ It appears to us to be sufficient to provide specially for the offence of child-stealing, and to subject it to imprisonment not exceeding seven years.

21. We have not made any alterations in the list of offences punishable with imprisonment not exceeding seven years,** except by adding to it the offences above specified. But it is proper to point out that the offence of simple housebreaking with intent to steal, here made punishable by imprisonment for a term which may extend to seven years, which is the punishment indicated in Regulation I. of 1811, of the Bengal Code, is by a later Regulation punishable by imprisonment for two years, and one year in addition, in lieu of corporal punishment.

New Draft, Art. 129.
Referred Draft, Art. 123.
New Draft, Art. 122.
XII. of 1818, Sect. 2, Part 5.

22. There is another Article in the draft referred to us, intended for housebreaking without violence, for which the punishment of imprisonment not exceeding three years is assigned, to be inflicted by the sentence of a district or garrison court martial. But as it is proposed to allow offences ordinarily cognizable by general courts martial to be referred occasionally to district and garrison courts, with a power of punishment limited to imprisonment for three years, it does not appear to be necessary; we have therefore omitted it.

Referred Draft, Art. 130.

23. Among the proposed Articles is one which declares, that any person aiding or abetting any of the offences specified in the preceding Articles, that is to say, offences cognizable by a general court martial, shall be liable to the punishment provided for the substantive offence. This provision, which agrees with the penal code for India and the draft Act of crimes and punishments of Her Majesty's Commissioner on Criminal Law, we entirely approve; but we do not see why it should be confined to the offences cognizable by a general court martial; we propose that it should be made applicable generally, as it is in the drafts above mentioned.

Aiding and abetting.
Referred Draft, Art. 128.
New Draft, Art. 139.

24. The Articles relating to the jurisdiction of district or garrison courts martial, and of regimental detachment or line courts martial respectively, in our draft, are substantially the same as those in the draft referred to us.

New Draft, Art. 130 to 138.
Referred Draft, Art. 129 to 136.

25. By Articles 135 and 136 of the referred draft, provision is made for the punishment of certain offences specified, and generally of offences against persons or property not otherwise particularly provided for, by imprisonment for different periods, according as the sentences may be passed by a general court martial or by a district or garrison court martial, or by a regimental detachment or line court martial. As the longest term of imprisonment authorized is two years, and as district or garrison courts martial are vested generally with a power to pass sentence of imprisonment which may extend to three years, it does not appear to us to be necessary to refer any such cases to general courts martial; and we have altered the Articles in our draft accordingly, empowering district and garrison courts martial to award imprisonment not exceeding two years in all cases in which

* Referred Draft, Art. 116; New Draft, Art. 120.
† Referred Draft, Art. 117; New Draft, Art. 121; Referred Draft, Art. 119; New Draft, Art. 127.
‡ Referred Draft, Art. 120; New Draft, Art. 124; Referred Draft, Art. 124; New Draft, Art. 123.
§ Referred Draft, Art. 119.
‖ By the Act of Crimes and Punishments of Her Majesty's Commissioners on Criminal Law, this offence is punishable by transportation for seven years, or imprisonment not exceeding three years.
** Offences punishable with imprisonment not exceeding seven years. Referred Draft, Art. 121 to 127; New Draft, Art. 118 to 129.

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which such a term of imprisonment might, under the proposed Articles, be awarded by general courts martial.

26. We have placed the provision relating to the confirming, remitting or mitigating of sentences together after those relating to the jurisdiction and powers of the several courts martial; they are substantially the same as in the referred draft.

We submit this our report for the consideration of the Right honourable the Governor-general in Council.

(signed) *C. H. Cameron.*

CRIMES to be tried by Courts Martial where no regular Criminal Tribunals exist.

Legis. Cons. No. 4, Enclosure.

Article 106. IN any place within the limits of the charter of the East India Company, whether in or out of the British territories, where there may be no civil judicature appointed by Her Majesty or the said Company for the trial of persons accused of offences ordinarily cognizable by civil tribunals, such offences, when committed by officers or soldiers, shall be cognizable by courts martial.

Article 107. *General Courts Martial* shall have cognizance ordinarily of offences punishable with death; transportation for life; imprisonment for a period which may extend to 14 years; imprisonment for a period which may extend to seven years.

Article 108. *District or Garrison Courts Martial* shall have cognizance ordinarily of offences punishable with imprisonment for a period which may extend to three years, and by special order, of offences ordinarily cognizable by general courts martial, not liable to the punishment of death or transportation, with power to sentence persons convicted of such offences to imprisonment for any period not exceeding three years.

Article 109. *Regimental Detachment or Line Courts Martial* shall have cognizance ordinarily of offences punishable with imprisonment for a period not exceeding six calendar months, and by special order, of offences ordinarily cognizable by district or by garrison court martial, with power to sentence persons convicted of such offences to imprisonment for a period not exceeding six calendar months.

GENERAL COURTS MARTIAL.

Punishment of Death.

Article 110. Any officer or soldier who shall be convicted by a general court martial of the crime of "murder," shall be sentenced to suffer death by being hanged by the neck.

If an injury intended against one person shall, through mistake or accident, light upon another person and kill him, such killing shall be deemed to be murder, whensoever it would have been murder had the person against whom such injury was intended been killed.

Whensoever death shall result from an injury wilfully caused by an offender, but without his intending such injury to light on any person in particular, such offender shall be guilty of murder, if the offence would have been murder had he intended to do the injury to the person killed.

Offences punishable by Transportation for Life.

Article 111. An officer or soldier who shall be convicted by a general court martial of any of the offences hereinafter mentioned, accompanied with an attempt to commit murder, or with wounding, or other corporal injury to any person endangering the life of such person; that is to say,

1. Breaking or attempting to break, by day or night, into any dwelling-house, tent, boat or other habitation, or into any building or place used for the preservation of property, with the intent to rob or steal;
2. Robbery, or attempt to rob;
3. Stealing or attempting to steal in a house, or from the person;

shall be sentenced by such general court martial to imprisonment, with or without hard labour, and transportation for life.

Offences

Offences punishable by Imprisonment, which may extend to Fourteen Years.

Article 112. Any officer or soldier who shall be convicted by a general court martial of any of the offences specified in the last Article, accompanied with wounding or other corporal injury to any person, not endangering the life of such person; or,

Article 113. Of wounding, with intent to murder, whether the person wounded be the person whom the offender intended to murder or another; or,

Article 114. Of robbery, by open violence or dacoity; that is to say, going forth in the day or in the night with any offensive weapon, or in a gang, with or without an offensive weapon, with the intention of committing robbery, and by force or intimidation robbing or attempting to rob any person in any place, or attacking by open violence any house or place of habitation, or any place in which property may be kept for the purpose of robbery; or,

Article 115. Of breaking or attempting to break into any dwelling-house, tent, boat or other place of habitation, between sunset and sunrise, with intent to rob or steal; or,

Article 116. Of breaking into any such place of habitation, or into any place used for the preservation of property, and stealing therefrom property the value of which shall exceed 100 Company's rupees; or,

Article 117. Of purchasing or receiving plundered or stolen property, knowing it to have been obtained by robbery, by open violence, or by theft or robbery, aggravated as described in Article 111 or Article 112,—

Shall be sentenced by such general court martial to imprisonment, with or without hard labour, for a period not exceeding 14 years.

Offences punishable by Imprisonment not exceeding Seven Years.

Article 118. Any officer or soldier who shall be convicted by a general court martial of culpable homicide, not amounting to wilful murder; or,

Article 119. Of premeditated affray, attended with homicide or severe wounding, or other aggravating circumstances; or,

Article 120. Of intentionally wounding, maiming or otherwise doing corporal injury to any person; or,

Article 121. Of accidentally wounding, maiming or otherwise doing corporal injury to any person, with the intention of doing such injury to another person; or,

Article 122. Of breaking into any dwelling-house, tent, boat or other place of habitation, or into any place used for the preservation of property, between sunrise and sunset, with intent to steal therein; or,

Article 123. Of stealing from any habitation, from any person, any property exceeding 300 Company's rupees in value; or,

Article 124. Of having purchased any property so stolen, exceeding in value 300 Company's rupees, knowing it to have been stolen.

Article 125. Of arson; or,

Article 126. Of an unnatural crime; or,

Article 127. Of rape; or,

Article 128. Of enticing or taking away, or of causing to be enticed or taken away, for any unlawful purpose, any unmarried woman under the age of 15 years; or,

Article 129. Of stealing any child under the age of eight years,—

Shall be sentenced by such general court martial to suffer imprisonment, with or without hard labour, for any period not exceeding seven years.

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DISTRICT OR GARRISON COURT MARTIAL.

Article 130. It shall be competent to the Commander-in-chief, and to any officer having authority to convene district or garrison courts martial, to cause offenders, not being commissioned officers, accused of any of the offences specified in the preceding Articles of War, for which the punishment of death, or imprisonment or transportation for life is not provided therein, to be tried for such offence before a district or garrison court martial, and as such court shall have power, on conviction, to sentence any such offender to imprisonment, with or without hard labour, for any period not exceeding three years.

Article 131. Any officer or soldier who shall be convicted by a district or garrison court martial of stealing from any habitation, or from the person, any property of value not exceeding 300 Company's rupees, but exceeding 50 Company's rupees; or,

Article 132. Of having purchased or received any stolen property of value not exceeding 300 Company's rupees, knowing it to have been stolen, but not under aggravating circumstances; or,

Article 133. Of having stolen property in his possession, and of having kept possession of such property after becoming aware of its having been stolen;—

Shall be sentenced by such court to suffer imprisonment, with or without hard labour, for any period not exceeding three years.

REGIMENTAL, DETACHMENT OR LINE COURTS MARTIAL.

Article 134. It shall be competent to any officer having authority to convene a court martial to cause offenders, not being commissioned officers, accused of any of the offences specified in the preceding Articles of War, for which no punishment exceeding imprisonment with hard labour for three years is therein provided, to be tried before regimental, detachment or line courts martial; and any such court shall have power, on conviction, to sentence any such offender to suffer imprisonment, with or without hard labour, for any period not exceeding six calendar months.

Article 135. Any officer or soldier who shall be convicted of stealing property to the value of 50 Company's rupees or of less value; or,

Article 136. Of assault or affray, unattended with homicide, severe wounding or aggravating circumstances, shall be sentenced to suffer imprisonment, with or without hard labour, for any period not exceeding one year, by the award of a district or garrison court martial, or for any period not exceeding six calendar months, by the award of a regimental or detachment or line court martial.

Article 137. Any officer or soldier who shall be convicted of resisting the process of a magistrate or police officer; or,

Article 138. Of having committed any offence against person or property for which provision is not already made in the preceding Article of War,—

Shall be sentenced to suffer imprisonment for any period not exceeding two years by the award of a district or garrison court martial, and not exceeding six calendar months by the award of a regimental or detachment or line court martial.

Article 139. Any officer or soldier who shall be convicted by a general or district or regimental court martial of having been present, aiding and abetting, or of having caused, instigated or procured the commission of any of the offences specified in any of the preceding Articles, shall be sentenced by such court to the punishment therein provided for such offence.

Article 140. No sentence of death shall be carried into effect until confirmed by the Commander-in-chief, nor if the trial shall have been held within the British territories forming part of either of the Presidencies of Fort William, Fort St. George and Bombay respectively, until such confirmation shall have been concurred in by the Government of the Presidency where such trial shall have been held.

Article

Article 141. The Commander-in-chief is authorized, at his discretion, to confirm any sentence of death or to remit such sentence, or to commute it into imprisonment with hard labour and transportation for life, or into imprisonment with hard labour for any term of years.

Article 142. No sentence of transportation shall be carried into effect until confirmed by the Commander-in-chief; and the Commander-in-chief is authorized, at his discretion, to confirm any such sentence, or to commute it into imprisonment, with or without hard labour, for any period of time.

Article 142. It shall be competent to any officer having authority to confirm the sentence of a general or other court martial, to remit any sentence passed by such court martial, or to mitigate such sentence by substituting simple imprisonment for imprisonment with hard labour, or by reducing the period of imprisonment, or by directing the discharge of the offender in lieu of any imprisonment.

Article 143. But no sentence of imprisonment with hard labour passed by a regimental or detachment or line court martial, and confirmed either in whole or part by the commanding officer, and no award of discharge substituted for other punishment as aforesaid by such commanding officer, shall be carried into effect without the sanction and authority of the officer commanding the division or field force in which the offender may be serving, or of the senior officer on the spot in the field.

Article 144. A person who may have been tried for any offence by a court martial, under the authority of these Articles of War, shall not be tried for the same in any other court whatsoever; and no person who shall have been acquitted or convicted of any offence by a civil judicature shall be punished by a court martial for the same, otherwise than by cashiering or dismissal from the service.

Article 145. The regulations at present in force at any Presidency, by which the office and powers of commissariat officers, or officers in charge of the police, or superintendents of bazars, and defined and controlled, or by which Punchayets are constituted and guided, or by which jurisdiction is given to courts martial over offences committed by persons amenable to the Articles of War, within certain limits beyond or around cantonments, are hereby declared to be in full force, and the same shall continue to be observed at the several Presidencies respectively.

(signed) *C. H. Cameron.*
D. Elliott.

Act No. XX. of 1845.

Passed by the Governor-general of India in Council, on the 6th of September 1845.

An Act providing Articles of War for the Government of the Native Officers and Soldiers in the Military Service of the East India Company.

Whereas by an Act passed in the third and fourth years of the reign of his Majesty King William the Fourth, intituled, "An Act for effecting an arrangement with the East India Company, and for the better Government of his Majesty's Indian Territories till the 30th day of April 1854," it was, amongst other things, enacted, that it should be lawful for the Governor-general of India in Council, from time to time, to make Articles of War for the government of the native officers and soldiers in the military service of the Company, and for the administration of justice by courts martial to be holden on such officers and soldiers, and such Articles of War from time to time to repeal or vary and amend, and that such Articles of War should be made and taken notice of in the same manner as all other the laws and regulations to be made by the said Governor-general under the said Act, and should prevail and be in force, and should be of exclusive authority over all the native officers and soldiers in the said military service, to whatever Presidency such officers and soldiers might belong, or wheresoever they might be serving; provided nevertheless, that until such Articles of War should be made by the said Governor-general in Council, any Articles of War for or relating

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relating to the government of the Company's native forces, which at the time of the said Act coming into operation should be in force and use in any part or parts of the territories under the government of the said Company, should remain in force.

It is hereby enacted, in pursuance of the above-recited authority, That the following Articles of War shall, from and after the 7th day of October 1845, be the Articles of War for the government of the said native officers and soldiers in the military service of the said Company, and for the administration of justice by courts martial to be holden on such officers and soldiers.

Articles of War.

Section I.—*Of Enlisting and Discharges.*

Article 1. Every recruit, prior to being enrolled in his regiment, shall have the first four Articles of the second section of these Articles of War read and explained to him, after which such declaration as is now used, if any, in the respective Presidencies, shall be made to him by the officer commanding in front of the regiment or corps, in presence of the native officers and soldiers; and an oath or declaration shall then be required from him, according to the forms of his religion, such oath and declaration to be the like as are now used in the respective Presidencies.

*Article 2. No commissioned officer shall be dismissed except by the sentence of a general court martial. No non-commissioned officer or soldier shall be discharged as a punishment except by the sentence of a court martial, or by order of the Commander-in-chief at the Presidency to which he may belong. Every such dismissal or discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect without the concurrence of the Commander-in-chief, or the General or other officer commanding the division, field force, district or brigade in which the prisoner may be serving; provided also, that the Governor-general in Council, in his executive capacity, and the Governor in Council of any Presidency to which a commissioned or non-commissioned officer or soldier may belong, shall have power to order his dismissal or discharge.

Article 3. All non-commissioned officers and soldiers discharged the service shall be furnished by the commanding officer of the regiment with a discharge certificate made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for and cause of such discharge, and the period of his entire service in the army.

*Article 4. No non-commissioned officer or soldier shall enlist himself in any other regiment without a regular discharge from his former regiment, under the penalty of being reputed a deserter, and suffering accordingly.

Section II.—*Crimes and Punishment.*

Crimes punishable with Death, Transportation, Corporal Punishment, Imprisonment or Dismissal.

Article 5. Any officer or soldier who shall begin, excite, cause or join in any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps or regiment whatsoever, on any pretence whatever, or who being present at any mutiny or sedition shall not use his utmost endeavours to suppress it, or who, coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the State, shall not without delay give information thereof to his commanding officer; or,

Article 6. Who shall strike his superior officer, or shall draw, or offer to draw, or lift up any weapon, or use or offer any violence against him, whether on or off duty, and under all circumstances in which his superior officer may be distinguishable as such in any manner; or,

Article 7. Who shall disobey any lawful command of his superior officer; or,

Article 8. Who shall desert from the East India Company's service, (whether or not he shall re-enter or re-enlist in the same); or,

Article

Article 9. Who being a sentry, in time of war or alarm, shall sleep upon his post, or shall leave it before regularly relieved, or without leave; or,

Article 10. Who shall shamefully abandon or deliver up any garrison, fortress, post or guard committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer or soldier so to abandon or deliver up any such garrison, fortress, post or guard; or,

Article 11. Who shall treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; or,

Article 12. Who shall hold correspondence with or give intelligence to the enemy, or any person in arms, against the State, either directly or indirectly, or who, coming to the knowledge of such correspondence or communication, shall not discover it immediately to the commanding officer; or,

Article 13. Who shall directly or indirectly assist or relieve the enemy, or persons in arms, against the State, with money, victuals or ammunition, or shall knowingly harbour or protect any enemy or person in arms against the State; or,

Article 14. Who shall treacherously release, wilfully aid, or connive at the escape of any enemy or person in arms against the State, placed as a prisoner under his charge; or,

Article 15. Who shall misbehave himself before the enemy, or persons in arms against whom he is led, or use means to induce others so to misbehave; or,

Article 16. Who shall in presence of an enemy, or of persons in arms against whom he is led, shamefully cast away his arms or ammunition; or,

Article 17. Who shall leave his commanding officer, or his post or colours, or party, in time of action, to go in search of plunder; or,

Article 18. Who in time of war shall do violence to any person bringing provisions or other necessaries to the camp or quarters of the forces, or shall force a safeguard, or break into any house or other place for plunder, or plunder fields or gardens or other property; or,

Article 19. Who in time of war shall by discharging fire-arms, drawing swords, beating drums, making signals, using words, or by any means whatever intentionally occasion false alarms in action, camp, garrison or quarters; or,

Article 20. Who shall without proper authority release any State prisoner, or through carelessness or neglect shall suffer any such prisoner to escape; or,

Article 21. Who, being a sentry placed over any State prisoner, or over treasure, or over a magazine or dock-yard, shall quit his post without being regularly relieved or without leave, or shall sleep upon his post;—

Shall, if an officer, on conviction, suffer death, or transportation for life, or be dismissed the service.

And, if a soldier, shall, on conviction suffer death, or transportation for life, or imprisonment, with or without hard labour, for life or for any term of years, and with or without solitary confinement for any portion or portions of the term of imprisonment, not exceeding 28 days at a time, nor 84 days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement, or shall suffer corporal punishment, or dismissal from the service, as by a general court martial shall be awarded.

Crimes not punishable with Death or Transportation.

Article 22. Any officer or soldier who shall, in operations in the field, spread reports by words or letters calculated to create unnecessary alarm in the troops, or in the vicinity, or in rear of the army; or,

Article 23. Who shall, in action, or previously to going into action, use words tending to create alarm or despondency; or,

Article 24. Who shall be drunk when on or for duty, or on parade, or on the line of march; or,

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Article 25. Any soldier who shall be grossly insubordinate or insolent in the ranks, or grossly insubordinate and violent in the presence of a court martial;—

Shall, if an officer, on conviction, be sentenced to be dismissed the service, or to be suspended from rank and pay and allowances;

And if a soldier, shall, on conviction, before a general or district or garrison court martial, be sentenced to suffer such punishment as a general or district or garrison court martial is by these Articles of War respectively empowered to award.

Provided that such offender shall not be sentenced to death, or transportation, or imprisonment with hard labour.

Article 26. Any officer who shall behave in a manner unbecoming the character of an officer (the fact or facts whereon the charge is grounded being clearly specified therein); or,

Article 27. Any officer or soldier who, being under arrest or in confinement, shall leave his arrest or confinement before he is set at liberty by competent authority; or,

Article 28. Who shall advise or persuade any other officer or soldier to desert, or who shall connive at such desertion, or who shall knowingly receive and entertain any deserter, and shall not immediately on discovery give notice to his superior officer, or shall not cause such deserter to be apprehended by the civil power; or,

Article 29. Who shall obtain or attempt to obtain for himself, or for any officer or soldier, or for any other person whatsoever, any pension or allowance, by any false statement, certificate or document, or by the omission of the true statement, or certificate or document; or,

Article 30. Who shall knowingly make a false return or report to any his superior officer authorized to call for a return or report of the state of the men under his command, or of arms, ammunition, clothing or other stores thereunto belonging, or of which he may have charge; or,

Article 31. Who shall malinger, feign, or intentionally produce disease or infirmity, or intentionally delay his cure, or intentionally aggravate his disease or infirmity; or,

Article 32. Who at any post, or on the march, shall illegally and against the will of the parties extort money or property of any description, as fees or duties, or on any pretence whatever; or shall, without authority, exact from villagers or others carriage, porterage or provisions; or,

Article 33. Who shall wantonly and intentionally defile any place dedicated to religious worship, or shall wantonly and intentionally insult the religious prejudices of other persons; or,

Article 34. Who shall, without orders, commit any waste, or spoil or plunder, or shall injure or destroy any property; or,

Article 35. Any soldier who shall, contrary to orders, when off duty, appear in or about camp or cantonments, or on occasion of visiting towns or bazars, carrying a sword, bludgeon, or other weapon; or,

Article 36. Who shall sell, pawn or designedly, or through neglect, lose or injure his horse, arms, clothes, accoutrements or regimental necessaries, or any of the above articles entrusted or belonging to any other soldier;—

Shall, if an officer, on conviction, be sentenced to be dismissed the service, or to be suspended from rank and pay and allowances.

And if a soldier, shall, on conviction before a general, district or garrison court martial, be sentenced to suffer such punishment as a general or district or garrison court martial is by these Articles of War respectively empowered to award.

Provided that such offender shall not be sentenced to death, or transportation or corporal punishment.

Crimes

Crimes punishable with Fine or loss of Pay, in addition to other Punishments.

Article 37. Any officer or soldier who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition or military stores of whatever kind or description, the property of Government, entrusted to his charge, or who shall wilfully spoil such property or suffer it to be spoiled, or shall be concerned in or connive at any such embezzlement or fraudulent misapplication;—

Shall, on conviction before a general court martial, be dismissed the service, and fined to the extent of his arrears of pay and allowances, and be further liable to suffer imprisonment, with or without hard labour, for a term which may extend to three years, and with or without solitary confinement, to be regulated as aforesaid.

Article 38. Any soldier who shall be guilty of disgraceful conduct;

In wilfully maiming or injuring himself or any other soldier, at the instance of such soldier, with intent to render himself or such soldier unfit for the service, or with intent to take his own life; or,

Article 39. In purloining or selling Government stores; or,

Article 40. In stealing money or goods, the property of a soldier or of a military officer, or of any military mess, or of any person or persons belonging to or serving with or attached to the army; or,

Article 41. In embezzling or fraudulently misapplying public money entrusted to him for any military purpose; or,

Article 42. In committing any petty offence of a fraudulent nature, to the injury of or with intent to injure any person, civil or military; or,

Article 43. Who shall be guilty of any other disgraceful conduct, being of a cruel, indecent or unnatural kind;—

Shall, on conviction before a general, or district or garrison court martial, be liable to suffer such punishments as any such courts are by these Articles of War respectively empowered to award for disgraceful conduct.

And every such offender shall, if not dismissed the service, further be put under stoppages, by sentence of the court, not exceeding half of his monthly pay and allowances, until the amount be made good of any loss or damage arising out of his misconduct.

And if such offender shall be dismissed the service, he shall further be sentenced to forfeit his arrears of pay and allowances due at the time of his discharge, or in such proportion as may be required to make good such loss or damage.

Crimes not punishable with Corporal Punishment or Imprisonment with Labour.

Article 44. Any officer, or non-commissioned officer, who shall strike or otherwise ill-treat any soldier; or,

Article 45. Any sentry who in time of peace shall sleep upon his post, or shall leave it before regularly relieved, or without leave; or,

Article 46. Any officer or soldier who shall knowingly enlist a deserter, or connive at his enlistment; or,

Article 47. Who directly or indirectly shall require or accept a bribe, present or gratification, on the pretence of or as a consideration for procuring leave of absence, promotion, or any other advantage or indulgence for any officer or soldier; or,

Article 48. Who, being in command at any post, or on the march, on complaint made to him of any person under his command beating or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs or markets, or committing any kind of riot; shall not see reparation done to the party or parties injured, or, if that be impracticable, shall not report the same to his superior officer; or,

Article 49. Who being in command of a guard, shall refuse to receive any prisoner duly committed to his charge; or shall without proper authority release any prisoner, or shall suffer, through carelessness or neglect, any prisoner to escape; or,

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Article 50. Who shall quit his guard or picquet in time of peace, without being regularly relieved, or without leave; or,

Article 51. Who shall impede the provost-marshal, or his assistants, or any other officer or person legally exercising authority, or refuse to assist him when requiring his aid in the execution of his duty; or,

Article 52. Who, being on leave of absence, shall have received information from the head quarters of his regiment, or from other competent authority, that his regiment has been ordered on service, and shall not rejoin without delay; or,

Article 53. Who in time of peace shall, by discharging fire-arms, drawing swords, beating drums, or by any other means whatever, intentionally occasion false alarms in camp, garrison or cantonments; or,

Article 54. Who shall fail to repair at the time fixed to the parade, or place appointed for exercise or duty, if not prevented by sickness, or some other sufficient cause; or,

Article 55. Who shall, without urgent necessity, or without leave of his superior officer, quit his company or troop, or the parade; or,

Article 56. Who shall absent himself without leave, or shall, without sufficient cause, overstay the period for which leave may have been granted him; or,

Article 57. Any soldier who shall be found two miles from the camp contrary to orders; or,

Article 58. Who shall, contrary to orders, be absent from his cantonment after tatoo, or from camp after retreat beating; or,

Article 59. Who shall sell, lose, or designedly or through neglect waste the ammunition delivered out to him;—

Shall, if an officer, on conviction, be sentenced to suspension from rank and pay and allowances, or to be reprimanded in such manner as the Commander-in-chief may direct;

And if a soldier, shall, on conviction before a general, or district, or garrison or regimental court martial, be sentenced to suffer such punishment as any such courts martial are by these Articles of War respectively empowered to award;

Provided that such offender shall not be liable to be sentenced to suffer corporal punishment or imprisonment, with hard labour.

Article 60. All crimes not capital, and all disorders or neglects which officers or soldiers may be guilty of, to the prejudice of good order and military discipline, though not specified in these Articles, are to be taken cognizance of by courts martial, and to be punished, according to the nature and degree of the offence, by the sentence of a general or district or garrison or regimental court martial; provided that a soldier shall not for any such offences be liable to be sentenced to suffer corporal punishment or imprisonment with hard labour.

Crimes incident to Courts Martial.

Article 61. Any person amenable to these Articles of War who, when duly summoned before a court martial, shall not attend, or shall refuse to be sworn, or to make affirmation, or to answer any lawful question, or who shall induce any other person so to offend,—

Shall be punished according to the sentence of the same or another court martial, with dismissal or suspension from rank and pay and allowances, if a commissioned officer; with dismissal or reduction to the ranks, if a non-commissioned officer, or with dismissal or imprisonment, if a soldier;

Provided that such person, being a commissioned officer, shall not be liable to be punished by any but a general court martial; and that no offender punished under the provision of this Article of War shall be sentenced to suffer imprisonment with hard labour or corporal punishment.

Article 62. Any person not amenable to these Articles of War, who, having been summoned upon any court martial, shall refuse or neglect to attend, or who attending shall refuse to be sworn, or to make affirmation, or to answer any lawful question, or shall give such testimony as if given in a criminal court would render him guilty of perjury, or who shall induce any other person so to offend,—

Shall be delivered to a magistrate, to be proceeded against according to law.

Article

Article 63. Any person using menacing or disrespectful words, signs or gestures, in the presence of a court martial then sitting, or causing any disorder or riot so as to disturb their proceedings,—

Shall be punished according to the condition of the offender and the nature and degree of his offence, by the sentence of the same or another court martial, if he be amenable to these Articles of War; provided that such offender shall not be liable to be sentenced to corporal punishment or to imprisonment with hard labour; and if not amenable to these Articles of War, the offender shall be delivered over to a magistrate, to be proceeded against according to law.

Article 64. Any officer or soldier who shall be found guilty of wilfully and knowingly giving false evidence on oath or affirmation on any trial before any general or other court martial, or any military court entitled to administer an oath, or of inducing any other person so to offend,—

Shall be dismissed the service, and shall be further subject to fine to the amount of his arrears of pay and allowances, or to imprisonment, which may extend to three years, according to the sentence of a general or district or garrison court martial.

Crimes admitting of less serious Notice.

Article 65. Whereas it may be advisable that some of the offences which by the foregoing Articles are directed to be tried by a general or district or garrison court martial, should, in certain cases which admit of less serious notice, be tried by district or garrison or regimental courts martial respectively; in such cases the officer commanding the regiment or corps to which the offender belongs, shall lay a particular statement of the case before the general or other officer having authority to convene general or district or garrison courts martial, under whose command such offender may be serving, with an application so to proceed; and such general or other officer will exercise his discretion in complying or not with such application; but the permission of such general or other officer so to proceed, shall be entered upon the proceedings at the trial of such offender.

Provided that mutiny shall not be considered one of the offences admitting of such discretionary investigation.

And that in cases where offences designated "disgraceful conduct" in these Articles of War, and admitting of less serious notice, shall be permitted to be tried by regimental courts martial, the term "disgraceful conduct" shall be omitted in the charge.

Offences on the Line of March or on board Vessels.

Article 66. For offences committed on the line of march, or on board any ship or other vessel, the officer in command of the troops is hereby authorized to try any soldier by a regimental or detachment court martial, and to confirm and execute the sentence, and in all cases of mutiny or gross insubordination to carry the sentence into execution on the spot;

Provided that such sentence shall in no case exceed that which a regimental court martial is competent to award; and that the proceedings held in all such cases shall be specially reported for the information of the Commander-in-chief.

SECTION III.—*Administration of Justice.*

Article 67. Whenever any officer or soldier shall commit a crime deserving punishment by court martial, he shall, by his commanding officer, be put under arrest, if an officer; or if a soldier, be confined; until he shall be either tried by a court martial, or shall be lawfully discharged by a proper authority; and no officer or soldier who shall be put in such arrest or confinement shall continue in his confinement longer than may be actually unavoidable.

And such process of arrest or confinement, or an attempt to effect such process, shall in no case be omitted where it may be practicable; but where resistance may be made, or from other circumstances such process may be impracticable, the offender or offenders shall be liable to trial and punishment at any subsequent period, within the limitations provided in these Articles of War.

Article 68. No person shall be liable to be tried or punished for any offence against these Articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself, or

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some other manifest impediment, shall not have been amenable to justice within that period; in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased.

Article 69. Any person amenable to these Articles of War, who may commit any offence against the same, may be tried and punished for such offence in any place within the British territories, or elsewhere, where he may have come after the commission of the offence, in the same manner as if the offence had been committed where such trial shall take place.

Article 70. The Commander-in-chief at the Presidencies of Fort William, Fort St. George and Bombay respectively for the time being, may appoint general or other courts martial, and confirm, mitigate or remit the sentences of such courts; and may issue his warrant to any general or other officer having the command of a body of troops in the service of Her Majesty or of the East India Company, empowering such officer to appoint general or district or garrison courts martial as occasion may require, for the trial of offences committed by any of the officers or soldiers or followers in the service of the said Company, being natives of the East Indies, or of other places within the limits of the said Company's charter, and to confirm, mitigate or remit the sentences of such courts martial.

Article 71. A general court martial shall not consist of less than thirteen commissioned officers, unless it be held out of the East India Company's territories, where such court martial may consist of seven commissioned officers, if a greater number cannot be conveniently assembled. And no sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief, or to some other person duly authorized to confirm the same, and until his directions shall have been signified thereupon.

Powers of a General Court Martial.

*Article 72. A general court martial may sentence any officer or soldier to death or transportation, for any crimes which are by these Articles of War expressly made liable to sentence of death or transportation, and for such crimes only.

And when a commissioned officer shall be convicted of any offence, of which the punishment is not defined in these Articles of War, or is left discretionary, a general court martial may adjudge such officer to be dismissed the service; or to be suspended from rank and pay and allowances for a stated period; or to be placed lower on the list of his rank, by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service; and the court shall in every such sentence specify the extent or degree of suspension or reduction which they shall so adjudge; or the court may sentence such officer to be reprimanded in such manner as the Commander-in-chief may direct.

And a general court martial may sentence any non-commissioned officer to be reduced to the ranks; or may sentence any non-commissioned officer or soldier to be dismissed the service; or to be placed lower in the list of the rank which he holds; or may sentence any soldier to suffer corporal punishment not exceeding two hundred lashes; or imprisonment, with or without hard labour, not exceeding two years; and to be kept in solitary confinement for any portion or portions of such imprisonment, not exceeding twenty-eight days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement.

And a general court martial may, in addition either to corporal punishment or to imprisonment as aforesaid, sentence a soldier to forfeiture of all advantage as to additional pay and to pension on discharge, which might have otherwise accrued from the length or nature of his former service; or to forfeiture of such advantage absolutely, whether it might have accrued from past service, or might accrue from future service, according to the nature of the case, for disgraceful conduct.

And a general court martial may, in addition to the punishment of dismissal, sentence any officer or soldier to forfeit his arrears of pay and allowances due at the time of his discharge, or such proportion thereof as may be required, to make good any loss or damage arising out of his misconduct;—and in addition to any punishment not involving dismissal from the service, may sentence any officer or soldier to be put under stoppages not exceeding two-thirds of his pay and allowances

ances in the case of an officer, and not exceeding half of his pay and allowances in case of a non-commissioned officer or soldier, until the amount of such loss or damage be made good.

Confirmation and Commutation of Sentence by the Commander-in-chief.

Article 73. In cases wherein a sentence of death shall have been awarded by general court martial, for any offence against discipline for which sentence of death is awardable under these Articles of War, the Commander-in-chief may confirm such sentence, and cause it to be carried into effect, or may, instead of causing such sentence to be carried into effect, order the offender, if an officer, to be transported for life, or to be dismissed; and if a soldier, to be transported for life, or to be imprisoned, with or without hard labour, either for life, or for a certain term of years, and with or without solitary confinement, to be regulated as aforesaid, as to the Commander-in-chief may seem meet.

In cases of commissioned officers sentenced to transportation, the Commander-in-chief may, in lieu thereof, order the offender to be dismissed. And in cases of commissioned officers sentenced to be dismissed from the service, the Commander-in-chief may, in lieu of such punishment, direct that the offender be suspended from rank and pay and allowances for a certain period, to be distinctly specified by the Commander-in-chief.

And the Commander-in-chief may commute a sentence of transportation passed on a soldier to imprisonment with or without hard labour, and with or without solitary confinement, to be regulated as aforesaid; and such imprisonment may be either for the same period for which transportation shall have been awarded, or for any lesser period.

And the Commander-in-chief may commute a sentence of corporal punishment to dismissal from the service; or, in the case of a non-commissioned officer, may mitigate such sentence to reduction to the ranks; or in the case of a non-commissioned officer or soldier, may commute such sentence to imprisonment without hard labour, and with or without solitary confinement (to be regulated as aforesaid), for any period not exceeding two years, if the sentence shall exceed one hundred and fifty lashes; not exceeding one year if it shall exceed one hundred lashes; and not exceeding six months if it shall be less than one hundred lashes; but the term of such commuted imprisonment may be for any lesser periods respectively, at the discretion of the Commander-in-chief.

In cases of non-commissioned officers sentenced to be dismissed from the service, the Commander-in-chief may, in lieu of such punishment, direct that the offender be reduced to the ranks, or placed lower in the list of the rank which he holds.

And in cases of offenders sentenced to imprisonment with hard labour, the Commander-in-chief may mitigate such sentence by causing the offender to be reduced to the ranks, in the case of a non-commissioned officer; or in the case of a non-commissioned officer or soldier by directing that he be dismissed from the service; or suffer imprisonment without hard labour, and with or without solitary confinement (to be regulated as aforesaid), for any period not exceeding that for which he shall have been sentenced to such imprisonment with hard labour.

Article 74. A district or garrison court martial shall not consist of not less than seven commissioned officers, except in situations where that number cannot be conveniently assembled, when such court may consist of not less than five commissioned officers. And such district or garrison court martial may be composed of officers of the same regiment, and shall be assembled in conformity with the orders of the Commander-in-chief.

And the sentence of a district or garrison court martial shall be confirmed by the Commander-in-chief, or by some officer duly authorized to confirm the same.

Commutation of Sentence.

And the Commander-in-chief is empowered to remit or mitigate or commute the sentences of such courts martial, in the same manner as the sentences of general courts martial; and to delegate or withhold the power to commanding officers of convening such courts martial, and of confirming, remitting, mitigating or commuting the sentences of such courts (not including forfeiture of pay or pension or other advantage), as the Commander-in-chief may deem to be most expedient.

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And in case of any sentence, including forfeiture of additional pay or of pension or discharge, or of any prospective advantage, such sentence shall not be carried into effect, until confirmed by the Commander-in-chief; and all forfeitures of any present or prospective advantage shall be restorable by the same authority.

Powers of a District or Garrison Court Martial.

*Article 75. A district or garrison court martial may sentence any non-commissioned officer to be reduced to the ranks, or may sentence any non-commissioned officer or soldier to be dismissed from the service, or to be placed lower in the list of the rank which he holds, or may sentence any soldier to suffer corporal punishment, not exceeding one hundred and fifty lashes, or imprisonment with or without hard labour, not exceeding one year, and to be kept in solitary confinement, to be regulated as aforesaid.

And such court martial may, in addition either to corporal punishment or to imprisonment as aforesaid, sentence a soldier to forfeiture of all advantage as to additional pay, and to pension or discharge, which might have otherwise accrued from the length or nature of his former service, or to forfeiture of such advantage absolutely, whether it might have accrued from past service, or might accrue from future service, according to the nature of the case, for disgraceful conduct.

And such court martial may, in addition to the punishment of dismissal sentence any non-commissioned officer or soldier, to forfeit his arrears of pay and allowances due at the time of his discharge, or such proportion thereof as may be required to make good any loss or damage arising out of his misconduct; and in addition to any punishment not involving dismissal from the service, may sentence any non-commissioned officer or soldier to be put under stoppages, not exceeding half of his pay and allowances, until the amount of such loss or damage be made good.

Article 76. A regimental court martial shall consist of not less than five commissioned officers (unless it be found impracticable to assemble that number, when three may be sufficient), and shall be assembled by order of the officer commanding the regiment, and no sentence of a regimental court martial shall be of force until the commanding officer shall have confirmed the same; provided that such commanding officer shall have power to remit all sentences whatever, passed by such court, and thereupon to cause the offender to be released and to return to his duty.

Commutation of Sentence.

And such commanding officer shall have power to mitigate all sentences whatever passed by such court, and to commute a sentence of corporal punishment to imprisonment without hard labour, and with or without solitary confinement, to be regulated as aforesaid, for any period for which such court is competent to sentence an offender to suffer imprisonment, and in the same manner, and to mitigate a sentence of dismissal in the case of a non-commissioned officer to reduction to the ranks, and to commute a sentence of imprisonment with hard labour, or with solitary confinement or both, to dismissal, or to mitigate such sentence to reduction to the ranks, or to imprisonment without hard labour.

But no sentence of corporal punishment, or of imprisonment with hard labour, passed by a regimental court martial, and confirmed in full by such commanding officer, or confirmed and mitigated by him, and no sentence of dismissal confirmed, and no commutation of dismissal for imprisonment made as aforesaid by such commanding officer, shall be carried into effect, without the sanction and authority of the officer commanding the division or field force, or district or brigade (being the senior officer on the spot), in which the regiment may be serving; who is hereby empowered to cause such sentence to be inflicted in accordance with the confirmation thereof, in full or in mitigated degree, by the officer commanding the regiment, or such dismissal to be carried into effect, or to direct the release of the offender, and his return to duty as he may deem expedient.

Provided that in detached situations, or when on service in the field, the officer commanding the regiment shall have power to carry into effect any sentence of a regimental court martial, in cases where an immediate example is necessary, and reference cannot be had to superior authority without detriment to the service.

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Powers of a Regimental Court Martial.

*Article 77. A regimental court martial may sentence any non-commissioned officer to be reduced to the ranks, or may sentence any non-commissioned officer or soldier to be dismissed from the service, or to be placed lower in the list of the rank which he holds, or may sentence any soldier to suffer corporal punishment not exceeding 100 lashes, or imprisonment, with or without hard labour, for any period not exceeding six calendar months, and to be kept in solitary confinement, to be regulated as aforesaid.

Any such court martial may, in addition to the punishment of dismissal, sentence any non-commissioned officer or soldier to forfeit his arrears of pay and allowances due at the time of his discharge, or such proportion thereof as may be required to make good any loss or damage arising out of his misconduct, and in addition to any punishment not involving dismissal from the service, may sentence any non-commissioned officer or soldier to be put under stoppages, not exceeding half of his pay and allowances, until the amount of such loss or damage be made good.

Article 78. An officer commanding any detachment of his own regiment, may assemble regimental detachment courts martial, and an officer commanding a detachment consisting of men of different corps, may assemble detachment or line courts martial, and all such courts shall be constituted in the same manner as regimental courts martial under the provisions of these Articles of War, and shall have the like powers.

And the provisions of these Articles of War, relating to courts martial held in regiments, shall be taken to apply to courts martial held in detachments, in all practicable cases.

Provided that no officer on detached command of less than four troops or companies, or of detachments numerically equal to four troops or companies, shall carry into effect any punishment awarded by a court martial held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, or by the nearest superior officer holding a command of not less than a regiment, (who is hereby authorized to confirm the same, in like manner as an officer commanding a regiment is empowered to do, and with the same restrictions), except in cases where an immediate example is necessary, and reference cannot be made to such commanding or superior officer without detriment to the service.

Article 79. At all courts martial, it shall be competent to the officer convening the court, to instruct the court, that, should the prisoner be found guilty, and imprisonment form a part of the sentence, no portion of the imprisonment should be solitary, or, should corporal punishment be awardable to the offender, that it shall not be awarded in the particular case; and the court will govern itself accordingly.

Execution of Sentences of Courts Martial.

Article 80. In every sentence of death awarded by a general court martial, the court shall specify that the offender shall "suffer death by being hanged by the neck until he be dead," or, "by being shot to death," as the court in their discretion shall deem expedient, and such sentence, if confirmed, shall be carried into effect accordingly.

Article 81. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, any of the Sudder Courts shall give effect to such sentence or commuted sentence, on the same being certified to the court under the authority of the Commander-in-chief.

And whenever any sentence of a court martial shall adjudge imprisonment with labour, or with solitary confinement or both, or whenever the sentence of a court martial shall be commuted to any such imprisonment, it shall be the duty of every judge, magistrate, sheriff, or other officer in charge of a gaol, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, field force, district or brigade, within which the trial is held.

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Article 82. Whenever any soldier shall be sentenced to imprisonment for life, or a sentence of death shall be commuted to imprisonment for life, it shall be lawful for the Commander-in-chief to order such offender to be transported beyond sea for life, unless there should be special reasons inducing the Commander-in-chief to think such prisoner not a proper subject for transportation.

Article 83. Persons sentenced to imprisonment by courts martial shall be imprisoned in any public prison, or in any other fit place which the Commander-in-chief shall from time to time direct.

Article 84. Every soldier sentenced to imprisonment with hard labour shall, previous to undergoing such punishment, be struck off the strength of his corps from the date of confirmation of such sentence; and no soldier who has undergone such punishment for any period shall be capable of being re-admitted in the ranks, or of receiving pension on discharge.

Article 85. Offenders sentenced to dismissal for disgraceful conduct.

And offenders subject to corporal punishment, or to imprisonment with hard labour for disgraceful conduct, shall, on any such sentence being confirmed, be dismissed with ignominy.

Article 86. In every case wherein a fine or stoppages shall be adjudged by a court martial, any arrears of pay or public money due to the offender shall be available under an order from the Commander-in-chief for the payment of the amount so adjudged.

And no soldier sentenced to pay a fine or to stoppages to make good any loss or damage arising out of his misconduct, shall be continued under forfeiture or stoppages under any one such sentence for any period exceeding one year; and no soldier shall be at any one time placed under forfeiture or stoppages, exceeding in the whole the amount of half of his pay and allowances, nor be liable to be put under stoppages prospectively while actually under stoppages to the amount of half of his pay and allowances.

Forms of Proceeding.

Article 87. Trials by courts martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Article 88. At general courts martial a Judge Advocate, or an European officer of not less than 10 years' service, shall be appointed to conduct the proceedings.

At all courts martial, inferior to general, an European officer of not less than four years' standing in the service, except in cases where no officer of that standing may be available, or the Adjutant of the regiment, shall be appointed to conduct the proceedings.

Article 89. An interpreter shall be appointed to all courts martial, and any interpreter available at the station where the court martial may sit, shall be appointed, as occasion may require, by the officer commanding at such station, on application from the Judge Advocate or superintending officer at such court martial; but in situations where the services of an interpreter are not available, the superintending officer at the court martial shall perform the duty of interpreter.

Article 90. At all courts martial the senior officer shall sit as president, without being so appointed by warrant; provided that all subadar majors are to take precedence according to the dates of their commissions, and above all native officers holding the rank of subadar or jemadar; and that sirdar bahadoors and bahadoors shall rank only according to their respective commissions of subadar major, subadar or jemadar; rissaldars will take rank with subadars, and naib rissaldars with jemadars, according to the dates of their respective commissions.

In case of the death or unavoidable absence of the president, the next senior member shall take the place of president, and the trial shall proceed; provided that the court shall still consist of at least the number of members of which such court is directed to consist by these Articles of War.

Article 91. No finding or sentence of a court martial shall be revised more than once, and no evidence shall be received on such revision. For the purpose

of

of such revision, the president and all the members shall be convened, if possible; but if any of them should be unavoidably absent, the remaining members may proceed with such revision, provided they are not fewer than the smallest number directed in these Articles respectively. When all the same members do not meet, the circumstances are to be duly certified on the face of the proceedings.

Manner of Voting.

Article 92. All the members of a court martial are to preserve order, and in giving their votes upon all matters are to begin with the youngest; and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of members present, provided the number of members present be not less than that required by the preceding Articles; but in case of an equality of votes, the decision shall be in favour of the prisoner; the president at a court martial shall vote with the other members, but shall have no casting vote; provided, that in cases of an equality of votes upon other questions than the finding and the sentence, the president shall have a casting vote.

Article 93. No sentence of death shall be given against any offender by a court martial unless two-thirds of the members present concur therein, or four where the court consist of five members, or five where the court consist of seven.

Affirmations.

Article 94. On the assembly of a court martial, the Judge Advocate or superintending European officer shall administer to the interpreter the following solemn affirmation:

"I, A. B., solemnly affirm, in the presence of Almighty God, that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been published by authority; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial in due course of law."

In case of the unavoidable absence of an interpreter, the European superintending officer of a court martial, inferior to general, shall make the solemn affirmation prescribed for the interpreter.

The Judge Advocate or superintending officer shall then cause the following solemn affirmation to be made by each member:

"I, A. B., solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Articles of War, without partiality, favour or affection, and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases, and that I will not divulge the sentence of the court until it shall be published by authority; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial in due course of law."

The following solemn affirmation shall then be administered by the interpreter to the Judge Advocate or superintending Officer:

"I, A. B., solemnly affirm, in the presence of Almighty God, that I will not upon any account whatsoever disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice or a court martial, in due course of law, and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the court until it shall be published by authority."

Provided, That it shall be necessary to re-administer these solemn affirmations on the commencement of fresh trials before the same court.

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Article 95. All persons who give evidence at a court martial are to be examined on oath according to the forms of their respective religions, or on affirmation; and persons of the Hindoo or Mahomedan persuasion shall make affirmation to the following effect:

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

And if any person making such affirmation as aforesaid shall wilfully and falsely state any matter or thing, which if the same had been sworn would have amounted to perjury, every such offender shall be subject to the same punishment to which persons convicted of perjury are subject.

Summoning Witnesses not amenable to these Articles.

Article 96. In all cases where persons required as witnesses before a court martial may not be amenable to military law, the Judge Advocate or commanding officer shall transmit to the magistrate, within whose jurisdiction the witness may reside, his summons for the attendance of such person, and the magistrate shall cause the witness to be duly summoned.

Powers and Duties of Provost Marshal.

Article 97. For the prompt and instant repression of all irregularities and crimes which may be committed by troops in the field and on the line of march, Provosts Marshal shall be appointed by the Commander-in-chief, and their powers shall be regulated according to the established usages of war and rules of the service. Their duties are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, to prevent breaches of both by soldiers and followers of the army, and to punish on the spot, on the same day, those whom they may find in the immediate act of committing breaches of good order and military discipline, provided that the punishment be limited to the necessity of the case, and shall accord with the orders which the provosts may from time to time receive from the Commander of the forces in the field; and whatever may be the crime, the Provost Marshal or his assistant shall see the offender commit the act for which summary punishment may be inflicted, or if the Provost Marshal or his assistant should not see the offender actually commit the crime, but that sufficient proof can be established of the offender's guilt, a report shall be made to the Commander of the army in the field, who is hereby empowered to deal with the case as he may deem most conducive to the maintenance of good order and military discipline. The duties of Provosts Marshal being limited to the punishment of offenders whom they may detect in the actual commission of any crime, the General commanding the forces in the field will cause them to exercise the powers entrusted to them in such manner and under such circumstances as he may consider best calculated to prevent and instantly to repress crimes injurious to the discipline of the East India Company's army and the public service.

Trials by European Courts Martial.

Article 98. At any Presidency where the native troops have hitherto been authorized to claim to be tried by European courts martial, every person amenable to these Articles of War, and who may be under orders for trial by a court martial, shall have the right to claim to be tried by European officers; and should he make such claim, the court, whether general or district or regimental, shall be composed of European commissioned officers, and the number of members and the proceedings shall be governed in all respects by the provisions of these Articles.

And it shall be competent to the Governor-general of India in Council, by a general order, to authorize the native troops of any of the Presidencies to claim to be tried in like manner by European courts martial.

SECTION IV.—*Effects of the Dead.*

*Article 99. When any officer or soldier, or any person receiving public pay drawn by any officer in charge of a public department belonging to the army, may die or be killed in the service, the commanding officer of the regiment or party, or officer in charge of the department, shall, if no heir or executor be present, secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the Adjutant or officer in charge of the department.

*Article 100. If there be no heir or executor on the spot, the effects are to be publicly sold; the commanding officer of the regiment or party, or officer in charge of the department, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or nominated in the regimental register, or in failure of such to the legal representative of the deceased; and in the event of no executor, heir or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate is to be remitted to the general treasury at the Presidency.

SECTION V.—*Miscellaneous.*

Article 101. The effects of deserters are to be publicly sold, and the proceeds after payment of regimental debts, remitted by the officer commanding the corps to which the deserter belongs, to the general treasury at the Presidency.

Article 102. All powers and provisions contained in these Articles relating to the Commander-in-chief, shall be construed to extend to the Commander-in-chief at any Presidency, and to the officer commanding the forces for the time being at any Presidency, unless when otherwise provided.

All powers and provisions contained in these Articles relating to soldiers, shall be construed to extend to non-commissioned officers, unless when otherwise provided.

Article 103. When any portion of the troops belonging to one Presidency shall be serving within the limits of another Presidency, such troops shall be considered as placed, during such service, under the orders and authority of the Commander-in-chief or commanding officer of the forces of the Presidency within which they are serving, for all the purposes of these Articles of War, in the same manner as though they belonged to such Presidency; and all the provisions of these Articles of War which relate to the trial and punishment of offenders belonging to the Presidency within which the trial is held, are hereby declared applicable to the trial and punishment of offenders amenable to these Articles of War serving within such Presidency; provided always, that it shall be lawful for the Governor-general in Council, in his executive capacity, to direct that the troops, or any part thereof, of any Presidency, whilst serving without the limits of such Presidency, shall continue under the orders and authority of the Commander-in-chief, or commanding officer of the forces of the Presidency to which they belong, for all purposes of these Articles.

Article 104. Any officer commanding any portion of the East India Company's troops which may at any time be serving in any place out of Her Majesty's dominions, or of the possessions or territories which are or may be under the government of the said company, or of the territories of those states in alliance with the said Company in which the said Company's forces are permanently stationed, shall, upon complaint made to him of any offence committed against the property or person of any inhabitant or resident in any such countries, by any person serving with or belonging to the Company's army, being under the immediate command of any such officer, summon and cause to assemble a general court martial, which shall consist of not less than three officers at the least, for the purpose of trying any such person, notwithstanding any such officer shall not have received any warrant empowering him to assemble courts martial; and every such court martial shall have the same powers in regard to summoning and examining witnesses, trial of and sentence upon any such offenders, as are granted by these Articles to general courts martial; provided that no sentence of any such

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court martial shall be executed until the General commanding in chief the army to which the division, brigade, detachment or party to which any person so tried, convicted and adjudged to suffer punishment shall belong, shall have approved and confirmed the same; except where such sentence shall not exceed the powers granted by these Articles to a district or garrison court martial, in which case the officer by whom the court is convened is hereby authorized to confirm or commute or mitigate or remit the same; reporting the proceedings to the said General commanding in chief.

Article 105. General courts martial only shall have the power to try commissioned officers, or to pass sentence of death or transportation on any offenders.

Article 106. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence; provided always, that after a soldier shall have been found guilty by a court martial of any military offence, such court martial shall inquire into and receive evidence of any previous conviction of such soldier before a court martial or a court of justice, and shall inquire into the general character of such soldier, for the purpose of affixing the punishment to which he is liable to be sentenced for the offence of which he has been so found guilty.

Provided that no such evidence shall in any case be received until the court shall have ascertained that such soldier had previously to his trial received notice of the intention to produce such evidence on the same; and it is hereby directed that such notice shall be given to all soldiers previous to trial.

*Article 107. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial, or by order of the Commander-in-chief of the Presidency to which the offender shall belong; provided that no non-commissioned officer shall be reduced to the ranks for any limited period; nor suspended from his rank; nor reduced from a higher to a lower grade of non-commissioned officer, nor sentenced to suffer corporal punishment or imprisonment, without being first reduced to the ranks.

*Article 108. Any officer or soldier thinking himself wronged by his superior or other officer, is to complain thereof to the commanding officer of his troop or company, by whom if the grievance be not redressed, such officer, non-commissioned officer or soldier may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint, or remit it to his superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished according to the sentence of a general or other court martial in manner hereinbefore mentioned; provided that such offender shall not be liable to be sentenced to dismissal, nor to suffer corporal punishment or imprisonment with hard labour.

Article 109. In case of light offences, a commanding officer may, without the intervention of a court martial, award extra drill with or without pack for a period not exceeding 15 days, restriction to barrack limits not exceeding 15 days, confinement in the quarter guard, or defaulters' room, not exceeding seven days, removal from staff situations or acting appointments, or may order soldiers to be employed in piling and unpiling shot, and in cleaning accoutrements of men in hospital; but none of these descriptions of punishment shall be awardable by sentence of a court martial. And a commanding officer may award solitary confinement not exceeding seven days.

Provided that soldiers in confinement shall be liable to be ordered to attend ordinary drill.

Article 110. Any officer or soldier who shall be taken prisoner by the enemy shall forfeit all claim to pay and allowances during the period of his remaining a prisoner, and until he shall again return to the service, when, if he can establish before a court martial, that he was unavoidably taken prisoner in the course of service, and resisted as long as he was able, and that he hath not served with or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole or such portion of his arrears of pay and allowances as the government of the Presidency to which he may belong shall determine, after the opinion or finding of such court martial shall have been confirmed by the Commander-in-chief.

SECTION VI.—*Mode of dealing with Offences not Military.*

Article 111. In all places within the jurisdiction of any civil judicature established by appointment of Her Majesty or of the said Company, officers and soldiers accused of capital crimes, or of violence, or of offences against person and property, punishable by such civil judicature, shall be delivered over to a magistrate, to be proceeded against according to law.

And all officers and soldiers are hereby required to assist the officers of justice in apprehending and securing any person so accused.

Crimes to be tried by Courts Martial where no regular Criminal Tribunals exist.

Article 112. In any place within the limits of the charter of the East India Company, whether in or out of the British territories, where there may be no civil judicature appointed by Her Majesty or the said Company for the trial of persons accused of offences ordinarily cognizable by civil tribunals, such offences when committed by officers or soldiers shall be cognizable by courts martial.

Article 113. General courts martial shall have cognizance, ordinarily, of offences punishable with death; transportation for life; imprisonment for life; imprisonment for a period which may extend to 14 years; imprisonment for a period which may extend to seven years.

Article 114. District or garrison courts martial shall have cognizance, ordinarily, of offences punishable with imprisonment for a period which may extend to three years, and, by special order, of offences ordinarily cognizable by general courts martial not liable to the punishment of death or transportation, with power to sentence persons convicted of such offences to imprisonment for any period not exceeding three years.

Article 115. Regimental, detachment, or line courts martial shall have cognizance, ordinarily, of offences punishable with imprisonment for a period not exceeding six calendar months, and, by special order, of offences ordinarily cognizable by district or garrison courts martial, with power to sentence persons convicted of such offences to imprisonment for a period not exceeding six calendar months.

GENERAL COURTS MARTIAL.

Punishment of Death.

Article 116. Any officer or soldier who shall be convicted by a general court martial of the crime of "murder" shall be sentenced to suffer death by being hanged by the neck until he be dead.

If any injury intended against one person shall, through mistake or accident, light upon another person, and kill him, such killing shall be deemed to be murder, whensoever it would have been murder had the person against whom such injury was intended been killed.

Whensoever death shall result from any injury wilfully caused by an offender, but without his intending such injury to light on any person in particular, such offender shall be guilty of murder, if the offence would have been murder had he intended to do the injury to the person killed.

Offences punishable by Transportation for Life.

Article 117. Any officer or soldier who shall be convicted by a general court martial of any of the offences hereinafter mentioned, accompanied with an attempt to commit murder, or with wounding or other corporal injury to any person endangering the life of such person: that is to say,

1st.—Breaking or attempting to break by day or night into any dwelling-house, tent, boat, or other habitation, or into any building or place used for the preservation of property, with the intent to rob or steal:

2d.—Robbery or attempt to rob:

3d.—Stealing or attempting to steal in a house, or from the person:—

Shall be sentenced by such general court martial to imprisonment, with or without hard labour, and transportation for life.

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Offences punishable by Imprisonment which may extend to Fourteen Years.

Article 118. Any officer or soldier who shall be convicted by a general court martial of any of the offences specified in the last Article, accompanied with wounding or other corporal injury to any person not endangering the life of such person; or,

Article 119. Of wounding with intent to murder, whether the person wounded be the person whom the offender intended to murder or another; or,

Article 120. Of robbery by open violence or dacoity; that is to say, going forth in the day or in the night with an offensive weapon, or in a gang with or without an offensive weapon, with the intention of committing robbery, and by force or intimidation robbing or attempting to rob any person in any place, or attacking by open violence any house or place of habitation, or any place in which property may be kept, for the purpose of robbery; or,

Article 121. Of breaking or attempting to break into any dwelling-house, tent, boat, or other place of habitation, between sunset and sunrise, with intent to rob or steal; or,

Article 122. Of breaking into any such place of habitation, or into any place used for the preservation of property, and stealing therefrom property, the value of which shall exceed 100 Company's rupees; or,

Article 123. Of purchasing or receiving plundered or stolen property, knowing it to have been obtained by robbery, by open violence, or by theft or robbery aggravated as described in Article 118 or Article 119;

Shall be sentenced by such general court martial to imprisonment with or without hard labour for a period not exceeding 14 years.

Offences punishable by Imprisonment not exceeding Seven Years.

Article 124. Any officer or soldier who shall be convicted by a general court martial of culpable homicide not amounting to wilful murder; or,

Article 125. Of premeditated affray, attended with homicide, or severe wounding, or other aggravating circumstance; or,

Article 126. Of intentionally wounding, maiming, or otherwise doing corporal injury to any person; or,

Article 127. Of accidentally wounding, maiming or otherwise doing corporal injury to any person with the intention of doing such injury to another person; or,

Article 128. Of breaking into any dwelling-house, tent, boat, or other place of habitation, or into any place used for the preservation of property, between sunrise and sunset, with intent to steal therein; or,

Article 129. Of stealing from any habitation, or from any person, any property exceeding 300 Company's rupees in value; or,

Article 130. Of having purchased any property so stolen exceeding in value 300 Company's rupees, knowing it to have been stolen; or,

Article 131. Of arson; or,

Article 132. Of an unnatural crime; or,

Article 133. Of rape; or,

Article 134. Of enticing and taking away, or of causing to be enticed or taken away, for any unlawful purpose, any unmarried woman under the age of 15 years; or,

Article 135. Of stealing a child under the age of 8 years;—

Shall be sentenced by such general court martial to suffer imprisonment, with or without hard labour, for any period not exceeding seven years.

DISTRICT OR GARRISON COURTS MARTIAL.

Offences punishable by Imprisonment not exceeding Three Years.

Article 136. It shall be competent to the Commander-in-chief, and to any officer having authority to convene district or garrison courts martial, to cause offenders, not being commissioned officers, accused of any of the offences specified in the preceding Articles of War, for which the punishment of death or imprisonment or transportation for life is not provided therein, to be tried for such offences before a district or garrison court martial, and such court shall have power, on conviction, to sentence any such offender to imprisonment with or without hard labour for any period not exceeding three years.

Article 137. Any officer or soldier who shall be convicted by a general, district or garrison court martial, of stealing from any habitation, or from the person, any property, of value not exceeding 300 Company's rupees, but exceeding 50 Company's rupees; or,

Article 138. Of having purchased or received any stolen property of value not exceeding 300 Company's rupees, knowing it to have been stolen, but not under aggravating circumstances; or,

Article 139. Of having stolen property in his possession, and of having kept possession of such property after becoming aware of its having been stolen;—

Shall be sentenced by such court to suffer imprisonment, with or without hard labour, for any period not exceeding three years.

REGIMENTAL, DETACHMENT OR LINE COURTS MARTIAL.

Offences punishable by Imprisonment not exceeding Six Months.

Article 140. It shall be competent to any officer having authority to convene a court martial, to cause offenders, not being commissioned officers accused of any of the offences specified in the preceding Articles of War, for which no punishment exceeding imprisonment with hard labour for three years is therein provided, to be tried before regimental or detachment or line courts martial, and any such court shall have power, on conviction, to sentence any such offender to suffer imprisonment, with or without hard labour, for any period not exceeding six calendar months.

Offences punishable by Imprisonment from Six Months to One Year, according to the Description of Court.

Article 141. Any officer or soldier who shall be convicted of stealing property to the value of 50 Company's rupees, or of less value; or,

Article 142. Of assault or affray, unattended with homicide, severe wounding, or aggravating circumstances;

Shall be sentenced to suffer imprisonment, with or without hard labour, for any period not exceeding one year, by the award of a general, or district, or garrison court martial, or, for any period not exceeding six calendar months, by the award of a regimental, or detachment, or line court martial.

Offences punishable by Imprisonment from Six Months to Two Years, according to the description of Court.

Article 143. Any officer or soldier who shall be convicted of resisting the process of a magistrate or police officer; or,

Article 144. Of having committed any offence against person or property for which provision is not already made in the preceding Articles of War;—

Shall be sentenced to suffer imprisonment for any period not exceeding two years, by the award of a general court martial; not exceeding one year, by the award of a district or garrison court martial; and not exceeding six calendar months, by the award of a regimental or detachment or line court martial.

Article 145. Any officer or soldier who shall be convicted by a general or district or regimental court martial, of having been present, aiding or abetting, or of having

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having caused, instigated or procured, the commission of any of the offences specified in any of the preceding Articles, shall be sentenced by such court to the punishment therein provided for such offence, and awardable by general, or district or regimental courts martial respectively.

Article 146. No sentence of death shall be carried into effect until confirmed by the Commander-in-chief; nor, if the trial shall have been held within the British territories forming part of either of the Presidencies of Fort William, Fort St. George and Bombay respectively, until such confirmation shall have been concurred in by the Government of the Presidency where such trial shall have been held.

Article 147. The Commander-in-chief is authorized, at his discretion, to confirm any sentence of death, or to remit such sentence, or to commute it into imprisonment with hard labour and transportation for life, or into imprisonment with hard labour for any term of years.

Article 148. No sentence of transportation shall be carried into effect until confirmed by the Commander-in-chief, and the Commander-in-chief is authorized at his discretion to confirm any such sentence, or to commute it into imprisonment, with or without hard labour, for any period of time.

Article 149. It shall be competent to any officer having authority to confirm the sentence of a general or other court martial, to remit any sentence passed by such court martial, or to mitigate such sentence by substituting simple imprisonment for imprisonment with hard labour, or by reducing the period of imprisonment, or by directing the discharge of the offender in lieu of any imprisonment.

Article 150. But no sentence of imprisonment with hard labour, passed by a regimental or detachment or line court martial, and confirmed either in whole or in part by the commanding officer, and no award of discharge substituted for other punishment as aforesaid, by such commanding officer, shall be carried into effect without the sanction and authority of the officer commanding the division or field force, or district or brigade (being the senior officer on the spot) in which the offender may be serving, or of the senior officer on the spot in the field.

Article 151. A person who may have been tried for any offence by a court martial under the authority of these Articles of War, shall not be tried for the same in any other court whatsoever; and no person who shall have been acquitted or convicted of any offence by a court of civil judicature, shall be punished by a court martial for the same, otherwise than by cashiering or dismissal from the service.

Article 152. The regulations at present in force at any Presidency, by which the office and powers of Commissariat officers, or officers in charge of the police, or superintendents of bazars, are defined and controlled; or by which punchayets are constituted and guided; or by which jurisdiction is given to courts martial over offences committed by persons amenable to the Articles of War, within certain limits beyond or around cantonments, are hereby declared to be in full force, and the same shall continue to be observed at the several Presidencies respectively.

Section VII.—*Application of the Articles.*

Article 153. All officers and soldiers, all drivers, farriers, trumpeters and drummers; all hospital attendants, sub-assistant surgeons, native doctors and dressers; all artificers and labourers, sutlers, followers, public and private, or others attached to or serving with any part of the army, are to be governed by these Articles, and subject to trial by courts martial.

Provided, that persons of European descent (whether on the side of their father or mother) professing the Christian religion, shall not be amenable to these Articles; but if belonging to the descriptions mentioned in this Article, (and not being Her Majesty's natural born subjects born in Europe, or the children of such subjects), shall be tried and punished in the same manner as persons are who are subject to the Mutiny Act and Articles of War in force for the better government of the officers and soldiers in the European service of the East India Company.

Promulgation

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Promulgation of the Articles.

Article 154. These Articles are to be translated into the several languages of the different Presidencies, and the parts following; viz., the second section, together with the following Articles in other sections, which are marked with an * (asterisk), viz., 2, 4, 72, 75, 77, 99, 100, 107 and 108, are to be read once every six months at the head of every regiment, troop or company mustered in the service, and to every recruit at the period of his enlistment.

HOME DEPARTMENT.—LEGISLATIVE.

(No. 32 of 1845.)

To the Honourable the Court of Directors of East India Company.

Honourable Sirs,

IN continuation of our despatch of the 18th ultimo, No. 77, from the Foreign Department to the Secret Committee, we have the honour to transmit herewith, for the information of your Honourable Court, a printed copy of Act No. 20 of 1845, intituled, "An Act for providing Articles of War for the Government of the Native Officers and Soldiers in the Military Service of the East India Company."

We have, &c.

(signed) *T. H. Maddock.* *C. H. Cameron.*
F. Millett. *G. Pollock.*

Fort William, 7 October 1845.

On the Draft Articles of War for the Native Troops.

Legis. Cons. 22 Nov. 1845. No. 16.

ON examination of the Draft Articles of War for the Native Troops, which, after a very full discussion in 1838 particularly, and more or less in several previous years, was transmitted in 1839 for the information and orders of the Court of Directors, I found its provisions to be so much at variance with the tenor of the laws which have been established in the native service in the interval between 1839 and the present year, and so different from the Articles of War in force in the European service of the Company, that it appears to me necessary to make a new Draft of Articles, in the arrangements and provisions of which regard should be had to the Draft of 1839, so far as might be consistent with the present state of the laws for either service, keeping in view also the probable re-introduction of corporal punishment.

Draft of 1839.

2. In the Draft of 1839, corporal punishment was not alluded to; the more serious military offences were made punishable with death, transportation, imprisonment, with or without hard labour, or solitary confinement, and with dismissal.

3. The discretionary punishments were limited in the cases of soldiers to imprisonment not exceeding four months, or imprisonment with hard labour not exceeding two months, and solitary confinement, besides dismissal, forfeiture of pay and pension, and reduction in the rank, with proportionate loss in respect to length of service.

Act XXIII. of 1839.

4. The Act No. XXIII. of 1839, passed on the 23d of September of that year, empowered courts martial to award imprisonment with or without hard labour for all offences for which dismissal had been made awardable by Lord William Bentinck's General Order, dated 24th of February 1835, which substitutes dismissal for corporal punishment. By this Act, a general court martial was empowered to sentence to imprisonment with or without hard labour for any period not exceeding two years, a garrison or line court martial for any period not exceeding one year, and a regimental or detachment court martial for any period not exceeding six months; and such sentences passed by other than general courts martial were to be confirmed by general officers commanding divisions. These provisions themselves render very material changes necessary in the Draft Articles of 1839.

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District Court Martial.

5. In that draft the Articles of War provided for only two descriptions of courts, the general court martial, and the inferior court martial. There appears to be an intermediate court required, before which offences not of a trifling nature, and yet not so serious as to call for a general court martial, may be tried and adequately punished. Such a court has now long been established in the Queen's service, the district or garrison court martial; and the germ of such an intermediate court is found in the garrison or line court martial, mentioned in the Act XXIII. of 1839, to which, for the first time, powers were given by that Act more extensive than the regimental court martial possessed. All inferior courts martial having previously been on the same footing again since the Draft of 1839 was settled, a new Mutiny Act for the Company's European forces has come into operation (the Act 3 & 4 Vict. c. 37, in force from the 1st January 1841), in which, among other changes, district or garrison courts martial have been introduced. To assimilate the modes of procedure in the Company's service, European and native, as well as for the purpose above mentioned of adequately punishing certain offences without having recourse to a general court martial, it is proposed to introduce district or garrison courts martial into Articles of War for the native troops. The Commander-in-chief is decidedly in favour of this measure, and I have accordingly provided for such courts, and have endeavoured to adapt their powers to the fulfilment of the object in view.

Mutiny Act.—Articles for the Company's European Troops.

6. Besides the recent institution of district courts martial, there are other changes introduced in the Mutiny Act and Articles of War for the Company's European troops, such as the regulation of sentences of imprisonment, and the taking of evidence of previous convictions, which had been adopted, indeed, in the draft Articles of 1839, from those for the Queen's service, but in which some new rules have since been made in both services. Another alteration is in the designation of disgraceful conduct as applicable to certain offences, with peculiar punishments applicable to them. For this class of offences the Draft of 1839 made no specific provision.

Acts of the Government of India.

7. Since the period of the last settlement of the Articles, some Acts have been passed which require attention in finally settling the Articles. Besides the Act No. XXIII. of 1839, already noticed, there are the Acts No. V. of 1840, concerning the oaths and declarations of Hindoos and Mahometans; No. XI. of 1840, amending the law in the Presidency of Bombay concerning the prisoners sentenced to labour or solitude.

No. VIII. of 1841. On the process of taking the examination of absent witnesses.

No. XI. of 1841. Consolidating Regulations for Military Courts of Requests for native officers and soldiers.

No. XXVIII. of 1841. For extending Act No. 23 of 1839 to camp followers.

No. XXX. of 1841. For repressing obstructions to justice in certain courts.

No. XII. of 1842. Regulating military bazars, and defining the liabilities of camp followers.

No. III. of 1844. Legalizing corporal punishment in cases of petty larceny generally.

No. VIII. of 1844. Authorizing the removal of native officers, soldiers and followers imprisoned under sentence of a court martial, from one prison to another.

No. XIV. of 1844. In regard to sentences of transportation for life.

No. XVIII. of 1844. For the better control and management of gaols within the Bengal Presidency.

8. It

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8. It may not appear at first sight in what way some of these Acts can apply to the Articles of War, and, indeed, to the Draft of 1839; there are several of them which are inapplicable, because that Draft contained no provisions for regulating trials for criminal offences; but this is a deficiency which may be rectified on the present occasion of finally settling the Articles, and my experience induces me to represent the importance of doing so, to avoid the inconvenience of the present system. I have endeavoured to effect this object in revising the Articles, and have provided for criminal offences in Section VI.

Confirmation of Sentence and Commutation.

9. The subject of confirmation of the sentences of courts martial in the native troops is one on which no law has hitherto been made in Bengal, and we proceed on precedent and usage as confirmed by Acts of Parliament. From 1785, when the Supreme Government formally recognized the power of Lieutenant-general Sloper, commanding in chief in Bengal, to the present time, the Commander-in-chief has invariably exercised the power of confirmation of capital and other sentences, whether for criminal offences or military crimes; delegation of power to confirm sentences of general courts martial, though now long disused within the provinces, was formerly customary. We have a Regulation of the 11th May 1770, delegating this power, in cases even of death, to colonels of brigades; the power was re-conferred in 1777. In 1790 a warrant was granted by Lord Cornwallis to Colonel Mackenzie, commanding the forces in Bengal, empowering him to confirm all sentences but those of death, and those also in case of necessity. Under Regulation II. of 1809, this power is given when troops are on foreign service. Then, as regards commutation, we have precedents of commutation of sentence of death for criminal offences in cases of camp followers, as long ago as 1790, 1792, 1795. The power of the Commander-in-chief to mitigate all sentences has never been doubted, and how a sentence of death can be mitigated does not appear, except it be by substituting another punishment for it. The Charter Act of 1813, 53 Geo. III., chap. 155, clause 97, distinctly recognized and confirmed all established usages subsisting at that date, which were to be of force equally with any Articles of War. The Mutiny Act for the Company's troops, 4 Geo. IV., chap. 81, which came into operation in February 1824, clauses 62, 63, ratified the usages previously sanctioned by the Charter Act of 1813; but, as the usage of commutation of sentences of death, for military offences by native soldiers, does not distinctly appear till the year 1818, in the time of Marquis of Hastings, a doubt hangs over that practice, though the cases are very numerous, down to the year 1841, in which the Mutiny Act now in force came into operation; in this Act, however, the recognition of usages is remarkable as differing in a very important manner from the Act of George IV. The present Mutiny Act, clause 8, provides that on the trial of native soldiers reference shall be had to the Articles of War framed by the Government of India, and to the "established usages of the service;" no restriction is herein contained to the usages established in 1813, and it is considered that the usages existing at the date of the present Act coming into force, are the usages intended to be sanctioned by it. This construction is precisely that which applies to the Charter Act of 1813; the "established usages" mentioned in either of these statutes are those which the said statutes respectively found established in 1813 and in 1841; at this last date, commutation of capital sentences for imprisonment with hard labour, was an usage of no less than 23 years' standing, and in conformity therewith, and under the sanction given in the clause cited, commutation of sentence of death has been exercised up to the present date. In Madras and Bombay, since 1827, the Commander-in-chief has been empowered by regulation to commute capital sentences.

10. The Draft of Articles now prepared confers on the Commander-in-chief full power to appoint courts martial, to confirm sentences, and to authorize officers in command to appoint general courts martial, but not to confirm the sentence of such courts. The Commander-in-chief is now, also, empowered to mitigate and remit and to commute all sentences by substituting lesser punishments, only that he is not authorized to substitute corporal punishment for any other sentence; the power is also given to commute sentences of district and regimental courts martial.

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Arrangement of the Articles.

11. I have adopted the plan of the Draft of 1839 (following the plan of the Act for Her Majesty's forces) in the arrangement of the Sections into which the Articles are divided, and in numbering the Articles consecutively from first to last, without regard to their sectional division; but in the placing of the Articles I have made changes, chiefly rendered necessary by the considerations noticed in the earlier part of this note. I have also endeavoured carefully to carry out the views of the Law Commission, in specifying the punishments awardable for different offences.

12. Section I. "Of enlisting and discharges," contains four Articles.

13. Section II. "Of crimes and punishments," is divided into seven subdivisions; viz., crimes punishable with death, transportation, corporal punishment, imprisonment or dismissal; crimes not punishable with death or transportation, or corporal punishment; crimes punishable with fine or loss of pay, in addition to other punishments; and these include disgraceful conduct, crimes not punishable with corporal punishment, of imprisonments with labour, and crimes incident to courts martial.

Crimes punishable with Death, Transportation, Corporal Punishment, Imprisonment or Dismissal.

14. This subdivision contains 15 Articles, providing for the under-mentioned offences:

Article 5. Mutiny.
" 6. Striking an officer.
" 7. Disobeying lawful command.
" 8. Desertion.
" 9. Sleeping on post in time of war, or quitting post.
" 10. Abandoning fortresses, &c.
" 11. Betraying the watchword.
" 12. Correspondence with the enemy or with rebel.
" 13. Relieving an enemy or rebel.
" 14. Allowing escape of an enemy.
" 15. Misbehaviour before the enemy.
" 16. Casting away arms in presence of the enemy.
" 17. Quitting post in action to plunder.
" 18. Forcing safeguards, &c.
" 19. False alarms in time of war.

These are all capital offences in the Articles for the Queen's forces, and for the Company's European troops.

Crimes not punishable with Death or Transportation, or Corporal Punishment.

15. The subdivision consists of 20 Articles, providing for the following offences:
Article 20. Unbecoming conduct of officers.
" 21. Breach of arrest.
" 22. Striking soldiers.
" 23. A sentry sleeping on his post in time of peace.
" 24. Advising to desert.
" 25. Enlisting deserters.
" 26. Accepting bribes to procure promotion, &c.
" 27. False certificate, &c.
" 28. False returns.
" 29. Feigning disease.
" 30. Extortion of fees, &c.
" 31. Not repressing ill treatment of persons at market, &c.
" 32. Refusing to receive prisoners or allowing their escape.
" 33. Quitting guard or post in time of peace.
" 34. Impeding the Provost Marshal.
" 35. Not rejoining from leave when his corps is warned for service.
" 36. Defiling places of worship and insulting religious prejudices.

Article

Article 37. Waste or plunder of villages, &c.
„ 38. Carrying swords or bludgeons.
„ 39. Losing necessaries, &c.

These offences are punishable, in the case of an officer, with dismissal or suspension, and in the case of a non-commissioned officer or soldier, with dismissal, reduction to the ranks, degradation in rank with consequent loss of service, imprisonment with or without hard labour, and solitary confinement, according to the power of general or district courts martial, and with stoppages to make good any damage, &c.

Crimes punishable with Fine or Loss of Pay, in addition to other Punishments.

16. The subdivision contains seven Articles, providing for the subjoined offences.

Article 40. Embezzlement. This offence is punishable with transportation in the Articles for Her Majesty's forces, and for the Company's European troops. It is by Article 40 rendered liable to dismissal and fine of arrears of pay, besides imprisonment with or without hard labour, for any term not exceeding three years, and with solitary confinement. This Article applies to officers as well as to soldiers.

Article 41. Disgraceful conduct in maiming himself or another soldier.
„ 42. Disgraceful conduct in purloining Government stores.
„ 43. Disgraceful conduct in thefts from military persons.
„ 44. Disgraceful conduct in embezzling public money.
„ 45. Disgraceful conduct in perpetrating petty injury or fraud.
„ 46. Any other disgraceful conduct.

These offences are punishable with dismissal or corporal punishment, or imprisonment with or without hard labour, reduction or degradation in rank, with consequent loss of service and stoppages to make good any damage; and in addition to corporal punishment, or imprisonment with labour, the offender may be sentenced to forfeit all advantage from former or from future service, of additional pay and pension on discharge by sentence of general or district courts martial.

N.B. Original imperfect.

Crimes not punishable with Corporal Punishment or Imprisonment with Labour.

17. This subdivision consists of eight Articles, embracing the following Offences:—

Article 47. False alarms in time of peace.
„ 48. Failing to attend parade.
„ 49. Quitting company or troops on parade.
„ 50. Absence without leave.
„ 51. Straying from camp.
„ 52. Absence after hours.
„ 53. Wasting ammunition.
„ 54. All crimes not capital.

These offences are to be tried by general or district or regimental courts martial, and are punishable with dismissal or suspension in the case of an officer, and in the case of a non-commissioned officer or soldier with dismissal; reduction or degradation in rank, with consequent loss of service, imprisonment without labour, and with or without solitary confinement, and stoppages to make good any damage.

Crimes incident to Courts Martial.

18. This subdivision contains four Articles, providing for the subjoined offences:—

Article 55. Persons amenable to these Articles, neglecting summons, refusing to be sworn, or to give evidence on affirmation.

For this offence the punishments are, for commissioned officers, reduction; for soldiers, simple imprisonment.

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Article 56. Persons not amenable, so offending, to be made over to a magistrate.
„ 57. Persons creating disorder or riot in court; such persons, if amenable to these Articles, are to be punished at discretion, but not liable to corporal punishment or imprisonment with labour; if not amenable, they are to be delivered over to a magistrate.
„ 58. Perjury.

This offence is punishable with dismissal and fine of all arrears of pay, or imprisonment not exceeding three years; punishments were provided for the offence of perjury in the Draft of 1838-39. The term of imprisonment is apparently adopted from the Regulations, by which a Sessions Judge is authorized to mitigate the severe penalties for perjury to three years' imprisonment, with or without tusheer. I have preferred placing the Article relating to perjury in the present connexion, rather than transferring it to a place among the criminal offences provided for in Section VI.; because, in the Mutiny Act for the Company's European troops, Clause 55, it is made punishable as a military offence, and because the punishments applicable to it are different in their nature from those which apply to criminal offences generally.

Crimes admitting of less serious Notice.

19. This subdivision consists of one Article only, the 59th, for the Queen's forces; and Article 81, for the Company's European troops, provides for the trial by district courts martial of offences restricted by the proposed Articles of War to the cognizance of general courts martial, and by regimental courts martial of those restricted to district courts. Mutiny is the only exception, and I have made it so, because in the Regulations for the Queen's service, that offence is excepted, and strictly kept within the jurisdiction of general courts martial. It is also provided that when offences called "disgraceful conduct" may be tried by inferior courts martial, that term shall not be used in the charge. The reason for this provision is that some confusion has been experienced in trials of the same description; in the European troops the term "disgraceful conduct" points to certain special penalties, and as it is not proposed to give to inferior courts the power to award those penalties, it appears undesirable to use the term in charges submitted to such courts.

The offence tried will be described with sufficient certainty without adopting that term.

Offences on the Line of March or on board Vessel.

20. Article 60 is the only one in this subdivision; it gives the power, so necessary to discipline under the circumstances of a march, or on board of any vessel, to carry sentences into effect on the spot. At the same time the power is salutarily confined to such sentences only as an inferior court martial can award. The Article follows the provisions of Article 80 for the Queen's, and Articles 77 and 82 for the Company's forces. The words "or other vessel," after "ship," are intended to apply not only to vessels proceeding by sea, but to fleets of boats, in which troops are habitually sent up and down the rivers to their destinations, on board which the power here given is much required.

21. Section III. "Administration of Justice."

This Section is arranged in the order of circumstances, beginning with arrest and liability to trial; then stating the constitution and powers of courts martial, and of confirming officers, the execution of sentences, the forms of proceedings; and lastly, miscellaneous matter.

Article 61. Arrest previous to trial.
„ 62. Duration of liability.
„ 63. Liability to trial at any place.
„ 64. Authority to appoint general or district courts martial.
„ 65. Constitution of general courts martial.
„ 66. Powers of general courts martial.
„ 67. Confirmation and commutation of sentences of such courts.
„ 68. Constitution of district courts martial, and disposal of sentences of such courts.

Article

Article 69. Powers of district courts martial.
„ 70. Constitution of regimental courts martial, and disposal of sentences of such courts.
„ 71. Powers of regimental courts martial.
„ 72. Courts martial in small detachments.
„ 73. Convening officer may instruct courts martial not to sentence to solitary confinement or to corporal punishment.
„ 74. Form and execution of sentences of death.
„ 75. Execution of sentences of transportation or imprisonment.
„ 76. Transportation of persons sentenced to imprisonment, with labour, for life.
„ 77. Imprisonment in gaols.
„ 78. Soldiers imprisoned with hard labour to be dismissed.
„ 79. Soldiers sentenced to dismissal or imprisonment with labour, for disgraceful conduct, to be dismissed with ignominy.
„ 80. Recovery of fines or stoppages.
„ 81. Hours of trial.
„ 82. The Judge-advocate and superintending officer.
„ 83. The interpreter.
„ 84. The President.
„ 85. Revision.
„ 86. Manner of voting.
„ 87. Sentences of death how rested.*
„ 88. Oaths to courts, Judge-advocate and interpreter.
„ 89. Oaths to witnesses.
„ 90. Summoning witnesses not amenable to Articles of War.
„ 91. Provost Marshal.

* *Sic orig.*

22. Section IV. " Effects of the Dead."

The section consists of two Articles, the 92d and 93d, which have been taken from the draft Articles of 1838–1839.

23. Section V. " Miscellaneous."

In this Section are eleven Articles, from 94 to 104 inclusive, for matters which appear not to come within any of the previous sections; viz.

Article 94. The disposal of effects of deserters.
„ 95. Application of the term " Commander-in-chief," and the term " soldier."
„ 96. Troops of one Presidency serving within the limits of another.
„ 97. Trials in troops serving beyond the Presidency.
„ 98. Commissioned officers and offenders liable to death or transportation, how to be tried.
„ 99. Prohibiting a second trial for the same offence, and providing for evidence of previous convictions and general character.
„ 100. Reduction of non-commissioned officers.
„ 101. Redress of wrongs.
„ 102. Punishments by commanding officers for light offences.
„ 103. Pay of men taken prisoners by the enemy.
„ 104. Application of the Articles.

24. Section VI. " Criminal Offences."

This section sets out with an Article, the 105th, directing the delivery to magistrates of offenders accused of criminal offences, punishable by the civil judicature.

25. Then follows a set of Articles, numbered from 106 to 139, inclusive, embodying the punishments for criminal offences committed in places where there is no civil jurisdiction in force. I have endeavoured in these to follow as nearly as possible the Regulations in force in Bengal, which appear to be compatible with those in force in Madras and Bombay, to so great a degree as to admit of their applicability to the forces of the three Presidencies, without any material alteration of the existing law. In an earlier part of this note, I have adverted to the expediency of making Articles for the trial and punishment of criminal offences. Hitherto courts martial have exercised jurisdiction over such offences

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under Article 5 of Section 15 of the Articles of War of 1796, now in force, which is as follows:—

"Whenever any of the troops shall be employed where there is no Court of Judicature, the officer commanding-in-chief shall order any person of the said troops who may be guilty of wilful murder, theft, robbery, or of other capital crime or offence, to be tried by such general court martial, and be punished with death or otherwise, according to the sentence of the court."

26. So indefinite and comprehensive is this Article, that whenever a general court is convened to try a criminal offence, the duty devolves on the Judge Advocate-general of pointing out the punishment legally awardable; and, not to mention the delay occasionally caused by references for such information, the Judge Advocate-general can only refer the officer who conducted the trial to cases in the Reports of the Nizamut Adawlut, and to Smith's or Skipwith's Compendious Guides to the Penal Regulations. Even these books are not always accessible to officers who are from time to time appointed to conduct such trials. To remedy this deficiency, and to establish a more satisfactory mode of ascertaining the law, it is proposed to embody in the new code Articles by which the punishments for criminal offences shall be distinctly laid down. Another object to be attained is, the administration of criminal law uniformly to the native troops of the several Presidencies, whether serving within their own limits, or serving together, as of late years has been so much the case.

27. As a general outline, it may be stated that the offences have been classed according to the Regulations, and punishments are assigned to them as awardable by the three descriptions of courts martial.

First. A general court martial is made to have exclusive jurisdiction over,—1st. Capital crimes; 2d. Crimes punishable with transportation or imprisonment, extending to seven years and upwards.

But these different offences are also subdivided into such as are liable under the Regulations, to death, to imprisonment and transportation for life, to imprisonment for 14 years, and to imprisonment for seven years respectively.

Again, as it may often be desirable and very practicable to punish some of these offences adequately, without having recourse to the higher power of a general court martial, it is provided that any offence for which death or transportation or imprisonment for life is not awardable, may be tried by a district court martial, and will in that case be punishable with or without hard labour not exceeding three years.

Secondly. A district court martial is empowered to try such offences as are punishable with imprisonment with hard labour for three years.

And it is provided that such offences may be tried on occasion by inferior courts martial, and will in that case be punishable with imprisonment with or without hard labour, not exceeding six months.

Thirdly. Offences are specified which are punishable with imprisonment with or without hard labour, for terms ranging from six months to one year, according as they are tried by superior or inferior courts martial.

Fourthly. For certain petty offences, and for such as are not before distinctly provided for, simple imprisonment is awardable for terms varying from six months to two years, according to the description of court by which they are tried.

28. The crimes and punishments are as follows:—
Article 106. Murder.
Article 107. Homicide in housebreaking, or in the attempt.
Article 108. Homicide in robbery, or in the attempt.
Article 109. Killing one person when intending to kill another.
These are made capital offences.

29. The Commander-in-chief is empowered to confirm the sentence of death, and when passed within any Presidency, the concurrence of the Government of such Presidency is made requisite previous to execution of the sentence. In the province of Scinde, which has not been attached to any particular Presidency, the Commander-in-chief at the Presidency to which the troops serving in Scinde belonged, would confirm and carry into effect the sentence. If the Governor of Scinde had been invested with independent authority as regards the troops serving there,

there, I should have proposed to require his concurrence in sentences of death for criminal offences, or to authorize his confirming sentences and carrying them into effect; but the point is for the consideration of the Supreme Government. Under the warrant recently received with the Act 7 Victoria, cap. 18, a warrant was issued to Sir Charles Napier by the Commander-in-chief in India, empowering him to confirm sentences of courts martial on native soldiers, with exception of sentences of death for criminal offences, or of transportation, or sentences passed on native commissioned officers. These restrictions were imposed in conformity with the instructions which accompanied the Queen's warrant.

30. This concurrence of Government in confirmation of sentences passed on native soldiers, whether for military or criminal offences, is entirely new in Bengal. The object is to assimilate the practice in the native troops with that obtaining in the European Troops.

In Bombay the concurrence of the Government is required by Regulation XXII. of 1827, section IX., clause 2.

31. In continuation :—

Article 110. House-breaking and stealing } With an attempt to commit murder,
„ 111. Theft - - - - } or with personal injury endan-
„ 112. Robbery - - - - } gering life.

These offences are made liable to imprisonment with or without hard labour and transportation for life. Power of commutation is given to the Commander-in-chief.

32. The following offences are punishable with imprisonment with or without hard labour for 14 years :—

Article 113. House-breaking and stealing without injury, endangering life, or the property not exceeding 300 rupees.
„ 114. House-breaking between sunset and sunrise with intent to steal.
„ 115. Robbery without injury endangering life.
„ 116. Wounding and maiming.
„ 117. Intending to murder or injure one person, and therein maiming or injuring another.
„ 118. Rape.
„ 119. Stealing or selling children.
„ 120. Receiving stolen property obtained by gang robbery, or property so obtained, exceeding in value 300 rupees.

33. The following offences are liable to imprisonment with or without hard labour for seven years :—

Article 121. Culpable homicide.
„ 122. Premeditated serious affray.
„ 123. House-breaking between sunrise and sunset with intent to steal.
„ 124. Stealing to the value of above 300 rupees.
„ 125. Arson.
„ 126. Unnatural crime.
„ 127. Abduction of females.

34. Under Article 128, accomplices are made punishable in the same manner as principals in all the foregoing offences.

35. The following offences are made punishable with imprisonment with or without hard labour for three years :—

Article 130. House-breaking without open violence with intent to steal.
„ 131. Theft not exceeding 50 rupees.
„ 132. Receiving stolen property not exceeding 300 rupees, but not under aggravating circumstances.
„ 133. Knowingly keeping stolen property.

36. For other comparatively minor offences, as I have already mentioned, imprisonment with or without hard labour from six months to one year, and simple imprisonment from six months to two years, are respectively awardable.

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37. The power of commutation is given to officers authorized to confirm the sentences of courts martial, superior or inferior, with the same limit to the power of regimental commanding officers as are contained in the Articles of War for military offences.

38. Provision is made for "preventing trials by Civil Courts of offenders already tried by court martial, and *vice versâ*." Art. 138.

39. And the section concludes, Art. 139, with confirming the existing Regulations in any Presidency, relative to punishments to Commissariat officers, or officers in charge of the police of bazars, and to the trial of criminal offences committed within one mile of cantonments. These are chiefly regulations in force in Madras and Bombay.

40. Section VII. contains but one Article, which terminates the code providing for the due translation of it, and for the periodical publication of a section of the Articles.

41. The foregoing observations are made with reference to the code as prepared by me. I propose now to advert to what has taken place since the Draft was prepared, and to consider the suggestions which have been made in the several Presidencies in the proposed Articles of War. Perhaps it will be most convenient to take separately the suggestions made by different authorities, either on alterations in the Article, or in corporal and other punishments as applicable to the native armies at the several Presidencies.

Alterations in the proposed Articles.

Suggestions by the Commander-in-Chief in India.

42. His Excellency has expressed his concurrence in all but a few of the proposed Articles, and has made verbal suggestions to the following effect:—

43. Article 1. The Commander-in-chief, adverting to some corps having no colours, suggests the insertion of the word "guns" for the artillery, and "native officers" in corps having no colours. The native officers and the regiment are assembled at the time of the swearing in the recruits, as this Article directs. Either the words "or guns" may be introduced, or rather the words "in front of the colours" may be omitted. It is sufficient to administer the oath in presence of the regiment; and the colours being on parade and in the centre, the obvious place for administering the oath (especially the feelings of the native soldiery for their colours so well known) would be in front of the colours in regiments which have them, without any special direction to that effect.

44. Article 9. The insertion of the words "being a sentry" is suggested, and they appear desirable. The 23d Article, which relates to time of peace, has exclusive reference to sentries in the same manner.

45. Article 33. The word "picquet" is proposed to be substituted for "post," the latter being provided for in Article 23. The alteration appears desirable.

46. Article 44. It is proposed to substitute military for "regimental;" the suggested word is the more comprehensive, and therefore the better of the two.

47. Article 60. The word "*held*" is suggested in lieu of "had;" either will answer.

48. Article 64. After the word "confirm" his Excellency suggests the insertion of the words "mitigate or remit," and proposes the same words at the end of this Article, relating to the powers to be conferred on officers authorized to convene general and district courts martial. I think these suggestions may conveniently be followed.

49. Article 84. The words "or Bahadoors" are suggested, and should be inserted; the omission was an oversight.

50. Article 87. His Excellency proposes to omit the words "*or four where the Court consists of five members.*" There is no authority in these Articles for a general court martial being composed of five officers, unless it be under Article 97; but that Article does not contemplate sentence of death, and such sentence is by Article 66 restricted to crimes for which capital punishment is expressly provided.

The

The words objected to may therefore be conveniently omitted, and the word "members" be added to the end.

51. Article 98. It is proposed to add, "except in the case of soldiers under circumstances for which provision is hereinbefore made." The allusion is evidently to Article 59, which authorizes the trial by district or inferior courts martial respectively, of offences otherwise restricted within the jurisdiction of general or of district courts martial. The object of this Article (98) was to declare general courts martial to be alone competent to try commissioned officers, and to pass sentence of death or transportation for offences so punishable. I would propose, as a preferable amendment, that the Article be written thus:

"General courts martial only shall have power to try commissioned officers, and to pass sentence of death or transportation on offenders convicted of crimes so punishable under these Articles of War."

If this be adopted, the clause at the end of Article 69 may be omitted as superfluous.

52. On the subject of punishments, the Commander-in-chief has made some suggestions. These I had at first thought of treating in connexion with the suggestions made by other authorities, but as some communications from Madras and Bombay are still to be expected, it will save time to consider separately what the papers now collected contain.

Solitary confinement.

53. His Excellency, in noticing the punishments inserted after Article 19, remarks, that it is impossible "in Bengal to carry out solitary confinement with our present inadequate means of prison accommodation, and even were those means available, the prejudices and religion of the Hindoos render this punishment very questionable." In connexion with Articles 66, 67, 69 and 102, similar objection is made to solitary confinement.

54. The experiment was made several years ago of building solitary cells at the stations of Barrackpore and Kurnaul; but as solitary imprisonment was not authorized, the experiment was necessarily imperfect, and could lead to no results; some of the officers who have replied to the confidential questions have adverted to these cells, as will be subsequently noticed. If it be determined to introduce solitary confinement in Bengal, it will be necessary to provide sufficient means for carrying that punishment into effect; but it will, perhaps, be convenient to defer any further observations on the subject till the reports from Madras regarding this punishment come to be considered.

Imprisonment with hard labour.

55. The Commander-in-chief proposes to exempt the offences enumerated in the Articles from 20 to 39 from the punishment of imprisonment with hard labour. The offences for which these Articles provide are mentioned in a former part of this note (*see* para. 15), together with the punishments to which they are made liable as the Draft now stands; but his Excellency's objection does not stop here. It appears from the remarks made on Article 67, clause 3; Article 68, clause 3; Article 69; Article 70, clauses 2, 3; and Article 71, that the Commander-in-chief is of opinion that hard labour in imprisonment should be restricted to the principal military offences provided for in the Articles from 5 to 9 inclusive (*see* para. 14 of the note) and to disgraceful offences, as in the Articles from 41 to 46 (*see* para. 16 of this note), that it should not be substituted for other punishments by confirming offences more awardable by regimental courts martial.

56. Under Act XXIII. of 1839, imprisonment with hard labour has been awarded very generally for military offences, much more so probably than was intended; but as it was introduced as a substitute for corporal punishment, it became awardable in subjection to the rules by which flogging was limited, which, though at first made applicable to certain specified offences only, was in a few months necessarily made more exclusively applicable, so as to leave no exact definition of the offences liable to corporal punishment. On the working of imprisonment with hard labour, the replies to the confidential questions furnish information and opinions which I propose to consider in their place; but in connexion with these observations of the Commander-in-chief (*see* para. 170, 182 and 184 of this note.)

Punishment of Commissioned Officers.

57. On Article 40, clause 2, and Article 58, clause 2, the suggestions made by his Excellency manifest an opinion that imprisonment with or without hard labour is inapplicable as a punishment for commissioned officers.

58. For military offences this punishment is not made applicable to officers, because it is confessedly inappropriate to their rank and condition. But Article 40, in which it is provided, applies it to embezzlement of money or of military stores, the property of Government, or the fraudulent misapplication of them. In the Mutiny Act for Her Majesty's forces, section 8, the penalties of these offences are transportation or fine, imprisonment, dismissal and incapacity of serving, besides having to make good the loss or damage sustained. In the Mutiny Act for the Company's European troops, section 16, the penalties are the same. This Article (40), therefore, is much more lenient than the law for the European troops, in not rendering embezzlement liable to transportation, but to dismissal with forfeiture of arrears of pay, and also to imprisonment with or without hard labour for three years, and with or without hard labour confinement*; and though it may be observed that the imprisonment awarded to the native officer for embezzlement may be with hard labour, yet it is also to be remarked that the simple imprisonment awardable to the European officer is not limited, as the other is, to three years, but is discretionary as to period. If his Excellency's suggestions should prevail, the only punishment to which a native officer would be liable for embezzlement would be dismissal and forfeiture of arrears; a very inadequate punishment, I conceive, for one of the greatest crimes, not immediately affecting discipline, which a native officer can commit.

* *Sic orig.*

59. Again, Article 58 provides for false evidence, and makes the punishment dismissal, with further liability to forfeiture of arrears, or to simple imprisonment for three years. In the Queen's service perjury is not triable by court martial. In the service of the Company (Mutiny Act, Section 55), it is punishable by law; or in the case of commissioned officers, if tried by court martial, by cashiering. The restriction to this one military punishment is probably to be accounted for by the subjection of the European officers so offending to the laws of the land as an alternative, so that if it be determined to try him by court martial instead, he may be subjected to a military punishment only. But the Article (58) for the native troops embraces the penalties, both of the military and of the criminal law, making the former, dismissal, imperative, but leaving the addition of the latter, imprisonment, discretionary with the court. I submit that the Articles 40 and 58 may conveniently be allowed to stand as they are in the Draft, especially as dismissal is made imperative in both as the first punishment; for the offender being once dismissed, is no longer to be looked upon as a native officer suffering imprisonment (should confinement be also sentenced), but as an individual degraded from his rank, and deprived of his commission, and thereupon falling into the grade of ordinary offenders.

60. On Article 66, clause 5, the Commander-in-chief suggests that native soldiers should not be subjected to sentence of stoppages for loss or damage occasioned by their offence when they are sentenced to any punishment not involving dismissal from the service. I would respectfully observe, that there is no other way than by such stoppages to obtain at their hands any sort of compensation for damage done, although it is expedient to make a difference between the European and the native soldiers, so as to exempt the latter from the forfeiture of pay, to which the former is liable, for absence or non-performance of duty, as when in confinement; yet the mulct here proposed is of a different nature from all other forfeitures, being designed for the restoration of damage committed by the offender, and not as a fine. I submit that the clause may conveniently stand without alteration.

61. Passing from the powers of a court martial to that of the Commander-in-chief, his Excellency suggests in Article 67, clause 1, an alteration to the effect that native officers shall not be liable to imprisonment with hard labour, as a punishment substituted for sentence of death. I think the alteration may be appropriately introduced in the way suggested, because the offences for which such sentence of death is applicable are military offences. In a subsequent part of the Draft, between Articles 109 and 110, power to substitute imprisonment with labour for sentence of death is given; and in that place I think it should stand, because

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because the application is to criminal offences, and native officers should be liable, in common with other native subjects, to the punishments substituted for death by the criminal laws, from which the provision is taken.

62. With reference to clause 4 of Article 67, his Excellency thinks hard labour is greater punishment than flogging, and it should therefore not be commuted for it. The native soldier dreads flogging most of the two.

Suggestion by Major-general Sir C. J. Napier, Governor of Scinde.

63. Article 18. His Excellency proposes to add, to plunder fields or gardens, "or other property;" and states, for instance, that in Scinde there are rarely houses to break into, and grain is generally heaped up, and covered with a paste made of mud. Provision is made in Article 37 for plundering gardens and fields, or destruction of property of any kind. The Article under consideration (18) relates exclusively to time of war. I see no objection to the proposed addition, with a slight alteration in regard to property.

64. Articles 32, 33. It is suggested that sentries in the Bombay army are frequently placed over treasure and state prisoners, and that the neglect of such sentries should subject them to corporal punishment. The suggestion is a good one; to carry it out, I would propose not to alter Articles 32 and 33 for the purpose, because that would create some confusion in the arrangement of the code, but to insert two new Articles after the present Article 19, in the following terms:—

"Article. Who shall without proper authority release any state prisoner, or shall suffer, through carelessness or neglect, any such prisoner to escape; or,

"Article. Who being a sentry placed over any state prisoner, or over treasure, or over a magazine, or other place of deposit of stores or other articles, the property of Government, shall quit his post without being regularly relieved, or without leave."

65. By placing these new Articles in the same subdivision with Article 19, the offences which they provide for become liable to the punishments of death, transportation, imprisonment for life or for any period, corporal punishment and dismissal. This goes beyond the actual suggestion of Sir Charles Napier, who mentions only corporal punishment as appropriate; but there is no other subdivision which would admit these new Articles, and, as capital sentence may justly be incurred in some rare instances by offenders violating these Articles, the proposed location of them appears the most convenient.

66. Article 53. Sir Charles Napier thinks the offence of selling or wasting ammunition should be liable to corporal punishment. His Excellency has not made the same suggestion with regard to the offence of selling or spoiling a horse, or arms, accoutrements, &c., provided for in Article 39, which is exempted from corporal punishment.

67. The Commander-in-chief in India did, at Simla, in August 1844, express his opinion that the offences provided for both in Article 39 and 53 (*i. e.* in Articles 43, 44 of the code prepared in 1838) should be made liable to corporal punishment; but considering that that opinion was not a final or decided one on his Excellency's part, but based on my own suggestion, from which the Adjutant-general differed, and considering, also, that it was desirable, in restoring corporal punishment, to limit it to offences likely to occur frequently, rather than extend it to offences such as those in question, which are very rare, in drawing up the code, I placed the Article 39 where it would be exempted from corporal punishment, and Article 53 where it would not only be so exempted, but also made liable to less severe punishment; the wasting of ammunition being of less importance than the destruction of arms, accoutrements, &c. But in the confidential questions (Question 12), the "sale of arms" is enumerated among the offences which it is proposed to subject to corporal punishment. It remains, then, to decide whether the offences in Articles 39 and 53 shall or shall not be made liable to flogging; my opinion, on mature consideration, is, there is no necessity for making them so.

68. Article 66, clause 3. Sir Charles observes that they do not keep rank in the Bombay army, so as to admit of the punishment of placing a man lower on the list of the rank which he holds. The Commander-in-chief at Bombay has not made this observation, but has declared the provisions of the proposed Articles

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to be satisfactory, but the point may have escaped notice. To meet Sir Charles Napier's remark, I would propose to insert, after "specified" in the sentence, these words: "or to forfeit any specific portion of his service, and any advantages accruing therefrom." This would enable a court martial to deprive a soldier of any period reckoning towards service, for which he would otherwise, on its completion, have claimed increase of pay; a punishment likely to be useful. The same to be introduced in Articles 67, 69, 71.

69. Sir Charles Napier further observes, that 200 lashes are too severe, and suggests half that number; and, in conformity with this suggestion, his Excellency proposes to limit a district court martial (Article 69) to 75 lashes instead of 150, and a regimental court martial (Article 71) to 50 instead of 100 lashes. The numbers of lashes in these Articles were adopted from those to which courts martial of the same descriptions are limited in the Queen's service and in the Company's European troops. The diminution of the numbers has not occurred to any other of the authorities, nor apparently to any of the general and other officers in the three Presidencies to whom the confidential questions were circulated, several of whom have, on the contrary, proposed limitations in excess of those contained in those Articles. Major-general Sir James Lumley, who considers the restoration of corporal punishment unnecessary, expressed to me his opinion that the numbers of lashes awardable in the native army might unobjectionably be made larger, but it was desirable to place the native troops on no worse footing in this respect than the European troops. The Commander-in-chief in India approved of the assimilation. In 1827, though Lord Combermere thought fit to limit corporal punishment to certain offences, his Lordship did not consider it necessary to make any limitation as to the number of lashes; and in this respect the practice of courts martial in the native army in Bengal generally followed that obtaining from time to time in the European troops, rather keeping below the relative numbers than exceeding them. It is to be considered, also, that where the maximum is so low as 200 lashes for a general court martial, it will be unnecessary to inflict sentences to that extent frequently, because of the various shades of crime; and should that number of lashes be often awarded, the sentence may always be mitigated at discretion by the confirming authority. And so of other courts martial in their degree.

70. On the duration of solitary confinement, Sir Charles Napier observes, with reference both to this Article (66) and Article 19, that 28 days are too long a period, that three weeks is the utmost length of time a man should be in a solitary cell in England, and in this country even that is too long. His Excellency suggests that medical opinion should be consulted. The period has been adopted from the Articles of War for 1844 for Her Majesty's forces, and even if it were considered necessary practically to restrict the infliction of solitary confinement, so long as the Articles for the European troops are not altered in this respect, I conceive it may not be thought desirable to make an alteration in the Articles for the native forces. It will scarcely be feasible to carry completely into effect the punishment of solitary confinement in India. The habits and prejudices of the native soldiery of the Hindoo classes, especially of the higher castes, will make it indispensable to allow the prisoner * from his cell at certain periods of the day; and even though on such occasions strict silence were enjoined and carefully preserved, the very breathing of fresh air, and the sight of objects among which he must pass on his way to and from his place of confinement, would tend materially to diminish any evil effect of the confinement itself. In the Bengal army solitary confinements have never hitherto been authorized, nor have the means been contrived for carrying it into effect. But perhaps the best available criterion of the probable effects of this punishment on the native soldiery at either of the Presidencies, is the experience of it as carried into execution at Madras. A return on the subject is among the papers transmitted from the Presidency, and will be considered in a subsequent part of this note.

* Blank in orig.

71. Article 70, clause 3. Sir Charles Napier objects to what his Excellency terms a double confirmation of sentences of regimental courts martial. It is not a double confirmation that was intended in this clause, and indeed that was expressly avoided in framing the clause. But the sanction and authority of the General commanding the division is required before a sentence of dismissal or corporal punishment, or imprisonment with hard labour, can be carried into execution,

execution, such sentence having previously been confirmed by the officer commanding the regiment, and the general officer having power to annul the sentence, and to direct the prisoner's release; the effect is certainly tantamount to a double confirmation, and is open to the objection of Sir Charles Napier, that, "If the General differs in opinion with the commanding officer of the regiment, that difference is published to the regiment, which would be better avoided."

72. I submit, however, that there are no means of avoiding the publication of a difference of opinion, and that the taking away from the regimental commanding officer the power of confirmation, and conferring it on the General above, in the cases mentioned, would not remedy the difficulty. The trial is held, the proceedings are submitted to the commanding officer, and forwarded by him to the General. The regiment is well aware that the commanding officer is prohibited by the Articles of War from carrying into effect punishments of the descriptions mentioned, and that he must refer them to the General; but they know also that the commanding officer can remit the sentences without such reference; and if, on the return of the proceedings, the prisoner be released, the difference between the two authorities is made manifest at once. It is, therefore, the same thing, in the eyes of the regiment, whether, in submitting the sentence for orders, the commanding officer enter his confirmation on the face of the proceedings, or signify his opinion of it by letter. But it is very important that as much power as possible may be given to the regimental commanding officer, consistently with due consideration to the men under his command; and though it may be deemed necessary to require superior sanction to inflict the punishments of dismissal, flogging or imprisonment with labour, because these punishments are comparatively the most severe, and demand caution in the execution of them, yet it cannot but greatly lower the commanding officer of a regiment to deprive him of power to deal at all with such sentences; and the restriction cannot stop short of that if Sir Charles Napier's suggestion be acted upon. The power of causing the offender's trial is inherent in the officer commanding the regiment, or at any rate it is conferred upon him necessarily by the Articles of War; in all ordinary cases he is vested with authority to confirm, or remit, or mitigate the sentence; and to make an exception in the more important sentences, is to paralyse his authority just when it is most of all desirable that he should exercise it. It is detrimental to his power to require a reference in any case to superior authority, but the peculiar characteristics of the native soldiery are thought to make this course necessary in the more severe sentences; yet where the reference can be made in any way compatibly with the preservation of the commanding officer's authority, it is desirable so to make it. The power of confirmation, in the first instance, preserves to him this authority, and as, in the great majority of cases, the general officer concurs with him, his authority is in practice generally preserved. Of the occurrence of a difference of opinion, and of the evil effects of its being known to the corps, it may be well observed that all regimental trials, without exception, are submitted to the general officer's perusal; and, even in cases of ordinary sentences, he has it in his power to annul the act of the commanding officer if he observes illegality in the proceedings. Should he interfere in this way, as he must sometimes unavoidably do, or he tacitly sanctions illegal procedure, the difference of opinion with the commanding officer must become public, and even more directly and more inconveniently than it could in the case of difference as to the infliction of the severer sentences in question. On a difference in the latter cases, the sentence being still in abeyance for want of sanction to inflict, and that sanction being withheld, the infliction does not take place; on a difference in the former cases, the sentence is actually in operation when the superior authority of the General is exercised to annul its further effect. I need not lengthen these observations by dwelling on the inconvenience and evil effects of depriving the regimental commanding officer of power to remit or *mitigate* the sentences in question, which must be involved if the power of confirmation be taken from him. A sentence must be confirmed before it is capable of mitigation or remission, for without confirmation it is nothing; the confirmation alone gives it that substantiality which is requisite as a foundation for further dealing with it, whether by carrying it into effect, or by remitting or mitigating it.

73. Article 102. Sir Charles Napier states his opinion, that "extra duty is a good punishment; that duty is neither honourable or dishonourable, but it is generally very unpleasant, and it is fair to make the bad soldier do the duty of the

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good one." Perhaps it will be convenient to take up the consideration of this suggestion in connexion with the opposite opinion given by the Commander-in-chief at Bombay (*see* para 85).

74. His Excellency points out the mistake in this Article (102), which appears to prohibit courts martial from awarding solitary confinement. It was intended only to prohibit courts martial from sentencing to solitary confinement for so short a period as seven days, to which extent the commanding officer is himself authorized to punish; but the wording is certainly faulty. I accordingly propose the subjoined alteration, *i. e.*, the words "or solitary cell" to be omitted, and the following words to be added after "court martial," viz., "and a commanding officer may award solitary confinement not exceeding seven days."

75. Article 103. Sir Charles Napier suggests the insertion of the words "and resisted as long as he was able," after the word "enemy." It would not appear to be of any consequence whether the suggestion be or be not adopted.

76. Among the papers is one containing observations by Sir Charles Napier on the note to Section VI., providing for criminal offences. The note in question merely announced, that it was intended to make certain Articles giving distinctive jurisdiction over criminal offences to general and district and regimental courts martial in places where no criminal judicature exists; upon this note his Excellency sets out with stating his opinion, that the greatest care should be taken not to tie up the "courts martial by defined rules when it can be avoided;" and then proceeds at length to comment on the mode in which military Judge Advocates conduct their duties. I need not enter into those observations, for they do not appear to me legitimately to arise out of the note on Section VI., on which his Excellency has based them. The intention of the note is being fulfilled in the preparation of Articles for regulating the punishment of criminal offences, of the expediency of which even Sir Charles Napier himself, I imagine, would not doubt, if he properly understood what was proposed.

Suggestions by the Commander-in-Chief at Bombay.

77. Sir Thomas M'Mahon has not suggested any alterations in the form of the Articles or their wording, but he throws out for consideration two or three points.

78. First. The want of authority for the forfeiture of pay and period of service by native soldiers in confinement before trial, and while undergoing sentence after trial, these being especially provided for in the Mutiny Acts for the Queen's forces and the Company's European troops.

79. The allusions to the Mutiny Acts are to Section 46 of that for Her Majesty's forces, and to Section 33 of that for the Company's service.

80. His Excellency mentions that on a reference from the Military Auditor-general, the Government of Bombay decided, in May 1837, that nothing beyond the subsistence of the prisoner could be deducted; that in the draft Articles of War made in 1838, provision was made in Article 78 for withholding the full pay of prisoners, the arrears being restorable on acquittal; but that that draft was not passed into law, and a subsequent draft of an Act for the purpose published in 1842, was relinquished, on a representation from the Government of Fort St. George. His Excellency strongly advocates the subjection of men in confinement to forfeiture, if the grounds of the objection from Fort St. George do not now exist.

81. The Article 78 in the draft of 1838 was as follows: "Any commissioned officer, non-commissioned officer or soldier, under arrest or in confinement, under charge of any offence, shall not be entitled to receive his full pay and allowances from the day of his commitment till the day of his return to duty in his regiment, or to the party he shall be ordered to join, but shall be subsisted at a rate proportioned to his rank; and if he be acquitted, he shall receive the balance of all arrears of pay and allowances accruing during the time of his confinement."

82. A draft of an Act, to which allusion is made, was published on the 22d of November 1841 (not 1842), and declared no soldier entitled to pay, or to reckon service towards pay or pension during confinement before trial, or in arrest for debt, or as a prisoner of war, or while confined under a charge of which he should afterwards be convicted. The draft was withdrawn, because the Madras Govern-

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ment showed that its provisions as to forfeit of pay would be ruinous to the families of the sepoys at that Presidency, and that it was politic to let the soldiery depend implicitly on the inviolability of pension, and in these views the Government of India concurred. The papers on the subject are put up with this note.

83. The same objections still exist, and appear of themselves sufficient to show the inexpediency of introducing the forfeiture promiscuously; but to a sentence of loss of service, as in Articles 66 and 69, no objections made in any quarter on the present occasion.

84. When I submitted the draft Articles of War of 1838 to Sir Hugh Gough, before quitting Simla, his Excellency expressed his concurrence in the opinion of the Adjutant-general, that Article 78 should be omitted, "because it is unadvisable to make any deduction from the pay of native soldiers while in confinement, previous to trial and sentence." Embracing the same opinion myself also, I did not insert in the new Articles any provision for forfeiture of pay of prisoners before trial. It is so undesirable, when it can be avoided, to interfere with the allowances of native soldiers, and for so long a period has it been customary to give them the bulk of their pay during confinement, that the contrary rule would be an innovation fraught with much danger of exciting discontent, and it is also to be considered, that for disgraceful offences, for embezzlement, for perjury, and for damage occasioned by misconduct, stoppages of pay are awardable in various degrees. It would defeat the object of these stoppages, if offenders were subjected to forfeiture in every case of conviction as proposed by Sir Thomas M'Mahon.

85. Secondly. The Commander-in-chief of Bombay suggests, with reference to Article 102, that "extra duty for two reliefs not only appears liable to objections of a physical nature, as regards the individual, but is quite discountenanced in Her Majesty's army; it being considered highly inexpedient to class anything as a punishment, the cheerful performance of which the exigencies of the service may render it necessary to require from the best-behaved soldier."

86. It was not intended that a man should be placed on actual duty as sentry for any period exceeding the customary one or two hours at a time, but only that he might be made to stand fast on a guard for the period of two reliefs of the sentries of such guard, taking his turn of sentry with the other men. This explanation will, I conceive, remove the physical objection made by Sir Thomas M'Mahon. The Commander-in-chief at Madras proposes "three turns." Minute dated 28th February 1845.

87. On the point of expediency, it has been seen that Sir Charles Napier has given a contrary opinion to that of the Commander-in-chief at Bombay, (*see* para. 73 of this note). It is to be considered, that by putting a man on extra duty as a punishment, he is subjected to temptation to neglect that duty, and thus to commit offences of much graver character than that which caused his being so punished. If the individual be a man of good character and correct feeling, he will, perhaps, not allow himself to shrink from the strict performance of duty, although in the shape of punishment; but the irksomeness of duty of a sentry is capable of so much mitigation by the self-indulgence of the individual when no eye is upon him, that where the chance of detection is not great, the temptation to remissness is very powerful. It is also an inherent objection to any punishment that its greater or less severity can be regulated by the *solicition* of the sufferer himself, and this objection applies to hard labour also, as well as to extra duty, but not in the same degree. The argument in favour of extra duty as a punishment is well put in the remarks of Sir Charles Napier, and, as far as I have observed, it has operated well in the native army; on the whole, I would submit, that without making it a question of honour or dishonour, it is desirable that the actual disagreeableness of duty should not be enhanced by making it a punishment, lest the zeal which is requisite to its exact and soldier-like performance should be destroyed or diminished.

Sic orig.

88. Thirdly. The Commander-in-chief at Bombay suggests that some effective mode of preventing re-enlistment should be established when men are discharged for misconduct without having been flogged. His Excellency proposes that they should

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be branded, as is done with European deserters, who are marked with the letter D. A similar proposal was made by the late Sir Henry Fane, when Commander-in-chief, but it was considered inexpedient by the Supreme Government. The same suggestion is made by some of the officers of the Bengal army, who have replied to the confidential questions. I would observe, that in the European troops a deserter branded is not discharged, but in general remains in the ranks; the mark upon him is not inflicted for the purpose of preventing his re-enlistment, as in the proposed branding of the native soldier, and therefore the analogy does not lie.

89. The branding of natives convicted in the civil courts of criminal offences is restricted to those who are sentenced to imprisonment for life, and exemptions may be directed by the Nizamut Adawlut. Few military offences, however, can be classed with the more serious criminal offences; but, independently of that consideration, it would be hard to inflict an indelible mark on any man, of which the effect might probably be, not to keep him out of the ranks merely, but to interfere greatly with his obtaining a livelihood at all; and much more hard would it be in the case of a man discharged without flogging, when the Articles of War (as they do in the draft) provide that punishment for disgraceful crimes and for the higher military offences. If a man be flogged, he is effectually branded; if not, it would seem unjust to brand him in any other way. A man imprisoned for life may be an exception; but then it is not proposed by any one to brand as a punishment or a mark of infamy, but solely to prevent re-enlistment.

90. I think a much better means of preventing re-enlistment would be to require the registration of all recruits, and require the recruit to bring with him satisfactory proof of such registration; all persons who are candidates for the military service should be made to enter their names in the office of the magistrate within whose jurisdiction they may reside, who should keep descriptive rolls of all such persons, with such particulars of their personal appearance and of their connexions and residence as would at the same time vouch for the recruit and lead to the detection of the deserter. Native officers charged with recruiting parties should be made to bring their men to the office of the magistrate for identification, and should be furnished with copies of the magistrate's rolls, to certify their commanding officer as to the identity of the recruits. Whenever an individual presented himself for enlistment, he should not be admitted without the magistrate's certificate, or without reference to the magistrate from whose jurisdiction he may have come. When a recruit is rejected for physical infirmity, or a soldier dies or deserts, or is discharged, intimation should be given to the magistrate by commanding officers. At first this registration would be laborious, but it might be effected, and once done, the continuance of the registers would be comparatively easy; the effect would be extensively and permanently beneficial. This plan could, of course, be only followed out in the British territories; it would be very difficult, if indeed practicable, in Oude, but possibly the pension paymaster at Lucknow might, in a great degree, effect what is desired.

Suggestions by the Commander-in-chief and by the Judge Advocate-general at Madras.

91. Article 1. The Marquis of Tweeddale observes, that the "declaration" referred to is not understood; that oaths have been abolished, and recruits make only a declaration, which is given by his Lordship. The words "I swear" occur in this declaration, which involves some religious form. It is the same, I observe, which Sir Robert O'Callaghan, when Commander-in-chief at Fort St. George, designated in April 1835, "the oath administered to the recruits of the Madras Army." The Judge Advocate-general also suggests that, as it appears indispensable to *swear* recruits, a provision of imprisonment should be made to punish a recruit who refuses to be sworn. The terms in which Article 1 now stands were settled by the Honourable Mr. Amos in 1838-39, after he had considered the suggestions made in every quarter.

92. One declaration alluded to in this Article is that which may be seen in Article 1 of the draft published in November 1838. That is in use in Bengal. It does not appear to me to be advisable to make any alteration in the Article, which was not intended to introduce any change in enlistment, but to perpetuate the existing forms; where declaration is used, it will continue to be used; where none is customary, as at Madras, it may still be administered. I conceive, with Lieutenant-colonel Chalon, that nothing short of an oath would be sufficient in the case of a recruit; but the proposal to punish a recusant appears objectionable. I believe no instance

instance is known of a recruit refusing to be sworn; practically, therefore, it is unnecessary to make any alteration in this respect.

93. Article 3. I do not perceive the expediency of the allusion to general orders proposed both by the Commander-in-chief and the Judge Advocate-general. It is matter of course that the discharge certificate shall be granted, "according to the general order on that head, which shall be in force at the particular Presidency to which the soldier shall belong," and therefore I see no occasion for inserting those words.

94. Article 4. It does not appear to me to be any offence to enlist without making known the fact of his previous discharge from another corps, which the Commander-in-chief proposes to render punishable. The possession of a regular discharge entitles the soldier to re-enlist if he can; no deceit is practised in the service of his availing himself of the privilege, and I can see no object in obliging him to divulge his previous history, especially as in many cases his having served in one regiment may prejudice his admittance into another.

95. Article 5. His Lordship suggests the substitution of the word "authority" for "State," observing that combination may be made against a commanding officer, and yet not against the State. I submit that the term "mutiny," which occurs just previously, embraces combination against a commanding officer, while "concealed combination against the State" points at a very distinct and treasonable offence. I think the alteration suggested would defeat the object of this part of the Article.

The words "regiment or corps" appear to include all the words "party, post, detachment or guard," which occur in the corresponding Article for the European troops, and which the Judge Advocate-general proposes to insert. I think the Article is quite sufficiently perspicuous.

96. Article 6. It is stated to be an objection to this Article that it makes wilful violence to an officer, under any circumstances, a capital offence; it was the very purpose of the Article, and the intention of the Governor-general under whose instructions it was made (to protect officers under all circumstances), and we thus escape the question of execution of office, which so often embraces cases of violence to officers by European soldiers; in Bengal the sepoy has been always capitally liable for violence to officers, so that the provision of the Article is no novelty.

97. Article 9. The Judge Advocate-general proposes to follow the Articles for Europeans in making sleeping on or quitting a post capital, in peace as in war, without distinction. I think the distinction made in this Article and Article 23 very appropriate, the offence being much more serious in time of war than at any other time. Sleeping on a post can rarely be deserving of death in time of peace, and quitting a post, if it be very serious, as when a sentry makes off with treasure placed under his charge, of which we have several cases, usually merge into the offence of desertion, which is capital; so that practically there is no inconvenience whatever in the distinction made in the Articles. It will be observed, also, that in consequence of Sir Charles Napier's suggestion on Article 32–33, it has been proposed to insert two additional Articles after 19, which make the only very serious occasions of this offence punishable with death (*see* para. 64, of this note). These appear to answer every purpose.

98. Article 14. I think the Commander-in-chief's wish would be better met by taking out the comma after "aid," than by inserting a comma after "connive at," as his Lordship proposes.

99. Article 15. I would submit that the word "enemy" could not everywhere legitimately be explained, as suggested by the Commander-in-chief, to mean all insurgents, rioters, robbers, or others, who may be in any way in opposition to the authority of Government; perhaps it would suffice to insert after "enemy" the words "or persons in arms against the State," in this and the 16th Article.

100. Article 17. I see no necessity for the proposed insertion of the words "or party" after "colours;" but there seems no objection to it.

The Judge Advocate-general would omit the words "in time of action," but the next Article seems to answer all predicaments except time of action, and the proposed alteration does not appear expedient.

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101. Article 21. The words "or imprison" are proposed for insertion as more applicable than "arrest" to the case of a soldier. I think them unnecessary, but they are unobjectionable; they occur in the corresponding Article for the European troops.

102. Article 26. The Commander-in-chief's proposal to insert the words "or as a consideration for" obtaining promotion, &c., appears an improvement.

103. Article 27. His Lordship suggests the words "or certificate or document" at the end of this Article. I have inserted these words as proposed; but the Article as it stood before followed exactly the corresponding Article (42) for the European troops.

104. Article 33. The word "picquet" proposed by the Judge Advocate-general has already been introduced, at the suggestion of Sir Hugh Gough. It appears undesirable to omit the words "in time of peace" (*see* the remarks on Article 9).

105. Article 36. The Marquis of Tweeddale makes serious objection to this Article, as tending to involve the Governor in an official recognition of pagodas and other similar buildings, and as being unnecessary. The Honourable Mr. Chamier's minute, dated 1st March 1845, aptly explains the object of the Articles, and replies to his Lordship's observations. The intention of the Article was to afford complete protection to all classes in their religious observances, and to prevent wanton acts of outrage in places of worship or against religious prejudices. For instance, we have cases of men tried for throwing pigs into mosques, and for killing cows in the lines of Hindoo sepoys; and these offences, and such as these, it is proposed by this Article appropriately to subject to imprisonment, with hard labour, which could not be awarded under Article 54, to which Lord Tweeddale would refer them. Article 37, which his Lordship also refers to, does not seem to apply to such offences in general.

106. Article 37. The Commander-in-chief would make this Article more brief, and at the same time equally comprehensive. I have made the proposed alteration, inserting also the word "plunder," which appears desirable.

107. Article 38. The Judge Advocate-general is supported by the Commander-in-chief in strongly objecting to this Article; but it has not been properly understood. The words "when off duty" sufficiently mark what was intended, and there is no reference or application to sepoys travelling on furlough. The practice of carrying bludgeons and other weapons when men off duty visit neighbouring bazars or towns, has been a fruitful source of offence against both discipline and good order, and it became necessary in Bengal to prohibit the practice under penalty of severe punishment. This Article follows the general order, dated 3d June 1843. Lieutenant-colonel Chalon observes, "that the improper use of weapons would of course be punishable at any time." It might, on the other hand, be observed, that the proper use of weapons is easily distinguishable, and would not subject men to trial under this Article.

108. Article 39. The suggestions by the Judge Advocate-general to insert the word "power," and to omit the words "or spoil his arms, &c.," appear appropriate.

109. The Commander-in-chief observes that the offences provided for in Articles 23 to 33 inclusive, 35, 37, 39, and 43 to 45, should not be placed beyond the cognizance of a regimental or detachment court martial. His Lordship appears not to have adverted to Article 59, which extends the jurisdiction of inferior courts martial over offences of every description except mutiny.

110. Article 40. The Judge Advocate-general proposes to introduce after "military purposes" the words "or who shall unlawfully sell, embezzle, fraudulently misapply, or wilfully spoil, or suffer to be spoiled," which are in the corresponding Article (16) for the European troops. The Article is taken from the draft of 1838. I think some needless repetition is avoided by it, and that it is preferable as it stands; but the offence of "spoiling or suffering to be spoiled," is not provided for, and to that extent I would propose to follow Lieutenant-colonel Chalon's suggestion.

111. Article 44. The word "military" is proposed to be inserted after "regimental" purposes. It has been substituted for it at the suggestion of the Commander-in-chief in India.

112. Article

112. Article 48. I perceive no objection to insert "for exercise or other duty" after the word "appointed," though there appears no necessity for doing so.

113. Article 49. There appears no occasion to insert the words "detachment or party," in this Article, as suggested.

114. The Commander-in-chief would make the offences in Articles 48, 49, 50 and 53 liable to corporal punishment. With deference to his Lordship, I think that if, for such offences as not attending, or quitting parade, absence without leave, and straying two miles from camp, corporal punishment were to be made awardable, there would be no reason for exempting any other minor offence from the same punishment.

115. Article 51. Lord Tweeddale thinks the Article too stringent, unless "when on service" be added, and constantly liable to be evaded. We have a similar Article (30) for the European troops, without mention of service. The word "camp," however, answers the purpose of restricting the offence of situations of service on the march.

116. Article 54. The Judge Advocate-general suggests that the words "except in cases of gross insubordination" be added, so as to make that offence punishable with corporal punishment and imprisonment with hard labour. The suggestion appears to be good.

117. Article 55. The Commander-in-chief would make the offence of refusing to give evidence liable to imprisonment with hard labour, and the Judge Advocate-general proposes to subject officers to dismissal for this offence. It appears desirable to subject both officers and soldiers to dismissal for obstructing justice, and I have made alterations in the Article to this extent only.

118. Article 56. I think it is a good suggestion of the Judge Advocate-general to make this Article provide also for the offence of inducing others to give false evidence. A similar provision might be inserted in the preceding Article, and in Article 58.

119. Article 57. It appears reasonable to subject the offence of gross insubordination in presence of a court martial to severe punishment, as proposed by Lieutenant-colonel Chalon and the Commander-in-chief, but not to make it capital, which is involved in his Lordship's suggestion to transfer the offence to the first division of this section.

120. Article 61. The old limitation of confinement to eight days previous to trial, now suggested by the Judge Advocate-general, was purposely omitted in this Article under the Governor-general's instructions, because of its practical inconvenience, it being considered sufficient to provide that a man shall not be confined longer than may be actually unavoidable, which meets all cases. I see nothing in the objections to the second clause, made by Lieutenant-colonel Chalon, to lead to any alteration. The period of arrest would never legitimately become a question for the court, unless it were urged by the prisoner in his defence; and even then, though the arrest might be shown to have been neglected, it by no means follows that the offender should escape punishment, and this clause certainly provides no such impunity in any case. An offender would no more necessarily escape under a neglect of this clause, than he would if it appeared that the previous clause had been neglected by his having been kept in confinement longer than was avoidable. In conceiving that the clause militates against Article 62, by which liability to trial is restricted to three years in the absence of manifest impediment, Lieutenant-colonel Chalon has overlooked the closing words "*in conformity with these Articles of War*," which directly point to Article 62, and cannot be misunderstood. The object of this clause was quietly to set at rest the question raised by the General Orders issued in Bengal in the case of the 34th Native Infantry, and I endeavoured to do so without introducing any novelty. Accordingly the clause states nothing more than the actual law military as universally obtaining, and is indeed rather declaratory than legislative. I submit that, under existing circumstances, this clause of the Article is *indispensably necessary*, and I do not perceive that it can lead to the slightest embarrassment in practice.

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121. Article 66. The Judge Advocate-general proposes "seven years" as a limit to transportation. But it is in contemplation (*see* para. 202 of this note) to allow of transportation for life only,

On the punishment of "losing the corresponding benefit of length of service," doubts are expressed, as seniority does not necessarily command promotion. But where claims on other grounds are equal, seniority will carry promotion; and hence there is a distinct loss in losing standing. The intention was, however, not to affect promotion so much as the claim to increased pay, and to pay pensions which are claimable only for certain fixed periods of service. These periods will of course regulate a sentence of loss of standing, which involves a corresponding loss of service.

The Marquis of Tweeddale objects on principle to awarding forfeiture of future claims. This is taken from the Articles for the Queen's service. His Lordship's suggestion that the Commander-in-chief should have power to restore forfeited advantages, is already provided for in Article 68.

The Judge Advocate-general would omit sentences of reprimand to officers. It was the object of these Articles to leave no awardable punishment unspecified. I see no occasion for alteration.

122. Article 67. The Commander-in-chief has observed that the objections urged by the Judge Advocate-general do not outweigh the advantages of the power of commutation given him, and strongly urges its retention. The principle of the commutation authorized, is, in fact, only a mitigation of the sentence; and I do not see the force of the objections urged. In truth, there is very little that is new in the power now to be conferred, and it was the Governor-general's desire that large powers of commutation should be given.

Hitherto the power of substituting transportation for death has not been exercised in Bengal, but imprisonment with hard labour has for many years been substituted for death; both, it is believed, were authorized by the Regulations of 1827 at Madras and Bombay, and both are provided as commuted punishments in this Article; solitary confinement being also added at discretion.

In lieu of transportation, the Commander-in-chief has always possessed the power of substituting dismissal in cases of soldiers, and with the sanction of Government, he possesses it in cases of officers; and this is now to be authorized.

In cases of dismissal of officers, suspension is now made a substitute, and we have several precedents of this commutation, though not hitherto sanctioned by Regulation.

Corporal punishment, before the abolition, and imprisonment with hard labour, being necessarily followed by discharge, the power of mitigating them into mere discharge has been constantly exercised; and the mitigation of imprisonment with labour into simple imprisonment is obvious and very common.

The only provisions which are entirely new in the commutations now proposed, are the substitution of imprisonment, simple or mixed, and with or without solitary confinement, for transportation (in cases of soldiers), or for corporal punishment, and of reduction to the ranks, of displacement of rank with loss of service for corporal punishment, for imprisonment with hard labour, or for dismissal.

I think that though reduction to the ranks must precede sentence of corporal punishment on a non-commissioned officer, yet there is no "contradiction" in saying that reduction may be substituted for flogging, as Lord Tweeddale suggests.

123. Article 68. Lieutenant-colonel Chalon suggests, that district courts martial might be authorized to consist of officers of the same corps, where others cannot be procured. I had purposely omitted this provision, but on further consideration I think it should be introduced.

With reference to the Commander-in-chief's remarks, I think that though the convening officer must confirm the sentence of which the part adjudging forfeiture must also be confirmed by the Commander-in-chief, the whole should be referred as this Article directs, and not a part only.

124. Article 69. The Judge Advocate-general would restrict forfeiture of future service to serious crimes, and by sentence of general courts martial only; this forfeiture is made applicable only to disgraceful conduct, and follows in that respect the Articles for the Queen's service. I think no change is required in this particular.

The

The Commander-in-chief would authorize forfeiture of additional pay (clause 2, and so in clause 4 of Article 66), of course either absolutely or for a time; considering that the forfeiture is for disgraceful conduct, and that the Commander-in-chief has the power to restore it, if thought expedient (Article 68), I think the forfeiture should be absolute, when adjudged by the court martial.

125. Article 70. Observing that this Article differs from what is proposed in the 13th of the confidential questions, in allowing a commanding officer to commute corporal punishment into imprisonment with hard labour and into dismissal, I have made alterations in the Article conformably. Lord Tweeddale strongly recommends that officers commanding regiments should be empowered to confirm and carry into effect all sentences of regimental courts martial, the revision by general officers commanding divisions, and the monthly reports to the Adjutant-general being sufficient check on commanding officers of corps. The Judge Advocate-general also urges the same point, and suggests that sentences might be subjected to the confirmation of the commanding officer, or of the General of division, so that if want of sound discretion were observed on the part of a commanding officer, the General might direct him to submit proceedings to himself in future. This last arrangement appears to me objectionable, as the exercise of such power by the General would be most prejudicial to the authority of such commanding officer over his men, and would especially prejudice him at a station where there were other regiments; besides if a commanding officer's power is to be interfered with, it should be, I think, by no less authority than that of Government, and should be affected, if at all, only by Articles of War, generally applicable to all Commanding officers of regiments.

126. The restriction of the power of commanding officers was introduced into the draft of Articles, in conformity with the existing rules on the subject, since 1827, when Lord Combermere first made the restriction; officers commanding corps have not had the power to carry into effect sentences of corporal punishment without the sanction of Generals of divisions, and sentences of dismissal and of imprisonment with hard labour have been subjected to the same superior sanction since they were instituted as punishments. My own belief is that much mischief has been done to discipline by taking away the power of final confirmation from commanding officers. In a former part of this note (para. 72) I have expressed an opinion unfavourable to interference with the power of commanding officers.

127. I think the question, whether the power to carry into effect all sentences should be given to them, as one of much importance, and the changes made from time to time in regard to sentences of corporal punishment have greatly enhanced its difficulty. In 1827, such sentences were ordered to be referred to Generals of divisions; in 1832, this reference was countermanded, and the power to carry into effect was given to commanding officers; in 1835, the reference to general officers had again just been ordered, when corporal punishment was abolished altogether. Then, as to dismissal, commanding officers have never had power to confirm such sentence; it was instituted as a distinct punishment in 1835, in lieu of flogging, when that was abolished, and for these ten years it has required the authority of Generals of divisions. Again, imprisonment with hard labour, and simple imprisonment, to a certain extent, since they were authorized by the Act of 1839, have been subject to the sanction of Generals of divisions. If commanding officers now have the power conferred on them of carrying all such sentences into effect, it must be done in the face of all these previous arrangements; and if there be a probability of dissatisfaction on the part of the soldiery at the re-introduction of corporal punishment, that dissatisfaction would be much increased when they found that the infliction of the sentence was confided to the discretion of their commanding officers. When these points are fully weighed, and in addition to these, it is considered that a proportion of our men have enlisted since the abolition of corporal punishment, that the characters of commanding officers of regiments are very various, so that powers which might most properly be entrusted to some, cannot with safety be confided to others, while the nature and rules of the Company's service present much obstacle to the satisfactory distribution of commands, I believe that all the main objections to the extension of the powers of officers commanding regiments will have been presented to the view, and they are in appearance formidable enough.

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128. But I do not myself attach any weight to the argument that many men have enlisted since flogging was abolished, and that these might justly complain of its re-introduction. I have no doubt that much more is included in that argument than ever occurred or would occur to the great majority of our sepoys, and that if the power of flogging were restored, the comparative paucity of consequent solicitations for discharge on the one hand, and the undiminished facility of procuring recruits on the other, would show clearly that the argument in question has no strength whatever; neither do I perceive any cause to apprehend dissatisfaction on other grounds; and a very large majority of officers who have been consulted have declared their opinion decidedly to the same effect; the opinion is nearly unanimous. Undoubtedly the seeds of disaffection might be sown by an indiscreet or excessive exercise of the power of flogging, and this would just as naturally occur in any other army as it would in our own; but I think the limitations to corporal punishment made in the proposed Articles of War, are well calculated to conciliate the approbation of our native troops as a body, and that these, with the power of commutation, conferred in the Articles, will secure every desired object. The consideration that the views of Government will have to be carried out by a number of commanding officers very variously constituted in judgment and in temper, presents the only real difficulty to be contended with. But the ends of discipline so manifestly require that commanding officers should have adequate means to control their men, and so imperfect must that control be when the power to carry sentences into effect, passed by regimental courts martial convened by themselves, is withheld from them, that in the choice of evils, for such it is, I am persuaded it would be far less objectionable to all commanding officers of regiments to carry into effect all sentences without exception, than to perpetuate the system heretofore obtaining of reference to higher authority. I have, however, not altered the Articles in this respect.

129. Perhaps I may in this place avail myself of the opportunity of briefly submitting for consideration the expediency of introducing *corporal punishment* by rattan; it has many advantages. Being applicable on the very spot, it would have all the force of immediate example; it would not be inflicted on the naked person, nor with the ceremonies which render flogging so revolting to the spectator; it would leave no indelible marks, nor send the sufferer to hospital; it would not excite the dangerous sympathy of the man's comrades, and yet it would give sufficient pain to be a punishment to the offender, and to deter others from committing offences. I am convinced that this punishment would render flogging with the cat scarcely ever necessary for offences connected with discipline; and it is well suited to the feelings of the native soldiery. But punishment with the rattan is *essentially* a summary punishment, and should be distinguished in this way from flogging with the cat. I would propose not to allow it to be commuted for flogging, because this would make flogging still more revolting by direct contrast, and neither do I think it should be awardable by court martial, because the formalities of its infliction as a sentence would be out of place, and tend to render it unimpressive. It appears well adapted to the instant suppression of insubordination on parade, or at drill, or on a march, and for the prompt punishment of plundering and riot on a march. It should be inflicted by order of the commanding officer only, without any form of trial, and by the drummers of the regiment. In short, I would propose to make it exactly similar to punishment by the Provost Marshal; which is inflicted on view of the offence, summarily, and on the instant. For this purpose I submit for approval the subjoined Article of War, which may be inserted after Article 59:—

"Article. For the instant suppression of insolence in the ranks, insubordination on parade, and insubordination or disobedience on the line of march, and for the prompt punishment of plundering or riot on the march, the officer commanding the regiment or detachment to which the offender belongs is hereby empowered to cause summary punishment with a rattan to be inflicted on the offender, in presence of the regiment or detachment, not exceeding in any case three dozen strokes of the rattan."

130. On the punishments of dismissal and imprisonment with hard labour, Lieut.-col. Chalon has in this place (Articles 70 and 71) and on Article 78 also, some remarks to the effect that the former is an inappropriate punishment for a soldier, and that if the latter could be inflicted without involving discharge, it might be awarded

awarded for not more than three months by a regimental court martial. Serious cases involving discharge, being restricted to general courts martial, and the punishment very rarely resorted to, it is most desirable that, if possible, arrangements should be made to inflict imprisonment with or without labour, or solitary confinement, on soldiers in military prisons, or at least separately from prisoners under sentence by the criminal courts, and discharge would then not be necessary; but the point involves many considerations, on which I need not enter.

131. Article 72. Lord Tweeddale proposes to specify a certain number of men, 250 for instance, because troops and companies vary numerically. I do not see the inconvenience of using the troops or companies, and 250 men appears too small a command to confer on the commanding officer the power of an officer commanding a regiment.

132. Article 73. The instruction to a court martial not to award corporal punishment, objected to by the Commander-in-chief and the Judge Advocate-general, has been taken out of this Article. (*See* Paras. 193 and 194 of this note, founded on his Lordship's Minute previously received).

133. Article 75, Clause 2. Lord Tweeddale proposes to insert the words "Judge, Sheriff or other officer in charge of any gaol," who, as well as every "Magistrate," should give effect to sentences of imprisonment with labour. I do not see the object of the suggestion; the gaols for native prisoners are under the charge of Magistrates, and in Bengal we do not send prisoners to the great gaol of Calcutta; but as the proposed words may be required at Madras, I have inserted them.

His Lordship would also make the officer at the head of a department to which an offender belongs, certify the sentence, and deliver the offender to the Magistrate. I submit that as officers at the heads of departments have no concern with trials further than as they may be accusers, they are not proper persons to take any part in the execution of sentences.

134. Article 76. The error pointed out has been amended by simply omitting the words "or transportation." This article is founded on the Act, No. XIV. of 1844.

135. Article 77. The Commander-in-chief considers this Article unnecessary with reference to Article 75. That Article relates to imprisonment with labour, or solitary confinement only, and to cases only when an offender is sent to the Magistrate: the present one relates to any imprisonment and any offenders; its object is to open, as much as possible, the selection of places of imprisonment according to circumstances.

136. Article 79. The Judge Advocate-general would not make discharge with ignominy necessarily consequent on any punishment, but discretionary with the court. It is not the sentence in particular that this Article alludes to, but the sentence of dismissal or imprisonment with labour for *disgraceful offences*. I think the peremptory provision here of ignominious discharge is good.

137. Article 80. The Commander-in-chief suggests on the first clause, that the sentence of the court is sufficient to authorize stoppages without the intervention of the Commander-in-chief. I submit that it is desirable, in every case where the pay of the men is mulcted, that the Commander-in-chief should know it and sanction it; this is the object of the Article. There is no analogy here to fines inflicted by magistrates; there will be no occasion for additional correspondence with head quarters; the proceedings might be transmitted without any letter, and the Adjutant-general might enter at the foot of the sentence, after having submitted it, the order of the Commander-in-chief for the payment.

To the second clause, the Judge Advocate-general suggests in addition these words, "except for the purpose of completing his necessaries under the Regulations of the service." I see no occasion for this addition.

138. Article 82, Clause 2. The Commander-in-chief observes, that as officers may be appointed Adjutants after two years' service, it is inconsistent to allow them to superintend a court martial, and yet not to allow other officers under four years' service. But it is very rarely that an officer of two years' standing is appointed Adjutant, and at any rate an officer of whatever standing who is fit to be an Adjutant is superior to officers in general of four years' standing.

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139. Article 83. It is observed that the system of allowing a superintending officer to interpret is unknown at Madras. The objections to it are very obvious, and have not failed to be often noticed in Bengal; but there are places under this Presidency at which an interpreter is not to be had, in Arracan and Assam, for instance, and it was for these that the Article provided, and is indispensably necessary. But on this topic I would suggest one consideration, that the interpretation of the evidence at a native court martial is very rarely from English into the vernacular for the information of the court; that the witnesses themselves in general speak the language of the court; it is for the record of the proceedings and for the information of the European confirming officer mainly that interpretation is required. This fact considerably lessens the objection to the superintending officer performing the office of interpreter, when no other capable person is available. The General Order by the Earl Moira, quoted by the Judge Advocate-general, under date the 8th of May 1816, though correct on general principles, did not advert to this view of interpretation at a native court martial.

140. Article 85. Lieutenant-colonel Chalon proposes to add these words, "and no evidence shall be recorded on revision." I think the addition may be made, substituting "received" for "recorded."

141. Article 88. It is stated to have been decided by the Government of India, on a reference from Madras, that Act V. of 1840 was applicable to the case of members of a native court martial, and that each member should be required to make the affirmation therein prescribed, succeeded by a declaration to the same effect as the oath formerly required, omitting the religious formula thereof. I have accordingly made the necessary alteration, but it has an awkward appearance.

Lieutenant-colonel Chalon proposes to swear an interpreter, to interpret well and truly, according to the best of his skill and judgment, instead of the form given in this Article; but the form appears necessary, as it embraces the preservation of secrecy, to which an interpreter should be sworn, as he remains present in closed court at the passing of sentence.

142. Article 89. The proposal to provide for procuring false evidence in this Article is unnecessary; it is provided for in Article 58.

143. Article 90. In lieu of "these Articles," I have adopted the suggested words, "military law."

144. Article 91. Lord Tweeddale observes, that Provost-marshals should be appointed by the Commander-in-chief in the field, not by Government.

This Article is taken word for word from Article 91 for the Company's European troops.

145. Article 92. "No heir" appears better than "no nominated heir," which his Lordship suggests. The former includes the latter, but not *vice versâ*.

146. Article 93. The suggested words, "or nominated in the regimental register," have been inserted.

147. Article 97. The words "or commute, or mitigate, or remit," have been inserted as proposed.

148. Article 98. The suggestions on this Article are not followed, the Article having been altered already, (*see* para. 51 of this note.)

149. Article 99. The Judge Advocate proposes to insert "military" before "offence" in the seventh line, to prevent evidence of previous convictions being taken in trials for civil offences. I have inserted the word, but this Article was not intended to apply to trials for civil offences.

The proposal to add a proviso restricting the court to such sentence as may be awarded for the offence of which the offender is found guilty, is unnecessary, ample provision for this very purpose having been already made in the concluding words of the first clause of this Article. Lieutenant-colonel Chalon states his objections to taking evidence of previous convictions, on the principle that the culprit has already satisfied the law for his previous delinquencies. I think this evidence often bears very hard upon a prisoner, but it is clearly right and just that a distinction should be made in the sentence between a first offence and

and the case of a frequent offender. The provision is taken from the Articles for the European troops.

150. Article 102. The Commander-in-chief proposes to omit this Article, and to leave minor punishments to be regulated from time to time in general orders. But should it be determined to keep this Article, his Lordship makes suggestions for alteration, which consist in adding loss of step in seniority roll at discretion, in amplifying the description made of awardable punishments, and in extending the periods of confinement to barracks. I submit that the Article as it stands is sufficiently explicit in describing the punishments; that loss of seniority is too severe a punishment for a commanding officer to award, and that confinement to barracks for 30 days is much more than should be awarded.

The proviso regarding soldiers in confinement being ordered to attend drill, is, as his Lordship remarks, inapplicable to solitary confinement, and of course was not intended to apply to it. But it is applicable to imprisonment in the guard or defaulter's room, and may therefore be allowed to stand. This proviso is needed, because a question has been raised in Bengal, whether men in such confinement are liable to drill.

151. Article 104. The Marquis of Tweeddale proposes a new draft of this Article, but I submit that the present Article is better.

152. His Lordship observes that no provision is made in these Articles of War to continue the option of being tried by European instead of native courts martial, which the Madras troops have enjoyed since 1829, and which his Lordship considers highly desirable. The main argument is that the practice brings the European officers and the men into closer contact with benefit to both, and his Lordship has given the draft of an Article of War for the purpose. On this draft I would submit that, if the measure be adopted, the numbers of European officers to form the respective descriptions of courts martial should correspond with those provided in these Articles of War for native courts martial respectively.

153. It will be seen in one of the papers which accompany this note, that the Adjutant-general of the army expressed himself favourably to this measure, and I had at first taken the same view of it. The Commander-in-chief in India did not feel himself competent to give a decided opinion on the subject, not being sufficiently acquainted with the native army. I purposely omitted providing for this measure in the draft of the Articles of War, because, after consideration of the subject, it was omitted in the Draft Articles of 1838-39, because it was altogether unknown in the native armies of Bengal and Bombay, and because it appeared to me to have an obvious tendency to lower the native officer in the eyes of the men. I would beg to refer on this point to the observations of Sir Peregrine Maitland, when Commander-in-chief at Madras (Cons. Legislative Department of 20th May 1839, No. 9); my impression, on the whole, is, that it is not desirable to introduce into the Bengal Army, nor into the army of Bombay, the option of trial by European or by native courts. I doubt whether it would be well received, or work well. It is a privilege of which the want has never been experienced, and on the present occasion of re-introducing corporal punishment, I think it would be unwise to legislate in any way calculated to lower the respectability, and so to lessen the zeal, of native commissioned officers.

154. In regard to the Madras army, as the measure is so strongly urged by the Commander-in-chief (who is also at the head of the Government), and appears to be beneficial, and as the privilege has been in operation since the year 1829, I conceive that it may be allowed to continue, and that an Article to the effect of that proposed by the Marquis of Tweeddale, but in the words of the draft here subjoined, may be inserted after Article 91:—

"Article. At any Presidency where the native troops have hitherto been authorized to claim to be tried by European court martial, every person amenable to these Articles of War, and who may be under orders for trial by a court martial, shall have the right to claim to be tried by European officers, and should he make such claim, the court shall be composed of European commissioned officers, and the proceedings shall be governed in all respects by the provisions of these Articles of War."

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155. The Judge Advocate-general suggests some additional Articles to provide for drunkenness, on or off duty, or on parade, for forfeiture of pay by men absent without leave, and for the securing of captured stores for the public service.

156. So very rare is the offence of drunkenness in the native army, that it has purposely been omitted in the several drafts of Articles which have been prepared. I think it need not be specially provided for, but may be left to be dealt with, under the 54th Article of War, and made liable to corporal punishment, as proposed in the Confidential Questions, No. 12.

157. The forfeiture of pay by men absent without leave is a reasonable and just penalty, but the same objections that apply to mulcting the pay of men in confinement, preparatory to, or in pursuance of sentence, apply equally to making deductions from the pay of absentees, (*see* paras. 78 to 84 of this note). In either case, they are absent from their duty, whether it be by committing an offence for which they are necessarily confined, in order to trial, or by absenting themselves without leave.

158. To make an Article for securing for the public service all public stores, &c., taken from the enemy, appears to me unnecessary in a code of Articles for native troops. The duty of securing such stores devolves on officers commanding in chief, and the 104th Article for the Company's European troops makes them responsible for any neglect in this respect. That provision appears to be quite sufficient for the purpose.

The Confidential Questions.

159. In considering these, I propose to notice, first, the replies made by the chief military authorities, and subsequently those elicited from the officers of the three Presidencies, to whom the Confidential Questions were sent; but as the opinions given are based upon experience acquired in the armies of the three Presidencies respectively, and are applicable to each army separately, it will be convenient to examine them as much apart as possible.

160. The Confidential Questions are 17 in number, and may be divided into the following parts, and in this order it is proposed to consider them.

1st. Corporal punishment, questions 1, 2, 3, 8, 9, 10, 11, 13, 14, 15, 16, 17.—The purport of these questions is to ascertain whether discipline has relaxed; whether in consequence of the abolition of corporal punishment; whether to such a degree as to make its restoration expedient or absolutely necessary; whether injurious effects have been felt on service from the abolition; whether flogging has been necessarily inflicted on service, and with what effect, whether power to commute sentences of corporal punishment might not be given with good effect to confirming officers and convening officers authorized to instruct a court not to award corporal punishment so as to restore flogging, without creating bad feeling; what the opinion of the native officers and well-disposed men is to its restoration, and what the abolition has done, or the restoration of corporal punishment would effect in regard to recruiting.

2d. Question 4.—This inquires into the comparative increase or decrease of crimes since the abolition, and calls for returns.

3d. Questions 5, 6, 7.—These relate to the effect of dismissal, of imprisonment with hard labour and dismissal, and of solitary confinement, as punishments and as substitutes for flogging.

4th. Question 12.—Whether corporal punishment might not beneficially be limited to the higher military offences, without necessarily entailing dismissal, and, in rare instances, as in the field, made awardable for disgraceful crime and followed by dismissal, while imprisonment with hard labour and dismissal should be applicable to every disgraceful crime, and for such gross military offences as required the discharge of the offender.

161. The Commander-in-chief in India has not replied to the Confidential Questions separately.

162. Commander-in-chief at Bombay.—First. On those relating to corporal punishment, as above placed together, the Commander-in-chief at Bombay replies, that discipline has relaxed in the Bombay army since the abolition, in consequence

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consequence chiefly of the impediment presented to the immediate and visible punishment of offences; that the modified restoration of flogging in cases requiring immediate example is highly expedient, but it is not stated to be absolutely necessary; that no doubt injurious effects have been felt on service from the abolition; and that, besides the want of example, prisoners express desire to leave the service, even though it be feasible only by undergoing imprisonment of any description; that the power of commutation would be highly beneficial; that the power of instructing the court not to award corporal punishment is desirable; that in this way flogging might be restored without creating bad feeling, and to the satisfaction of the well-disposed men; that in former years, when flogging was carried to an unnecessary and censurable extent, men of excellent character, who made good soldiers, were procured, and men of the same description might still be obtained.

163. Second. On the subject of returns showing the increase or decrease of crimes, little information has as yet been received from Bombay, but an abstract of the returns is promised.

164. Third. In regard to dismissal, Sir Thomas M'Mahon states, that it has proved ineffectual; that it is in some instances severely felt by the individual, but this is unknown to his comrades; while, in many cases, it is to the discontented characters the desired release from the service. In regard to *imprisonment with hard labour*, his Excellency states that punishment to be ineffectual; and that though in some cases it may be considered a degradation, it is not so viewed in others. Of solitary confinement, his Excellency remarks, that if judiciously applied it might be made a very effectual punishment, but that it is not generally resorted to for want of means, and because it is not sanctioned by the Act No. XXIII. of 1839. His Excellency cites the rules established in clause 2, section 7 of Regulation 14 of 1827, as practically found efficient in the criminal gaols in the Bombay Presidency.

165. Fourth. Sir Thomas M'Mahon gives his opinion in the affirmative in regard to the beneficial effect on the discipline of the army, should the greater military offences and disgraceful offences be punished in the way suggested in the 12th question.

166. Major-general Sir Charles Napier's replies are to the following effect:—

First. That he knows not whether discipline has relaxed since the abolition of corporal punishment, but thinks its restoration necessary; that the greatest fact proving the inadequacy of the substituted punishments is, that when most wanted, as in the field, they cannot be enforced; and his Excellency has himself frequently had men flogged, but does not know the effect of this on the minds of the sepoys; that the power of commutation is worth trying, it being understood that the good men do not object to the existence of corporal punishment, and his Excellency not believing that any punishment judiciously applied can fail to do good; that in the opinion of the best officers the restoration of flogging would not excite bad feeling, and that the native officers and well-disposed men are in favour of the power to flog.

167. Sir Charles Napier does not reply to the question of increase or decrease of crimes.

168. Third. His Excellency considers that dismissal is not an effectual, but a heavy punishment; that *imprisonment with hard labour* is not effectual as a substitute, as it cannot be inflicted when punishment is most required; viz. before an enemy, or in marching; that it is a terrible degradation to a good soldier, but none at all to a bad one. Of solitary confinement, it is only observed, that it is not practised in the Bombay army.

169. Fourth. His Excellency sees no occasion for dismissal being made a necessary consequence of any other punishment, and thinks should be allowed the power of repentance, and a fair start again, since many a convict has reformed.

170. At the same time with his replies to the Confidential Questions, Sir Charles Napier transmitted a paper of observations on the necessity of restoring corporal punishment in the Indian army. The observations embrace other topics besides this, but which his Excellency considers to come within the scope of the main

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subject. In these observations the severe effect of hard labour in irons along with felons is strongly depicted, especially in regard to a man who perhaps once only has broken the rules of discipline, and is not a hardened character; and the error is pointed out of punishing the belly, according to the proverbial expression of the sepoys, instead of punishing the back.

171. In Sir Charles Napier's work "On Military Law and Flogging," printed in 1837, the evils of corporal punishment are prominently exhibited as consisting, 1st, In its being torture; 2d, Torture of very unequal infliction, as it depends on the stroke of the drummer; 3d, And partly on the obtuse or acute feeling of the sufferer; 4th, And partly, also, on the influence of the commanding officer and the drum-majors on the drummers; 5th, It is observed that a man's health cannot always be ascertained at the time when he is punished; 6th, That climate makes much difference in individual cases; 7th, That the first infliction is the most cruel, the back becoming callous, and the sufferer less punished as he deserves it the more; 8th, That the sufferer is indelibly branded as a felon; and that there can hardly be stronger argument against flogging;* should be abolished in time of peace, and continued in time of war, only because it is indispensably necessary.

* *Sic orig.*

172. In the observations now transmitted, Sir Charles Napier writes in a great degree consistently with his published opinions, in strongly advocating the restoration of corporal punishment, as he declares that "*our Indian army* is always in the field;" and it would appear to be under that view of the service that his Excellency states his conviction, "that the power of inflicting corporal punishment must be restored, whether the sepoys like the measure or not, and at once, too, or the observation of the Governor-general of India will assuredly prove prophetic, that delay tends to confirm the General Order of 1835 by usage, and weakens the power, as well as the right of returning to the former system of discipline."

173. I submit, that it can hardly, with accuracy, be said of the Indian army, as situated in the three Presidencies, that it is always in the field, and there have been long periods of peace to which the assertion cannot apply. It is therefore to be regretted that Sir Charles Napier's observations proceed entirely on that assumption, because we thus fail to ascertain his Excellency's sentiments on the main question, the applicability of corporal punishment to the native soldier considered in his ordinary circumstances; and the deficiency is the more to be regretted, because from the tenor of his remarks on flogging, as published in the work I have noticed, his Excellency evidently considers that punishment highly objectionable in itself, and unfitted even for the British soldier in the time of peace.

174. The Commander-in-chief at Madras has not replied to the Confidential Questions, but in a Minute, dated 15th November 1844, his Lordship states his sentiments in reply to questions from the Government of India, bearing on corporal punishment, and its substitutes; and these perhaps may be most conveniently noticed, together with the opinions of the Government of Madras and Bombay, after the remaining replies to the Confidential Questions shall have been considered. These documents contain the opinions, and report the experience of general and other officers in command, and on staff employ; and for uniformity's sake I propose to take them up in the order of the four portions into which I have before divided the Confidential Questions (*see* paragraph 160, above).

175. First. Out of the 65 officers of the Bengal Presidency, to whom the questions were sent, 62 have furnished replies, and it is probable the remainder have either not received the paper, or have been unable to transmit their answers; of this number four are adverse to the restoration of corporal punishment, one considers it indifferent, four consider it not generally expedient or absolutely necessary; the remaining 55 advocate the restoration more or less strongly, and the general feeling is in favour of much restriction. The testimony to the relaxation of discipline is very general, and it is attributed to the abolition of flogging principally, and to other causes combining with it, such as the reducing of the powers of regimental commanding officers, the want of effectual substitutes for corporal punishment, foreign service, heavy duties and frequent marches, want of sufficient attention to the men on the part of the officers, the introduction of men of bad character, who, before the abolition, would not have dared to enlist; of the effects of the abolition,

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as regards troops in the field, comparatively few can speak; but an instance is given of a daring act of plunder and resistance in China (*see* Lieut.-colonel Lloyd's answer to Question 8), and allusion is made by several officers to the campaigns in Affghanistan as illustrative of its ill effects, the substituted punishments having been impracticable. It is stated that in China and in Affghanistan, flogging by the Provost Marshal was necessarily inflicted, and with the best possible result. (*See* answers of Colonel Wymer, Colonel Palmer, Lieut.-colonel Stacy, Lieut.-colonel M'Laren, Major Osborn, to Questions 10, 11.)

176. On the commutation of sentences, as proposed in the 13th Question, all the officers except four are favourable to the proposal. It is observed by several that the confirming officer empowered to commute, should be the commanding officer, or the officer who convenes the court.

177. There are 17 officers in favour of occasional instructions to a court martial not to award corporal punishment (Question 14), and the sentiments of two more are doubtful; the remaining 43 are against the proposal.

178. On the important question (15), whether, under the restrictions mentioned, corporal punishment might be restored without producing bad feeling or discontent, and preventing enlistment? all but nine are decidedly of opinion that no such effects would ensue. Of the nine excepted, several consider that the feeling would only be temporary, and might be explained, accompanied by grant of discharge to those who wished for it. One individual supposes the experiment of restoring corporal punishment to be dangerous; but even he thinks that, like the abolition, the restoration would be received with apathy; and one officer pronounces it a delicate question.

179. There is a very general testimony that the native officers and the good men are very favourably disposed towards the restoration; that it would not render recruiting more difficult, that the abolition did not assist recruiting, and that neither men of more high caste or family, nor more relations of the soldiers, have enlisted in the interval. It is observed by several officers, that men of worse caste and worse description have enlisted since the abolition, who would have not ventured into the ranks previously. It is stated by many, that disinclination to enter the service is not attributable to the substitution of hard labour for corporal punishment, but to various other causes, such as the increased prosperity of the provinces, rendering the people independent of employ in the army, and because the service is altered in many respects, as in the increase of duty over an extended territory, the frequency of marches, and the distance to which men are removed from their homes; foreign service; the abrogation of the privilege of priority of suits in the civil courts conferred on soldiers by Regulation 15 of 1816; the prohibition of hearing of cases not submitted within one month, under Act IV. of 1840; the restriction of family remittances to the period of the issue of pay. Major Craigie, who commands the regiment at Khelat-i-Ghuznee, mentions (*see* his answer to Question 9) the difference on several occasions in Affghanistan in the conduct of troops under subjection to corporal punishment, and the troops exempted from flogging; and in his reply to Question 2, he notices the good effect of that punishment which was awardable to his regiment for three years after its abolition in Bengal.

180. Second. The fourth question is directly answered by a few only, but these officers declare that crime has increased since the date of the abolition of corporal punishment.

181. With few exceptions, the returns obtained are from those corps only to the commanding officers of which the Confidential Questions were sent, so that the status of crimes in the whole Bengal Army is not ascertainable from these papers; but we have returns from 39 regiments, which may be taken to convey a fair criterion of the whole. As to the form of returns, which has created embarrassment, I beg to observe, that it was made at the commencement of my late serious indisposition, and carried though the press, and circulated when I was unable to rectify its obvious errors. From these returns it appears that the cases of desertion were nearly the same in the two periods referred to, while those of absence without leave are much more numerous in the latter period. Cases of mutiny and mutinous conduct in this period have decreased by more than half;

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those of insubordination are nearly the same as before; those of neglects of duty have increased in the proportion nearly of 12 to 10; minor miscellaneous offences in the proportion of 6½ to 5. There is an increase of 10 in disgraceful offences; and thefts have greatly increased.

182. Among the papers, I have put up a return showing the comparative number of native soldiers convicted of offences for five years preceding, and for five years immediately subsequent to the abolition of corporal punishment. No exact comparison with the returns obtained on the present occasion can be made with this return, because the latter embraces the whole Bengal native army; but it may be useful to examine this document. It must be observed, however, that during nearly the whole period of five years after the abolition of flogging, dismissal only was substituted for it, and the little impression made by that punishment is seen in the increase of offences immediately connected with discipline; and though imprisonment with hard labour was so novel during the last few months of the period in question as to account in some measure for its not having much effect, yet it cannot but be remarked, that the small portion of the year 1840 shows an increase of offence which is inconsistent with the notion of any great dread attending that punishment. The extraordinary increase of numbers in the years 1841 and 1842, as given in the return, goes further to show the ineffectual nature of imprisonment with hard labour as substituted for corporal punishment; but in regard to all the returns, it should be remembered, as has before been remarked, that many more offences were brought to trial when it became practicable to inflict imprisonment with labour than used previously to be the case, and that a greater latitude was taken in awarding that punishment than was probably intended when it was first legalized; yet if, notwithstanding this greater frequency of awarding it, crime increased as it did, the proof is strengthened of the ineffectual character of this punishment.

183. Third. In regard to the substituted punishments, the testimony is very general that dismissal is not an effectual substitute for corporal punishment; that it is little cared for; men who cannot obtain discharge, frequently committing offence in order to quit the service, even by sentence of dismissal; that to a soldier of long standing, who is looking for promotion or a pension, it is a severe punishment, because he has no means of obtaining a livelihood out of the service, but to the young soldier it is of no consequence.

184. With respect to imprisonment with hard labour, the opinion is general, that it is not an effectual substitute for flogging, that it is not properly enforced under the present system, and that bribes enable the military prisoner to procure exemption from severe labour. It is declared by one-half of the officers consulted to be a degradation, but some of these state the degree of degradation to be slight, and some declare it to depend on caste, or on the nature of the crime, and to be far less serious in that respect than corporal punishment. It has been seen (paragraphs 55, 56) that the Commander-in-chief in India objects to this punishment for any but the more serious military offences or disgraceful crimes. The only offences exempted from imprisonment with hard labour in the proposed Articles are those mentioned in Articles 47 to 54, which are minor delinquencies (*see* paragraph 17), and those in Articles 55 to 58 which are offences incident to courts martial (*see* paragraph 18), and this arrangement is the curtailment of the practice under Act No. XXIII. of 1839. I think there is much room for objection to the application of this punishment for minor offences merely military, but some of the crimes which the Commander-in-chief would exempt, such as persuading to desert, taking bribes, false certificates, false returns, maligning, extortion, profaning places of worship, plundering, carrying bludgeons, selling or spoiling arms (Articles 24, 27 to 30, 36 to 39), may, I conceive, be appropriately punished by imprisonment with hard labour. I would propose, accordingly, to transfer the remainder, viz. Articles 22, 23, 25, 26, 31 to 35, to the subdivision of crimes not punishable with corporal punishment or imprisonment with hard labour.

185. In regard to solitary confinement, the prevalent reply is, that it is unknown as a punishment in Bengal; several officers are of opinion that it is incapable of strict enforcement on account of the religious customs and prejudices of the Hindoo sepoy. It is not considered likely to be regarded with dread, nor effectual, unless

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unless it involved forfeiture of pay during the time of confinement. One officer (Lieutenant-colonel Williamson) mentions its having been tried with native drummers and musicians, and with very salutary effect. Another (Lieutenant-colonel Syers) states it to have been sometimes inflicted, and that it was felt and dreaded, but had no ill effect on the health of the prisoners; and yet Colonel Palmer, who speaks of the same cells to which Lieutenant-colonel Syers alludes, the experimental ones built at Kurnaul, declares the punishment not to have been dreaded at all. Major Gray mentions his having placed a man in solitary confinement for 28 days without injury to his health, and with the desired good effect.

186. Fourth. On the arrangements proposed in the 12th question for punishing the greater military offences and disgraceful crimes, the opinions of 23 officers are, that dismissal should necessarily and invariably follow the infliction of corporal punishment; one officer would make it a general rule; one considers that it should invariably follow a certain number of lashes; and one gives a doubtful opinion; but a great majority do not consider it indispensable that corporal punishment should be followed by discharge, or the necessity of dismissal accompanying imprisonment with hard labour; the opinion appears unanimously in the affirmative. There is a very general assent to the proposed adoption of corporal punishment and of imprisonment with hard labour; but a few of the officers observe that imprisonment with hard labour and dismissal are not unsuitable as punishments for purely military offences, that they are not dreaded. Some suggest the more general application of flogging as the better punishment of the two; and that differences might be made in regiments according to their character and past conduct. It is also suggested that men imprisoned with hard labour should be branded to prevent their re-enlistment.

187. In the army of Fort St. George, the Confidential Questions were sent to 63 officers on the 2d and 3d questions; regarding the expediency and necessity of restoring corporal punishment, there are but four adverse to its re-introduction, besides two who give no opinion; and nearly all who are in favour of the measure declare it absolutely necessary, under restriction. To the 15th question, the reply of Lieutenant-general Sir John Doveton is, that the restoration of flogging would probably create a mutiny. Major-general Allan considers that it might at first create a little sensation among the bad characters, but would not injure enlistment; and Major Sinclair, that it may at first astonish the sepoy, but he ought not to consider it a hardship. Two other officers seem to think it might excite dissatisfaction among the bad men; but the great majority are of opinion, that neither dissatisfaction nor bad feeling would ensue, nor enlistment be affected by the measure.

188. In regard to the substituted punishment, *dismissal* is very generally declared to be ineffectual, and to depend on the length of service of the individual, but it is considered severe on the sepoy of standing. *Imprisonment with hard labour* is stated by about 29 officers to be a degradation, and some declare it to be very serious, but the majority are not of that opinion. It is generally considered an effectual substitute for corporal punishment. Solitary confinement is declared by a large majority, about 27, to be effectual and dreaded by the men, but the remainder pronounce it ineffectual. The recommendation to extend it beyond the existing limits is very general, and it is observed that forfeiture of pay in confinement would be advantageous. In the Presidency of Madras, solitary confinement has been carried into effect, under regulations laid down in the Standing Orders; but the papers which I have seen do not contain these. It is, however, unnecessary here to enter into a consideration of the detail of solitary confinement. The cells in use in the Madras Presidency are considered by most of the officers who have reported upon them to be well adapted for the purpose; but I have no information of particulars as to their construction. It has been seen in an earlier part of this note, that the Commander-in-chief in India considers it scarcely possible to carry solitary confinement into effect, and that such is the opinion of several officers who have answered the questions. The cells erected as an experiment at Barrackpore and Kurnoul were made on the plan submitted by the Military Board, in their letter, No. 5101, dated 4th February 1840, which is put up with the other papers accompanying this note. That plan was at the same time authorized at Bombay, but only experimentally at one or two stations, and the remarks of Sir Thomas M'Mahon on the subject have been

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above noticed. I can see no reason why solitary confinement should not be regulated nearly in the same way at all the Presidencies, regard being had to the prejudices of the Hindoos in Bengal and Bombay. But until the details can be settled, the instruction to a court martial not to award solitary imprisonment, as provided in Article 73, will obviate any difficulty.

189. The returns from Fort St. George exhibit a great increase of crime, during the latter period of nearly five years, showing that the substituted punishment of imprisonment with hard labour is ineffectual. The increase is greatest in offences immediately affecting discipline.

190. With regard to the other points of inquiry in the Confidential Questions relating to the effects on recruiting, which the abolition of corporal punishment may have had, and the effects on enlistment which its restoration may probably produce, it appears to be sufficient to refer to the letter from the Acting Adjutant-general of the Madras Army to the Secretary to Government Military Department, No. 114, dated 5th February 1845, which contains the views of the Commander-in-chief on the existing causes of deterioration in discipline, and on the remedies applicable to it.

191 It remains now only to advert to the sentiments of the Government of Fort St. George and Bombay on the question of restoring corporal punishment.

Government of Madras.

192. The Government of Madras consider that corporal punishment should be restored. In the minute by the Marquis of Tweeddale, as Commander-in-chief, dated 15th November 1844, his Lordship suggests that as two-thirds of the sepoys have joined the ranks since flogging was abolished, commanding officers should at first, and for some time, be required to refer to Generals of Divisions, or to the Commander-in-chief, before inflicting sentences of corporal punishment. His Lordship considers the restrictions on flogging in the proposed Articles of War to be most judicious and appropriate. It is stated not to have been the practice in the Madras army to discharge men who were flogged, unless their crimes were disgraceful, and their characters incorrigibly bad. The abolition of flogging is declared to have made not the slightest difference in recruiting, unless it may have done so by rendering the service less popular than before.

193. His Lordship is much averse to the proposed occasional instructions to a court martial not to award corporal punishment. But it has struck me on perusing the remarks made, not only by his Lordship, but also by the officers who have replied to the Confidential Questions, that the object in view in instructing the court, and the proposed mode of doing so, have been misapprehended. I suspect the term "instruct" has been taken to imply an interference with the trial, and an intimation of the commanding officer's opinion on the case. It was by no means intended to interfere with the judgment of the court on the merits of a case, so as in any way to influence their finding, but solely to prevent the passing of sentence of corporal punishment in the event of the conviction of the culprit for an offence liable to such sentence. When a man is placed on his trial, the court must conclude that the commanding officer who brings him before them considers the man guilty, and in reality the proposed instruction to the court adds nothing to this conclusion; it is of a piece with the arraignment of the prisoner, as far as that act intimates the opinion of the commanding officer, but it is nothing more. In fact, although we have no precedent of an Article of War empowering instructions to a court martial relative to its sentence, the proposed instruction is essentially nothing more than is exemplified in the confidential circular, dated Horse Guards, 24th August 1843, by which corporal punishment was directed to be applied to certain offences, and to those only. The Articles of War for the Queen's service authorized corporal punishment generally, the circular directed its particular application. In like manner the proposed Articles for the native army authorize corporal punishment for various offences, and the proposed instruction to a court martial would prevent its infliction in certain cases. Indeed the circular adverted to went much beyond the proposed instruction, in stating the offences to which corporal punishment should be applied, while all other offences should be exempted; whereas the present proposal is, not to apply it at all, but only to prevent the application of that punishment in any particular instance. The individuality, however, of the instances in which it would be exercised, seems to make a difference, which renders the proposed instruction liable to be misrepresented.

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194. The power of commutation given in the Articles appears on the whole sufficient. The proposed power to instruct is novel, and that is one objection to it, though not of any consequence, if that were all; but as among the very persons who would have to carry out this provision, a very general objection to it appears to exist, and as that very feeling on the part of commanding officers would tend to foster, certainly not to weaken, the impression which they anticipate will be formed on the minds of the soldiery, that interference with the usual course of trial is to be exercised, I submit that it is expedient to amend Article 73, so as to give power to instruct a court only in regard to solitary confinement, which proceeds on a very different ground, and is unobjectionable.

Government of Bombay.

195. The sentiments of the Government of Bombay on the restoration of corporal punishment are not unanimous, the Governor, Sir George Arthur, being of opinion that the discipline of the Bombay army has not deteriorated since the abolition of corporal punishment; that, consequently, the restoration of this punishment is not imperatively called for, as far as relates to that army; but that, if it be deemed necessary to restore it at the other Presidencies, the application of the measure should be made general, which Sir George Arthur believes could be done, so far as the Bombay army is concerned, without any risk of dangerous results. The Commander-in-chief's minute, dated 5th January 1845, contains only a copy of the letters from his Excellency's Military Secretary to Mr. Currie, dated 30th November 1844, which has already been considered in a former part of this note. The other Members of the Council of Bombay express their opinions in favour of restoring corporal punishment; but it appears from the Honourable the Governor's second minute, dated the 10th January last, in which the Board concur, that the Government of Bombay, assuming it as a fact, on the Commander-in-chief's authority, that discipline has relaxed, and relaxed in consequence of the impediment presented to the immediate and visible punishment of the offender, consider this to form a strong argument for the restoration of corporal punishment.

Camp Followers.

196. A communication received by me from the Judge Advocate-general of the Madras army brings under consideration the term "camp followers," used in the 104th Article in the proposed draft.

197. Lieutenant-colonel Chalon observes that the Articles of War for the Queen's forces do not apply to camp followers, who are not mentioned in them; that the term used in the Articles of Company troops is "followers," and that there is a distinction between this term and the term "camp followers," the latter being applicable for those persons only who follow the camp into the field; he, therefore, suggests the substitution of the term "followers" as the more comprehensive.

198. This distinction has not been drawn hitherto, I think, and the terms in question are interchangeably used to designate the same descriptions of persons. In the Act No. XXVIII., of 1841, which legislates for "camp followers," that term is stated to mean "persons amenable to any Articles of War for the native forces."

199. Again, in Act No. XII. of 1842, the following words are used: "All persons serving with any part of the army, and receiving public pay in any capacity, menial servants and other camp followers of every description," showing that this term applies to persons "both in public and private employ." But as it would appear that difficulty may arise from the use of the term "camp followers," I see no objection to "followers" being substituted for it.

200. We have hitherto in Bengal the Regulation XX. of 1810, which provides for the trial and punishment of camp followers, including retainers of every description, whose trial by court martial it authorizes for breaches of duty, offences against good order or local regulations in cantonments, petty assaults and breaches of the peace, and petty thefts. All these offences are provided for in the proposed draft of Articles of War, and when these come into operation, that portion of Regulation XX. of 1810 which has not been repealed already by the Act No. XI. of 1841 (the Act regulating Courts of Request) will be superseded and set aside; the 73d clause of the Charter Act (3 & 4 Will. 4, cap. 85), now in force, declaring that Articles of War made by the Government of India shall be of exclusive authority, I think that the use of the term "followers,"

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as suggested, will be an improvement, as corresponding to all the descriptions of persons to whom the Regulation of 1810 applied.

200 A. It appears that the Confidential Questions have been sent to 37 officers of the Bombay army, and they are unanimous in thinking it expedient that corporal punishment should be restored, under restrictions. The application of corporal punishment and imprisonment with hard labour, suggested in Question 12, is generally approved of. The general opinion is unfavourable to the instruction of a court martial not to award corporal punishment, as proposed in Question 11, while dismissal, imprisonment with labour, and solitary confinement are stated to be insufficient substitutes for flogging; it is considered by nearly all, that this punishment may be re-introduced without causing discontent or disinclination to enlist; those who think otherwise being of opinion that only the bad men, who are a small minority of the whole, would feel dissatisfaction.

200 B. Besides the replies now furnished, there were 11 previously transmitted by Sir Charles Napier. I believe among them are replies from Captain Fisher, commanding the 12th Native Infantry, who is also included among the officers whose replies are now submitted. Of the eleven, one only is adverse to corporal punishment, and the general views of the whole on the questions at large correspond with those now furnished.

200 C. From the abstract return of crimes and punishments in the Bombay army, since the abolition of flogging, it appears that in the latter period, of nearly five years, insubordination has become nearly twice as frequent as before, and the increase in mutiny and mutinous conduct is nearly four-fold. There is a considerable increase in disgraceful offences, and in all the other crimes in the return a decided, and in some of them a large, increase is observable.

201. Having now, I believe, considered all the papers which relate to the proposed Articles of War, I may take occasion to mention such alterations or amendments as have occurred to myself on looking into the draft.

Transportation.

202. In the Draft Articles of War, published in 1838, transportation was made awardable for life, and for any term of years; I therefore adopted the provision. But in the Regulations transportation is not awardable, except for life, and that restriction is followed in Section VI. of the new Draft relating to criminal offences. I propose to make the same restriction in regard to military offences, so that the offences in the Articles from 5 to 19, inclusive, shall be punishable with transportation for life only; if that description of punishment be adjudged, and the commutation of sentences of death by the Commander-in-chief, Article 67 will require the same alteration.

203. Article 60. The word "Ship" in the heading of this Article should be altered into "Vessels."

204. Article 61. I propose to insert "by court *martial*," after "deserving punishment," as otherwise this Article would seem to require all offenders to be tried; whereas for slight offences they may be punished by the commanding officer without arrest.

205. Article 67. With reference to Article 95, the words "at the Presidency to which the offender belongs, or under the authority of which he may be serving," may be omitted.

Similar alteration is required in the Articles 68 and 75.

206. Article 104. "*Application of the Articles*;" I think it would be better to place this Article in Section VII., immediately above the Article on Promulgation. In the Articles for the Queen's forces and the Company's European troops, this Article is placed in the concluding section.

207. I submit herewith a copy of the proposed Articles of War, corrected in conformity with the suggestions made by the Commander-in-chief and others, and with the observations regarding them which are made in this note.

Concurrence

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Concurrence of Government on Sentences of Death.

208. Connected with the Articles of War, but not directly coming within their provisions, is the subject of the proper mode of expressing the concurrence of Government in the confirmation by the Commander-in-chief of sentences of death passed for criminal offences. The honourable Mr. Chamier, of the Madras Council, brings the subject to notice, with reference to his Article 106, in his minute, dated 12th December 1844.

209. In paragraph 3, Mr. Chamier remarks on a slight difference between the phraseology of the Mutiny Act for the Company's forces and the Articles for the Queen's forces (102), and the company's troops (92), and that of the proposed Article (106). In the three former, the words "*Governor in Council* of the Presidency," and the latter "*Government of the Presidency*," are used, and Mr. Chamier suggests that the alteration may have been intended to signify that the concurrence is to be expressed in the name of the Government collectively, and not signed by the Governor and Members of Council individually. That was the principal reason of the alteration, and I had proposed to bring the point under consideration, with reference not to the cases of native soldiers only, but also to those of European soldiers in the Queen's and the Company's services. It appears that one form should be settled, and invariably used on all occasions.

210. Mr. Chamier observes, that the practice of individual signature by each member of the Government, is not in accordance with the provisions of Section 39 of the Act 33 George 3, chapter 52. That clause directed, "That all orders and other proceedings of the Governor-general and Council at Fort William shall be expressed to be made by the Governor-general in Council, and that all orders and other proceedings of the Governors and Councils of Fort St. George and Bombay, respectively, shall be expressed to be made by the Governor in Council, and not otherwise; and that the several orders and proceedings of all the said Presidencies shall, previous to their being published or being put in execution, be signed by the Chief Secretary to the Council of the Presidency, by the authority of the Governor-general in Council, or Governor in Council, as the case may be." The 79th clause of the present Charter Act, 53 George 3, chapter 155, authorizes either the "Chief Secretary or the Principal Secretary of the department to which such orders and proceedings relate," to sign them previous to publication.

211. The use of the terms "Governor-general in Council, or Governor in Council," in the "Mutiny Act," and Articles of War, appears to imply that the act of concurrence is the act of the Government, and not of the individual members.

212. I subjoin specimens of the mode in which the concurrence of Government has heretofore been signified.

1. Case of Gunner *Colter*.—G. O. 2d June 1838.

"The Right honourable the Governor-general of India concurs in the foregoing sentence of death passed on gunner John Colter, of the third company, second battalion of artillery.

(signed) "*Auckland.*"

"The Honourable the President and Members of the Council of India, concur in the foregoing sentence of death passed on gunner John Colter, of the third company, second battalion of artillery.

(signed) "*A. Ross.*
"*W. Morison.*
"*W. W. Bird.*"

2. Case of Private *Carpenter*, 44th Foot.—G. O. 3d August 1842.

"I concur in the confirmation by his Excellency the Commander-in-chief on the sentence passed upon private William Frederic Carpenter, of Her Majesty's 44th regiment of foot.

(signed) "*Ellenborough.*"

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"The Honourable the President and Members of the Council of India in Council concur in the confirmation by his Excellency the Commander-in-chief of the sentence of death passed upon private William Frederick Carpenter, No. 1520 of Her Majesty's 44th regiment of foot.

(signed) "*W. W. Bird.*
"*W. Casement.*
"*H. T. Prinsep.*"

3. Case of Gunner *Jones*.—G. O. 8th December 1843.

"The Right honourable the Governor-general of India in Council concurs in the confirmation by his Excellency the Commander-in-chief of the sentence of death passed upon gunner John Jones of the first troop, third brigade of horse artillery.

(signed) "*Ellenborough.*
"*W. W. Bird.*
"*W. Casement.*"

4. Case of Private *Crockett*, 3d Buffs.—G. O. 4th March 1843.

"I concur.

(signed) "*Ellenborough.*"

"The Honourable the President and Members of the Council of India in Council, concur in the confirmation of his Excellency the Commander-in-chief of the sentence of death passed on private Edward Crockett, No. 909 of No. 2 company, Her Majesty's third regiment of foot (or buffs).

(signed) "*W. W. Bird.*
"*W. Casement.*
"*H. T. Prinsep.*"

213. It will be observed, that these four specimens all differ from each other, and on that account I have selected them from the General Orders. The double concurrence in the first, second and fourth cases was given at times when the Governor-general was in the Upper Provinces, and invested with the general functions of Governor-general in Council; Mr. C. Prinsep, acting Advocate-general, having advised that course under all the circumstances. The words of the Mutiny Act for the Company's forces, clause third, and of Article 92, are as follows: "Such sentence, whether original, revised or commuted, shall not be carried into execution until confirmed by the General or other officer commanding in chief at the Presidency, with the concurrence of the Governor-general in Council or Governor in Council of the Presidency in the territories subordinate to which the offender shall have been tried." The words of the 102d Article of War for Her Majesty's Forces are as follows: "Such sentence, whether original, revised or commuted, shall not be carried into execution until confirmed by the General or other officer commanding in chief the forces at the Presidency in the territories subordinate to which the offender shall have been tried, with the concurrence of the Governor-general in Council, or Governor in Council or Governor of such Presidency.

214. In conformity with these enactments, I would submit for approval the subjoined form of expressing the concurrence of Government. I have omitted the titles of honour of the Governors and others, because they vary from time to time, and may always be introduced if thought necessary.

In case of Death.

"The Governor-general in Council (or Governor in Council, or Governor) concurs in the confirmation by the Commander-in-chief of the sentence (or the revised sentence) of death passed on private A. B., of the — regiment, and in the said sentence being carried into execution."

(signed) "*B. C.*
"Secy to Government,
Mily Department."

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In cases of Commutation.

"The Governor-general in Council (or Governor in Council, or Governor) concurs in the confirmation by the Commander-in-chief of the sentence (or revised sentence) of death passed on private A. B., of the — regiment, and commuted by his Excellency to transportation for life (or for years), and in the said commuted sentence being carried into execution.

(signed) ———,
"Secretary to Govt,
"Military Department."

215. Whenever the Governor-general is separated from the Council, the form would run accordingly; the double confirmation heretofore practised being still observed; and I conceive it would suffice to say, "the President in Council" concurs, instead of the "President of the Council of India in Council," as in the cases of Carpenter and Crockett, given above. These forms would apply equally to the cases of European and native soldiers tried by courts martial for criminal offences.

(signed) *R. J. H. Birch*, Lieut-col,
Judge Advocate-general.

Judge Advocate-general's Office,
Calcutta, 15 March 1845.

HOME DEPARTMENT.—LEGISLATIVE.

(No. 36 of 1845.)

To the Honourable the Court of Directors of the East India Company.

Home Department, Legislative, 22 November 1845.

Honourable Sirs,

WITH reference to our despatches, as per margin, we have the honour to transmit to your Honourable Court copy of a note, dated 15th March 1845, submitted by the Judge Advocate-general of the Bengal army, on the draft Articles of War for the government of the native officers and soldiers in the military service of the East India Company.

No. 30, dated 20 December 1844.
No. 3, dated 20 January 1845.
No. 32, dated 7 October 1845.

We have, &c.

(signed) *T. H. Maddock.* *Geo. Pollock.*
F. Millett. *C. H. Cameron.*

Fort William, 22 November 1845.

Note.—The papers relating to the subject of Military Courts of Request are also annexed.

(No. 146.)

To *H. Chamier*, Esq., Chief Secretary to the Government of Fort St. George.

Legis. Cons. 23 March 1840. No. 17.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to call your attention to Mr. Officiating Secretary Grant's letter, No. 457, dated the 12th August last, on the subject of the Draft of Act for improving Military Courts of Request, and to request that you will as soon as practicable submit the opinion of the Right honourable the Governor in Council on the subject.

I am, &c.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Fort William, 23 March 1840.

Legis. Cons.
5 July 1841.
No. 16.
Jud. Department.

(No. 283—5221.)

To *F. J. Halliday*, Esq., Junior Secretary to the Government of India.

Sir,

I AM directed by the Right honourable the Governor in Council to request that with the permission of the Right honourable the Governor-general of India in Council, you will be so good as to refer to the Indian Law Commissioners, who have at present under their consideration a modification of Regulation 7 of 1832 of the Madras code, the correspondence with the Court of Sudder Adalut, noted as below,* in which is pointed out an oversight in the law, in not extending to the particular cases cognizable by courts martial, under Clause 3, Section 42, Regulation 7 of 1832, *when sitting in lieu of a Punchayet*, the extended power of confinement conferred upon the Punchayet itself.

I have, &c.

(signed) *H. Chamier*,
Chief Secretary, Sudder Adalut.

Neilgherries, Ootacamund,
29 June 1840.

(No. 81.)

Legis. Cons.
5 July 1841.
No. 17.

To the Officiating Secretary to Government in the Judicial Department.

Sir,

I AM directed by the Judges of the Court of Sudder Adalut to acknowledge the receipt of your letter of the 26th ultimo, submitting for their determination the question, "Whether at stations beyond the frontier, when the amount or value awarded by a court martial shall not have been paid by the party cast, it is legal for the commanding officer to cause such defaulter to be sent to a Zillah Judge, in order to be dealt with as directed in the latter part of Section XXXIII., Clause I., Regulation VII. of 1832?"

2. The Judges have given this question deliberate consideration, and are of opinion, that, under the law as it now stands, a commanding officer possesses no authority to send a defaulting debtor, against whom judgment has been given by a court martial, to the nearest Zillah Judge to be dealt with as other civil debtors.

3. Section XXXIII., Regulation VII. of 1832, expressly restricts the power to remit to the civil court to those cases alone where there has been an award by a Punchayet, and it appears to the Judges as expressly to provide, that in other cases the provisions of Article VII., Section XII., Regulation V. of 1827, are to be applied, which distinctly limit the term of a debtor's imprisonment "to the space of two months," any confinement by order of a commanding officer beyond that period, in cases where the award is not by a Punchayet, is, in the opinion of the Judges, prohibited and illegal.

4. At the same time the Judges remark that the principle of the law evidently seems to have been, that two months' imprisonment is an adequate confinement for debts within 200 rupees, of which alone courts martial in general have cognizance; as punchayets may take cognizance of suits for *personal* property to an unlimited amount, the law provides, in such cases, for extended confinement by the civil power; and it appears to have been an oversight in the law, when it was omitted to extend this provision to the particular cases specially cognizable by courts martial under Clause 3d, Section XLII., Regulation VII., 1832, sitting in lieu of a punchayet.

Sudder Adalut, Register's Office,
5 September 1834.

(signed) *J. F. Thomas*,
Register.

(No.

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* 1. Letter from Sudder Adalut, dated 5th September 1834, No. 81; 2. Eccl. Pro. 20th April 1840, No. 75; 3. Ditto, ditto, 2d June 1840, No. 104 A.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 75 B.)

EXTRACT from the Proceedings of the Sudder Adawlut, under date the 20th April 1840.

READ again Order of Government, dated 13 January 1840, No. 32, transmitting to the Court of Sudder Adawlut, for inquiry and report, a letter, dated 23d ultimo, from the Officiating Secretary to the Government of India, and two petitions, addressed to the Supreme Government by Nanand Ram, and Soorat Ram and Teekum Dossa, representing themselves to be prisoners confined for debt in the Zillah gaol at Bellaree, and praying to be released from confinement.

Read also Return, dated the 1st instant, from the Zillah Judge of Bellaree, to the precept of the Sudder Adawlut of the 27th January 1840, directing him to transmit copies of the petitions to the commanding officer at Jaulnah, for inquiry and report on their contents, and also for the further inquiry through the military authorities, which is directed in Section XI., Regulation II., of 1811, and directing the Zillah Judge to communicate the result of such inquiry, and to submit a copy of the commanding officer's report for the information of this court and of Government.

1. From the papers which accompany the above return, it appears that the petitioners, Nanandram and Sooratram, and Teekum Doss, are defendants in suits decided by a court martial, assembled under Clause 3, Sec. XLII., Reg. VII. of 1832, and the amount awarded against them by the said court martial not having been discharged, it appears that they were sent to the Zillah Judge of Bellary, in order to be dealt with as directed in Section XXXIII., Reg. VII. of 1832.

2. It has not, however, been explained by the officer commanding Jaulnah how the suits against the petitioners in question came to be tried by a court martial, and not by a punchayet; and without this explanation, the jurisdiction of the court martial would appear questionable, as under Clause 3, Sec. XLII., Reg. VII. of 1832, the suits specified in the first clause of that section are not cognizable by a court martial, unless the defendant may have refused to refer the claim to a punchayet, or where, having consented thereto, and an award having been passed, a charge of partiality may have been preferred against the punchayet.

3. But even if the court martial had jurisdiction in the suits in question by reason of the defendant having refused to refer the claim upon him to a punchayet, the further detention of the prisoners, Nanundram and Teekum Doss, by the Zillah Judge (the other petitioner, Sooratram, is reported to have died in gaol), would not be legal, the court of Sudder Adawlut having ruled in a letter addressed to Government, under date the 4th September 1833, that under the law as it now stands, a commanding officer possesses no authority to send a defaulting debtor, against whom judgment has been given by a court martial, to the Zillah Judge to be dealt with as other civil debtors.

4. Section XXXIII., Reg. VII. of 1832, expressly restricts the power to remit to the civil court, to those cases alone where there has been an award by a punchayet; and it as expressly provides that in *other* cases the provisions of Article VII., Sec. XII. Reg. V. of 1827, are to be applied, which provisions distinctly limit the term of a debtor's imprisonment to the space of two months. It was no doubt an oversight in the law in not extending to the particular cases cognizable by courts martial under Clause 3, Sec. XLII., Reg. VII. of 1832, when sitting in lieu of a punchayet, the extended power of confinement conferred upon the punchayet itself; but under the law, as it now stands, any confinement by order of a commanding officer or court martial, under Regulation VII., 1832, beyond two months, in cases where the award *is not by a punchayet*, is prohibited and illegal.

5. The Zillah Judge of Bellaree will communicate this view of the law to the officer commanding Jaulnah, and unless that officer can show that the prisoner is detained on account of an award by a *punchayet*, the Zillah Judge will proceed to release the said Nanandram and Teekum Doss from confinement.

6. With respect to the petitioner, Soharam, who has been detained in confinement at Jaulnah by the authorities in the Nizam's territories, on a charge of murder, no orders can be issued by this court.

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Ordered, That extract from these proceedings be forwarded to the Judge in the Zillah of Bellary, for his information and guidance, and that a copy thereof be furnished to the Chief Secretary to Government.

(True extract.)
(signed) *W. Douglas*,
Register.

(No. 104 A.)
EXTRACT from the Proceedings of the Sudder Adawlut, under date the 2d June 1840.

READ extract from the Minutes of Consultation, under date the 8th May 1840, approving of the orders issued by the court of Sudder Adawlut, for the release of the prisoners Nanandaram and Tekum Doss, unless detained under an award by a punchayet; but at the same time suggesting for the consideration of the Sudder Adawlut the propriety of restricting the power of punchayets in cases of debt to that possessed by courts martial, viz. to two months' imprisonment.

1. In the proceedings of the Sudder Adawlut of the 5th September 1834 and 20th April 1840, it was explained to Government, that in ordinary cases *courts martial* had originally cognizance only of debts *within* 200 *rupees*, and though this has since been raised to 400 rupees by Section XXI., Reg. VII., 1832, yet the term of imprisonment was limited to two months by Article VII., Sec. XII., Reg. V., 1827, apparently because the law considered such confinement adequate for debts of 200 rupees; but as punchayets may take cognizance of suits for personal property to an *unlimited* amount, the law provides in such cases for extended confinement by the civil power; and as observed by the court of Sudder Adawlut, it was no doubt an oversight in the law in not extending to the particular cases cognizable by courts martial under Clause 3, Section XLII., Reg. VII. of 1832, *when sitting in lieu of a punchayet*, the extended power of confinement conferred upon the punchayet itself.

2. A modification of Reg. VII. of 1832 is at present under the consideration of the Law Commission, and it seems proper that such opportunity be taken to amend these provisions in it. But it does not appear to the court of Sudder Adawlut to be expedient to propose a special law in favour of debtors under awards of such military punchayet, to the exclusion of those under decrees of punchayets appointed by the civil authorities.

3. Persons detained under an award of a military punchayet are proceeded against as other civil debtors; the relief afforded to insolvent debtors under Sec. 11, Reg. II. of 1811, being open to persons detained under an award of a military punchayet, equally with those confined under a decree passed by a punchayet assembled by the civil authorities.

4. The Zillah Judge of Bellary in a letter dated the 16th ultimo, has reported, that as the prisoners Nanandaram and Tekum Doss were detained in confinement on account of an award of a court martial, and not of a punchayet, they were released in obedience to the orders of the court of Sudder Adawlut, their confinement having already exceeded the legal period of two months.

Ordered, That extract from these proceedings be forwarded to the Chief Secretary to Government, for the purpose of being laid before the Right honourable the Governor in Council.

(True extract.)
(signed) *W. Douglas*,
Register.

(True copies.)
(signed) *W. A. E. Mason*,
Ag Dy Secry to Govt.

(No.

Legis. Cons.
5 July 1840.
No. 18.

(No. 56.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the Military Department, under date the 5th August 1840.

READ letter, No. 2548, dated 30 July 1840, from the Secretary to Government, Military Department, at Fort St. George, submitting copy of a despatch from the Adjutant-general of the Madras army, of a Minute by the Honourable Mr. Sullivan, and of a letter from the officer commanding at Arcot, relative to a case which has recently occurred at Hydrabad, in which it has been decided by the Sudder Udalut, that a soucar, named Ramiah, although resident within the military limits, is not amenable to the military courts established by Reg. VII. of 1832.

Ordered, That the letter from the Secretary to the Government, Military Department, at Fort St. George, together with its enclosures, be transmitted to the Legislative Department for consideration, and such orders as may be necessary, with a remark that in the Minute by the Honourable Mr. Sullivan, two very different subjects, the jurisdiction of the Military Court of Requests, and the authority of police officers, appear to be unduly blended together.

Ordered, That the papers now transmitted be returned to this Department when no longer required.

(True extract.)

J. Stuart, Lieut.-col[l],
Secretary to the Gov[t] of India,
Military Department.

MILITARY DEPARTMENT.

Legis. Cons.
5 July 1841.
No. 19.

(No. 2548.)

To the Secretary to the Government of India, Military Department.

Sir,

I AM directed to transmit, for the consideration of the Right honourable the Governor-general of India in Council, the accompanying papers* relative to a case which has lately occurred in the cantonment at Hydrabad, in which it has been decided by the Sudder Udalut, that a soucar named Ramiah, although resident within the military limits, is not amenable to courts which were established within such limits by Reg. VII. of 1832, as he did not belong to the classes who are specified in Section XLII. According to their interpretation of the law, a native subject of the Company, resident within military limits, may sue, but cannot himself be sued, before the Military Courts; as there are no tribunals beyond the frontier to which both parties can resort in case of dispute, such an alteration in the law would appear to be necessary as would bring both parties within the jurisdiction of the military police.

I have, &c.

(signed) *S. W. Steel*, L[t]-col[l],
Secretary to Government.

Fort St. George, 20 June 1840.

(No. 237.)

To the Secretary to Government, Military Department.

Sir,

BY order of the Officer commanding the Army in chief, I have the honour to forward a communication from the Brigadier commanding the Hydrabad Subsidiary Force, with a letter addressed to that officer by the executive police authority, and to request that in submitting them to the consideration of the Right honourable the Governor in Council, you will be good enough to express Sir Hugh Gough's

* From the Adjutant-general of the Army, dated 11th March 1840, No. 237.
Minute by the Honourable John Sullivan, Esq., dated 24th March 1840. Letter from the Officer commanding at Arcot, dated 11th November 1839, referred to in the above Minute.

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Gough's earnest recommendation that his Lordship may be pleased to take the subject into his early and serious consideration, as the decision of the Court of Sudder Adawlut involves the total destruction of all legal safeguards to the extensive and important mercantile transactions of a large community, upon which the supply and resources of some of our principal forces are necessarily in a great degree dependent.

I have, &c.

(signed) *R. Alexander*, Lt-col^{l},
Adjutant-general of the Army.

Adjutant-general's Office, Fort St. George,
11 March 1840.

(No. 3 of 1840.)

To the Adjutant-general of the Army, Fort St. George.

Sir,

THE late decision of the Judges of the Sudder Adawlut of Madras, "that the native subjects of the Company (not of the military classes) residing in this cantonment are not amenable to the military authorities for civil suits," has so paralysed all business here, that the Superintendent of Police has felt it his duty to refer the subject for the decision of the Right honourable the Governor in Council, for which purpose I have the honour to forward his letter to my address.

The present decision (imperfectly as it is yet known) has already created a considerable sensation, and as it places an influential portion of the community beyond all jurisdiction at this place for civil suits, it is much feared that a large opening will be left for the practice of fraud by the dishonest creditor; besides which, it gives them an undue advantage, for while they may appear as plaintiffs, they cannot be sued as defendants.

The question now is, before what court can this class of persons be sent? It cannot surely be intended that plaintiffs and defendants, with their books, accounts and witnesses, should be sent to Guntoor (the nearest court to this) for this purpose, where they may be detained for months before it comes to their turn to be heard, which would entail inevitable ruin to both parties, as during their absence their business must be neglected; and what is to be done in the case of a subject of his Highness the Nizam being plaintiff? is he to go to a Company's court to prefer his claim?

The system of making them amenable to military courts, according to the construction hitherto acted upon, has proved very beneficial to all parties, and is much desired to be continued by them; and even Ramiah himself, whose case this decision would appear to favour, is exposed to much inconvenience, as he cannot in consequence recover sums due to him from persons situated as himself.

If the construction now put by the Judges of the Sudder Adawlut of Madras on Section XLII., Reg. VII., A. D. 1832, be correct, I have the honour to request, that the Right honourable the Governor in Council may be pleased to take the same into consideration, and give to officers commanding forces beyond the frontier the power of bringing before military courts all subjects of the Company residing within military cantonments, whether marching or stationary, in civil suits as well as in criminal offences; a power which, legally or otherwise, has been hitherto exercised with benefit to all persons concerned.

This power is vested in the officer commanding the Hydrabad Subsidiary Force by a sunnud from his Highness the Nizam, over all his subjects residing within these cantonments, and to which they most willingly submit.

I have, &c.

(signed) *J. Wahale*, Brigadier,
Commanding Hydrabad Subsidiary Force.

Head Quarters, Hydrabad,
Subsidiary Force, Secunderabad,
3 March 1840.

To

No. 2.
On the New Articles of War for the East India Company's Native Troops.

To Brigadier *J. Wahale*, C. B., Commanding Hydrabad Subsidiary Force.

Sir,

AFTER careful perusal of Reg. VII., A. D. 1832, together with the decisions of the Judges of the Sudder Adawlut thereon, which you had the goodness to place in my hands, I consider it my duty to address the following representation to you, as the head of the police at this station, and solicit your support, in order that the subject may be brought in all its bearings to the notice of the Right honourable the Governor in Council, and some specific instructions furnished to me for my guidance.

2. I observe by reference to the records of the police office at this station, that from the first publication of Regulation VII., A. D. 1832, till the receipt of the annexed copy of a letter from the Register of the Sudder Adawlut, it has been invariably the practice to refer to decision by native punchayets or courts martial assembled under the provisions of Section XLII. of the aforesaid Regulations, all civil suits in which the defendant, at the time the cause of action arose, was one of the classes specified either in the 1st or 2d Clause of Section XIII.; and such, to my knowledge, has been the practice, under similar circumstances, in the other field forces; no doubt having been previously entertained by the judicial or police authorities, as to the legality thereof, or that such power was vested in the commanding officers of the field forces and the superintendents of police, acting under their orders.

3. The copy of the letter from the Register will show that the Judges of the Sudder Court have decided that the classes specified in Clause II., Section XIII., Regulation VII., A. D. 1832, are not military classes, and that claims against them do not come under Section XLII.; the consequence of which is, that the greater part of the population of this station, amounting to many thousands, including the registered bazar-men, have no means of settling any civil suits or claims of a pecuniary nature, the result whereof must be a system of fraud and peculation, which no authority at this station can check or control, and must end in a cessation of all trade and fair dealing, to the injury of the force, as well as to the interests of the Government. Further, it will cause continual litigation, since all suits which have been previously settled under a misconstruction of the clause are now illegal.

4. The Judges of the Sudder Adawlut having decided the point in question, I am obliged to submit the annexed queries, since I am quite at a loss in what way to fulfil my duty, or to answer the appeals made to me as Superintendent ofPolice for the recovery of money which has become due in the course of trade; for although at *this* station civil suits of large amount might be referred to the nearest Zillah Court, still this could not be the case when the suits are for sums of small amount, which are those generally filed by the followers of a camp; further, as these are the only Regulations acted on in any camp, wherever situated, it becomes a question what course is to be adopted when a force is beyond sea.

5. From what is above set forth, I beg to state, with the utmost respect, that in my opinion the Legislature, in framing Section XLII., Reg. VII., A. D. 1832, did intend to bring under its provisions all native subjects serving, supplying or carrying on any trade or profession with a force when beyond the frontier; and the only point which at all opposes this conclusion is, that the words "military classes" are used in the aforesaid section; and this even may bear two constructions, since one of the classes included in Clause 2, Section XIII., as registered bazar-men, are in Class 2, Section V., called "military bazar-men;" and, if I mistake not, all other persons therein included should be classed as military, since they are made amenable to trial for criminal offences. At any rate, I feel assured that the Government will hesitate ere it abrogates a system which has hitherto worked well, and has given general satisfaction, inasmuch as it accords with the customs of the natives, and enables them to obtain without delay, and on the spot, cheap and efficient justice.

6. In making the above statement, I trust I have not exceeded due limits. I have spoken plainly, because I am bound by the solemn obligation of an oath to

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adhere strictly to the rules prescribed in Regulation VIII., A. D. 1832, enacted for my guidance, and in order that I may faithfully execute the trust reposed in me, it is absolutely necessary that they should be clearly defined.

I have, &c.

(signed) *J. D. Awdry*,
Capt^{n} Sup^{t} of Police.

Police Office, H. Q. H. S. Forces, Secunderabad,
February 1840.

QUESTIONS arising out of Regulation VII., A. D. 1832.

1. ARE bazar-men, registered according to Section V., included in the military classes, against whom civil suits may be referred to native Punchayets and courts martial assembled, according to the enactments of Section XLII., Regulation VII., A. D. 1832, and if not, in what way are these suits to be disposed of?

2. Are native subjects of the Company carrying on trade, and serving or supplying the troops beyond the frontier, either as bazar-men, shopkeepers, sowcars or artificers (but not registered according to Section V.), amenable to the provisions of Regulation VII., A. D. 1832; and if not, in what way are civil suits filed for the recovery of money due by them to be disposed of?

3. Are natives receiving public pay, drawn by an officer in charge of a public department appertaining to the army labourers employed either publicly or privately for the use of the troops, and servants of military officers or chaplains beyond the frontier, amenable to the provisions made in Section XLII.; and if not, in what way are suits for the recovery of money from them to be disposed of?

4. Are Europeans supplying or serving the troops, either as shopkeepers or in any other capacity, amenable to be sued for the recovery of money before courts assembled under the provisions of Section XLII. of Regulation VII., A. D. 1832; and if not, in what way are these suits to be disposed of?

5. In what way are claims against European pensioners to be decided beyond the frontier?

6. In what way are claims against native pensioners to be decided beyond the frontier?

(signed) *C. D. Awdry*,
Captain Sup^{g} Police.

(True copies.)
(signed) *S. W. Steel*, L^{t}-col^{l},
Sect^{y} to Gov.

MINUTE.

THE Sudder Adawlut having, upon a reference made to it, expressed an opinion that an individual named "Ramia," a sowcar by profession, living within the cantonment of Secunderabad, did not belong to any of the classes specified in Section XIII., Reg. VII. of 1832, and that he was not therefore amenable in civil matters to the jurisdiction of the military court of that station, the officer commanding the Subsidiary Force at Hyderabad has questioned the correctness of that opinion, and requests the Government to give to him and to other commanding officers similarly circumstanced "the power of bringing before military courts *all* subjects of the Company residing within military cantonments, whether marching or stationary, in civil suits as well as in criminal offences; a power which," he says, "whether legally or otherwise, has been hitherto exercised with benefit to all persons concerned." The Superintendent of Police at Secunderabad is of opinion, that "the Legislature, in framing Sec. 42, Reg. VII. of 1832, did intend to bring into its provisions *all* native subjects serving, or supplying, or carrying on any trade or profession with a force when beyond the frontier." But there is no proof, in the first place, that the sowcar, Ramia, is a native subject of the Company; and it is clear

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clear that he does not belong to any one of the classes enumerated as below,* who are declared by that section to be amenable to military courts in civil suits.

The opinion of the Sudder Adawlut appears, therefore, to be perfectly correct; but if it were otherwise, the Government has no power to amend it, or to stretch the law in the manner proposed by the commanding officer. The anomaly complained of, viz. that non-military persons, in the present state of the law, may sue, but cannot be sued, in military courts, is common to such courts as are within, as well as those beyond the frontier; neither are such persons amenable *within the frontier* to military courts for offences committed within military limits. In a quarrel or affray, if a civilian is the defendant, he must be handed over to the civil power; if plaintiff, he may prosecute in the military court. The civilian may recover a debt from a soldier with expedition and economy, but if he is the debtor, the soldier may be put to infinite expense and trouble in recovering his dues; the parties may nevertheless be next-door neighbours. But the greatest evil of the present military bazar system is, that the officer who is entrusted with the powers of punishment, exercises them without any check whatever; the commanding officer may, it is true, revise and annul his sentences; but this is only the check of a principal over his subordinate. There is no such check as is exercised over every civil magistrate by distinct controlling authority. Every magistrate is obliged to keep a register of his punishments, which is strictly scrutinized by the Judge on circuit, and any abuse of authority at once animadverted upon and checked. But the Military Superintendent of Police keeps no such register; no one, save his commanding officer, knows whether in the nature and amount of his punishments he keeps to the law, or whether he keeps within his own jurisdiction.

From some expressions in the letter from the officer commanding at Arcot, it would seem to be his opinion, and I believe the opinion to be a prudent one, that any part or portion of these territories, and all the population included in them, may, by being pronounced to be within military limits, be placed at once under a military police. I believe that this opinion is acted upon to a very great extent; that persons in no way liable to military jurisdiction are tried, and punished by the Military Police; that punishments in no way warranted by the Regulations are inflicted by that police; that persons being many miles beyond military limits are made amenable to it, and that assessments are imposed and levied by the officers of police for police purposes, without any warrant of law. 11 Nov. 1839.

None of these abuses would exist, if the superintendents of police were, as the civil magistrates are, liable to visitations by the Judges of Circuit. If that wholesome check was imposed upon them, their powers might be so enlarged as to correct the anomalies which now exist. They might be civil magistrates as well as military superintendents within their range, or within a larger range; and as this branch of the judicial system will come under the revision of the Law Commissioners, I think that the papers which have given rise to the present discussion should be sent to them.

There is another anomaly which requires correction; the law exempts all tradesmen within military limits from paying "moturfa," while all without those limits pay a tax upon their arts or professions. There can be no reason for such a difference; it is very invidious and very unjust.

So long as the law continues as it is, the more confined the military limits are, the less chance is there of inconvenience and collision with the civil authority. That authority has jurisdiction over all classes; the military police has authority over a few. I think, therefore, that the enlarged limits which the commanding officer at Arcot asks for should not be given, and that when the military police at that station is introduced, the commanding officer should be reminded that he can only exercise jurisdiction over bazar-men who have voluntarily enrolled themselves as such, and that such people may withdraw themselves from his jurisdiction when they please by erasing their names from the register. This is the law at present.

24 March 1840. (signed) *J. Sullivan.*

(True copy.)
(signed) *S. W. Steel,*
Secretary to Government.

(No.

* Native non-commissioned officers or soldiers, all servants receiving pay, or being hired in the service of the artillery and military surveyors and draftsmen, apothecaries, farriers, trumpeters, drummers, artificers and labourers, servants of officers, public and private servants of chaplains, and military bazar-men registered.

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(No. 479.)

To the Adjutant-general of the Army, Fort St. George.

Sir,

1. In compliance with the request made in your letter of the 6th instant, No. 6324, I have the honour to enclose a small sketch of that part of the cantonment of Arcot which is alluded to, including the lines of the two regiments at present in cantonment. I observe the plan that has come from the Board of Revenue (only just now forwarded to me by the collector) is on no scale at all, and is incorrect, according to the Minutes of Council received, besides excluding several compounds and houses (I only knew of two when I last wrote) from the military cantonment, which might be added to the other objections I have already pointed out.

2. The plan of the cantonment, as laid down according to orders from the Commander-in-chief by the General Officer commanding the division who resided on the spot, under instructions from Government in 1813, will be found in the Quartermaster-general's and the Chief Engineer's offices at Madras, dated 27th February 1814, excluding Raneepet, (it will be seen) alters the military precincts entirely, and will benefit no one that I know of, but the perquisites of the Tassildar. I have lately sent a case of fraud to the collector, defrauding Government, I believe, of 1,000 rupees in one year, in some very trifling matters, in Raneepet; and the arrack contract of this place, which yields a revenue of 10 or 15,000 rupees annually, people have offered about 3,000 rupees more for, if put under military control; but this had better be managed by a commissariat officer or a collector. All I wish is, to have police authority within the limits of the cantonment, as shown in my letter to your address of the 2d instant, No. 470. Hussonallypet being excluded may be of minor importance; but it will be obvious to the Officer commanding the Army in chief that there can be little utility in giving me police authority in the officers' compounds and troopers' lines, for in both of those places commanding officers are competent to do what the State requires.

3. If Government, after what I have stated, should not consider it expedient to comply with my suggestion, there is still another ground of complaint that I have to prefer. I allude to that part of the sketch where civil bazars will be found at present in the regimental lines, that ought to be removed or placed under military authority, the cantonment having been under the civil power. The bazar-people of Raneepet could not be prevented from establishing branch establishments in the lines occupied by the troops, which they have done, and are now marked off as civil bazar accordingly; but there can be no doubt of the impolicy of having a civil bazar added on to the end of a regimental bazar, or each alternate shop being under civil and military control, which will create endless trouble and confusion; and when a disturbance takes place, it will be difficult to adjust, or even to say whose business it is to settle it; for these cases always involve people under opposite authorities, independent of the collision that may frequently take place between the civil inhabitants and the troops. If we are to be separate, we ought to be separated. Again: if civil bazars are allowed to be located in the bazar within military precincts, where they should not be, it will be totally impossible for officers to make their bazar of any use to the men, and the G. O. G., 30th October 1819, will become a dead letter; and should the regiment be required to take the field, it will be without an efficient bazar, and destitute of the means of providing for its exigencies; for all those who had previously lived by the corps will stay behind, and leave it to its fate, and the regimental bazar people who had been out of employ could not from their want of capital be expected to assist the troops in an instant who had never patronized them. The inhabitants, I have been told, were getting up a petition to be placed under military authority, but I desired it might not be done. The shops in the lines called civil bazar yield 308½ rupees to Government annually, which might still be collected as quit-rent under military authority.

I have, &c.

(signed) *Geo. Sandys*, Lieut.-colonel,
Com^g Arcot.

Arcot, 11 November 1839.

(True copy.)

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

(No.

(No. 610 *a*.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the Military Department, under date the 24th February 1841.

Legis. Cons. 5 July 1841. No. 20.

READ letter, No. 327, dated 26th January 1841, from the Secretary to Government, Military Department, at Fort St. George, in continuation of a letter of the 30th June 1840, submitting extracts from Minutes of Consultation and copy of a letter from the Adjutant-general of the Army, representing the expediency of making Section XLII., Madras Regulation VII. of 1832, applicable to all classes inhabiting military bazars beyond the frontier.

Ordered, That the letter from the Secretary to Government, Military Department at Fort St. George, be transmitted to the Legislative Department for consideration, and such orders as may be necessary, in continuation of extract from this department, No. 56, under date the 5th August 1840, and that the enclosure be returned to this department when no longer required.

(True extract.)

(signed) *J. Stuart*, Lieut.-colonel,
Secretary to Government of India,
Military Department.

MILITARY DEPARTMENT.

(No. 327.)

To the Secretary to the Government of India, Military Department.

Legis. Cons. 5 July 1841. No. 21.

Sir,

IN continuation of a despatch from this department, of the 30th June last, No. 2548, I am directed by the Right honourable the Governor in Council to forward to you for submission to the Right honourable the Governor-general of India in Council the papers noted below,* containing a representation from his Excellency the Commander-in-chief as to the expediency of making Section XLII., Madras Regulation VI. of 1832, applicable to all classes inhabiting military bazars beyond the frontiers, which the Right honourable the Governor in Council recommends for favourable consideration.

I have, &c.

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

Fort St. George,
26 January 1841.

(No. 4180.)

EXTRACT from the Minutes of Consultation, 11 November 1840.

The following Papers are ordered to be recorded:—

No. 902.—To the Secretary to Government, Military Department.

Sir,

BY order of the Commander-in-chief, I have the honour to request that you will be pleased to move the Right honourable the Governor in Council, that the following may be submitted for the opinion of the Court of Sudder Adawlut; viz.

Whether a native ironsmith, not a registered bazar-man, residing within the limits of a military cantonment, situated beyond frontier, is amenable to a military court of requests assembled under the provisions of Article VII., Sec. XII. of the Native Articles of War, for a debt under 200 rupees. The question is put with reference to a late decision given by the Judges of the said court, under date 5th October 1839, para. 4, that Sec. XLII. of Reg. VII. of 1832, is only applicable when the defendant is one of the military classes specified in Sec. XIII. of the same Regulation,

* Extract from the Min. of Cons. No. 4180, 11th November 1840, with copies of papers therein recorded. Extract from the Min. of Cons. No. 4646, dated 22d December 1840. Copy of a Letter from the Adjutant-general of the Army, 6th January 1841; No. 18.

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Regulation, and also with reference to Clause 1 of Section XXI. of the same Regulation.

The decision of this question has become of peculiar moment at this time on a trial for perjury, wherein it becomes necessary to inquire if the Court of Requests, before whom the false evidence was given, had jurisdiction in the cause.

As the proceedings of three courts martial are awaiting the decision of the Judges of the Sudder Adawlut, his Excellency instructs me to bring to consideration that an early reply is very desirable.

I have, &c.

Adjutant-gen^{ls} Office, (signed) *R. Alexander*, L^{t}.-col^{l},
Fort St. George, 10 November 1840. Adjutant-gen^{l} of the Army.

Ordered, That the foregoing letter be referred, through the Judicial Department, for the opinion of the Judges of the Court of Sudder Adawlut.

(No. 4646.)

EXTRACT from the Minutes of Consultation, 22 December 1840.

Read the following Extract:

Judicial Department, No. 968.—Extract from the Minutes of Consultation, 14 December 1840.

Read the following Extract:

No. 213.—Extract from the Proceedings of the Sudder Adawlut, under date the 8th December 1840.

Read Order of Government, dated the 14th ultimo, No. 896, communicating an Extract from the Minutes of Consultation in the Military Department, under date the 11th ultimo, requesting the opinion of the Court of Sudder Adawlut, whether a native ironsmith, not a registered bazar-man, residing "within the limits of a military cantonment, situated beyond frontier, is amenable to a military Court of Requests, assembled under the provisions of Article VII., Sec. XII. of the Native Articles of War, for a debt under 200 rupees."

1. The Court observe that the jurisdiction of the military Courts of Request, established by Article VII., Sec. XII., Reg. V. of 1827, has been extended by Sec. XXI., Reg. VII. of 1832, to all persons of the military classes specified in Section XIII. of the last-mentioned Regulation; that is, the Court conceive, to all persons of all the classes specified in any of the three clauses of that section; the persons from whom those of the military classes are intended to be contradistinguished being only *those* of the persons referred to in the passage of Clause 2, quoted below,* who do not belong to any of the classes specified.

2. It is to be observed, that these civil persons are liable, under Clause 2d, Sec. XIII., to punishment for the petty *criminal offences* specified in Clause 1st, by either courts martial, or by the officer in charge of the police; but they are expressly exempted from any responsibility for debt to the Court of Requests, and even beyond the frontier, from the jurisdiction, unlimited in amount, provided for in Section XLII., which is restricted also to the military classes specified in Section XIII.

3. The only description given in the Adjutant-general's letter of the native ironsmith in question is, that he is not a military bazar-man, and that he resides within the limits of a military cantonment situated beyond the frontier. The Court conclude that if he had belonged to any of the military classes specified in Section XIII., Reg. VII. of 1832, or Article XI., Sec. XII., Reg., V. of 1827, this would have been expressly stated. If he *does* belong to any of those classes, he *is* amenable; if he does not, he is *not* amenable to the Military Court of Requests, assembled under the provisions of Article 7, Sec. XII. of the Native Articles of War.

Ordered,

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* Viz. "And beyond the frontier all native subjects of the Company, of whatever description, who may have followed the troops into the field, or may be there residing within the limits of a military camp or cantonment."

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Ordered, That Extract from these Proceedings be forwarded to the Chief Secretary to Government, for the purpose of being laid before the Right honourable the Governor in Council.

The original letter which accompanied the Order of Government, dated the 14th ultimo, No. 896, is herewith returned.

(True extract.)

(signed) *W. Douglas,* Registrar.

To the Chief Secretary to Government.

Ordered, That the following Extract be communicated to the Military Department, in reference to an extract from the Minutes of Consultation in that department, dated 11 November 1840, No. 4180.

(signed) *Hy Chamier,*
Chief Secy.

Ordered, That the foregoing Extract be communicated to his Excellency the Commander-in-chief, in reference to a letter from the Adjutant-general of the Army, dated the 10th ultimo, No. 902.

(No. 18.)

To the Secretary to Government, Military Department.

Sir,

I HAVE the honour to acknowledge the receipt of Extract from the Minutes of Consultation, No. 4646, of the 22d December 1840; and with reference to the decision of the Court of Sudder Adawlut, that Section XLII., Regulation VII. of 1832, has no reference to others than the military classes specified in Section XIII. of the same Regulation. I am directed by his Excellency the Commander-in-chief to bring to the consideration of Government, that a very large and the wealthiest and most influential portion of the inhabitants of bazars beyond the frontier are without civil law or legal means of obtaining debts due to them.

2. His Excellency considers that it is unnecessary to do more than advert to the serious evil of such insecurity to the mercantile transactions of those classes upon which our forces would be mainly dependent for supplies, had they to take the field, and instructs me to bring to the notice of Government, that by an arrangement of the political authorities, the subjects of the foreign states where our forces are cantoned are, when inhabitants of the military bazars, rendered amenable to the laws therein in force.

3. The Commander-in-chief begs to recommend that his Lordship in Council will be pleased to take the subject into early consideration, in order that an immediate remedy may be provided for such a state of insecurity, and that for the present the provisions of Section XLII., Reg. VII., of 1832, may be rendered applicable to all classes inhabiting military bazars beyond the frontier.

I have, &c.

(signed) *R. Alexander,* Lt-coll,
Adjt-genl of the Army.

Adjutant-genl's Office,
Fort St. George, 6 January 1841.

(True extracts and copies.)

(signed) *S. W. Steel,* Lt-coll,
Secy to Govt.

Legis. Cons. 5 July 1841. No. 22.

(No. 7.)

RESOLUTION, dated 26 April 1841.

Extract Proceedings.

READ Extract, No. 610 A., dated the 24th February last, from the proceedings of the Governor-general of India in Council, in the Military Department, forwarding papers from the Secretary to Government, Military Department, at Fort St. George, representing the expediency of making Sec. 42, Reg. 7, of 1832, Madras code, applicable to all classes inhabiting military bazars beyond the frontier.

RESOLUTION.

The Governor-general in Council observes, that the Military Court of Requests Act provides for the difficulty pointed out by the Commander-in-chief of Fort St. George; viz., "that the cantonments beyond the frontier, the wealthiest and most influential portion of the inhabitants of bazars, are without civil or legal means of obtaining debts due to them."

2. That Act subjects to Courts of Request, within and without the frontier, *all* persons who for crimes would be subject, within and without the frontier respectively, to courts martial. The draft Military Court of Requests Act is now undergoing the consideration of the Judge Advocate-general, and it is desirable that that officer should also see the papers under review.

Ordered, accordingly, That the Military Department, in reply to the extract of the 24th February last, and in continuation of that from this Department of the 1st of March last, be furnished with a copy of the foregoing resolution, with a request to obtain and communicate to this department the opinion of the Judge Advocate-general on the point in question, in connexion with the provisions of the draft Military Court of Requests Act.

Legis. Cons. 5 July 1841. No. 23.

(No. 287.)

EXTRACT from the Proceedings of the Honourable the President in Council, in the Military Department, under date the 18th November 1839.

No. 228.—From the Judge Advocate-general to Major *William Cubitt*, Officiating Secretary to the Government of India, Military Department, Calcutta.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 148, of the 9th ultimo, with the draft of an Act for the regulation of Native Courts of Request, and other papers connected therewith, and having laid the same before the Commander of the Forces, I have been directed to submit the accompanying memorandum on the subject.

The enclosures are herewith returned.

I have, &c.

(signed) *G. Young*,
Judge Advocate-general.

Judge Advocate-general's Office,
Head Quarters, Meerut,
12 October 1839.

Judge Advocate-general's Office, Head Quarters, Meerut, 12 October 1839.

MEMORANDUM on the Draft of an Act for regulating Native Military Courts of Request, dated 20 May 1839, received with Major Cubitt's letter, No. 148, of the 9th September 1839.

1. TRIALS by Courts of Request, European and Native, are carried on under the orders of officers commanding stations, and not under the eye of the Commander-in-chief. The evidence is not recorded, and the decrees are final, so that I have no official knowledge of the working of the system, except what is derived from the few references which have been made to me, when a difference of opinion has arisen

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arisen between a court and a commanding officer. I was also consulted on the framing of an order by Sir Henry Fane in January 1837. This order was prepared after information had been received from the principal stations of the army of the rules in force at each station, and was intended to introduce uniformity of practice by prescribing the most convenient regulations, and declaring what was considered to be a just construction of the law on points which were doubtful or variously understood. As there was nothing beyond the competence of a Commander-in-chief in the proposed General Order, I expected to see it published as such, but it was referred to Government in April 1837. If it had been published, it would have prevented the petition addressed to the Governor-general by Mr. John Rawlins, dated Agra, 19 September 1838, by declaring, that non-military persons resident in a cantonment are not amenable to European Courts of Request. I think it desirable that it should yet be published, with the addition of some clauses from the Madras General Order of 10 February 1835, relating to the swearing of parties. It may be observed, that among the suggestions conveyed to Sir Henry Fane by commanding officers in January 1837, none proposed any change in the law contained in the 4th Geo. 4, c. 81; and in Reg. XX. of 1810, there was no demand of a legislative remedy for any acknowledged evil.

2. Having had so little knowledge of the operation of the present system, I thought it right to consult some of the most experienced officers at this station, and shall have occasion to refer to their testimony in the following observations on the several sections of the draft.

3. Section 1. In this section it is proposed to raise the amount recoverable from 200 rupees to 400. When the draft of Native Articles of War was revised in 1836, by a committee consisting of Major-general Lumley, Captain Richard Birch and myself, we agreed to retain the present limit of 200 rupees, on the ground that it was not advisable to encourage a greater extension of credit, and that 200 rupees is in as high a ratio to the pay and allowances of native officers, soldiers and camp followers, as 400 rupees is to those of Europeans. I adhere to the opinion I then held on that point, and also (following the analogy afforded by the 4th Geo. IV., c. 81) as to the propriety of introducing an article on the subject of military Courts of Request, rather than making it the matter of a separate legislative Act. On this proposition, Major-general M'Caskill thus expresses himself: "I do not perceive what benefit could be expected to accrue from raising the amount claimable to 400 rupees; on the contrary, it would, I conceive, give rise to much litigation, and would introduce many causes of a complicated and difficult nature connected with trades, which would be beyond the knowledge of most members, who, not being conversant in such matters, would have difficulty in arriving at a just comprehension of them; and, besides, this would hold out encouragement to the natives to multiply suits and embark in ventures from which they would otherwise be deterred."

4. With respect to requiring that the defendant shall have been "a person of the description above mentioned when the cause of action arose," I do not think that necessary, but only that he should be so when the suit is instituted.

5. Section 2. There is no objection to giving power to compose the court of European or of native officers.

At present superintending officers exercise a salutary influence on the deliberations of courts; but as some are withheld by doubts or indifference, the Commander-in-chief might signify that it is their duty to interpose their advice whenever they are satisfied that the judgment which the court are inclined to adopt is erroneous.

6. Sections 3, 8. Courts martial already possess, and may most conveniently exercise, all the powers referred to in these sections.

7. Section 4. I concur in the general opinion, that to record the proceedings, including the evidence and the decree, and to furnish a copy of the same to the convening officer, would be incompatible with the summary nature of the judicature, and with the multitude of petty suits that come before it every month. On this point, I think the objections of Major-general M'Caskill are conclusive: "To record the proceedings of the courts I should also consider objectionable; indeed, scarcely feasible. The average number of cases for 12 months anterior to

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October 1838, when the station had its usual complement of troops, gives 295 cases per month; no monthly Court of Requests could record its proceedings in 295 cases, and business would consequently fall into arrears; and plaintiffs and defendants would thus be subject occasionally to upwards of a month's attendance before their case could be heard, and no servants or trades-person could command so much time: besides the above objection, there are many others. An office and establishment would become necessary, as officers could not be expected to give up their mess-houses for the use of this perpetual court, and the officer who noted the proceedings in court could not be expected to furnish a copy extending to many hundred pages, as they unquestionably would in a large station like Meerut. The time of the convening officer would also be greatly encroached upon should he bestow the necessary attention on the proceedings, and the labour to the station staff would be beyond his means, with reference to his other heavy duties."

8. Major Oliver says, "To record the proceedings and evidence would be an undertaking almost impossible to effect; it would employ the court for a considerable period, and one would not be closed before the time arrived for the assembly of a new court, as the cases are always very numerous, and without recording them, I have invariably seen them satisfactorily settled in a few days."

9. Sections 5, 6, 7, 8, 9. These sections relate to making suits for debts not exceeding 20 rupees cognizable by the senior commissariat officer. There are many objections to this proposition:—1st, The senior commissariat officer has not time to execute the duties of a Court of Requests with respect to more than half the total number of suits that occur at a station, even if he were not bound to record the proceedings. This rule obtains at Madras, but practically the letter of the law is set aside, and the duties are entrusted to *junior* commissariat officers, who are said to be "imperfect linguists," inexperienced "and unaccustomed to native litigation." On the other hand, I believe our junior commissariat officers to be good linguists, and well acquainted with the native character and habits; but even their time cannot be spared for the proposed duties. A commissariat department is of the utmost importance to the welfare and existence of an army, and the Bengal commissariat department is as efficient as ever took the field.

Letter from Major Alexander, of 13 August 1838. Para. 14.

2d. The only modification of this proposition that would be practicable, would be to limit the cognizance to suits against defendants resident in Sudder bazars, of which a commissariat officer had charge; some authority of this description is already exercised, and Major Burlton can say whether he wishes his officers' hands to be strengthened in this respect.

3d. At the largest stations there is often only one commissariat officer, and at some large stations there is not one; *e. g.*, Barrackpore, Lucknow, Delhi, Barelly, Loodiana.

10. Sections 9, 10. These sections give power to convening officers to send back decrees for revision if they are dissatisfied with them upon any matter of form, or upon the merits, not once, but an indefinite number of times; if the proceedings are not recorded, it is evident that the convening officer cannot judge of the merits of the case, and he already has the power of pointing out any irregularity or illegality manifest in the decree itself, the only case in which a court is readily disposed to alter its decision. If the proceedings were recorded, convening officers would not willingly undertake the labour and responsibility of participating in the judicial functions of Courts of Request of a tendency prejudicial to harmony and discipline. I therefore consider it neither practicable nor desirable to give the proposed powers to convening officers.

11. Sections 11, 13. At present the court direct whether the execution shall be general or by stoppages from pay; this practice is more convenient, and payment to the creditor is effected in a less operose manner than by the process prescribed in the sections.

12. Section 12. By G. O. G. G., 8th August 1828, and Reg. V. of 1828, property beyond military jurisdiction may be sold in satisfaction of decrees.

13. Section 14. This section would give rise to many doubts and different constructions as to what constituted a demand of a different nature, and seems contrary to the policy of the Act, which is, besides bringing the administration of justice

justice to the door of the defendant, to exclude complicated cases from the cognizance of Courts of Request, and to discourage plaintiffs from giving credit for a greater amount than 400 rupees. The technical distinctions between notes, bonds and other securities are not likely to be attended by the parties, nor understood by the members of the court. The Judges of the Court of Requests at Calcutta are more able to deal with demands of a different nature, each amounting to 400 rupees, but it may be supposed that occasions for their exercising such discrimination have very rarely, perhaps never occurred.

14. Section 15. This is a reasonable limitation, but it may be supposed practically to exist.

15. Section 16. Courts of Requests are already bound to investigate any counter-claim or set-off on the part of the defendant.

16. Section 17. It is equitable that goods pawned to or by a defendant should be made available for the payment of his debts, subject to the rights of owners and pawnees, and may therefore be considered to be within the competence of Courts of Request.

17. Section 18. At present Courts of Request composed of European officers have cognizance of suits beyond the frontier to an unlimited amount. If an appeal were allowed, it would be necessary that the proceedings should be recorded. Where the demand did not much exceed 400 Rs., a plaintiff would abate the excess to avoid an appeal, and where it amounted to several thousand rupees (as against a Commissariat Gomashta), the delay might enable the defendant to abscond with his property. In such cases, however, it might be expected that the proceedings would be more frequently criminal than civil, a trial for embezzlement, or other fraudulent conduct than an action for debt.

18. Section 19. Resolution of Government, para. 3. It is questioned whether the Punchayet system of Madras should be introduced into Bengal. On this subject, Lieutenant-colonel Gowan says, "I have seen a great deal of trial by Punchayet. Two arbitrators named by each of the parties, and the fifth by the judge, and I have generally found it a party business. The arbitrators on each side upholding the cause of their friend, neither conceding the slightest point, while the President has given his casting vote in favour of him who paid his best; and such the result after a great deal of lost time."

19. Major Crawfurd says, "I object to this. I have seen it tried on a large scale, and the result was, that the members considered themselves more in the light of advocates for the parties nominating them than jurors, and in most cases were probably feed also, which rendered the nominee of the convening officers *bonâ fide* the sole judge in the case, and thereby put him in the way of temptation."

20. Colonel Woulfe says, "In the course of some days after their quarrel, he having refused to give up her property to her, a complaint was again made to the officer commanding the force, and a Punchayet was ordered to investigate it; after sitting for many days, without coming to a decision, Hoolassee having reported to Captain Sheriff that bribes had been offered to some of the members, the Punchayet was dissolved by Captain Sheriff, without (I believe) the consent or knowledge of Colonel Farran." In the same page, he says, "that this very dispute might easily be settled by a Punchayet, or a court martial." Major Alexander proposes to counteract the evils resulting from four-fifths of the court being composed of interested members, their dilatoriness, and the frequency of appeals on allegations of gross partiality, by adding three impartial members, instead of one. A shorter remedy would be to cut off the four peccant members, and leave the three impartial. In Bengal, the disadvantages of this mode of arbitration are considered to preponderate over the expense and venality of Moonsiffs, Ameens and Sudder Ameens, as compared with Courts of Request. It has neither popularity or cheapness to recommend it; I should therefore think its introduction into Bengal very inexpedient.

Letter of 7th June 1836.

21. Resolution, para. 4. A General Order issued by Lord Dalhousie on the 5th July 1830, prohibiting credit being given in Sudder Bazars, was rescinded by Lord William Bentinck on the 9th December 1834, I suppose, because it was found that the prohibition could not be enforced without injustice. At present

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there is no limit to credit in military bazars, except what is implied in the greater facility of recovering debts not exceeding 200 rupees in Courts of Request than of recovering debts exceeding that amount in civil courts, and I do not see how any other limit can be prudently and effectually imposed. What is called crying down credit, as enjoined by the 111th Article, for the Queen's troops, is a mere caution to the inhabitants that if they give credit to a soldier, it will be at their own peril, since the balance of his pay, after defraying all regimental expenses for necessaries, is the only fund out of which their claims can be satisfied; and by the 3d Section of the Mutiny Act, he is not liable to be arrested for any debt under 30*l.*

22. Resolution, para. 78. It appears to me advisable that legislation on this subject should be confined to the main points established in Section 22, of Regulation XX. of 1810, and Section 27 of the 4th Geo. 4th, c. 81, leaving subsidiary details to the military authorities. Inconvenient rules will be corrected, and uniformity of practice gradually introduced under the authority of Commanders-in-chief. Thus the Madras G. O. of 10th February 1835 was republished at Bombay on the 1st April of the same year; something might be borrowed from it for the Bengal Court of Request, and if Sir H. Fane's order of April 1837 were published, it might afford useful suggestions for the other Presidencies. If the plaintiff is on the spot, he ought to attend the court; if not, he should be permitted to send his documents to the Brigade-major. If witnesses are at a distance, they may be examined on oath, or interrogatories prepared by both parties, as practised occasionally at trials by courts martial. With respect to the rate of interest, I understand that no more is allowed than 12 per cent., which is too little for small sums lent for short periods. By the 39th and 40th Geo. 3, c. 99, a pawnbroker may take for sums under 22*l.* fourpence for every pound by the month, or at the rate of 20 per cent. per annum, and for sums under 10*l.* at the rate of 15 per cent. This is not inconsistent with the principle of the usury laws, which is to withhold the protection of the law from the gambling transactions which take place between a spendthrift borrower and usurious lender. The taint of usury may be found when lacs of rupees are lent to a native state at 18 per cent., and not when 10 rupees are lent at 24 per cent. With respect to the proof of contracts, it does not seem advisable to specify one kind of evidence to the exclusion of all others. Some plaintiffs and defendants cannot read and write.

23. Resolution 2. The only point which remains to be noticed of the ten enumerated in the 2d para. of the Resolution of Government, is the 1st. At all the Presidencies, the only actions cognizable are actions of debt, and personal actions.

Houses and lands are not the subjects of actions, nor assets for satisfaction of decrees. It does not appear expedient to relax these restrictions. But beyond the frontier, and where there are no British courts of justice, it would seem reasonable to allow unlimited civil jurisdiction to military Courts of Request, for the same necessity which renders non-military offences triable by courts martial in the same situations.

(signed) *G. Young,*
Judge Adv^e^-gen^l^.

Order. *Ordered,* That a copy of the foregoing letter from the Judge Advocate-general, and the memorandum of his report which accompanied it, be transmitted to the Legislative Department, in reply to Extract No. 17, from that defendant, of the 12th August last.

(True extract.)

(signed) *R. J. H. Birch,*
Ass^t^ Sec^y^ to the Gov^t^ of India,
Military Department.

(No. 3347 of 1839.)

JUDICIAL DEPARTMENT.

Legis. Cons. 5 July 1841. No. 24.

To the Secretary to the Government of India in the Legislative Department.

Sir,

IN acknowledging the receipt of your letter, dated the 12th of August last, No. 458, I am directed by the Honourable the Governor in Council to transmit to you, for submission to the Honourable the President in Council, the accompanying copy of a letter from the Adjutant-general of the Bombay army of the 21st instant, stating that the Commander of the Forces is of opinion, that the proposed Act for regulating the proceeding of military Courts of Request will tend to the promotion of the object in view and remove existing defects, but suggesting that an appeal may be allowed in all suits exceeding 200 Rs. to such tribunal as may be determined on by the legislative authority.

I have, &c.

(signed) *J. P. Willoughby*,
Sec^{y} to Gov^{t}.

Bombay Castle, 31 December 1839.

(No. 1025 of 1839.)

Legis. Cons. 5 July 1841. No. 25.

To *L. R. Reid*, Esq., Secretary to Government, Judicial Department.

Sir,

I AM directed by the Commander of the Forces to return the accompanying papers relating to the investigation of claims of debt against persons belonging to and attached to the Native Army of the several Presidencies, together with the proposed draft of an Act for regulating the constitution and proceedings of Courts of Request.

After an attentive perusal and consideration of these documents, the Commander of the Forces desires me to state, that the intended enactment will, he considers, tend to promote the object in view, and to remove existing defects at the same time. The Major-general begs to suggest for consideration the equity of granting an appeal in suits exceeding 200 Rs. to such other tribunal as may be determined upon by the legislative authority.

I have, &c.

(signed) *S. Powell*, Lieut.-col^{l},
Adj^{t}-gen^{l} of the Army.

Adjutant-general's Office, Bombay,
21 December 1839.

(True copy.)

(signed) *J. P. Willoughby*,
Sec^{y} to Gov^{t}.

MINUTE by the Honourable *A. Amos*, Esq.

Legis. Cons. 5 July 1841. No. 26. Military Courts of Request. Minute on Bombay. Letter, dated 31st Dec. 1839, concerning Military Courts of Request.

I PROPOSE deferring a particular examination of this subject until the papers are complete by the receipt of the expected communication from Madras, but it may be useful to advert on the present occasion to one or two matters.

The answer from Bombay is so very general in its expressions that it is difficult to say whether it is entitled to any and what weight, as an expression of opinion in favour of the terms of the Draft Act upon the various points on which the report of the Judge Advocate of Bengal was unfavourable to those terms.

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One point only is adverted to with any particularity in the answer from Bombay; viz., the competency of Courts of Request to deal with claims exceeding 200 Rs.; the Bombay Regulations make the limit 400 Rs.; the Madras Regulations made it 200 Rs. at first, and afterwards increased it to 400 Rs.; and the Madras papers (received previously to the promulgation of the Draft Act and Questions) were in favour of its continuance at 400 Rs. The Bengal Regulations make the limit 200 Rs., and the Bengal papers are in favour of its being confined to 200 Rs.

The Madras papers above mentioned are strongly in favour of a power to be vested in commanding officers of ordinary cases, to be revised by the same or other Courts of Request in all cases. The Bengal papers are as strongly opposed to such a power in any case, even in respect of suits to an unlimited amount beyond the frontier.

The Bombay papers leave it in some obscurity whether the Commander of the Forces approves of the power mentioned in the last paragraph in suits under 200 Rs.; it would rather seem that as to suits above 200 Rs. he thought such a power was not sufficient; but his meaning appears to me very ambiguous, except so far as he may be considered as averse to trusting Courts of Request with the ultimate decision of suits exceeding in value 200 Rs.

Three practical questions will have to be decided:

1st. Should the Madras and Bombay limit of 400 Rs. be altered in favour of the Bengal limit of 200 Rs., or *vice versâ*?

2d. Shall there be an appeal or revision in any and what cases? This question turns very much upon the expediency of *recording the evidence* (which the Bengal Judge Advocate says is impracticable), but without which, it is argued in the report of the Madras Judge Advocate, the grossest injustice, and even a burlesque upon justice, will very often be exhibited in Military Courts of Bengal.

3d. Lastly, it may be observed that the trial of petty suits of 20 or 30 rupees in amount by a public officer is not inconvenient at Bombay or Madras, but would seem to be usual and desirable in those Presidencies; whereas it would appear that the Bengal authorities were opposed to such a mode of trial. Is the Bombay and Madras practice to yield to that of Bengal, or *vice versâ*? The selection of the proper public officer to be charged with this duty, though perhaps not an easy question, is a subordinate one. In Sir H. Fane's Draft Article of War upon the subject of Courts of Request, upon which the Judge Advocate of Bengal would appear to cast some lingering looks, the matter is cut very short, disposing of the above three questions by laying down for all the Presidencies the actual practice of the Bengal Presidency, viz. making the limit 200 rupees, allowing no appeal or revision, and abolishing the Madras and Bombay jurisdictions for suits not exceeding 30 and 20 rupees.

17 January 1840. (signed) *A. Amos.*

(No. 36.)

Legis. Cons. 5 July 1841. No. 27. Jud. Dept.

To *F. J. Halliday*,, Esquire, Junior Secretary to the Government of India.

Sir,

Para. 1. With reference to the letters noted below,* I am directed by the Right honourable the Governor in Council to transmit for submission to the Right honourable the Governor-general of India in Council the accompanying

14 Dec. 1839. copy of a communication from the Adjutant-general of the Madras army, and of the memorandum transmitted with it, drawn up by the Officiating Judge Advocate-general of the same army, upon the subject of the Resolution of the Government of India received with Mr. Officiating Secretary Grant's letter of the 12th August 1839, and of the Draft Act for the improvement of Courts of Request for the recovery

* From the Officiating Secretary and Secretary to the Government of India respectively, the 12th August 1839, No. 457, and 23d March 1840, No. ——.

recovery of debts against military persons, and for the improvement of the administration of justice by Commissariat officers, together with a copy of a letter from the Register to the Sudder Adawlut, expressive of that court's opinion on the remarks of the Officiating Judge Advocate-general, and a copy of a communication from the Commissary-general, stating his sentiments on the observations contained in the letter from the Adjutant-general relative to the inexpediency of entrusting the powers of police and judicature to the Commissariat officer.

9 March 1840. No. 45.

13 July 1840. No. 147.

The general subject of military bazars being at present under the consideration of the Government of India, it is presumed that whatever alterations in the existing system may be determined upon for introduction under the Bengal Presidency will also be extended to the other Presidencies; and therefore, although the Judges of the Court of Sudder Adawlut have stated that the observations recorded by the Major-general lately commanding the army in chief, and by the Judge Advocate-general of the army, are in accordance with their opinion upon the inexpediency of vesting the superintendence of police and civil adjudication at a bazar station in the Commissariat officer, the Right honourable the Governor in Council is desirous of stating his conviction that the present system, adopted from the first establishment of the Commissariat department under Colonel Morrison, which was approved of by Sir Thomas Munro, and stood the test of long experience under his government, and was so strongly advocated by Sir J. Malcolm in preference to all other systems, should not be disturbed in that particular.

The Right honourable the Governor in Council will only further remark, that as in the first section of the Draft Act it is stated that actions against the military classes are to be tried by military courts only "within the territories of the East India Company," embarrassment would be likely to result from this provision, if the cause of action should arise in places where no materials are to be found to form a military court; but if it is intended, as appears to be the case, that such shall be the law in all cantonments and military stations within the territories of the East India Company, his Lordship in Council would suggest the expediency of the meaning being stated in more precise language.

His Lordship in Council concurs in the opinion of the Judges of the Sudder Adawlut (para. 15), that persons, not military, residing within military limits, should not be made amenable to the jurisdiction of military courts, except beyond the frontier.

I have, &c.

Fort St. George,
9 January 1841.

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

(No. 967.)

To the Secretary to Government, Military Department.

Legis. Cons. 5 July 1841. No. 28.

Sir,

In forwarding the accompanying memorandum, drawn up by the Officiating Judge Advocate-general of the army upon the subject of the Resolution by the Honourable the President in Council, at Fort William, dated 12th August 1839, I have the honour, by order of the Officer commanding the Army in chief, to express his opinion of the urgent necessity that exists for limiting credit to be given to the military, and for granting power to cry it down.

2. The 111th Article of War for Her Majesty's army entails a penalty upon the commanding officer who shall fail to cry down the credit of his men, and it exonerates officers from the duty of attempting a settlement of debts after a proclamation has been duly made; but there is no legislative provision for the difficulty contemplated in the Resolution of the Government of India; viz., that of giving credit for sums that may be sued for in civil courts. If, however, the limitation of credit to be given by inhabitants of the bazars within military cantonments be effected, the Major-general considers that a considerable advantage will accrue to the State by the suppression of what is most baneful to discipline, as well as to the happiness of improvident soldiers and their families.

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3. In addition to the memoranda of the Officiating Judge Advocate-general, Major-general Sir Hugh Gough would advert to the importance of having the duties of military police and civil adjudication in cantonments not only separate from all other departmental functions, but especially from those with which their connexion is most incompatible.

4. The business of the Commissariat is, as has often been represented, onerous and of paramount importance. The addition of Military Police Punchayets and Courts of Request to what in itself requires the full exertions of able officers, appears self-evidently to involve that of two departments, each requiring undivided attention; the zealous administration of one must be often detrimental to the properly efficient discharge of the other; and it appears to Sir Hugh Gough that no arrangement can be less desirous or more probably injurious to the best interests of Government, than that the executive police authority and the approaches to the civil adjudication should be immediately vested where the principal commercial dealings have an influence, which spreads in numerous transactions and sub-contracts through the population amongst whom the power of an Indian Police is exercised.

(signed) *R. Alexander*, L^t-col^l,
Adjutant-gen^l of the Army.

Adjutant-general's Office, Fort St. George,
14 December 1839.

MEMORANDA having reference to the Draft Act for the Improvement of Military Courts of Request.

1. LITTLE further can be said in support of the argument in favour of restricting the amount of credit to be given to native soldiers, than that which the papers accompanying the proposed Act contain. Subsequent events have fully proved the justice of these arguments, showing that the effects of unlimited credit allowed to the native soldiery not only tend to their demoralization, but also lead them to the commission of crime in their military capacity.

On the 24th of October 1839, three troopers of the 5th regiment of Light Cavalry were brought to a general court martial for refusing to receive the balance of their pay, on the plea that justice had not been done them by a Court of Requests. These men had severally been brought before a garrison Court of Requests for Rupees 389, 385 and 85 respectively, and the court awarded Rupees 389, 226½ and 85 in favour of the plaintiffs, to be paid by monthly instalments of four rupees per mensem.

The troopers were each sentenced by the general court martial before which they were tried to loss of "good conduct pay," and to nine weeks' imprisonment. The officer commanding in chief remitted the forfeiture altogether, and a portion of the imprisonment.

The restriction mentioned in this section, that the defendant must have been one of the classes described when the cause of action arose, and at the time of the institution of the suit, appears to be highly advantageous. The cause of action likely to arise between parties circumstanced as above will generally be of the simplest kind; whereas were actions, the cause for which had arisen previous to the defendant becoming entitled to the protection the Act affords to be entertained, they would in many instances be found of a highly complicated nature. Besides which, the intention of the Legislature in granting permission for the formation of these courts appears to be sufficiently gained; the chief object being, in the instance of the soldier, to secure a cheap remedy to the civilian against him, at the same time securing the services of the latter to the state; and in the case of bazar-men, to afford them the same cheap mode of redress against the soldier, and against each other, as an inducement for them to reside within military limits, and supply our bazars.

3. As regards the punishment to be inflicted for menacing words, signs or gestures, &c., it might be conveniently stated in this section of the Act, the particular punishment to which an offender might be summarily adjudged, such as fine and

and imprisonment to a certain extent; and it might be added, all such summary punishments to be entered on the proceedings of the court, with a brief statement of the offence, and to be subject to the confirmation of the convening officer. In cases requiring more serious punishment, it should be provided that the President of the court, or Commissariat officer before whom the offence was committed, shall frame a charge against such offender, having at the back thereof the names of the witnesses by whom the same is to be supported, and shall send the said charge to the commanding officer.

This section of the Act requires to point out how persons not amenable to military law, offending as above mentioned, are to be dealt with.

In this section might be included a provision, that it shall be part of the duties of such courts to insert upon their proceedings the nature of all evidence, whether parole or documentary, proffered to the court, and which has been rejected by it.

As the superintending officer has to prepare the copy of the proceedings of the court for the commanding officer, it would be preferable that he should furnish the commanding officer with such proceedings, instead of the native President.

5 and 6. The expediency of vesting the authority of deciding these suits in the person of the senior Commissariat officer, may well be doubted. His departmental duties are frequently of that arduous nature, as to call for his whole time and application, and he will be led, therefore, to consider these duties of secondary importance, and to hurry them accordingly. Although the superintendence of police, including the authority for investigating suits to a limited amount, has, by regulation, hitherto been vested in the Senior Commissariat Officer, yet at large stations, where there have been two in the department, it not unfrequently happens that these duties are made to devolve upon the junior; for the senior officer cannot have that necessary surveillance over the duties of his department, if his whole time be occupied in offices unconnected therewith. Besides which, the interests of the department are so intimately blended with the views and interests of the commercial commuuity, and the suits so frequently arise in the transactions between Government contractors or their agents, and persons whom they employ, that it becomes an object of importance that no suspicion of departmental influence or bias should be suspected to exist by the natives in the settlement of the claims in which persons connected with the department may be concerned; such suspicion of ex-parte prepossession on the part of the natives tending to render the most just decision liable to misconstruction. It is suggested, therefore, that the superintendence of the police of a military bazar station, and the power of adjudication in petty suits, determinable by him, should be vested in an officer unconnected with the Commissariat department, and chosen for his general fitness for the duties entrusted to him.

It would appear by the wording of Section 5, that the power of investigating the suit himself, or of directing it to be tried by a court martial, remains with the Commissariat officer. In this case the necessity of bringing the suit, in the first instance, before the commanding officer, is not very apparent, and the practice may be considered as liable to occupy a greater portion of his time than may be convenient to the service.

8. *Vide* remarks on Section 3.

9. The words "constituted as aforesaid, or" appear to be necessary between the words "Military Court" and "of such Senior Commissariat Officer," if the context be understood as referring either to the decree of the Military Court of Requests, or to that of the Commissariat officer.

9. In this section might be inserted, "and it shall be lawful for any such Military Court of Requests or Court of Commissariat Officer, as aforesaid, when their proceedings or decrees may be returned for revision, to receive and record any fresh evidence that may be offered by the parties, or may be attainable by the Court, in order to come to a more satisfactory decision."

The propriety of allowing the convening officer to return the proceedings for revision an unlimited number of times, would appear doubtful, and likely to lead to inconvenience, at the same time that it bears too much the appearance of dictation, if not of intimidation, in the mode of administering justice, and it is likely to produce ill-feeling, perhaps stubbornness, on the part of the court. It is conceived that

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it would seldom occur that the court and the convening officer would differ in their opinions more than once on the same matter, and therefore, should such be the case, the preferable mode would probably be that laid down by G. O. C. C. 7th November 1829 (since cancelled); viz. "If the court persevere, upon revision, in a decision palpably unjust and contrary to the evidence, then the officer by whom the court was assembled will forward the proceedings thereof, with such opinion as he may have to give thereon, through the usual channel to the Commander-in-chief, who will, if he see fit, direct a *new trial* of the matter in question, by another Court of Requests, to be assembled for the purpose;" and it might be added, "the decision of such court shall be final, except in the case of an illegal award, which shall always be subject to revision."

11. This section would appear to require a provision directing what course is to be pursued, if the court persist in a decision with which the commanding officer is dissatisfied.

11. 12. 13. In these sections a great latitude of discretion is given to the commanding officer, so much so as perhaps in a measure to prove inconvenient to himself, and to render the distribution of justice anything but unique in practice.

One commanding officer, satisfied of the necessity of putting a stop to the system of borrowing amongst his men, will always order the execution of a decree to a large amount against a soldier to be general, in order to punish the lender, convinced that the good of the service will be best consulted by the loss of the services of a soldier for two months, than that he should be placed under stoppages, being of opinion that the pay of a soldier is not more than sufficient to keep him effective as such, and that any deduction therefrom will impair his serviceableness. Another commanding officer might consider that as the terms of the Section 1st held out to a creditor a remedy against his debtor to the extent of 400 rupees, that ordering an execution generally against the debtor, when in the receipt of pay, would be tantamount to a withdrawal of that protection intended to be afforded by the section in question, and would therefore direct the execution to be satisfied out of the pay of a debtor. In nine cases out of ten, the amount of the sale of the effects of a soldier would be so small that the only satisfaction afforded to the creditor by a general execution, would be the knowledge that he had incarcerated his debtor, and it is to be apprehended that a soldier himself who had got into debt to a large amount without the hope or intention of paying, would gladly ease himself of his debt by suffering a temporary imprisonment to the limited extent allowed by the Act, which, considering his class in life, bears no proportion to the maximum of debt which he is permitted to contract. It is said that the Court of Requests for the recovery of small debts at the Presidency can, at its discretion, on consideration of the circumstances of the case, direct imprisonment from four months to two years for any sum decreed above 25 pagodas.

If credit to be allowed to the soldier cannot be conveniently restricted, it would appear convenient to enact, that where the execution of a decree is directed to be by monthly instalments from the debtor's pay, such instalments, in the case of a native officer, should never be more than one-half, and in the case of a non-commissioned officer or soldier, one-fourth of his pay and allowances.

It is conceived that imprisonment for debt, in the case of a native officer, should never be directed while there are other means of satisfying the award against him.

An opinion of disgrace in the minds of the men would, it is to be feared, attach to him after his return to the regiment, which would be injurious to his authority, and to military discipline.

It is suggested that paragraph 14 of G. O. C. C., 10th February 1835, could be added with advantage to the provisions of this section, viz. but no creditor can be allowed to divide his demand against the same person into several suits for the purpose of reducing it within the jurisdiction of a Court of Requests; but if he be willing to limit and restrict his entire demand to the sum of 400 rupees, and to quit claim to the surplus of the debt over and above the said sum, then his suit may be so admitted accordingly.

The provisions of this section particularly deserve attention, as a petty court for the decision of suits to the amount of 400 Rs.; the courts established by the previous

previous sections of the Act would appear to be as well calculated for the purpose intended beyond as they are within frontier, and no modification seems particularly called for. The formation of a European court for the decision of claims to an unlimited amount beyond 400 Rs. will, it is expected, have the effect (perhaps is intended to have the effect) of superseding the course of Punchayets, held under Section XLII. of Regulation VII. of 1832.

It appears doubtful whether the system of Punchayets, as held under the above-mentioned Regulation beyond frontier, should be disturbed, further than by regulating the formation and procedure thereof. At stations so situated, the decision of suits is frequently given to a very considerable amount. The accounts are of the most intricate nature, requiring sometimes the utmost patience and ingenuity to unravel, and scarcely to be understood, except by persons acquainted with the mode of keeping native accounts, and the rules by which natives are guided in their dealings one with another. A European court, unaided by native assistance, would frequently have its time occupied with long examinations of accounts, which it might ultimately be unable to come to a just conclusion upon. Besides, suits of the nature in question so frequently arise, that there would be a continual demand for European officers to form the courts, whose military duties would be interrupted for a considerable period. Even under the present Regulations, the withdrawal of European officers from their duties to sit upon European Courts of Request is oftentimes much felt, and this evil, under the section of the Act in question, would be incalculably increased.

The improvements that may be suggested for reforming Punchayets held beyond frontier, under Section XLII. of the Regulation referred to, are briefly as follows :—

I. That a list should be kept by the Superintendent of all respectable natives available for this duty.

II. That, upon a claim being preferred of the nature cognizable by Punchayet, the same should be assembled by the Superintendent of Police, under the orders of the commanding officer, consisting of five or seven persons, selected by the Superintendent of Police, but liable to challenge by the parties; and that to this court a native register should be attached to record its proceedings.

III. That on security being given to satisfy the award of the Punchayet, an appeal be allowed to a European court martial to be assembled, similar to that allowed by Clause 3 of Section XLII. of the Regulation in question ; and that the nomination to such courts be matter of selection rather than routine, from officers whose general fitness qualifies them for this special duty; and that the proceedings of the court be conducted by the Judge Advocate of the district.

IV. That an appeal be permitted from such court to the Sudder Dewanny Adawlut.

V. That a party making a frivolous or vexatious appeal to the European Court shall be fined to a certain amount.

(signed) *Chas. B^d Chalon*,
Off. J. A. J. of the Army.

Judge Advocate-general's Office, Fort St. George,
5 December 1839.

MEMORANDA of Suggestions on the subject of Courts of Request and Punchayets.

I. MUCH inconvenience having frequently arisen by witnesses at distant stations being required to give evidence before Courts of Request, it requires to be enacted, that where witnesses reside beyond a certain distance, or who from age or sickness are unable to travel, their evidence may be taken either by the Judge of the zillah or commanding officer of the station where they reside, by written interrogatories furnished by one or both parties, requiring his or her

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evidence, and transmitted by the Court or Punchayet before whom the suit is tried, upon which their evidence becomes material.

II. Provision requires to be made for the prosecution of suits before Military Courts of Request when the plaintiff may reside at a distance from the station where the defendant resides, and at which the court is held. G. O. C. C., 25th July 1835, directs that plaintiffs so situated, or for any other sufficient cause, may prosecute their suits by any person duly authorized to appear on their behalf. This is an equitable provision, but to render it complete it requires that plaintiffs so residing at distant stations may be examined in support of their claims by written interrogatories, upon oath in the mode proposed in para. 1. This, of course, presumes that it is allowable to examine parties to a suit upon oath.

III. It should be enacted that the decrees of the Courts of Request be published in Station, &c., Orders. This is customary at some stations, but not at others.

IV. At least five days' (a longer period must of course be given where witnesses are at a distance) notice should be given to the parties of the day fixed for the trial of a suit before a Court of Requests after it is registered, in order that they may prepare their vouchers, &c.; and summonses should be granted by the Superintendent of Police, or issued from the Court for the attendance of the witnesses, upon the application of the parties.

V. There does not appear to be any provision made for the proceeding to be adopted by a Court of Requests when either of the parties fails to appear. Might not some mode of proceeding like the following be directed? viz.: If the plaintiff or his duly constituted agent fail to appear, without cause shown, to prosecute his claim, a non-suit shall be entered, and the court closes its proceedings on the case; but this shall not be considered a bar to a future suit, the cause not having been decided upon its merits.

As regards the defendant; in the case of officers or soldiers, their attendance may be compelled by order of their commanding officer, but as the contempt may be committed by other defendants, it requires to be provided for. Might it not be directed, that on proof upon oath of due and sufficient notice of the day and hour of the court's assembly having been served upon the defendant, the cause may be postponed for another hearing, due notice of which shall be given him? and in the event of his still continuing in contempt, his absence being unaccounted for, it shall be taken as a confession of the justness of the claim against him, and a decree given in favour of the plaintiff accordingly; or the cause might be heard *ex parte* on the vouchers, &c., of the plaintiff.

VI. The oaths and examination of parties are admitted in equity; and it is stated in a note to Blackstone, Vol. III., p. 438, as a dictum of Lord Chancellor Eldon, that if a defendant positively, plainly and precisely denies the assertion, and one only witness proves it as positively, clearly and precisely as it is denied, and there is no circumstance attaching credit to the assertion overbalancing the credit due to the denial, as a positive denial, a Court of Equity will not act upon the testimony of that single witness. This seems at variance with the rule laid down in para.* 8th, of G. O. C. C., 10th February 1835; besides which, in connexion with the rule laid down in para.† II., of the same Order, it would appear to bear very heavy upon the party whose evidence is rejected. The idea appears to have been to prevent the courts becoming a party to perjury. It is, however, too much to suppose that the party who had firmly and decidedly in open court asserted his claim, or the party who had as firmly, decidedly and publicly denied

* Although neither party can be sworn in support of his own cause at his own desire, yet either party may be required by the other to give answer upon oath, or may be ordered by the Court so to do; but it is only usual for the Court to resort to such a measure when a decision is about to be pronounced *upon the statements of the parties only, without evidence of any kind; or when the evidence adduced is altogether insufficient and unsatisfactory*, in such cases the Court directs such party to be sworn as it may deem best.

† One party having been sworn at the request of the other, or by order of the Court, the other party is not *in any case* to be sworn.

The Plaintiff may, if he please, require the Defendant to be sworn in support of the prosecution, and this precludes the Defendant from making a like demand on the Defendant.

denied it, would hesitate to put the stamp of validity upon his assertion by swearing to its truth; so that as far as a test of truth goes it would appear useless.

VII. On the subject of interest, the corresponding practice of civil courts, as existing within the Madras territories, would appear equally applicable to military courts held within frontier. This practice appears to be, that 12 per cent. is the highest rate allowable, if that rate is mentioned in bond, note or writing, even when more has been stipulated; but no interest to an amount exceeding the principal, nor compound interest, except when a former bond has been cancelled, and a new one entered into for principal and interest consolidated, in which case interest may be decreed on the amount of the new bond as on principal money. When interest is named, but rate not specified, a constructive interest of eight per cent. is allowed, the same in all money transactions in which property is mortgaged; and no interest is allowed where a party sues upon an instrument bearing a higher rate of interest than 12 per cent.

It is notorious that interest to a most usurious amount, 60, 80 and 100 per cent. per annum, is frequently agreed to, and paid by persons borrowing, and that it is the inducement of exorbitant interest which makes lenders supply the wants of native soldiers in this particular. In lending petty sums to a soldier, one single fanam in one rupee is usually claimed, and in larger sums the mode of security adopted by a lender is to take a bond for a nominal sum, to be paid by instalments, two-thirds or three-fourths of which sum only is given to the borrower, and the remainder kept as the equivalent for the accommodation afforded.

While it would be expedient to restrict the rate of interest upon loans made to the military classes beyond frontier (in order to discourage the same), the value of money is subject to such fluctuation, that among other classes it would be advisable that provision should be made for the payment of interest as agreed between the parties, unless the agreement be manifestly usurious.

VIII. It would appear correct, that a Court of Requests should have the power of reducing the amount and curtailing the prices charged in bills and accounts laid before them by sutlers, shopkeepers and others, provided they evidently appear to be of an exorbitant nature, and that the defendant had no reason to suppose that he would be charged to the amount claimed.

IX. As it frequently happens that a defendant, at the time of the trial of a suit, is under stoppages for the amount of decrees given by former courts against him, it would be advisable to provide that the defendant be allowed to adduce proof of any stoppages under which he labours for the satisfaction of any former decree or decrees against him by any court.

X. At stations beyond frontier, it has been known that native subjects of friendly states, not residing within military limits, have been allowed to possess houses so situated; some provision would appear requisite to be made regarding the mode of deciding the rights and interests in such property, and how far such property is liable to seizure for debts contracted by such persons within military limits, and the mode of procedure to be adopted.

XI. A corresponding provision to the foregoing is also required to be made as to cases within frontier, where British subjects, European or native, may possess property within military limits, but are not themselves subject to military courts. These persons, it would appear, have all the rights and advantages of prosecuting in military courts for debts, &c. (most frequently originating out of the possession of such property); yet they are themselves only liable to be prosecuted by a tedious and expensive procedure in the civil courts.

XII. It would appear to be highly expedient that the rules and regulations for the proceedings of Courts of Request and Punchayet should be kept apart from the miscellaneous provisions regarding military bazars and cantonments, so as to form a code of regulations entirely distinct and of easy reference; at present they are so little capable of such, that persons not very conversant with the Bazar Regulations frequently have to look through the whole before they can satisfy themselves upon some little particular regarding a Court of Requests or Punchayet, which, were the regulations regarding them kept separate and in order, would be fixed upon immediately. It would also be desirable that all rules regarding Punchayets should

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be fully set forth in the new code, instead of referring to other Regulations of Government, as in Section XXVI. of Regulation VIII. of 1832. It may be, that the person requiring information has not the Regulations to refer to, and if he has, he is likely to confine himself in his selection of what is applicable to the particular point required, and that which is not so.

XIII. It has been found frequently difficult to decide what sections of the existing Bazar Regulations (Regulation VII. of 1832) are applicable beyond frontier, and those which are not. This has been a source of innumerable references to the Court of Sudder Adawlut which might otherwise have been avoided. The provisions of Regulation VII. of 1832, as regards Punchayets within the frontier, for which they appear to have been more particularly formed, would appear generally to meet the object for which they were intended, because the civil courts are open to those who do not like to refer their suits to this particular mode of arbitration. But beyond frontier, where the courts mentioned in Section XLII. of the Regulation in question are the only ones to which some 40 or 50,000 individuals can have recourse for the protection of their properties, and for the decision of all civil suits, and where suits to a very large amount are frequently decided, it becomes a matter of paramount importance to render such courts as perfect in their formation as possible, and to give them very particular rules for their guidance, and sufficient powers to meet all contingencies. The Regulations for the courts beyond frontier appear generally deficient in this respect.

XIV. Beyond frontier, suits to a very large amount are decided under Section XLII. of the Bazar Regulations, as before stated; and it may occur, that when the defendant knows his cause to be a bad one, he may make away with or transfer some part or the whole of his property. There is no regulation at present to prevent this, and it rests with the commanding officer whether or not he will take upon himself the responsibility of doing so. Again, in appeal cases, when the decision of the Punchayet has been against the defendant, it should be in the power of a commanding officer to prevent any fraudulent sale, removal or transfer of property, and either to demand security to satisfy the award or attach the property also, in cases where there is an evident intention on the part of the defendant to abscond; and all transfer or mortgage of property during appeal should be declared null and void, in like manner as in appeal cases before civil courts.

XV. It is desirable that some provision be made in the event of a Punchayet being unable to come to a decision within a certain time, and unable to give good reason for the same. It is considered that in this case the Punchayet should be dissolved, and defendant should have the choice given to him of having the suit tried by another Punchayet, or by a European court martial.

On the subject of contracts, it would be very advisable that they should be in the language of both contracting parties, and that the principal heads should be registered in the office of the Superintendent of Police, and no verbal contracts beyond a certain amount should be binding on either party. The want of some regulation of this nature beyond frontier is considerably felt.

(signed) *Chas. B^d Chalon,*
Offg J. A. G. of the Army.

Accountant-general's Office,
Fort St. George, 5 December 1839.

JUDICIAL DEPARTMENT.

(No. 45.)

To the Chief Secretary to Government.

Sir,

1. I AM directed by the Judges of the Court of Suddur Adawlut to acknowledge the receipt of an Order of Government, dated the 10th of January 1840, No. 24, and of an extract from the Minutes of Consultation in the Military Department, under date the 31st of December 1839, communicating copy of a letter addressed to Government by the Adjutant-general of the Madras Army, dated

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dated the 14th December 1839, and of the "memorandum" which accompanied it, drawn up by the Officiating Judge Advocate-general of the Madras army, upon the subject of the resolution of the Government of India, dated the 12th of August 1839, and of the Draft Act for the improvement of Courts of Request for the recovery of debts against military persons, and for the improvement of the administration of justice by Commissariat officers, copies of which papers have been transmitted to the Court of Suddur Adawlut for any observations the Judges may desire to offer on the subject created therein.

2. The remarks of the Officiating Judge Advocate-general of the Madras Army on the Draft Act, which accompanied the resolution of the Government of India of the 12th August 1839, appear to the Court of Sudder Adawlut to be generally judicious. The points on which the Judges differ with Captain Chalon will be shown in the order of those sections of the proposed Act on which the Court of Suddur Adawlut desire to offer any observations.

Section 3. Providing punishment for non-attendance, refusing to give evidence, or for perjury, as a witness, or using menacing words, signs or gestures in the presence of the Court, or causing any disorder so as to disturb its proceedings.

3. Captain Chalon observes that "this section of the Act requires to point out how persons not amenable to military law offending as mentioned therein are to be dealt with."

4. The Court of Suddur Adawlut are of opinion, with reference to Section 3, that the rules contained in Section XII., Regulation VII. of 1832, respecting persons not military, should be inserted in this section of the proposed Act.

Section 5 enacts, "That at all stations where military bazars are established, suits for the recovery of any debt not exceeding 20 rupees where the defendant at the time the cause of action arose, as well as at the period of that institution of the suit, was a person belonging to any of the descriptions before mentioned, should be brought before the officer commanding at such station, who may by written order refer them to the Senior Commissariat Officer at such station, who is hereby invested with authority to determine all such suits, or may, at his discretion, direct them to be tried by a Court of Requests."

5. Captain Chalon considers that from the present wording of Section 5, "the power of investigating the suit himself, or of directing it to be tried by a court martial, remains with the Commissariat officer;" and, in this case, he adds, "the necessity of bringing the suit in the first instance before the commanding officer is not very apparent, and the practice may be considered as liable to occupy a greater portion of his time than may be convenient to the service.

6. The Court of Suddur Adawlut do not concur in opinion with Captain Chalon, that by the wording of Section 5, the power of investigating the suit himself, or of directing it to be tried by a court martial, remains *with the Commissariat officer*; but whatever may be the correct reading of that section, the Court of Suddur Adawlut consider it desirable that the power of determining to which of the two tribunals the suit should be referred, should be vested in the commanding officer, and not in the police officer under him.

7. But the "expediency of vesting the authority of deciding these suits in the person of the senior Commissariat officer, is doubted by the Officiating Judge Advocate-general," and the Adjutant-general of the Army, in the concluding paragraph of his letter to Government, dated the 14th December 1839, states, that "it appears to Sir H. Gough that no arrangement can be less desirable or more probably injurious to the best interests of Government than that the executive police authority and the approaches to civil adjudication should be immediately vested where the principal commercial dealings have an influence which spreads in numerous transactions and sub-contracts through the population, amongst whom the power of an Indian Police is exercised.

8. The observations on this subject recorded by the Major-general commanding the Army in Chief, and by Captain Chalon, the Officiating Judge Advocate-general of the Army, are in accordance with the opinion of the Court of Suddur Adawlut, who think them deserving of the serious consideration of the Government of India.

Section 9 enacts, "That the officer commanding at any station or cantonment, upon being furnished with copies of the proceedings, including the evidence and decree of any Military Court, (or) of such Senior Commissariat Officer, shall pass his orders thereon, either for a revision of the decree, or for the execution thereof."

9. With reference to Section 9 of the Draft Act, a provision seems required for the submission of the proceedings to the officer commanding at the station cantonment.

10. Section 19 of the Draft Act provides, "that nothing in this Act contained shall be construed to repeal or affect any regulation, or part of regulation, touching the trial of suits at military bazar stations by Punchayet,"

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11. The Government of India, in para. 12 of their resolution, dated the 12th August 1839, observe, on the subject of Punchayets, if it shall be thought advisable "to include them in the present Act, it would be desirable that draft clauses should be furnished incorporating the provisions in the Regulations, the principal decisions of the Madras Suddur Court, and the various amendments suggested, by means of which the law may be expressed in a compendious and improved form."

12. But the Judges of the Suddur Adawlut are not of opinion that the paragraph quoted above applies to the present reference to this court, because whether or not the provisions in Regulation VII. of 1832 of the Madras code, respecting Punchayets, are not to be introduced into the territories under Bengal and Bombay, is matter for the authorities there to determine; and unless that point is determined in the affirmative, the drawing up of provisions, with the amendments described in the 12th paragraph of the resolution of the Government of India for introduction into a general Act for all India, would be a useless expenditure of their time. The Judges will be prepared to undertake this task, if the Supreme Government should decide the preliminary point in the affirmative.

13. In para. VII. of the Memoranda, drawn up by the Officiating Judge Advocate-general of the army, "of suggestions on the subject of Courts of Request and Punchayets," Captain Chalon observes "on the subject of interest, the corresponding practice of civil courts, as existing within the Madras territories, would appear equally applicable to military courts held within frontier."

14. The rules as regards interest in civil suits before the military tribunals are contained in Section XXXII., Regulation VII. of 1832; and the court of Sudder Adawlut conclude that the provisions of Act XXXII. of 1839, are also applicable to such military courts held within the frontier.

15. Referring to Para. XI. of the "Memoranda" of the Officiating Judge Advocate-general, the Judges of the court of Suddur Adawlut altogether dissent from Captain Chalon's suggestion, that persons not military residing within military limits should be made amenable to the jurisdiction of military courts.

Suddur Adawlut, Register's Office, 9 March 1840. (signed) *W. Douglas*, Register.

(No. 147.)

To the Chief Secretary to Government.

Sir,

I HAVE the honour to acknowledge extracts from the Minutes of Consultation, under date the 16th April 1840, ordering copies of paras. 3 and 4 of a letter from the Adjutant-general of the 14th December last, No. 967, to be furnished to me for any observations I might have to offer with reference to the remarks contained therein.

2. Deeming it right to obtain the sentiments of those officers of the department the most conversant with police duties, and therefore the most competent to form a just and proper estimate of the practical working of the entire system, I called upon them for the unreserved expression of their opinions generally on its advantages or disadvantages, as it now exists, to point out wherein it might be thought defective, and susceptible of any and what improvement; and if the due execution of its duties in any way interfered with or militated against their more immediate and proper functions in the department of supply, and in that event to suggest any other arrangements that might with more advantage be substituted.

Major Watkins,
Capt. M'Cally,
" Johnstone,
" Audry,
" Robertson,
" Bremmer,
" Trotter.

3. The result of their experience is conveyed in the accompanying Reports, copies of which I beg to submit for the information of his Lordship in Council. In the sentiments they have all and severally expressed, I generally concur, though I could draw particular attention to the full and able expositions of Major Watkins, Captains M'Cally, Johnstone, Audry and Trotter on the nature and extent of the police duties as affecting the due performance of those of the Commissioners.

4. Allusion

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4. Allusion is made by the Adjutant-general to a Memorandum of the Officiating Judge Advocate-general of the scope and purport of that memorandum. I am not aware, nor do I know the occasion which may have originated it, or the Adjutant-general's letter; I am therefore precluded from giving an answer so much in point, and shall confine my observations to the subject-matter of the extract, which goes to impugn the propriety of vesting the military bazar police duties in cantonments in the officers of this department, with which their connection is declared to be especially most incompatible.

5. The propriety of this union of duties was agitated some years ago; and having passed under the review of Government, the established system appeared to have been considered good, inasmuch as it was not suffered to be disturbed; the question, it was supposed, had been then set at rest; the occasion which has now given rise to its revival appears to be connected with some proposed revision of the constitution of Courts of Request, with the business of which tribunals, I beg to say, the officers of this department, in their capacities of superintendents of police, have not the remotest concern, neither do Punchayets, as is erroneously supposed, occupy any portion of their time, or entail an extra onus upon them, having simply to nominate one of the members to countersign the award, and direct its execution.

6. The bare Commissariat duties in the provinces are not of that burthensome or complicated nature that would seem to be imagined; the routine office business has been so long well understood and regulated, that an active and intelligent officer will find little else required of him than to watch and supervise the details.

7. The officers have thus ample time at their disposal for the performance of police duties, without any fear of interruption to those of supply. To the more extensive divisions, however, it had always been the object to attach a junior officer, who, if duly qualified, assisted both in the Commissariat and Police duties, under the immediate supervision and responsibility of the senior. The exercise of police duties by the juniors was, however, disallowed by Government upon an opinion given by the Sudder Adawlut, that such exercise was at variance with the provisions of Regulation VII., A. D. 1832; and furthermore, that although qualified as justices of the peace, they were incompetent. I would, however, again respectfully urge upon the consideration of Government, that the prohibition may be yet rescinded, and that it may be declared competent to officers commanding, in concurrence with the senior Commissariat officer, to empower any junior officer that may be deemed duly qualified to conduct the details of police duties, not independently, but always under the immediate responsibility of the senior, and the controlling authority of the officer commanding: such a limited charge may be safely reposed, without risk; it will relieve the senior officer from the minor details of police business, and thus enable him to direct more of his attention to that of the Commissariat, while at the same time it will serve to school the junior in the duties which must eventually devolve upon him.

8. I beg, however, to be understood that I consider one active and intelligent officer as being fully competent to the efficient discharge, under all circumstances, of the joint duties of the Commissariat Department and Police at any of the military bazar stations; for the latter, the confessedly troublesome are not so laborious, and by those experienced in their discharge are readily despatched.

9. It appears to be against the exercise of police authority in cantonments only that objection is urged, but it may be observed that the position of the Commissariat officer is, in garrison, precisely the same as in the field; and I consider the efficiency of the department would be materially affected by depriving its officers of that just influence and control in garrison, which in their hands in the field has been always found to be so beneficial to the public interests. Their connexion with the merchants and bazar-men that are eventually to accompany them to the field, should not be severed; for it is to them they are accustomed to look for support and redress in their difficulties, and for the settlement of their disputes. It is the possession of this influence that has enabled the officers of the department to exert it with so much success in the prompt equipment of troops for the field: deprive them of it, and it will cripple their energies, and destroy the independence and just influence of the executive officers, and leave the bazar people without an appellate tribunal.

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10. It is not meant to be asserted that this circumscribed power with which they are vested has been ever turned to a bad purpose. Exercising it as they do in the most public manner, and under the very eye of the commanding officer, it is impossible that they could abuse it, if so inclined. But their character, and the far more important trust as officers of supply, which is reposed in them by Government, is, I could hope, a sufficient guarantee against such an imputation.

11. With the bazars or prices they cannot meddle; all their own acts and dealings are public and thoroughly known; they cannot be said to control and influence Nerigs, for every body is well aware that they have been for many years abolished, and that merchants and tradesmen are at liberty to dispose of their goods as they please. The markets are everywhere, even in camps, universally known to be entirely free, and no person, either civil or military, can venture to attempt to control or tamper with them. How is it, then, that the best interests of Government are to be injured from the exercise of police authority, and the approaches to civil adjudication being vested in the Commissariat officers? How can their departmental dealings, which for the most part are carried on by contracts, publicly invited and publicly accepted, and which cannot be concluded till approved by the Commissary-general, possess them with an influence detrimental to the best interests of Government, or which can be prejudicially exercised, directly or indirectly, over the population amongst whom their transactions spread, or which can by possibility, in their police capacities, be turned to corrupt or bad purposes towards Government, or the community, or to the perversion of strict and impartial justice to all? Surely, if the officers' individual character be not a sufficient security for rectitude of principle and conduct, what better security can be attained? But there is the officer commanding at hand, "who controls the police," to appeal to, and beyond him the officer commanding the division; and it is well known that the meanest individuals are not deterred from prosecuting their appeals even to the very highest quarters,

12. That police authority gives some small share of influence to whomsoever exercises it, there can be no question; but whether is it more salutary and beneficial that this influence, trifling as it is, should be possessed by the commissariat officer who needs it, and to whom it proves useful and auxiliary in his more important office of providing supplies for Government, or to another officer to whom it can be of no public advantage whatever, and who, therefore, could never be expected to feel or take the same interest in its successful operation than the Commissariat officer who derived most aid from it, naturally would? It is very essential, however, that he should possess it, as it enables him to act with greater energy and promptitude on occasions of emergency, and to carry on the public service with that degree of efficiency which we should, I fear, in vain look for, were he to be made dependent for assistance in the time of need upon the co-operation of another officer, who would have no interest in the provision of supplies or equipment of the troops on any sudden call for their services.

13. In illustration of what I have above stated, I would beg leave here to quote the sentiments of that distinguished statesman and soldier, the late Sir J. Malcolm, who, in writing on this question in a despatch to the Bombay Government, thus expresses himself:—

"There can be no question, if the bazar of a camp is to be regulated on the principles described of a new market, it will be quite essential to have it either under the Commissariat or a bazar-master, who gives the subject constant and minute attention." Upon "the principle that supply was formerly conducted, I always thought it essential that the superintendent of bazars should be separate from that of the person who had charge of public grain; but since the establishment of a regular Commissariat, there has been a degree of order, efficiency and integrity introduced into the supply department, which render those who belong to it, when not overloaded with work, the best persons to manage the bazars; and where the magnitude of the force and increased duties render our Commissariat officer unable to give that attention to the bazars which they require, another should act under him (as has always been the case in the Hydrabad force) as superintendent of bazars. The Commissariat officer who is thus placed at the head of every branch of supply has, as far as my experience goes, from his increased means, information and influence, greater facility in managing bazars than any officer not in that department can have; and though it is essential he should

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should keep the different branches of supply under his conduct and control quite distinct, he can, on almost every occasion, make the one aid the other. Besides these considerations, it is much more likely an officer in this line should be qualified for the duties I have described, than one who is selected, when a detachment or army is formed, to be a superintendent of supplies. The reason I have often heard stated for making these stations separate is, that they form a check upon each other, and prevent too much power centering in one person. With regard to power, the officer of supply is under the commanding officer of the force, and his duty, like that of all other subordinate officers, is to obey orders; and where we suppose efficiency in the head (all departments will be liable to go wrong if you have not that), the more powerful the instruments that he has to use, the better. With regard to his native servants, whose power, when it touches a free market, is a subject of just alarm, it is to be recollected, that according to the Madras system—and it is to that I now allude—to his servants, in his capacity of Commissariat, and those who manage the bazar, are quite distinct; and cannot be blended without a departure from orders as well as usage; and with regard to an overload of business, I have already stated, that though one officer may conduct both duties in a small force, when a corps is large, another is usually nominated, who has the charge, under the superior Commissariat officer, of the bazar and police."

"With regard to the check constituted by a separate officer from one of the Commissariat having charge of the bazar, I confess myself hostile to the principles upon which it rests. If the integrity of the Commissariat, in which all my experience gives me full reliance, wanted to be confirmed, it would be by increased confidence, not suspicion, through which this must be effected; but I contend that in most situations, and above all in the field, such checks are oftener baneful than beneficial. They extend beyond the principals, and throw collision and counteraction into offices whose union and perfect understanding are essential for the public service. I have seen all systems, and have no hesitation, for reasons stated in this letter, in giving my opinion, that it is better to place the superintendence of bazars under the Commissariat officer, than of keeping them, as is now the case in the Bombay establishment, under an officer styled Bazar-master (distinct from that department). When upon the subject, I may be permitted to add, that the greatest deficiency I observed in the supply of the Bombay troops that served with me was their total want of regimental bazars. Had they continued in Malwa, I should have recommended a complete change in this part of the system; for without a regimental bazar, a corps is in many cases almost inefficient; nor can this want be supplied by the usual expedient of detaching a few shops from the general bazar."

The bazars at Bombay are now placed under the Commissariat by order of the Court of Directors. (signed) *M. C.*

"The nature of the service, and being constant in the field, had led to the formation of very efficient regimental bazars with many of the corps in the Madras service employed in the Deckan; and Brigadier-general Smith had, I understand, done much to remedy this deficiency with the troops under his orders; but no general system was established. The Government of Madras have, I observe, lately published Regulations for regimental bazars very similar to those in the Bengal army. I cannot, however, help thinking that more is required than has been yet done to give full efficiency to this most essential of all sources of military supply. It is, however, beyond all others the most difficult, and will continue under all systems to depend chiefly upon the character of the commanding officer of the corps."

14. It cannot, I imagine, be supposed that the system which has now been assailed was hastily or without due deliberation adopted; that it was the offspring of blind chance, instead of the deep meditation of able men. Previously to its introduction, the imperfections and defects of all former systems had been attentively considered, and the sentiments of those most competent to suggest improvements consulted. But the existing system derives its highest recommendation from having been established with the concurred sanction and approval of Sir Thomas Munro, Sir J. Malcolm and Colonel Morison. All these men had the benefit of practical experience, possessing an intimate knowledge of the service, and of the habits and feelings of the people frequenting camps and military bazars; they had served in all the great campaigns of their time with our armies in the field, and even those of the other Presidencies, and had enjoyed opportunities of

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witnessing in all situations the practical working of all systems; none, therefore, could be better qualified to form a correct judgment of their advantages and disadvantages. It is not to be supposed that these experienced and enlightened officers would have given their sanction to a faulty system, or one which in its operation was likely to prove injurious to the best interests of the Government, and, as the result of their conjoint experience, they recommended that which is now impugned as the most perfect that could be devised; it was founded upon that which had succeeded in Bengal, and which has been since followed in Bombay. I trust, therefore, that an arrangement which has been established with the concurrent approbation of such eminent and able men, that has been found to work so well for so many years, and to answer all the success expected of it, will not now be allowed by Government to be disturbed for the introduction of any innovations which, by divesting Commissariat officers of the exercise of police authority, would only tend to impair the efficiency of that department, without gaining for the public any adequate advantage.

Letter to Government, dated
14 March 1812,
1 May 1812,
12 August 1814,
20 Oct. 1815,
29 June 1816,
17 May 1820.

15. There are on the record of Government several reports on bazars and police, given in by my predecessors, the dates of some of which I have subjoined in the margin, and to which reference may be made for any further information on the subject.

(signed) *W. Cullen*, Colonel,
Commissary-general.

Commissary-general's Office, Madras,
13 July 1840.

To Colonel *William Cullen*, Commissary-general, Madras.

Sir,

1. I HAVE the honour to acknowledge the receipt of your circular letter, dated 2d ultimo, with its accompaniments, and in reply to state, that no correspondence on the subject to which it relates has ever passed between myself and any officer commanding a station or district.

2. But as at different periods, during my service in the Commissariat, I have carried on the duties of police and supply at the large stations of Secundrabad, Jaulnah and Masulipatam, and have consequently had full experience of the working of the system by which those duties are combined under one and the same officer, I venture with considerable confidence to express an opinion, formed upon that experience, that instead of either being impeded, both are greatly and reciprocally facilitated by being vested in one authority.

3. At all military bazar stations, the Commissariat officer is considered responsible, not only for the due provision of all public supplies, but also for the general efficiency of the bazars, as regards the wants of the troops and camp followers; and in the event of a force taking the field, he is charged with the formation of an effective bazar for its subsistence while on service.

4. This latter duty, incomparably the most important, and failure in which cannot but involve the most lamentable consequences, obviously suggests the necessity, on his part, of an intimate acquaintance with, and extensive influence over, the merchants and dealers in his station bazar, and points out the expediency of strengthening his hands, and increasing his influence by every legitimate means in that particular quarter, in which, in case of emergency, the success of his arrangements must principally depend.

5. His functions of disbursing and advancing large sums of money on account of Government, place him at once in a prominent position in the bazars of his station, and can be made subservient to their efficiency, whenever such subserviency is not incompatible with the public interests. He is thus enabled to give, as his duty demands, every fair encouragement to the Soucars, Buncahs, Bunjarries, and every other description of dealers, who resort to his bazar, to relieve by an opportune purchase, or encourage by a timely advance, those whom he may particularly

ticularly wish to attract or attach to it, and by creating among his component establishments, and by the strong tie of self-interest, a kind of connexion with and dependence on himself, to convert it into his most certain resource for the emergent, as well as his most convenient channel of supply for the ordinary, demands of the public service.

6. But in order that he may do this with due judgment and discrimination, it is necessary that he should have such an acquaintance with the affairs, circumstances, and position of the various dealers, as may serve to guide him in his transactions with them; that he should have a general knowledge of the quantity of supplies brought into the bazar, the extent of the sales, and the stock in hand remaining on account of each, and possess such an insight into their general character and methods of transacting business as may enable him to judge correctly of their individual and commercial respectability.

7. The immediate exercise of police authority places at once within reach of the Commissariat officer the means of obtaining information on all the above points, and, what is of much importance, of obtaining it in that indirect manner which is least calculated to alarm or offend the objects of it, and consequently the best guarantee for its correctness.

8. In the police, he has at his disposal a large and efficient establishment, constantly occupied in duties of inquiry and investigation, and therefore the more likely to become acquainted with a great variety of circumstances important for him to know. The numerous cases which come before him in the police office, and his connexion with the proceedings of Punchayets, give him a constant insight into the history and circumstances of the members of his bazar. To him, and to his arrangements the merchants look for the security of their property from robbery, and for redress when wronged or aggrieved; he is the referee in all disputes connected with breaches of the Bazar Regulations, and frequently the chosen arbitrator between individuals in matters of private disagreement.

9. The above advantages, which the Commissariat officer could obtain in no other manner so readily as by his administration of the department of Police, tend, by the confidence they secure for him in the minds of the dealers, and the importance they confer on him in the bazar, to enhance most materially the efficiency of his arrangements in the department of Public Supply.

10. On the other hand, his extensive dealings in the latter branch of his duties, which bring him into daily communication with natives of all descriptions, necessarily lead him to acquire a knowledge of native character, prejudices, customs and observances, most useful to him in his administration of the Police, and which probably no other military officer would have equal opportunities of acquiring.

11. But if this reciprocal facilitation of duties were to be interrupted; if the Commissariat officer were to be relieved from all responsibility for the efficiency of the bazars, as he must be if deprived of the administration of the Police, he would be constantly dependent on the superintendent of bazar for that assistance in matters of Supply which his present position renders unnecessary, and his arrangements and those of the merchants would probably often clash* of the production of much mutual inconvenience, which by their present relative position is altogether avoided.

* *Sic orig.*

12. But above all, when called on, perhaps at a short notice, to form an effective field bazar, he would feel the want of his present connexion with the merchants, of their confidence in his protection, and habitual deference to his authority, and having in the moment of need comparative strangers to depend on, he would run a greatly increased risk of making inadequate or illusory arrangements.

13. As an instance in support of this view of this subject, I may be permitted to adduce the widely different circumstances in point of efficiency under which the Cowle bazar of Bellary took the field, in 1815, with the army of reserve under Sir Thomas Hislop, and last year with the Kurnool field force under Major-general Wilson, C. B.

14. On the former occasion, it had been subject to the control of the magistrate of Bellary, till called on to move out; and although large advances were made to the dealers, they failed to bring forward any supplies, and the greatest

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distress would have resulted in camp, had not Captain Cumming, the Commissariat officer, been able to draw them from other sources.

15. On the latter occasion the same bazar, which since 1819 had remained under the superintendence of officers of the Commissariat in garrison, was found perfectly efficient in the field, and in the Mahratta campaigns of 1817, 18 and 19, those bazars which had been under charge of this department in garrison proved equally serviceable in camp.

16. Having now detailed my reasons for being of opinion that the duties of the Police in the hands of a Commissariat officer do not in any way interfere with or impede those of Supply, but that on the contrary is in fact the case; I may add, that in the course of my own experience I have seen no reason to believe that his commercial transactions in the latter branch of his duties are prejudicial to his administration of criminal justice, or calculated to impart an unfair bias to his decisions in matters of civil adjudication.

17. The limits of his authority are so shortly defined by the provisions of Regulation VII. of 1832, the extent of his jurisdiction in civil cases is so trifling, being only to the amount of 20 rupees, and the check upon his decisions so obvious and immediate, by their being subject to the confirmation of the commanding officer of the station, that perhaps there is scarcely any other officer of any branch of the service, civil or military, entrusted with authority of any kind, in whose hands it is less liable to be converted into an instrument of injustice or oppression, or who is more immediately and strictly responsible for its fair and impartial exercise.

18. At the same time, I may be permitted to observe, with reference to the concluding paragraph of your circular letter, now under reply, that in my opinion the Regulations now extant for the discipline of military bazars, and the administration of justice within their limits, are susceptible of improvement, and might in several particulars be advantageously modified.

19. While serving with the head quarters of the Hyderabad Subsidiary Force, I gave much attention to this subject, and drew up at the time a set of rules better adapted, in my opinion, than those now in force, for the attainment of the objects proposed by Government in the formation of military bazars, particularly with field forces and troops serving beyond the frontier. Of these rules you did me the honour to cause a copy to be taken in your office in 1836, so that it appears unnecessary here to refer to them more particularly.

20. I may, however, mention the expediency of endeavouring to insure more regularity than now obtains in the proceedings of courts martial, held under the provisions of Section XLII. of Regulation VII. of 1832, and of Courts of Request assembled according to Act 4 Geo. 4, cap. 81, by the appointment of Judge Advocates, or other equally qualified officers, to preside at them; the latter courts especially, from the considerable amounts frequently at stake before them, calling for the greatest possible security for their being conducted according to established regulation.

21. With respect to the administration of military police at stations within the frontier, it appears to me preferable that the jurisdiction should be defined according to certain limits of space, and not to certain classes of persons, as at present; the present mode of limitation being in my opinion very detrimental to its efficiency, and tending to frequent collision between the civil and military police authorities.

22. I cannot conclude these remarks without adverting to the inconvenience to the public service resulting from the so frequent practice of commanding officers of stations corresponding with officers of the Commissariat on police or other matters through the divisional or station staff. This is a positive hinderance to the public business, frequently engenders ill-will between the parties, and is contrary to the spirit of the regulation by which Commissariat officers are directed to address Commandants of division and stations direct.

(signed) *W. Watkins*, Major,
Assis[t] Commissary-general.

Grazing Farm, near Hoonsoor,
27 June 1840.

(True copy.)
(signed) *W. Cullen*, Commissary-general.

To

No. 2.
On the New Articles of War for the East India Company's Native Troops.

To the Commissary-general, Madras.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 2d May 1840, with its enclosure, being a copy of an extract from the Minutes of Consultation of date the 16th ultimo.

2. As far as I have been able to ascertain, no correspondence has ever taken place between this office and any authority relative to the subject of separating the Police duties from the Commissariat. I was not, indeed, aware that such a measure had ever before been formally propounded to Government, though I have frequently heard it alluded to in private conversation.

I have, I believe, had more extensive police and judicial proceedings to conduct, in addition to my Commissariat duties, than most other officers of the department, having been a Magistrate for three years and a half at Moulmein, and Superintendent of Police at Bangalore for two years, with considerable power and jurisdiction granted from the Mysore Government; and therefore I shall at least be able to say how far I have felt such duties to interfere with those of the department of Supply.

I have thought it advisable, and more convenient, to record my opinions on the proposed measure of disuniting the Police and Commissariat in a separate paper of remarks, which I have the honour herewith to forward, and shall be glad if any of my arguments assist in preventing such complete destruction of the efficiency of the Commissariat department as would be involved in the adoption of the new theory now proposed for experiment.

(signed) *A. M'Cally*,
Ag. C. Gen^{l}.

THE question of separating the office of Superintendent of Police from the department of Supply has again been submitted for the consideration of Government.

In the Minutes of Consultation under date the 16th April 1840, the following extract from a letter from the Adjutant-general of the Army is inserted. *

If I understand the Adjutant-general's letter rightly, the propriety of uniting in the same person the duties of the department of Supply and those of the executive Police authority is called in question on two objectionable points:—

1st. That duties of the department of Supply are so onerous and so paramount in importance, that the exercise of another important office, that of Superintendent of Police, is incompatible with the proper and efficient discharge of both by the same person.

2d. That the power of adjudicating civil suits, vested in the Commissariat officer, in his capacity of executive Police officer, is injurious to the best interests of Government, because it is exercised by one presiding over the department of Supply, whose commercial dealings have an influence which spreads in numerous transactions through the population of a military bazar; in other words, that a Commissariat officer cannot be an impartial judge in cases where perhaps some of his own agents may be parties concerned, and where the cause of litigation may be connected with the department of Supply.

I hope I shall be able to show, that, although the situation of a Commissariat officer at the head of an office in the provinces is a highly responsible one, and demands unremitting attention, great foresight and judgment, it is nevertheless of such a nature as to leave him ample time to conduct the duties assigned him by the Regulations, as the immediate executive police authority; and that, so far from his

* Extract from a Letter from the Adjutant-general of the Army, dated 14th December 1839. No. 967.

Para. 3. In addition to the memoranda of the Officiating Judge Advocate-general, Major-general Sir Hugh Gough would advert to the importance of having the duties of military police on civil adjudications in cantonment, not only separate from all other departmental functions, but especially from those with which their connexion is most incompatible.

4. The business of the Commissariat, as has often been represented, is onerous and of paramount importance; the addition of military police, Punchayets and Courts of Request to what in itself requires the full exertions of able officers, appears self-evidently to involve that of two departments, each requiring undivided attention; the zealous administration of one must be often detrimental to the properly efficient discharge of the other; and it appears to Sir Hugh Gough that no arrangement can be less desirable, or more probably injurious to the best interests of Government, than that the executive police authority and the approaches to civil adjudication should be immediately vested where the principal commercial dealings have an influence which spreads in numerous transactions and sub-contracts through the population amongst whom the power of an Indian police is exercised.

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his judgment being liable to bias in the trial of suits where the department of Supply may be concerned, he never has, in fact, any civil suits of consequence to try, and that military Courts of Request, which form no part of the police duties, and Punchayets assembled by order of the commanding officer, dispose of all suits which are authorized to be heard in military bazar and cantonments, and in whose decisions, of course, the Commissariat officer has neither voice nor influence; and that, even if he had, the nature of his office is such as to set him beyond the temptation of acting with partiality.

Those who have had experience in the Commissariat department know, that when an office has been efficiently organized, the officer at the head of it has in times of peace only to watch its machinery, and observe that it works well; the active business is carried on by native agents, all of whom have their respective duties assigned them; to regulate those duties, and secure their correct performance, though involving great responsibility and demanding much attention, leaves sufficient time to conduct the police duties, and to exercise that authority so essential to the efficiency of his department, when its energies may be called forth in time of war or on the movement of troops.

I must suppose that as the continuance of the two offices in one person has been considered calculated to injure the best interests of the Government, numerous instances of failure in practice have been the grounds on which the objections to the union have been founded.

I have never heard of a single instance of failure, and therefore am not prepared to remark on such, should any have occurred; but experience, that best of all tests, is assuredly not wanting to enable the Government to judge how far it would be desirable to alter the present system, which has now been in practice since 1821, namely, 19 years, within our own frontiers, and in the field since the first formation of the Commissariat, a period of 30 years.

When police authority was vested in commissariat officers at the principal stations of the army in 1821, it was but extending to them in times of peace, and within our own frontier, that authority with which they had long previously been clothed in the field.

The wisdom of familiarizing those officers, who in time of war would be at the head of field bazar, and conduct the duties of police in camp, with similar duties in times of peace, and thus preparing and organizing beforehand the materials, and regulating the discipline of a camp bazar, must have been evident to those who legislated on the subject, and experience and reflection will not, I think, allow us to call it into question.

It does not appear that the union of the two offices in the field is objected to, as reference is made by the Adjutant-general to cantonments only; but the same theory which is applicable in the one case must be so in the other. Paralysed, indeed, would be the efforts of that Commissariat officer who should ever have the misfortune to be charged with the highly responsible duties of the department of Supply in the field, with all the numerous followers under his orders, if he were deprived of that wholesome and salutary control which police authority in his own hands could alone enable him to exercise; but still sufficiently embarrassing would be his situation, if, while deprived of all the influence of police authority in cantonment, he should be suddenly called on to equip a force and organize a camp bazar amongst a population over whom he had previously exercised no control.

In regard to the injury sustained by Government from the Commissariat officer exercising police authority amongst a population where the department of Supply has commercial dealings, I shall remark, that the extent of police authority in cantonments, according to existing regulations, is the adjudication of civil suits under 20 rupees, and these only under the written order of the commanding officer; all other suits are tried by Punchayets and military Courts of Request; his criminal jurisdiction is similarly limited; he is empowered to imprison for one month, to fine 50 rupees, and to inflict 50 lashes; but these cannot be carried into execution without the written authority of the commanding officer, a power so limited, and surely* not interfere with the interests of Government.

* *Sic orig.*

If it be inferred that by the power he exercises he can influence the prices of articles in the market, such objection must cease, when it is recollected that for upwards of 20 years the establishment of a nerick in bazars has been positively prohibited by Governmont, and all interference in the prices of articles in the bazar strictly interdicted.

Moreover, all the important commercial transactions of the department of Supply take

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take place in the adjacent country, and not amongst the population over which he exercises police authority. The evil, therefore, real or imaginery, arising from the union of the two offices in one person, must be in amount very small, and not to be weighed against the long-tried advantages of the existing system, which no new theory should be allowed to disturb.

Indeed, my own opinion, founded on much experience, is, that so far from the very limited police and judicial power now entrusted to Commissariat officers being productive of any injury to the interests of Government, great benefit would result from his authority being considerably extended, both in criminal and civil jurisdictions. An officer trained daily to the hearing and adjudication of causes would be more likely to come to a correct decision than a number of officers casually assembled without any previous experience; and whilst it would convenience officers employed on Courts of Request by relieving them from a multitude of causes which could be settled by the Commissariat officer, it would especially add to the great contentment of the traders in the bazar, if they had their disputes adjusted by a person who comes to the task with experience in such matters.

Were the Commissariat officer a mere contractor himself, deriving personal benefit from his transactions in the department of Supply, the impropriety of his being clothed with authority, which might influence those transactions, would be more apparent; but a public officer holding a highly responsible situation, transacting his public business through the agency of subordinate native servants for the benefit of Government, and deriving none himself beyond his established salary, may, I think, be safely and advantageously entrusted with much more extensive power than a Commissariat officer at present is; and Government need be under no apprehension that its interests will suffer from the offices of Superintendent of Police and Commissariat officer being united in such a person.

With such extended powers, I am of opinion that an officer of moderate abilities and energy of character may efficiently discharge the duties of both offices; and if the order restricting the performance of Police duties to the senior Commissariat officer were cancelled or modified, the assistance of the junior (there being two at most stations) might be made available so as to lighten his labour considerably; all responsibility, of course, resting, as it ought, on his superior.

I have not yet referred to that part of the Adjutant-general's letter which proposes that the office of Superintendent of Police should be held by an officer who has no other departmental functions to perform. This would at once entail on the Government the expense of another set of officers to do that duty which, I hope, I have shown can with ease be performed by a Commissariat officer, without interfering with his duties as officer of Supply.

In conclusion, I must observe that unless some instances of failure have occurred to prove beyond a doubt that the present system is founded on bad principles, no good can result from disturbing it by making an experiment with a new and untried theory.

(signed) *A. M'Cally*,
A. C. Gen^{l}.

Commissariat Office, Bangalore,
9 May 1840.

(True copy.)
(signed) *W. Cullen*,
Commissary-general.

To the Commissary-general of the Madras Army.

Sir,

In answer to your letter regarding the union of Police and Commissariat duties, and the working generally of the system, having given for many years great attention to the former duties, and thus studied the effect generally of its being joined with the latter, I have long been convinced that whatever may be the defects, or whatsoever objections theoretically can be raised, in actual practice, the union is most salutary and beneficial, and with a due knowledge of their united operations no one would speculate upon the advantages of their division.

First, If the union of magisterial with revenue duties be considered necessary in the present state of our rule, the same argument will apply with equal force to the union of the Commissariat with the Police in camp and cantonment; and it

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must be daily apparent to all connected with the department of Supply that the real efficiency and resource rests mainly on its power to enforce its commands, when, were it not so, delay, evasion, or trusting to another service for the execution of its orders, would be the result, especially beyond the frontier and inland stations.

I cannot illustrate this part of the subject better than by reference to what has come under my own knowledge at this, a Bombay station, where the Police and Commissariat were separate establishments under a system which cannot be considered by its greatest advocates ever to have been useful and efficient in as far as the equipment or supply of troops are concerned.

Having no power vested in themselves, it was customary on all occasions when cattle, coolies or bearers, the smallest or the greatest supply, was required by the Bombay Commissariat, for the officer of that department to address the Police officer for his aid in obtaining the same from the bazar.

The latter having no personal weight, such as the union of the Commissariat in the employment of followers, eattle, or calling for supplies naturally gives, could but command the few persons found or waiting for hire in the bazar, and his resource therefore was the collector and magistrate.

The latter, who was the person always applied to, has personally assured me of the great inconvenience to the ryots these constant calls always occasioned, and no one who practically is acquainted with its hardships could dispassionately view it otherwise.

Different, indeed, have been the results since the arrival of the Madras Commissariat within these provinces; for, with the exception, on my arrival, and before this establishment was formed, of calling twice, not for public assistance, but for the carriage of the private baggage of two corps, I have never, on any sudden demand by any of the departments or corps, once requested the aid of the civil authority for any supply required.

The collector and magistrate has more than once expressed to me his gratification at the result; not a ryot has been pressed, not a bullock has been seized, nor a single revenue or police officer employed, or required to execute the demands of the department of Supply.

All theory must give place to this plain statement of the ease and comfort to the cultivator caused by the influence which the Commissariat possesses by its admirable system of present combination.

I speak not my own sentiments in recording the above; they are the opinions of the founder of the system, who sagaciously foresaw the many advantages that must accrue to a department like the Commissariat, endowing it with such advantages and privileges.

I have chosen to rest the chief merits of this happy union upon what has latterly come under my observation; but it would be an easy task to extend this letter, by showing that in the movement of troops at the several large stations where I have had charge of the Commissariat, the weight and just influence of the combination of the two offices made the business of supply alone easy and practicable, relying upon our own resources, without which a Commissariat cannot be said to exist.

What, I would ask, must be the state of that department, upon which rests solely the speedy movements of troops and their supply, if upon every petty emergency, if upon the occasions of insurrections, as have occurred here, or general disaffection, it cannot supply by its own power the resources demanded; if the time is to be wasted in corresponding with the police officer, and the latter with the collector, perhaps absent in the districts; and if the result is a general pressing by the civil authority of unwilling ryots, instead of, as at present, an ever-ready body employed and governed by the department they respect and fear?

If such are to be, and such unquestionably would be, the results, the Commissariat would become a powerless department, uncertain in its supplies, unable to give effect to the movement of troops, and concerned in bringing its own hired followers into constant scenes of altercation, litigation and strife.

I have, perhaps, said enough to show the dread I entertain of any change that would deprive the Commissariat, in the present state of society, of that combination of influence which it unquestionably requires to maintain it in its present high and envied situation.

It is easy to reason by analogy upon the abuses that, in a different state of society, would result from this union of necessary power; but in reasoning upon what

what has been proved to be required, the only just argument that can be admitted is, whether in the absence of this combination the good results anticipated by a separation or division of power would be produced; and in pointing to the present state of the Bombay Commissariat, I could not have selected a more prominent department, or one in which proof of what I have stated could have been easier referred to, if doubted, than any other demonstration I could have offered.

Such are, then, in my opinion, the unquestioned advantages to Supply which the union of Police power enables the Commissariat to command, and a separation of which I cannot view in any other light than throwing this department into other hands for succour and aid in all its future exigencies, whensoever they may occur, but especially at the remote stations.

The other part of the subject is the efficiency of the Police as at present constituted. Of this long experience enables me to say, that most persons have a double dread of appearing before the person who unites in his own person the power of punishment and the power of employment. The same inhabitant who will be careless about his name being known to the magistrate, stands, it is a well-known fact, in great dread of his deeds being known to him who employs him, whether in the supply of troops or other calls of public or private service, and to whom he looks for payment and protection.

But if in the criminal jurisdiction of the Commissariat this has so notorious an effect, how much more so must it influence the dealers and salesmen in the bazar? The great calls of the Commissariat make all bazar-men wish to stand well with that department, and few there are who will disallow a just debt when the alternative is a settlement in the office of the senior Commissariat officer.

The advantages are manifold, by parity of reasoning, in the actual settlements by punchayet or arbitration. The great dealings of the Commissariat not only make them fully and intimately acquainted with the character and probity of the wholesale and retail merchants in their bazars, but occasions the latter to dread doing any unjust deed by interference, combination or swaying of a punchayet, it being manifestly his interest to do otherwise, and his fear lest a knowledge of any underhand practices of his should cause, with the ruin of his character, ruin of his resources, in so far as they may have depended upon his dealings with the Commissariat.

With Courts of Request, again, as the whole duty of inquiry and the proceedings remain with the members thereof, no argument can be drawn from their sittings for withdrawing the powers of Police from the Commissariat officers; similarly also are the duties of punchayets; the actual burthen, apart from all exaggeration, consists in determining petty debts under 20 rupees, and petty offences of minor consideration; and when it is brought to notice, that at this station the actual time it occupied a separate officer under the Bombay system, as declared by himself to me on my arrival here, where also his jurisdiction was more enlarged than allowed by the Madras rules, I cannot but think the union of other duties would not have imposed too severe a measure of detail upon him, as will be herein apparent.

The hours of attendance during the months of March, April and May were two, from five to eight A.M., three times during the week only; and during the rest of the year, although later hours of office were selected, yet the attendance was not more onerous than above described.

Surely, then, it is not so arduous a duty by any means as described, and having for a series of years in my own person borne the united labour of both offices at the different stations of Trichinopoly, Bellary, Masulipatam, Nagpore, and for the greater part of the time at Belgaum also, I cannot join in the declaration of the two being either so onerous or too burthensome for one person.

Admitting, however, that it may be true that the duties of the one require the undivided attention alone of one person, still as at all the larger stations two officers are now quartered, each would perform or take that portion of the duty which the other did not or could not attend to. It is important that the simple character of the Police duties should be kept in view whilst considering this subject. In a well-regulated establishment, and following the example of the systems as they obtain in the collectors' cutcheries, nothing can be more easy, better defined, or less likely to interrupt other labour than the efficient conducting of a police.

I should but swell this letter to a disproportionate size, were I to lay down here the rules guiding the system, and as it is open to all to observe the union in the

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different collectorates, and the method pursued at the Hoozoor cutcheries throughout our provinces, the same detail, where preserved by the Commissariat, presents the same general results. It is, moreover, an exceedingly vigilant and searching system, leaving it merely out of the power of all concerned to be guilty of oppression, injustice or violence.

I can safely state, that so high has been the character attached to the office of the Superintendent in the other branch, the settlement of debts, that by the mutual consent of all parties, Courts of Request and Punchayets are seldom resorted to. Were the wishes of the mass of the inhabitants at military stations consulted, it would be found that the high character of the Commissariat has long prepossessed them in its favour, as the adjudicator of their accounts, and to them this appears an inseparable connexion: the only change desired by them being, that the jurisdiction should be legally raised from 20 to 200 rupees, as it has long been in actual practice.

I feel, moreover, perfectly assured that the greater part of the judges, magistrates and collectors who have been for years in correspondence and connexion at these stations with Commissariat officers, would state freely their conviction of the advantages of the present union, which to them must be very apparent.

The last head upon which I would now touch, is, that should a separation unhappily be considered expedient, the loss of support which the Commissariat will sustain, must be made up by a corresponding increase of that establishment, and the police also must be at every station greatly enlarged. It is the relation in which the one stands to the other that enables both to be maintained as at present on a diminished footing; but a separation unbinding that support would immediately be followed by a call for extra or corresponding aid and assistance. I could with ease enlarge upon this, and show in detail how this would be in all the branches particularly needed. I do not, however, imagine that this proposition would be controverted; I therefore leave it to rest upon its own necessity, and proceed to show wherein I think improvements on the present working of the Police might be advantageous.

Government having been pleased to invest Commissariat officers with the powers of Justices of the Peace, it has given them a power over Europeans in criminal matters, which requires to be completed by extending the power to settle, when brought before them, debts incurred by the same persons, to a limited amount; for the recourse to a Court of Requests for one or more rupees due by Europeans, men or women, in camp, is vexatious and tantamount to a denial of justice; neither can the party who complains of an assault, and meets with instant redress, comprehend how or why the same dispensation of justice cannot be made to extend to awarding five rupees due, or on some frivolous pretext withheld. It seems also to them void of reason, requiring for the settlement of the latter the assembly of three or five officers, whilst for the investigation of a very grave or serious charge the superintendent can act alone.

It has further, for the speedy adjudication of leases, or rather the prevention of delays, been the practice at Bombay to confer magisterial powers on military officers, making them assistants to the magistrates for the stations where they are required, and it was one of the recommendations to me of the Judicial Commissioner, on his late visit to this district, to make an application for these powers here to the Government for sanction. I need not enlarge on the advantages which this liberality extends to officers acting in charge of the police, in preventing all cavilling about separate jurisdiction, which is the bane of the military police generally throughout the provinces.

That the powers hitherto granted as Justices supersede those of a superintendent, and that the addition gained as an assistant magistrate would render a revision of the rules guiding the superintendent necessary, must be obvious to all who have studied the practice of the duties appertaining thereto. In this there would be but little difficulty, and presents an additional reason for the union recommended.

There are still many points left untouched in this hasty view of the general subject; were I to dedicate the leisure I desire to the full and deliberate consideration of all its bearings, I should hope to produce a more convincing* than I have here drawn out; other matters, however, demand my attention; and if this brief sketch places before you some of the more prominent features, I shall, if ever again called upon, be ready, I hope, to carry out these views into fuller relief.

* *Sic orig.*

I will conclude this with one assertion, drawn from my own practice for nearly 15 years,—that although at times there is a pressure and weight of business caused

caused by extraordinary occurrences, yet attention to office, by the daily practice of attending until evening, will now cause the combined duties to be complained of as onerous or burdensome, more especially where an assistant is on the spot. But when this practice of sitting from six to eight hours daily injures the health, and renders irksome the duty, then will the combination be considered an evil, which with renewed health would be again differently viewed.

In illustration of the case above mentioned, wherein I have stated that the powers of the superintendent are superseded by those of Justices of the Peace, I would refer in particular to an Act of the Legislative department, No. II. of 1839, which vests a jurisdiction in the Justices of the Peace, which is altogether at variance with those of a superintendent, making it obvious that the rules binding the latter are set aside by the extended judicature granted by virtue of his commission to the former.

(signed) *J. Johnstone*, Assist Commissy Genl, and Superintendt of Police, D.D.

Police Office, Dooab Division,
Belgaon, 30 May 1840.

(True copy.)
(signed) *W. Cullen*, Commissary-general.

To the Commissary-general of the Army, Madras.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 2d May 1840, giving cover to the Extracts of Minutes of Consultation, dated the 16th April, and calling upon me to forward the copies of any correspondence which may have passed between my predecessors or myself, with the officers commanding the station or district, relative to the propriety of vesting the officers of the Commissariat with the duties of the police, in addition to those of supply, as well as to make known my sentiments generally on this case; and after due consideration of this important subject, I hasten to reply.

On reference to the records, it does not appear that any correspondence has taken place exclusively on this point, though the accompanying communications from Captain Bullock on the subject of courts martial, held under the provisions of Section XLII., Regulation VII., A. D. 1832, and of Courts of Request, held under the provisions of Act 4 Geo. 4, c. 81, call for particular attention, and I have therefore enclosed a copy of the letter alluded to.

My own opinion on the advantages and disadvantages of the present system is, that unless the Commissariat officer possesses the police authority, it would be impossible for him, with the other means at his disposal, to equip troops for movement in a speedy and efficient manner; and to enable him to do so, an establishment of public carriage, dooley bearers, bamboo coolies, &c., seems nearly double what it is at present, must be kept up for public equipments, whilst private individuals and European troops cannot even then be supplied, as they have hitherto been, with hired carriages of every description, at short notice, whereby, as will be clearly proved by reference to officers commanding Her Majesty's regiments, all classes have been enabled to march with comfort, comparative economy, and without the slightest cause of complaint, whilst the Government have been saved all extra expense.

I would remark, and I do so with the most respectful deference, that the experience of many years does not bear out the objection made to the present system, wherein it is said, "that no arrangement can be less desirable or more probably injurious to the best interests of Government than that the executive police authority and the approaches to civil adjudication should be immediately vested where the principal commercial dealings have an influence in numerous transactions and sub-contracts, amongst whom the power upon Indian police is exercised;" inasmuch as the case is not now a matter of theory, but of actual practice; the Commissariat, as at present constituted, has been at work for the last 29 years, during which time its efficiency has been fully tested and clearly proved, and has drawn upon it the well-earned meed of high eulogium from many of our best officers and statesmen, who have seen its practical effects; whilst, on the other hand, the evil tendency of the combination of duties objected to is still unsubstantiated or borne out by fact. Further, the data upon which it is

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founded are erroneous, since the Commissariat has nothing whatever to do with commercial dealing; it has no sub-contracts or transactions, as therein set forth; it simply advertises, calling for tenders for the supply of any article required, which is done openly and fairly. The tenders are opened before all parties, and the most favourable offer accepted, pending a reference to the Commissary-general, provided the person making it can be depended on. Under these circumstances, I would, with all due submission, point out the inexpediency of annulling a positive benefit when the evil anticipated is only imaginary; for I am convinced that any alteration will entail heavy expense, and destroy efficiency. At any rate, previous to adopting any measure, I would urge the utility of making a full and impartial inquiry on the subject, which will, I am convinced, prove that the police authority is not unfairly used, or its influence in any way injurious to merchants or others; neither do I believe that in the present day, let the officer conducting it be whom he may, that it could be so used without its being forthwith made manifest. However, the Police records, the Commissariat accounts, contracts and correspondence, both at head quarters and the out-stations, are open to the Government, and I will venture to assert, without fear of contradiction, that a careful investigation of them will prove that no public department can be conducted more fairly or openly, and with a stricter attention to economy, consistent with efficiency, than the Commissariat has been for the last five years, and I am convinced any change will be injurious.

I fully coincide in the observation that the business of the Commissariat is onerous and of paramount importance; that the addition of Military Police, Punchayets and Courts of Request, to what in itself requires the full exertions of able officers, is injurious; but I do not agree that it is self-evident, as involving two departments requiring undivided attention; but it proves that Sec. IV., Reg. VII., A. D. 1832, which, restricts the charge of the police to the senior Commissariat officer, is injudicious and inexpedient. Let the Police authority be vested in all Commissariat officers of a certain standing, and let two able officers of the Commissariat be placed at the three large stations of the army, namely, Bangalore, Sunderabad and Kamptee, and let it be understood that the junior officer is to conduct the duties of the police under the control of the senior, whilst the latter, except in difficult and important cases, is to attend to his Commissariat duties, and the difficulty will then vanish, and the duties be in no way too onerous.

In addition to what I have above said, I would strongly urge the necessity of a new Code of Regulations for the military police, or that Regulations VII, A. D. 1832, be carefully revised, since they are in many respects ill defined. I would also second Captain Bullock's suggestion, that on all courts martial assembled under the provisions of Section XLII., that a Judge-advocate, or other qualified person, be appointed to conduct the proceedings of such courts; that the evidence given before Courts of Request be recorded and revised by the Judge-advocate, and that Courts of Inquest be invariably conducted by the Superintendent of Police; and that the medical officer be called upon to give his professional opinion in writing, a copy whereof to be sent to the Medical Board.

In conclusion, I trust I shall not appear to have exceeded due limits in having thus plainly expressed my opinions; they are given after due consideration of all the bearings of the case.

(signed) *A. D. Awdry*,
A. C. Gen[l].

Police Office, H. Q. H. S. Force,
Secunderabad, 30 May 1838.

To Brigadier *J. Wahab*, C. B., Commanding Hyderabad Subsidiary Force.

Sir,

In conformity with your instructions, I have herewith the honour to forward the statements called for in letters Nos. 1691 and 1697, from the Adjutant-general's office, bearing date respectively the 12th and 14th of April 1838.

2. It will be observed, that within the period of five years two cases only have occurred of appeals from Punchayet to courts martial, under the provisions of Clause 3, Section XLII., Reg. VII. of 1832. I may, however, be permitted to remark, that I have seldom known a cause determined, whether by court martial, Punchayet or Court of Requests, wherein the award has not been objected to by the losing party, on one ground or other; such objections, nevertheless, generally proving

proving on inquiry to be unfounded, frivolous or otherwise of a nature which precluded their admission. In cases where the existence of irregularity or misconception on the part of Punchayet has been clearly established, the proceedings have been occasionally quashed by mutual consent, and the matter referred for investigation to another Punchayet; the parties preferring such mode of procedure to the alternative prescribed in the Regulation above adverted to.

3. Referring to the 2d paragraph of the letter from the Adjutant-general's office, under date the 12th of April 1838, I take the liberty of submitting a few remarks and suggestions, which many years' experience of the practical working of Courts of Request and Punchayets enables me to offer, and which, I am disposed to think, may tend to their improvement, and towards promoting more effectually the ends of justice.

Court martial under the provisions of Reg. VII. of 1832.

4. In cases of appeal from the award of Punchayets, or where the defendant may altogether refuse to refer the claim upon him to the decision of a Punchayet or court martial, held under the provisions of Section XLII. Reg. VII. of 1832, have jurisdiction in civil suits to unlimited extent, and the award of such courts is declared to be final; it becomes, therefore, of primary importance that every practical precaution should be taken to secure a just and equitable decision, and attention to those technical formalities usually deemed essential to the validity of legal instruments. It appears to me that these points have not been sufficiently provided for by Regulation: first, from the constitution of such courts; and, secondly, from the absence of any officer duly qualified to conduct the proceedings.

Constitution Court.

5. Nominated by regular routine from the several raster, without reference to qualification, it will frequently happen that the Court is composed of officers entirely unacquainted with the principles which regulate mercantile dealings among natives, their mode of keeping accounts, and other points essential to a correct appreciation of the matter about to be tried. Claims of the description referrible to courts martial, held under the provisions of this Regulation, have their origin often in mercantile dealings of many years' standing, involved in all the intricacies and confusion which widely varying accounts of the kind may be expected to display, where each party seeks to establish his cause by entries and calculations peculiar to his class, and requiring much practical experience of the native systems of book-keeping to understand. The duty is not of very frequent occurrence, and I would venture to suggest, that the nomination of such Courts be matter of selection rather than routine, from officers whose knowledge of the native language, acquaintance with native habits and customs, and aptitude for patient investigation, may afford a reasonable security that the matter at issue will be well and truly tried, and an equitable award passed.

Alterations suggested.

Proceedings in Bengal concluded by Deputy Judge-advocate in certain cases.
Similar arrangements suggested for the Madras Presidency.

6. Under the Bengal Presidency, and, if I mistake not, under that of Bombay also, the proceedings on courts martial in actions for debt, where the amount sued for exceeds the sum of 400 rupees, are invariably conducted by the Deputy Judge Advocate-general of the district, or, in his absence, by an officer specially selected to act in that capacity. I beg to suggest that a similar practice be introduced on this establishment. It would become the duty of the officer conducting the proceedings to inform himself beforehand of the particulars of the cases about to be tried, and the nature of the evidence to be adduced in support thereof. Thus prepared, much irrelevant matter would be avoided, and the attention of the Court at once directed to the leading points in issue, while at the same time the Judge Advocate's acquaintance with the legal forms, the rules of evidence and general principles of law and equity would tend to prevent those informalities and anomalies so frequently occurring under the existing system, often calculated to render the awards of the court martial a mere nullity, if adduced in bar of proceedings before any other tribunal, and otherwise involving much injustice to parties concerned. It would be easy to multiply instances in support of my argument, but it may suffice to adduce one only.

Example.

In February 1835 a running account between A. B. and C. D. closed, exhibiting a balance of 1,992 rupees in favour of the former, for which a bond was granted by C. D., admitting the amount due, and engaging that the whole should be paid by the 17th February 1839, with interest at the rate of 12 per cent. per annum. A sub-agreement was almost immediately afterwards concluded between the

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parties, to the effect that the debt should be liquidated by regular monthly instalments proportionate to the amount due, as far as compatible with the debtor's means. Pursuant to this agreement, a family certificate was granted for 75 rupees per mensem, and continued until October 1836, consequent upon a representation then made by A. B. that the instalment was barely sufficient to keep down the interest, and his requisition thereupon for larger payments. C. D. discontinued the family certificate, and declared his determination to dispute the validity of the bond, alleging that it had been granted in haste, and included charges which were incorrect. The matter was ultimately referred to Punchayet, and an award passed in favour of the plaintiff. The defendant appealed against this award to a court martial. The court appear to have been of opinion that because the 17th of February 1839 was the period prescribed in the bond for final adjustment, that therefore the respondent A. B. had been premature in bringing his action, and thereupon decreed that "the defendant in the appeal be non-suited." The effect of this award would have been to reverse the decision of the Punchayet, nonsuit the plaintiff, and annul an agreement for upwards of 10,000 rupees, the validity of which the court did not dispute; and there being no appeal from the decision of the court, the plaintiff would have been without redress. The award, however, having been rendered in terms exceedingly indefinite and informal, it became necessary to return the proceedings for explanation, and the opportunity was availed of to point out the consequences that would result from the decision; consequences evidently not contemplated or intended by the court itself. A revised award was the result, confirming the decision of the Punchayet, but providing that no warrant could issue in execution for recovery of the amount due until the expiration of the period prescribed in the bond. The court in this case appears to have overlooked the circumstance of the plaintiff having been compelled to bring his action by the defendant's breach of contract, and his denial of the validity of the bond; and in its final award an essential part of the agreement was lost sight of, which provided for payments by regular monthly instalments. The defendant has now, what may be termed, a letter of license for the remaining portion of the period prescribed, by which time he will probably have made away with his property, and the plaintiff will hence be defrauded of the amount due. It may be fairly presumed that these mistakes would not have occurred had the proceedings been conducted by the Deputy Judge Advocate, nor would the court have been led into the error of nonsuiting a defendant in a matter of appeal.

Punchayets, how constituted.

7. Under existing regulations, Punchayets are composed of five members, each party nominating two, and one being appointed by the Commanding or Commissariat officer, who is unobjected to by both parties. Inconvenience has occasionally resulted from this formation. The members severally chosen by the parties are not unfrequently in the habit of regarding themselves as advocates merely of the party who names them, and, heedless of the merits of the case, obstinately adhere to what is calculated for the interest of such party, and if carried against them, withhold their signatures from the Fyselnamah; thus leaving the instrument in an incomplete and unsatisfactory state, the majority in favour of the award being one only, inclusive of the two members nominated by the party in whose favour the issue has determined. To obviate this inconvenience, I would suggest an alteration in the existing Regulation, where the parties desire to nominate their own members, to be allowed to do so, as at present; but in such case the Commanding or Commissariat officer, should he deem advisable, to have the power of nominating other three members, who shall be unobjected to by both parties. This would secure a majority, who may be presumed wholly uninterested in the issue, and thence a more satisfactory result. In ordinary cases the Commanding or Commissariat officer to have the power of nominating from dealers and merchants of respectability the whole of the five members, the same being unobjected to by both parties. Such is now occasionally the practice at the joint request of the parties; but not being expressly sanctioned by regulation, its legality may be questioned.

Alteration suggested.

Court of Requests.

8. Erroneous decisions, involving much of injustice to parties concerned, are a frequent result of misconception on the part of Courts of Request on certain points, inattention to others, and generally a want of due appreciation of the extent and nature of the duty devolved. I venture to notice a few circumstances in illustration of this assumption.

9. It

Natives appearing as plaintiffs before European Courts of Request at a disadvantage.

9. It may be observed generally, and the correctness of the remark will, I conceive, be admitted by all who reflect upon the subject, that a native appearing before an European Court of Requests, with a claim against an officer, is at disadvantage. The ordinary claimants are petty shopkeepers, native dealers and servants. The mere fact of his having resort to such mode of recovery, induces, however unconsciously, on the minds of the Court a feeling of prejudice against the claimant, and, coupled with the irksome nature of the duty, causes that degree of inattention to the matter at issue which sometimes leads to awards at variance with every principle of law and equity.

In respect of language.

10. The native is, moreover, at evident disadvantage in respect of language. The defendant, personally acquainted with the individual members of the court, pleads his cause in English, replies to the demand against him by a long and seemingly plausible explanation, which carries conviction to the minds of the Court, and often determines the award. No care having been taken meanwhile to explain to the plaintiff the several points which the defendant has urged in his reply, and quitting the Court entirely unconscious of what has been thus urged, he is entirely at a loss to imagine upon what grounds the issue has determined against him, and naturally imputes unfairness and injustice to the Court itself. I would suggest that it be rendered imperative upon Courts of Request to explain fully to the plaintiff the several points replied upon by the defendant, thereby affording him the opportunity for rejoinder, and, if necessary, for calling witnesses to disprove what may have been thus advanced.

Suggestions thereupon.

Appearance of witnesses occasionally not recorded.

11. Courts of Request are in the occasional habit of rejecting evidence as irrelevant, having ascertained before swearing in the witness that such would be its character, and the appearance of such witness before the Court remains unnoticed in the record. I conceive it would be desirable that the appearance of all witnesses tendered by either party be entered in the record of proceedings, with a brief notice of the grounds which may have led the Court to decline the examination of any particular witness, explaining to the party the reason why the evidence tendered is not admitted. Appeals against the decision of Courts of Request frequently hinge upon this point; plaintiffs conceiving that justice has not been done them, because their witnesses have been refused a hearing.

Contracts and agreements written in the English language only too readily admitted.

12. Contracts and agreements between officers and natives written in the English language only are too readily admitted by European Courts of Request as conclusive evidence against the plaintiff, without due inquiry as to whether, when subscribing his mark or signature, he understood the tenor of such agreement. When about to build a house or make repairs, an officer, to avoid the trouble of daily accounts, determines to effect the same by contract; a man of no substance or responsibility, but calling himself a maistry, offers to undertake the same. It is explained to him generally what is required, and he is asked what he will do it for. He makes his rough estimate, and names a particular sum. This is deemed highly exorbitant, and probably two-thirds or one-half is tendered. Anxious mainly for a job, and the expected advance, after a little demur he consents, although the sum proposed is probably much less than the work can possibly be completed for. An agreement is then drawn out in the English language, explanatory of what is to be performed, to an extent and particularity eminently calculated to confuse the contracting party. This is read over to him, a sort of explanation given by some ignorant servant, and he is required to affix his mark to the document. He receives the stipulated advance, commences the work, expends the money advanced, and perhaps his credit also for materials and workmen, and is then at a stand-still for money. This is refused, the work not having advanced so far as required by contract. The man declares himself unable to proceed, and the matter is referred to the police, and eventually to a Court of Requests. The contractor is cast, a penalty declared, which he has no means of paying, and his imprisonment ensues, attended probably with either ruin to himself and family, and no little loss and inconvenience to the officer. This is one description of contract; but others are constantly presenting themselves for the hire of the equipments or servants, and for work to be performed, wherein subsequent inquiry clearly establishes that the contractor wholly mistook the intent and meaning of the agreement he has unconsciously entered into. I beg to suggest that all contracts or agreements between officers and natives be written in the native language and character of the subscribing party, as well as in English.

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It would be further advisable, wherever the amount or value exceeds 20 rupees, that the agreement be countersigned by the officer of police, whose duty it would be to explain fully to the contracting party the terms of contract, and so far as practicable, ascertain his capabilities of performance; hence at the same time affording security to the officer, and protection to the native.

13. A want of formality in preparing the award of Courts of Request is of frequent recurrence, and, as observed in the instance of courts martial, might prove of material consequence, should the instrument be required in bar of trial before the civil tribunals. A want of specification in regard to the amount awarded, and in the definition of persons, is more immediately adverted to. It is desirable that the attention of Courts of Request be called to this circumstance, and to the expediency of rendering their awards complete, and framed in every respect as a document may be eventually required under circumstances that would render inexpedient the production of the original record of proceedings.

14. In illustration of the foregoing remarks upon the practical working of Courts of Request, I beg to adduce a few out of very many instances of similar tendency that have attracted my notice within the last two years at the station:—

Example 1.

Case 1. A., as agent on behalf of B., sowcar, at Kamptee, *versus* Captain C., for 428 Nagpore rupees. This suit originated in a protested order for 374 Nagpore rupees, with interest thereupon, at the rate of 12 per cent. per annum, deducting what was necessary to bring the amount within cognizance of a military Court of Requests. The protested note was produced before the court, and evidence tendered in support of the claim for interest, but declined by the court. The defendant admitted the principal, but demurred to the charge of interest, on the plea that when he granted the order to the sowcar's agent, the latter was distinctly informed that the amount would be paid only after all his (the defendant's) other creditors at Kamptee should have been paid; and in support of this plea, the vakeel of the regiment was called, who swore to the circumstance. The court awarded the amount of principal, without interest; and decided that the same "be paid after the claims of all the defendant's creditors at Kamptee shall be satisfied." I am of opinion that the court was not warranted in this decision; First, because the debt having originated principally in money advances for current expenses, the sowcar was clearly entitled to the usual interest; Secondly, because the protested note contained no stipulation of the kind assumed in the defence, and hence the reasonable presumption that none such was made at the time it was granted; Thirdly, because evidence was tendered in support of the claim for interest, and should have been admitted by the Court; and had it been so, the real facts of the case would have been made manifest; Fourthly, because it does not appear that the plea advanced in court by defendant was explained to plaintiff's vakeel, or any opportunity afforded him for disproving the same; and Fifthly, because the court must have been aware from the power of attorney that the plaintiff was liable to a charge of five per cent. agency commission for the vakeel who appeared on his behalf; and in equity the defendant should have borne such charge, the reference to a Court of Requests having resulted from his own default. Moreover, it was incumbent upon the court, viewing the case as they did, to have ascertained from the defendant whether in point of fact he still had other creditors at Kamptee, and if so, the aggregate amount of their claims, and the arrangement in progress for their liquidation. Thus far, as regards the Court of Requests, and the evidence available for their guidance. The following further exposition will tend to place the matter in a yet more extraordinary point of view. The demand against the defendant in the suit was brought to the notice of the Superintendent of the police at Kamptee about the 6th of March 1835, the debt having been then of long standing, and defendant having failed in repeated promises, defendant was called upon for reply, with an intimation from the Superintendent, that as the regiment was about to march from the station, and some difficulty might exist in paying the amount, if he would specify any monthly instalment that he could conveniently afford, and pledge himself for its regular remittance, he (the Superintendent) would endeavour to procure complainant's consent to the arrangement. Defendant declined this, expressed great indignation at the complaint having been preferred against him, alleging that he had informed the sowcar that he intended settling with him before quitting the station, and that such was still his intention. The regiment marched three days afterwards, and the day following, complainant again appeared

appeared at the police office, and stated that he had remained at defendant's quarters the whole of the preceding day and night, and accompanied the regiment to its first stage, but had failed in obtaining any settlement of his accounts. The foregoing particulars were communicated to the officer commanding the regiment, with an intimation, that unless an immediate satisfactory arrangement was entered into, the matter would be submitted to superior authority. Defendant then gave an order upon Messrs. Cursetjee & Co. for the amount due to be paid from proceeds of certain articles left in their hands for sale. This order was given to the sowcar himself, and not to the agent, and he supposed it to be an order for immediate payment. On presentation, Messrs. C. & Co. declined accepting, on the ground that the articles in question were estimated at prices which precluded the probability of sale, and that if sold by auction, the proceeds would not suffice to cover the amount due. The articles remaining on hand for some months, without any offer, a communication was made to the defendant to authorize their sale by auction, or to provide otherwise for payment of the unaccepted order. He declined both propositions. In September 1835, the order was protested by Messrs. C. & Co. Repeated official communications were made to defendant, without eliciting any satisfactory reply, and in August 1836 the matter was referred to a Court of Requests. The other creditors at Kamptee had been arranged from sale of house. The plaintiff's claim was omitted in that arrangement, because defendant had promised that he should be settled with before quitting the station. The award of the Court in this case was not confirmed by the officer commanding the force. The foregoing facts having been brought to his notice, the defendant was called upon to enter into immediate arrangements for liquidation of the amount due, with interest thereupon, or abide the result of a reference to army head quarters. He acceded to the proposition, entered into an arrangement by monthly instalments, but dying insolvent a few months afterwards, it is presumed the greater part of the debt remains unpaid.

Case 2. A. B. *versus* Lieutenant C. D., for 13 Hyderabad rupees. Plaintiff engaged with the defendant for the repair and painting of a bullock-coach, for which he was to receive 25 rupees. Two months after the work had been completed, defendant paid him 12 rupees, and having failed in repeated promises, this suit was instituted for recovery of the balance. Defendant declined payment on the plea that one of the springs repaired by plaintiff had broken, and that, pursuant to agreement, plaintiff was to warrant the same for 12 months. In support of this plea, defendant handed in an agreement, written in the English language, and purporting to bear plaintiff's signature, of which the following is a transcript:—

Example 2.

> "I promise to repair carriage-property, and warrant the spring to keep good for one year, in default of which I will return the money he has given me for repairing the same."

Ballinga's signature; plaintiff admits his mark to the document, but pleads, first, that he merely engaged, in the event of the springs breaking, to repair the same for nothing; and secondly, that the broken spring was not one of those repaired by him. Two servants of defendant, on leading questions being put to them, support his statement as to the identity of the broken spring. Defendant admits, that on two occasions he drove his bullock-coach on rough roads across the country to some distance from cantonment. The following is the Court's award:—"According to the strict letter of the appended agreement, the plaintiff should lose the whole of the sum he claims; but from certain answers given by plaintiff to questions from the Court, it appears that he did not rightly understand its tenor; under this consideration, the Court awards that 8 rupees be deducted from the claim of 13 rupees, and the defendant pay the plaintiff the balance of five rupees." I submit that the Court was not warranted in this decision: First, Because there was no proof as to whether or not the 12 months had expired; the written agreement is without date, and no evidence to show when it was entered into. Secondly, Because defendant had broken contract; he promised to pay for the carriage upon its being brought home; two months after that period he paid 12 rupees only, and some months then elapsed before this action was brought. And thirdly, Because the agreement was repugnant to reason and equity, and, as admitted by the Court, not understood by the plaintiff. The bullock-coach was repaired generally, and painted, two springs mended, the wheels new tired, and

Witness Podulness signature.

the pole repaired. The whole of this was completed for 25 rupees; and it was neither equitable nor reasonable to require that the whole amount should be forfeited in the event of one spring happening to break within a twelvemonth.

Example 3. Case 3. A. B. *versus* Lieutenant R. S., for Hyderabad Rs. 45. 2. This action was brought for tailor work performed by plaintiff and his brother. Defendant being asked if he admitted the claim, replied in the affirmative, to the amount of Rs. 31. 10. Plaintiff's brother being called, deposed generally to work performed, but without any special reference to the amount claimed, nor is he questioned thereupon. It is then recorded, that the plaintiff having no further evidence, and the court not being satisfied with that adduced, put the defendant upon his oath. In specifying the items admitted, and those objected to by him, defendant makes out a balance due to plaintiff of 26 rupees and two annas only, alleging at the same time, that he considered some of the smaller items of the bill exorbitant, but would leave that point to the Court itself. The following is the Court's award:—"That the plaintiff has not substantiated his claim to Rs. 45., 2., and, therefore, award that defendant do pay to plaintiff the sum of Rs. 26. 10., which appears to the Court to be due; and as the Court also considers the plaintiff to have been actuated by fraudulent motives in his proceedings, it decrees the said sum of Rs. 26. 10. to be paid by small instalments of five rupees monthly, as a sort of punishment to deter him from future delinquency." The amount awarded by the Court neither accords with the first statement nor the subsequent deposition upon oath of the defendant. Its finding of fraud against the plaintiff is not warranted by the recorded evidence; while the discrepancy between the defendant's statement in reply and subsequent deposition upon oath should have induced caution in admitting his unsupported evidence in his own behalf. It does not appear that the defendant's deposition was explained to the plaintiff, or the opportunity afforded him for reply. It was incumbent upon the Court also, as a court of equity, to have considered the length of time the plaintiff had been already kept out of his just due by the defendant. In a correspondence with the Superintendent of Police, before the matter was referred to a Court of Requests, defendant had objected to the account on two grounds; that it included bills due to two persons, and that in one of those bills items were erroneously included for articles supplied by himself. Defendant tacitly admitted the sum of Rs. 25. 6. as due to the plaintiff, and the items objected to in the other bill amounted to Rs. 2. 12. only; the bills conjointly amounting to Rs. 45. 2.; the defendant's admission upon the two bills must therefore be considered good for Rs. 42. 6. It was explained in reply, that the lesser bill was due to plaintiff's brother, who had transferred the same to plaintiff for recovery, an arrangement not unusual or objectionable. The defendant would appear to have admitted this explanation, since the objection was not renewed before the Court. The items objected to were for hooks and eyes and a pair of wings. It was explained that the charge of one rupee was for altering the wings, and not for the materials; and plaintiff positively affirmed that the hooks and eyes were purchased by himself in the bazar. Supposing that he was mistaken in this particular, that circumstance would scarcely warrant an accusation of intentional fraud, nor could such be correctly deduced from the defendant's averment that he considered some of the lesser charges exorbitant.

Example 4. Case 4. C. D., and 16 Bearers *versus* Captain A. B., for 90 rupees, balance alleged due for one month and 20 days' pay, at the rate of six rupees each bearer, and seven rupees the head bearer per mensem. Plaintiff, on behalf of self and bearers, states, that 10 days before the march of the regiment from Bangalore they were entertained by the defendant, Captain A. B. at the rate indicated, with the understanding that if they behaved well they would be continued in his service after the arrival of the corps at Secunderabad. Three witnesses, having no apparent interest in the issue, distinctly swear that the rate of hire agreed upon between plaintiffs and an orderly trooper was seven rupees per mensem for the head bearer, and six rupees each per mensem for the remainder; one of those witnesses further deposes to the fact of their having been informed by the trooper, that if they behaved well during the march, they would be continued in the Captain's service after arrival at Secunderabad. Defendant disputes the claim *in toto*, alleging that the bearers were hired for six rupees each per bearer for the trip, not by monthly hire, and that they had received their full due; in support of this averment, an agreement written in the English language, and purporting to bear the mark of the head bearer, was produced in court; defendant admitted that

that the agreement was entered into some days before the regiment quitted Bangalore, and that the plaintiffs then took up their residence in his compound; but states that this was for their own comfort and convenience, and that when employed by him at Bangalore they were paid extra; an orderly trooper appears as witness for defence, and being asked if he was present when an agreement was made with the plaintiff, replies, "Yes, I was; the agreement was six rupees a head for the trip, not monthly, and a present afterwards, should they conduct themselves well. It was understood that the head bhose would get something more than the rest if he behaved well." Being shown the written document, he recognized it, and says this was signed by the plaintiff; and the contents were explained to him in the presence and by order of Captain ——, the other bearers being present. Being asked whether the bearers were in defendant's monthly pay previous to the march of the regiment, replies, "No, they were not; Captain —— invited them to put up in the compound until the march, there being plenty of shade and water there." There was no further evidence for defence. Plaintiff admits his mark upon the document, but states that he understood the engagement to be for monthly hire, and such was the impression of the other bearers also; admits also, that on three occasions wherein eight of the number were employed in carrying, money was given them, half a rupee on one occasion, and one rupee on the other two; but they considered this as a present, and when the eight bearers were thus engaged, the remainder were employed about the house. The Court award 26 rupees, but upon what principle does not appear. If the written agreement was recognized as good, a nonsuit should have been declared; if otherwise, the plaintiffs were entitled to the full amount claimed, deducting only the two and a half rupees received at Bangalore. The presumption strongly favours the supposition that the bearers understood the agreement in the manner stated by them; for otherwise we must suppose that they were willingly engaging to proceed to a distant station, with the chance of having to return unemployed, for Rs. 3. 9. 7. per mensem; or, at any rate, taking the time occupied in the march above, for Rs. 4. 8. per mensem. The regulated hire per trip from Bangalore to Secunderabad is Rs. 8. 12. 6. each bearer. Bearers are in the habit of hiring per trip with individuals proceeding alone from one station to another, full sets being employed, and the march usually performed in less time than prescribed by regulation. But they are generally averse to trip hire with regiments, the time occupied being so much greater. It is improbable that, at a time when bearers were in great request from corps moving, the plaintiffs should have engaged themselves 10 days before the march of the regiment for trip hire so much below regulation. The ordinary pay for bearers when marching is seven rupees each per mensem, and one rupee extra to the head bearer; six rupees per mensem for each bearer, and one extra for the head bearer, is the lowest rate at which they are usually procurable. Other two suits were instituted against the same officer before this Court of Requests for hired equipments, in reference to whom similar misunderstanding with the present had obtained. Hence the obvious inference that the misconstruction lay with him, and that the tenor of the respective engagements was not clearly explained to the several parties. The contrary was deposed to before the court; but in these cases the evidence of an orderly sepoy or domestic servant should be received with caution. The bearers and other equipments were detained, subsequent to the arrival of the regiment at Secunderabad, for 18 days before these suits were determined, and the amount of awards realized; and it appears to me, that a finding for plaintiffs to the full amount claimed would have been more accordant to the principles of equity and justice than that found by the Court, such amount being the very lowest hire for which bearers are usually procurable. It should be observed that, from defendant's statements, the written agreement was not entered into until the day on which the regiment marched, when the bearers having demanded batta from the date of entertainment, the same was refused by defendant, who threatened to discharge them unless they signed an agreement. Beyond the statement of the defendant there is no recorded evidence on this point.

Case 5. A. B. Butler, *versus* Lieutenant A. P., for Rs. 35. 8., on account of wages and current expenses. Defendant admits to the extent of Rs. 11. 2., which was tendered to plaintiff on his discharge, but declined by him. Defendant objects to the remainder, because including interest on monies alleged to have been borrowed from a shroff for current expenses; whereas he has been in the habit Example 5.

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of settling accounts daily. He objects also to difference between butcher's and maty's pay for four days, during which the plaintiff was absent on occasion of the Mohurrum, finding a maty only as substitute; and he objects further to two items in the account, which he alleges were paid for some time before. Defendant's cook is called, who deposes to the fact of his master being in the habit of settling accounts daily. No further evidence for defence. The court awards Rs. 11. 2., as admitted by defendant. The plaintiff, when apprised of the decision, appealed strongly against it, alleging that the cook has sworn falsely, and that his own witness was refused a hearing; on reference to the record of proceedings, the following entry is found:—

"*Question* by the Court to the Plaintiff:—'Did your master authorize you to borrow money on interest, and have you any proof?'—*Answer*. Yes, I was authorized, 'but I have no witnesses to prove it.' The plaintiff having no evidence to produce in court, the defendant is called upon to state his case."

Yet on subsequent inquiry it appeared that the Sowcar was actually called by plaintiff, and questioned (not on oath) as to whether defendant had authorized his advancing money on interest, and on his replying in the negative, his evidence was deemed inadmissible. The Court would have been warranted in absolving the defendant from any charge of interest under the circumstances stated, but was not so in declining the evidence, because such evidence was material to the general correctness of the plaintiff's accounts. The item of interest had been objected to by defendant on the plea of his being in the habit of settling his accounts daily. The evidence of the Sowcar would have afforded presumption in favour of the plaintiff's statement, in so far as exhibiting from his books, that certain advances corresponding with the butcher's account, and bearing interest, had been made to the butcher. But even supposing the Court justified in declining to admit such evidence, it clearly was not so in making the entry upon the record as above quoted. As a matter of equity, the defendant's plea relative to difference of pay between butler and maty should have been rejected by the Court. It is customary for servants to have leave granted them at certain festivals, without requiring any substitute: but having required one who performed the duties, the circumstance of his not being exactly of the same class with plaintiff did not warrant a reduction of pay. The Court should have required evidence in regard to the two items alleged to have been paid for some time before. Defendant having been in the habit of settling his accounts daily, should have been required to refer to the same in support of his statement. If none such were in existence, it must be inferred that defendant trusted to recollection only, which cannot be certainly relied upon.

The foregoing will tend to establish the positions assumed by me on the subject of Courts of Request, and the expediency of revising the regulations prescribed for their guidance, to the extent that may be necessary to secure the requisite attention to the interest of plaintiffs, and the observance of those technical formalities which are essential to the validity of all legal proceedings.

(signed) *S. Bullock*,
Supdt of Police.

(A true copy.)
(signed) *J. D. Awdry*,
A. C. General.

(True copies,)
(signed) *W. Cullen*,
Commy General.

Commissariat Office, Centre Division, Vellore,
9 May 1840.

To the Commissary General, Madras.

Sir,

In acknowledging the receipt of your letter of the 2d instant, forwarding a copy of an extract from the Minutes of Consultation of the 16th ultimo, I have the honour to inform you, that by the records of this office it does not appear that any correspondence has passed between the officers of this department and officers commanding the station or division relative to the subject of your communication.

2. It

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2. It appears to me that the Adjutant-general, in paragraph 4 of his letter, an extract from which is annexed to the Minutes of Consultation, overrates the duties generally required to be performed in the Police department, for Courts of Request are not conducted by the superintendent of police; nor does the revision of the proceedings of Punchayets involve in most cases either extraordinary mental or bodily exertion; in fact, the Regulations, by limiting all causes, police and civil, that come under our cognizance, to such as are very trivial, precludes the probability of our being overburdened with business; nor can I conceive why the connexion of the Police and Commissariat departments can be considered incompatible with the efficient discharge of the duties of both, or be in any mode or degree injurious to the public, or those with whom they may have commercial dealings.

3. The present system of placing both the Police and Commissariat department under the same individual, the establishments attached to them being kept perfectly separate and distinct, appears to be the best calculated, under all exigencies of service, to ensure complete efficiency in the Commissariat. In times of peace, it enables the officer to gain that knowledge of the character, capabilities and resources of the merchants and tradespeople of the military bazars which best enables him on the formation of camp bazars to select those on whose exertions and means the greatest dependence can be placed; also, on the sudden movement of troops, he can supply their equipments with a degree of celerity which it would be vain to expect were different officers at the head of each department.

4. It would be tedious to attempt to enumerate all the advantages which in the field result from the Commissariat officer having it in his power to combine the resources of the different branches of supply; but one of the most important appears to be that he, by his knowledge of the state and efficiency of the bazars and that of the markets in his vicinity, is enabled to suggest what quantity of grain carriage will be required to meet the wants of the army. Had intelligence of these and other sources of supply to be gained through a superintendent of bazars, time, secrecy and confidence in the authenticity of information would be sacrificed.

5. So much has been written regarding the advantages which result to the public from the Commissariat having control of all branches of supply by men of far greater experience and information, that it seems unnecessary that I should dwell on the subject; but I would beg to draw your attention to the three first paragraphs of a memorandum of the late Commissary-general, which, I believe, was forwarded to Government on the 23d May 1829; also, to the following extract from a letter of Sir J. Malcolm to J. B. Simpson, Esquire, Secretary to Government, dated 2d February 1820:—"There can be no question, if the bazar of a camp is to be regulated on the principles described of a free market, it will be quite essential to have it either under the Commissariat or a bazar-master who gives the subject constant and minute attention. Upon the principles that supply was formerly conducted, I always thought it essential that the superintendent of bazars should be separate from that of the person who had charge of public grain; but since the establishment of a regular Commissariat, there has been a degree of order, efficiency and integrity introduced into the Supply department which render those who belong to it, when not overloaded with work, the best persons to manage the bazars; and where the magnitude of the force and increased duties render one Commissariat officer unable to give that attention to the bazars which they require, another should act under him (as has always been the case in the Hyderabad Force) as superintendent of bazars. The Commissariat officer, who is thus placed at the head of every branch of Supply, has, as far as my experience goes, from his increased means, information and influence, greater facility in managing bazars than any officer not in that department can have; and though it is essential he should keep the different branches of supply under his conduct and control quite distinct, he can on almost every occasion make the one and the other.* Besides these considerations, it is much more likely an officer in this line should be qualified for the duties I have described, than one who is selected when a detachment or army is formed to be a superintendent of supplies. The reason I have often heard stated for making these stations separate is, that they form a check upon each other, and prevent too much power and too much business centering in one person. With regard to power, the officer of Supply is under

* *Sic orig.*

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the commanding officer of the force, and his duty, like that of all other subordinate officers, is to obey orders; and where we suppose efficiency in the head (all departments will be liable to go wrong if you have not that), the more powerful the instruments that he has to use the better. With regard to his native servants, whose power when it touches a free market is a subject of just alarm, it is to be recollected that according to the Madras system, and it is to that I now allude, his servants, in his capacity of Commissariat, and those who manage the bazar, are quite distinct, and cannot be blended without a departure from orders as well as usage; and with regard to an overload of business, I have already stated that though one officer may conduct both duties in a small force, when a corps is large, another is usually nominated, who has the charge under the superior Commissariat Officer of the bazar and police."

"With regard to the check constituted by a separate officer from one of the Commissariat having charge of the bazar, I confess myself hostile to the principle upon which it rests. If the integrity of the Commissariat, in which all my experience gives me full reliance, wanted to be confirmed, it would be by increased confidence, not suspicion, through which this must be effected; but I contend that in most situations, and above all in the field, such checks are oftener baneful than beneficial. They extend beyond the principals, and throw collision and counteraction into officers, whose union and perfect understanding are essential for the public service. I have seen all systems, and have no hesitation, for reasons stated in this letter, in giving my opinion that it is better to place the superintendence of bazars under the Commissariat officer, than of keeping them (as is now the case in the Bombay establishment, under an officer styled bazar-master) distinct from the department."

(signed) *James Robertson*,
D. A. C. Gen^{l}.

(True copy.)
(signed) *W. Cullen*,
Commissary General.

Commissariat Office, C. D. Bellary,
7 May 1840.

To Colonel *W. Cullen*, Commissary-general.

Sir,

WITH reference to your letter of the 2d instant, with its accompaniments, I beg leave to offer my opinion touching the combination of the Commissariat and Police duties under one officer; and in doing so I feel considerable diffidence, seeing my experience in the department does not go beyond the ceded districts. I shall state, however, what appears just and proper. First, I firmly believe that a separation of the Police from the Commissariat, and investment of the duties in two individuals having no departmental connexion or subordination to each other, will be attended with the greatest detriment to the public service, and render the Supply department, particularly when large bodies of troops are ordered off simultaneously, or suddenly, utterly inefficient. I shall endeavour to show how difficulties would offer, even in trifles; a few coolies and forage bullocks are required on emergent indent; this must be accomplished by an application to the superintendent of police; he again transmits his orders to the Cutwal; in this way, setting aside the chance of the indent not being complied with, a considerable loss of time would take place; at present the machinery is under such management that almost immediately after the indents have reached the office, the cooly or bullock is forthcoming. If such is the case in matters of that sort, what is to be expected when a large force is under orders? The superintendent of police may be an accommodating person; he may be a man of business; however, it might happen he was neither; but even supposing him to be possessed of every requisite quality, the Commissariat officer, if he had proper zeal for his department, would then, as now, have the entire trouble, or things would not be done as they ought to be. Two parties securing equipments at the same time would lead to endless correspondence and much unpleasantness. These arrangements can only be done satisfactorily and efficiently by one officer, and that officer of the Commissariat department.

The Police being combined with the Commissariat has a great effect in keeping the servants of the department in good order; the mere fact of their chief being vested

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vested with power to punish any neglect of duty acts powerfully. Supposing that a separate officer exercised the police duties, and that these servants were frequently guilty of acts which called for the exercise of power, and that it became necessary to send them to the police, the Commissariat officer appearing as prosecutor, I would submit for consideration how injuriously this would operate on the efficiency and control so necessary to be maintained in a department where the duties are so multitudinous and onerous as the Commissariat.

The Police was handed over to the Commissariat here in July 1822, since which time I am not aware of one complaint being made against its efficiency, or that one officer has ever hinted that his duties were too great for him. Indeed, the police arrangements were so well based by that able and zealous officer, Colonel Tulloch, C. B., Deputy Commissary-general, that it has only acquired common attention and vigilance on the part of his successors to keep up the character established and preserved by him.

With regard to the alleged inability of one officer being fit to discharge efficiently the two distinct duties, both alike arduous and important, I can, from upwards of six years' experience, confidently assert, that the ordinary and extraordinary duties of both departments, as far as the ceded districts are concerned, can be performed with ease and perfect satisfaction to all parties by one officer, and I do not for a moment hesitate in saying, that if the police duties at this station were doubled I could discharge them. I do all my police duties early in the morning, and they are generally ended by eight or nine o'clock. By keeping the officers for both departments in the same compound, the work is carried on in a regular and easy manner, the one department never interfering with the other.

Punchayet and Courts of Request give very little trouble to the police officer. The monchilka is made out at the office for the Punchayet, and seldom is any thing heard of the case by the police till the decision is brought to the office, when copies are handed to the parties there; the matter, except in receiving the money through the office, terminates; the matters sent before Courts of Request are disposed of in nearly the same way. These cases give very little trouble to the police officer.

I cannot, in any point of view, see that the Police being vested in the Commissariat can in the slightest degree influence their dealings in the bazars; the system now existing has been found to work well; and I cannot see that a change would benefit either the Government or the community. To show this more clearly, I would beg to mention that all our contracts are with men in the Bruce Pettah; men over whom my police power does not extend; and further, that these very men, and many others in the Pettah, have again and again come to the police, and begged of me to settle their commercial disputes; the easy and speedy settlement of cases brought before me was probably the chief inducement. This, however, will show that our commercial dealings are not controlled in any way by the police. Indeed, it must appear to you obvious, that if their interests as contracting parties with the Commissariat were likely to suffer by being placed under the officer discharging both the Police and Commissariat duties, they would not be so anxious as they now are to be permitted to bring their transactions with each other before me for adjudication. The system now existing appears to me to recommend itself by the absence of all complaints against it, in as far as this station is concerned.

In as far as the Commissariat duties are concerned, I would presume to appeal to you, as head of the department, as to whether that branch has been efficiently discharged, and with regard to the police duties, would beg to refer to the documents accompanying this, marked Nos. 1, 2 and 3, which will show the opinion entertained by the military authorities, and by the respectable natives at this place.

No question having ever arisen here as to the propriety or impropriety of the Commissariat officer being vested with the duties of Police, in addition to those of Supply, no correspondence has ever been entered into touching the same in the most remote degree.

Should I have omitted anything that may appear to you essential to the matter under answer, I shall be obliged by your informing me, so as the object may be remedied.

I have, &c.
(signed) *W. Bremner*,
D^y Assist^t Com^y Gen^l, C. D.

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No. 1.

Head Quarters, Ceded Districts, Bellary,
3 January 1839, Tuesday.

DIVISION ORDERS by Major-general *Wilson*, C.B.

CAPTAIN W. BREMNER, Deputy Assistant Commissary-general, having delivered over charge of his department at this station to Captain Babington, Sub-assistant Commissary-general, and being about to proceed to Madras, agreeably to the leave granted in G. O. of the 21st ultimo, the officer commanding the division cannot allow him to leave this without conveying to him his unqualified approbation of the manner in which he has discharged the various duties connected with the Commissariat department, which have been marked with a promptness and efficiency in every thing relating to the supply and equipment of the troops required to march, and in regard to the arduous duties of the Police, have been conducted with a degree of laborious investigation and justice that has gained the general confidence, and secured perfect order and harmony through the whole extensive population of the place; for all which Major-general Wilson has great pleasure in returning Captain Bremner his most cordial thanks.

By order,
(signed) *W. G. T. Lewis*,
Captain, D. A. A. Gen^{l}, C. D^{s}.

(A true copy.)
(signed) *W. G. T. Lewis*,
D. A. A. Gen^{l}, C. D.

(A true copy of the copy.)
(signed) *W^{m} Bremner*,
D^{y} Ass^{t} Com^{y} Gen^{l}, C. D.

No. 2.

GARRISON ORDER by Brigadier *Bell*.

4 January 1839.

BRIGADIER BELL has great pleasure in offering his testimony to the zeal and ability with which Captain Bremner has discharged the various duties of his situations, both in the Commissariat and Police departments, as also to the ready assistance he has at all times afforded him; for which he begs to render to Captain Bremner his best thanks and earnest good wishes for his speedy restoration to health, and the resumption of those duties which have been executed with so much credit to himself, and benefit to the public.

(A true copy.)
(signed) *W. Cotton*,
Captain, Act^{g} Fort Adjt^{t}.

(A true copy of the copy.)
(signed) *W. Bremner*,
D^{y} Ass^{t} Com^{y} Gen^{l}, C. D.

No. 3.

AN ADDRESS from the Merchants, Tradesmen and other Inhabitants of Bellary.

To Captain *W. Bremner*, Deputy Assistant Commissary-general and Superintendent of Police, Bellary.

Sir,

IN addressing you on the eve of your departure from Bellary, where you have resided for the long period of 17 years, both as First Adjutant and Superintendent of Police, we cannot refrain from offering you our most sincere thanks for the kindness and urbanity with which we have been invariably treated by you during that time.

Your

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Your arrangements in the Police have led to the security of our property and our personal tranquillity; and your intimate acquaintance with our character enabled us to approach you with a feeling of confidence which has been fully sustained by the consideration and support you have invariably afforded to our humble interests.

We, therefore, beg your acceptance of our sincere and heartfelt gratitude; and while we deeply deplore the necessity of your absence from this station, we trust that your health, which has been impaired by long and arduous labours, will be speedily restored, and that you will be enabled ere long to return to Bellary.

With our humble wishes for the prosperity and welfare of yourself and family,

We remain, &c.

Signed by 40 of the most respectable natives of the place.

Bellary, 2 January 1839.

(True copy.)

(signed) *Wm Bremner*,
D. A. C. Genl, C. D.

(True copies.)

(signed) *W. Cullen*,
Commy Genl.

Commissariat Office,
Nagpore Subsidiary Force.

(No. 115.)

To the Commissary-general, Madras.

Sir,

I HAVE the honour to acknowledge your letter of the 2d instant, together with copy of an extract from minutes of consultation, dated 16 April last, and in reply to inform you, that no correspondence discussing the advantage or otherwise of a separation of the Police and Commissariat departments has taken place, either with myself, or, as far as I can learn from their official records, with any of my predecessors, and the officer commanding this station.

With regard to that measure, I venture respectfully to observe, that I feel strongly impressed, if it is carried into effect, it will be attended with anything but advantage to the interests of the state. The present united system of Police and Commissariat has worked well ever since the formation of the latter; and, in my opinion, a very slight modification in the wording of Section IV. and XL. of Reg. VII., 1832, is all that is wanting to render the Police, as now constituted, as effective as any separation could possibly make it, and at the same time preserve to the department of Supply that influence in the bazars which is essential to its efficiency, whether in obtaining the punctual fulfilment of contracts, the prompt equipment of troops, or collecting supplies when actually in the field. The alteration to which I refer is simply the providing in the above-quoted sections that the charge of Police "shall be vested in a Commissariat officer," instead of "shall be vested in the senior Commissariat officer." According to that enactment, the senior officer, though other Commissariat officers be present, can alone legally conduct Police transactions; and having Commissariat business to attend to also, too much is thus thrown on him; but the simple modification I have ventured to suggest would at once obviate this, and by giving to two officers of the department relative duties, conduce, there is reason to suppose, to the most effective performance of both.

Were the Commissariat and Police departments placed on this footing, your instructions on appointing an officer to the police charge of a station, while they vested him with complete police authority, could at the same time direct that all orders of the senior Commissariat officer touching carriage and supplies must have instant force in the bazar, as well as a ready and hearty co-operation on his part in procuring them. This, with the spirited corps of officers of one and same department, would, it may be assumed, insure unanimity; and whilst the arrangement kept the Police in its judicial capacity sufficiently distinct, and quite as efficient as a total separation could render it, would preserve to the Commissariat

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the moral weight and influence which is no less essential for the due performance of its important functions than actually compatible with its position amongst a rude and half-civilized community.

It is indisputable, I believe, that the Commissariat department has been eminently effective for the last 30 years; and to keep it so, the amalgamation of Police power, however incongruous and incompatible mere speculative persons may deem it with the duty of Supply, yet, in the state of the country, I think no one of experience would advocate its withdrawal. The power in question has never hitherto been exercised unduly, or to any other end than the best interests of the service. Much, therefore, does it behove superior authority to pause ere it sanctions the separation of the two departments, which would not render the Police a whit more efficient than at present, but must seriously weaken the department of Supply, and on a crisis arising, possibly lead to the failure of some operation of consequence.

(signed) *A. Trotter*,
A. D. E. Gen[l].

Cantonment, Kampty, 16 May 1840.

(A true copy.)
(signed) *W. Cullen*,
C. General.

(True copies.)
(signed) *H. Chamier*,
Chief Sec[y].

MINUTE by the Honourable *A. Amos*, Esquire; dated the 5th July 1841.

Legis. Cons. 5 July 1841. No. 29.

I SUBMIT a revised Draft Act for Military Courts of Request consequent on the communications received from the Presidencies with reference to the former Draft and the circular of Queries.

As every communication from Madras teems with strong expressions respecting the baneful effects of an extended credit being given to the troops, I think we should send an answer that we cannot prohibit credit. We have, however, directed several provisions of the Draft to the remedy of the evil complained of, especially by reducing the sum recoverable in Courts of Request from 400 to 200 rupees, by providing against divided demands, by requiring greater certainty in the proof of debts, and by regulating executions, especially as they regard stoppages. But what the Madras authorities appear to desire is, that if credit be given beyond a certain amount, it shall not be recoverable either in a civil or military court, is what, I conceive, we should not be warranted in enacting. It can only be done by what is called "crying down credit," which appears to resolve itself into a menace of expulsion from cantonment.

I apprehend that in consequence of the opinions contained in the communication of the Judge Advocate of Bengal, we must abandon the attempts at uniformity aimed at in the former Draft under two important heads, viz. trials for debts under 20 rupees by a Commissariat or other officer and Punchayets. If these heads cannot be included in an Act for the three Presidencies, I think we should desire the Madras authorities to send us drafts of Acts upon those two subjects. The points connected with those subjects appear to be of more importance than any others concerning the recovery of debts against the military classes as regards the Madras Presidency.

I had commenced preparing reasons for the adoption of each of the provisions of the present draft Act, but as it led me in each instance to compare and comment upon a statute and three Codes, and a draft Articles of War, and a great variety of communications, presenting a very remarkable discrepancy of enactment and opinion upon almost every point, I thought my minute would be extended to an inconvenient size, of which some idea may be formed from the abstracts of opinions and enactments which I made, and which accompany these papers. It appears to me to be a more convenient course if the military or other members of Council would point out what may appear to them to require modification; I will, then, in a separate minute, address myself to those points. It may be noticed that, perhaps, the more important questions relate to the recording the evidence taken before Military Courts to which the Bengal authorities appear to

be

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be adverse, to new trials, general and special executions and suits beyond the frontier. Some controversy has also arisen as to subjecting residents within cantonments, not belonging to the military classes, to Courts of Request.

(signed) *A. Amos.*

22 February 1841.

Fort William, Legislative Department, the 1st March 1841.

The following draft of a proposed Act was read in Council for the first time on the 1st of March 1841:—

Legis. Cons. 5 July 1841. No. 30.

Act No. —— of 1841.

An Act for consolidating and amending the Regulations concerning Military Courts of Request for Native Officers and Soldiers in the Service of the East India Company.

I. It is hereby enacted, That all Regulations and parts of Regulations concerning Military Courts of Request are repealed; provided always, that nothing in this Act contained shall be held to alter or affect the jurisdiction of a single officer duly authorized and appointed under the rules in force in the Madras and Bombay Presidencies for the trial of small suits in military bazars, at cantonments and stations occupied by the troops of those Presidencies respectively, or the trial by Punchayet of suits against military persons, according to the rules in force under the Madras Presidency.

II. And it is hereby enacted, That within the territories of the East India Company actions of debt and other personal actions against native officers, soldiers and other persons amenable to the Articles of War for the native forces in the military service of the East India Company, shall be cognizable before a military court, and not elsewhere; provided the value in question shall not exceed 200 rupees, and the defendant was a person of the description above mentioned, when the cause of action arose and when the suit was instituted.

III. And it is hereby enacted, That the commanding officer of any station or cantonment is authorized to convene such military courts; and such courts shall be composed, according to the orders of the Commander-in-chief or of the commanding officer of the forces of the Presidency within which the station or cantonment is situate, or, in the absence of such orders, according to the discretion of the convening officer, either of not less than three European commissioned officers, or of not less than three native commissioned officers, with an European officer to superintend and record the proceedings.

IV. And it is hereby enacted, That such military courts shall be convened monthly, and shall be holden on some convenient day before the issue of the pay for each month.

V. And it is hereby enacted, That the forms of proceeding in every such court shall be conformable to the usages observed on trials before courts martial held for the Honourable Company's native troops, as far as the same are applicable; and any such court shall have the like power of summoning witnesses as is possessed by courts martial; provided always, that every such court shall have the power of examining the parties to any suit, and of requiring or dispensing with their attendance at its discretion; and that every such court shall have like power of taking the examinations of absent witnesses as is possessed by the Honourable Company's civil courts.

VI. And it is hereby enacted, That witnesses omitting to attend, refusing to give evidence or committing perjury, shall be tried and punished, if amenable to the Articles of War, by a court martial, subject to all the rules contained in the Articles of War for the punishment of such offences in regard to trials for military offences; and if not amenable to the Articles of War, they shall be tried and punished in the nearest of the Honourable Company's courts of criminal justice, in like manner as if such offences had been committed in regard to any trial before such nearest court.

VII. And it is hereby enacted, That any person, civil or military, using menacing words, signs or gestures, or otherwise interrupting the proceedings of any Military Court of Request, shall be punishable with imprisonment according to the summary judgment of such court, during the time such court is sitting; and every such offender shall be liable to be further punished by a court martial, or by the nearest Company's court of criminal jurisdiction, according as the

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offender is amenable or not to the Articles of War, in like manner as if the offence had been committed in the presence of the court to which it so referred: Provided that if the court to which the offence is referred shall be of opinion that the offender has been already sufficiently punished, they shall discharge him forthwith.

VIII. And it is hereby enacted, That a record shall be kept of proceedings in every case tried before any Military Court of Requests; and such record shall contain, as well a particular account of the evidence given, as of the nature of such evidence as may have been rejected on the ground of its not being legally admissible or relevant, or on other grounds, and the same shall be signed by the members of the said court; and such record or a copy thereof shall, with as little delay as is practicable after the conclusion of the proceedings, be transmitted by the European superintending officer of every such court to the officer commanding the station or cantonment.

IX. And it is hereby enacted, That where a demand shall exceed the amount of 200 rupees, or where several separate demands or securities shall exceed such amount, no more shall be recoverable than the sum of 200 rupees only; and the judgment in respect of any demand in a Court of Requests shall be a bar to the recovery of any demand for the same cause of action in any other court whatever; provided that the liability accrued before the time of instituting the suit in the military court; and it shall be competent for every such military court to investigate any counter-claim alleged by any defendant; and it shall be competent for every such military court to allow the interest for money agreed on between the parties, provided the same does not exceed the usage of the country; and every contract upon which a demand for debt exceeding 20 rupees is founded, not being money due for goods bought and delivered, shall be in writing and expressed in the language of the defendant, and signed by him, or on his behalf by some other person than the plaintiff; provided that it shall not be competent to any Court of Requests to admit any suit for a debt which has accrued upwards of six years.

X. And it is hereby enacted, That on failure of either of the parties to a suit to attend either personally or by representative, or to produce his witnesses according as he shall be required by any Military Court of Requests, such court, on being satisfied that the party has been duly apprised of what is required of him, may proceed to the termination of the suit in his absence; and if the decree in any such case shall be against the plaintiff, it shall not be competent for him to commence a new suit for the same cause of action.

XI. And it is hereby enacted, That it shall be lawful for the commanding officer to whom the proceedings have been transmitted as aforesaid to return to the same for revision, either by the same or another Military Court of Requests; and in every such case, the second decree shall be final, unless for error in points of law, when the same shall be transmitted to the Commander-in-chief, who shall have power to annul the proceedings, without prejudice to any future suit: Provided always, that in the case of any new trial the court may receive evidence which was not adduced at the first trial.

XII. And it is hereby enacted, That every plaintiff shall prefer his claim in writing, and shall deliver the same to the station staff officer; the claims shall be entered in a schedule by the station staff officer, which schedule is to be sent to adjutants of corps or heads of departments two days before the assembly of the court; and the adjutants or heads of departments shall be responsible that the defendants belonging to their respective corps or establishments have been duly summoned.

XIII. And it is hereby enacted, That every decree of any Military Court of Requests shall be published in the station orders before the same is executed.

XIV. And it is hereby enacted, That the execution of decrees of Military Courts of Request may be either general or special, according to the sentence of the Court: Provided always, that the commanding officer may, notwithstanding the direction of the Court, order that the execution shall be general or special at his discretion.

XV. And it is hereby enacted, That in cases in which the execution is to be general, the debt, if not paid forthwith, shall, under the authority of the commanding officer, in writing, to be signed by him, be levied by seizure and public sale of such of the debtor's goods as may be found within the limits of the station

or

or cantonment; and if sufficient goods are not to be found, the debtor, if not a soldier, shall be arrested and imprisoned in any civil gaol near to the station or cantonment, or in any other convenient place of confinement situate within the limits of the station or cantonment, for the space of two months, unless the debt be sooner paid; and his goods, if found within the limits of the station or cantonments at any subsequent time, shall be liable to be seized and sold in satisfaction of the debt; and if the debtor be a soldier, and the debt be not liquidated by sale of his effects, accoutrements and necessaries excepted, an order may be issued for payment of the residue by monthly deduction from the pay issued to the debtor under the rules which follow.

XVI. And it is hereby enacted, That where the execution is to be special, the debt shall be satisfied out of the pay and allowances of the debtor, and not otherwise; and a certificate of the decree and direction or order thereon, certified under the hand of the commanding officer, and signed by him, shall be a sufficient authority for making such stoppages: Provided always, that no more than one half of the pay and allowances of any commissioned officer, or than one-fourth of the pay and allowances of any non-commissioned officer or soldier, shall be stopped in any one month.

XVII. And it is hereby enacted, That in places beyond the frontier of the territories of the East India Company, actions of debt and other personal actions may be brought before such Military Courts as aforesaid against persons so amenable as aforesaid, for any amount of demand: Provided that such Military Courts beyond the frontier shall be composed of European officers, and provided, that if the sum recovered shall exceed 200 rupees, an appeal shall lie to the Court of Sudder Adawlut of the nearest Presidency, according to the rules in force with regard to appeals from subordinate civil courts.

Ordered, That the Draft now read be published for general information.

Ordered, That the said Draft be re-considered at the first meeting of the Legislative Council of India, after the 1st day of June next.

(signed) *T. H. Maddock*,
Sec^{y} to Gov^{t} of India.

(No. 27.)

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, in the Legislative Department, dated the 5th July 1841.

Legis. Cons. 5 July 1841. No. 31.

(No. 28.)

To *J. G. Willoughby*, Esq., Secretary to the Government of Bombay.

Sir,

With reference to your letter, No. 3347, dated the 31st December 1839, with its enclosure, I am directed, &c.

Honourable the Governor in Council,

the accompanying copy of Draft proposed Act for consolidating and amending the regulations concerning Military Courts of Request for native officers and soldiers in the service of the East India Company, this day published for general information, and to request if, in respect to its provisions, any modifications or additions should occur to His Honour in Council,

that they be communicated to me for the information of the Supreme Government, before the expiration of the three months after which the draft is ordered for reconsideration.

To *H. Chamier*, Esq., Chief Secretary to the Government of Fort St. George.

Sir,

With reference to your letter, No. 522 and 36, dated respectively the 29th June 1840 and 9th January last, with their enclosures, I am directed to transmit to you, for submission to the

Right honourable the Governor in Council,

His Lordship in Council,

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

Legislative Department,
1 March 1841.

(No. 1.)

EXTRACT Proceedings, dated the 5th July 1841.

Legis. Cons. 5 July 1841. No. 32.

READ Draft of an Act for consolidating and amending the regulations concerning Military Courts of Request for native officers and soldiers in the service of the East India Company.

Ordered, That a copy of the foregoing Draft Act be forwarded to the Military Department, in reply to the extracts from that department, of the 15th November 1839, 5th August 1840, and 24th ultimo, for communication to his Excellency the Commander-in-chief, with a request that should any modifications or additions in respect to its provisions occur to his Excellency, that it may be communicated for the information of the Legislative Council before the expiration of the three months after which the draft is ordered for reconsideration.

Ordered, also, That the Military Department be informed that a copy of the draft Act has been communicated from this department respectively to the Governments of Fort St. George and Bombay for a similar purpose.

Ordered, finally, That the original enclosures received from the Military department be returned to that department as requested.

(No. 574.)

Legis. Cons. 5 July 1841. No. 33.

To *T. H. Maddock*, Esq., Secretary to the Government of India, Legislative Department, Fort William, dated the 5th July 1841.

Sir,

WITH reference to the Draft of an Act regarding Military Courts of Request, read for the first time on March 1st last, I am directed to request that you will lay before the Right honourable the Governor-general in Council the annexed copy of a correspondence with the Court of Nizamut Adawlut at Allahabad.

Letter from Officiating Registrar, Nizamut Adawlut, dated 26th February, with enclosures.
Ditto to ditto, of this date, with annexure.

2. There seems to be some want of precision regarding the jurisdiction to which British officers and soldiers are amenable in cases of debt, to the amount of 400 rupees and under, and the present may be a favourable opportunity for removing this uncertainty.

3. Section 57, Statute 4th of George IV., cap. LXXXI., referred to in Clause 2, Section III., Regulation XX., 1825, clearly exempts British officers and soldiers from the summary jurisdiction given to the magistrate by Section 106, Statute 53 of George III., cap. 155.

4. Clause 3, Section III., Regulation XX. of 1825, construes the same Act, viz. 4th of George IV., cap. LXXXI., as exempting British officers and soldiers from the jurisdiction of the local Civil Courts in cases to the above amount.

5. Act No. XI., 1836, does not notice Statute 4 of George IV., cap. LXXXI., but enacts that no person whatever shall, by reason of place of birth, or by reason of descent, be exempted from the jurisdiction of certain local courts. The exemption of British officers and soldiers rests not only on the place of their birth, but also on their position in the British army; and a question may arise, whether or not they are amenable to the local courts mentioned in Act No. XI. of 1836, in cases of debt for an amount under 400 rupees.

6. In the case of officers employed like the Revenue Surveyors, often at a distance from any military cantonment, it is not evident to what Court of Requests they are liable in cases under 400 rupees, and much hardship may be experienced by individual creditors in seeking redress for wrongs of this class.

(signed) *J. Thomason*,
Secretary to Government, N. W. Ps.

Agra, 27 March 1841.

(No.

(No. 261.)

Legis. Cons. 5 July 1841. No. 34.

To *J. Thomason*, Esq., Secretary to the Honourable the Lieutenant-governor in the Judicial Department, North Western Provinces.

Sir,

I AM directed to transmit for the purpose of being submitted to the consideration of the Honourable the Lieutenant-governor, copies of correspondence connected with a point at issue between the Sessions Judge and Magistrate of Mirzapore.

N. A. N. W. P.
Present :—B. Taylor and F. Currie, Esquires, Judges; and G. P. Thompson, Officiating Judge.
Sessions Judges, No. 11, dated 16th January, and annexures.
Court, No. 156, dated 23d idem, Sessions Judge, No. 23, dated 30th idem, with enclosures.

2. The particular question which caused the Session Judge's reference has been disposed of by the majority of the Court directing the magistrate to carry the preliminary order of the Session Judge to send Oordoo papers of the case for perusal into effect. Mr. Thompson not joining, on the ground that, as the magistrate distinctly professes to have passed the award against Captain Wroughton, under section 106, cap. 155, statute 53 of George III., neither the Session Judge nor the Nizamut Adawlut possess any jurisdiction in the matter, though the majority of the Court hold that, in his capacity of controlling authority, the Session Judge had a general right to call for the papers, and that on the magistrate a general *primâ facie* obligation rests to send any papers or proceedings his superiors may call for, to enable the latter to judge whether they are of a nature he can exercise jurisdiction over or not; the superior being, of course, for any illegal interference, responsible.

Adverts to a point at issue between the Magistrate and Session Judge of Mirzapore, regarding which the latter officer's preliminary order has been enforced by a majority of Court, one Judge not joining, for reasons stated.

3. The object, however, of the Court's now troubling Government, is, after expressing their dissatisfaction with Mr. Donnithorne's conduct and proceedings throughout, the unusual and irregular features of which, in all their stages, are most obvious, to bring to the notice of his Honour the apparent anomaly involved in magistrates acting on the authority,* conveyed by the statute (53 George III.) alluded to under the present state of the law, in which, since, by Act No. XI. of 1836, Europeans are made amenable to the petty Company's courts, and thus another tribunal is thrown open for the cognizance of claims against that class of persons by law, a necessity no longer exists for the exercise of the competency given to magistrates by the statute in question; and the Court think, therefore, that magistrates should be directed by circular letter to abstain from such interference, except in special cases in future.

States object of reference, besides notice of irregular proceedings of Magistrate, to the recommendation that exercise of the competency conferred on Magistrates by 53d of Geo. III., cap. 155, sec. 106, be prohibited (save in special cases), as being unnecessary since passing of Act No. XI.; 1836.

4. The Court think it right to observe, that it has not escaped their notice that in the present case the provisions of Regulation XX., 1825, place Captain Wroughton beyond the jurisdiction of the local Magistrate.

I have, &c.

Allahabad,
20 February 1841.

(signed) *M. Smith*,
Officiating Registrar.

(No. 11.)

To *M. Smith*, Esq., Officiating Registrar of the Court of Sudder Nizamut Adawlut, N.W.P.

Sir, Allahabad.

I HAVE the honour to submit, for the Court's consideration and orders, the copies of a correspondence that has taken place with the Magistrate, in consequence of a letter addressed to me by Captain Wroughton, Revenue Surveyor, dated the 29th December last, the contents of which I considered were of a nature that required immediate interference, and the case one that called for an English explanation.

Submits copies of Captain Wroughton's letter and the correspondence with the Magistrate in consequence of it.

2. Captain Wroughton being at a distance from the station, I did not think it requisite to call on him for a regular appeal in Oordoo, and mentioned in my letter to

In appeal in Oordoo thought unnecessary, but an English explanation,

* Giving jurisdiction to Magistrates in cases of small debts due to natives from British subjects.

with the papers in the case, required from the Magistrate.

to the Magistrate, that I conceived myself authorized, conformably to the construction, No. 1071, dated the 3d of February 1837, to require an English report, as well as the papers in his office. My letter remaining unanswered, I sent a second, giving ample time for a reply.

No detailed report from the Magistrate, who states a different amount of debt and names in each proceeding; he might have as legally deducted from Colonel Home's or other officer's bills.

3. The Magistrate, in his answer, enters into no explanation, although the amount of the debt differs in each proceeding, and the defendant in the first is Gunga Purshad, and not Captain Wroughton, who is designated in the second order as Mr. Robert Wroughton. He merely mentions, "I believe Captain Wroughton is a European British subject;" but does not distinguish that he is likewise an officer holding Her Majesty's and the Honourable Company's commission, whose pay-bill cannot be deducted from by any collector on the order of a magistrate; besides, Captain Wroughton at the time resided in the military cantonment of Chunar, and the Magistrate might as well and as legally have requested the collector to make a deduction from Colonel Home's or any other officer's salary.

The Magistrate has had time for his report, and evinced little consideration for an officer of Captain Wroughton's rank and situation.

4. The Court will be pleased to observe, that I have afforded the Magistrate every opportunity, and sufficient time to enter into an explanation which his abuse of authority renders necessary. Mr. Donnithorne ought to have had more consideration for an officer of Captain Wroughton's rank and standing in the service, and one holding so important and responsible a situation in this district.

Regrets being compelled to submit this correspondence, but hopes Mr. Donnithorne may be instructed to pay more attention in future.

5. Although I have freely expressed my opinion of the Magistrate's order, I do not feel myself justified in rescinding it, without reading over the papers in the case. My repeated requisition for them, however, has been disregarded; and I am, consequently, with great regret, compelled to submit this correspondence, in the hope that Mr. Donnithorne may be instructed to pay more attention to the controlling authority vested in this Court.

I have, &c.

(signed) *R. J. Tayler,*

Sessions Court, Zillah, Mirzapore, 16 January 1841. Sess[n] Judge.

P. S.—There is likewise the construction, No. 902, dated the 26th September 1834, which mentions, that it is not competent to attach the salary of a military officer in execution of a decree of court.

(signed) *R. J. Tayler,* Judge.

(No. 166.)

To *W. S. Donnithorne,* Esq., Magistrate at Mirzapore.

Sir,

1. I HAVE the honour to forward copy of a letter, dated of yesterday, from Captain Wroughton, Revenue Surveyor, which contains copies of an urzee from the Cotwal, dated the 4th of October, your rubecurry of the 9th October, Captain Wroughton's rubecurry in reply, of the 16th October, and your rubecurry of the 24th of this month.

2. The Cotwal mentions in his urzee, that cloths had been sent to Moonshee Gungapershad, through Narain Doobey, who claims for them Rs. 17. 4., on which your proceeding of the 9th was sent to Captain Wroughton, requesting him to forward quickly that amount to your court, in order that it might be paid through the Cutwal to the cloth merchant.

3. Captain Wroughton stated, in his reply, that Gungapershad disclaimed all knowledge of the transaction, and transmitted his petition to that effect; and he added that it was the practice of his camp always to pay beforehand whatever it required, and that it is very strange such a demand should be made after more than eight months had expired.

4. After a long interval, on the 24th instant, you again addressed Captain Wroughton on the subject in a proceeding wherein you designate Narain Doobey, plaintiff, and the Captain, defendant, with a claim of 16. 2., the price of cloths, &c.,

&c., which you state to be proved on the credibility of the plaintiff and his witnesses; and thereon you have addressed a proceeding to yourself as collector, desiring the above amount to be deducted from the first pay-bill presented in Captain Wroughton's favour.

5. I have not sent the copies of rubeecarries, &c., as the originals are in your office; but in conformity with the provisions of the Circular Order, Nizamut Adawlut, dated the 22d May 1804, and the construction of that Court, No. 1071, February 3d of 1837, I request you will favour me with an English report regarding this very extraordinary case, and at the same time submit Gungapershad's urzee, with the deposition of the plaintiff and his witnesses, and the Cutwal's last report on the matter.

I have, &c.

(signed) *R. J. Tayler,*
Sessn Judge.

Sessions Court, Zillah, Mirzapore,
30 December 1840.

To *R. J. Tayler*, Esquire, Session Judge, Mirzapore.

Sir,

It is with regret that I find myself called upon to address you in a matter wherein the Magistrate, Mr. Donnithorne, has treated me with every want of consideration, and by a proceeding which I conceive not only illegal, but at variance with the usage of the service, has issued a decree, and directed an execution against me in a transaction of which, I declare upon the honour of an officer, I have no concern whatever. The proceeding of Mr. Donnithorne not only reflects upon my reputation as a gentleman and an honest man, but is utterly derogatory to my character as an officer holding a commission in Her Majesty's and the East India Company's service.

2. I beg to append the entire correspondence that has transpired between the Magistrate and myself on this occasion. Upon a reference to the Kotwal's urzee to the Magistrate's address, dated the 4th October 1840, it appears that the sum of Rs. 17. 4. is claimed from a person, by name Gungapershad, of my establishment, who is said to have written to the Kotwal for some clothes. The Magistrate forwards that urzee to me, requesting that the amount demanded by the complainant be remitted. I applied to the only person of that name in my camp, who disclaimed all knowledge of the transaction between himself and the complainant, Narain Doobey, by an urzee, dated the 16th October, which I forwarded to the Magistrate. Since that time nothing further has occurred, until I this day received notice of the Magistrate's award, decreeing the sum of Rs. 16. 2. to be deducted from the first bill of mine which may be presented at the collector's office for payment; thus degrading me before the entire native omlah of Mirzapore, and executing in a manner upon my official bills which no conduct on my part could under any circumstances have authorized.

3. I respectfully solicit your interference in this case, and trust that you will be able to protect me against the unmerited disgrace which Mr. Donnithorne's measures are calculated to inflict upon me.

I have, &c.

(signed) *Robert Wroughton*, Captain,
Revenue Surveyor.

Camp Bohilukdas, Zillah Mirzapore,
29 December 1840.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 1.)

To *W. S. Donnithorne*, Esquire, Magistrate of Mirzapore.

Sir,

I HAVE the honour to inform you that unless I receive a reply to my letter, No. 166, dated the 30th ultimo, on or before the 9th instant, I shall consider it my duty to bring the subject of it to the notice of the Sudder Nizamut Adawlut.

I have, &c.

(signed) *R. J. Tayler*,
Sessn Judge.

Sessions Court, Zillah Mirzapore,
4 January 1841.

(No. 11.)

To *R. J. Tayler*, Esquire, Session Judge of Mirzapore.

Sir,

IN reply to your letter, No. 1, dated 4th instant, I have the honour to observe, with all due respect and deference, that I have neither the power nor even the wish to prevent your bringing any subject you please to the notice of the Sudder Nizamut Adawlut. Captain Wroughton, the defendant, is, I believe, a European British subject.

I have, &c.

(signed) *W. S. Donnithorne*,
Magistrate.

Mirzapore, Magistrate's Office,
5 January 1841.

(No. 6.)

To *W. S. Donnithorne*, Esquire, Magistrate of Mirzapore.

Sir,

1. IN acknowledging your letter, No. 11, dated the 5th instant, in reply to mine of the 4th, calling your attention to one of the 30th ultimo, I must remark that the latter remains unanswered, and the requisition for certain papers (viz. Gungapershad's urzee, the depositions of the plaintiff and his witnesses, and the Cutwal's last report) is still unattended to.

2. I admit Captain Wroughton is a British subject; but as he is likewise an officer holding a commission in Her Majesty's and the Honourable Company's service, you cannot, in my opinion, order the collector to make any deduction from his pay-bill. At the time of your order, the Captain was residing in the military station of Chunar, and the plaintiff had the option of preferring his claim there, which would have been tried by a Court of Requests, being under 400 rupees. The Act of Parliament you allude to is, I suppose, the 53d of Geo. 3, Sect. 106, which is in conformity with Sect. 1, Reg. II. of 1839, but will not apply to the present case, the salaries of military officers not being liable to attachment.

3. In your proceeding of the 9th October, you mention Gungapershad defendant, and the claim against him to be Rs. 17. 4., but in that of the 24th December you style R. Wroughton defendant, and designate the sum of Rs. 16. 2.; a discrepancy which I request you will explain, likewise why you omit calling the defendant Captain.

4. Requesting the papers mentioned in my first paragraph with your English report may be submitted on or before the 9th instant.

I have, &c.

(signed) *R. J. Tayler*,
Session Judge.

Sessions Court, Zillah Mirzapore,
6 January 1841.

(No.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

(No. 10.)

To *W. S. Donnithorne*, Esq., Magistrate of Mirzapore.

Sir,

I BEG leave to remind you, that my letter, No. 6, dated the 6th instant, remains unanswered, and request you will on the receipt of this forward the Cutwal's last report, Gungapershad's urzee, and the plaintiff's and witnesses' depositions, and the required report, as soon after as practicable.

I have, &c.

(signed) *R. J. Tayler*,
Session Judge.

Sessions Court, Zillah Mirzapore,
14 January 1841.

(True copies.)

(signed) *R. J. Tayler*,
Session Judge.

(No. 156.)

To *R. J. Tayler*, Esquire, Sessions Judge of Mirzapore.

N. A. N. W. P.

Present.—B. Taylor, Esq., Judge, and G. P. Thompson, Esq., Officiating Judge. States course which Magistrate, if he had objections to obey order, ought to have followed, as contrasted with unsatisfactory course pursued by him, and enjoins what he is now to be called on for.

Sir,

1. I AM directed to acknowledge the receipt of your letter, No. 11, dated 16th instant, with Oordoo enclosure, submitting particulars of the non-compliance of the Magistrate of Mirzapore with the orders of your Court, calling for the papers, and an English report in a certain case, in which Captain Wroughton, Revenue Surveyor, objects to the Magistrate's award, for the consideration and orders of the Court.

2. In reply, I am instructed to say, that whatever might be the question of your jurisdiction in the matter alluded to, it was the Magistrate's undoubted duty to have fulfilled the directions of your Court, or if he demurred, to have stated fully the nature and grounds of his objection to do so for your consideration; and the Court are of opinion that the letter of the Magistrate, No. 11, dated 5th instant to your address, so far from being in accordance with the above rule, is as disrespectful in tone, as in matter it is unsatisfactory.

3. You are requested to call on Mr. Donnithorne to submit an *immediate* explanation of his reasons for refusing compliance with your orders in this case, and forward the same with your remarks to the Court.

I have, &c.

(signed) *M. Smith*,
Officiating Regr.

Allahabad, 23 January 1841.

(No. 23.)

To *M. Smith*, Esq., Officiating Register of the Nizamut Adawlut, N. W. P., Allahabad.

Sir,

IT is with regret that I forward copy of Mr. Donnithorne's extraordinary and disrespectful reply to my letter, No. 19, dated 29th instant, enclosing copy of your letter, No. 156, dated the 23d idem.

Regrets the extraordinary and disrespectful tone of Mr. Donnithorne's letter.

2. In reply to the first para., it will be seen, on a reference to my letters of the 31st December and 6th instant, that I called for certain Oordoo papers to ascertain the merits of a case wherein he stated, in one proceeding, that the defendant was Moonshy Gungapershad, the debt Rs. 17. 4, and in another, that Róbert Wroughton was defendant, and the amount due Rs. 16. 2., the plaintiff in either case being Narain Doobey. In the first proceeding a native is the

One defendant in the case being a native, it is within my jurisdiction; the other defendant is out of the Magistrate's, as residing in a military cantonment.

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defendant, in the second an English officer in civil employ, residing in a military cantonment. I consequently have a right to send for and pass orders on the first, and the Magistrate, in my opinion, has no jurisdiction in the second case, the party being resident in a military cantonment.

The Magistrate's defiance and disobedience of the Court's orders.

3. The 2d para. is in defiance of your Court's authority, in direct disobedience to its orders, and likewise incorrect in calling the case Captain Wroughton's; for I have shown above that Mr. Donnithorne calls Narain Doobey, plaintiff, *versus* Gungapershad, for 17. 4., and then *versus* R. Wroughton, for 16. 2.

Will not explain or send papers.

4. The 3d para. mentions that he considers it an imperative duty to withhold the papers, as well as any explanation.

A copy of my letter is sent.

5. Agreeably to the request contained in the 4th para., I have the honour to forward a true copy of my letter.

Copies of letters in Mr. Eggleso's case, and remark in the three cases.

6. In reply to the 5th para., I beg leave to forward copies of my letters in Mr. Eggleso's case, that the Court may understand the exact nature of my interference. The first letter was occasioned by my seeing Mr. Eggleso, when I visited the gaol. The second was accompanied by a rubecarry from Mr. Todd, complaining of Mr. Donnithorne's want of courtesy in not applying to him, as collector of the Government Customs, when the attendance of his subordinate officers was required; and the third was occasioned by the omission of Mr. Eggleso's case in the Magistrate's monthly statement. Mr. Todd's case is still undecided, and extremely discreditable to Mr. Donnithorne. The following is an abstract of it:—Mr. Todd, returning one morning from his ride, spoke to the duffadar who was over a party of prisoners that were employed on the Custom House premises, and complained of their idleness; the duffadar gave an impertinent reply, and Mr. Todd struck him with his whip, and afterwards wrote to Mr. Donnithorne a private note, who removed the man to another gang. Here it was supposed this trifling matter had ended; but four or five months after, when Mr. Eggleso was apprehended, the duffadar, by Mr. Donnithorne's orders, prosecuted Mr. Todd for an assault. Mr. Todd wrote and spoke to me about the case, and I wrote several times to Mr. Donnithorne, by his desire, to know why the case was not decided. Mr. Donnithorne never replied to any of my letters, and I did not feel myself authorized to do more; and here allow me to observe, that Mr. Donnithorne was sworn in as a Justice of Peace by Mr. Lang, in November last, and did not, when the Todd and Eggleso's cases came before him, possess the authority of one. He has consequently usurped this authority; and I believe it will be found on inquiry that he has neglected to send a copy of his proceedings in any of these cases to the Secretary of Government, as he should have done conformably to Section V., Regulation XV. of 1806. As to Mr. Eggleso, under Mr. Donnithorne's view of his case, he ought to have been forwarded under a guard to the Magistrate of Calcutta, together with his witnesses, and a letter stating the case.

Remarks on the impertinence and absurdity of Mr. Donnithorne's lame, impotent conclusion.

7. It is difficult to say whether the impertinence or the ignorance and absurdity of the concluding para. is most apparent. I may without presumption say, I know my own jurisdiction as well as Mr. Donnithorne, and the protection afforded by the Supreme Court to European British subjects, I have never questioned or denied. It is rather too absurd talking of protection to British subjects after his conduct to Captain Wroughton, and in the cases of Eggleso and Todd, a very *lupus in fabulâ*. The Magistrate first requires Rs. 17. 4. to be paid by Gungapershad through Captain Wroughton, who sends an urzee from the man, denying the debt; and some months after, Mr. Donnithorne, on the *ex-parte* evidence of the plaintiff and his witnesses, writes to Captain Wroughton that he is defendant in the case, and that the collector has been instructed to deduct Rs. 16. 2. from his first pay-bill; if this is protection, it is of a singularly Irish description.

My letters written without any ill-will or intention against Mr. Donnithorne; but his to the Commissioner, of the 19th December, quite the reverse. It has been answered in each particular in mine to Mr. E. T. Smith, of the 28th instant.

8. Mr. Donnithorne first asserts my ignorance, and then gives me the credit (if not downright stupid) of being ill-intentioned; then hopes he was mistaken, and again begs my pardon. He certainly was mistaken; I had no ill intentions, and my letters to him are before your Court, and speak for themselves; a letter likewise from Mr. Donnithorne to the Commissioner of this division has been before your Court, containing several serious imputations against my character, and which although dated as far back as the 19th ultimo, has remained unanswered until the 28th instant, because unknown of. As soon, however, as Mr. Smith did me the honour

honour of sending the letter, I lost no time in replying (I hope satisfactorily) to every point contained in it.

9. In conclusion, I entreat the Court to believe that I have never intentionally interfered in what may be considered the Magistrate's peculiar jurisdiction, although I have sometimes been asked to do so, when a public good would have been the probable result; and in a course of nearly 22 years' service I have always been on good terms, not only with my brother civilians, but with every one else, until I came to this district.

Have been on good terms with gentlemen in and out of the service, until I came to Mirzapore.

I have, &c.
(signed) *R. J. Tayler,*
Sess. Judge.

Sessions Court, Zillah Mirzapore,
30 January 1841.

(No. 72.)

To *W. S. Donnithorne,* Esq., Magistrate of Mirzapore.

Sir,

I BEG to call your attention to the case of Mr. Eggleso, a patrol, whom I saw this morning in the criminal gaol; he appears to have been very harshly treated by the police; the man's body is very much bruised, and the flesh of his arms lacerated by the cords that have bound him. Mr. Eggleso told me that the burkundazees had kicked and trampled on him when lying on the ground, and one burkundauze in particular had endeavoured to kick him in the face, and had hurt him by stamping on his neck.

2. Mr. Eggleso is attended by Dr. Barker, but his accommodations are very inconvenient for an European under medical treatment.

3. I saw likewise a prisoner who had lately wounded a burkundauze, but whose punishment for that offence had not yet been awarded him. In such cases a very summary inquiry is generally the best, and such a sentence as would strike terror into the other prisoners; corporal punishment, therefore, appears well adapted to be part of the penalty awarded for such dangerous insubordination, unless the criminal is in ill-health. The prisoner appears a sickly person.

I have, &c.
(signed) *R. J. Tayler,*
Sessn Judge.

Sessions Court, Zillah Mirzapore,
2 May 1840.

(No. 75.)

To *W. S. Donnithorne,* Esq., Magistrate of Mirzapore, dated 9 May 1840.

Sir,

I HAVE the honour to forward copies of a proceeding and letter, No. 83, from the collector of Government Customs, dated the 7th instant. It is always usual, when the evidence of a subordinate is required, to apply to the head of the office to cause his attendance, which, from the perusal of Mr. Todd's proceeding, it seems you have neglected doing; I would, consequently, suggest the propriety of your writing to him, to direct the attendance of the darogah, the suwar and the chuprassee; and that in future you would in the first instance always apply to the collector of Customs when any officer under his control may be required to give evidence in your court; a course which will prevent the confusion that has arisen at Shahgunge, and likewise protect the interests of Government in the Customs department, which must suffer if its officers are summoned into the station before the collector has time to appoint successors to their situations.

I have, &c.
(signed) *R. J. Tayler,*
Sessn Judge.

Sessions Court, Zillah Mirzapore,
9 May 1840.

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(No. 78.)

To *W. S. Donnithorne*, Esq., Magistrate of Mirzapore.

Sir,

I REQUEST you will inform me under what heading the offence committed by Patrol Eggleso is classed, if his case has not yet been brought to hearing, and if he is permitted to communicate with his family in gaol, or is allowed writing materials to correspond with his wife.

I have, &c.

(signed) *R. J. Tayler*,
Sessn Judge.

Sessions Court, Zillah Mirzapore,
16 May 1840.

(No. 176.)

To *R. J. Tayler*, Esq., Session Judge, Mirzapore.

Sir,

IN reply to your letter, dated 16th instant, No. 78, I have the honour to inform you, Mr. Eggleso being an European British subject, and not amenable to the regular criminal courts of this country, I have not included his case in any of the monthly statements, and that in apprehending him I have acted, not as subordinate to the Nizamut Adawlut of Allahabad, but as a Justice of Peace subordinate to the Supreme Court, which every Magistrate, by the circular letter of the Nizamut Adawlut, is authorized to do in cases of necessity, even if he have not taken (as I have not) the oaths of a Justice of Peace. The case has been brought to a hearing by me, and all the papers relating to Eggleso forwarded to the Commissioner for the purpose of his giving me himself, or procuring for me from the highest court of judicature in these provinces, advice or instructions as to how I should dispose of Mr. Eggleso, and to such advice or instructions I purpose to conform my conduct. I do allow Mr. Eggleso to write letters to his family whenever he expresses a wish to that effect to me through the darogah, which he has three or four times done, and all letters which have been received at the gaol addressed to him have been duly delivered to him. Even if you should think that the last act committed by Mr. Eggleso should be entered in the monthly statement, I trust you will defer passing any orders at present until the papers are returned by the Commissioner, as I have some doubt whether it amounts to robbery or only a simple assault.

I beg leave to add, that he was apprehended also to prevent an affray taking place between him and his adherents on the one side, and Mr. Chill and the officers of the Revenue Survey on the other, which affray, if it had occurred, would have been entirely caused by Mr. Eggleso's most unjustifiable conduct, and there was every reason to expect that it would take place. If the Commissioner should not think it necessary to send him for trial to the Supreme Court, it is still certain that he cannot be released without giving security; and Mr. Chill, when he attended my court, showed me a letter bearing his signature, in which he threatened to pull down Mr. Chill's house, and Mr. Chill is ready to swear the peace against him. How far I am empowered to demand security is another question, which I hope will be decided by the Commissioner's reply, should the latter recommend his release. I therefore at present know not whether I shall consider him confined under a charge of robbery, or one of assault, or only as a prisoner under requisition of security for good conduct; but I feel sure that when I had the power to prevent it, I ought not to have stood by unconcerned, and allowed an affray, most probably attended with bloodshed, to be committed between the hostile parties; and, notwithstanding whatever the Custom collector may allege respecting want of courtesy, I beg that you will consider that it was a great object with me to apprehend so desperate a character, both without delay and without any notice, in order that he might not be prepared for making resistance; and had I written to the collector of Customs, it is not at all improbable that some friends of the patrol in the office, or some other person, might have given notice to the patrol of my intention. This man has a great deal too much protection

tection and support from the collector of Customs, and were you to see the papers of the case, I am sure you would agree with me; he would otherwise never have dared to behave in the way he has for several months past.

I have, &c.

(signed) *W. S. Donnithorne*,
Magistrate.

Mirzapore, Magistrate's Office,
18 May 1840.

(True copies.)

(signed) *R. J. Tayler*,
Sessn Judge.

(No. 19.)

To *W. S. Donnithorne*, Esq., Magistrate of Mirzapore.

Sir,

I BEG to forward for your immediate attention copy of a letter, No. 156, dated the 23d instant, from the Officiating Register of the Sudder Nizamut Adawlut.

2. You will be pleased to submit with your explanation the Oordoo papers called for in my several letters, under date the 30th December 1840, No. 166 of the 4th, No. 1 of the 6th, No. 6, and 14th instant, No. 10.

I have, &c.

(signed) *R. J. Tayler*,
Sessions Judge.

Sessions Court, Zillah, Mirzapore,
29 January 1841.

(No. 33.)

To. *R. J. Tayler*, Esq., Sessions Judge of Mirzapore.

Sir,

IN reply to your letter, dated 29th instant, with enclosure, I have the honour to state, that I did not consider that your jurisdiction did extend to cases in which European British subjects were defendants; otherwise I should have been most happy to have made the explanation you required.

I regret very much that my manner of doing my duty has not been approved by our superior authorities, but it not having been ruled by the court of Nizamut Adawlut that I am under your authority in such matters, and conceiving that I owe a duty to the laws of England and to the Supreme Court, as well as to yourself, I must still decline sending you a single paper relating to the case of Captain Wroughton.

I humbly beg your pardon for any want of consideration I may have committed towards you, but my sense of duty is imperative, and whatever words I may or may not use, my course of conduct must, I am afraid, be the same.

May I request the favour of your forwarding an exact copy of your own letter to my address, with this my reply, to the Register of the Sudder Nizamut Adawlut?

This is not the first time, I beg leave to add, that you have interfered in the cases of European British subjects; in Mr. Eggleso's and Mr. Todd's cases you did so, and it had become very necessary that some opposition to usurped authority (as I conceived) should be made when I received your letters respecting Captain Wroughton's case.

I also thought it most probable that you would be at least as well acquainted with the extent of your jurisdiction. The protection afforded by the Supreme Court and the laws of England to European British subjects, I had supposed was known to all. I could not suppose you alone were ignorant of it, and I did, there-

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fore, think that your letter could not have been written with any good intention; I hope I was mistaken, and again beg your pardon.

I have, &c.

(signed) *W. S. Donnithorne,*
Magistrate.

Mirzapore, Magistrates' Office,
29 January 1841.

(True copies.)

(signed) *R. J. Tayler,*
Session Judge.

(True copies.)

(signed) *M. Smith,*
Officiating Register.

(No. 571.)

To *M. Smith*, Esq., Register of the Nizamut Adawlut, N. W. P., Allahabad.

Sir,

Judicial Department.

1. I AM directed to acknowledge the receipt of your letter, dated 20th February last, connected with a point at issue between the Sessions Judge and the Magistrate of Mirzapore.

2. The Court will be apprised of the views of the Honourable the Lieutenant-governor regarding the special case affecting Captain Wroughton, out of which this discussion has arisen, by the annexed extract from a letter to the Secretary to the Sudder Board of Revenue (para. 2).

3. His Honour concurs with the majority of the Court in thinking that the Sessions Judge is warranted in calling for any proceedings from a Magistrate's court, under whatever authority they were held, and that the Magistrate is bound to comply with such requisition, and submit the papers accordingly. It may, however, be observed, that in the case in question, Mr. Tayler did more than simply call for the papers, for he required an English report, and even demanded an explanation of part of the proceedings. Had Mr. Donnithorne been right in his assumed authority, he would have been fully justified in declining compliance with these requisitions.

4. On the subject of your 3d para., his Honour is not disposed to concur with the Court in viewing the power entrusted to the Magistrates by Section 106, stat. 53 of Geo. III., cap. 155, as anomalous or unnecessary. European British subjects were made amenable to the local courts of civil justice by Sec. 107 of the very same statute, and not for the first time by Act XI. of 1836. The anomaly, then, if it be one, existed from the first enactment of the clause, and is not the accidental result of a subsequent law. But, in fact, the existence of a special and summary jurisdiction in certain cases is by no means inconsistent with the requisition of a general separate regular jurisdiction. Thus, Sec. IV., Reg. VII. 1819, vests Magistrates with powers summarily to award arrears of wages to servants, notwithstanding that such case would be ordinarily cognizable in the civil courts. His Honour is disposed to consider the summary powers vested in the Magistrate by the Act of Parliament in question as a salutary expedient, the abridgment or abolition of which he is not prepared to recommend.

I have, &c.

Agra,
27 March 1841.

(signed) *J. Thomason,*
Secretary to the Government, N. W. P.

EXTRACT

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EXTRACT from a Letter to the Secretary to the Sudder Board of Revenue, N. W. P., dated the 27th March 1841.

Para. 2. WITH respect to Captain Wroughton's case, his Honour observes that, by the provisions of Sect. 57, Statute 4 of Geo. IV., Cap. LXXXI., referred to in Clause II., Sec. III., Reg. XX., 1825, the Magistrate was clearly incompetent to take any cognizance of a claim for debt preferred against that officer. Mr. Donnithorne can only, therefore, be held to have issued an extra-judicial order, which he was not warranted as collector in enforcing. He must therefore, in his capacity of collector, be called upon to make good the amount in full of Captain Wroughton's bill for 16 rupees 2 annas, of which he holds no legal acquittance. The Board are requested to see that the account is adjusted accordingly. At the same time Captain Wroughton is liable to be sued for the amount before the Court of Requests, and his further amenability to the civil court with reference to the provisions of Clause 3, Sec. 3, Regulation XX. of 1825, and the wording of Sec. 2, Act XI. of 1836, is under reference to the Government of India.

(True copies and extract.)

(signed) *W. Edwards,*
Assist[t] Secretary to the Gov[t], N. W. P.

(No. 402.)

Legis. Cons. 5 July 1841. No. 35.

To *T. H. Maddock*, Esq., Secretary to the Government of India, dated Fort St. George, 31 May 1841.

Sir,

Judicial Department.

1. I AM directed by the Right honourable the Governor in Council to acknowledge the receipt of your letter, No. 27, dated the 1st March 1841, transmitting a Draft Act for consolidating and amending the regulations concerning Military Courts of Request for native officers and soldiers, and requesting that any modifications or additions which may occur to this Government in respect to its provisions might be communicated for the information of the Supreme Government.

2. His Lordship in Council having addressed the military and judicial officers, and obtained their replies, in respect to the provisions of the proposed Act, has desired me to forward copies of them * for the purpose of being submitted to the Supreme Government, as containing all the modifications which seem to be called for in the Draft.

I have, &c.
(signed) *H. Chamier,*
Fort St. George, 31 May 1841. Chief Secretary.

(No. 54.)

To the Chief Secretary to Government.

Sir,

Legis. Cons. 5 July 1841. No. 36.

1. I AM directed by the Court of Sudder Udalut to acknowledge the receipt of the order of Government, dated the 30th March last, No. 254, communicating copy of a letter from the Supreme Government, dated the 1st March last, transmitting draft of a proposed Act for consolidating and amending the regulations concerning Military Courts of Request for native officers and soldiers in the service of the East India Company, and requesting that any modifications or additions which may be found necessary in the said Draft Act may be communicated for the information of the Supreme Government.

2. The first observation which strikes the Judges on perusing the Draft Act is, "that whereas the Act for the Company's *European* troops gives jurisdiction to Courts of Request as far as 400 rupees, as provided in Clause I., Sec. XXII., Reg. VII. of 1832 of the Madras Code, in regard to their *Native Troops*," also, this Draft will reduce their jurisdiction as regards the latter to 200 Rs., for which anomaly no reason is given. Their next remark is, that it makes no provision

* From the Reg[r] Sud[r] Udalut, 21st May 1841, No. 54; Ex. Min. Cons. Military Dep[t], dated 27th April in Cons[n], 11th May 1841, with enclosure and order from the Reg[r] Sud[r] Udalut, 24th May 1841, No. 84.

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vision at all for one of the two grand objects had in view by the military authorities at Madras, in consequence of whose representation it was prepared. Those objects were, 1st, To limit the credit of native officers and soldiers, and the means of recovering debts due by them, thereby destroying the present ruinous facility of incurring debts. 2dly. To transfer the jurisdiction in cases of debt, not exceeding 20 rupees from Commissariat officers who, as such, labour under the most decided disqualifications for exercising it to other officers who are free from those disqualifications. Some provision has been made for the former of these objects by limiting the proportion of a native officer's or soldier's pay which can be stopped in any month, but the latter is left *in statu quo*—why, does not appear from any papers before the Court.

3. The Judges would suggest the following improvements in the Act as it now stands; viz.

4. The following addition to be made at the end of Sec. II., with reference to the orders of Government of the 30th March last, except "when there are not a sufficient number of officers to form a court without including the person sued, in which case the claim must be tried at the nearest military station not so circumstanced."

(Margin illegible.) 5. The purport of Clause 2, Sec. XXI., Reg. VII. of 1832, as noted in the margin, to be inserted between Sec. II. and III., to prevent misconception as to the nature of the suits cognizable by these courts, experience having shown that without this the greatest mistakes and mischief are liable to arise.

6. In Sec. VI. the words "omitting to attend, refusing to give evidence, or," to be omitted, and the following words be taken from Sec. XII., Reg. VII. of 1832, added to the end of it: "for which purpose there shall be sent with them to that Court the original deposition on which the perjury is assigned, duly signed and certified, and the witnesses who can prove the fact which falsifies the deposition, and also the witnesses who can prove the wilful and deliberate giving of the deposition."

7. The following to be substituted for the present Section VII.; viz.

"VII. And it is hereby enacted, That witnesses omitting to attend, or refusing to give evidence, or sign their deposition, shall be fined, at the discretion of the Court, in a sum not exceeding 200 rupees, and the latter shall be imprisoned also in some convenient place till they shall consent to give their evidence or sign their depositions. Also that any person using menacing words, signs or gestures before or in any manner interrupting seriously the proceedings of any Military Court of Requests shall be liable to be imprisoned, by order of the Court, in some convenient place nigh at hand, during the time that the Court shall continue sitting; at the rising of the Court, when such imprisonment shall not appear to the Court a sufficient punishment, such persons shall be further liable to be fined by the Court, at their discretion, in a sum not exceeding 50 rupees, and in default of payment to be further imprisoned for a period not exceeding one month: Provided always, that every sentence of fine or imprisonment passed under this section, other than imprisonment during the sitting of the Court, shall be reported in writing, and the record of proceedings respecting it sent immediately to the officer commanding the station; and no such sentence shall be carried into execution until it shall be approved in writing by that officer, who shall have power to modify or remit it altogether at his discretion."

8. If the fine be not paid forthwith, the amount thereof shall be levied by seizure and public sale of such goods of the offender as may be found within the military limits, or if sufficient property be not found within these limits, an application shall be made by the commanding officer to the European civil judicial authority within whose jurisdiction his property may be situated, who shall levy the amount specified in such application from any property belonging to the offender which may be found within the jurisdiction of his Court, and shall communicate the result of his proceedings, and remit the amount levied to the commanding officer.

9. Section VI. and VII., as they now stand, will, in their practical operation, involve considerable inconveniences under this Presidency.

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First. There will be two entirely different modes of proceeding in cases of witnesses who are not amenable to the Articles of War, omitting to attend, or refusing to give evidence before a Military Court of Requests, and in the same cases before the officer in immediate charge of the police under Regulation VII. of 1832, whose jurisdiction in civil suits is expressly retained by Sect. 1 of the Draft Act. The delinquent before the Military Court of Requests will be sent, under Sect. VI. of the Draft Act, to the nearest Company's criminal court, to be tried and punished as if he had committed the same offence before that court. The delinquent before the officer in immediate charge of the police will be fined by that officer under Clause 1, Sect. XI., Reg. VII. of 1832. This section has hitherto been applicable to such delinquents in both cases, there being no other provision for those offences in the native Articles of War for this Presidency, as contained in Reg. V. of 1827, Reg. III. of 1829, and the several sections of Reg. VII. of 1832, which are subsidiary to and explanatory of the former regulations. Hitherto all witnesses committing the offences above mentioned, whether amenable or not to the Articles of War, were liable to be punished in the same manner.

Secondly. Persons committing the offences specified in Sect. 6 & 7 of the Draft Act, when not amenable to the Articles of War, being by those sections to be *tried* as well as *punished* by the nearest Company's criminal court, the witnesses against them must attend before that court, and they will of course be entitled to have witnesses summoned for them should they require it. Now when the nature of the offences in question, excepting only that of refusing to give evidence, is considered, it is obvious that such cases will often admit of a defence, and that in trials for the offences specified in Sect. VII., it might often be necessary to examine the members of the Military Court of Requests themselves, whose attendance would be derogatory to those courts, and often inconvenient to the public service. A natural, and, if proved, a valid, defence in such cases would be, that strong provocation was given, and no evidence would be so satisfactory upon such a point as the admissions and statements of a member of the court itself. The prisoners would be inclined to summon such members out of mere revenge; and if they were to insist upon this on plausible grounds, it could not be denied to them.

Thirdly. There would be useless trouble and vexation in sending persons to a distant criminal court to be confined only till they shall consent to give their evidence or sign their deposition; the moment they so consent, their imprisonment would cease. The journey to and from the criminal court would answer no purpose, and the latter journey would only retard the completion of the case for which their evidence or signature is required.

10. By adopting the sections above proposed, in modification of Sect. VI. and VII. of the Draft Act, these inconveniences will be removed, and under this Presidency this will not involve the subjecting newly to military tribunals persons not amenable to the Articles of War; for it will only continue the existing law here, to which the Judges are not aware that any objections have been offered.

11. The above observations on Sections VI. and VII. of the Draft Act could not be offered when the subject was last before this court, and when my letter to you, dated the 9th March 1840, was prepared, because the mode of disposing of persons not amenable to the Articles of War who should commit the offence in question was not then laid down.

12. In Sect. IX. the court would add after the word "country" the words "in ordinary money transactions." The practice of the country beyond the frontier might be to exact usurious and enormous interest from borrowers of the classes contemplated in this Act; but it can hardly be intended to enforce such interest.

13. Section XV. appears to the Judges rather inaccurately worded, and they think the provisions very nearly the same of Article VII., Sect. XII., Reg. V. of 1827, and Sect. XXXIII., Reg. VII. of 1832 of this Presidency, preferable. They would also suggest that the mode of proceeding prescribed in the latter section, in cases in which the amount awarded by Punchayet cannot be realized within the military limits, should be extended to all decrees by the said Courts of Request in the same cases.

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14. With reference to the conclusion of Sect. XVII., the Judges would suggest whether a nearer and less expensive appeal court might not be preferable.

15. It appears also desirable that the principle of Act II. of 1840 should be extended to Courts of Request, as they do not properly come within the term of Courts Martial.

(signed) *W. Douglas*, Register,
Military Department.

Sudder Udalut Register's Office,
21 May 1841.

(No. 1719.)

EXTRACT from the Minutes of Consultation, under date the 27th April 1841.

Read the following letter:—

(No. 384.)

To the Secretary to Government, Military Department.

Sir,

1. WITH reference to extract of Minutes of Consultation, No. 1385, dated 6th instant, I have the honour, by order, to forward a letter addressed to the officer commanding the army in chief by the Judge Advocate-general.

2. Sir R. Dick instructs me to solicit particular consideration to the second para. of Observation I., and to the necessity of extending the provisions of the Act, not only to all natives residing in bazars beyond the frontier, but of providing some law to meet the circumstances of Europeans and Indo-Britons who carry on business in camps and cantonments in the territories of foreign princes.

3. Adverting to Sec. VII. of the proposed Act, I am instructed to suggest for consideration what authority the Company's Courts of Criminal Jurisdiction under this Presidency have of punishing for contempt?

4. The position of a warrant officer is not adverted to in Sec. XVI.; although such are not commissioned officers, it may be subject for consideration whether larger stoppages cannot be made from them than from serjeants.

5. The 6th Observation of the Judge Advocate-general applies to what it may be highly advisable to consider in connexion with Section XV. of the Draft, in order that houses and real property within the limits of military cantonments should be made liable for debts recoverable before Military Courts of Request.

(signed) *R. Alexander*, Lieut.-colonel,
Adjutant-general of the Army.

Adjutant-general's Office,
Fort St. George, 21 April 1841.

(No. 63.)

To Major-general Sir *Robert Henry Dick*, K.C.B. & K.C.A., Commanding the Army in Chief, Madras.

Sir,

I DO myself the honour to acknowledge receipt of an extract from the Minutes of Consultation of the 6th instant, No. 1385, herewith returned, and agreeably to your instructions received through the Adjutant-general of the Army, I have perused the draft of the proposed Act for consolidating and amending the regulations concerning Military Courts of Request, for native officers and soldiers in the service of the East India Company, to which the said minute refers.

I beg leave to state that the proposed Act appears to me fully calculated to answer its purpose, and that the only observations which occur to me on a consideration of the same are the following:—

I. Sutlers, followers, and others serving with the army, under whatever denomination, are included among the persons stated to be subject to the native Articles of War. But as regards these persons they can only be considered generally subject to military law when attached to the army on actual service, and in the field, but such liability does not attach to them when residing within military cantonments within the Company's territories. Registered bazar-men were amenable to Courts of Request, under Sec. 21 and 22 of Reg. VII. of 1832

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of this Presidency; but this amenability may be considered no longer to exist, since all regulations and parts of regulations concerning Military Courts of Request are repealed by the 1st section of the present Act. As it is no doubt the intention that registered bazar-men should be amenable to the jurisdiction of a Military Court of Requests in all situations, it is offered for consideration that they should be specially mentioned.

It having been decided that troops stationed in cantonment beyond frontier are not to be considered in the field, a large proportion of the persons who have followed the troops so situated, not belonging to the military classes, are not at present considered amenable to Courts of Request (or to Punchayets, under the present regulations). From the extreme inconvenience this occasions beyond frontier, where there is no civil judicature in force, it is suggested that the provisions of this Act might be extended beyond frontier to all native subjects of the Company, of whatever description, who may have followed the troops beyond frontier, and be there residing within the limits of a military camp or cantonment.

II. It might be more perspicuous to add with reference to the description of officers who may convene Courts of Request, that the officer commanding any portion of troops in the field should have power to do so.

III. With reference to the 3d section of the Act, it may be observed, that as it will always be necessary for an European officer to attend a Court of Requests as interpreter, and as he should sign the proceedings, he should be considered a component part of the Court.

IV. As regards the 5th section of the Act, the formula of the affirmation to be made by the members of a Court of Requests would require to be a modification of the one required by the Articles of War.

V. It is suggested that in the 10th section, after the words "has been duly apprised of what is required of him," might be added, "and is not prevented attending from some manifest impediment."

VI. The last section of the Act, in giving cognizance to Courts of Request of debts to any amount, would appear to require some extension of its power to enforce its awards, such as to direct the sale of houses or other real property belonging to the debtor in satisfaction of its judgment.

(signed) *Tho^{s} B^{d} Chalon*,
Judge Advocate-general's Office, Judge Advocate-general of the Army.
Fort St. George, 20 April 1841.

Ordered, That the foregoing letter may be communicated to the Judicial Department, in reference to an extract from the Minutes of Consultation in that department, under date the 30th March 1841, No. 254.

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

(No. 359.)

Ordered, THAT the foregoing letter and its enclosure be communicated to the Judges of the Sudder Udalut, with reference to the order in this department, dated 30th March 1841, No. 254, the reply to which the Judges will be pleased to expedite.

Fort St. George, 11 May 1841.

(No. 84.)

To the Chief Secretary to Government, dated the 24th May 1841.

Sir,

1. I AM directed by the Court of Sudder Udalut to acknowledge the receipt of the order of Government of the 11th instant, No. 359, communicating an extract from the Minutes of Consultation in the Military Department, under date the 27th ultimo, together with copy of a letter addressed to the officer commanding the army in chief by the Judge Advocate-general on the subject of the Draft Act,

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for consolidating and amending regulations concerning Military Courts of Request for native officers and soldiers.

2. The Judges conceive (with reference to the first para. of Observation 1 of the Judge Advocate-general) that all persons amenable to the native Articles of War, both under the Regulations of this Presidency, and under the Draft Act, are and will be subject to those Articles and the new Act, just as much when in garrison or cantonment within the Company's territories, as when on actual service and in the field. There is not a trace of any such limitation as is referred to by the Judge Advocate-general, in any part of Reg. V. of 1827, Reg. III. of 1829, or Reg. VII. of 1832. If such had been intended, it would undoubtedly have been expressly stated in Article 12, Sec. 2 of Reg. V. of 1827, Article 2, Sec. 2, of Reg. III. of 1829, or in Sec. 13, Reg. VII., of 1832, in which are specified and enumerated all the different classes of persons who in any situations are amenable to the Articles of War. It is true that for certain petty *civil* offences, Clause 2, Sec. XIII., Reg. VII. of 1832, renders subject to punishment, either by courts martial, or by the officer in charge of the police, only *beyond the frontier*, "all native subjects of the Company," who have followed the troops to the field, or are resident in camp or cantonment. But the reason why this applies not *within* the Company's dominions is, that the civil tribunals there have cognizance of these *civil* offences, as noticed in Sec. XX., and provision was required for them only, where civil tribunals did not exist.

3. With respect to registered bazar-men in particular, they are expressly, by Clause 2, Sec. 13, Reg. VII. of 1832, made liable to be tried by courts martial for certain specified offences; but this does not amount to declaring them amenable to the Articles of War, and to the best of the knowledge of this Court they never have been declared to be so. The difficulty, therefore, anticipated by the Judge Advocate-general may occur, for it is only to defendants amenable to the Articles of War that the jurisdiction of the Military Courts of Request by the Draft Act extends. It is probable that registered bazar-men will be more frequently plaintiffs than defendants before Military Courts of Request; but still, as an important class in the army, their interests should not be neglected, and the Court have no doubt, that their exclusion from the benefits of the new Courts of Request was not intended. The oversight might be corrected by adding the words, "and all registered military bazar-men," after the words "and other persons amenable to the Articles of War," in Sec. 2 and other places of the Draft Act.

4. With respect to the suggestions at the end of the 2d para. of Observation 1st, "That the provisions of the Act might be extended beyond frontier, to all native subjects of the Company, of whatever description, who may have followed the troops beyond frontier, and be there residing within the limits of a military camp or cantonment;" and in the 2d para. of the Adjutant-general's letter, "and that some law may be provided to meet the circumstances of Europeans and Indo-Britons, who carry on business in camps and cantonments in the territories of foreign princes," the Court of Sudder Udalut are not qualified to pronounce an opinion as to the advisableness of measures to those effects; but it occurs to them that it would probably be preferable, as far as the army of this Presidency is concerned, to give the proposed extensions in the case of natives, at least to the provisions of Sec. 42, Reg. VII. of 1832, which will not be rescinded by the Draft Act.

5. The Court have no objection or remark to offer as to Observations 2, 3 and 4.

6. With regard to Observation 5, the Court would prefer the addition of the words, "and on his failing to account satisfactorily for his default," after the words "required of him," in Sec. 10. This would be in conformity to received principles.

7. With reference to Observation 6, the Court think that the execution of decrees under Sec. 17 is provided for by Sec. 15, as far as it can be by an Act of the Indian legislative. It may be necessary, in some cases, to apply to the British resident at the native court within the territories of which the military court may have been held; but this could hardly be introduced into the Act.

8. With regard to para. 3 of the Adjutant-general's letter, the Court conceive that every necessary power of punishing contempts is given by Section 22, Reg. III.

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of 1802, and Reg. I., of 1832. But a necessity for any reference to these enactments will be superseded by the alterations in Sec. VI. and VII. of the Draft Act proposed in my letter to you under date the 21st instant.

9. The subject of para. 4 of the Adjutant-general's letter is one upon which the Judges are not qualified to offer an opinion.

10. With regard to para. 5 of the Adjutant-general's letter, there can be no doubt that houses, lands, or other real property belonging to persons against whom decrees have been passed by Military Courts of Request, should be made liable for the amount of those decrees. But the Judges think that the sale of real property every where within the Company's territories should be conducted on the application of commanding officers by the regular courts; because such sales frequently involve points of law and other difficulties which military authorities cannot be supposed fitted to deal with. This is provided for in the alteration suggested at the end of para. 13 of my letter of the 21st instant. When such property may be situated beyond the Company's territories, its sale cannot be provided for by any enactment of the Government of India.

Sudder Udalut, Register's Office, 24 May 1841.

(signed) *W. Douglas*, Register.

(True copies.)
(signed) *Hy Chamier*, Chief Secretary.

(No. 1462 of 1841.)

JUDICIAL DEPARTMENT.

To *T. H. Maddock*, Esq., Secretary to the Government of India, in the Legislative Department.

Legis. Cons. 5 July 1841. No. 37.

Sir,

WITH reference to your letter, No. 28, dated the 1st March last, forwarding the draft of a proposed Act for consolidating and amending the regulations concerning the Military Courts of Request for native officers and soldiers in the service of the East India Company, I am directed, by the Honourable the Governor in Council, to transmit, for the consideration of the Right honourable the Governor-general of India in Council, a copy of the correspondence noted in the margin,* on the subject.

*Letter from the Deputy-Register of the Suddur F. Adawlut to Government, dated 17 April 1841, No. 721; ditto from the Adjutant-general of the Army, dated 18th May 1841, No. 447.

I have, &c.
(signed) *J. P. Willoughby*,
Bombay Castle, 27 May 1841. Secy to Govt.

(No. 721 of 1841.)

To *J. P. Willoughby*, Esq., Secretary to Government, Judicial Department, Bombay.

Legis. Cons. 5 July 1841. No. 38.

Sir,

I AM directed to acknowledge the receipt of your letter, dated the 31st ultimo, and its enclosures, being copy of a letter from the Secretary to the Government of India in the Legislative Department, and of a proposed Act for amending the regulations regarding Military Courts of Request for native officers and soldiers in the service of the East India Company, and requesting that the Judges would submit any remarks they might have to offer on the provisions of this enactment.

Mr. Marriott, Mr. Bell and Mr. Giberne.

In reply, I am instructed to state that the Judges consider the proposed Act to be applicable to the object contemplated.

I am desired, however, to add, that there may be points affecting subjects which in their nature appertain to the Military rather than to the more distinct Judicial Department, and that the Judges consider it might be advisable that the Judge Advocate-general be consulted, which they beg to suggest.

Mr. Giberne does not concur in this suggestion, as he considers an expression of the Court's opinion on the subject referred, is all that is required by Government.

I have, &c.
Bombay, Suddur Adawlut, 17 April 1841.
(signed) *W. H. Harrison*, Deputy Registrar.

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(No. 447.)

To *J. P. Willoughby*, Esq., Secretary to Government, Judicial Department.

Sir,

I AM directed by the Commander-in-chief to acknowledge the receipt of your letter of the 31st March last (No. 927), with its accompanying draft of a proposed Act for consolidating and amending the existing regulations relating to Military Courts of Request in the native branch of the army.

The Commander-in-chief, having fully considered the several provisions in the intended enactment, desires me to request you will submit to the Honourable the Governor in Council, that the only addition which his Excellency considers it requisite to suggest is the introduction of a clause to the following effect:—

"That in cases in which a suit has been filed, to be brought before a Court of Requests, if a plaintiff produces satisfactory proof to the superintendent of bazars that the defendant intends to remove his property, the superintendent shall be authorized to call on the defendant for security to produce the said property, or part thereof, sufficient to satisfy the decree when past; and in the event of such security not being found, that the superintendent be authorized to hold the property under sequestration until the decree has been passed and executed."

I have, &c.

(signed) *S. Porrell*, L. & Col[l],
Adjutant-general of the Army.

Adjutant-general's Office, Mahableshwar,
18 May 1841.

(True copies.)

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

(No. 80.)

Legis. Cons. 5 July 1841. No. 39.

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the Military Department, under date the 2d June 1841.

READ letter, No. 657, dated 27th ultimo, from the Acting Adjutant-general of the Army, returning the extract received with a letter of the 12th ultimo, accompanied by a memorandum, prepared by the Judge Advocate-general, on the proposed draft of a regulation for the guidance of Military Courts of Request:

Ordered, That the letter from the Acting Adjutant-general of the Army, with its enclosure, be transmitted to the Legislative Department, with reference to the extract thence received, No. 1, under date the 1st March 1841, and No. 7, under date the 26th April last.

Ordered, That the papers transmitted be returned to this department when no longer required.

(True extract.)

(signed) *J. Stewart*, L[t]-Colonel,
Secretary to the Gov[t] of India, Military Department.

Legis. Cons. 5 July 1841. No. 40.

(No. 657.)

From the Acting Adjutant-general of the Army to the Secretary to the Government of India, Military Department.

Sir,

Returning original papers on the subject of Courts of Request, with copies of a letter and memorandum from the Judge Advocate-general on the Draft Regulation proposed for their guidance.

I HAVE, the honour, by direction of his Excellency the Commander-in-chief, to return the original papers received with your despatch, No. 220, of the 12th instant, together with a copy of a letter from the Judge Advocate-general, and a memorandum prepared by that officer on the proposed draft of a regulation for the guidance of military Courts of Request.

I have, &c.

(signed) *Pat. Craigie*,
Acting Adjutant-general of the Army.

Head Quarters, Calcutta,
27 May 1841.

(No.

(No. 191.)
From the Judge Advocate-general to the Acting Adjutant-general of the Army.

Dated Head Quarters, Calcutta,
22 May 1841.

Sir,

I HAVE to acknowledge your official letter of the 19th instant, the number and subject as per margin.

No. 986, with Papers regarding Native Courts of Request.

2. The accompanying memorandum contains such observations as it has occurred to me to submit on the provisions of the Draft Act for consolidating and amending the Regulations concerning Military Courts of Request for native officers and soldiers in the Company's service, as also on the subject of the difficulty pointed out in the despatch from Fort St. George, relative to inhabitants of cantonment bazars beyond the frontier, communicated in the extract, Legislative Department, No. 7, under date the 26th ultimo.

3. In connexion with these observations, I have entered in red ink on the printed Draft of the Act such alterations as appear to me to be desirable.

4. The enclosures received with your letter are herewith returned.

Judge Advocate-general's Office,
Head Quarters, Calcutta,
22 May 1841.

(True copy.)
(signed) *Pat. Craigie,*
Acting Adjutant-General of the Army.

MEMORANDUM.

DRAFT of an ACT for consolidating and amending the Regulations concerning Military Courts of Request for Native Officers and Soldiers in the Service of the East India-Company.

Clause II. "Jurisdiction;" in line six, after "East India Company," I would propose to insert these words, "or residing or carrying on any trade or business in a military bazar."

Clause III. I think that a minimum length of service as a qualification of the European Superintending Officer should be specified. The new Mutiny Act has similar provision in certain cases.

The last words, "with an European officer to superintend and record the proceedings," appear to apply to the courts, whether composed of European or of native officers, which I imagine was not intended.

Clause VII. The punishment of contempts committed in face of the Court appears to me to be very expedient. If after the words "Civil or Military," the words "Europeans or Native," were introduced, it would comprise all classes, which, though it appears to be the object of the clause, may be open otherwise to question. The word *imprisonment* presents a difficulty. Where is it to take effect, in cases where commissioned officers or civil persons are concerned? A soldier, either European or native, would be sent to the guard; but a non-commissioned officer cannot, as such, be confined, much less a commissioned officer. If officers are to be made liable to this clause, the word "arrest" should be inserted before "imprisonment;" that is applicable to commissioned and non-commissioned officers, and is in itself a punishment. Courts of Request under this Act are to be composed either of European or of native officers. With the former there is little probability of difficulty arising out of the status of a commissioned officer committing a contempt; with the latter it is very different. I doubt whether in either description of court it would not be better to exempt commissioned officers from summary arrest; the court having it in its power to turn the disturber out of the place where they are sitting, and then to prefer charges against him. And indeed, on the fullest consideration, I would suggest that as it is inexpedient to draw a line of distinction between classes of disturbers of proceedings, it were better to take away the power of summary punishment in any case.

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Line 10, "the Articles of War;" query, Whether this would not be taken to mean the Articles of War elsewhere referred to in this Act, to which native soldiers only are amenable? Perhaps the word "*any*" might be substituted for "*the*," or the word "*the*" omitted, which would answer the purpose.

Line 15, "shall discharge him forthwith." A court martial does not possess this power, and its being conferred in the present Act, would not entitle a court martial to deviate from the usage which subjects the judgment of such court to the confirmation of superior authority. If the power of summary punishment is to remain, I would suggest, instead of "*discharge him forthwith*," the words "*abstain from awarding any further punishment.*"

Clause VIII. It is an improvement to require a record of the evidence; but, on the other hand, it may practically be a great inconvenience. From the words "particular account of the evidence," some difficulty will arise. I suppose it will be unnecessary to record the actual statements of witnesses, but that is done at a court martial; and in Clause V. it is directed that the usages of courts martial shall be followed. If the Court of Requests is to be permitted to give the substance of the evidence, the record will be comparatively short. It has been suggested that the plaintiff might be made to present a written complaint in order so far to shorten the record made in court; but I fear such requirement would tend to enable the plaintiff to make up a story, and to show that he had written to his witnesses, so that they might get their part by rote, unless the writing were of a very brief description. It has also been suggested that several Courts of Request might sit at one time; but the time of officers would be too much taken up if that were the case, and sufficient interpreters could not be had. I observe that in Clause XI., though it is made lawful for a commanding officer to return proceedings for revision, yet he is not imperatively bound to read all proceedings, to see whether they require to be returned. I apprehend that he would be *bound* to return proceedings for revision on reasonable complaint of the decree made by either party to the suit. I look upon the privilege of appeal on the merits of the judgment of a commanding officer, or ultimately to the Commander-in-chief, to be of very great value. Without recording the substance of the evidence, no such appeal could be made; but I think it would suffice to make the record as brief as possible; and even then, without occasional inspection of the record by authority, with a view to keep it within proper limits, and to ensure uniformity of practice at all the stations, I doubt whether the system would not work very inconveniently in taking up too much of the time of officers, and most especially of interpreters. The record must be in English, for we have no means of recording in any other language; and translating, which would be indispensable for the benefit of the European officers concerned, whether on the court or of superior authority, and would be an interminable and very distressing labour.

Line 12. I would insert "President or" between "European" and "Superintending officer," Clause IX. At the end I would propose to add, "unless it be proved that a promise of payment has been made within (so many) years from the commencement of the suit." I believe it is required in England that the promise should be in *writing*; but I suppose nine-tenths of the persons amenable to this Act can neither read nor write; and I apprehend it would suffice that good proof be given of a verbal promise of payment.

Clause XII. As before observed, I think that the less the plaintiff is made to write the better, to avoid collision between him and his witnesses.

Clause XV. I would insert "*or elsewhere*," after "cantonments," in line 14. I do not apprehend that undue advantage would be taken of this extension by the military authorities; and it is desirable that defendants should be deprived of the power of fraudulent secretion of property beyond (and perhaps only just beyond) the limits of cantonments. Although in the cases of Sepoys, personal property is liable to seizure, and sale, under a general execution, would not include their huts; yet I think it is desirable that the term "goods," in this clause, should be declared to extend to houses and other erections within the limits of cantonments, in order that, if occasion require, the houses of bunneahs and others sued before a Court of Requests may be seized, and sold in satisfaction of the award. In putting the construction that houses in cantonments are personal property, I would refer to decision of the Supreme Court, given on the 24th July 1840, in the case of Burney *v.* Bagshaw

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Bagshaw & Company, in which it was settled that houses within the cantonments at Barrackpore were of the nature of personal estate.

With reference to the extract, Legislative Department, No. 7, dated 26th April 1841, I conceived that the words I have proposed to insert in Clause II. of the Draft Act will, if introduced there, sufficiently provide for the difficulty represented in the despatch from Fort St. George, and for which I think it important that provision should be made.

(signed) *R. J. H. Birch*,
Major, Judge Advocate-general.

(True copies.)
(signed) *Pat. Craigie*,
Acting Adjutant-general of the Army.

Legis. Cons. 5 July 1841. No. 41.
Military Courts of Request.

MINUTE by the Honourable *A. Amos*, Esq., dated the 17th March 1841.

AFTER this Draft had been settled to the satisfaction of all parties in Calcutta, and after the day for passing the Act had expired, a series of new Suggestions from Madras and Bombay have arrived. I will go through these Suggestions *seriatim*.

SUGGESTIONS of SUDDUR COURT.

1st. Limit reduced from 400 Rs. to 200 Rs., noticed by Suddur Court. Neither the Madras nor Bombay military authorities object. It occasions uniformity. The Bengal military authorities have objected to raise their limit from Rs. 200 to 400 Rs.

It answers one of the objects proposed by the Madras authorities, viz., to check the encouragement of credit by the ready remedy of a military court.

2d. Transfer of jurisdiction, where the debt does not exceed 20 Rs. from the Commissariat officer.

As this tribunal is unknown in Bengal, it is expressly exempted from the present Act, which is meant not to embrace any matters peculiar to particular Presidencies.

It will still be open to propose a law for the Madras jurisdiction by Commissariat officers; but it may be observed that the Madras authorities seem to differ upon this subject.

3. I see no objection to introducing at the end of Section III., "except when there is not a sufficient number of officers to form a court without including the person sued, in which case the claim may be tried at the nearest military station not so circumstanced."

4. I see no objection to inserting, by way of proviso, "Provided, that no suit shall be entertained by any Court of Requests under this Act concerning any dispute of caste, or the right to land or other real property, or the possession thereof."

5. I am averse to the alterations proposed in Sections VI. & VII. They relate (1.) To proceedings for not attending or refusing to give testimony; (2.) To perjury; (3.) To interrupting the proceedings of military courts.

To discuss these points on paper would occupy much time. If any point recommended with respect to these sections be thought desirable, I shall be happy to discuss the matter verbally or in writing as may be most desirable.

6. I see no objection in Section IX., adding after the word "country," the words "in ordinary money transactions."

7. I do not see any sufficient ground for altering Section XV.

8. I do not think the Courts of Request require the use of the civil gaols; if they do, the adoption of Act II. of 1840 may be useful.

9. I do not see sufficient ground for altering the appeal court in suits beyond the *frontier*.

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SUGGESTIONS by Sir *R. Dick.*

10. Extension to natives (not subject to Articles of War), being subjects of the East India Company and Europeans, or East Indians carrying on business in cantonments within the territories of foreign princes ;—

I think our own amendments of the printed draft provide for this.

11. Punishment for contempt, under Section VII. The Sudder, in reference to this matter, say that the powers are adequate. In our draft, I have not left anything to rest simply on the word "contempt."

12. I think it would be going too much into detail to provide for the stoppages of warrant officers, especially as they may be proceeded against by *general* execution when the stoppages are not of so much importance.

13. Houses and real property within cantonments are seizable under our amendments of the printed Draft.

SUGGESTIONS by JUDGE ADVOCATE, Madras.

The Judge Advocate says, that the Act is fully adequate to answer its purpose, subject to*.

* *Sic orig.*

14. The Sudder Court set the Judge Advocate right, and held that camp followers, though not in the field, but in cantonments, are subject to the Articles of War, and consequently to Courts of Request.

15. Registered bazar-men will, I apprehend, be included by our own amendments to the Draft Act.

16. Followers beyond the frontier have been before considered.

17. I see no objection to add to the description of the convening officer, "officer commanding any portion of troops in the field."

18. I do not see why the European officer should be a component part of the court.

19. I think that under the 5th Section the Court of Requests would take an oath or affirmation from a witness just as a court martial would do, varying the style of the court and the statement of the matter in dispute.

20. It is not necessary to provide for parties prevented from attending by manifest impediments.

21. The sale of real property beyond the cantonment, where the cantonment is beyond the frontier, had better not be meddled with. The Sudder are of this opinion.

SUDDER COURT again.

22. The Sudder wish for the words "and on his failing to account satisfactorily for his default," (*à propos* of 20 *supra*), I think it will lead to laxity of practice, and is unnecessary.

N. B.—The other observations of the Sudder are only argumentative with reference to the suggestions of Sir R. Dick and the Madras Judge Advocate.

BOMBAY SUGGESTIONS.

The only suggestion from Bombay relates to giving an authority to the superintendent of bazars to prevent defendants from taking their property out of the jurisdiction of the court. I think we effect this by our amendments to the printed Draft, by allowing the seizure of personal property *beyond* the limits of the cantonments.

(signed) *A. Amos.*

17 June 1841.

MINUTE

MINUTE by the Right Honourable the Governor-general of

I ENTIRELY concur in what Mr. Amos has so clearly written on this subject, and if the other members of Council should also, it only remains that amendments upon some of the suggestions from Madras and Bombay be introduced into the Act, and answer, upon the grounds given by Mr. Amos, to the other suggestions communicated to those Presidencies. Legis. Cons. 5 July 1841. No. 42.

(signed) *Auckland.*

I concur.
(signed) *W. W. Bird.*

FORT WILLIAM.

LEGISLATIVE DEPARTMENT, 5 July 1841.

THE following Act, passed by the Right Honourable the Governor-general of India in Council, on the 5th of July 1841, is hereby promulgated for general information. Legis. Cons. 5 July 1841. No. 43.

ACT No. XI. of 1841.

AN ACT for consolidating and amending the Regulations concerning Military Courts of Request for Native Officers and Soldiers in the Service of the East India Company.

I. It is hereby enacted, That all Regulations and parts of Regulations concerning military Courts of Request are repealed: Provided always, That nothing in this Act contained shall be held to alter or affect the jurisdiction of a single officer duly authorized and appointed under the rules in force in the Madras and Bombay Presidencies for the trial of small suits in military bazars at cantonments and stations occupied by the troops of those Presidencies respectively, or the trial by Punchayet of suits against military persons according to the rules in force under the Madras Presidency.

II. And it is hereby enacted, subject to the aforesaid proviso, That within the territories of the East India Company, actions of debt and other personal actions against native officers, soldiers and other persons amenable to the Articles of War for the native forces in the military service of the East India Company, or residing within any station or cantonment, and carrying on any trade or business in a military bazar, shall be cognizable before a military court, and not elsewhere; provided the value in question shall not exceed 200 rupees, and the defendant was a person of the description above mentioned, when the cause of action arose and when the suit was instituted: Provided, that no suit shall be brought before any military court under this Act to determine any dispute of caste, or concerning any right to real property.

III. And it is hereby enacted, That the commanding officer of any station or cantonment, or officer commanding any portion of troops in the field, is authorized to convene such military courts, and such courts shall be composed, according to the orders of the Commander-in-chief for the time being of the Presidency within which the station or cantonment is situate, or in the absence of such orders, according to the discretion of the convening officer, either of not less than three European commissioned officers, or of not less than three native commissioned officers, and, in the latter case, with an European officer of not less than five years' standing, to superintend and record the proceedings; provided that if there be not a sufficient number of officers to constitute a court at the station or cantonment where any cause of action may arise, or where the defendant may be residing, the suit shall be determined at the nearest stations or cantonment where a military court can be duly constituted as aforesaid.

IV. And it is hereby enacted, That such military courts shall be convened monthly, and shall be holden on some convenient day before the issue of the pay for each month.

V. And it is hereby enacted, That the forms of proceeding in every such court shall be conformable to the usages observed on trials before courts martial held for the native troops in the service of the East India Company, as far as the same are applicable; and any such court shall have the like power of summoning

No. 2.
On the New Articles of War for the East India Company's Native Troops.

witnesses as is possessed by courts martial: Provided always, That every such court shall have the power of examining the parties to any suit, and of requiring or dispensing with their attendance at its discretion; and every such court shall have the like power of taking the examinations of absent parties and witnesses as is possessed by the civil courts of the East India Company under Act No. VII. of 1841; provided that the depositions taken under a commission issued by any military Court of Requests shall be receivable in evidence before any such court subsequently held; provided also, that commissions may be issued by military Courts of Request under this Act, pursuant to the provisions of Act No. VII. of 1841, notwithstanding the courts to which the commissions may be directed are not situate beyond the jurisdiction of such military courts.

VI. And it is hereby enacted, That witnesses omitting to attend, refusing to give evidence or committing perjury, and persons suborning witnesses to commit perjury, shall be tried and punished, if amenable to Articles of War, by a court martial, subject to all the rules contained in such Articles of War for the punishment of such offences in regard to trials for military offences; and if not amenable to Articles of War, they may be tried and punished in the nearest of the courts of the East India Company for the administration of criminal justice (whether such court have ordinarily jurisdiction over such person in criminal matters or not), in like manner as if such offences had been committed in regard to any trial before such nearest court.

VII. And it is hereby enacted, That any person, civil or military, European or native, using menacing words, signs or gestures, or otherwise interrupting (whether being personally present or not) the proceedings of any Military Court of Requests, shall be punishable, if amenable to Articles of War, by a court martial, or if not amenable to the Articles of War, in the nearest of the Courts of the East India Company for the administration of criminal justice, (whether such court have ordinarily jurisdiction over such person in criminal matters or not), in like manner as if the offence had been committed in regard to any proceeding of the court to which it is so referred.

VIII. And it is hereby enacted, That a record shall be kept of proceedings in every case tried before any Military Court of Requests, and such record shall contain the substance of the evidence given, and the nature of such evidence as may have been rejected on the ground of its not being legally admissible or relevant, or on other grounds; and the same shall be signed by the members of the said court; and such record or a copy thereof shall, with as little delay as is practicable after the conclusion of the proceedings, be transmitted by the European President or superintending officer of every such court to the officer commanding the station or cantonment.

IX. And it is hereby enacted, That where a demand shall exceed the amount of 200 rupees, or where several separate demands shall exceed such amount, no more shall be recoverable from any one defendant by the same plaintiff or plaintiffs than the sum of 200 rupees only; and the judgment in respect of any demand in a Court of Requests shall be a bar to the recovery of the same demand, or of any other or further demand for the same cause of action in any other court whatever, provided that the liability accrued before the time of instituting the suit in the military court; and it shall be competent for every such military court to investigate any counter claim alleged by any defendant; and it shall be competent for every such military court to allow the interest for money agreed on between the parties, provided the same does not exceed the usage of the country in ordinary money transactions; and every contract made after the passing of this Act, upon which a demand for debt exceeding 20 rupees is founded, not being money due for goods bought and delivered, shall be in writing, and expressed in the language of the defendant, and signed by him, or on his behalf, by some other person than the plaintiff; provided that it shall not be competent to any Court of Requests to admit any suit for a debt which has accrued upwards of six years, unless a direct promise to pay, made within six years of the commencement of the suit, be proved.

X. And it is hereby enacted, That on failure of either of the parties to a suit, to attend either personally or by representative, or to produce his witnesses according as he shall be required by any Military Court of Requests, such court,

on

on being satisfied that the party has been duly apprised of what is required of him, may proceed to the termination of the suit in his absence; and if the decree in any such case shall be against the plaintiff, it shall not be competent for him to commence a new suit for the same cause of action.

XI. And it is hereby enacted, That it shall be lawful for the commanding officer to whom the proceedings have been transmitted as aforesaid, to return the same for revision, either by the same or another Military Court of Request; and in every such case, the second decree shall be final, unless for error in points of law, when the same shall be transmitted to the Commander-in-chief, who shall have power to annul the proceedings, without prejudice to any future suit; provided always, and in the case of any new trial, the court may receive evidence, which was not adduced at the first trial.

XII. And it is hereby enacted, That every plaintiff shall prefer his claim in writing, and shall deliver the same to the Station Staff Officer; the claims shall be entered in a Schedule by the Station Staff Officer, which Schedule is to be sent to Adjutants of corps or heads of departments two days at least before the assembly of the court; and the Adjutants or heads of departments shall be responsible that the defendants belonging to their respective corps or establishments have been duly summoned.

XIII. And it is hereby enacted, That every decree of any Military Court of Requests shall be published in the Station Orders before the same is executed.

XIV. And it is hereby enacted, That the execution of decree of Military Courts of Request may be either general or special, according to the sentence of the court: provided always, that the commanding officer may, notwithstanding the directions of the court, order that the execution shall be general or special at his discretion.

XV. And it is hereby enacted, That in cases in which the execution is to be general, the debt, if not paid forthwith, shall, under the authority of the commanding officer, in writing, to be signed by him, be levied by seizure and public sale of such of the debtor's goods (under which term are included houses or other erections within the limits of stations and cantonments) as may be found within the limits of the station or cantonment or elsewhere; and if sufficient goods are not to be found, the debtors, if not a soldier, shall be arrested and imprisoned in any civil gaol near to the station or cantonment (for which purpose the provision of Act No. II. of 1840 shall be applicable), or in any other convenient place of confinement situate within the limits of the station or cantonment, for the space of two months, unless the debt be sooner paid, and his goods, if found within the limits of the station or cantonments or elsewhere at any subsequent time, shall be liable to be seized and sold in satisfaction of the debt; and if the debtor be a soldier, and the debt be not liquidated by sale of his effects, accoutrements and necessaries excepted, an order may be issued for payment of the residue by monthly deduction from the pay issued to the debtor under the rules which follow.

XVI. And it is hereby enacted, That where the execution is to be special, the debt shall be satisfied out of the pay and allowances of the debtor, and not otherwise; and a certificate of the decree and direction or order thereon, certified under the hand of the commanding officer and signed by him, shall be a sufficient authority for making such stoppages: provided always, that no more than one-half of the pay and allowances of any commissioned officer, or than one-fourth of the pay and allowances of any non-commissioned officer or soldier, shall be stopped in any one month.

XVII. And it is hereby enacted, That in places beyond the frontier of the territories of the East India Company, actions of debt and other personal actions may be brought before such military courts as aforesaid, against persons so amenable as aforesaid, for any amount of demand: provided, that such military courts beyond the frontier shall be composed of European officers, and provided, that if the amount of claim shall exceed 200 rupees, an appeal shall lie to the court of Sudder Adawlut of the nearest Presidency, according to the rules in force with regard to appeals from subordinate civil courts.

No. 2.
On the New Articles of War for the East India Company's Native Troops.

XVIII. And it is hereby enacted, That this Act shall not affect the proceedings upon any suit heretofore commenced, or which shall be commenced before the 10th day of August next.

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

Legis. Cons 5 July 1841. No. 44.

29 June 1840, No. 522, with Enclosures; 9 January 1841, No. 36, with Enclosures; 31 May 1841, No. 402, with Enclosures.

(No. 97.)

W. Chamier, Esq., Chief Secretary to the Government of Fort St. George.

Sir,

With reference to your letters, of the numbers and dates specified in the margin, on the subject of the proposed Act for consolidating and amending the Regulations concerning the Military Courts of Request for native officers and soldiers in the service of the East India Company, I am directed by the G. G. in C. to transmit to you, for submission to the Right honourable the Governor in Council, the accompanying copy of Act No. XI., of 1841, this day passed into law, some of the provisions of which his Lordship in Council will observe have been amended agreeably to the suggestions offered by the authorities at Fort St. George.

2. The usual supply of copies of the Act for distribution will be forwarded by a future opportunity.

I have, &c.
(signed) *F. J. Halliday*,
Off. Sec. to Govt.

Legis. Cons. 5 July 1841. No. 45.

(No. 98.)

To *J. P. Willoughby*, Esq., Secretary to the Government of Bombay.

Sir,

With reference to your letters, No. 3347 of 31st December 1839, and 1462 of the 27th May last, with enclosures, I am directed by the Governor-general in Council to transmit to you, for submission to the Honourable the Governor in Council, the accompanying Act, No. XI. of 1841, for consolidating and amending the Regulations concerning the Military Courts of Request for native officers and soldiers in the service of the East India Company, this day passed into law.

2. His Honour in Council will observe that the suggestion relating to giving authority to the superintendent of bazar to prevent defendants from taking their property out of the jurisdiction of the court, has been effected by allowing the seizure of personal property *beyond* the limits of the cantonments.

3. The usual supply of copies of the Act for distribution will be forwarded by a future opportunity.

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

Legislative Department.

(No. 15 of 1841.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

No. 18 of 1839. 12 August, No. 19, of 1839, dated 12th ditto. Legis. Cons. 23 March 1840. No. 17. 5 July 1841. No. 16, and 45.

With reference to the despatches from this department as per margin, we have the honour to transmit the accompanying returns to the circular of Questions which we reported to have issued on the 12th August 1839, and correspondence with the several local Governments upon the Draft of an Act which we read on the 1st of March 1841, for consolidating and amending the Regulations concerning Military Courts of Request for native officers and soldiers in the service of the East India Company. This draft was, in consequence of suggestions offered by several authorities, amended, and finally passed on the 5th of July last as Act No. XI. of 1841.

We have, &c.

(signed) *Auckland.* *W. Casement.*
J. Nicolls. *H. T. Prinsep.*
W. W. Bird. *A. Amos.*

Fort William, 2 August 1841.

—No. 3.—

LEX LOCI.

No. 3.
Lex Loci.

EXTRACT of a General Letter from the Government of India to the Honourable the Court of Directors in the Legislative Department, dated 17 March 1843, No. 6.

Laws under Consideration.—Law Commissioners' Lex Loci Report and Draft Act, declaring to what substantive law persons in the Mofussil, not subject to Hindoo or Mahomedan civil law, shall be subject. The case of native converts to Christianity also provided for.

Legis. Cons. 8 July 1842. No. 16 to 23.

31. ON the 22d of May 1841, the Law Commissioners replied to the reference made to them (as reported in para. 84 of our despatch, No. 23, dated 29th November 1841), on a Memorial from certain Missionaries at Calcutta, representing the legal grievances under which native converts to Christianity laboured.

32. On the same date, the Commissioners submitted the draft of an Act for declaring the *lex loci* of the territories subject to the Government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts. This draft was prepared under the instructions from this Government, reported to your honourable Court in our Special Letter, No. 2, of 1841, dated the 1st of February.

33. The Memorial of the Missionaries referred to the situation of natives who have abandoned the religious creed of their fathers, many of whom have become members of the Christian church. The Commissioners observed, that in the draft Act, persons in the circumstances stated were recognized as subject to the *lex loci*, and that a general provision had been made to guard persons in such circumstances from any loss or forfeiture of rights, in consequence of their renunciation of the religion of their fathers.

34. The Commissioners were of opinion that the provisions of Sections X., XI., and XII., would afford a remedy for the particular grievances complained of, so far as such an object could be properly connected with the other purposes of the Act.

35. Upon the Draft Act of the Law Commissioners, your honourable Court will find two minutes recorded by our colleagues, Messrs. Prinsep & Amos, dated respectively the 29th April and 2d May.

36. Mr. Prinsep recorded his particular objections to the terms of Sections X., XI. and XII. of the Law Commissioners' Draft, and he could not assent to the adoption of the Draft itself, proceeding as it did on the assumption, that it has hitherto been doubtful what was the law of India in respect to foreigners, and that, in consequence of such doubts, an erroneous practice had grown up in the courts of the East India Company. Upon this assumption, the Draft proceeded to lay down, that henceforward all foreigners, Asiatic as well as European, shall, in all matters of inheritance, be dealt with according to the law of England, modified only by the removal of the distinctions between real and personal estate.

37. But though disapproving of the basis of the law as it was drafted by the Law Commissioners, Mr. Prinsep was fully sensible of the disadvantage that arises from uncertainty, and of the necessity of prescribing what the law and practice shall hereafter be, more especially in cases where no special law is alleged and established as that recognized by the family of the deceased. Although, therefore, Mr. Prinsep would not hastily abrogate the recognized and well-understood principle which allows to foreign settlers the privilege of handing down their property to their posterity, according to the law of their nation and sect; he had no objection to allowing to English law such a preference as should leave it to be the law of distribution, whenever another special law was not pleaded and put in evidence.

38. Mr. Amos explained the grounds on which the Law Commissioners had proceeded, and stated, that he understood the general opinion of the Supreme Council to be, that in the cases of East Indians and descendants of Portuguese, in

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Lex Loci.

which much difficulty existed as to determining what was the law of the individual, the proposed Act of the Law Commissioners would be highly beneficial. With regard to Armenians, the difficulty was of another kind; viz., assuming that the law of the individual is that of Armenian customs, what those customs are? As the Armenians appeared to be desirous of being relieved from the uncertainty attending their own customs, Mr. Amos did not collect that (if their wishes were clearly ascertained) there would be any reluctance on the part of the Council to extending the Act to this class of persons.

39. As regards all other European foreigners, Mr. Amos thought there were many reasons for including them, and he did not see that they could complain of being subject to the same law by which they would be bound if they went to England, or to any other English colony, especially after becoming domiciled. This, indeed, was agreeable to the general custom of Europe, especially as regarded the transmission of immovable property.

40. But there were other classes of persons in India, permanently or transiently residing in it, who were neither of European origin nor Armenians, Mahomedans or Hindoos, even in the most extensive application of the two latter appellations. Mr. Amos did not suppose that we should be desirous of interfering with the usages of the Parsees, unless at their own desire; but independently of this class, he doubted whether it would be expedient to make further exceptions. As, however, much difference of opinion existed on the subject, Mr. Amos advised that the consideration of these cases might be postponed, so as not to impede the attainment of great benefits by extensive classes of the community, who in various cases did not know to what law they were subject, and in others, and sometimes in the same cases, were said to be governed by laws, the provisions of which no one could define with accuracy.

41. Mr. Amos was aware that much difficulty beset the question, where Hindoos or Mahomedans became Christian; but he was of opinion that the principle in such cases ought to be, that the parties may become subject to British law, but that this should not prejudice any vested rights in other Hindoos or Mahomedans.

42. Our President looked upon the whole question as one of peculiar difficulty and delicacy; and as it bore on the interests of many classes of persons, he thought it would be dangerous to legislate until opinions were less divided. In conformity, therefore, with his suggestion, we have requested the several subordinate governments to communicate their own opinion, as well as the opinion of the Judges of the Suddur Courts, and of other officers of judgment and experience in the several Presidencies on the Law Commissioners' Report and Draft of Act.

EXTRACT from a Legislative Despatch from the Honourable the Court of Directors, No. 24 of 1843, dated 6th December.

31 and 42, Draft Act declaring the Lex Loci of the Territories subject to the Government of the East Indian Company without the local jurisdiction of the Supreme Courts.

Para. 8. YOU will be careful to report to us the further consideration which this important and difficult subject may have received.

LEGISLATIVE DEPARTMENT.

No. 15 of 1845.

Our Governor-general of India in Council.

Lex Loci.

IN our letter in this department of the 6th December 1843, para. 8, we signified our wish to be informed of your further proceedings on the subject of a *lex loci* for India. We have not received any subsequent communication from you on that subject, but as it has been brought to our notice that the Draft of an Act relative thereto has been published in the Government Gazette of the 29th January last, we think it proper to desire that no law for the purpose of declaring the *lex loci* of India may be passed before being submitted for our deliberation, together with a full explanation of the reasons for the proposed enactment.

HOME

HOME DEPARTMENT.—LEGISLATIVE.

No. 3.
Lex Loci.

No. 19 of 1845.

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WE have the honour to acknowledge the receipt of your despatch in this department, dated the 21st May last, No. 15, desiring, with reference to the Draft Act published on the 29th January last, that no law for declaring the *lex loci* of India be passed without first submitting it for your deliberation, with a full explanation of the reasons for the proposed enactment. Home Dept., Leg. 5 July 1845.

2. We propose to address your Honourable Court more fully on this subject by a subsequent mail. In the mean time we would beg to refer you generally to the Report of the Indian Law Commissions, dated 31st October 1840, forwarded with the despatch from this department, dated the 1st February 1841, No. 2, describing the reasons for the enactment of a *lex loci* for British India.

We have, &c.

(signed) *H. Hardinge.* *G. Pollock.*
T. H. Maddock. *C. H. Cameron.*
F. Millett.

Fort William,
5 July 1845.

(No. 653.)

From Acting Secretary to the Government of Fort St. George to *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, dated Fort St. George, the 5th November 1842. No. 6.

Sir,

REFERRING to your letter of the 8th July last, No. 157, I am directed by the Most honourable the Governor in Council to transmit to you, for the purpose of being submitted to the Honourable the President in Council copies of letters noted below,* containing the opinions of the Judges of the Southern and Centre Provincial Courts, and of the 2d and 3d Judges of the Western Provincial Court, on the Draft Act and Report on the *lex loci* of India, and to intimate at the same time that as soon as the reports of some other officers, for whose consideration the subject was referred, are received, a further communication, conveying the sentiments of Government, will be addressed.

I have, &c.

(signed) *Walter Elliott,*
Ag Secy to Govt.

(No. 109.)

From *G. S. Hooper*, Esq., Second Judge, for Register, to *Walter Elliott*, Esq., Acting Secretary to Government, Judicial Department, Fort St. George, dated 30 August 1842. No. 7.

Sir,

I AM desired by the Judges of the Provincial Court, Southern Division, to acknowledge the receipt of extract from Minutes of Consultation, under date the 16th instant, furnishing that court with copy of a letter from the Officiating Secretary to the Government of India, of 8th ultimo, relative to the substantive law to which persons in the Mofussil, not subject to Hindoo or Mahomedan civil law, should be subjected, together with copy of a Draft Act on the subject, and requiring the Court's opinion on the provisions of the said Act, as well as on the subject discussed in the Report of the "*lex loci*" of India, copy of which was transmitted to them under date the 28th June 1841, and to state, that having given their best attention to the said Act and Report, the Judges do not hesitate to declare their almost entire concurrence in the views of the Law Commissioners throughout.

* From Register, Southern Revenue Court, at Trichinopoly, dated 30th August 1842; from Register of the Provincial Court, Centre Division, dated 12th October 1842; from the Western Provincial Court, dated 14th October 1842.

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Lex Loci.

throughout. The absolute want of a defined *lex loci* seems to them to be well and satisfactorily made out, as do the facts of the Hindoo and Mahomedan laws being from their very nature unfit to be adopted as such, and the law of England, modified as circumstances may dictate, being that which presents itself to notice for adoption with the greatest possible recommendations, and the fewest possible objections. Hindoos and Mahomedans are proposed to be made an exception to this arrangement; but it is justly observed, that leaving their own laws in force as regards persons professing the tenets of those religions respectively, cannot be confounded with the assertion that those laws continued, after the conquest of the country, to bind all Christians and others as long as they abide in the country. As regards the dictum of Lord Mansfield, quoted in the case of Campbell *v.* Hall, in para. 13 of the Report, it seems to the Court that a distinction should be made between persons voluntarily placing themselves under the protection of the laws of an unsubjugated independent state, and a people taking possession of a state by conquest; the latter contingency appearing to authorize the imposition by the conquering party of a *lex loci* of their own, especially if, as in the case of Hindoos and Mahomedans, the very genius of the system of law of the vanquished nation is incompatible with its ready adoption as the *lex loci*; while the former would seem to leave the persons seeking such protection subject to the laws of the country thus voluntarily adopted as the sole *lex loci*. It will be remarked, that in this observation the Court readily adopt the principle laid down in para. 78 of the Report (page 14), and of the dictum of Lord Stowell in para. 104, and the deduction drawn from it in para. 106 (pages 18 and 19), but are not equally ready to subscribe to Sir E. Ryan's deduction, as given in para. 109 (page 19), considering, as above stated, that an alien, voluntarily placing himself under the protection of the laws of an unsubjugated (this must be assumed, and the word "dominions," used in the para., seem to countenance it) state, would acquire a domicile in such state, so as to make his personal estate distributable according to its laws. The Court are disposed to agree, that the negative position of other nations than Hindoos and Mahomedans, noticed in the Report, is all that is necessary to bring them within the operation of the proposed *lex loci*, and will now proceed to notice briefly the Draft Act submitted to them; with reference to two sections of which only have they mainly used the qualifying phrase of "almost," when declaring their general concurrence in the views of the Law Commission. Those two sections are XI. and XII., which (if they rightly understand their drift and end) appear to them to involve just such an interference with the Mahomedan and Hindoo law as the Law Commission set out with repudiating. It is true that by the renunciation of his religion a Hindoo or Mahomedan may bring himself within the operation of the *lex loci* proposed; and on a first view it may seem but just that once within its pale he should be released from all the pains and penalties to which under his own law he would be subject as an apostate; and this, as regards the individual himself, would, perhaps, be equitable enough, if no other interest were involved; but it seems necessary to bear in mind, that in almost all instances in which a seceder from the Hindoo or Mahomedan religions may incur forfeiture, some staunch adherent (or adherents) to the faith he renounces becomes entitled, under those laws respectively, to benefit by his default; and to say that such forfeiture in the case of an apostate shall cease, because he is no longer a Hindoo or Mahomedan, seems to be an interference with the rights of those of the respective sects who under their own laws would benefit by his apostacy, they continuing good and faithful adherents to their own creeds respectively, and under such circumstances not liable to the provisions of this Act.

With this suggestion the Court would respectfully take leave of the subject.

(signed) *G. S. Hooper,*
Second Judge, per Register.

Trichinopoly, Southern Provincial Court,
Register's Office, 30 August 1842.

(A true copy.)

(signed) *Walter Elliott,*
As Secy to Govt.

EXTRACT

No. 3.
Lex Loci.

EXTRACT from the Proceedings of the Provincial Court in the Centre Division, under date 12th October 1842.

No. 8.
Mr. Taylor.
Mr. Luvre.

THE Judges of the Provincial Court in the Centre Division proceed to consider the Draft Act which accompanied the extract from the Minutes of Consultation under date 16th August 1842. Much delay has unavoidably arisen in recording these proceedings, in consequence of the Report on the *lex loci* of India having most unaccountably been mislaid; but the Government having complied with the request of the Judges to furnish another copy, with extract from the Minutes of Consultation under date the 4th instant, no further time has been lost in furnishing the required information.

2. The question so ably and learnedly argued regarding the *lex loci*, would show not only the propriety, but the necessity, of introducing substantive English law throughout all parts of British India, in order to meet such questions of law as do not concern Hindoos or Mahomedans. Any objection which might be advanced on the ground of Lord Mansfield's decision in 1774, is effectually met by the prodigious and unexampled growth of British authority in India since the beginning of the present century; and what might seem strange in the days of Lord Mansfield would now be accounted only just and expedient.

3. The vast possessions of Great Britain in the East, not to mention her colonies in the West Indies and elsewhere, have occasioned a state of things which can only be likened to the Roman empire in its most palmy state; and even this comparison would very inadequately describe the power, the wealth, the population and the resources of these immense adjuncts to the mother country. As the Romans carried their laws with them into the conquered provinces, leaving the people the full exercise of their religion and peculiar customs, so have we respected the prejudices and religions of the Hindoo and the Mahomedan; and in now desiring to give a modified code of our laws to strangers and inhabitants of the country, who are willing to receive them, we in some respects follow the example of Rome, and may hope to obtain equal celebrity with that great and mighty empire.

4. When wealth and power have passed from the former rulers, and a large and opulent class has arisen, differing most essentially from the aborigines of the country, and from those conquerors who afterwards obtained the sovereignty, and superseded by the later and more extensive conquests of the English, it is not to be expected that those who profess the religion, and speak the language of the governing power, should be left unprotected in their rights and properties, or have causes adjudged by laws and customs to which they owe no allegiance, and to which they are unwilling to conform.

5. It has long been felt as a serious grievance, and most extraordinary anomaly, that persons who have no common interest or feeling with the Hindoos or Mahomedans should nevertheless be confounded with them; and so early as 1827, the question was agitated in the Southern Division: that being considered at that time to be somewhat premature, no good resulted from the movement. That greater and more serious difficulties have not arisen in the provinces under the Madras Presidency, may be attributed to there not being so many or such wealthy families of this class as in Bengal, and to the local courts being enabled to decide suits of an ordinary nature, and all disputes not involving question of inheritance or other points of legal intricacy.

6. The Act now under consideration is entitled, from its clearness and simplicity, to the warm approval of every right-judging person. Nothing is so necessary in legislating for a widely spread and uneducated population like that of India than conciseness and plainness. In our present system of judicature we should ever be most cautious to avoid all that is calculated to confuse or embarrass the Judges and people. If the latter be not able most fully to understand the ways and means by which they are to obtain redress, and if they are compelled to seek information and assistance from others better qualified, for instance from authorized pleaders, as has been found to be the case even at present, they will be more or less in the hands of artful and designing men. Forms and niceties of law add greatly to the labours and anxieties of the Judge, and impede the course of justice.

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7. Our great object, and what the people more particularly require, is that substantial and impartial justice should be administered at the least possible expense and trouble to the governors and the governed, by allowing the Zillah Judge to decide upon all questions, with the exception of those respecting marriages, divorce and adoption, unencumbered by the forms and technicalities of English law, as administered in Great Britain. We afford every means and opportunity to the European settler and their descendants of obtaining speedy and effectual redress for their past grievances: such an object is of the highest importance at a time when India has opened its vast, and as yet only partially discovered, resources to British capital and enterprise, and one of the most serious objections and difficulties in the way of improving the agriculture and habits of the natives is thus most happily removed.

8. The provisions of Sec. 21 and 22 of the proposed enactment seem well calculated to relieve a very important and increasing class, the native converts to Christianity and their descendants; it will prove a most acceptable boon to many thousands who have hitherto been considered almost in the light of aliens and outcasts, and will so far attach them to the interests and welfare of the Government as to afford at all times a barrier against the evil machinations and tumultuous outbreaks of the other orders. To secure their rights and properties was demanded by all the principles of justice and honest legislation, but to have conceded this right before it had been pressed, and perhaps forced, upon the Government, as it must have been eventually, is a course of wise policy that cannot be too highly commended.

9. As this is a measure of the highest importance, and one nearly and greatly affecting all European settlers and missionaries, it was considered advisable to obtain unofficially the opinions of A. N. Groves, Esq., who possesses extensive plantations of the mulberry tree and sugar cane, and is engaged in making silk and sugar with a large establishment under his control, and of the Rev. Mr. Bilderluck, who has long and zealously laboured as a missionary among the inhabitants of the Chittoor district, and is intimately acquainted with the means and habits of the people generally, besides having a large body of native Christians under his immediate charge. It was also considered expedient to consult with A. E. Angle, Esq., the Zillah Judge of Chittoor, an old, a valuable and experienced servant of the Government; and it is most gratifying to state that all these gentlemen gave the proposed Act their most unqualified approbation.

10. It is not necessary to give their letters entire; it will be sufficient if a few extracts are taken from them. Mr. Bilderbeeck writes thus: "The disabilities to which natives at this and other places are subject on renouncing heathenism, is a matter that has occupied the attention of all good men; and it will be no small consummation of their efforts to relieve them from such disabilities when 11 and 12 provisions of this Act are carried into effect. Hitherto, indeed, in the case of such converts, the Hindoo and Mahomedan laws were applied to them as if they were the *lex loci*, to which alone they were to bow without a shadow of reference to their altered positions as Christians, or any deference to the new and important relation in which they now stand to Britain, her Sovereign, her Church, and her institutions. Thus Christianity, which in its very character is designed, under God's blessing, to make better citizens and subjects of mankind, is made to introduce a strange anomaly into this country, and that, too, a country under British rule, by making them, on a profession of its faith, but half citizens and subjects, by the cruel disabilities to which they are made subject, and the forfeiture of inheritance and property to which they are exposed, according to the enslaving and degrading requirements of either Hindoo or Mahomedan law. As if the reproach these converts have then naturally to endure from their heathen neighbours on a renunciation of caste were not enough, they must needs even be stripped of their natural rights of property and possession, and turned out of all their privileges of citizenship to wander about in the wide world as vagrants and the offscouring of society. Why, persecuting and pagan Rome would blush at such deeds; for we have imperishable proofs of her desiring to maintain even-handed justice even in the worst of times towards the Christians; nor do we find anything in the Roman law which deprived any one of his native privileges merely because such had changed his creed, provided that as citizens they reverenced the emperors. And Adrain, who succeeded Trajan, so early as A. D. 117, expressly forbade

forbade that any Christian should be persecuted or disturbed in their lawful enjoyments without cause; he was willing to punish Christians equally with other men if they violated the laws of the state, not otherwise."

11. Mr. Groves says, "The principle laid down of establishing the utmost extent of uniformity in the administration and character of all substantive law that is consistent with equity, is a point most earnestly to be pursued, both for the sake of those who are subjected and those who administer the laws, as giving a definite simplicity to legislation, the want of which now is so deeply felt in this country from the unexampled transition from an endless variety of small principalities with peculiar laws to the rule of one immense empire. Relative to the matters contained in Section 12, limited as they are by 10 and 11, is, I think, as much as legislation ought to attempt at first. Of course the terms of these three sections are extremely general, but this is all perhaps that could be ventured on till practice leads by precedents of adjudged cases to establish specific judgments on particular points. I would, however, suggest that the questions of the marriage of Christian natives should be considered, both as to what was essential to constitute this important relation legal, and, secondly, to define clearly in what way alone and for what causes it could be dissolved, as a most exceedingly loose practice of disruption of this sacred bond is growing into use among native Christians from the want of some definite and intelligibly expressed law of divorce. It was only a few weeks since that a very respectable young man came to me, with the recommendation of the missionary with whom he had been labouring, to obtain a wife from among the native Christians of the place; he said he had been married before, but that his wife had behaved very ill and left him. On his being asked how he considered himself free to marry, he said he had received a paper of divorce from the head of the police at Madras, who was a heathen man. I, of course, felt unable to accede in any measure to his wishes, or those of the missionary friend who had recommended him."

12. On the same subject Mr. Angels writes: "The only comment I would offer just now respects the expediency of removing the obstacles to justifiable divorce as concerns all, except Mahomedans and Hindoos, within our Indian possessions, as an exception to the application of the substantive law of England; it should be established as their right to obtain a divorce from the Sudder Adawlut in the cases of complaints from the Mofussil, and from the Residency Courts, and those within their limits, in filing copy of a sentence involving convictions of adultery. I have been assured by that highly gifted pastor, Mr. Hands,* that much embarrassment was experienced on this head in instances of converts; and Mr. Moraul† applied to me recently on the subject."

13. These opinions are very valuable in themselves, and show an earnest wish among all enlightened persons to promote useful and beneficial measures for the amelioration of the condition of the native inhabitants, and of those who have come to take up a permanent residence in India. The question moved by Mr. Groves and Mr. Angels requires immediate and earnest attention; and the mode of proceeding by obtaining a conviction for adultery in a local court, and then applying for divorce to the Sudder Adawlut, as suggested by Mr. Angels, would be very advantageous, and, if extended to Europeans by a specific Act of Parliament, save a vast deal of anxiety, delay and expense, which the present process occasions. This may, however, be advancing too rapidly; and we must be well content, and ought to be very thankful, for the improvement in legislation promised in this Act. Some more specific instructions would appear to be necessary in regard to the rules and laws specially applicable to inheritance of real and moveable property of Europeans, their descendants, or native Christians; but these may possibly be formed after the Act has come into full operation; and when a number of decisions may be collected so as to form a table of precedents, as pointed out in Mr. Groves's communication, each Zillah Court should be directed to form a simple and clear record of their several decisions, with an index, and the Sudder Adawlut should, from the whole mass of decisions, select such as would form a rule of guidance and instruction to all future Judges.

Ordered,

* A missionary, who has long and indefatigably been labouring among the heathen.
† A clergyman of the Established Church, and lately chaplain at Arcot.

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Ordered, That an extract from these proceedings be sent to the Acting Secretary to Government, to be laid before the Most Honourable the Governor in Council.

(True extract.)
(signed) *W. B. Hawkins*,
Register.

(A true copy.)
(signed) *Walter Elliott*,
Acting Secy to Govt.

No. 9.

OPINION of the Second and Third Judges of the Western Provincial Court on the Provisions of the Draft Act, received with the Extract from the Minutes of Consultation, under date the 16th August 1842.

IN obedience to the resolution of Government, contained in the extract from the Minutes of Consultation under date the 16th August, directing that the Judges of the Sudder Adawlut, the Board of Revenue, and the Provincial Courts do submit their opinion on the subject of the Report of the members of the Law Commission on the *lex loci* of India, as well as in the Act drafted upon the principle of the four first recommendations of that Report, the undersigned, the First Judge being absent on circuit, have the honour of stating that they have given their best consideration to the Report, and entirely concur in the opinion recorded that neither the Hindoo nor Mahomedan Law can be considered to be the *lex loci* of any part of British India, and that as the principles upon which the laws and systems of those nations are founded are so utterly unsuited to strangers, and as up to the present period all persons not subject to Hindoo or Mahomedan law have had no defined or acknowledged law upon which their claims have to be decided, that an enactment which specially provides for the case of such individuals is necessarily called for.

The nine first sections of the Act now drawn up, appear to meet the object for which they are required; for while the conditions of Section 2 prevent the peculiar laws relative to marriage, divorce or adoption of any person professing in good faith any religion other than the Christian religion, being interfered with, they expressly provide for the claims of such persons being adjudicated upon according to the substantive law of England.

By the 10th and two following sections it is proposed to afford a remedy for the grievances of those who renounce the Hindoo and Mahomedan religion, and as it appears to be the express wish of Government that such an enactment should be framed, and to have been in force in Bengal since the year 1832, the undersigned are not prepared to bring forward any objection to uniformity in this point throughout the territories of the East India Company.

(signed) *G. Bird*, 2d Judge.
H. Morriss, 3d Judge.

Tellicherry, 14 October 1842.

To the Secretary to Government in the Judicial Department, Fort St. George.

(A true copy.)
(signed) *Walter Elliott*,
Acts Secy to Govt.

(No. 1586.)

From the Secretary to the Government of Bengal to *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, Home Department, dated Fort William, 23d October 1843.

Sir,

IN compliance with the requisition conveyed by Mr. Halliday's Letter, No 57, dated the 8th July 1842, I am directed by the Honourable the Deputy Governor of Bengal to transmit, for the information of the Supreme Government, the accompanying

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panying copies of letters, as below*, containing the opinions of the Sudder Court, the Sudder Board and Superintendent of Police, L. P., on the Draft Act and Report of the Law Commissioner for fixing the "*lex loci*" of all places in the Company's territories without the jurisdiction of Her Majesty's Courts.

2. The authorities above referred to, do not appear to entertain any objection to the measure. The Deputy Governor is of opinion that the exception in Sec. X. should be so worded as to include not merely Hindoo and Mahomedans, the first of which terms is of very indefinite meaning, but all Asiatic sects who, like Hindoos and Mahomedans, have a religious law of their own, *i. e.* a law which is part of their religion. As the draft is now worded, Boodhists, Jaines and Seikhs, called heterodox Hindoos in the note to the section, besides impure Hindoo or quasi Hindoo castes, and other sects and tribes, some of whom in right perhaps come under the denomination of heterodox Mahomedans, and even others, neither related to Hindoos nor Mahomedans (such for instance as the Jews), would be subjected to modified English law as the "lex loci;" a result which, if they possess a religious law of their own, capable of being ascertained and administered, would probably be extremely distasteful to them, and indeed manifestly unjust and inexpedient, and therefore to be avoided if possible.

3. The 8th Section of the Draft Act relates to a description of court not yet established, and will therefore probably be omitted, especially as it does not appear necessary to the working of the Act. If his Honour desires me to say the Supreme and Sudder Courts could, as is much to be desired, be amalgamated as one Supreme Court of Appeal for the whole or a part of the Presidency, the Colleges of Justice alluded to in the Section in question would scarcely be wanted, and the effect, his Honour is satisfied, would be a general improvement in the administration of justice.

I have, &c.

(signed) *F. J. Halliday,*
Secy to the Govt of Bl.

(No. 329.)

From the Secretary to the Sudder Board of Revenue to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, Revenue Department.

Sir, Fort William, 27 August 1842.

I AM directed by the Sudder Board of Revenue to acknowledge the receipt of your letter of the 12th instant, No. 1838, together with copy of a Draft Act, defining the law to which persons in the Mofussil, not being Hindoos or Mahomedans, should be amenable, and in reply to state, for the information of the Honourable the Deputy Governor, that the provisions of the proposed Act appear to the Board to be unexceptionable.

No. 11.
Mis. Dept.
Present:
T. R. Davidson and
J. Lowes, Esqrs.

I have, &c.

(signed) *E. Currie,*
Secretary.

Sudder Board of Revenue, 27 August 1842.

(No. 3308.)

From the Register of the Dewanny Adawlut to *F. J. Halliday*, Esq., Secretary to the Government of Bengal in the Judicial Department.

Sir, Fort William, 9 September 1842.

I AM directed to acknowledge the receipt of your letter, No. 1037, dated 1st ultimo, together with the Draft Act and Report of the Law Commissioner which accompanied it.

Sud. Dy. Adt.
Present:
R. H. Rattray,
C. Tucker,
E. L. Warner and
J. F. M. Reid,
Esqrs., Judges.

2. In

* From Secretary, Sudder Board of Revenue, No. 329, dated 27th August 1842; from Registrar, Sudder Court, No. 3308, dated 9th September 1842; from Superintendent of Police, L. P., No. 1899, dated 1st September 1843.

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2. In reply, I am desired to communicate the opinion of the Court, that a law of the kind, fixing the *lex loci* of India, is urgently required, and that, in a theoretical point of view, the Act proposed is well adapted to the object in view. The Court, however, would wish to see the Act providing for its practical operation before they give any decisive opinion as to its adoption.

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

(No. 1899.)
From the Superintendent of Police, Lower Presidencies, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal.

Sir, Ballygunge, 1 September 1843.

In reply to Mr. Under Secretary Turnbull's letter, No. 1204, of the 28th ultimo, calling my immediate attention to Mr. Deputy Secretary Torren's letters, No. 628 and 793, of the 1st August and 3d October 1842, regarding the Draft Act and Report of the Law Commission for fixing the "*lex loci*" of all places in the Company's territories without the jurisdiction of Her Majesty's Courts, I have the honour to acquaint you, that concerning the very important questions contained in the papers referred to me to be exclusively confined to civil rights, and not to the introduction of any law affecting the criminal or police jurisdictions, I did not consider myself competent, either from my previous employments or experience, to enter into an inquiry regarding the benefits to be derived from, or the facilities of introducing, the measures proposed, and therefore did not reply to the call made to me.

2. Even now I feel great deference in offering an opinion on matters of such importance, unconnected with my former or present pursuits; but after considering attentively the proposed law and the Report of the Law Commissioner, I think that there will not be much practical difficulty in introducing the measure, or making it work well after some little time; and that it will afford great satisfaction to those classes for whose benefit it is to be enacted, admits, I think, of no doubt.

I have, &c.
(signed) *W. Dampier*,
Supdt of Police, L. P.

(True copies.)
(signed) *A. Turnbull*,
Under Secy Govt of Bl.

(No. 23 of 1840.)
No. 12. From the Secretary to the Government of Bombay to *F. J. Halliday*, Esq., Officiating Secretary to Government of India in the Legislative Department, dated Bombay Castle, 7th August 1843.

Sir,

Jud. Dept. With reference to your letters, dated the 8th of July and 16th of September last, No. 158 and 232, I am directed by the Honourable the Governor in Council to forward a copy of the documents noted below,* containing the sentiments of this Government, of the Judges of the Sudder Adawlut, and of the local authorities, in regard to the Report of the Law Commissioners on the substantive law to which all persons in the Mofussil not subject to Hindoo or Mahomedan law should be subject.

I have, &c.
(signed) *J. P. Willoughby*,
Secy to Govt.

(No.

* Letter from the Register of the Sudder Adawlut, dated 7th March, with Encl., Minutes by the Honourable Mr. Anderson, dated 23d March 1843.

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No. 13.

Jud. Dept.
Present:
G. Giberne and
J. Pyne, Esqrs.

(No. 475 of 1843.)

From the Register of the Sudder Dewanny Adawlut to the Secretary to the Government of Bombay, dated the 7th March 1843.

Sir,

In reply to your letter, No. 1866, of the 24th August last, with accompaniments, I have the honour, by direction of the Judges of the Sudder Adawlut, to forward, for the information of the Honourable the Governor in Council, the substance of the opinions entertained by some of the authorities in the Mofussil, to whom reference, as requested in your letter, has been made in regard to the Report of the Law Commissioners on the substantive law to which all persons in the Mofussil, not subject to Hindoo or Mahomedan law, should be subject, and also in reference to the draft of the proposed Act framed upon the principles advocated in the Report.

2. With the above opinions, I am instructed to submit copies of the minutes of the members of this court upon the subject above referred to.

3. Mr. J. Warden, the Judge of Poonah, agrees fully with the Commissioners as to what is the "*lex loci* of India," but anticipates a serious evil in the objection pointed to in the Report, viz. "the difficulty which the Mofussil Courts, from unavoidable defects of technical knowledge, will find in shaping their equity according to that law, in which they are inexperienced." To this obstacle Mr. Warden adds another, though it is one which talented energy will overcome, the unacquaintance, for the most part, of Her Majesty's Judges with the vernacular languages of India;" with a view of counteracting the former evil, he suggests that the new Act should be accompanied with a supply of statutes and books on the substantive law of England, and that young men entering the Judicial branch of the service should be called upon to satisfy the Government that they have studied the laws which it will be their duty to administer, by undergoing an examination. Mr. Warden, in conclusion, remarks that the enactment may require a provision for cases in which one party in a cause may be a Hindoo or Mahomedan, and the other a person entitled to the law of England.

4. Mr. Andrews, the Judge of Ahmedabad, considers the Act well suited for the purpose for which it is intended; but since the due administration of the new law by the Mofussil Courts will, in his opinion, be attended with the greatest difficulty, he thinks that a provision should be made for the appointment of an English lawyer to declare, when reference may be necessary, what the substantive law of England lays down in particular cases.

5. Mr. Brown, Judge of the Konkan, is of opinion also, that the advice and assistance of an English lawyer will be necessary, since otherwise parties appealing to the new law would virtually be denied the hope of obtaining justice, excepting from the last court of appeal, to which the poverty of some might prevent their carrying their cases.

6. He suggests that in a court, such as the College of Justice, composed of Judges of both Her Majesty's and the Sudder Court, much harmony would not prevail, by reason of the difference in the rules and forms observed by each, and the novelty which would be experienced by Judges newly appointed from England, in the procedure adopted and language used in this country.

7. He further adds, that in his opinion it would still be sufficient, in the few cases which are likely to arise in this Presidency under the new Act, to obtain the opinion of the Advocate-general, without having recourse to the institution of a College of Justice.

8. Mr. Richardson, Judge of Surat, considers that the proposed Act would be of general benefit, but that if under it suits will sometimes involve points, which, as suggested in the Honourable Mr. A. Amos's Minute, only an English lawyer can decide, it will be impossible for the Zillah Judges to administer the English substantive law.

9. Mr. Pringle, magistrate of Candeish, after premising that the nature of his duties, and the circumstances of the parts of the country with which he has been connected, have not been such as to afford an extensive opportunity of testing the probable practical operation of the Act, remarks that, on abstract and general

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grounds, the expediency of introducing a law, and that the substantive law of England, appears to him to have been very satisfactorily established by the arguments adduced in the Report of the Commissioners.

10. Mr. Townsend, magistrate of Belgaum, concurs in thinking that the difficulties now existing, as stated in the Draft Act and the Report, and arising from the absence of a well-defined substantive law of the place, are real; but suggests that they have not been hitherto much felt at places so distant from the Presidency as Belgaum; still he considers that they require remedy. He also remarks, I was prepared to start a question as to the operation of the new law upon "Jains" and "Lingayuts;" but in the 3d note to the Act, I observe that "Jains and Buddhists are considered as *heterodox* Hindoos" (by the *Bramins*, I presume), and this clause would appear to provide for the case of Lingayuts.

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

Bombay, Sudder Dewanny Adawlut,
7 March 1842.

MINUTE by *A. Bell*, Esq., Puisne Judge, dated 25 January 1843.

THE information called for from the Mofussil, on the Report of the Indian Law Commissioners on the substantive law, to which persons, not Hindoos or Mahomedans, should be subject, having been received, our opinion is alone required before submitting it to Government.

My opinion is, that the law of the nature contemplated is much required, though at the same time I am fain to admit that I anticipate some difficulty in carrying it out in the forms proposed, although most probably less difficulty arises here than at the other Presidencies, particularly Bengal.

On doubtful points, referring exclusively to English law, the opinion of the Government legal advisers may be obtained as heretofore, or, if it should be found to enhance his duties, that of the Remembrancer, an appointment lately created. The most serious objection, however, which strikes me, is the want of a provision for cases in which Hindoos and Mahomedans are brought into litigation with a person subject to the law of England; our code provides for this by declaring that the law to be observed in the absence of Acts and Regulations is to be that of the defendant. I will just instance two or three cases which have come within my observation:—

1. The case of a silk-manufacturer at Surat, who was baptized, but whose body was seized at his death by Brahmins and some members of his family, and carried away in opposition to the efforts of those whose faith he had become a convert to, and was burned by his caste; the man himself having expressed a strong desire to be buried as a Christian.

2. A Brahmin at Ahmednuggur was baptized; he had then one child four or five years old. His wife in a clandestine manner carried away this child. She afterwards had another child, born after the father had become a Christian. The mother refuses to give up either of the children, although the father is very anxious to bring them up in the Christian religion. He has been dissuaded from filing any suit for the recovery of his children, as he would not be likely to recover them, but they would be treated as though their father was dead, he being considered dead by the Hindoo law.

3. A young Brahmin female is betrothed to a young man who has been baptized, and has therefore lost caste. She will not follow her husband at present, but is considered a widow, and must so remain for life; she is about 15 years of age. What course should be pursued, should she persist in refusing to join her husband, to relieve her from the effects of the Brahminical regulation, which sentences her to perpetual widowhood?

Section 10 of the Draft Act provides, that no Hindoo or Mahomedan shall by renouncing his religion lose any rights on property, or deprive any other person of any rights in property.

How

How would this affect the relations of a convert who, as the eldest son, inherits family property?

These are the only observations I have to offer on the Draft Act submitted for our opinion.

(signed) *A. Bell.*

MINUTE by *G. Giberne*, Esq., Puisne Judge, dated 27 January 1843.

THE Draft Act permits so great a latitude in the application of the substantive law of England, that I should not anticipate any considerable difficulties in practice; a few of the latter, however, would, I think, arise, and those I shall point out. With regard to the great latitude allowed, I would instance Sec. 1 of the Act, which allows only "so much of the substantive law of England as is applicable to the situation of the people of the said territories." There is a wide field for the judgment and discretion of the Judge, so extended, indeed, that this law might become for many years a dead letter.

Again, in Sec. III. "Any case may be decided according to any good and lawful local customs;" here we have a law governed and controlled by a good and lawful custom; this, I conceive, is in direct opposition to the principle and just application of a law; for it appears to me that no custom or usage should run counter to or govern a law; and what a vast field is open to the judgment and discretion of the Judges in deciding what is "a good and lawful custom;" and what is not! The Judges preside here in a country wherein custom and usage are referred to as the controlling power of every act and transaction; the law, therefore, becomes a dead letter, and all that the Judges will have to decide is, whether the custom is "good" or "lawful," and which will be a difficult point, and occasion a great variety of decisions.

The Parsees and native Christians, &c. have adopted customs in the absence of any law immediately applicable to them, and it has been usual to obtain information regarding their customs from the Punchayet of the caste of the former, and from the priests of the persuasion of the latter. I do not think that either will be satisfied with the innovation of introducing the substantive law of England in supercession of the customs they have hitherto followed; and from what I have gathered of the sentiments of the Parsees in regard to this subject, it appears to me that they are far more desirous of having a law peculiar to themselves, particularly in regard to the inheritance of property, and which I understand was agitated some years ago, and submitted to the Judges of the Supreme Court of Judicature.

The substantive law of England will doubtless be preferred by all European British subjects. They are, however, amenable to the courts of the native Judges, who have no knowledge of that law, and at present no means of obtaining it. The European Judges could, and doubtless would, acquire some knowledge on the subject, and could refer to published works and authorities; but to ensure a proper application of the law, the same procedure should be directed in suits of this description, as is now followed in those in which points of law arise in respect to Hindoos and Mahomedans; viz. that a law officer should be appointed, to whom all questions regarding the substantive law of England might be referred, in the same manner as questions in points of law are now referred to the Hindoo and Mahomedan law officers respectively.

The detailed procedure for appeals, as provided for in Section 8, to the College of Justice, is not sufficiently defined to enable me to form an opinion; but if it is intended that they shall be carried on according to the costly mode adopted in the Supreme Courts, it will either be most severely felt by the many poor of the districts, or be a heavy charge to Government, or amount to a denial of justice altogether.

I am of opinion that the instances adduced by Mr. Bell would come under the provisions of Sections 10, 11 and 12.

In the first instance, the deceased would be entitled to the rights of his persuasion, Christian burial.

In the second instance, the father by renouncing his faith does not lose his rights, and could, therefore, recover his children.

So likewise could the husband, in the third instance, recover his wife.

The new law, however, would be in opposition to the Hindoo and Mahomedan laws, in regard to the sale of property by the Hindoo or Mahomedan heirs to a

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deceased debtor, if made to a person, an European for instance, or other person under the substantive law of England. By the Hindoo and Mahomedan laws the heir cannot sell the property of the deceased debtor until the debts are paid, and if sold, the property is recoverable by the creditor; but if an European or other person under the substantive law of England purchased the property, he would be entitled to keep it by the law under which he was living.

(signed) *G. Giberne.*

MINUTE by *J. Pyne*, Esq., Puisne Judge.

THE facts and arguments adduced in favour of a *lex loci* adapted to the condition of the increasing classes of India, who are not governed by the Hindoo or Mahomedan law, are apparently so conclusive as to preclude the exercise of discussion.

That the English law under certain modifications is fitly adapted to the purpose in view, can be competently judged of by those only who from education are versed in its principles and qualities. In deference to the comprehensive talent which has produced so learned a dissertation on the law of nations, inclusive of English law, it will not be unbecoming to lay aside impressions derived from our limited acquirements in the jurisprudence of England, and unreservedly receive the opinion expressed in the following extract: "We firmly believe that English law, taken together with the supplemental and corrective of English equity, constitutes a body of substantive law which is not surpassed in the qualities for which substantive law is admired by any of the various systems under which men have lived."

The proposed relaxation of the substantive law through the provisions contained in Sections 3 and 5 of the Draft Act, and the exemptions enacted in Section 2, appear to me of great value, and calculated eminently to accommodate it to the circumstances of the country, especially in cases wherein the tenures of land, which are governed by a variety of usages irrespective of law, form the subject of inquiry, and in a special manner to reconcile those to the change who would ill have brooked the casting aside and repudiating usages and customs which their ancestors and selves highly cherished and prized.

That cases of difficulty may arise in the administration of conflicting laws is to be expected, but not greater, perhaps, than has hitherto obtained, the removal of which, however, I am of opinion, will be much facilitated through the latitude allowed by the sections I have considered.

The only serious obstacle that occurs to me to the introduction of the substantive law is anticipated by the Commissioners, when they observe, "There will remain too, perhaps, what is incapable of complete correction, the inexperience of the Mofussil Judges in English law." The suggestion contained in the minute of the Honourable Mr. Amos seems adequate to the exigency. That some such expedient must be resorted to is clear, as a case may proceed through the original hearing, and one stage of appeal, without the Judges or the parties being acquainted with the law that may be ultimately applied in the appeal of last resort; and should the embarrassing event ever occur that English lawyers obtain admission to the court, it might present the spectacle of a pleader dictating the law to the bench, and by force of adventitious knowledge compel an assent to that which may be unsound, and, for what the Judge knows, abrogated law.

(signed) *J. Pyne.*

(True copies.)

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

(True copies.)

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

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MINUTE by the Honourable Mr. *Anderson*, dated the 23d.

No. 14.

THE Draft Act appears to me to introduce the English law to be the substantive law of the place to those who have no law, but may have customs, with every due caution.

In their Report the Commissioners state that, in their future proceedings, in regard to substantive law, they will be confined to the preparation of these codes, founded upon the three laws, Hindoo, Mahomedan and English.

The code of English law thus prepared as one of these codes, devoid of technicalities, made applicable to the circumstances of the people, and reduced into one body of law, will doubtless remove all those difficulties that might be anticipated, as well to those administering the law, as to those to whom it might be administered, from a general introduction of English law, as it is administered in the Courts of Westminster Hall, and taking date from the time of William the Conqueror.

On the side of India, of the classes who have not a written law, the Parsees, if not the most numerous, are the most wealthy and the most influential. They have for some time desired to have a written law framed for this sect.

I do not think it is the English law they exactly want; for instance, in respect to their widows and daughters, in regard to their share in inheritance when a man dies intestate.

The prepared code of English law may, however, better satisfy them, and doubtless the Commissioners will give due consideration to any exceptions they may desire to have made in favour of these sects, if such exceptions appear to be reasonably required, and not be inconsistent with the leading principles of justice that pervade the English substantive law.

(signed) *G. Anderson.*

(True copy.)
(signed) *P. Willoughby,*
Secretary to Government.

(No. 2846 of 1843.)

No. 15.

From *R. N. C. Hamilton*, Esq., Secretary to Government of N. W. Ps., Agra, to *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, Home Department, Legislative.

Sir,

Jud. Dept.

WITH reference to Mr. Officiating Secretary Halliday's despatch, No. 159, of the 8th July last, I am directed by the Right honourable the Governor-general to forward to you, for submission to the Honourable the President in Council, transcripts of letters from the gentlemen whose names appear below*, containing an exposition of their sentiments and opinion on the substantive law, to which persons in the Mofussil, not subject to Hindoo or Mahomedan law, should be subject, and to state that the Governor-general has no objection to the passing of the proposed law.

I have, &c.
(signed) *R. N. C. Hamilton,*
Secretary to the Government, N. W. Ps.

Agra, 5 June 1843.

(No. 1, in No. 2846 of 1843.)

No. 16.

(No. 1871.)

From *M. Smith*, Esq., Registrar to the Court of Sudder Dewanny Adawlut, Allahabad, to *R. N. C. Hamilton*, Esq., Secretary to the Honourable the Lieut.-governor in Judicial Department, N. W. Ps., Agra.

S. D. A. N. W. P.
Present:
B. Tayler,
G. P. Thompson
and F. Currie,
Esqrs., Judges.

Sir,

I AM directed to acknowledge your letter, No. 1564, of 18th ultimo, sending a Draft Act prepared by the Law Commission, in reference to part of their printed Report, dated 31st October 1840, on the substantive law, to which persons in the Mofussil,

* Register, Sudder Dewanny Adawlut, of 23d September 1842; Mr. J. Thomson, of 12th September 1842; Mr. W. J. Conolly, of 24th September 1842; Major W. H. Sleeman, of 8th October 1842; Lieut.-colonel J. Sutherland, of 14th October 1842; Mr. A. W. Begbie, of 27th April 1843; Mr. J. Davidson, of 13th April 1843; Mr. D. W. Morrieson, of 26th April 1843.

No. 3.
Lex Loci.

Mofussil, not subject to Hindoo or Mahomedan civil law, should be subject for the opinion of the Court, who desire me to say, in reply, that it occurs to them to offer no peculiar observations on the draft of law proposed by the Commission, which is in their estimation excellently adapted to the objects it is intended to promote.

I have, &c.

(signed) *M. Smith*, Esq., Registrar.

Allahabad, 23 September 1842.

(True copy.)

(signed) *R. N. C. Hamilton*,
Secretary to Government, N. W. Ps.

(No. 2, in No. 2846 of 1843.)

No. 17. To *R. N. C. Hamilton*, Esq., Secretary to the Government of N. W. Ps.

Sir,

In reply to your letter of the 18th, I have the honour to state, that I have examined the Draft Act forwarded therewith, and I am of opinion that it is in every way well calculated to meet the object for which it is designed.

I have, &c.

(signed) *J. Thomson.*

Allahabad, 12 September 1842.

(True copy.)

(signed) *R. N. C. Hamilton*,
Secretary to the Government, N. W. Ps.

(No. 3, in No. 2846 of 1843.)

(No. 58 of 1842.)

No. 18. From *W. J. Conolly*, Esq., Commissioner of Rahilcund, to *R. N. C. Hamilton*, Esq., Secretary to the Government, N. W. Ps., Judicial Department, Simla, 24th September 1842.

Sir,

I have the honour to acknowledge the receipt of your letter, No. 1564, of the 18th ultimo, calling upon me for my opinion on the proposed Act for making the substantive law of England as defined and limited in the said Act, the law of the place in Mofussil Courts, as it is already in Her Majesty's Supreme Courts at the Presidencies in all cases wherein the parties are not Mahomedans or Hindoos.

2. It is explained in Note E., that "the effect of this Act will not be to introduce any new system into the Mofussil Courts, but merely to extend to all persons who are not Hindoos or Mahomedans that system which is already administered to British subjects."

3. I consider the introduction of the proposed Act to be desirable in all respects, and after giving the subject my best consideration, I am unable to think of any further limitations or special provisions that are required in carrying it into effect.

I have, &c.

Commissioner's Office, Rohilcund, Dr., Bareilly, 24 September 1842.

(signed) *W. J. Conolly*,
Commissioner.

(True copy.)

(signed) *R. N. C. Hamilton*,
Secretary to Government, N. W. Ps.

(No.

No. 3.
Lex Loci.

(No. 4, in No. 2846 of 1843.)

(No. — of 1842.)

From Major *W. H. Sleeman*, Officiating Agent to Lieut.-governor N. W. Ps., to *R. N. C. Hamilton*, Esq., Secretary to Lieut.-governor N. W. Ps., Agra. No. 19.

Sir,

I HAVE the honour to state, in reply to your letter of the 18th of August last, giving cover to Mr. Halliday's letter to your address of the 8th of July, with a printed copy of a Draft Act, that the measure of abrogating the law of the Koran and the Shasters in regard to inheritance, appears to me a very injudicious one; very few can ever stand in need of such a law, while it may be made a continual and formidable source of disaffection by the fanatics, who are always at work somewhere or other to excite among the people feelings of discontent against their rulers.

A Mahomedan convert is, I believe, a thing of very rare occurrence, and of such converts not one in a hundred would require the aid of this law; a Hindoo convert to Christianity, in its reformed state, that is to Protestantism, will be of rare occurrence, and of those converted not one in a hundred will have any inheritance to lose by it. The educated members of wealthy Hindoo families, who forsake Hindooism, become not Christians, but deists; as such, they would of course have the benefit of this law equally with converts to Christianity, and they are almost the only people who stand in need of it. But for their sake alone I do not think that Government should venture upon so hazardous a measure.

I would, therefore, in Clause the 2d, introduce the word *inheritance* in addition to marriage, divorce and adoption, and I would leave out altogether Clauses 11th and 12th. We may do what we please with criminal or adjective law, but I do not think we can safely insist upon this important alteration in the rights secured by the civil or substantive law, the right of excluding from a share in the inheritance any member of a family who casts off its religion. I suppose that this right is now secured by the Koran and the Shasters; if not, the enactment now proposed cannot be wanted; if it is, it ought not to be passed.

I am, &c.

(signed) *W. H. Sleeman*,
Offg Agent to Lieut.-governor, N. W. Ps.

Jhansi, General Superintendent's Office,
8 October 1842.

(True copy.)

(signed) *R. N. C. Hamilton*,
Secy to the Govt., N. W. Ps.

(No. 5, in No. 2846 of 1843.)

(No. 22.) No. 20.

From Lieut.-colonel *J. Sutherland*, Commissioner of Ajmere, to *R. N. C. Hamilton*, Esq., Secretary to Government N. W. Ps., Agra.

Sir,

I HAVE had the honour to receive your letter, No. 1564, dated the 18th of August, with enclosures; a copy of Mr. Secretary Halliday's letter to your address, dated the 8th of July, and its enclosures; the Draft Act on the subject of the substantive law, to which all persons in the Mofussil, not subject to Hindoo or Mahomedan law, should be liable; and requiring the expression of my opinion in this matter.

2. I understand the question to have arisen out of the difficulty which exists in administering civil law in situations beyond the jurisdiction of Her Majesty's Supreme Courts, where the parties are neither Hindoo nor Mahomedan; and the object is to declare a substantive law, which shall there assimilate the law and practice with the English substantive law, or the law of the place, as is in force within the local jurisdiction of Her Majesty's Supreme Courts.

3. It is apparently necessary, in legislating for the Indian community in their civil affairs, to divide that community into three great classes; 1st, Hindoo; 2d, Mahomedan; and 3d, persons who belong to neither of these two classes.

No. 3.
Lex Loci.

4. Within the jurisdiction of the Supreme Court, the 3d class would, as I understand, whether plaintiff or defendant, have the same advantages with British born subjects, and have equal and the same laws administered to them, whether India born, Armenians or any other designation of Christians. But beyond that jurisdiction there is uncertainty as to the law, and an endeavour to administer in each separate case the law of the country of the defendant, in a suit, or the law of the country of his ancestors.

5. Since, therefore, the object of all legislation should be to administer equal and the same laws to all classes of our Christian subjects living under the protection of those laws, and since this Act has for its object the administration of the law of equity and good conscience to all alike, following law, but not embarrassed by Courts of English law which have no existence in the Mofussil, I am of course of opinion, that the proposed Act cannot fail to be generally beneficial to all classes of our Indian Christian subjects.

6. The 10th, 11th and 12th Sections of the Act are doubtless necessary in legislating for Christians, as relieving Hindoos and Mahomedans from forfeiture of rights and property, on renouncing their own religion and becoming Christians.

7. But I do not see the utility of introducing the 2d Section into the Act regarding marriage, divorce and adoption amongst other religious sects, although it appears to be supposed that these three exceptions being made, the Parsees will be ready to sacrifice all things peculiar to their sects for the sake of being brought, through this Act, under the same system of equity in the Mofussil as in the Presidencies; and I am of opinion that our acquaintance with the peculiar laws and privileges of various other sects, not orthodox Hindoos or Mahomedans, is yet far too limited to render it safe to legislate for them, as for our Christian subjects, or that, at all events, such legislation should not be attempted in this limited form.

I am, &c.

Commissioners' Office, Ajmere, 14 October 1842.

(signed) *J. Sutherland*, Comm^{r}.

(A true copy.)
(signed) *R. N. C. Hamilton*,
Sec^{y} to Gov^{t}. N. W. P^{s}.

(No. 6, in No. 2846 of 1843.)
(No. 103.)

No. 21. From *A. W. Begbie*, Esq., Judge of Meerut, to *R. N. C. Hamilton*, Esq., Secretary to Government N. W. P., Agra, dated 27th April 1843.

Sir,

I HAVE the honour to acknowledge the receipt of your letters, Nos. 1564 and 1804, of 1843, under date 18th August last, and 10th instant, calling on me for an opinion regarding the Draft Act affecting persons in the Mofussil not subject to Hindoo or Mahomedan civil laws.

2. I have perused the Draft attentively, and can perceive in its propositions nothing objectionable, or likely to operate injuriously on the rights of those classes on whose behalf it has been drawn up.

3. Section V. appears to be but an extension of the principle in our Mofussil law already recognized in Section 17, Regulation 2, of 1803, and most extensively acted upon.

4. Officers in the Judicial branch of the Company's service, not having had the advantage of a regular legal education, are ill qualified to discuss intricate points of civil law; under this impression, I submit the opinion called for with much diffidence.

I have, &c.

Zillah Meerut, Judges' Office, 27 April 1843.

(signed) *A. W. Begbie*, Judge.

(True copy.)
(signed) *R. N. C. Hamilton*,
Sec^{y} to the Gov^{t}, N. W. P.

(No.

(No. 7, in No. 2846 of 1843.)

(No. 15.)

From *J. Davidson*, Esquire, Commissioner of the Agra Division, to *R. N. C. Hamilton*, Esquire, Secretary to Government, N. W. Provinces, Judicial Department, dated 13th April 1843.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 1564, dated 18th August last.

2. The Draft Act which accompanied your letter enacts that the "substantive law of England," with certain limitations and exceptions, shall be "the substantive law of the place," in the territories subject to the Government of the East India Company; one of the limitations of the proposed Act being to provide that the Indian Judicial Courts shall be at liberty to adjudicate the legal rights affected by the Act, and to modify the same whenever equity and good conscience require.

3. The objections which occur to me to the passing the proposed enactment into a law are the following: Such a law, to be any thing but a dead letter, implies that our Indian Courts shall know precisely, 1st, What particular portions of the substantive law of England it is which they will have to administer; and 2d, That they should rightly judge of those occasions when that substantive law, if truly administered, would militate against the rules of equity and good conscience. These are conditions which Indian Law Courts, in reference to the departments of English substantive law which they would be required to administer, are at present wholly incapable of fulfilling.

4. In elucidation of the above remark, I would draw attention to a few branches of the substantive law of England, to be thereupon administered by our courts to the persons intended by the Act, the portions of the English law which I shall name not being inconsistent with any regulation or act of the Indian Government; (the existing Indian code being, indeed, almost entirely silent in regard to the interests in question); neither would the operation of this part of English law oppose the rules of equity and good conscience, but quite the contrary.

5. What, then, I ask, is the amount of knowledge which our Indian courts possess of the English substantive law on the subject of the various legal contracts and liabilities affecting the private interests of trade?

To what extent are they prepared to administer, with understanding, the English law of "contracts," of "principal and agent," of "partnership," and of "mercantile securities in general?" In respect to the above-named interests of the parties in question, the Indian courts would be forced to administer, as they do now, some rule of equity and good conscience, not because positive law required modification, but because of the court's ignorance of what that positive law may be.

6. It appears to me, then, that whatever department of the substantive law of England is to become "the substantive law of the place," for our Indian territories in general, should be introduced gradually by embodiment, with all requisite modifications, into individual successive Acts of the Indian Government, as practical necessity might arise or be foreseen; and in this way the Indian courts might draw light from English jurisprudence, and a body of law be created, than which a greater legislative boon could hardly be given to the country, both immediately as a safeguard to private rights, and indirectly in its influence on the character of our Indian courts of justice.

I have, &c.

(signed) *J. Davidson*,
Comm^r.

Commissioner's Office, Agra Division,
13 April 1843.

No. 3.
Lex Loci.

No. 23.

(No. 8, in No. 2846 of 1843.)

From *D. B. Morrison*, Esq., Officiating Commissioner, 5th Dn, Benares, to *R. N. C. Hamilton*, Esq., Secretary to Government, N. W. Provinces, Agra, Benares, dated 28th April 1843.

Sir,

I HAVE the honour to reply to your letter, No. 1564, of the 18th August last, on the subject of a Draft Act submitted for approval by the Law Commissioners on the substantive law, to which all persons in the Mofussil, not of the Hindoo or Mahomedan persuasion, should be amenable in their civil relations.

2. A person circumstanced as I am, having to remark upon such a subject, labours under peculiar disadvantages, for he does not know the previous recommendations of the Law Commissioners alluded to in their letter to the Governor-general of the 22d May 1841, nor what is meant by Colleges of Justice in Sec. 8 of the Draft Act, nor the substance of the petition of the Rev. George Gogerly and other missionaries. As far as I can form a judgment, the proposed Act seems in a great degree to be superfluous, for the law of British India is compounded of the Hindoo and Mahomedan codes, as modified by the Regulations; these modifications are grounded considerably on the English law, and on customs which in various parts of the country have become by long usage incorporated with the feelings and practices of the native and other residents; and in anomalous cases, where persons of different creeds happen to be concerned, it is already provided, that equity and good conscience are to be the guides of our judicial tribunals. This is the standard upon which the present proposed Act eventually falls back, as stated in Sec. 5.

3. The Draft makes exceptions as regards marriage, divorce, adoption, &c. So that, in fact, there is very little left that may not be brought under the law as it at present stands, without the necessity of any further legislation regarding changes of religion. Sec. 11 provides for every thing, and may form the subject of a specific Act, in which the provisions of Sec. 9 may be introduced with propriety, but beyond this I do not see the necessity of proceeding.

4. However, if it should be deemed expedient, for reasons with which I am imperfectly acquainted, to pass the proposed Act, I would strongly recommend that in the preamble the definition of substantive as distinguished from adjective law be given. Had it not been for the note appended to the Draft, I should not have known what was meant by substantive law, as used by the Commissioners; and as they themselves acknowledge that their interpretation of the term, though abstractly correct, is different from what has generally or popularly been put upon it, the sense in which the expression is used ought to be clearly and specially explained in the law itself.

I have, &c.

(signed) *D. B. Morrison*,
Officiating Commr, 5th Division.

Commissioner's Office, 5th Div., Benares,
28 April 1843.

(True copy.)

(signed) *R. N. C. Hamilton*,
Secretary to Govt, N. W. Provinces.

(No. 465.)

No. 24.

From *J. F. Thomas*, Esq., Secretary to the Government of Fort St. George, to *J. Thomason*, Esq., Secretary to the Government of India.

JUDICIAL DEPARTMENT.

Sir,

From Officiating Secretary to the Government of India, dated 8 July 1842, No. 157, to ditto, 5th Nov., No. 653. Dated the 28th June and 27th July 1843, Nos. 65 and 379.

Para. 1. WITH reference to the correspondence noted in the margin, I am directed by the Most Noble 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, the accompanying copies of letters from the Acting Register to the Court of Sudder Adawlut and Acting Secretary to the Board of Revenue, and to state that his Lordship in Council considers the Draft Act,* generally well calculated to meet the object in view.

* The Lex Loci of India.

2. The

No. 3.
Lex Loci.

2. The only observation on the provisions of the Act which it occurs to his Lordship in Council to make, is, that it may be doubtful whether the terms of Section 10 and 11 provide a remedy for the cases contemplated. Section 11, as it now stands, appears to apply only to the formal renunciation of his religion by the Hindoo and Mahomedan as his own act. But the principle, it is believed, is to maintain the personal rights of individuals, whether they voluntarily renounce their own creed, or are ejected from its communion by others. If this be the principle, it may perhaps be necessary to make an addition to this effect, "either by renouncing his religion or by exclusion therefrom," and thus afford a remedy in all cases against those provisions of Hindoo law which deprive the outcast of his civil rights.

I have, &c.

Fort St. George,
2 September 1843.

(signed) *J. F. Thomas,*
Secretary to Government.

(No. 65.)

From *H. D. Phillips*, Esq., Acting Register to the Court of Sudder Adawlut, to *J. F. Thomas*, Esq., Secretary to Government in the Judicial Department.

No. 25.

Sir,

With reference to the extract from the Minutes of Consultation, dated the 16th August 1842, forwarding copy of a communication from the Officiating Secretary to the Government of India, together with a Draft Act, and requesting the Court to submit their opinion on its provisions, as well as on the subject discussed in the Report on the *lex loci* of India, forwarded to this Court on the 28th June 1841, I am directed by the Judges to state, that they have no remarks to offer on the various provisions of the contemplated enactment, which, in their opinion, is greatly required, and provides a suitable remedy against those peculiar dissensions so liable to result from the want of a clearly defined *lex loci*.

8 July 1842, No. 157.

(signed) *H. D. Phillips,*
Acting Register.

Sudder Udalut, Register's Office,
28 June 1843.

(A true copy.)

(signed) *J. F. Thomas,*
Secretary to Gov^t.

(No. 379.)

From *C. L. Lovell*, Esq., Acting Secretary to the Board of Revenue, to *G. D. Drury*, Esq., Chief Secretary to Government.

No. 26.

Sir,

Para. 1. I am directed by the Board of Revenue to acknowledge the receipt of an extract from Minutes of Consultation, under date 16 August 1842, transmitting copy of a communication from the Officiating Secretary to the Government of India, together with a Draft Act, and calling upon the Board to submit their sentiments on its provisions, as well as on the subject discussed in the Report on the *lex loci* of India forwarded to this office on the 28th June 1841.

2. The questions treated of in the Draft Act and Report above referred to, appearing to the Board to involve considerations of a purely legal character, and to have no direct bearing upon the revenue of the country, it was deemed sufficient to order these documents to be recorded for future reference. The attention of the Board has been again drawn to the subject by the order of Government (No. 345) of the 17th instant; they have, therefore, attentively reconsidered the papers transmitted to them, but, after a careful review, are unable to discover any point on which it would fall within their province to offer remarks, unless it be that part of the proposed enactment which fixes the substantive law of the place in the case of British subjects and aliens who have recently been permitted to

No. 3.
Lex Loci.

hold lands within the Company's territories; a measure which, as defining the civil rights and obligations of such important classes, the Board cannot but regard with much satisfaction.

(signed) *E. C. Lovell*,
Acting Secretary.

Revenue Board Office, Fort St. George,
27 July 1843.

(True copy.)
(signed) *J. F. Thomas*,
Secretary to Gov^{t}.

(No. 550.)

Legis. Cons.
25 Jan. 1845.
No. 27.

From *J. F. Thomas*, Esq., Secretary to the Government of Fort St. George, to *J. Thomason*, Esq., Secretary to the Government of India, dated 3 October 1843.

Sir,

Jud. Dept.

With reference to my letter of the 2d ultimo, No. 465, I am directed by the Most Noble the Governor in Council to request that you will lay before the Government of India the accompanying communication from Mr. Boileau, First Judge of the Northern Provincial Court, dated the 1st instant, on the subject of the *lex loci* of India.

I have, &c.
(signed) *J. F. Thomas*,
Sec^{y} to Government.

Fort St. George, 3 October 1843.

(No. 250.)

Legis. Cons.
25 Jan. 1845.
No. 28.

From *T. E. J. Boileau*, Esq., First Judge of the Northern Provincial Court, to the Secretary to Government in the Judicial Department, Fort St. George, dated 3 October 1843.

Sir,

With reference to the resolutions of the Government, under dates the 16th August 1842 and of the 17th July last, requiring the "opinion" of the Northern Provincial Court on the Draft Act, and likewise on the matters discussed in the Report of the Law Commission, the *lex loci* of India, I have the honour to report, that I found the latter of the printed papers lying over for deliberation on rejoining from sick leave on the 4th of the past July.

2. The subject is one which requires deep and almost a total abstraction from other business fully to weigh its merits and to search into the preconceived consequence in application; so that by losing sight of more important duties, in giving to them the desired attention, one is compelled in a great measure to desert, as it were, the interests of those who have the most prominent claims on official labours; but as the brief notice which I shall venture to submit will be upon a cursory and undigested perusal of their contents, it will neither stand in the way of such calls or engagements, nor barely be deserving of the character of an "opinion," with but the sentiments of one, instead of the quorum, of the court.

3. I am strongly impressed with the persuasion, that it has not been demonstratively shown that necessity or cogency points that the law without should be the same as that within the precincts of the administration of the Supreme Court; that the state of Mofussil justice is such as to require this accession, or that which has hitherto existed is so far diseased or inapposite as to need new cures or aids.

4. The system of judicature now in force is well understood and appreciated; that proposed to be superadded would be productive of dismay and disorder from its complexity; so that, however praiseworthy the design is, and conspicuous the talent displayed in its preparation, the practical working of the local law will, I am convinced, find a very different bearing to that apprehended, and the contemplated benefit be but imaginary.

5. But

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Lex Loci.

5. But many of the promises in the "Draft Act," in their relation to this Presidency, are fallacious in the outset, as the basis for putting it forth and pressing the expediency of its adoption;—for,

The number of "aliens" are neither so great nor so increasing as supposed.

The diversity of the law has not produced (that I am aware) either of the hindrances which has been assumed. The hypothesis as to the large proportion of "Armenians" is by no means to the purpose as respects this section of the Company's territories; and the point on which great stress has been laid as another adventitious reason, is the large and increasing number of British subjects, which at best is a fancied finding.

6. As far as Europeans are concerned, the plural can scarcely be used in naming those who have entered the list of colonists, or, with as little propriety, to express another class of adventurers who have newly become proprietors of land, since both these privileges have been granted, or who have undertaken to speculate in manufactures, or in the growth of any of the staple productions* of the interior that are marketable in Europe.

* 1. Arrowroot.
2. Coffee.
3. Cotton.
4. Indigo.
5. Pepper.
6. Saltpetre.
7. Sugar.

Since, however, it has been allowed† that the Mofussil courts have nothing to do but to administer equity, following law, of course, but unembarrassed by the co-existence of the courts of law, *et eis similibus*, I must confess that I shall not be disappointed in their continuance under the same undisturbed efficiency.

† *See* note (*d*) to Draft Act, *infra*, p. 633.

(signed) *Thomas Boileau*,
First Judge.

Masulipatam, North Prov. Court,
1 September 1843.

(A true copy.)

(signed) *J. F. Thomas*,
Secy to Government.

PROPOSED SECTIONS for the *Lex Loci*.

Legis. Cons. 25 Jan. 1845. No. 29.

III. PROVIDED always, and it is hereby enacted, That nothing in this Act contained shall be construed to prevent any court from deciding any case according to any custom immemorially observed as a part of their religion, by any race of people indigenous to and inhabiting any part of the said territories, or according to any good and lawful customs.

X. And it is hereby enacted, That nothing hereinbefore contained shall apply to any Hindoo or Mahomedan, or to any property of any Hindoo or Mahomedan, unless such Hindoo or Mahomedan shall have renounced either of those religions, or shall have been excluded from the communion thereof, and shall not have adopted the other of those religions.

XI. Provided always, That no Hindoo or Mohomedan shall, in consequence of any thing in this Act contained, by renouncing the Hindoo or Mahomedan religion, or by being excluded from the communion thereof, lose any rights or property, or deprive any other person of any right or property.

XII. And it is hereby enacted, That so much of the Hindoo and Mahomedan law as inflicts forfeitures of rights or property upon any party renouncing or excluded from the communion of either of those religions, shall cease to be enforced as law in any of the courts of the East India Company.

XIII. Provided always, That if in any case falling within Sections 11 or 12, it shall appear to the court that this application of the provisions of those sections would outrage the religious feelings of any party against whom the court is called upon to apply them, the court shall draw up a statement of the facts, and submit to the College of Justice, to which appeals lie from the said court, and the said College of Justice shall thereupon make a decree; and the said College of Justice is hereby authorized and directed to decide by such decree, whether the said provisions shall be applied or not, and if applied, with what modifications, and whether any and what compensation shall be made to any party for the loss which such party may sustain, in case the said College of Justice should decide that the said provisions shall not be applied.

No. 3.
Lex Loci.

Legis. Cons.
25 Jan. 1845.
No. 30.
Notes on Mr. Cameron's proposed modifications of the Lex Loci Draft Act.

MINUTE by the Honourable *W. W. Bird*, dated the 13th September 1844.

I SEE no objection to Section III.

It is stated in the letter from the Government of Bengal, that Section X. in the printed draft was defective, inasmuch as it did not include in the exception other Asiatic sects, who, like the Hindoos and Mahomedans, have a religious law of their own.

The alteration in Section III. does not meet the objection; and I therefore still think that Section X., even as now altered, is defective, for the reason assigned. I think the wording also objectionable, because there is no need to except Hindoos and Mahomedans who have renounced their religions, seeing that when they have so renounced, they are no longer Hindoos or Mahomedans. I would word the Section as follows:—

"And it is hereby enacted, That nothing herein contained shall apply to any person professing the Hindoo or Mahomedan, or any other religion, as includes and enforces by its sanctions a system of substantive law capable of being ascertained and administered."

A corresponding alteration is required in Section II., which might run thus:—

"Provided always, That no person professing a religion such as is described in Section X. of this Act, shall, by renouncing his religion, or being excluded from the communion of the same, lose, in consequence of any thing contained in this Act, any right or property, or deprive any other person of any rights or property."

Section XII. would, it appears to me, be in every respect improved, and its purpose as certainly and comprehensively secured, by omitting the specification of religions.

It would then stand as follows:—

And it is hereby enacted, That no part of any religious law or custom which inflicts forfeitures of rights or property upon any party renouncing or excluding from his religious communion, shall be enforced in any of the courts of the East India Company.

Section XIII. gives a power to the court of appeal upon mere statement of facts drawn up by the lower court, and previous to any appeal, to suspend the operation of the last two very important sections, a power which appears to me to be open to the most serious objections, and the necessity of granting which affords a very strong argument against the proposed enactment.

(signed) *W. W. Bird.*

13 September 1844.

FORT WILLIAM, HOME DEPARTMENT, LEGISLATIVE, the 25th January 1845.

THIS Draft having been sent up by the Law Commission, with explanatory notes, is now published with those notes, by order of the Right honourable the Governor-general in Council.

ACT No. —— of 1845.

WHEREAS it is doubtful what is now the substantive (*a*) law of the place (*b*) in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts at Calcutta, Madras and Bombay:

And whereas also a practice has grown up in the courts of the East India Company of administering to every person not being a Hindoo or Mahomedan, in all cases not specially provided for, the substantive law of the country of such person, or of the country of the ancestors of such person, whenever such substantive law is not inconsistent with equity and good conscience:

And whereas it is lawful for aliens to hold lands in the said territories, and there is a great and increasing number of aliens in the said territories:

And

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Lex Loci.

And whereas, also, the diversity of laws, which the said courts of the East India Company, according to the said practice, may have to administer, is likely to occasion great and increasing inconvenience and difficulty:

And whereas, also, there is in the said territories a great and increasing number of persons, whose legal connexion with their country or with the country of their ancestors is interrupted by illegitimacy, and it is doubtful whether the said practice is applicable to such persons:

And whereas, also, the said Courts of the East India Company will, in the application of the said practice, have frequently to determine intricate questions of pedigree, before they can decide what law they are to administer:

And whereas, also, there is in the said territories a large number of Armenians, and it is doubtful what is the Armenian law:

And whereas, also, the English substantive law is the law of the place (*b*) in such parts of the territories subject to the government of the East India Company as are within the local jurisdiction of Her Majesty's Supreme Courts aforesaid; and it is expedient that the law of the place in the territories subject to the government of the East India Company, within and without such jurisdictions, should, as nearly as circumstances will permit, be the same:

And whereas, also, there is a large and increasing number of British subjects in the territories subject to the government of the East India Company, and it is lawful for such British subjects to hold lands therein, as well without as within the local jurisdiction of Her Majesty's Supreme Courts aforesaid; and the Courts of the East India Company now administer English substantive law to such British subjects, whenever such substantive law is not inconsistent with equity and good conscience, and it is expedient that they should continue to do so:

I. It is hereby enacted, That from and after the day of in the year 1845, the substantive law of the place in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts aforesaid, shall be so much of the substantive law of England as is applicable to the situation of the people of the said territories, and as is not inconsistent with any regulation of the codes of Bengal, Madras or Bombay, or with any Act passed by the Council of India, or with this Act.

II. Provided, and it is hereby enacted, That nothing in this Act contained shall apply, so far as regards marriage, divorce or adoption, to any person professing any religion other than the Christian religion.

III. Provided also, and it is hereby enacted, That nothing in this Act contained shall be construed to prevent any court from deciding any case according to any law or usage immemorially observed by any race or people not known to have been ever seated in any other country than the said territories, or from deciding according to any good and lawful custom.

IV. And whereas, also, it is held by Her Majesty's Supreme Courts at Calcutta, Madras and Bombay, that (*c*) no Act of Parliament which has been passed since the thirteenth year of his Majesty King George the First extends to India, unless there be in such Act a special provision to that effect; and it is expedient, as aforesaid, that the substantive law of the place in the said territories, within and without the local jurisdiction of the last mentioned courts, should be, as nearly as circumstances will permit, the same;

It is therefore enacted, That no Act of Parliament passed since the Thirteenth year of King George the First, shall be held to be extended to any place in India by virtue of this Act, unless there be in such Act of Parliament a special provision for extending it to India.

V. And whereas no Court of the East India Company is, in respect of the administration of English law, a court of law, as distinguished from a court of equity and good conscience; and doubts might arise in what way such courts ought to adjudicate the legal rights of the persons subject to the substantive law of the place enacted by this Act; and to modify such legal rights whenever equity and good conscience require; (*d*)

It is hereby enacted, That the said courts of the East India Company shall adjudicate such legal rights, and modify the same, whenever equity and good conscience require, in the same way in which the said courts of the East India Company now adjudicate and modify the legal rights of British subjects.

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VI. And whereas it is not expedient that the distinctions (*e*) known in English substantive law, between real property and personal property, should subsist in the territories subject to the Government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts aforesaid;

It is hereby enacted, That all immoveable property situate within the territories subject to the Government of the East India Company, and without the local jurisdiction of the said Supreme Courts, and every interest in immoveable property so situate, shall be regulated by the rules which regulate personal property according to the substantive law of England, and shall be adjudicated upon accordingly in all courts within the said territories, whether established by royal charter or otherwise.

VII. Provided, and it is hereby enacted, That nothing in this Act contained shall be construed to affect the distinction (*f*) recognized by the law of England, as well as by the law of other civilized nations, according to which succession to immoveable property of a person deceased follows the law of the place where such property is situate, while succession to moveable property of a person deceased follows the law of the place of the domicile of such person.

VIII. And whereas it is probable that a High Court of Appeal will be established at Calcutta, or at each of the three Presidencies, which will supersede all the functions whereby the several Supreme Courts and Sudder Courts now correct the decisions and control the proceedings of the inferior Courts; but it is uncertain how much time may elapse before such High Court of Appeal can be established: It is therefore hereby enacted, That until the establishment thereof, in all cases to be decided under this Act, an appeal shall lie from the decision of any of the Courts of the East India Company to the Supreme Court of Fort William, or Fort St. George, or Bombay, according as the suit may have been commenced in the Provinces subordinate to either of the said Presidencies; and such court shall have the same powers, as to suspending or allowing execution of the judgment or decree appealed against, and as to taking security for costs, or for the performance of the decree or judgment of the said Courts of the East India Company, as the Sudder Courts have in other cases of appeal from the said Courts of the East India Company, and shall also make rules of practice for the conduct of the said appeals in all other respects, conforming in substance and effect as nearly as possible to the course of procedure of the said Sudder Courts.

IX. And it is hereby enacted, That in every suit brought in any Court of the East India Company, wherein the matter out of which the cause of action arose shall have had place before the said day of 1845, the decision shall be according to the law or laws under which the parties shall appear to the court to have supposed themselves to be living, or according to equity and good conscience, following such law or laws.

X. And it is hereby enacted, That nothing hereinbefore contained shall apply to any Hindoo or Mahomedan, or to any property of any Hindoo or Mahomedan, (*g*) unless such Hindoo or Mahomedan shall have renounced either of those religions, and shall not have adopted the other of those religions. (*h*)

XI. Provided always, That no Hindoo or Mahomedan shall, in consequence of any thing in this Act contained, by renouncing the Hindoo or Mahomedan religion, lose any rights or property, or deprive any other person of any rights or property.

XII. And it is hereby enacted, That so much of the Hindoo and Mahomedan law as inflicts forfeiture of rights or property upon any party renouncing or who has been excluded from the communion of either of those religions, shall cease to be enforced as law in the Courts of the East India Company.

XIII. Provided always, and it is hereby enacted, That if in any case falling within the provisions of Section XI. or XII. it shall appear to the Court that the application of any of those provisions would outrage the religious feelings of any party against whom the Court is called upon to apply them, the Court shall state the facts of the case, and submit the statement for the decision of the Court of Appeal, who shall decide whether the provisions shall be applied or not, and with what modifications, and whether any and what compensation shall be given to any party for the loss which such party may sustain in case the said Court of Appeal should decide that the said provisions should not be applied.

XIV. And

XIV. And it is hereby enacted, That nothing in this Act contained shall apply to the Court of the Recorder of Prince of (*i*) Wales Island, Singapore and Malacca (*k*).

NOTES to the DRAFT ACT.

(*a*) *Substantive Law.*

FOR two reasons we think it right to explain the sense in which we have used this expression.

First, Because, though the expression has been used in treatises of jurisprudence and in official reports, it has not, we believe, been before used in legislation.

Second, Because we believe the expression has been used, or at least understood, in a sense different from that which it is intended to bear in this Act.

It has been used or understood, we believe, as if it included the definitions of crimes; as if there were substantive criminal law, and substantive civil law; as if the only subject-matter of the whole *corpus juris* excluded by it, were the rules of pleading, evidence and procedure. When the expression is used in this sense, the rules of criminal pleading, evidence and procedure are considered as adjective to the penal code, or definitions of crimes,—the penal code itself being considered not as adjective to the civil code, but as substantive.

In this Act we intend the term to include only the definitions of rights and obligations; and we consider the definitions of civil injuries and the definitions of crimes as parts of adjective law.

This, we think, is clearly the correct import of the expression. The definitions of civil injuries and of crimes are evidently only necessary for preventing infractions of rights and obligations.

If we suppose every member of the community to have sufficient motives, independently of legal proceedings, to respect the rights of his neighbour and his own obligations, there would be no use in defining civil injuries or crimes; that is to say, definitions of civil injuries and of crimes are of no use, except as adjective to definitions of rights and obligations.

We have also the authority of the Fourth Report of the English Commissioners of Criminal Law for this use of the expression:

"It is, in the first place, material (they say) to advert generally to the relation which the criminal branch of the law bears to the whole system. Every system of municipal law consists necessarily of two distinct parts, which may be distinguished as substantive and adjective laws. The former comprehends the definition of civil rights and obligations; while it is the office of the latter to prevent the occurrence of certain grave infractions of such rights and obligations. And one mode of prevention, namely, the infliction of punishment on those who offend, in order, by example, to deter others from offending, constitutes the great principle on which the law respecting crimes and punishments is founded," p. 6.

(*b*) *Law of the Place.*

Lex loci. The Hindoo law and the Mahomedan law are properly the laws of persons belonging to the Hindoo and Mahomedan religions; they cannot, therefore, be considered as *lex loci* in the sense in which English law is the *lex loci* of the Presidencies, although they are the laws of a vast majority of the inhabitants.

(*c*) *Application of Statutes to India.*

We wrote to the Judge of the Supreme Courts of Madras and Bombay to ascertain if this proposition is correct as to their Courts, and have been favoured with early answers. The answer of Sir Robert Comyn and Sir Edward Gambier shows that the proposition is correct as regards the Supreme Court of Madras. By Sir Henry Roper's answer, it seems that the question has never been decided at Bombay. From the evidence of Sir Ralph Rice, however, before the Select Committee of the House of Lords, 1830, it appears that the 13th year of King George the First has been considered at Bombay also as the epoch at which English law was introduced by the establishment of the Mayor's Court.

We observe, also, in the Reports of Cases decided by the Sudder Dewanny Adawlut of Bombay, Vol. I., p. 333, that a case is cited by the Advocate-general from the "Courier" newspaper of the 30th January 1818, in which the learned Recorder of that day is made to say that "the first charter of justice might be said to be that of George I., in 1726, creating the Mayor's Court at each of the three Presidencies." Perhaps, therefore, the allegation in the preamble to this section may be considered sufficiently proved.

(*d*) *Equity and Good Conscience.*

The Mofussil Courts, as regards English law, are not Courts of Law, but of Equity.

They now administer to British subjects the same system which is administered by English Courts of Equity. See the case of Hoo *v.* Peter Marquis, Reports of the Sudder Dewanny Adawlut, Vol. iv., p. 243.

But one very remarkable difference in their circumstances causes an equally remarkable difference in the mode in which they administer that system. They are courts administering

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English equity in a country in which there are no courts of English law. This is a vast advantage. A very great portion of the business of English courts of equity consists of attempts (not always, though generally, effectual) to prevent or remedy the mischievous effects of proceedings in courts of law. Where there are no such courts, this function has of course no existence. The Mofussil courts have nothing to do but to administer equity, following law of course, but unembarrassed by the co-existence of courts of law,—that is to say, to give to every suitor his legal rights when there is nothing inequitable in them,—when there is any thing inequitable, then his legal rights modified and corrected by equity. Again, as every British subject who sues in the Mofussil is seeking equity, he is obliged, according to the well-known rule, to do equity as the price of obtaining it.

The effect of this Act will not be to introduce any new system into the Mofussil courts, but merely to extend to all persons who are not Hindoos or Mahomedans that system which is already administered to British subjects.

(*e*) *Distinction between Real and Personal Property.*

This, in the early stages of English law, would have been a very important change. But now every man may by that law dispose of his real property by will as he pleases. And by Mr. Fergusson's Act the real estates of British subjects in the Presidencies are liable for debts of all kinds. Practically, therefore, this change will not be a great one, especially when we take into account the circumstance that all the Mofussil courts are courts of equity, in which kind of courts the distinctions between realty and personalty are not looked upon with favour.

We apprehend that the law of primogeniture, as it now exists in England, has not much direct operation, because the greater part of landed property is either in settlement or passes by will. It is probable, however, that the original law of primogeniture, excluding as it did any testamentary power, has still a considerable indirect effect through the feelings of landed proprietors. It probably induces them in their settlements and wills to *make an eldest son*, as it is commonly expressed.

The question agitated among political economists has been, whether a *compulsory* law of equal partition is beneficial or otherwise. We believe it has not been frequently urged that, so long as every man is left at liberty to divide his property as he pleases after his death, the national welfare requires that, in the event of his making no provision, the principle of primogeniture should prevail.

Whether, in a country where the power to settle and devise real property exists, the feeling in favour of primogeniture, or something approaching to primogeniture, with its effect upon wills and settlements, is beneficial or not, is a question too wide to be discussed in this note. Nor is such a discussion necessary for the present purpose; because the feeling does not exist with regard to the real property of Englishmen in India, and assuredly could not be created in such circumstances by merely permitting the remnant of the ancient English law of primogeniture to continue in existence. The existence of that remnant, therefore, surely holds out no prospect of advantage equivalent to that of having one simple and uniform law of succession for all kinds of property.

There is one distinction between moveable and immoveable property, which we believe is in practice observed in the Mofussil, and which we think ought to have the sanction of law. We mean the distinction introduced into English law by the Statute of Frauds, which makes writing and signature necessary to a conveyance of real property. But we think a provision to this effect will more properly form the subject of a separate Act than of an exception to this section.

(*f*) *Distinction between Moveable and Immoveable Property.*

It cannot be denied that, by the recognition of this distinction, the difficult question of domicile will frequently arise for decision in the Mofussil courts, and also that those courts will frequently have to inquire what is the law of the domicile of a deceased person in respect of succession to moveable property. These difficulties, however, cannot be removed without making British India an exception in this respect to other British possessions, and perhaps to the whole civilized world: and even if we thought it advisable to propose the abolition of the distinction, we should doubt whether any Legislature, except the Imperial Parliament, could, with perfect propriety, alter a part of the law which seems to have a near relation to the *comitas inter gentes*.

When we come to the codes of substantive law we shall go fully into this subject, and consider how far we can, consistently with a due respect to the general practice of nations, relieve the courts of this country from the necessity of applying any other law than that of the place.

(*g*) *Difference between the Law administered to Hindoos and Mahomedans in the Presidencies and in the Mofussil.*

The right of Hindoos and Mahomedans to have Hindoo and Mahomedan law administered to them is limited, both in the Presidencies and in the Mofussil; but the limitation is not the same in the two cases. Neither is the law administered to these two classes in cases where they are not entitled to their own laws, the same (practically at least) in the Presidencies and in the Mofussil.

When

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When we are making the three codes of substantive law, which appear to be required for the three great classes of which the population of this Indian Empire consists, viz., Hindoos, Mahomedans, and persons who are neither Hindoos nor Mahomedans, it is to be hoped that we may find it possible to give to the two former classes the same law, in the cases in which Hindoo and Mahomedan law are not now specially reserved to them, or may not continue to be specially reserved to them, as that to which the last class will be subject in such cases. It is also to be hoped, or rather it is not to be doubted, that we shall be able to provide that the legal condition of each of the three classes shall be the same respectively in the Presidencies and in the Mofussil.

This Act, however, is intended for the last class only, and any provisions affecting the other two would be out of place in it.

(*h*) *Consequences of Persons changing their Law.*

According to the view expressed in Note (*b*), these persons no longer professing the Hindoo and Mahomedan religions, the Hindoo and Mahomedan laws will not be applicable to them respectively. They will become properly subject to the *lex loci*. It is necessary, however, to provide against any loss of rights to them, or to any other persons through them, by this change of law. This is done by Section XI.

But besides the change from Hindoo and Mahomedan law to the *lex loci*, which owes its origin to this Act, there is a loss of rights consequent upon renunciation of the Hindoo and Mahomedan religions, by the operation of the two systems of law belonging respectively to those religions. It was to prevent this loss of rights that Section IX., Regulation VII., of 1832, of the Bengal Code, was enacted. Section XII. of this Act will make the law uniform on this point throughout the territories under the Government of the East India Company, except within the limits of the local jurisdiction of Her Majesty's Supreme Courts. We think it ought to be the same within those limits, but to make it so does not fall within the scope of this Act.

(*i*) *Settlements in the Straits of Malacca.*

The whole of the settlements in the Straits being subject to the law which is administered by the Recorder's Court, there is no room for the application of this Act to those settlements.

(*k*) *Extension of Acts of the Council of India.*

We at first thought of extending, by a general provision in this Act, all the Acts of the Council of India which have extended the provisions of Acts of Parliament to any parts of India, or to any persons in India. But having looked through those Acts, we believe it will be a more expedient course to make separate and special provision for that purpose.

The sort of case which Section XIII. is intended to meet may be thus exemplified: A married Hindoo man renounces his religion and becomes subject to the *lex loci*; according to that law he might sue for a restitution of conjugal rights if his wife refused to cohabit with him; but according to Hindoo law the wife would have a right to separate herself from a husband who had become outcast, and, nevertheless, to have her maintenance out of his property.

This right of the husband, and this right of the wife, are inconsistent with each other, and only one of them can prevail. To avoid outrage to the religious feelings of the wife, her right to separate herself ought to prevail. But it is very difficult to foresee all the cases requiring special provision when a man passes from the Hindoo or Mahomedan law to the *lex loci*, and to make such special provision beforehand as shall meet the exigency. A discretion is therefore left to the Court of Appeal in these cases to decide according to what may appear to be the merits of each individual case.

This is a very anomalous provision; but it is a provision intended for a very anomalous state of things.

Ordered, That the Draft Act be re-considered at the first meeting of the Legislative Council of India after the 10th day of April next.

G. A. Bushby,
Secy to the Govt of India.

Legis. Cons.
25 Jan. 1845.
No. 32.
Home Department,
Legis.

M. H. the Governor in Council.
H. the Governor in Council.
H. the Lieut.-Governor of the N. W. P.
His Lordship in Council.
His Honour in Council.
His Honour.

From *G. A. Bushby*, Esq., Secretary to the Government of India, to Secretaries to the Governments of Bengal, Madras, Bombay and N. W. Provinces, dated 25 January 1845.

Sir,

I AM directed by the Right honourable the Governor-general in Council to transmit to you, for the purpose of being laid before the Right honourable the Governor of Bengal, for any opinions or suggestions which his Honour may be pleased to offer, the accompanying Draft of a *lex loci*, which has been this day read in Council for the first time, and will be published for general information.

I have, &c.

(signed) *G. A. Bushby*,
Secy, Govt of India.

Fort William, 25 January 1845.

From the Honourable Sir *Lawrence Peel*, Knight, Chief Justice, the Honourable Sr *H. W. Seton*, Knight, Puisne Judge of the Supreme Court at Calcutta, to the Right honourable Sir *H. Hardinge*, K. C. B., Governor-general of India, in Council, dated 25 March 1845.

Right honourable and Honourable Sirs,

WE have the honour to acknowledge the receipt of your letter to the Judges of the Supreme Court at this Presidency of the 1st March 1845, requesting their opinion on the provisions of a Draft Act for establishing a *lex loci*, which is now under the consideration of the Legislature of British India.

We think the object of the Act unexceptionable; but some of its provisions appear to us to be open to objection, and others to be inadequate to the attainment of the proposed object.

As the expression "substantive law" has not been hitherto used in Statutes or Acts; as it is used by the framers of the Act in a sense which all who have adopted it do not give to it; and as the terms substantive and adjective law are not of themselves indicative of their proposed meaning, we think it desirable that some definition should be given in the Act itself of the meaning of the expression "substantive law." The notes of the Law Commissioners would not be authority to which a court would be bound to defer; but the main effect, as it appears to us, in the enactment by which that which is called "substantive law" is to be introduced, is its want of precision as to the extent to which the law of England is to be introduced. It is, perhaps, a necessary result from the usual modes by which the laws of a State are introduced at once into its dependencies, that the courts of justice must decide on the admission or rejection of parts of such laws; such *quasi* legislative power in courts of justice is, however, an evil which should not be introduced needlessly. From the number and constitution of the courts to which this power would be entrusted, its exercise would be likely to be more than commonly objectionable; the system of English law is so vast, and the application of it is attended with so many difficulties, that to Judges not previously trained to its study, the difficulties in this country would be almost insurmountable, since they would have to administer a law with which they were unacquainted, and they would not have the assistance of a bar or other professional agents, or of officers possessing the knowledge in which the Judges were deficient; they would, therefore, be under disadvantages to which no magistrate or body of magistrates administering the English law in England is exposed; and it must be remembered, that they would often have to decide cases of difficulty and complexity; it would be a laborious task, but it would not be impracticable, to point out the portion of the common law of England intended to be introduced, and the difficulty would be less as to the Statute law, from the records of it being collected and accessible. It would be of the greatest aid to those who would have to apply its provisions if the Draft Act were accompanied by some digest or authoritative exposition of the law to be introduced.

With respect to the fourth section, we beg further to suggest, that it would be advisable to extend to India some Statutes passed since the 13th George 1st; and that the Statutes to be extended might be named in a Schedule to the Act,

and

and that it would be a favourable opportunity for making this extension to the Presidency towns as well as to other parts of British India.

It appears to us that the fifth clause would introduce much uncertainty. What is the way in which the courts of the East India Company now adjudicate and modify "the legal rights of British subjects?" Is there an uniform rule of decision in such cases observed by all courts of the East India Company in the Mofussil? The Law Commissioners refer to the case of Hoo *v.* Peter Marquis, Reports of the Sudder Dewanny Adawlut, vol. 4, p. 243, as proving that the courts in the Mofussil now administer to English subjects the same system of equity which is administered by English courts of equity. This case appears to us not to establish that position; the case itself abounds with errors; the decision is as little authorized by English equity as by English law. Had it proceeded on the opinion quoted in the case of the Advocate-general of that day, it would have been apparent that the court meant to decide according to rules which they were erroneously informed would have been applied by an English court of equity deciding in the same case; but as that opinion was not pursued, the case cannot be cited to prove that the courts of the East India Company in the Mofussil now apply English equity in any case.

The introduction of the words "good conscience" would be likely to give rise to misconception and error if the object be merely to introduce the system of equity observed in English courts of equity. In equity, or any other system that is governed by precedents and fixed rules, it cannot be said of every claim or defence which a party is permitted to establish, that it is a conscientious one; particular injustice must occasionally result from the observance of general rules, and the lesser evil is tolerated that the graver one of uncertain laws may be avoided.

With respect to the sixth clause, we think that if the distinctions known in English substantive law between real and personal property be not introduced in the Mofussil, they should be abolished throughout India in all cases where they now prevail; otherwise, as the Act would introduce a *lex loci rei sita*, lands of the same owner dying intestate would often devolve in one mode in the Mofussil and in another mode within the Presidency towns; we think that there is no sufficient reason for maintaining these distinctions in any part of the country, particularly after the Act called Fergusson's Act has already gone so far in abolishing them; at the same time, it would be proper to consider whether the wife's interest in her landed estate should not be preserved on the same footing as if it were real estate.

The Act is defective, in our opinion, in not stating how the representative on the death of an owner intestate is to be ascertained; as the English law would be introduced, property would devolve on a personal representative, either executor or administrator, and in cases of intestacy, until the appointment of an administrator, it would not be certain in whom the property would vest.

To simplify titles, and facilitate transfers of property, it is essential that representation should be kept up.

It appears to us that the provisions of the twelfth section, relative to forfeitures to be enforced under the sanction of the appellate court, are objectionable.

The inquiry, whether the religious feelings of any party would be outraged by enforcing the provisions of the law, would be one upon which it would be difficult satisfactorily to adjudicate. The party who would be next in succession to the party abandoning his religion would not be slow to assert that it outraged his religious feelings; that a change of faith should work no forfeiture; what better means than those which the court below had would the appellate tribunal possess of forming a judgment on the question of the sincerity of alleged religious scruples? Is such a question fit to be entertained at all?

We beg to offer our aid to the Government and to the Law Commissioners in framing provisions in accordance with our views as to the specification and explanation of the law to be introduced.

We have, &c.

(signed) *Lawrence Peel.*
H. W. Seton.

Court House, 25 March 1845.

No. 3.
Lex Loci.

MINUTE by the Honourable *C. H. Cameron*, dated 4 April 1845.

Letter from Sir L. Peel and Sir H. W. Seton.

THIS is a very important communication.

Sir Lawrence Peel and Sir Henry Seton think the object of the Act unexceptionable, but some of its provisions appear to them to be open to objection, and others to be inadequate to the attainment of the proposed object.

They offer their aid to the Government and to the Law Commission in framing provisions in accordance with their views as to the specification and explanation of the law to be introduced.

This aid, I think, should be thankfully accepted, and the Law Commission put in immediate communication with the two Judges.

All their suggestions are worthy of attention, and some of them are fully in accordance with views of the Law Commission, which are only not embodied in the Lex Loci Act, because some of them cannot be brought to maturity for a long time to come, and others seem more proper for the subject of a separate Act.

The two Judges think that the expression "substantive law" ought to be defined and explained in the Act itself; and they add, "it would be of the greatest aid to those who would have to apply its provisions, if the Act were accompanied by some digest or authoritative exposition of the law to be introduced."

From the way in which this recommendation is expressed, I was afraid that the two Judges meant to advise that the enactment of the Lex Loci Act should be delayed until such a digest or authoritative exposition of the law to be introduced by it can be prepared.

I have communicated with the two Judges on this point, and I have the greatest satisfaction in stating (as they have authorized me to do) that they approve of the adoption of the English law, with limitations expressed in general terms, as the Lex Loci of British India to be hereafter digested.

The recommendation of the two Judges, thus explained, points at the very same result as the intention entertained by the Law Commissioners, and announced in their Report upon the *lex loci*, of reducing it into the form of a code.

The assistance of the two Judges in framing this digest or code will be most beneficial in every point of view, and will besides be productive of the special advantage, that the code or digest so framed by the two Judges and the Law Commissioners may at once be enacted both for the Presidency towns and for the Mofussil.

What the two Judges say upon the 4th Section is quite in conformity with the intentions of the Law Commission.

They object to the 5th Section as productive of uncertainty, and they ask, "What is the way in which the Courts of the East India Company now adjudicate and modify the legal rights of British subjects?" and they say that the case of Hoo *v.* Peter Marquis, adduced by the Law Commission, "cannot be cited to prove that the Courts of the East India Company in the Mofussil now apply English equity in any case."

I think that the case, whatever errors it may contain, may be cited to prove that the Courts of the East India Company in the Mofussil now endeavour to apply English equity.

I do not think the Judges in that case intended to deviate from the principles laid down by the Advocate-general, whose opinion they had taken; I cannot doubt that they intended to give the parties the same measure of justice which they would have got in the English system. The case should not be looked at as an insulated case, but as one of several, which go to prove that the endeavour of the Mofussil courts is to give to each man the law he would have got in his own country.

Now, if this be so, it is certainly of importance to make the public aware of it; for it is one thing now to call upon the Mofussil Judges for the first time to administer the English system of law and equity, of which, it must be confessed, they can know but little, and quite another thing to call upon them to extend their actual administration of that system to all persons who are not Hindoos or Mahomedans. The former would be to impose a great difficulty upon them; the latter is to relieve them from an infinity of other difficulties, to impose no new one, but only to leave them subject to that one which also will be greatly mitigated when the digest or code above mentioned is prepared.

These were the reasons which influenced the Law Commissioners in drawing Section 5, and I still think it desirable to preserve the terms of that section, though I am ready to give way to the two Judges if they insist; and at any rate, I myself think it quite proper to introduce words showing beyond doubt that the English courts of equity are the guides to be followed.

The two Judges think that the introduction of the words "good conscience" may give rise to misconception and error; this is possible, and therefore I am willing to omit them; but I apprehend that they are correct technical terms as applied to English equity, "*Intelligentur de conscientia legibus munita.*"

I am most truly glad to find that the two Judges think there is no sufficient reason for maintaining the distinctions between real and personal property in any part of this country; and, with their proffered assistance, I think the Law Commission should prepare an Act for the Presidency towns, to be passed simultaneously with the Act in question, abolishing these distinctions, and making any other provisions which we may agree upon for assimilating the law within and without the local jurisdiction of the Supreme Courts.

The same Act may provide for the objects stated by the two Judges in their remarks upon the 4th Section.

The two Judges say, "the Act is defective, in our opinion, in not stating how the representative, on the death of an owner intestate, is to be ascertained."

I agree that a provision to this effect must accompany the Act.

With regard to the 12th Section, the intention of the Act has not been correctly apprehended by the two Judges; we did not mean that the Court should inquire whether, as a matter of fact, the religious feelings of the parties had actually been outraged, but that it should determine, as a matter of law, whether the application of the general principles of the Act to the case in judgment would have that tendency. This is a question analogous to the question, whether a writing alleged to be libellous has a tendency to provoke a breach of the peace, or to weaken moral and religious restraints; the Court does not inquire into the fact whether any body has felt disposed to break the peace, or has felt moral and religious restraints weakened in his mind, but decides, as a matter of law, whether the writing has or has not this tendency.

But putting this misapprehension out of view, the difficulties of Section 12 are very great, and I shall be most anxious to discuss with the two Judges the modes of overcoming them.

This letter of the two Judges appears to me to open the fairest prospect of accomplishing that great object, the enactment of a code of English substantive law, so far as it is applicable to India (including Presidencies and Mofussil), that has ever yet presented itself, and I acknowledge it with gratitude and with the highest satisfaction.

(signed) *C. H. Cameron.*

April 4, 1845.

From the Government of India to the Honourable Sir *Lawrence Peel*, Knight, and Sir *H. W. Seton*, Knight, Judges of the Supreme Court, dated the 19th April 1845.

Honourable Sirs,

We have the honour to acknowledge the receipt of your communication of the 25th ultimo, containing your sentiments on the Draft of the proposed *lex loci*, read by us in council for the first time on the 25th January last.

We thankfully accept your valuable and obliging offer to aid the Government and the Law Commissioners in revising the provisions of the proposed law; any suggestions you may be pleased to make shall receive our best attention, but we do not now think necessary to notice the various points discussed in your letter, as we understand that those points and the various clauses of the Draft Act have already undergone discussion in conferences held by you with our colleague the 4th Ordinary Member of Council.

We have, &c.

(signed) *H. Hardinge.* *G. W. Pollock.*
F. Millett. *C. H. Cameron.*

No. 3.
Lex Loci.

From the Hindoo Inhabitants of Madras to the Right honourable Sir *Henry Hardinge*, K. C. B., Governor-general of India in Council.

The MEMORIAL of the undersigned Hindoo Inhabitants of the Presidency of Fort St. George, dated 2 April 1845.

Respectfully showeth,

1. THAT your memorialists having at all times been accustomed to regard the exercise of British rule over the vast territories possessed by the honourable East India Company in this part of the world as the strongest security of the rights and immunities, both civil and religious, of the native inhabitants subject to their authority, indulged this feeling in a still stronger degree than heretofore, on the promulgation of the Charter Act, dated the 28th August 1833; which besides doing away with former disabilities in respect of religion, colour, place of birth, &c., enabled and required the Governor-general to provide, with all convenient despatch, for the protection of the natives of the said territories from insult and outrage in their persons, religions or opinions.

2. That since the passing of the said Act your memorialists have seen, with satisfaction, a few instances wherein their countrymen have been permitted to hold offices or employments, without being disabled by religion, colour or birth-place; a step which they regard as an earnest that this clause of the Act will be brought into operation by the Local Governments as time and opportunity shall permit; but your memorialists have vainly looked for the performance of the clause which regards their protection from insult and outrage in their religion.

3. That your memorialists, prepared as they were to expect some enactment of the kind in their favour as respects their religion, have perused with concern and amazement the Draft Act, dated Fort William, Home Department, 25th January, Legislative, in which the Law Commission, under the intention of assimilating the practice of the Supreme Courts of Judicature and the Company's Courts in the Mofussil, has aimed a deadly blow at the religion and opinions which the charter requires the Governor-general in Council especially to protect.

4. That your memorialists refer to Clauses XI., XII. and XIII., but more immediately to the 12th clause of the said Draft; by which it is enacted, that "so much of the Hindoo and Mahomedan law as inflicts forfeiture of rights or property upon any party renouncing or who has been excluded from the communion of either of those religions, shall cease to be enforced as law in the courts of the East India Company."

5. That your memorialists feel themselves compelled, most respectfully, but at the same time most strongly, to remonstrate against this clause, as a palpable invasion of their ancient rights, a direct attack upon their religion, and a peremptory subversion of their ancestral and inalienable law.

6. That the laws of your memorialists, in almost every case, and in those relating to inheritance in particular, are part and parcel of their religion, incapable of being separated therefrom, and in the same degree that the law of inheritance is infracted, are the privileges of their religion taken from them vitiated and destroyed.

7. That this association of Hindoo law with their religion, or rather the emanation of the former from the latter, was clearly understood and laid down by that high legal authority, Sir Thomas Strange, formerly Chief Justice at Madras, who having referred, in the Preface to his "Elements of Hindoo Law," to an extract from Mr. Colebrooke's "Hindoo Schools of Law," which states, "The laws of the Hindoos, civil and religious, are by them believed to be alike founded in revelation, a portion of which has been preserved in the very words revealed, and constitutes the Vedas, esteemed by them as sacred writ," when speaking, page 113, vol. 1, of the loss of property incurred by forfeiture of caste, remarks, "By our own law, as old as the time of the Saxons, property is with us forfeited by crime; as by the feudal law also, as introduced among us at the conquest, it escheats for the same cause on attainder. Degradation from caste, by the Hindoo law, answers the attainder by ours; except that under the former, instead of the king or the lord taking the succession, upon the delinquency of the owner being ascertained by sentence, it vests in his heirs."

8. That

8. That the loss of caste is connected with the vitality of the Hindoo religion, is proveable from the fact that the relations of the party coming under its legal penalty are bound to consider his degradation as a moral death, in token of which the same ceremonies are by them performed on his account as take place in the celebration of obsequies for the dead.

9. That the Hindoo Law of Inheritance is considered by your memorialists and their countrymen as a sacred privilege; that it has been preserved to them by all former governors; and that it is guaranteed by Clause LIII. of the present Charter of the East India Company; and therefore to enforce the obnoxious Clause XII. of Draft Act of the Law Commission, would be to violate their prescriptive rights, and contravene the intentions of the British Legislature; besides inflicting an unnecessary and incurable wound on the religious feelings, opinions, practices and obligations of a large portion of British subjects, by whom such harsh treatment has been at no time, and in no instances, merited from the English Government.

10. That the Law Commission, in thus summarily attempting an innovation, intended to deprive the Hindoo community of a national and legal right, derived from their ancestors, and hitherto respected by their European rulers, affords strong cause of suspicion that such an innovation is only the prelude to others; that the security in person, property and religion, hitherto ensured to native subjects, is in danger of being taken from them, and that the protection, thus undermined in one instance, may eventually be denied them altogether. The power which deprives them of this privilege can do so by another, and the spoliation of one is an intimation that all are liable to be similarly swept away.

11. That such a spoliation would be a virtual breach of faith on the part of the Indo-British Government towards the Hindoo population, incompatible with the engagements of former Governments, and diametrically opposed to the feelings and intentions of the House of Commons, at the time of the renewal of the Company's Charter, as is evident from the "Minutes of Evidence" taken before the Select Committee of that Honourable House in the year 1832.

12. That on this occasion Mr. John Sullivan, on being examined with regard to the condition of Hindoo converts to Christianity, having stated that he should not consider it to be a question which affects the religion of this country, if the Government were to issue a declaratory Regulation (similar, your memorialists apprehend, to Clause XII. of the Draft Act) allowing the Christian convert to share any hereditary property, as he would have done if he had remained a Hindoo; the said Honourable Committee recorded its opinion, that, in order to maintain their right in India, the Government were bound in honour and good faith not to interfere with the religion of the natives in any way whatever.

13. That Mr. Sullivan, admitting the truth of this proposition, gave it as *his opinion*, that a Regulation of this kind would not interfere with the religion of your memorialists, and further stated that it was a disputed point, whether the conversion of a Hindoo to another religion does, by the Hindoo law, deprive him of his right to inherit ancestral property; by which opinion and statement Mr. Sullivan, it must be inferred, would not have dared to advise such a regulation, were it known to interfere with the religion of your memorialists, or were it contrary to Hindoo law.

14. That your memorialists unequivocally declare, that such a regulation (enunciated in Clause XII. of the Draft Act) is a direct violation of the law and religion of the Hindoos; in proof of which declaration your memorialists will quote an extract from the "Dáyá Bhágá," or Law of Inheritance, chap. 5, sec. 19: "Since a son delivers his father from the Hell, called *Pùt*, therefore he is named *Pùttra*, by the Self-existent himself. His connexion with the property is, therefore, the reward of his beneficial acts. If he neglect them, how can he have his hire?" From which it appears that a son's right of succession is the reward of benefits conferred on his father, which benefits, and especially the principal one of *Pùt*, no apostate from his religion can confer. It follows that an apostate cannot, by Hindoo law, succeed to inheritance, and *Pùt* being a religious duty, proves the union of the religion and law of your memorialists, both of which are renounced and forfeited by apostacy.

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15. That your memorialists might quote many other portions of their laws, to show that no outcast can inherit; but the fact is so well known, and so universally acted upon, that they consider it would be superfluous to dwell upon them in a memorial; the more especially as Mr. Sullivan merely says, "It seems to be a disputed point," without citing an instance in which it had been disputed, or referring to any authority beyond himself.

16. That the Hindoo law has always been, and still is, the law under the Presidency of Madras, in all cases in which inheritance is concerned, as is proved from the following extract from Sec. 16, Reg. 3, A.D. 1802: "In suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions, the Mahomedan laws as regard Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which Judges are to form their opinions. The Mahomedan and Hindoo law officers of the courts are to attend to expound the law of their respective persuasions, in cases in which recourse may be required to be had to it." And the Act 21 Geo. III., Cap. 70, Sec. XVII., provides that the "inheritance and succession to lands, rents, goods, &c., shall be determined, in the case of Mahomedans, by the laws and usages of the Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the department." Again, Sec. XVIII. enacts, "that the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentoo or Mahomedan law, shall be preserved to them respectively within their said families."

17. That the said Act 21 Geo. 3, cap. 70, not having been repealed by any subsequent statute, remains in full force, being further confirmed by the Company's present Charter Act, 3 & 4 Will. 4, cap. 85, sec. 53, which enacts, "That the Indian Law Commissioners shall from time to time suggest such alterations as may in their opinion be beneficially made in the said courts of justice and police establishments, forms of judicial procedure and laws; *due regard being had to the distinction of castes, difference of religion, and the manners and opinions prevailing among different races and in different parts of the said territories.*"

18. That the innovations now proposed by the Draft Act in Clause XI., XII. and XIII., against which your memorialists remonstrate, being a direct violation of the above-quoted Act 21 of Geo. III., Cap. 70, Sects. XVII., XVIII., and the above-quoted Charter Act, 3 & 4 Will. IV. Chap. 85, Sec. LIII., it is impossible that such clause and clauses, invading and destroying, as they do, the religion and law, the rights and authorities of Hindoo fathers and masters of families, expressly thus guaranteed to your memorialists, can pass into law, until the said Acts of Geo. III. and Will. IV. are annulled by the Parliament of Great Britain and Ireland; and that consequently, in the opinion of your memorialists, the Law Commission is not competent to propose a law completely at variance with and prohibited by the charter from which its own existence and legislative powers are derived.

19. That your memorialists further submit the high probability, if not the absolute certainty, that the Law Commission is mistaken in supposing the Hindoos have no *lex loci* of their own; since, according to that part of the Hindoo law termed Smritee, which is based upon the sacred Vedas, "That part of the earth occupied by the people who both by Mahomedans and Europeans have been and still are called Hindoos, is a portion of "Bhárathá Khunda," which originally consisted of two grand divisions, denominated Gavoodas and Dravedas, each having five provinces, and each province its particular law, dialect and usages;" and if it should appear, as your memorialists are of opinion, upon strict inquiry, it would, that, upon the principle of these "*leges loci*," Hindoo jurisprudence, as respects the laws of succession and inheritance, has been administered hitherto, your memorialists submit, that there can be no necessity for the introduction of a new "*lex loci*," the most important clauses of which are intended to annihilate rights and privileges handed down from time immemorial, preserved and assured to them by the British Government, sanctioned by their sacred books, and experienced as sufficient for every purpose for which they were intended.

20. That your memorialists submit that the clauses of the Draft Act objected to are not only unnecessary, but also highly inexpedient, inasmuch as they are contradictory

contradictory of each other; Clause III. enacting that nothing in this Act contained shall be construed to prevent any court from deciding any case, according to any law or usage immemorially observed, while Clause XII. breaks down the old Hindoo law of inheritance, which, it is incontestable, has been observed immemorially by the Hindoos up to the present hour. If Clause XII. be enforced, it invalidates Clause III.; if Clause III. be adhered to, Clause XII. must become a nullity.

21. That not only do Clauses III. and XII. clash with each other, but Clause XI. absolutely nullifies whatever it may be meant to enforce, by enacting that no Hindoo or Mahomedan shall, by renouncing the Hindoo or Mahomedan religion, lose any rights or property, or deprive any other person of any rights or property; two opposing provisions utterly irreconcilable. A Hindoo apostate, as has been shown above, by the act of apostacy, forfeits his inheritance, which *ipso facto* becomes the property of his Hindoo relations. If, therefore, in consequence of Clause XII., the share so forfeited be given to him, his family suffer wrong in the deprivation of the property which his apostacy had transferred to them; and if he be denied the forfeiture, then, in the construction of the Draft Act, he is wronged and deprived of his rights and property; by a decision either way, one of the parties must suffer injury.

22. That though it would seem that the Law Commission, aware of the difficulties created by Clauses XI. and XII., added Clause XIII. as a door of escape, by giving a discretionary power to the decision of the Court of Appeal, yet this does not remedy the evil. By this Clause it is enacted, that "where the application of any of the provisions of Clauses XI. or XII. shall outrage the religious feelings of any party against whom the court is called upon to apply them, the Court of Appeal may modify the provisions, and decide what compensation shall be given to any party sustaining loss by the non-application of the provisions." In all and every case where it shall be decided that an apostate Hindoo shall be entitled to a share of the family property, the religious feelings of his family and the whole Hindoo community will be most grossly outraged, and the discretion given to the Appeal Court, by which they are thus permitted, at their pleasure, to sanction this outrage of the religious feelings of the whole caste, is considered by your memorialists as a palpable and wanton violation of Act 21 Geo. 3, Cap. 70, Sec. XVII. and of Act 3 & 4 Will. 4, Cap. 85, and Sec. LIII. and LXXXV.; and in cases where the Appeal Courts, refusing to sanction such an outrage, shall award a compensation, it is hardly less an outrage to mulct the family of the apostate, in order to reward him for having forsaken the laws and religion of his ancestors, and brought disgrace upon his relations.

23. That, moreover, the award of compensation to an apostate under Clause XIII., is at variance with the note thereto appended. By the clause, a remuneration is given to the apostate under the operation of what the Law Commission denominates "English substantive law;" by the note, the apostate is made to incur the loss of his wife, and to provide her with compensation under the operation of Hindoo law; so that the same article allows the working of two contrary and different rules, at the discretion, that is to say, the pleasure, of the Court of Appeal; and Clause XIII., sanctioning the administration of contrary laws, is framed as an expedient to obviate the contradictions contained in the two Clauses preceding.

24. That your memorialists cannot avoid noticing a still further incongruity; while Clause XII. is found so deeply to affect the Hindoos in their law, privileges and religion, it is gravely stated at the end of Note (*g*), "This Act, however, is intended for the last class only, and any provisions affecting the other two, would be out of place in it;" on which your memorialists submit, that as the XII. Clause will actually, if passed, annul the Hindoo law of inheritance, it cannot, under the intention of the above-quoted sentence, be introduced into the Act, without exhibiting a contradiction in point of fact, too evident to escape the notice of the most disinterested individual. To take from the Hindoos a share of the family property, or to oblige them to make compensation for the benefit of an outcast and an apostate from his religion, whether the Act intended it or not, is, to all intents and purposes, legislating to their injury, and deeply affecting their community from one end of India to the other.

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25. That the clauses intended to change the ancient Hindoo law of inheritance are, moreover, highly objectionable, inasmuch as they will destroy the peace of families, and jeopardize the harmony and welfare of the entire Hindoo population, by encouraging litigation between relatives, and offering a premium for bickerings and strife. The system by which Hindoo converts have been gained in Madras, is that of inducing young persons to attend the schools of the English missionaries, where, contrary to the wishes and without the knowledge of their friends, they are frequently taught to despise the customs of their forefathers, before they are old enough to form a correct judgment of their own; and although instances of conversion to the creed of the missionaries have hitherto been few, yet, if once a law should compel the relations of the convert to reward his apostacy, either by awarding a share in the property he has forfeited, or by way of compensation, every fickle, inexperienced boy will have it in his power to insult his family, and disturb its social relations, by appealing to the law for an immediate separate maintenance at their expense, under the real or pretended plea of embracing Christianity.

26. That your memorialists earnestly deprecate the mischievous results which must follow the introduction of the Draft Act, as it now stands, on every ground of private and public good; and that as Clauses XI., XII. and XIII. are subversive of their long-enjoyed rights, at variance with the charter, contradictory in themselves, and calculated to overturn the peace and happiness of their whole community, your memorialists respectfully beg that the said three clauses may either be altogether expunged from the Act, or that the Act itself may be suspended, pending an appeal against it to the Honourable the Court of Directors, and the Imperial Parliament of Great Britain and Ireland.

And your memorialists, as in duty bound, shall ever pray.

Luchmee Narrasa Chatty, Chairman,
Madras, Hindoo Literary Society's Rooms, [and others.]
2 April 1845.

(No. 352.)

From *G. A. Bushby*, Esq., Secretary to the Government of India, to *G. Luchmee Narasa Chetty*, Chairman of a Meeting of Hindoo Inhabitants of Fort St. George; dated 24th May 1845.

Sir,

Home Department, Legis.

I AM directed to acknowledge the receipt of a memorial from a meeting of Hindoo Inhabitants of the Presidency of Fort St. George, held at the Hindoo Literary Society's Rooms on the 2d of April last, of which meeting you were the Chairman.

2. The memorialists pray, that Clauses XI., XII. and XIII. may be expunged from the Draft Act for establishing a *lex loci* in British India, which was published on the 15th January 1845. As they appear to labour under considerable misapprehension as to the principles which guide this Government in legislating for the native inhabitants of India, I am directed to communicate to you the following observations for their information.

3. The enactment to which the memorialists principally object is, "that so much of the Hindoo and Mahomedan law as inflicts forfeiture of rights or property upon any party renouncing or who has been excluded from the communion of either of those religions, shall cease to be enforced as law in the Courts of the East India Company."

4. The memorialists declare, that "such a spoliation would be a virtual breach of faith on the part of the Indo-British Government, and incompatible with the engagements of former Governments."

5. The principle which guides the Government of India is, that all the religions professed by any of its subjects shall be equally tolerated and protected.

6. The Government acts upon this principle, not on account of any engagement it has come under (for no such engagement exists), but because it is just and right so to act.

7. If

7. If the Government were to deviate ever so widely from this principle, it could not justly be reproached with breach of faith, though it might justly be reproached with partiality and intolerance.

8. It is just and right to tolerate a Hindoo in the exercise of his religion, and to protect him from any loss of property on account of the profession and exercise of his religion.

9. But the Hindoo religion is not the only religion which the Government is bound to consider. The Christian religion, the Mahomedan religion, and all others which exist in the country, have claims (quite independent of the fact that one of them is the religion of the Government itself) to the same impartial protection; and if a Hindoo becomes a Christian or a Mahomedan, it is just and right that he, too, should be protected against any loss of property on account of the profession or exercise of the religion he has adopted.

10. If the Government refused to protect such a person against the loss of any property, to which, but for his change of religion, he would be entitled, the Christian and Mahomedan communities would have just cause of complaint, and the Government, consistently with its own principles, could give no answer to their complaint.

11. In such a case, too, if the notion entertained by the memorialists, that the Government has entered into an engagement on the subject, were correct, the Mahomedan community might justly allege that the engagement had been disregarded, and the faith of the Government broken.

12. For in every one of the legislative measures adduced by the memorialists, and relied upon by them as engagements entered into by the Government, the Mahomedan religion is put, as it certainly ought to be, upon a footing of equality with the Hindoo religion.

13. If the Government were really pledged to enforce every provision of Hindoo law, it would be equally pledged to enforce every provision of Mahomedan law.

14. The memorialists cannot be ignorant that the Mahomedan law does not permit a Mahomedan, who has been converted from the Hindoo religion, to be deprived of any property, or subjected to any disadvantage in consequence of his conversion.

15. In the case, then, of a Hindoo who has become a Mahomedan, if it were really true that the Government is pledged to enforce the whole of the Mahomedan law, the community who follow that law would justly complain if the Government were to deny to such a Mahomedan any part of the rights which his own law promises to him. But the Government being in truth not bound by any engagement, is happily free to make such provisions for the conjunction as shall be equitable not to one class only, but to all classes of its subjects.

16. But putting aside the incorrect notion of an engagement on the part of Government to abstain from any alteration of the existing Statutes and Regulations, the Mahomedans have an unquestionable right to insist upon all the advantages which the law, as it now stands, confers upon them. The Statute to which the memorialists appeal, the 2 Geo. III., c. 70, s. 17, provides, "that their inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos; and when only one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the defendant." So that, according to the Statute, which the memorialists (however erroneously) consider, and rejoice in considering, to be an irrevocable law, a convert from the Hindoo to the Mahomedan religion, who has got possession of his Hindoo ancestor's property, is entitled to retain it against the Hindoo claimants.

17. If the memorialists were to act consistently upon their own doctrine, that the unjust portion of the Hindoo law of inheritance can in no case, without a breach of faith, cease to be administered by the Courts of British India, they ought to ask the Government immediately to alter this law, instead of asserting that it is an irrevocable engagement. They ought to ask that so much of it as enables a convert to the Mahomedan faith to defeat the unjust provision of the

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Hindoo law of inheritance should be immediately repealed. They are quite right not to ask this, because they must know that an impartial Government would never accede to such a request; but they are as inconsistent in applauding the Statute as they are wrong in supposing that it is a law which can neither be repealed nor altered.

18. Upon an occasion of this sort, it is proper to advert to the history of this country.

19. When the Hindoos became by conquest the subjects of a Mussulman Prince, they were deprived of their own law of inheritance if they entered the courts of justice, and compelled to submit to the Mahomedan law.

20. From this injustice the Hindoos have been delivered by the British Government, and they are now protected in the enjoyment of their own laws of inheritance. The Government will continue that protection to them; but it will not suffer them to force their law upon persons who have chosen to quit the Hindoo community. Those persons are entitled to the same toleration and protection as the Hindoos, and they will receive the same.

21. How completely the Hindoo law of inheritance was set aside under the Mahomedan dominion, may be seen from the remonstrance made in the year 1772 by the Naib Dewan of Murshedabad against a declaration of the British Government of Bengal, that "matters respecting the inheritance, and the particular laws and usages of the castes of the Gentoos, should be decided by the established magistrates, assisted by the proper persons of the respective religions, according to the laws and usages of each."

22. The substance of this remonstrance is quoted by the Law Commissioners in their Report upon which the *Lex Loci* Act is founded, from the Sixth Report of the Committee of Secresy, appointed to inquire into the state of the East India Company, as follows:—

"The Council of Revenue, in a letter to the President and Council, May 1772, enclosed a remonstrance of the Naib Duun, respecting that part of the instructions in the last letter of the President and Council which directed that in cases of the inheritance of the Gentoos the magistrates should be assisted by the Brahmins of the caste to which the parties belong. In that memorial the Naib Duun strongly remonstrates against allowing a Brahmin to be called in to the decision of any matter of inheritance, or other dispute of Gentoos; that since the establishment of the Mahomedan dominion in Hindostan, the Brahmins had never been admitted to any such jurisdiction; that to order a magistrate of the faith to decide in conjunction with a Brahmin, would be repugnant to the rules of the faith, and an innovation peculiarly improper in a country under the dominion of a Mussulman emperor; that where the matter in dispute can be decided by a reference to Brahmins, no interruption had ever been given to that mode of decision; but that where they think fit to resort to the established judicatures of the country, they must submit to a decision according to the rules and principles of that law, by which alone these courts are authorized to judge.

"That there would be the greatest absurdity in such an association of judicature, because the Brahmin would determine according to the precepts and usages of his caste, and the magistrates must decide according to those of the Mahomedan law.

"That in many instances the rules of the Gentoo and Mahomedan law, even with respect to inheritance and succession, differ materially from each other."

23. The British Government delivered the Hindoos from this oppression, and gave them the free enjoyment of their own law of inheritance. In the same spirit of justice and impartiality the Government of Bengal enacted the 9th Section of the Regulation VII. of 1832, to prevent that law of inheritance, which the Government had restored to the Hindoos, from being converted into an instrument of oppression against those who have ceased to be Hindoos. This law has been the law in Bengal since 1832, and has never been complained of as being oppressive, or as a breach of any engagement entered into between the Government and the Hindoos. And now, in the same spirit, the Governor-general of India in Council is about to extend that principle to the whole of the British Indian Empire.

24. The

24. The Charter Act, 3 & 4 Will. 4, c. 85, to which the memorialists justly refer as strengthening their feeling of confidence in the British Government, contains the last of those provisions which the memorialists consider as pledges that the whole of the Hindoo law shall be for ever enforced.

25. The supposed pledge is contained in the 53d Section of the Charter Act. The memorialists have quoted a portion only of that section. It is proper to quote the whole:

"And whereas it is expedient that, subject to such special arrangements as local circumstances may require, a general system of judicial establishments and police, to which all persons whatsoever, as well Europeans as natives, may be subject, should be established in the said territories at an early period, and *that such laws as may be applicable in common to all classes of the inhabitants of the said territories*, due regard being had to the rights, feelings and peculiar usages of the people, should be enacted, and that all laws and customs having the force of law within the same territories should be ascertained and consolidated, and, as occasion may require, amended; be it therefore enacted, That the said Governor-general of India in Council shall, as soon as conveniently may be after the passing of this Act, issue a commission, and from time to time commissions, to such persons as the said Court of Directors, with the approbation of the said Board of Commissioners, shall recommend for that purpose, and to such other persons, if necessary, as the said Governor-general in Council shall think fit, all such persons not exceeding in the whole at any one time five in number, and to be styled, 'The Indian Law Commissioners,' with all such powers as shall be necessary for the purposes hereinafter mentioned; and the said Commissioners shall fully inquire into the jurisdiction, powers and rules of the existing Courts of Justice and Police Establishments in the said territories, and all existing forms of judicial procedure, and into the nature and operation of all laws, whether civil or criminal, written or customary, prevailing and in force in any part of the said territories, and whereto any inhabitants of the said territories, whether European or others, are now subject; and the said Commissioners shall from time to time make reports, in which they shall fully set forth the result of their said inquiries, and shall from time to time suggest *such alterations as may in their opinion be beneficially made in the said Courts of Justice and Police Establishments, forms of judicial procedure and laws, due regard being had to the distinction of castes, difference of religion, and the manners and opinions prevailing among different races and in different parts of the said territories.*"

26. The memorialists consider the sections of the *Lex Loci* Act against which they remonstrate, so completely at variance with this section of the Charter Act, that they think the Law Commission are not competent to propose such a law, and are prohibited from doing so by the Charter, from which its own existence and legislative powers are derived.

27. So far is this section from being a pledge that the laws existing in the country shall not be altered, that it is, on the contrary, an announcement that the Legislature contemplated the alteration and amendment of them. It lays down, indeed, the principles which are to control and limit any proposed alterations, and the real question, therefore, is, whether the enactments in question infringe those principles.

28. It is expedient, says the Charter Act, that "such laws as may be applicable in common to all classes of the inhabitants of the said territories, due regard being had to the rights, feelings and peculiar usages of the people, should be enacted;" and again, "The Law Commissioners shall from time to time suggest such alterations as may in their opinion be beneficially made in the said Courts of Justice and Police Establishments, forms of judicial procedure and laws, due regard being had to the distinction of castes, difference of religion, and the manners and opinions prevailing among different races and in different parts of the said territories."

29. A law which provides that in a country where several different religions prevail, no man, to whichever of those religions he may belong, shall suffer loss of rights or property because his conscience impels him to adopt another, is "a law applicable in common to all classes of the inhabitants of the said territories;" and

the Law Commissioners, in suggesting such a law, have shown "due regard to the *difference* of religion, and the manners and opinions prevailing among *different* races, and in different parts of the said territories."

30. The memorialists say, that the XII. Clause will, if actually passed, annul the Hindoo Law of Inheritance. If this were true, it would follow that the whole Hindoo Law of Inheritance consists of provisions for furnishing freedom of conscience, and the Government might feel bound to annul it. But the Hindoo Law of Inheritance is far from being the unjust and barbarous thing here implied, and the Government can conscientiously continue to enforce the far greater part of its rules.

31. The memorialists speak also of the proposed law as one which would "compel the relations of the convert *to reward* his apostacy." If this were a correct description, the law would be justly open to objection. The law should provide neither reward nor punishment for a change of religious opinion. It should leave every man to the dictates of his understanding and his conscience, unbiassed by any motive of interest; and this is what the proposed law does.

32. The memorialists say, in para. 10, "That the Law Commission, in thus summarily attempting an innovation, intended to deprive the Hindoo community of a national and legal right, derived from their ancestors, and hitherto respected by their European rulers, affords strong cause of suspicion that such an innovation is only the prelude to others; that the security in person, property and religion, hitherto insured to native subjects, is in danger of being taken from them; and that the protection thus undermined in one instance may eventually be denied them altogether.

"The power which deprives them of this privilege can do so by another; and the spoliation of one is an intimation that all are liable to be similarly swept away."

33. The principles of legislation which have been stated in the course of this letter ought to satisfy the memorialists that the apprehensions thus expressed are groundless, and though their law is not protected by a pledge that its provisions shall be enforced throughout all futurity, it is protected by the determination of the Government to preserve to the two great classes of its native subjects the rules under which they have lived, and to which they are attached, when these rules are not injurious to other classes.

34. With regard to the objections made by the memorialists to the wording of the sections in question, they will be taken into consideration, together with objections of the same kind made from other quarters, before the law is passed. The Government is always glad to receive and to attend to suggestions intended to assist it in the endeavour to express its laws with all possible clearness and precision.

35. It is the intention of Government, for the more convenient arrangement of the new law, to remove the three sections from the *Lex Loci* Act, and to place them in a separate Act.

36. It may now be reasonably presumed that no other persons intend to offer objections against this Draft than those who have already availed themselves of the opportunity afforded by the period of four months which has elapsed since the Act was read a first time, being one month beyond the time notified in the Gazette for its reconsideration. The Government, therefore, in framing this answer to the memorialists, has under its consideration not only their memorial, but the representations of all those who appear to take any active interest in the questions to which it relates; and the confidence of the Government in the principles stated in this letter has not been at all shaken by any of those representations.

37. In conclusion, I am directed to state, that although the Government is always desirous that the classes to be affected by its legislative measures should freely express their opinions upon the Draft Acts which it publishes, yet it is a source of deep regret to the Governor-general in Council, that at a period when public opinion among a great part of the Hindoos has become in a high degree tolerant

tolerant and enlightened, a memorial founded upon doctrines of so opposite a character should have been presented by a respectable portion of that community.

I have, &c.

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

Fort William, 24 May 1845.

(No. 353.)

From *G. A. Bushby*, Esq., Secretary to the Government of India, to *J. F. Thomas*, Esq., Chief Secretary, Government of Fort St. George; dated the 24th of May 1845.

Sir,

I HAVE the honour to enclose a letter written in reply to a memorial from a meeting of Hindoo inhabitants of the Presidency of Madras, appealing against certain provisions of the proposed *lex loci* in British India, and to request that you will be good enough to forward it to the chairman of that meeting.

I have, &c.

(signed) *G. A. Bushby,*
Fort William, 24 May 1845. Secretary to the Government of India.

From *Baboo Aushootos Day*, for self and others, to *G. A. Bushby*, Esq., Secretary to the Government of India in the Home Department; dated the 16th April 1845.

Sir,

WE have the honour to forward to you our Petition or Memorial to Government, and request you will have the goodness to lay the same before the Right honourable the Governor-general of India in Council at your earliest opportunity.

We have, &c.

Calcutta, 16 April 1845. (signed) *Aushootos Day,*
for self and other Memorialists.

To the Right honourable Sir *H. Hardinge*, G.C.B., Governor-general of India in Council.

Right honourable Sir,

WE, the undersigned inhabitants of Bengal, Behar and Orissa, having perused the Draft of a proposed Act, published in Government Orders of the 25th of January last, commonly called the *Lex Loci*, take the present occasion of stating our sentiments regarding certain provisions in Sections IX., X., XI., XII. and XIII., of the said Draft, which we humbly conceive to be invasive of our religious rites, prejudices and usages, and directly opposed to the solemn assurances of the British Parliament, Act 21 Geo. 3, cap. 70, sects. 17, 18, and to the various proclamations of the Local Government, Regulation IV. of 1793, sec. 15, inclusive, and here quoted for ready reference.*

The

* Charter, 21 Geo. 3, c. 70.—XVII. Provided always, and be it enacted, That the Supreme Court of Judicature at Fort William in Bengal shall have full power and authority to hear and determine, in such manner as is provided for that purpose in the said charter or letters patent, all and all manner of actions and suits against all and singular the inhabitants of the said city of Calcutta; provided that their inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Gentoos by the laws and usages of Gentoos; and where only one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the defendant.

XVIII. And in order that regard should be had to the civil and religious usages of the said natives, be it enacted, That the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentoo or Mahomedan law, shall be preserved to them respectively within their said families; nor shall acts done in consequence of the rule and law of caste respecting the members of

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The repeated and solemn pledges breathe in every case the same generous spirit of toleration, and each succeeding one is only confirmatory of its predecessor; they assure the native community of British India, that there shall be no encroachment on the full exercise of their religious privileges; and that in all matters of succession and inheritance, every judicial proceeding respecting them shall be regulated and governed by Hindoo or Mahomedan law, as the case may stand, and according to the doctrines that obtained at periods prior to British supremacy.

The subject matter of an application being limited to the consideration of those sections of the proposed Act above enumerated, we refrain from reviewing them otherwise than by general observations on each as they consecutively appear in the Draft; and these observations will have a double reference, on the one hand, to their bearing upon the tenets of the Hindoo law, and whatever is thereby enjoined, and on the other, to their absolute nullification of all guarantees for the protection of our Hindoo institutions, in both their civil and religious capacities.

Section IX. Upon this we would remark, with due deference, that the system of Hindoo inheritance is materially different from the systems of other sects. By way of example, we take the liberty of stating a hypothetical case, which may, however, at any time occur regarding the distinction to which we advert. A Hindoo sister, agreeably to the doctrines of Hindoo law, cannot ever inherit the property of her brother on the simple score of consanguinity. In the Mahomedan code this prohibition is not to be found. Now, were a Hindoo woman to marry a Mahomedan, she would, in virtue of that connexion, derive and confer the title to claim certain share of property.

Section X. Unless this mean that the proposed law shall be made applicable to some other than of Hindoo and Mahomedan persuasion, and shall not apply to conversion to either of those creeds, we are quite at a loss to understand what is intended. If our interpretation be correct, then the clause assumes the form of a positive temptation, if not, an invitation to apostacy from an original faith to other than Hindoo or Mahomedan. Should the Draft in question become law, we respectfully submit that such a procedure would not be consistent with toleration. We need not add, how momentous must appear to us the violation of that principle whereby good faith is established between any two interested parties.

Section XI. and XII. These, if placed in juxta-position with the Act of Parliament and local Regulations already recited, would be found directly subversive of those provisions. With the utmost respect, we venture to submit, that whether the local government are justified in abrogating a solemn pledge founded upon the Act of a superior and supreme Legislature, confirmed by the local government, and acted upon from the very period of British connexion with the Eastern Empire.

Section XIII. involves inconsistency, and is in itself insufficient for what it contemplates: "Provided always, and it is hereby enacted, That if in any case falling within the provisions of Sect. XI. or XII.; it shall appear to the Court that the application of any of those provisions would outrage the religious feelings of any party against whom the Court is called upon to apply them, the Court shall state the facts of the case, and submit the statement for the decision of the Court of Appeal, who shall decide whether the provisions shall be applied or not, and with what

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of the said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England. Colebrooke's Digest Regulation, passed in 1772.

Page 5.—23. That in all suits regarding inheritance, marriage, caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Charter with respect to Gentoos, shall be invariably adhered to; on all such occasions.... shall respectively attend to expound the law, and they shall sign the report and assist in passing the decree.

Page 19. Passed in 1780.—27. That in all suits regarding inheritance, marriage and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shasters with respect to Gentoos, shall be invariably adhered to; on all such occasions, the Molvies or Brahmins shall respectively attend to expound the law, and they shall sign the report and assist in passing the decree.

Page 49. Passed in 1781.—XIX. Nor to give any degree in any suit concerning the succession or inheritance to any Zemindary, Talookdary, Chowkeedary, land or house, where there be more claimants than one, who by the Hindoo or Mussulman law (respect being had to the religion of the claimant) would be entitled to the same, except the same be by such decree adjudged to all such claimants in such portions as they shall be respectively entitled to by the law of that religion which the claimants profess.

A. D. 1793. Regulation IV.—XV. In suits regarding succession, where marriage and caste, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which the Judges are to form their decision. In the respective cases, the Mahomedan and Hindoo law officers of the court are to attend to expound the law.

what modifications, and whether any and what compensation shall be given to any party for the loss which such party may sustain, in case the said Court of Appeal should decide that the said provisions should not be applied." Whence is this compensation to be drawn? From the funds of an estate in which by apostacy the claimant has been wholly disconnected? How, we would ask, would it be possible to avoid outrage of feeling, when, according to our Shasters, an apostate attains civil death, when communion with him becomes next to infamous, and his touch an actual pollution? But then, says the clause, the case is open to appeal. It is to be much apprehended that the only two purposes likely to be answered by this process would be intolerance, under another form, and litigation; for it would inevitably follow, as the feelings of such members of families as did adhere to their original faith must be violently "outraged," that appeals would rise upon appeals, invariably, and as the case might be against the inheritance or the compensation.

Every Hindoo family has some peculiar deity, of whom the worship is enjoined, as being inseparably connected with rights of succession, inheritance and administration. In most instances this is so willed by the party who originally acquired the property, and it is also exactly conformable to the inculcation of the Shasters. The necessity for the administration at the hand of one not an apostate, is founded on a belief, that on the due observance of rites and religious ceremonies depends the progressive welfare of deceased souls, in their migratory transition to ultimate and unfading happiness. An apostate by the rules of faith cannot administer, and as any deviation from or neglect of the said worship, or the obsequial rites and ceremonies, would, as taught by our faith, bring down consequent and proportionate endurance, it follows, that whenever an apostate is permitted to administer, there must be a deadly outrage, not only to the living, but to the memory of the departed. Need more be uttered to prove how deep would be the infliction of such a law on both the present and future generation?

There are in our code three descriptions of heritable title, the one being consanguinity; the other benefits conferred on the deceased by performance of religious obsequies; and the third administration by those only who scrupulously cling to the ancestorial faith. This last invalidating the other two, whenever innovation or profanation is attempted.

It may here be stated as a general remark, that the Hindoo code is not altogether singular in inflicting forfeiture of civil rites upon apostacy; both Christian and Mahomedan codes exhibit similar denunciation in cases where there exists a combination of social and religious demands, as exemplified in the religious codes of the West, and the doctrines laid down in the Koran.

It would be impossible for us to divine the motive that would make the law respecting converts personally applicable to Hindoos or Mahomedans. People of other nations would be sure to derive profit from its adoption, as they shifted from one creed to another; whereas the whole burden of the provision falls with unmitigating severities on those whose only fault it is to have abided by the faith of their fathers.

In the Act of Lord William Bentinck abolishing the practice of suttee, we find a remarkable token of professed consistency with former and repeated state proclamations regarding toleration and non-interference with prescribed religious usage. His Lordship starts with observing, that the Governor-general determines on the abolition of suttee, because he believes it is not enjoined by any doctrines laid down in the sacred writings or ordinances of the Hindoos; a manifest testimony that the ground-work of our religious codes was not intended to be invaded or injured by the Act, and that the protection afforded by Parliament was at that time considered as being perfectly operative. Now the clauses regarding converts strike, as we apprehend, at the very root of our religion and social compact, and commonly produce domestic discord, confusion and wretchedness. Referring to a late Act of his Lordship that bore upon the identical subject of inheritance, we may say that it became a dead letter, or perhaps more properly speaking, owing to the tenderness felt for the claims of Hindoos, on the score of the protection against invasion of religious scruples and principles that was supplied on the pledge of a great and enlightened power, and which they had a fair right to look upon them as inviolate.

In deferentially submitting these facts, we have but incidentally touched upon the various points brought forward in an address, and purposely, because we trust that it will be enough to show by irrefutable evidence an infraction of pledge is involved in the sections specified, and that the production of such evidence will suffice to make our rulers, whose government has hitherto been most paternal,

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pause before they perpetuate the source of disruption and misery throughout a community, by thus throwing open the door to interminable litigation, supplanting domestic confidence by domestic anarchy, subverting all harmony in native society, and consigning the pledged good faith of a mighty benevolent nation (appointed by Providence to sway our destinies) to the shades of oblivion, and therein giving cause to a diminished gratitude in those who would otherwise be alive to its impulse. We have esteemed the British rule for its manly and protective character, for its hitherto unbroken observance of assurances sacredly bestowed upon us, and the very observance of which more than all beside has insured our ready, constant and implicit obedience. We still place every confidence in our present Governor for a continuation of the blessings already experienced, the future quality of which, however, must be mainly tested by the issue of their deliberation on the projected Act.

In laying these sentiments before you, Right honourable Sir, for the consideration of Council, prior to your and their revision of the said proposed Act, we fervently beg to impress, that we do not and cannot for one instant lose sight of the devotion and respect that are due alike to the exalted position of the party to whom we are appealing, and to the remembrance of the benevolent spirit by which the supremacy of Britain in India has, up to this period, been invariably characterized.

Calcutta, 16 April 1845. We have, &c.

(No. 382.)

From *G. A. Bushby*, Esq., Secretary to the Government of India, to *Baboo Aushootos Day*; dated 24 May 1845.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to acknowledge the receipt of your letter, dated the 16th ultimo, with a memorial from yourself and other inhabitants of Bengal, Behar and Orissa, stating your sentiments regarding Sections 9, 10, 11, 12 and 13 of the draft of a *Lex Loci* Act, published in Government Orders of the 25th of January last.

2. The Governor-general in Council has had under his consideration a similar representation respecting these provisions of the proposed Act from a meeting of Hindoo inhabitants at Madras.

3. The misconception of the memorialists concerning the existence of any stipulation on the part of the British Government of India with its native subjects, which would be infringed by the enactment of the sections above mentioned, has been fully discussed in the reply of the Governor-general in Council to the meeting at Madras. In the same letter, the principles on which the Government acts in regard to religious toleration, and in regard to the administration by its courts of the Hindoo and Mahomedan law, are stated, and I am directed to transmit, for the information of the Hindoo inhabitants of Bengal, Behar and Orissa, who have signed the enclosure of your letter, a copy of that reply.

I have, &c.
(signed) *G. A. Bushby*,
Secretary to the Gov^{t} of India.

From *Baboo Bhobaney Churn Banoorjee*, Secretary and Member of the Dhorma Sabha, to *G. A. Bushby*, Esq., Secretary to Government of India; dated 17th April 1845.

Sir,

I AM directed by the President and Members of the Dhorma Sabha to request that you will have the kindness to submit the accompanying representation to the consideration of the Right honourable the Governor-general in Council, and favour the Sabha with his Honour's reply, at your earliest convenience.

I have, &c.
(signed) *Bhobaney Churn Banoorjee*,
Secretary and Member of the Dhorma Sabha.

Calcutta, Dhorma Sabha,
17 April 1845.

From

From *Raja Radhakant Bahadur*, and others, to the Right honourable Sir *Henry Hardinge*, G. C. B, Governor-general of India in Council, &c. &c. &c.; dated — April 1845.

Right honourable Sir,

ACTING upon the conviction that it was intended by the very enlightened and liberal policy adopted by this Government, of giving previous publicity to proposed Acts, that opinion should be elicited as to the probable effect of their operation, we, the undersigned members of the Hindoo Religious Society, known by the name of Dhurma Shubha, of Calcutta, have taken upon ourselves the liberty of most humbly and respectfully submitting the grounds whereon we imagine the draft of a proposed Act (issued in General Orders of the 25th January last from the office of the Home Department) is likely to be generally felt as a grievous innovation, bearing unjustly on those subjected to its provision, hurtful as a violation of pledge, and in direct opposition to the promise of maintaining that religious toleration which secured the ready allegiance of the Indian subjects of the British empire.

2. Assuming the correctness of our conviction, it will be our endeavour to occupy as small a portion of time as possible, relatively to the importance of the subject, and the details into which we must necessarily enter in delivering our sentiments upon it.

3. When Great Britain had attained an ascendancy in India, her Imperial Parliament guaranteed, solemnly, full protection to religious exercises and usages; a fact distinctly specified in Act 21 Geo. 3, chap. 70, sects. 17, 18, wherein it is decided that all matters of contract and dealing between party and party shall be determined according to the doctrines of Hindoo and Mahomedan law respectively. Local Government Regulation (Section 15, 1793) also established similar right and authority in families and masters of families, and up to the present period there has been no avowed act militating against, far less subversive of, the said laws and usages.

4. In the draft of the proposed Act, paras. 10, 11, 12, 13, it is determined that Hindoo and Mahomedan converts from the faith of their ancestors shall not forfeit right and title to ancestorial property. These clauses we consider such as will surely become most unpopular, affecting the confidence of his Majesty's native subjects, violating given pledges of non-interference with religious rites and observances, nullifying *in toto* so much of Hindoo law as they apply to, and at variance with that good faith which, above every other consideration, won the affection, respect and obedience of the natives of this country.

5. Conformably to the opinions of all European writers upon Hindoo law (it seems unnecessary to say how much our national authorities are opposed to the doctrine proposed to be established), the opinions of Sirs Jones, Colebrooke, M'Naghten, and other compilers and commentators, the exact performance of obsequies forms the ground of right in inheritance. Every Hindoo, by renouncing his original faith, forfeits, according to the dictates of Munnoo and other Hindoo law-givers, his title to all property ancestorially acquired, and becomes, by the act of conversion, incapacitated for the fulfilment of religious ceremonies, such as are alike required by the tenets of the law and usages which have existed from time immemorial. Permit us, Honourable Sir, to enumerate these ceremonies:

1st. The funeral one of burning the body;
2d. Offering of food and libation of water, and the Shradha;
3d. Subsequent monthly and annual Shradha;
4th. Pilgrimage to Gujah;—the completion of the whole of which makes up the sole condition whereby a Hindoo can administer to an estate, and succeed to ancestorial possessions. As, according to our law, none but a person who professes the Hindoo religion is capable of executing the ceremonies, there must be a direct and, in our estimation, a very grievous violation of that law, when converts, who have disqualified themselves by the very act of conversion for the performance of those offices, are permitted to inherit property which they are not entitled to.

6. Now Parliament and the local authorities having, as we have stated above, solemnly held out assurances that there shall be no compulsory innovation of the law as it stands, and as it has stood for ages, we beg most respectfully and deferen-

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tially to submit that there must be a positive breach of good faith involved in any and every departure from the granted pledge; a breach rendered the more galling, as it exemplifies the encroachment of might upon helplessness. We trusted to the plighted faith of a great nation, while yet its local tenure was infinitely less firm than at present, and in reliance thereon, bound ourselves to a willing allegiance; but in the plenitude of its strength, and without, on our part, the slightest deviation from obedience as subjects, it eventually strikes at the root of our religious persuasions, and appears to offer us no other apology than a mere wilful exercise of its power.

7. When an individual abjures his own creed to adopt that of another, he must no doubt be able to weigh every circumstance of profit and disadvantage attendant upon his choice; and it follows, that every Hindoo convert must have known and calculated upon the penalties to which he subjected himself by renouncing the faith of his fathers. He must have been fully aware that he severed for ever all ties connecting him with his former co-religionists, and that these being so severed, he could not administer to estates he might otherwise have ancestorially derived. His deed, then, was a voluntary deed; and surely it is only just that he who commits an action, should bear the onus of it, and most unjust that the evils of it, or those arising from it, should fall upon others who have avoided the commission.

8. The mischief likely to ensue from the adoption of that portion of the proposed Act that refers to Hindoo and Mahomedan converts, would prove incalculable; affecting morals in a high degree, by inducing the practice of prohibited course (that is of course prohibited by Hindoo law), and causing for the most part dissipation, and a departure from all religious principles, *under the cloak of change.* Should what is contemplated unhappily pass into law, it will look *very like a Government premium to conversion,* and we much fear that all (and very many would they be) who are disposed to an indulgence of sensual appetites, would make this opening a means of discarding all religious obligations as enjoined by the Shasters and customs of their forefathers.

9. When a Hindoo embraces another faith, he becomes, according to the tenets of our law and religion, impure in the most extensive sense of the word. No one can act with—no one can associate with him, without in a great measure participating his offence; he is at once cut from communion as a Putita; a term which applies to an outcast, or a man degraded in society, and guilty of the most sacrilegious and heinous crimes; and, as both Parliament and the local authorities stand deeply pledged to protect all rites, ceremonies, prejudices and usages appertaining to caste, we humbly submit that, in the case of the convert most particularly, it appears questionable how far Government is competent to introduce so serious and so startling an innovation.

10. Great apprehension will naturally prevail that this may be the precursor of many serious encroachments; for if thegiven pledge be once broken, and the right to interfere in religious matters once established, we really do not know where the line of stoppage is to be drawn.

11. We beg to offer these sentiments for the reflection of the Honourable Council, to whose hands our destinies are consigned, and pray that it may be remembered we only seek to point out to its superior discrimination and judgment some of the most prominent objections that seem to lie against the institution of the proposed Act. Our confidence is yet unbounded, and our hope strong, that a nation, priding itself, with reason, on a scrupulous adherence to its pledges, will not now be turned aside from the considerate, mild and paternal course it has hitherto preserved, because unquestionably it has the power to do as it pleases. Converts are comparatively very few, and their wants may be separately regarded. But to make the multitude suffer, that the few may be favoured, in contravention of grave assurances of general protection, is, in our very humble opinion, neither consonant to reason, nor compatible with the ends of justice; and we beg it to be remembered that toleration and impartiality are the talismanic words that have so long made the rule of Great Britain dear to the people of this vast empire.

We have, &c.
(signed) *Raja Radhakant Bahadur,*
[and 32 others.]

Calcutta, Dhurmah Shubha,
— April 1845.

(No.

No. 3.
Lex Loci.

(No. 381.)

From *G. A. Bushby*, Esq., Secretary to the Government of India, to *Baboo Bhobaney Churn Banoorjee*, Secretary and Member of the Dhorma Sobha; dated 24 May 1845.

Sir,

I AM directed to acknowledge the receipt of your letter of the 17th ultimo, with a representation from the Dhurmo Shabha on the subject of Section 10 to 13 of the Draft *Lex Loci* Act published in the Government Orders of the 20th January last.

2. The Governor-general in Council has had under his consideration a similar representation respecting these provisions of the proposed Act, from a meeting of Hindoo inhabitants at Madras.

3. The misconception of the memorialists concerning the existence of any stipulation on the part of the British Government of India with its native subjects, which would be infringed by the enactment of the sections above mentioned, has been fully discussed in the reply of the Governor-general in Council to the meeting at Madras. In the same letter, the principles on which the Government acts, in regard to religious toleration, and in regard to the administration by its courts of the Hindoo and Mahomedan law, are stated; and I am directed to transmit for the information of the members of the Dhurma Shubha, a copy of that reply.

I have, &c.

(signed) *G. A. Bushby*,
Secretary to the Gov^{t} of India.

From Sir *E. Perry*, Puisne Judge of Bombay, to the Right honourable the Governor-general in Legislative Council; dated 27 March 1845.

Right honourable Sir,

IN reply to your letter of the 1st March instant, transmitting a copy of a Draft Act for a *lex loci*, and requesting opinions upon it, I have the honour to forward to you the accompanying observations.

I have, &c.

(signed) *E. Perry*.

Supreme Court, Bombay,
27 March 1845.

MINUTE on the Draft Act for a *Lex Loci*, No. —— of 1845.

THERE are so few European settlers or aliens occupying lands in the Bombay Presidency, that it is probable there will not be frequent occasion for calling the provisions of this Act into effect; still there are considerable bodies of men, Parsis, Jews, Portuguese, besides Anglo-Indians, as to whom there is a somewhat discreditable state of doubt as to what the law is. I therefore think that this Act is a step entirely in the right direction, firmly believing, as I do, that certainty in the state of the law is one of the most important objects for civil government to aim at.

I also think that uniformity in the law, so far as it is attainable, is most desirable; and, therefore, I agree with the whole of the preamble. There are one or two provisions in the enacting part which I think are open to remark.

III. This clause would not protect any laws or usages observed by the Parsis, although they have been settled in India for the last 1,000 years; nor by the Jews, although many of our Jew villages on the Malabar coast would appear to have been planted there more than 2,000 years ago,* for both these races are known to have been seated elsewhere. This can scarcely be the intention of the Legislative Council; so, also, *immemorially* seems an objectionable word, from its great ambiguity; applied to the Parsis, it would not include them, probably, as we know the very year in which they landed in Gujerath; applied to the Jews, it probably would include them, as we have no such record as to the time of their arrival;

* *See* a paper of Dr. Wilson's on the Jews in the Concan, and Buchanan's "Mysore," as to the Jews of Cochin.

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arrival; yet it is not improbable that the Jews may have arrived in India subsequently to the Parsis, and with regard to the immediate point, it is quite immaterial whether they did so or not.

Would it not be well to express the proviso so as to save any good and lawful custom (which, I suppose, has reference to what is considered good and lawful in English law), or any custom invariably observed by any race or people which is not contrary or highly offensive to good morals and sound policy?

Public policy is the standard to which the Judge in each case would have to refer the custom; it is that by which an English custom is now judged of; and the only reason why any additional words to "good and lawful custom" are required is, that English Judges might feel themselves bound to refer all disputed questions on bigamy, adoption, paternal authority, and such like, to English views and English policy.

IV. This clause I think decidedly objectionable, both as to its preamble and as to its enacting part.

1st, As to its Preamble: I think it is entirely an open question at Bombay from what date English Statutes can be said to apply; and if the question were to be raised, I feel a strong impression against the decision at Calcutta. It was not correct in Sir A. Anstruther to say, with respect to Bombay, that the Charter of Geo. 1, in 1726, was the first charter of justice; for, as I had occasion to show in a case of Perozeboye *v.* Ardaseer Cursetjee, the Charter of Car. 2, in 1669, granting Bombay to the East India Company, must have introduced the English law into this island, if it was not introduced before at some period after the grant of the island to the Crown in 1661, by some lost Order in Council, abrogating the Portuguese law. But, however this may be, the date of the introduction of the English law does not determine from what time the English statutes are to be held to apply; it would do so if Bombay were a plantation or a colony, in the sense in which the rule is applied to colonies, where the settlers are considered to plant themselves with as much of the laws of England as are applicable to their position, (*see* 1 Chalm., op. 195.) But neither Bombay, nor, *a fortiori*, Calcutta and Madras can be considered in the light of a colony, as is well shown by Master Stephen in Freeman *v.* Fairlie, (*see* Law Commission's Report on *Lex Loci*, p. 17); and at the date of the Charters in question, they are much more to be likened to factories than to colonies or plantations; indeed, they are all expressly called factories (Bombay, erroneously; Calcutta, I believe, correctly; Madras, questionably,) in the Charter of Justice of 1753; and the true question, I apprehend, is, What is the rule which regulates the application of English law to a factory? Is the English law at an English factory the law of England as it existed at the moment of the factory being established? or is it the law of the day applicable to the factory, and which each successive generation of factors brings with them from England? I have found no case in the books deciding this question, but it is obviously one open to much argument. Again, the Charter of Justice of 1753 expressly excludes natives (not merely Hindoos and Mahomedans) from the jurisdiction (except voluntary) of the Mayor's courts. The Charter of 1797, establishing the Recorder's court, makes all inhabitants subject to it. Here is another epoch from which it may be contended that English law was first introduced beyond the limits of the factory; that is to say, it was then introduced as to other persons than those having a mere temporary habitation, and no domicile, in Bombay, and, therefore, from that period, perhaps, English statutes may cease to bind. Lastly, with respect to the statement of fact as to no Statutes binding since the 13th of Geo. 1st, at Bombay, the fact is decidedly otherwise with respect to several Statutes I could mention; and the same fact would also appear to be the case with respect to Calcutta, by several decided cases in Mr. Morton's volume.

2d, As to the Enactment: Even if the fact were as the preamble states, I think it a pity, as there is to be express legislation on the subject, that the Legislative Council does not give British India the benefit of the improvements in the law during the last century. If this enactment were made with respect to the Presidencies, as well as with respect to the Mofussil, the Supreme Courts of the former would gradually, as they have done hitherto, establish what English Statutes are applicable; and their discretion may be safely depended upon (looking to their past exercise of it) for not allowing enactments to be introduced having reference to merely local British wants and exigencies. In point of fact, there are but few Statutes on which any question would arise.

VI. To

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VI. To carry out the same object of uniformity in the law, I do not see why the enacting clause should not be universal. There are, probably, as many Scotchmen holding lands in India as Englishmen; and the latter are far too few to make any special legislation necessary on this particular point.

VIII. Are appeals to come up to the Supreme Court in the first instance, and upon the facts as well as the law, and without reference to amount in suits (say) for half a rupee?

(signed) *E. Perry.*

27 March 1845.

(No. 1521 of 1845.)

From *J. Thornton*, Esq., Secretary to the Government in the North Western Provinces, to *G. A. Bushby*, Esq., Secretary to the Government of India, Legislative Department, Fort William; dated Agra, 12 April 1845.

Sir,

I AM desired to acknowledge the receipt of your letter, dated January 25th last, No. 88, forwarding the Draft of an Act declaratory of the *lex loci*, and in reply to request you will lay before the Legislative Council the accompanying copy of a letter from the Sudder Dewanny Adawlut, with its enclosure, deprecating the enactment of the law. Jud. Dept.

2. The Lieutenant-governor desires me to express his concurrence in this opinion. The Act does not appear to be such as can advantageously be administered by the courts of law throughout the country, as at present constituted.

3. The Lieutenant-governor does not consider it necessary to advert to all the provisions of the proposed Act; nor does he feel himself competent to pronounce an opinion upon their adaptation in the hands of skilful lawyers to the proposed end.

4. There were two great practical evils felt in this country, for which the Legislative Council were requested to find a remedy:

First, Converts to Christianity from Hindooism and Mahomedanism, in the Madras and Bombay Presidencies, were subjected to certain civil penalties and disabilities, which it was desirable to remove.

Secondly, There was a large and increasing body of Christians of all denominations, natives of India, for whom there was no law.

5. Effectual remedy has been provided for the first of those evils in the Presidency of Bengal by Sec. IX., Reg. VII., 1832; it was only necessary to re-enact that clause for Bombay and Madras.

6. The second object might have been attained by making the law of England applicable to Christians in India, in the same way and to the same extent that the Mahomedan law is to Mahomedans, and the Hindoo law to the Hindoos. The Advocate-general,* or the officer named, being the constituted expounder of the law in all cases referred to him, in the same way that the Moolvee is of the Mahomedan, or the Pundit of the Hindoo law.

* As now in criminal cases. *See* Cir. Or. Niz. Ad. 21 April 1843.

7. It seems to the Lieutenant-governor that a simple law to that effect might have been framed several years ago, when the necessity first arose. It might have been defective in philosophical accuracy, or in technical nicety, but it would have immediately supplied a pressing want, and would have been intelligible to all.

8. It is well known that the absence of a provision for converts to Christianity, such as is contained in Sec. IX., Reg. VII., 1832, is much felt in the Bombay and Madras Presidencies; and it is to be regretted that so much of the present law as is intended to effect the same end should be united with other matter, which admits of great diversity of opinion. It is believed that Sec. IX., Reg. VII., 1832, has been found quite adequate to the purpose in the Bengal Presidency, and the Lieutenant-governor hopes, that whatever may be the decision regarding the Act now under consideration, no further delay may occur in extending the above provision throughout the British territories.

I have, &c.
(signed) *J. Thornton,*
Sec^{y} to Gov^{t}, N. W. P.

Agra, 12 April 1845.

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Lex Loci.

(No. 561 of 1845.)

From *G. F. Edmonstone*, Esquire, Register to the Court of Sudder Dewanny Adawlut, in the N. W. P., to *John Thornton*, Esquire, Secretary to Government in the North Western Provinces; dated Agra, the 18th March 1845.

Sir,

S. D. A. N. W. P.
Present:
B. Taylor,
G. P. Thompson,
and J. Davidson,
Esqrs., Judges.

I AM directed to acknowledge the receipt of Mr. Assistant Secretary Shakespear's letter, No. 878, dated 5th instant, and in forwarding herewith a minute recorded by Mr. Davidson on the Draft Act which accompanied it, to subjoin a few observations on the part of the Court at large for the consideration of the Honourable the Lieutenant-governor, North Western Provinces.

2. The proposed Act declares that English substantive law shall be in future considered the *lex loci* of British India, and shall be administered to all persons professing neither the Hindoo nor the Mahomedan religion, subject only to such modification as its inconsistency with any Regulation of the Bengal code, or its inapplicability "to the situation of the people of the said territories," may permit.

3. Among the points most obviously and pressingly suggested to the consideration of the Court by a careful perusal of the proposed Act, are the magnitude of the change which it is designed, with so little preface or preparation, to introduce; the necessity or advisableness of that change; and, supposing the latter questions to be affirmatively answered, the adaptation of the instruments available to its introduction.

4. The substitution of English substantive law, with all its technicalities, involutions and intricacies, for a system governed by the dictates of equity and good conscience, and by the provisions of Regulations free from such complication, cannot but be regarded by the Court with the most serious apprehension of its effects on the property, transactions and interests of the classes for whose benefit this legislative enactment is designed. It will deprive them of a law which has been hitherto administered with efficiency, and has been found to provide adequately for all their judicial wants, which is as intelligible and accessible to the suitors themselves, as it is to the Courts charged with its administration, and will subject them to laws of which neither suitors nor courts are cognizants; of a law which, being declared to "include the definition of rights and obligation," will govern the adjudication of suits regarding contracts, mortgages, common bond debts, and other daily transactions; and this in a country where no professional advice is available, and where parties can never be satisfied, owing to the want of such advice, and other sources of information, that the legality and obligatory character of their mutual transactions, and the deeds or other instruments which represent them, will stand the test of judicial scrutiny. Such would be the immediate and direct consequence of the innovation, and its indirect influence on the interests of the classes amenable to the *lex loci* would be still greater and more comprehensive.

5. But the Court would inquire, has any necessity been shown to exist for the proposed measure, or is there any reasonable ground to suppose that it is recommended by expediency, or that under its operation more *substantial justice* will be dispensed? or is there not, on the other hand, fair reason to presume that the security of property is exposed to little or no hazard by the maintenance of the present system, and that the very classes for whose good this legislative effort is designed, would be almost unanimous in declaring their preference of the administration which they have hitherto enjoyed to that with which they are now threatened?

6. The necessity of the proposed measure, the Court observe, must be admitted to bear an exact proportion to the imperfection or absolute error of the existing law to the extent of litigation which is found to prevail among the classes declared subject to the *lex loci*, and to the numbers composing those classes, without attempting for a moment to contend that the practice heretofore pursued in the courts of civil judicature, or the principles and precepts of Regulation law, by which that practice has been governed, are either entirely free from error and occasional inconvenience, or altogether consonant with proper jurisprudential principles. The Court take leave to maintain that the general provisions of the Regulations, while they are remarkable for their simplicity and freedom from

unnecessary

unnecessary prolixity, are at the same time substantially equitable, and have been found practically efficacious; that imperfections do exist, and that provisions which the Court might desire to see rescinded do still disfigure the Regulations, is undeniable; but it is equally certain that little or no injury has resulted from such defects, and that the projected remedy is likely to be productive of infinitely greater evils than it can possibly remove. Admitting the excellence of English substantive law, "separated from the rules of procedure by which equity is made to modify law," and its immeasurable superiority to the system of law which necessity has introduced and established in this country, the Court would venture to give a preference to the latter, if only on the ground of its being accessible to all the judicial authorities, who, on the other hand, have enjoyed no opportunities of studying the former, and are not likely to fall in the way of such opportunities.

7. Again: as regards the extent of litigation in which the parties for whom the Council profess to legislate are engaged, it is a fact susceptible of substantiation by reference to the records of this Court and all the subordinate tribunals, that it composes an almost infinitesimally small proportion of the civil business annually instituted and disposed of in those Courts. It may be true, as argued in the preamble of this draft, that the number of aliens and of British subjects is increasing, and that it is lawful for both to hold lands in the British territories; but it is no less true (as experience has proved) that their occupations do not ordinarily bring them within the jurisdiction, or rather, rarely oblige them to resort to the aid of the civil courts; and that any subject of litigation, originating in their connexion with landed property or possession, will not, probably, in one instance out of one thousand, be under this Act triable and determinable by English substantive law; for Section 10 expressly declares the inapplicability of the Act to Hindoos and Mahomedans and to their property, and it is now, and will probably for another century continue to be, a rare occurrence that *both* parties to a suit affecting the property and possession of land, should be persons who are not of the one or the other persuasion. The Court presume that they do not err in so construing the 10th Section, that the restriction enacted thereby will bar the operation of the *lex loci* in all other suits than those in which *both* parties are neither Mahomedans nor Hindoos by religious profession.

8. If it be urged, with reference to the preceding remarks, that though the limited application of the Act is opposed to its present enactment, yet its prospective necessity is proved by the undenied fact of the progressive increase in the number of aliens and British subjects, and that the change which the gradual extension of their interests will occasion; without denying the fact, the Court are not disposed to concur in the inference which is opposed to past experience; they have reason to believe that such suits as have come before the Court of the nature amenable to this law have been satisfactorily adjudicated, agreeably either to the dictates of equity and good conscience, or to the analogy afforded by existing Regulations of the British Government, and that the courts of civil judicature, in attempting to follow the substantive law of England in their future decisions on the like questions, will fail as completely of success as they will of administering substantial justice, which, however obtained, should be, after all, the object of all litigation. But avoiding anticipation of the one insuperable objection to this innovation, the Court, besides, question its necessity, and its "expediency" also. Any injustice at present inflicted by the incapacity or inexperience, or even corruption of the lower courts, is remediable by an appeal to the next superior tribunal; and in every case wherein a legal question is involved by a special appeal to the Sudder Dewanny Adawlut, and with this facility of obtaining redress, cheap and efficient, the Court cannot avoid unfavourably contrasting the clumsy and in most instances impracticable remedy (provided in the 8th Section) of an appeal to the "Supreme Court of Fort William." The enormous distance of this appellate court from the court of original jurisdiction, the extravagant cost of prosecuting an appeal to a termination in that court, its very doubtful results, and the equally doubtful advantage of a successful issue relatively to the outlay incurred, must all combine to prevent the institution of an appeal, and induce the party supposing himself aggrieved to submit resignedly to a first loss, presumably unjust, rather than risk the consequence of a reference to the Supreme Court at Calcutta.

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9. The objection which in every case attaches to the remoteness of an appellate court from the tribunals of first instance, is in the present enhanced by the utter incapacity of the latter to administer English substantive law, and in this fact, as urged by Mr. Davidson in his minute, consists the insuperable obstacle to the real and effectual operation of the proposed Act. It has been not unfrequently urged, as opprobrious to the Government of India, and adverse to the success and credit of the present judicial system, that the individuals appointed to discharge the high and responsible functions of a judge have risen to that "bad eminence" by seniority in a graduation service, without being possessed of any judicial experience, of any peculiar qualifications, either natural or acquired, for that office. If this be true (as it certainly is), and if the fact have been found productive of evil, what shall be said of the proposed enactment, which will affect alike the experienced and inexperienced in Anglo-Indian jurisprudence, and will create difficulties of a much more serious and insuperable character than those adverted to? It is not unreasonable to expect that either European Judges, who are confessedly ignorant of English law, or the native Judges, who, in addition to that disqualification, are not conversant with the language in which it is written, and cannot therefore acquire a knowledge of it,—is it not unreasonable to expect that through the instrumentality of these, the benefits of English substantive law, moderated, corrected and explained by equity, will be extended to the parties who are amenable to the *lex loci?*

10. The disabilities, however, of the instrument selected to dispense this law do not stop here; the Law Commissioners, though foreseeing the difficulty, have failed to provide a remedy for it, or even to propose one, simply observing in their Report, dated in 1840, that "if English law is the *lex loci*, the Mofussil Courts, from defect of technical knowledge, must find considerable difficulty in shaping their equity according to that law;" but here the Court repeat the disabilities of the Mofussil Courts do not cease and determine; "defect of technical knowledge" is no mean obstacle; but even that sinks into insignificance when we consider that the common law, to which equity is said to be a supplement and corrective, is an *unwritten law*, which, "for the most part," says Mr. Justice Blackstone, "settles the course in which lands descend by inheritance, the manner and form of acquiring and transferring property, the solemnities and obligations of contracts, the rules of expounding wills, deeds, &c., the respective remedies of civil injuries, and an infinite number of minuter particulars which diffuse themselves as extensively as the ordinary distribution of common justice requires." It is plainly impossible that a competent knowledge of this common or unwritten law should be acquired by the judicial authorities of this country, either European or native, unless the customs or maxims which compose it be embodied in one or more Acts of the British Government, or in other words, in a separate code of the nature contemplated by the Law Commissioners in their Report on this subject. It is said by the learned commentator above cited, that these customs or maxims are to be declared and their validity determined by the Judges in the several English Courts of Justice; that they are the depositories of the law, the living oracles who must decide in all cases of doubt, whose "knowledge of that law is derived from experience and study," and from being long personally accustomed to the judicial decisions of their predecessors, "which judicial decisions," he adds, "are the principal and most authoritative evidence that can be given of the existence of such a custom as shall form a part of the common law."

11. In this country, to which it is sought to extend this law, neither these legal depositaries, these "living oracles," nor "these judicial precedents," are to be found. Those who occupy an analogous position in this land have had no "experience" and no means of "studying" that law; and the judicial decisions which, in the shape of printed reports, form an useful record of reference at present, are based upon the provisions of the Regulations passed by the Anglo-Indian Legislature, and the dictates of equity and good conscience, and will of course lose their utility with the abrogation of the law and practice which they now illustrate and expound. The common law of England is a law of precedents, and, to use Mr. Davidson's "words," the proposition that the commercial law (which may be looked upon as at least as much a law of precedent judgment as the common law) be administered in India, what does it import, but that there should be such analogous adjudication on the part of the Indian Courts, arising out of an instructed

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and prepense aim thereunto, as that the law enforced should in the courts of both countries be as nearly as circumstances will permit the same? The Court cannot foresee the remotest chance of this English law being rightly and effectually administered, being brought into real operation by agency avowedly wanting in the indispensable qualifications of experience and "technical knowledge," and removed, too, from all opportunity of acquiring either; neither can they understand how the Law Commissioners, who must be supposed cognizant of the inefficiency of the instruments available, can have admitted such a belief, or encourage such a hope, as the proposal of this Draft Act by implication establishes.

12. Further, it is obvious that the Anglo-Indian tribunals, unfit as they are in endeavouring to enforce English substantive law, will labour under the difficulties and disadvantages incidental to the absolute ignorance of the bar, to whose ability and legal knowledge, on the other hand, the Judges of England, who have devoted a life to the acquisition of the same knowledge are indebted for much assistance; and from this and the preceding arguments the Court conclude, with Mr. Davidson, that "the proposed enactment advances not one step towards providing that section of the Indian community for whom it legislates with English law as a *lex loci*, through the instrumentality of the Company's Courts; and that the only mode by which that law is eventually to reach the subjects of it, is when the cases of the suitors shall have passed through the Indian tribunals of first instance into the Supreme Court of Calcutta, where, and where only, a real adjudication of the interests concerned, according to the provisions of the English law, will commence.

13. The incapacity of the Anglo-Indian tribunals as instruments for the administration of English law, and the apparent misconception in regard to the "equity and good conscience" by which their judicial practice is regulated, are so forcibly set forth and exposed in the minute which accompanies this address, that the Court need only express their concurrence in the sentiments which it expresses, and the conclusion which is therefrom deduced. English equity is defined to be "the correction of that in which the law, by reason of its universality, is deficient," and cannot, the Court conceive, be brought into operation without a knowledge of the law, for the reasonable interpretation of which it is designed and called in; and it is to this element in the judicial system of England that the Law Commissioners must be supposed to refer when they declare this belief, "that English law, taken together with the supplement and corrective of English equity, constitutes a body of substantive law which is not surpassed in the qualities for which substantive law is admired by any of the various systems under which men have lived." The Court cannot avoid thinking that the obligations now resting on the Anglo-Indian tribunals of adjudicating questions not specially provided for by regulation, agreeably to the dictates of "equity and good conscience," or, in other words, the demands of abstract justice, is immeasurably preferable to the proposed enactment, which seems to them calculated not only to bring the administration of justice (as relating to the parties subject to *lex loci*) into contempt, but to produce much practical mischief.

14. The Court, seeing insuperable objections to the proposed Act, need not examine its several provisions, as they would have thought it a duty to do had they been able to recognize the capability of the Anglo-Indian tribunals to administer it, or to foresee even a remote chance of their present disqualifications being removed. In the conviction that the enactment is as uncalled for and unadvisable as its real and effectual introduction is impracticable with the agency available, they beg leave to enter their earnest protest against its being made; law recommending as infinitely preferable the detention of the present judicial system, or if an infusion of English law be thought indispensable to right decision and substantial justice, the promulgation of a series of specific acts, declaratory and enactive of the modifications which it is deemed desirable to introduce.

I have, &c.

(signed) *G. F. Edmondstone,*
Regr.

Agra, 18 March 1845.

No. 3.
Lex Loci.

NOTE on the Draft Act for a *Lex Loci* for the Territories within the Jurisdiction of the Company's Courts, in respect of certain Classes of the Population.

1. THE proposed Act is to empower the Company's Courts of Civil Jurisdiction to administer a defined and limited portion of the law of England, when this law is not inconsistent with any existing Regulation or Act of the Indian Government; and they are to administer it to all persons now amenable to their jurisdiction, not being Hindoos or Mahomedans, to whom and whose property the Act declares itself to be inapplicable.

2. The portion of English law which the Company's Courts are to administer is the law declaring and defining civil rights and obligations, excepting the law of "tenure" (and conveyancing). In examining into the expediency of passing this law, the questions that require to be considered are of quite a different character from what usually arise on like occasions. In the present case, we do not ask whether the body of law to be administered is composed of wise and just provisions, and adapted to the people whose interests are to be governed by it; *that law* may be assumed to be such as answers every requirement of a perfect jurisprudence in the matters it relates to. But the question that forces itself into view is the entirely novel and singular one, and in respect to the large innovation so suddenly and instantly to be introduced, the very startling question, "Do the Indian Courts of Judicature, on which the proposed Act devolves the duty of administering this part of the law of England, possess any the least acquaintance with this law?" Is there any hope of their attaining to an acquaintance with it, and in their adjudications on the interest of the parties made subject to this law, can we arrive by any calculation of chances at the remotest perceptible probability that this substantive law of England will be brought into a *real operation* through the medium of these Indian tribunals?

3. In reference to the above questions, we have first to inquire what are the particular branches of the substantive law of England which, under this Act, are henceforth to be the law of the vast territory its operation will embrace, and for an extensive and very valuable section of its population? It may suffice to enumerate a few principal heads of English law relating to commerce, which our native Judges may be immediately called on to give effect to, and which comprehend the rights, obligations and interests involved in the various forms and objects of mercantile contract in respect (in some degree) of the form of instrument, the parties to the contract, the matter stipulated, the legal interpretation of the articles of the contract, in connexion with the performance or infraction, the avoidance or determination of the same, and herein including all the legal rights and liabilities, mutual and externally relative of partners, principal and agent, the law of bailment, of sale, with the law of stoppage *in transitu*, of warranty, of lien, &c. &c., the law relating to bankruptcy, and to landlord and tenant. Now, the English law in regard to the above relations, as in operation in England, may be looked upon as being at least as much a law of precedent judgment as the common and statute law which those judgments declare and apply; and the proposition that this commercial law be administered in India, what does it import, but that there should be such analogous adjudication on the part of the Indian Courts, arising out of an instructed and prepense aim thereunto, as that the law enforced should in the courts of both countries "be as nearly as circumstances will permit the same?"

4. But any one who has made even cursory examination into the legal subjects above enumerated will at once perceive how vain and almost ludicrous is this legal injunction to a native Judge to administer in his Court, on certain occasions, a certain portion of "the law merchant" of England, or modify it, if necessary, by equity. What, then, is to be thought of a legislative measure which, in adopting a new code of substantive law, selects to dispense it officers who, of necessity, must be as wholly ignorant of its provisions as of a lost language? Does not such a measure present itself in the same light with that of the Roman emperor commemorated by the author of the Commentaries? "It is incumbent on the promulgators (of a law) to do it in the most public and perspicuous manner, not like Caligula, who (according to Dio Cassius) wrote his laws in a very small character, and hung them up on high pillars, the more effectually to ensnare the people?" Our native Judges, it is quite clear, will not be less effectually ensnared by engaging in the business of administering this particular portion of the substantive

law

law of England, their performances in regard to which must consist in mere blind imaginings. The selection of such Courts for such a purpose, left, as they are, without the aid of judicial Presidents of Council, learned in the law, or learned Judge as assessor, goes a step beyond that measure of Scottish legislation which created the Macer's Court, whereof we read, that "one of the requisites to be a Macer is, that they shall be men of no knowledge," and that the Legislature constituted those men of no knowledge into a peculiar Court for trying questions of relationship and descent, which often involve the most nice and complicated questions of evidence; but as a practical remedy for this absurdity, one or two of the Judges act upon such occasions as prompters and assessors to their own door-keepers.

5. But, indeed, it cannot be pretended that the proposed enactment advances one step towards providing that section of the Indian community for whom it legislates with English law as a *lex loci*, through the instrumentality of the Company's Courts; and the only mode by which that law is eventually to reach the subjects of it, is when the cases of the suitors shall have passed through the Indian tribunals of first instance into the Supreme Court of Calcutta, when and where only a *real* adjudication of the interests concerned, according to the provisions of the English law, will commence.

6. But it is said that the Indian Courts do already pretend to administer to British subjects the same system which is administered by English Courts of Equity, and this without the corrective of a good appellate judicatory as now contemplated. The Mofussil Courts, it is said, do, in adjudicating the cases of such suitors, follow British law when equitable, and when not, do administer such suitors' legal rights modified and corrected by equity.

7. There appears to be some misconception here as to the principle which binds the Indian tribunals on the occasions referred to. The law says, Regulation II. of 1803, Section 17, "In cases for which no specific rule shall exist, the Judges shall act according to justice, equity and good conscience; (that is to say) where a rule of law exists applicable to the case, that rule shall be enforced; on the other hand, where no provision of law exists, the Judges shall make laws, not follow actual law, and modify and correct the same, but frame such a rule for the case as justice, equity and good conscience may require; and in the adjudged cases cited in the Notes and Report on this Draft Act, the Judges, in seeking to ascertain what the foreign law (*i. e.*, British, French or Armenian) might be, adopted that mode, not as being bound to administer that law pure or modified, but because they deemed it consistent with justice and good conscience to give to the suitor the law of his own country when not bound to give him Regulation law. If such attempts were erroneous and vain as means of administering justice, as the principle of the proposed Act implies them to be, the proper remedy would seem to be in a progressive augmentation of our Indian statute-books, so as to meet the increased wants, and protect the newly evolved interests of the mixed Indian community, by a series of particular and appropriate enactments.

8. The proposed Act, then, it cannot be denied, must be ineffectual to its purpose and objects, inasmuch as the Indian judicatures of first instance are utterly inadequate as its instruments; and it is needless to dilate on the injury thus inevitably brought upon suitors by a measure that seems to violate one of the first principles of jurisprudence; for undoubtedly what is *aimed at* in the constitution of a court of justice is right decision, in the full sense of the words. It is not of set purpose constituted *to the end* that each of its decisions shall necessarily produce an appeal; but in selecting Indian Courts to administer unknown English law, the production of appeals would appear to be an object directly contemplated; for under any fair calculation of chances, it is not to be supposed that the Judges will happily hit the law applicable to the cases before them. Hence as many appeals as primary decisions, appeals to a distant and expensive court, or, practically, denial of justice. I would, therefore, earnestly deprecate the passing of the proposed Draft into law, considering the existing enactment which binds the Judges to adjudicate in cases legally unprovided by *secundum æquum et bonum*, to be a far better mode of securing right decision, until the Legislature shall from time to time provide for those of their subjects who are not Mahomedans particular laws suitable to the interests needing legal protection.

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9. But if this law is to be passed, I would desire that the courts of primary jurisdiction for cases falling under the law should be none other than those of the Zillah and City Judge, from whose decisions an appeal should be made to the Sudder Dewanny Adawlut, and that, finally, the case should be open to a special appeal on points of law to Her Majesty's Supreme Court in Calcutta.

10. I would earnestly advocate this mode of adjudication, because there is a hope that English Judges may be brought by special legal training, both in England and in India, to attain to fitness for the task of administering this *lex loci*; and these officers will thus be further enabled to watch through every court, and bring into immediate public discussion, where needful, the operation of the law, both in its judicial administration and in its general influence on the interests of those who are subject to it.

(signed) *J. Davidson*, Judge.

Agra, 14 March 1845.

(True copy.)

(signed) *G. F. Edmonstone*,
Registrar.

(True copies.)

(signed) *J. Thornton*,
Secretary to Government, N. W. P.

For the Right honourable the Governor-general of India in Council.

Supreme Court House, Calcutta,
17 April 1845.

Right Honourable Sir, and Honourable Sirs,

In returning to your Honour in Council an answer on my part to the letter you have done Her Majesty's Justices the honour to address to them under date 1 March 1845, transmitting to them copies of a Draft Act read in Council for the first time on the 25th January last, I beg leave to refer to the first part of my letter to your Honour in Council, of date the 28th January last, in which I entered into an explanation of the rules and limitations which I consider my duty to prescribe to me in giving to your Honour in Council my opinion upon a legislative measure proposed to be passed by the Legislative Council of India. I am the more induced to return a separate answer upon this occasion from that which you will receive from my learned colleagues, from my being aware that they do not estimate as I do the considerations which impose upon me the limitations I have referred to.

I have in my letter of the 28th January stated, that I consider it to be my duty, in returning my answer to such requisition as the present, to abstain from offering any observations upon the policy of an Act proposed to be passed by your Honour in Council. I therefore do not presume to offer an opinion approbatory or otherwise of the object of the proposed Act. I am quite persuaded that your Honour in Council would not propose to adopt any legislative measure which was not in your well-considered opinion a wise measure calculated to carry into effect an object conducive to the welfare of the people of India. Whether I agree in this opinion, or differ from it, can be of no importance, in the position which I occupy, having no duty or right to interfere in matters of legislation, or to offer suggestions upon them, except so far as may concern the practice of my own Court. But it is my duty to state to your Honour in Council what I know to be the operation, beneficial or otherwise, of the law, which I have to bear my share in the administration of, and my opinion as a lawyer of the legal and practical consequences of the law it is proposed to pass, and of each of its clauses, as they appear in the Draft submitted to me, leaving it to your Honour in Council to judge how far they may require amendment or alteration.

The law at present administered in Calcutta and the other presidential towns of India by Her Majesty's Supreme Courts being the Mussulman law to Mussulmans, the Hindoo law to Hindoos, and the laws of England to all the other inhabitants, has been, during a long course of years, unattended with any difficulty in its administration, and may, I think, be certainly stated to have given satisfaction to the inhabitants, and to have bestowed upon their property and their contracts as much certainty, and upon all their civil rights as ready means of securing and enforcing them, as are enjoyed in any of the civilized nations of Europe; and I think

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that this is evinced by the small number of contested causes which are brought in the Supreme Court of Calcutta, compared with the wealth of the place, the number of the inhabitants, and the extent of the mercantile transactions constantly going on in it. I cannot pretend to be accurately acquainted with the state of property or of society in the Mofussil; but I am not aware of any reasons to induce me, as a lawyer, to believe that the introduction of the like system in the Mofussil would be attended with any practical inconvenience, or deprived of any practical benefit, which has attended its administration at the Presidency, means being taken to insure its administration in the Mofussil by competent magistrates. The so doing, and the means by which this may be accomplished, are for the consideration of your Honour in Council. I apprehend all that is desired of me is to give my opinion how far the Draft Act is so framed as to be calculated to carry this object into effect, the administration of the judicial powers and duties under it being placed in the hands of competent men.

I address myself, therefore, with great readiness, but after much consideration; and I hope with due humility, to this important matter; and in endeavouring to the best of my ability to bring to the notice of your Honour in Council the considerations which appear to me to arise upon a perusal of the Draft Act, I hope I shall not be thought to treat the framers of it with intentional disrespect, if I state, without hesitation or reserve, the defects which appear to me inherent in many parts of it; and it being proposed, by Section 8 of this Draft Act, to enact that an appeal shall lie to the Supreme Court of Fort William, it seems desirable that the Judges of that Court should express their opinions upon the frame of it with a view to the practicability or otherwise of their giving judgment upon such appeals.

The recital in the preamble of an Act is always of great importance to the construction of the enacting clauses; and if the former be obscure or unintelligible, it must render the latter so in a greater or less degree. The words "*substantive law*," and "*law of the place*," being unknown in the language of the common or statute law of England, or of any writer of authority, that I know of, upon law generally, or upon the law of any country, cannot but be obscure and uncertain, having no customary acceptation to define and to fix their meaning. This is admitted in the *Notes to the Draft Act*, but cannot be cured by notes of this sort, to which a Judge interpreting this Act would have no more right to refer than to the report of the speech of a member on moving the first or second reading of a Bill in either House of Parliament when interpreting such Act of Parliament when passed. But referring to Note (*a*), we find that the term *substantive law*, is meant to include only *the definition of rights and obligations.* The preamble, therefore, is made to affirm that it is doubtful what are now the definitions of rights and obligations in the territories subject to the Government of the East India Company. These words, therefore, which are well known and intelligible, might be easily substituted for the unknown and unintelligible words *substantive law*, wherever these latter words occur in the Draft Act or Bill. But even so amended the sentence would not appear to me very intelligible. Law does not consist in the definition of rights and obligations, which forms a very small part of it as a science, and a still smaller as a code of rules for the enjoyment of rights and the performance of obligations. No man ever thought that the definition of property, *Jus utendi, faciendi et disponendi*, comprised the law regarding property. If the preamble ran, "Whereas it is doubtful what is now the law in regard to civil rights and contracts and injuries to be administered in the territories, &c., to certain large classes of persons residing in those territories," it would appear to me perfectly plain, sufficiently comprehensive, and, unhappily, perfectly true.

2. *Law of the place.* This is said in Note (*b*) to be equivalent to the Latin words "*lex loci.*" I am not aware of these words, so far as I at present recollect, being used, without some distinct announcement of the *locus* referred to, as *locus rei sita, locus contracti, locus delicti, locus domicilis, locus originis.* What is meant by the law of one of these several descriptions of place, I know, as the *lex loci rei sita*, the *lex loci contractus*, &c.; but what is meant by *lex loci*, I do not know, nor consequently what is meant by the *law of the place*, unless I am told what place. *Law of the place* is not a phrase that has any definite or known meaning; in English, *law of the land* has, because it is idiomatical, though not scientific. But it only means to express more emphatically what is expressed by the words "*the law*," as the law of the land in England is the law in England. The situation

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of the law in the Mofussil in India is anomalous, and must be expressed, as it appears to me, not in a new-coined phrase, which has no established or definite meaning, but in plain words, which may describe the anomaly. Thus, if it were said, "Whereas it is doubtful what is the law in regard to civil rights and contracts and injuries to be administered in the territories subject to the Government of the East India Company, not within the jurisdiction of Her Majesty's Supreme Courts at Calcutta, Madras and Bombay, to persons therein residing, who are neither Mahomedans nor Hindoos, nor of the class denominated and known by the appellation "British subjects," I apprehend the anomaly and the mischief would be accurately described.

3. The words *local jurisdiction* are not applicable as a description to any part of the civil jurisdiction of Her Majesty's Supreme Courts. The civil jurisdiction is given over British subjects and servants of the Company, and inhabitants of Fort William, Fort St. George, and the town and island of Bombay respectively. These are descriptions, not of localities, but of persons. It is true that the law of Calcutta, for instance, except in the case of Mahomedans and Hindoos by special exception, is the English law; but the jurisdiction of the court in civil matters is neither conferred nor limited by the locality of Calcutta; one, not a British subject, found in Calcutta, and not being an inhabitant, *i. e.* not residing or sleeping there, or having a house there occupied by himself or his servants, but contracting there, is not subject to the jurisdiction; one constructively an inhabitant, though residing actually at Benares or elsewhere, is subject to the jurisdiction; so that it is not true, as a general proposition, that it is doubtful what is the law to be administered without the local jurisdiction; meaning thereby, as must be taken to be meant, the only jurisdiction it has which is local, viz. the local criminal jurisdiction; and this is local only in consequence of the rule of law, that every man committing a crime, unless there be some special exception, is subject to the *lex loci delicti*; for in all civil matters the law of England is to be administered to all British subjects, and all inhabitants of Calcutta, Fort St. George and Bombay, whether actually inhabitants or by construction of law, wheresoever they may be found, or, in the last, may actually reside, unless such persons be Mahomedans or Hindoos, in which cases the law to be administered is the Mahomedan or Hindoo law respectively.

First enacting Clause.—I am apprehensive that the courts of the East India Company will not be better able to interpret this clause than I am; and I am quite sure that if any appeal should be brought before me from one of their decisions, grounded upon its not being in conformity with this clause, I should be under great difficulty in deciding in such appeal. I have already said, that what is meant by *substantive law* I cannot know without looking at the notes appended to the Act, and at these notes I cannot lawfully look in giving judgment. But what is meant by the *law of the place*, neither do I know, nor do the notes inform me; if I could look at them, and if I were freed from these, to me, unintelligible phrases, an insuperable difficulty would still remain. The Mahomedan and Hindoo laws are swept away by this clause, except in so far as they are preserved in force by subsequent clauses, of which presently, and no code or body of law is substituted, either for them or for such part of the law of England now in force among those subject to it, as this clause shall be held to abrogate. In lieu of these laws which are abolished, there is introduced not the whole law of England, but such part of it only as, in the first place, is *applicable to the situation of the people of the said territories*. In what respects applicable, in reference to what circumstances in their situation, who are meant by the *people of the said territories*, —these matters are left unexplained, and they require explanation very much. The Judges who shall have to decide upon this law will be left not to administer a plain law, nor to interpret a law whose intention is clear, but its wording somewhat doubtful, but without any help from the statute to declare the law, which in their opinion shall be *applicable to the situation of the people of the said territories*, which situation, in all its most material circumstances, the Queen's Judges, who form the Court of Appeal, are very ill informed of, if it be not too much to say that they are entirely ignorant of it. By the *people of a territory*, are generally meant the *native-born inhabitants*. No more, therefore, of the law of England, if this be the meaning, will prevail in the construction of the rights and contracts, and torts and liabilities of British subjects, or European or American residents, or any others, than may be applicable to the situations of native Hindoos

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or Mussulmans, the vast majority of the natives of these territories. But in many respects rules applicable to the situation of one of these classes are not so to that of the other. In this case, *quid juris* as to rights, contracts, torts and liabilities arising between a Mussulman and a Hindoo? *Quid juris* among Englishmen or other persons not Mussulmans or Hindoos there residing, or between an Englishman, or one of those other persons, and a Mussulman or a Hindoo? In general, when a civilized conqueror introduces his laws among the less civilized nations of the conquered country, it is for the purpose of introducing civilization, by substituting good laws for barbarous usages; but here it should seem that no more of the good laws are to be introduced than may consist with the situation resulting from the barbarous usages.

Again, in the second place, no more of the good laws are to be introduced than may consist not only with the situation so produced, but also with all the Regulations of the codes of Bengal, Madras and Bombay respectively; so that all these Regulations framed by the East India Company's Governments will be enacted as the law for all men of all countries resident or found for the time within these territories respectively subject to these Governments. It would seem that it were well to revise these codes first, or at least to see how much of the law of England will remain in force after all is struck out of it which is inconsistent with any regulation contained in them, and in particular how those Regulations are to be construed, which direct all matters to be decided not by any rule of any law, but according to equity and good conscience applied to that particular case.

If by the words "situation of the people of *the territories*" be meant, not of the native-born inhabitants, but all the people resident there for the time being, the difficulty in ascertaining what is applicable to their situation will be yet greater. It cannot be meant that different portions of the English law shall be administered to the different classes, as applicable to their different situations; for this would introduce under the general name of English law as great a variety of laws as of people. But this variety must be introduced; viz., that as different Judges will take different views of the law applicable to the situation of the people of the territories, there may be as many different laws in regard to civil rights and contracts, and wrongs and liabilities, as there are different Judges and different districts. No doubt, after a considerable lapse of time, it is possible that this discrepancy may be removed by the decisions on appeal; but it is difficult to conceive a greater inconvenience than this enactment of a wholly indefinite law must produce for many years to come.

The Second enacting Clause excepts from the operation of the law all questions of marriage, divorce and adoption *among persons not Christians.* This comprises all questions of *status* and legitimacy. *Quid juris* as to Jews in these matters, or Parsees or Chinese, or many others? As to Mahomedans and Hindoos, I understand that the codes of Bengal, Madras and Bombay, although as to these two latter I am uncertain, expressly declare that the Mahomedan and Hindoo laws shall be administered to those classes respectively in matters of marriage and divorce, and adoption and succession. If this be so, the law in regard to these classes will remain as at present in these matters. But there is a large class of native-born persons in these territories who are *Buddhistes* or *Coles* or *Bheels*, or profess some other form of religious belief—it may be very rude and undefined—but who, as I understand, are not Hindoos or Mahomedans. *Quid juris* as to them?

Clause Third enacts, that nothing in the Act contained shall be construed to *prevent* any court from deciding any case according to any law or usage, &c.; but it does not *prescribe* this proceeding. It leaves it optional to the court to decide the case in question according to such law or usage, or according to the law of England thus modified by the Act, as to its own unlimited discretion shall seem meet. This is to introduce, not a certain rule, but a most uncertain discretion; but the exercise of this discretion to the deciding according to laws and usages immemorially observed by a RACE or A PEOPLE *not known to have been ever seated in any other country than the said territories*, or according to any good and lawful custom; this discretionary permission is not confined, nor is it specifically extended, to questions of marriage, divorce or adoption, nor relation to the religious creed of the party. The Parsees, as a race, are known to have been seated many hundreds of years ago in Persia, though for many hundreds of years they have formed to all intents and purposes an integral part of the native inhabitants of Hindostan. The Jews are in a similar position. Some Chinese, some Africans, some other entire races of this multifarious population, not being Christians, are in positions of the same nature.

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Now it is very reasonable that those who come into a country should be subject to the laws of the country in all matters of contract and tort, and liability to repair damage, and should not in these matters import for their own use laws and usages of their own. But it is doubtful how far this Section 3 is to be construed in conjunction with Sec. 2, regarding marriage, divorce and adoption, and the rights of persons, and of succession, and of *status*, which flow from the natural relations created by marriage and adoption. But either way, whether Section 3 is construed as modifying the operation of Section 2, or this last-mentioned section be construed as not so modified, it should seem that a large portion of the population are left in a very singular position in regard to these matters.

If Sect. 2 is not affected by Sect. 3, then it should seem that all persons not Christians are left without any law regarding the relations of husband and wife and parent and child, or legitimacy, which depends upon marriage, or succession and inheritance, which depend upon legitimacy or adoption, except so far as in the case of Mahomedans and Hindoos, their marriages, adoptions and inheritance, are provided for by the Regulations. If, on the other hand, Sections 2 and 3 are interpreted in conjunction, the result, it should seem, will be the same as to a large portion of the un-Christian population, as in questions regarding marriage, divorce and adoption. All these persons are expressly excluded from the provisions of this Act, as there are no provisions of any other kind made for them in these respects; and as the operation of their own customs, they not being of such races as are above described, is excluded, the result is to leave them without all law in these matters.

In construing this clause, it remains to advert to the power given to the courts to decide *according to any good and lawful* custom. Customs are of two descriptions:—

1. *General customs*, which are nothing else than the common law; and the whole common law of England, in so far as not inconsistent with the Regulations, being rendered the law of the land, there is no room left for deciding according to any *general custom* not comprised in the common law of England.

2. *Particular customs*, which in the language of the English law means *local customs*, and is never applied to mean the peculiar customs of particular races or classes of persons; the words, therefore, *good and lawful custom*, in an Act in the English language passed by the English Government, could not, I apprehend, be taken to apply to the customs which are almost the only important ones in India, those prevailing with particular races or classes of the people; but a custom to be in law a good custom, must have immemorially prevailed; and to those *laws and usages*, expression for *customs*, immemorially observed *by any race or people*, the Judges are empowered in their discretion to give effect, if they so think fit; but, then, this is expressly confined to laws and usages which have been *immemorially observed by any race or people not known to have been ever seated in any other country*; the words, therefore, *according to any good and lawful custom*, appear to comprehend little of any substantial importance in the administration of the law in India; there being few, if any, customs, merely local, differing from the usual rules of the law.

Clause 5. The first part of its preamble announces an universal truth; viz., that there is no distinction in respect of the administration of a law not the law of the court, between the way in which a court of law proceeds and a court of equity. What is meant by the latter part of the preamble I do not clearly know. To direct the Courts of the East India Company to adjudicate legal rights declared by the Legislature, and modify the same whenever equity and good conscience require it, is to invite these Courts to decide contrary to law, or, at least, without paying regard to the law; and when it is added, that they are to adjudicate and modify such legal rights in the same way as such Courts now adjudicate and modify, &c., it occurs, first, That they are ordained to follow what may very well be an unlawful or expedient example; secondly, That the way in which such Courts now adjudicate and modify the legal rights of British subjects, it is impossible to know as a general rule for observance, since they are very numerous, scattered over an immense territory, and neither act, nor are stated to act, nor if acting, as described according to their individual views of equity and good conscience, can act according to any known and fixed rules.

I pretend not to know, with any accuracy, how the Mofussil Courts proceed, or what law or what system they practically adopt in the application of their wholly undefined power of judging in each particular case according to equity and good conscience.

conscience. But I must be excused for saying that the statement of the learned Commissioners in Note (*d*) upon this clause in the Draft Act, that these "Courts, as regards English law, are not courts of law, but of equity, and that they administer to British subjects the same system which is administered in English courts of equity, cannot but be founded in error. *English law* to these Courts is a *foreign* law; and a court of law and a court of equity cannot decide upon a foreign law in different manners, or to different effects; for the foreign law being to them *matter of fact*, must be learnt from evidence, and pronounced according to the proof, like any other matter of fact, and is in its own nature incapable of modification from equitable considerations without a breach of the truth. There may be in some rare cases particular rules of a foreign law which are received in particular proceedings, and are binding within the territory where that law prevails, but being inconsistent with natural justice, can have no effect given to them in other countries. But in these cases the rule of the foreign law is not modified, but rejected; and there may be cases where the foreign law being ascertained, distinct equities may arise with which English courts of equity will deal, in the same manner as if the right arose from a rule of English law. They do not interpret the rule of the foreign law in any different way from that in which an English court of common law would interpret it; modify it by any of what are called equitable principles; not taking it as matter of fact that such is the rule, and such is the right. An English court of equity inquires whether there are what it calls equities *aliundè*, which, according to its own well-known and established rules, control the exercise of the right. This is quite a different thing from *modifying* the rule or the right; nor is it of any importance to a court deciding upon a question which must be governed by a foreign law, to know in what court of that foreign country the right in question would be enforced, whether in a court of law or a court called a court of equity. It is sufficient to enable the court to decide according, for example, to the *lex loci contractus*, that it has evidence, that in a court of that country, competent finally to adjudicate upon the matter, a certain precise effect would be given to the contracts; if the contract were of that nature, that in England, where it was entered into, the court competent finally to adjudicate should be a court of equity, the duty of the Mofussil Court would be to decide upon its validity and its effects as such court of equity would decide. But in so doing, it would exercise no equitable jurisdiction, but would pronounce a plain decision upon a matter of fact upon the evidence. If, therefore, the Mofussil Courts, in deciding upon the rights of British subjects, when they have evidently jurisdiction so to do, mean to decide according to what they believe the system administered in cases cognizable in equity by English courts of equity, in a case which, by the law of England, is not directly cognizable in equity, but is governed by the strict rules of the common law, and in which, if the point incidentally arose in a case properly pending in equity, the court of equity would be bound to decide according to the same strict rule of law which frequently occurs, these Mofussil Courts are unconsciously betrayed into decisions contrary to justice, and inconsistent with truth. Instead of deciding according to the law of England, they would be deciding in a totally different manner; it might be in a manner opposite to what would be the decision in England.

What follows in this note is not to me very intelligible; what is meant by *administering the same system, with a* remarkable difference in the mode of administering it, I do not clearly understand. There cannot be courts administering *English* equity when there is no court administering *English law*; for these courts have not *conflicting* or antagonist *jurisdictions*, as seems supposed in this note; the one controlling the mischievous proceedings of the other; but courts exercising an harmonious jurisdiction in different descriptions of rights, and injuries and liabilities, proceeding to the investigation and decision of them, and the mode of redressing the wrong, or enforcing the right, by different rules of procedure, suited, in the opinion of English jurists, to the different descriptions of matters to be decided, combining their efforts for the purpose of administering complete justice in all cases. In most other countries, jurisdiction in all questions of civil right or civil injury has been given to one court or to several, having the same description of authority, which courts proceed according to rules and modes of procedure, the same or very similar, in all cases, of what nature and description soever. In the opinion of the English jurists, fortified, as they think, by long experience, it is better to try the simple and ordinary transactions of life, as bargain and sale, letting and hiring, borrowing and lending, &c., by a jury, on the *vivâ voce* examination of witnesses in half an hour, under the control of a Judge, who keeps all parties strictly

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to plain rules of evidence and known rules of law, and whose attention is constantly directed to matters of this sort, and to investigate the complicated affairs of a great trust before a Judge whose attention is constantly directed to matters of that sort, who has all necessary means supplied to him for carefully examining into the whole truth, and is not pressed to pronounce his decision till he is ripe for it. The English courts may fail in their attempt to administer complete justice in all cases. There may be essential errors in the opinion of those English jurists, which the Indian Law Commissioners may be able to point out and correct; but the rules of English courts of equity, and those of English courts of common law, form equally part of the law of England, applicable in different cases, according to that law.

There is no impossibility, though to English jurists there would appear great inconvenience and difficulty, in administering justice according to both sets of rules in one court; but to decide in all cases according to the rules of English equity, would be very far from *administering the same system which is administered by English courts of equity*, or any system which is at all consistent with the laws of England or with essential justice, since in a great proportion of the cases which require the decision of the courts much exceeding the majority, the rules of English equity do not apply; but the rules of law *unmodified and uncorrected by equity*, in the sense in which equity is understood in the English courts or the law language of England, and the attempt *to modify correct legal rights* in these cases *by* equity, meaning equity in the sense in which it is administered by English *courts of equity*, would be to introduce nothing but uncertainty and injustice, the very reverse of that *æquum et bonum* which the learned Commissioners appear to understand as the definition of *equity*, but which applied to the laws of England defines the object which they seek to obtain by the combined operations of their courts of law and equity.

It is quite certain, therefore, that these Mofussil Courts do not administer to British subjects, or to any body else, the same system which is administered by English courts of equity, not only because they are avowedly and unblamably ignorant of it, but because in the great majority of the cases which must come before them there is no part of that system capable of being administered, and consequently, if they are administering in all cases what they call equity, without being controlled by the rules of the common law, which control, and in the great majority of cases exclude English courts of equity, they may be administering a good system or a bad one, but they are not administering the same system which is administered by English courts of equity.

It seems unnecessary to make any remark upon the case of *Hoo* v. *Peter Marquis*, which is cited by the Law Commissioners as an example of the practice of the Mofussil Courts in administering to British subjects English equity, further than to say that it was an unfortunate one, since nothing can be more inconsistent with justice, or more exceptionable, than the mode in which they set about obtaining evidence of the rule of English law, or of the English courts, upon the matter in question; and since having obtained what they considered evidence of it, they did not decide agreeably to the evidence.

I have dwelt the longer upon this note, because it is brought forward to prove, what it is a mistake to suppose to be true, viz., that the effect of this clause in the Act will be merely to extend to all persons not Hindoos or Mahomedans, that system which is already administered to British subjects.

Clause 6. It is not for me to give an opinion upon the political expediency of any measure proposed; but I may say that I am not aware of any circumstances which would appear to render inexpedient the carrying out into full effect what is the principle, and to a great extent the legal effect, of the law, as settled by Mr. Fergusson's Act, regarding the real and personal property of British subjects dying in India, which is agreeable to the principle recognised by English courts of law, that so much only of the common or statute law of England can have effect in the colonies or foreign possession of the Crown as is consistent with the state and condition of the subjects of the Crown resorting there, and the objects of such resort, which are trade and commerce, not the establishment in such colonies or possessions of feudal rules of descent or aristocratical families, which is neither consistent with the policy of the sovereign nor the condition of colonists or of merchants. *Immoveable* property is a well-known term of the civil law, and is not unknown in the English law; but it is not a term in frequent use in the latter, and I would humbly suggest the words "all real or immoveable property, and every right and interest

interest in and concerning the same, shall be regulated and governed by the rules of the law of England, which concern personal or moveable property."

Clause 7 seems quite unnecessary. Every enactment in a statute which rules expressly to limit its operation in cases upon which it truly has no operation, tends to throw doubt upon the certainty of its enactments, and the clearness of the intention of the Legislature, which intention is always the governing rule for the interpretation of a statute, when the words will allow the application of the rule.

Clause 8. The preamble to this clause humbly appears to me objectionable, and is, I believe, unprecedented in the Act of any Legislature. It is an uncertain declaration of a future probable intention of the Legislature, and a certain declaration of its own want of knowledge of the time within which it may make up its mind upon a question highly important to the success of a very great measure which it is at the very same moment carrying into execution. These declarations seem quite uncalled for, and calculated rather to produce a want of certainty and confidence than any other result. If the Supreme Courts are found to answer as Courts of Appeal, and if the Act be properly framed, I can at present see no reason for their not doing so; they ought of course to remain. If they are found not to do so, that will afford a sufficient reason for remodelling the Court of Appeal.

Clause 9 appears to me wholly vague and uncertain. What law persons have been living under, is a question of law to be decided by the Court, not resting on the supposition of the parties. If it be uncertain to the Court what that law must have been, it must be equally so to the parties; to determine it upon their suppositions, if these could be ascertained with any certainty, that is, upon their intentions, would be to enable them to make laws for themselves not acknowledged by the State; the consequences of which, nevertheless, would be binding on their posterity. Where there is no known law subsisting, if such be the state of things which truly exists, there can be no law passed having the unjust effect of an *ex post facto* law; since *ex concessis* there is no established law or settled right to be altered or violated, and there can be no injustice in declaring that from and after the passing of the Act all the rights of the inhabitants shall be decided according to the law declared by the Act.

Clause 10. The last words of this Clause, "unless such Hindoo or Mahomedan &c.," to the end, seem unnecessary, and calculated to give rise to an opinion that the Legislative Council contemplated as a not improbable want the renouncing of their respective religions by many members of these classes.

When a Hindoo has renounced the Hindoo religion, or a Mahomedan the Mahomedan, they are no longer Hindoos or Mahomedans; if he has renounced the Hindoo religion, and become a Mahomedan, the first part of the clause enacting that nothing in the Act contained shall apply to any Mahomedan, embraces his case, he having become a Mahomedan, and not being the less so, because he was once a Hindoo. If it is thought necessary to exclude by express words the inference that the enactment might not be intended to apply to Hindoos or Mahomedans by conversion, but by birth only, the words might run, "any person professing the Hindoo or Mahomedan religion, whether born of parents professing such religion, or converted thereto."

The proviso which forms Clause 11 seems to me not to accomplish what I presume it intends. By the Regulations, the rights of succession and inheritance are to be adjudged among Hindoos and Mahomedans according to those laws respectively. I apprehend that upon an event which causes a civil death by any law, the *right of succession* opens to the heirs by such law as upon a natural death. It will not be, therefore, *in consequence of any thing in this Act contained*, but in consequence of a rule of the Hindoo law, sanctioned by the Regulations, that the property of a Hindoo will pass from him to his natural heirs, upon his renouncing the religion of his fathers, as if he were naturally dead, and this proviso will not prevent this if it is desired to prevent it. He will, therefore, notwithstanding this clause, in that event, lose his rights and his property. But it is difficult to see how he can retain his rights and his property without *depriving another person of his rights*, if that person, in the event which has happened, has a right to oust him of his property, and to succeed to it in his place.

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But by Clause 12 it is enacted, that "so much of the Hindoo and Mahomedan law as inflicts forfeiture of rights or property upon any party renouncing, or who has been excluded from, the communion of either of those religions, *shall cease to be enforced as law in the Courts of the East India Company.*"

It is for your Honour in Council to consider how far this negative mode of legislating is consistent with the dignity and decision of a great Government, when framing a law regarding an important matter of public policy, involving questions of essential justice. It humbly appears to me, writing as a lawyer, that if there be any doubt of the justice or policy of abolishing these forfeitures, they ought to be left untouched; but if there be none, and I cannot doubt the *justice* of abolishing them, that they ought directly and authoritatively to be abolished.

It would seem to me that these three clauses 10, 11 and 12, ought to be consolidated, and to be introduced by a preamble, stating with clearness and decision the indisputable principle of law, and government according to law, upon which the whole of what is meant to be enacted in these clauses is founded; namely, that it is consistent with reason and justice and the public welfare, that any person living under the protection of a civilized government should be affected in his natural or civil rights, privileges, immunities or enjoyments by reason of his religious faith or profession, or should forfeit any such right, privilege, immunity property or enjoyment by reason of any change in his religious faith or profession; and all rights now existing or supposed to exist to the possession of any such rights, privileges, immunities, property or enjoyments before mentioned, or of snccession thereto, founded upon forfeitures incurred or supposed to be incurred by any lapse from any such religious faith or profession, or any tenet thereof, are founded in manifest injustice and wrong, and ought to be abolished; and every person ought to be protected by the law in the due exercise and observance of the rites and ceremonies of the religious faith which he professes, whether it be the ancient faith of his ancestors, or any different faith to which he has become a convert, consistently with the public peace and decency and good order; and this preceded by the word "Whereas," and inserted as a preamble; the enactment, I think, might run thus: "Be it enacted, That from and after the passing of this Act, no person of the Hindoo or Mahomedan persuasion, or any other, shall, by reason of his or her renouncing his or her faith, or any tenet or tenets thereof, incur any forfeiture of any right as a husband or wife, parent or child, guardian or ward, master or mistress, or servant, or any right of property, easement or inheritance, or under any contract, express or implied, or for recovery of any damages for any tort, or on account of any legal liability whatsoever; but shall from and after the time of his or her said conversion or lapse, brook and enjoy the same, in the same manner and to the same effect as if he or she had been from their birth members of the religious community professing the faith to which such persons shall have been converted, any thing in any Statute, or Act, or Regulation, or custom to the contrary notwithstanding."

It will be observed, as Clause 12 now stands, it is only the courts of the East India Company which are prohibited from enforcing so much of the Hindoo or Mahomedan laws as inflicts forfeiture of rights of property upon parties renouncing or having been excluded from the communion of either of those religions. Her Majesty's Supreme Courts will remain bound, as at present, to enforce them on the inhabitants of the Presidencies, and even the East India Company's Courts will remain bound to enforce all rights of property, such as the rights of a father of a family, the right of a child to maintenance, &c.

Clause 13. It is my duty to say upon this clause, that if it forms part of the Act, it cannot fail altogether to defeat the object which, I believe, the framers have in view, the preventing forfeitures on account of a change of religion. It is impossible to suppose that the refusing to enforce a forfeiture declared by the fundamental tenets of their religions, and insisted on by their priesthood, as all forfeitures and inflictions in the cause of their faith are vehemently insisted on by the priesthood of every rude people, and in every rude and benighted age, will not outrage the religious feelings of the ignorant and the bigoted, who are probably the most sincere votaries of those religions; and it were greatly too much to expect that *any party against whom a court shall be called upon to apply provisions* which abolish forfeiture, from which such party would derive the advantage of succeeding to the property forfeited, will not be loud in his protestations, that the proceeding outrages his religious feelings; and who shall decide, or by what

possible

possible evidence, whether he is an ignorant bigot or an interested hypocrite? Least of all can the Court of Appeal, who have neither seen the parties, nor heard what they might have to allege; and of these forfeitures being according to the laws of these sects, forming part of the most stringent and sacred of the injunctions of their religions, there is no doubt and no room for inquiry.

It is for your Honour in Council to consider, and I admit it to be a matter for grave consideration, whether you will encounter the religious excitement of the bigoted portion of those communities, backed by the outcries of the covetous, for the sake of a great public principle, which, if carried into effect, may produce beneficial consequences of a very extensive nature. But I must protest for myself, with all humility and respect, and with no desire to shrink from any public duty which I can beneficially perform, against being required, sitting as an English Judge, to bear a part in deciding whether effect shall be given to an enactment of the Legislature, or my Court, by virtue of an anomalous power conferred upon it, shall abrogate and annul the enactment, or modify it in an arbitrary manner to an undefined extent, and compensate, it is not said at whose cost, the party who shall suffer from the non-fulfilment of the law; the Court deciding in each case whether the law shall be carried into effect or not, or to what extent, forming its opinion from circumstances of which it must be very imperfectly informed, and exercising upon them not a judicial, but a legislative, discretion

Upon a careful consideration of this Draft Act, I am compelled to say, that although its object is such as, if it were within my province to pronounce an opinion upon its policy, I could not, as an English lawyer, but declare it to be, in my opinion, certain to produce the most beneficial consequences to British India; yet the measure humbly appears to me not framed upon such a careful and comprehensive consideration of its details and the mode of its operation as its vast extent and importance require.

It will be seen from what I have said, that there are parts of the Act involved in great obscurity and uncertainty. The obscurity may be removed by the adoption of language in ordinary use and generally understood; but the uncertainty can only be removed by accurately describing and clearly announcing the law which it is intended to introduce, and by wiping out altogether every reference to institutions or regulations, or usages or situations, which it is impossible, or even difficult, so to describe and announce.

The first uncertainty, which I have already mentioned, arises from the want of any definite description of the amount of English law, or the parts of it, which it is intended by the Act to establish, as forming in all future times the rules by which decisions are to be pronounced upon the rights and liabilities arising out of the natural relations of persons, or the ordinary transactions of life, among the many millions of people to be rendered subject to this law. If any thing can demand certainty, it is, without doubt, the announcement of such rules; yet here it is proposed that the Act shall content itself with announcing, that these rules shall in future times consist of so much of the law of England as is applicable to the situation of the people of the said territories.

I admit that a necessity for a court of law, exercising what may be called by some a *quasi* legislative power, to decide that a law made by the Legislature generally does not extend to a certain colonial possession, because it is apparent to the Court, from the necessary circumstances inherent in the situation of such possession, that the law could not have been made by the Legislature with the intention that effect should be given to it within that colonial possession, is to some extent an evil; but I think it not a very great evil; and I am ignorant of any institution framed by man, particularly of a legislative character, that is not attended by some evil. I cannot agree that, although a laborious task, it would be practicable with certainty to point out by way of exclusion the portion of the law of England, whether of the common or statute law, intended to be introduced as not inapplicable to the situation of these territories. In truth, I think if Section 6 were enacted, being amended as I have above suggested, and further amended by omitting the word "subsist" in the preamble, and inserting the words "be introduced," and if a clause were inserted in the Act, resting the validity of marriages among Christians upon the observance of the rites of the respective churches to which the parties belong, and of marriage and adoption among Mahomedans and Hindoos upon the Mahomedan and Hindoo laws respectively; and in regard to Bhuddists, Parsees, Jews and other classes and sects of persons who have immemorially practised rites and usages different from those of Mahomedans, Hindoos or

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Christians, upon the due performance of such rites according to their several institutions, there would appear to me to be very little indeed, if any thing, remaining in the common law of England not equally proper to prevail as the law in Hindoostan.

To one who knows that the ancient Roman law is a collection of the rules of right reason and natural justice, set down and arranged by practical lawyers, who were also enlightened philosophers of the most accurate school of their time; that these laws prevailed in Britain during three centuries and a half, while she remained under the Roman dominion; that the common law of England, as it is found in Glanville and Bracton and other old writers, acknowledged as the greatest authorities in the common law, is, with the exception of the rules for real property, derived from the feudal law, the same, or very nearly the same, with the Roman law in the time of the Emperor Theodosius II., in whose reign the Romans abandoned Britain; that the Mahomedan law, as found in the Hidaya, is supposed, with great appearance of truth, to have been founded upon the Theodosian code, except as the former is influenced by the institution of polygamy and some peculiar religious tenets, and that the Hindoo law, as found in the lawyers of authority whose works are translated, appears to be almost, if not quite, the same with the Roman law in the reign of Theodosius II., a similarity long since remarked by Sir William Jones,* it will not appear unsafe to predicate, that the introduction of the English common law in its integrity, with the sole exceptions I have mentioned, in all questions of civil rights and liabilities, will not be the introduction of any novelty in adjudicating upon those rights and liabilities, except by the substituting fixed and certain and known rules of ancient right for uncertain decision, according to the undefined notions of equity and good conscience entertained by those who pronounce them.

* Jones on Bailments, 114.

With regard to the Statute law, it humbly appears to me, that it would be better, in the first instance, at least, to leave it in the hands of the Court of Appeal, when a question may arise upon any particular Statute, to decide whether it does or does not apply to India, subject to the correction of the Privy Council, the Legislative Council having always the power to pass a law for the purpose of repealing, as to India, what it conceives an inapplicable statute or enactment.

With regard to the uncertainty arising from the reference to the Regulations of the East India Company's Governments, I cannot pretend to an accurate knowledge of them; but I believe there are very few which prescribe accurate, or any, rules for the general administration of civil justice, being mostly confined to Regulations concerning the revenue and the usufructuary and uncertain possession of lands under the defeasible leases held of the East Indian Company, and to the modes of proceeding to obtain judgment and execution in the courts. If the Regulations concerning the revenue were left for the present entire, subject to future amendment, and the process to obtain judgment and execution reformed, so as to carry into effect an English system of judicature, there would remain, I imagine, little of these Regulations to be preserved. Those parts of them which require the Judges to decide, not according to law, but according to their own crude notions of what is agreeable to equity and good conscience, must in the first instance be abolished as wholly inconsistent with that uniformity of decision, according to established rules of law, which is enacted by the law of England, without which the law of England cannot be introduced in whole or in part. The Sovereign of England cannot by the prerogative establish a court which shall decide according to equity and good conscience in any part of his dominions where the law of England is the established law, but such courts only as shall be bound to administer the established and certain laws of England. To propose to introduce the laws of England into any country, accompanied with directions to the Judges to decide according to equity and good conscience, would not be an anomaly, but a contradiction. "The Queen," says Lord Coke, citing a decision of the Court of Queen's Bench in the 37th of Elizabeth, speaking of course of the power of the Crown within England, "cannot raise a court of equity by her letters patent, and there can be no court of equity but by Act of Parliament, or by prescription time out of mind of man; for all must judge according to one ordinary rule of the common law, but otherwise it is of proceedings extraordinary, without any certain rule." [4th Institute, 87.] The courts of equity, which have a prescriptive jurisdiction in England, exercise it according to fixed rules founded upon maxims derived from a remote antiquity, and they can no more lawfully adopt "proceedings extraordinary without any certain rule," than can the courts of common law; and it is not

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not to be supposed that Parliament will establish courts of equity and good conscience, with any extensive jurisdiction, without fixing them to the observance of the established rules which form the law administered by the courts of equity established by prescription. The King in his Court of Privy Council forms the Legislature for all the acquired dominions of the Crown beyond the British Islands, and may establish in such dominions any laws or courts which he thinks fit, provided he have not already introduced there the laws of England, in which case he can only alter those laws in his High Court of Parliament. But if he establish in any such dominion courts to decide according to equity or good conscience, not according to the rules of the common law, or the fixed rules and maxims of the courts of equity established by prescription in England, he cannot be said to have established the English law. Her Majesty's Supreme Courts in India, which have an equitable jurisdiction, were created in virtue of powers conferred by Act of Parliament, and they are expressly, by their charters, commanded, in the exercise of it, to adhere to the practice of the High Court of Chancery in England.

In truth, the rules of equity form part of the *unwritten law* of England, of which the rules of the common law form the other part; and the law of England cannot be said to be introduced into any possession of the Crown, unless the fixed rules of English equity are introduced there, with a court, to administer that equity at the same time with the rules of the English common law, and courts to administer that law.

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

(No. 330.)

To the Honourable Sir *J. P. Grant*, Knight.

Honourable Sir,

WE have the honour to acknowledge the receipt of your letter, dated the 17th instant, favouring us with many valuable observations on the provisions of the Draft Act of a *lex loci*, and we beg that you will accept our most cordial thanks for the attention which you have been so good as to bestow upon the proposed Act.

We have, &c.
(signed) *H. Hardinge.* *G. Pollock.*
F. Millett. *C. H. Cameron.*

Council Chamber, 3 May 1845.

From *D. Elliott*, Esq., Member of Indian Law Commission, to *G. A. Bushby*, Esq., Secretary to the Government of India, Home Department, dated 30th April 1845.

Legis. Cons. 2 Aug. 1845. No. 19.

Sir,

I HAVE the honour to transmit to you, in original, a letter from Dansa Rauzey Nursiah of Vizagapatam, submitting observations on the proposed Act for the introduction of the substantive law of England, as the *lex loci* of the territories of the East India Company, beyond the limits of the Supreme Court, for all persons not being Hindoos or Mahomedans. Indian Law Commission.

I have, &c.
(signed) *D. Elliott,*
Member Indian Law Com^n.

30 April 1845.

To the Law Commissioners in the Legal Department, dated 9th April 1845.

Legis. Cons. 2 Aug. 1845. No. 20.

The Humble Petition of *Dansarauze Nursiah*, Head Assistant Manager in the Governor's Agents' Court, in the District of Vizagapatam.

Honourable Gentlemen,

AVAILING myself of the advantage of general information allowed by the Government Gazette in cases of proposed Acts, &c., I most submissively beg leave to offer the following observation on the proposed Act, for the introduction of the substantive law of England, published in the Government Gazette of Fort

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St. George, dated 11th February 1845, and trust a deliberate consideration may be given thereto.

With reference to the Hindoo law, the provisions in Sections XI. and XII. may be acknowledged as legal and applicable to a case which involves right to the self acquisition of a Hindoo renouncing his religion, but not to a case in which he may dispute paternal or ancestral property, for reasons ;—viz.

1. Because he becomes an outcast, and is treated at law as one dead, and this his right falls on his next heir, standing on the principles of the religion in respect to the ceremonies of his ancestors.

2. Because the act of renouncing the religion cannot support his right to his paternal or ancestral property, as it tends to his discharge from the religious obligations to his ancestors.

3. Because the right of a Hindoo to his paternal or ancestral property is based upon the observance of the religious ceremonies due to his ancestors.

4. Because the true principle of the law on the point in question requires the application of every thing to its proper purpose, and the removal of all obstacles against the same. Under these circumstances, it is desirable that the part of the Hindoo law now proposed in the Act to be superseded may be allowed to continue in force.

I remain, &c.

Vizagapatam, 9 April 1845. (signed) *Dansarauze Nursiah.*

From the Rev. *Alexander Duff*, D.D., and the Rev. *Thomas Boaz*, to *G. A. Bushby*, Esq., Secretary, &c.

Sir, Calcutta, 25 April 1845.

In the name of the gentlemen who have signed the accompanying Memorial, we beg to solicit the favour of its immediate transmission through you to the Right honourable the Governor-general in Council.

Though circumstances have prevented its being forwarded at an earlier period, we trust that the importance of the subjects of which it treats will secure for it a favourable reception.

In the views expressed by the Memorialists, they have only represented what they know to be the sentiments of a very large proportion of the Christian public both in Britain and India.

The absence of certain individuals from Calcutta, and the difficulty of sending the Memorial into the Mofussil, have together rendered the number of signatures much smaller than it otherwise would have been.

Earnestly hoping that by the timeous adoption of large, liberal and comprehensive measures of legislative and administrative policy, the stability of the British Government in India may be increasingly confirmed,

We have, &c.

(signed) *Alex. Duff.*
Thomas Boaz.

To the Right honourable the Governor-general of India in Council.

The Memorial of the undersigned Christian Missionaries.

Humbly showeth,

That your Memorialists have seen in the Government Gazette of the 29th January last (1845) the Draft of an Act proposed by the Legislative Council of India, which was therein published; and your Memorialists believe, in order that all persons interested on the subject-matter thereof might have an opportunity of stating their opinions as to the tendency and character of its provisions prior to its formal enactment as law, by the Right honourable the Governor-general of India in Council;

I. That the first of the subjects essentially affected by the said proposed Act, which has attracted and engrossed the attention of your Memorialists, is the important one

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one of marriage and divorce, both as regards British-born subjects, technically so called, and all others who are not adherents of the Hindoo or the Mahomedan faith.

That, as regards certain classes of British-born subjects, considerable in number and influence, the state of the law has hitherto been involved in a good deal of uncertainty, painful to the feelings of individuals and injurious to the best interests of society; and that it is by no means clear how such state of uncertainty is to be removed by the said proposed law, or whether thereby it is likely to be removed at all.

That this is a subject of such importance to social well-being, that it has heretofore occupied the attention not only of your Memorialists, but of the highest authorities in India and Great Britain.

Letter from Government of India, dated 1 March 1841. Memorial from Missionaries sent to Government, 27 November 1838.

That some of your Memorialists, together with some other missionaries, had the honour of receiving a letter signed "T. H. Maddock, Secretary to the Government of India," dated the 1st March 1841, relative to a memorial presented to the said Government on the 27th November 1838, on the subject of marriages solemnized by others than priests in holy orders.

Despatch from Court of Directors, dated 1 Jan. 1841.

That the said letter was accompanied by a copy of a despatch from the Honourable the Court of Directors, dated 1st January 1841, which stated that the said memorial of the 27th November 1838 had received the serious attention of the said Court; that the opinion of several eminent legal persons had been taken, and that the said Court hoped that in the then ensuing Session of Parliament, the subject would be disposed of in the manner suggested by their solicitor, Mr. Lawford, namely, by an Act of Parliament removing all uncertainty.

That no legislative measure on the subject has been passed either by the Imperial Parliament or the Legislative Council of India; and that all the uncertainties which formerly existed relative to marriages solemnized in India by those who are not priests in holy orders, exist still.

That although the number of reverend chaplains has been increased during the last few years, yet there is still a very large number of districts and stations in India where there are no chaplains, but in which there are Christian ministers who are not recognized by law as priests in holy orders; and that even in those stations where there are chaplains, there are generally persons who, being dissenters from the Established Church, conscientiously object to the forms and ceremonies of that church, and conscientiously prefer being united in matrimony according to the forms of their own denomination.

Mr. Lawford's letter accompanying the said Despatch of January 1841.

That the opinions given by the eminent legal persons who were consulted by the Honourable Court of Directors state, that marriages solemnized in India by others than priests in holy orders are invalid for some purposes, though not for all, and especially for some important purposes, would be regarded as invalid in the Ecclesiastical Courts.

That by the legal term "priests in holy orders" is commonly and technically meant the duly ordained priests of the Roman Catholic Church or the Established Church of England, but not any dissenting ministers or missionaries.

Mr. Lawford's letter.

That the present unsettled state of the law is an evil which the Honourable Court of Directors and the Government in India, and the eminent counsel hereinbefore named, and (as appears by Mr. Lawford's said letter) Lord Palmerston as Foreign Secretary, and the Bishop of London, have all recognized and lamented.

That your Memorialists, in now seeking a removal of this uncertainty, desire for themselves only a rightful liberty, similar to that which their dissenting brethren in England enjoy by express legislative provision; and that they are ready and willing to submit to any reasonable civil regulations to secure due publicity and solemnity to the marriage ceremony.

Act 6 & 7 W. 4, c. 85, dated 17 Aug. 1836, to take effect on the 1st March 1837.

That in order effectually to secure this most desirable end, your Memorialists would be quite satisfied with (and accordingly do hereby humbly solicit) the introduction of a clause, founded on and embodying *the principle* of the present English law of marriage passed by the Parliament of 1836, subject, of course, to such modifications of detail in the mode and manner of its application as the obvious difference of locality and other circumstances would naturally suggest.

That the urgency for the introduction of some such clause or separate enactment for the removal of all uncertainty, has become more palpable now than ever, inasmuch as the present Draft Act, if passed into a law, will at once affect all

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individuals of other races, not Hindoo or Mahomedan, and more especially the large and constantly increasing body of natives who have already renounced, or may hereafter renounce, their ancestral faith.

That as regards the latter class, in particular, amongst whom, in the total absence of any authoritative law to regulate or direct, marriages have been celebrated for the last 50 years by the ministers of the different denominations to which they respectively belong, the uncertainties which would arise from the passing of the present Draft Act, without the introduction of a definitive clause or separate measure, could not fail to occasion endless and nameless heartburnings, alarms and disturbances of the domestic and social economy.

II. That the next subject which has engaged the attention of your Memorialists is the scarcely less important one of "Inheritance."

Sections XI. & XII. of the Draft Act.

That the XI. and XII. clauses of aforesaid Draft Act, which embody in clearer and definite form the *principle* of the 8th and 9th clauses of Regulation VII. of 1832, a Regulation which, as an important modification of the ancient barbarous law, was hailed at the time by all friends of humanity and toleration as an invaluable boon, have afforded to your Memorialists the highest satisfaction.

Provisions of Sec. XIII. of the Draft Act.

That this satisfaction, however, has been materially diminished in consequence of some of the proposed provisions of the XIII. or clause next following; provisions which, in the calm and deliberate judgment of your Memorialists, go far to defeat the just and beneficial object contemplated by the two preceding clauses.

That the introduction, in connexion with such a subject, of such an expression as the "outrage of religious feelings," is highly inexpedient, inasmuch as no case of the nature contemplated can possibly arise in which one or other, or both of the parties concerned, may not plausibly allege that their "religious feelings" have been "outraged;" and thus the door will be thrown wide open, or rather an express challenge and invitation offered, under the sanction of law, to the presentation of interminable complaints, leading to vexatious litigation and endless strife.

That if, in order to meet certain contingencies which may possibly arise, license is to be granted for qualifying, in extreme and peculiar cases, the provisions of Sections XI. and XII., your Memorialists would earnestly recommend the substitution of some general expression, such as "grievous personal inconvenience," or "disturbance of the public peace," instead of the more irritating and provocative one of "outrage of religious feelings."

That the introduction of the restrictive words, "and whether any," in the latter part of the clause, will also go far to neutralize the benefits obviously and humanely intended by the equitable provision of Sections XI. and XII., inasmuch as even in cases in which positive "loss" is supposed to be sustained by the non-application of the said provisions, it is thereby left at the sheer discretion or option of the Court whether "any" compensation for such acknowledged "loss" is to be made at all.

That in the humble judgment of your Memorialists, therefore, the limiting words "and whether any," ought to be altogether omitted, retaining simply the words "what compensation, &c.," rendering it thereby imperative on the Court to grant some adequate compensation in strict accordance with the sacred principles of justice, equity and good conscience.

Note on Sec. XIII.

That to render coercive by law the provision relative to "maintenance," supposed in the note which is designed to illustrate Section XIII., would involve a principle of more than doubtful equity, and lead to the greatest abuses in practice. By Hindoo and Mahomedan law, the party renouncing his religion is regarded and treated as *civilly or legally dead*; the non-renouncing party is consequently at full liberty to cast off or repudiate the other. The renouncing party, however, *if a Christian*, has no such right or liberty, inasmuch as his voluntary renunciation of ancestral faith does not, of *itself*, in the eye of Christianity, relieve him from the obligations of the previous conjugal alliance, or render him free at once to contract another.

That in such circumstances it would appear wholly inequitable and contrary to the general spirit of British law, in all cases, to compel the renouncing party to furnish "maintenance" to the other, who, merely because of a change of religious sentiment on the part of her husband, refuses to live with him and to fulfil the ordinary conditions of the matrimonial contract; more especially when,

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in the retention and exercise of her own religious sentiments and practices, she may, so far as her husband is concerned, be left altogether free and unfettered.

That, moreover, to provide by law that in all cases such maintenance *must* be furnished by the repudiated husband, would be uniformly to insure and almost necessitate a continued separation, with all the grievous inconveniences and evils to both parties, as well as to society at large, all but unavoidably attendant thereupon; inasmuch as the lure of such maintenance would always be sure to operate on the friends and relatives of the repudiating wife in the way of a bounty or bribe to induce and enable them to prevent the possibility of a reunion, however much such reunion might accord with the spontaneous wishes of her own unbiassed mind.

That in the humble judgment of your Memorialists, therefore, if any such explanatory, yet restrictive, clause is to be inserted at all, the very utmost which ought to be ordained should be to render "maintenance" in no case *ipso facto* obligatory on the repudiated party, but to leave all cases open for the investigation and decision of a court of equity.

That there are several other points which your Memorialists would gladly introduce to the notice of your Excellency in Council; but believing that, with the amendments now humbly suggested, the present Draft Act would, if passed into a law, lay the foundation of great and even indefinite ameliorations in our code of jurisprudence, they are unwilling to complicate the provisions of so wise and salutary a measure by the multiplication of details; and they must, therefore, for the present forbear.

That, in conclusion, your Memorialists cheerfully acknowledge the manifest readiness of your Excellency in Council to redress existing wrongs and remedy long prevailing evils in this land; and they now present themselves to the consideration of your Excellency in Council as some among the number of those who, by all means in their power, are endeavouring to co-operate in elevating the intellectual and moral, the social and religious condition of the people, and to instil into them the benign spirit and the cheerful loyalty which should ever characterize the disciples of the Lord Jesus.

That your Excellency in Council may long be spared to promote the real and lasting welfare of this great empire, and that in all your measures you may be guided and directed by wisdom from on high, is the humble prayer of the undersigned.

(signed)

Alexander Duff, Fr. Ch. Miss.	*A. Leslie*, Bap. Miss. Soc.
Thos. Boaz, London Miss. Soc.	*J. Thomas*, Bap. Miss. Soc.
W. Yates.	*Wm. H. Denham*, Bap. Miss. Soc.
A. F. Lacroix, Lond. Miss. Soc.	*W. W. Evans*, Bap. Miss. Soc.
Jas. Paterson, Lond. Miss. Soc.	*Joseph Mullens*, L. M. S.
Jno. Campbell, Lond. Miss Soc.	*J. Macdonald*, Free Ch. Miss.
J. H. Parker, London Miss. Soc.	*David Ewart*, Free Church Miss.
J. Wenger, Baptist Miss. Soc.	*Thos. Smith*, Free Church Miss.

(No. 354.)

From *J. F. Thomas*, Esq., Chief Secretary to the Government of Fort St. George, to *G. A. Bushby*, Esq., Secretary to the Government of India; dated 30th April 1845.

Legis. Cons. 2 Aug. 1845. No. 23.

Sir,

I AM directed by the Most Noble the Governor in Council to transmit copy of a letter from the Sudder Adawlut, reporting that they have no observations to make on the provisions of the proposed *lex loci*, a draft of which accompanied your communication of the 25th January 1845, No. 86, and to state that the Government have no observations to offer.

Judicial Department, dated 9 April 1845.

I have, &c.

Fort St. George,
30 April 1845.

(signed) *J. F. Thomas*,
Chief Secretary.

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Lex Loci.

(No. 61.)

From *H. D. Phillips*, Esq., Register to the Court of Sudder Adawlut, to the Secretary to Government in the Judicial Department; dated 9th April 1845.

Legis. Cons. 2 Aug. 1845. No. 24.

Dated 20 January 1845.

Sir,

With reference to the extract from the Minutes of Consultation, dated 28th March 1845, No. 254, transmitting a letter from the Secretary to the Government of India, together with the Draft of a *lex loci*; and with reference to former correspondence, and the addition to the provisions of the proposed enactment, requesting any suggestions the Judges of the Sudder Adawlut may desire to offer; I am desired by the Judges to state that it has not occurred to them to offer any observations on the proposed Act.

I have, &c.

Sudder Adawlut, Register Office,
9 April 1845.

(signed) *H. D. Phillips*,
Register.

(A true copy.)

(signed) *J. F. Thomas.*
Chief Secretary.

(No. 872.)

From the Under Secretary to the Government of Bengal, Judicial Department, to the Secretary to the Government of India, Home Department; dated 21st May 1845.

Legis. Cons. 2 Aug. 1845. No. 25.

Sir,

In compliance with the requisition conveyed by your letter (No. 80), dated the 23d January last, I am directed to transmit, for the information of the Supreme Government, the accompanying copies of letters, Nos. 587 and 176, dated respectively the 27th of March and the 5th instant, from the Superintendent of Police, Lower Provinces, and the Officiating Secretary to the Sudder Board of Revenue, containing their remarks on the proposed Act for fixing the *lex loci* in the territories of the East India Company, without the jurisdiction of the Supreme Court.

2. The opinion of the Sudder Court has been called for a second time, and will be submitted as soon as received.

I have &c.

Fort William,
21 May 1845.

(signed) *A. Turnbull*,
Under Secretary to the Gov^{t} of Bengal.

(No. 587.)

From the Superintendent of Police, Lower Provinces, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 27th March 1845.

Legis. Cons. 2 Aug. 1845. No. 26.

Sir,

With reference to Mr. Turnbull's letter, No. 322 of the 19th ultimo, forwarding to me copy of a Draft Act, giving the *lex loci* in the territories under the Government of the East India Company, and calling for any further remarks which I may wish to offer, I have the honour, with much deference, to state, that I think Sec. XIII. of the proposed law will be productive of much inconvenience, and even of unnecessary litigation, and if not altogether omitted, should be so much modified as to leave the primary decision in the hands of the Court trying the case. Of course, no person quitting the Mahomedan or Hindoo religion, and coming under the *lex loci*, could claim to be kept in possession of lands set apart for the support of the priests, temples or worship of those two creeds; but it is only to such lands that his claim should be barred.

I have, &c.

Monghyr,
27 March 1843.

(signed) *W. Dampier*,
Superintendent of Police, L. P.

(No.

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Lex Loci.

(No. 176.)

From the Officiating Secretary to the Sudder Board of Revenue, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, Revenue Department; dated 5th May 1845.

Sir,

I AM directed by the Sudder Board of Revenue to acknowledge the receipt of Under Secretary Turnbull's letters, No. 300 and 658, dated respectively the 19th of February and 19th of April last, and in reply to communicate, as requested, the sentiments of the members on the amended Draft of a proposed Act for fixing the *lex loci* in the territories under the Government of the Honourable East India Company without the jurisdiction of Her Majesty's Supreme Court, received with the first of the above-mentioned letters.

Misc. Dept.; present, J. Pattle and J. Lowis, Esqrs.

2. The Senior Member has desired me to state, that he delayed recording his opinion, because having understood that the Hindoos, Parsees and others contemplated memorializing Government against the interference with their religious prejudices which would be caused by Sect. 10, 11, 12 and 13 of the proposed law, he intended stating at large his objections to those sections, together with an expression of his opinion that, with exemption to the sections in question, the law had his approval. But having recently understood that the Law Commissioners intend to propose the removal of the said sections to a separate Act, he postpones at present expressing the opinion he intended to record.

3. The Junior Member desires to say, that this *lex loci* is a subject upon which he feels himself scarcely competent to form a judgment or give an opinion, and, but for its 13th Section, he would certainly have sheltered himself under the vagueness of general approbation, the object of the law being to his apprehension good, and its general execution, as far as he is able to judge, excellent.

4. But this 13th Section, to which he refers, Mr. Lowis thinks is a step backward from the law of 1832, which contains, although indirectly, the charter of those who are brought from idolatry and Islamism to a better faith; and such a step, he is satisfied, should not be taken, and the immunities conferred by that law should not be infringed, without positive proof, of which he believes there is none, that it has worked unfairly, and is, as between man and man, practically an unjust law.

5. The note appended to the Draft shows that those who drew the Act up were aware of some inherent weakness in the section spoken of, and it is explained, or rather excuses are offered for it; but Mr. Lowis begs, with the utmost diffidence, to suggest that the excuses made for this strange section are insufficient.

6. Sections XI. and XII., he observes, contain the general and positive enactments relating to this subject, which are to guide and rule the decisions of the Judge, and are in conformity with the law as it now stands; but the 13th Section, which is appended to the others by way of rider, enables the Judge to get astride upon the law; and, instead of being ruled by the law, to rule the law; and the excuse for the general power of abnegation thus conferred, is that the said section is intended to meet a particular sort of code, an example of which is given, and that this very anomalous provision is intended for a very anomalous state of things.

7. But an anomalous law for an anomalous state of things should be such in its anomalousness as to give results which shall not be anomalous, and is defensible on no other grounds. In the way that two negatives make a positive, the one anomaly should neutralize the other; and if the results be only anomaly in the positive, comparative and superlative degree, the law, it is obvious, does harm rather than good; and that this would be the practical effect of the proposed law, Mr. Lowis has no doubt.

8. This effect will be produced, in his opinion, inevitably, because the section in question admits exceptions without defining them. Those who made the law tell us, indeed, that it is intended to meet a certain sort of case; but framed, as the section is, those who study the law must perceive that it may be so stretched and construed as to include any and every case; and it has in it besides this most objectionable peculiarity, that, when suitors can enlist on their side the sympathies

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of a Mahomedan or Hindoo Judge, he is at liberty to abandon his judicial character, and advocate with the Court of Appeal the side which he prefers.

9. That there may be certain cases which should be exceptions to the general rule, Mr. Lowis does not deny; but he conceives that they should be strictly limited and defined. If this cannot be done, then the question arises, whether it is a lesser evil for the exceptions to fall under the general rule, or for general cases to be treated as exceptions; but this put into plain English, asks, whether there is to be law, or no law; and that question was solved by the single-minded integrity of Lord Wm. Bentinck, in 1832, and will scarcely now be revived.

10. Mr. Lowis has to apologize for the length to which his remarks have extended; but he foresees that this law, if passed as proposed, would virtually re-impose upon Christianity the penalties which were taken off 13 years ago; and the vital importance of the subject must be his excuse.

I have, &c.

(signed) *G. Plowden,*
Offg Secretary.

Sudder Board of Revenue,
5 May 1845.

MINUTE by the Honourable Sir *T. H. Maddock*, Knight, dated 22 May 1845.

The Law Commissioners' proposed *lex loci* enactment. Objections offered to parts of the proposed law by natives at Madras.

THIS Draft was published during my absence, or I should have made, in writing, certain observations on the proposed law, and should have recorded those opinions on the subject, which I have several times expressed in Council, when this project of law was brought forward.

I now intend to do so, but as I have seen the memorial from Madras against the provisions of Clause XI., XII. and XIII., with a draft of answer proposed to be given to the memorialists, and understand that other memorials have come in against the same clauses, I merely wish on this occasion to express my opinion that it will not be a judicious course for the Government to adopt, to make a formal reply to the objections of the memorialists, while the question is still under consideration in the Legislative Council, unless it is desired to give them an opportunity of carrying on a written discussion with Government, and of refuting, if they can, the arguments that are to be used in reply to their memorial.

At all events, I should like to read all the other memorials that have been received, before the Government attempts to answer any of them.

(signed) *T. H. Maddock.*

NOTE by the Honourable *C. H. Cameron*, dated 22d May 1845.

I THINK the Government ought not to suffer this memorial to go unanswered. It accuses the Government of violating its faith, and it has been published in the newspapers. I can hardly conceive an occasion on which the Government could be more urgently called upon to declare the principles on which it acts. If indeed there is any flaw in the argumentative parts of the draft answer, let us by all means correct it; but if we can perceive no flaw, we ought not to shape our course upon the supposition that others will detect errors that have escaped us.

22 May 1845. (signed) *C. H. Cameron.*

DRAFT ACT by the Honourable *C. H. Cameron.*

AN ACT for providing that Religious Belief shall not affect the Rights or Property of the Person entertaining such Belief.

Legis. Cons. 2 Aug. 1845. No. 28.

WHEREAS by Sect. IX., Reg. VII. of 1832, of the Bengal code, it is declared and enacted as follows:

Whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion, or when one or more of the parties to the suit shall not be either of the Mahomedan or Hindoo persuasions, the laws of those religions shall not be permitted

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permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of equity and good conscience:

And whereas it is just that the principle of the above-recited Regulation should be extended over the whole of the territories subject to the government of the East India Company, as well within as without the local limits of the jurisdiction of Her Majesty's courts of judicature, and that provision should be made for more effectually carrying it into operation throughout the said territories:

It is hereby enacted, That so much of the Hindoo law and so much of the Mahomedan law as inflicts forfeiture of rights, except such rights as are hereinafter excepted, or property, upon any party renouncing or who has been excluded from the communion of either of those religions, shall cease to be enforced as law in Her Majesty's courts of judicature and in the courts of the East India Company.

And it is hereby enacted, That the rights which are excepted from the operation of the preceding section of this Act are such rights as cannot be exercised by persons not being Hindoos or Mahomedans, by reason that they involve the performance of ceremonies connected with mosques or temples, and rights which cannot be exercised by persons not being Hindoos or Mahomedans, without occasioning personal pollution, according to Hindoo or Mahomedan doctrines, to the Hindoos or Mahomedans who may be affected by the exercise of such rights.

MINUTE by the Honourable Sir *Herb^t Maddock*, Knight, dated 9 June 1845.

Legis. Cons. 2 Aug. 1845. No. 29.
Proposed Act for providing that religious belief shall not affect the rights or property of the person entertaining such belief.

PROVISIONS similar in their tendency to those contained in this proposed Act, termed *Lex Loci* Act, I was opposed to them then, and I still regret that it should be thought necessary to legislate on the subject.

The promulgation of the intentions of Government, as intimated in the Xth, XIth and XIIth Sections of the *Lex Loci* Draft Act, has called forth memorials from the Hindoo community of Calcutta and Madras, protesting against the proposed sections as a direct infraction of their law, and as a departure from the principle on which they have hitherto been allowed by their British rulers the full enjoyment of their religious and civil rights. That there have not been more memorials presented against the measure, may be attributed to the want of combination for public purposes among the natives any where but in the capital towns, and more, perhaps, to the rareness of conversion from the Hindoo religion of any persons of family or property, except in these large towns, or of any persons at all but those of the lowest caste, whose families possess little or no property that would give them an interest in the operation of the proposed law. Where there may be no missionaries and no converts, the Hindoos might take but little notice of a proposition of this kind, even if they were made fully acquainted with its object, from a belief that it was not likely to affect their particular interests, though it is to be apprehended that the great mass of the people in the interior know little or nothing of the course of legislation, and remain ignorant of every new enactment till it comes to be applied to themselves.

I should attribute the apparent indifference with which the measure has been received, not to apathy on the part of the natives, but to the scanty and partial diffusion of knowledge of the proceedings of the Legislature among the masses of the people, and to their ignorance of their right to memorialize the Government, and of the proper mode of exercising that right; but there will be agitators among them, and this measure will be universally condemned, though few remonstrances against it are laid on the Council table.

It is on this ground, and because I see that any measure of this kind must diminish the attachment of our native subjects, and shake their confidence in the Government, that I regret the course which has been adopted, and which it is now proposed to adopt; and moreover, I can discover no imperative necessity for thus risking the loss of the respect and affection of the great body of the people.

We have never heard of any complaint on the part of the Mahomedans of the forfeitures or disabilities to which converts from Hindooism to their faith are liable. The Christian missionaries alone apply to the Legislature to set aside the operation of the Hindoo law in the case of their converts from that faith; and from them I

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find only one memorial recorded among the papers. It is that of the Reverend Mr. Gogerly and other missionaries, in which, among other grievances, they complain of the loss or total forfeiture of lands, goods and other property to which their converts may in certain circumstances and particular localities be liable. There have been many letters on the same topic published in the newspapers of late, and it is universally understood that the proposed enactment is meant to apply particularly, if not exclusively, to the position of converts to Christianity; and it follows, that although the proposed law propounds a principle which theoretically must be admitted as just, that is, that no man shall suffer loss or injury on account of his religion, it is regarded by the Hindoos as partial and unjust, because it will operate only in one direction, and in favour of those who leave the religion of their forefathers to embrace the religion of those who make the law; and in reality, though general in terms, it will operate only in the case of converts from Hindooism to Christianity; for neither Mahomedans or Christians can become Hindoos, and we rarely hear of the former becoming Christians.

If the Hindoo law makes a man's right to property depend on his being a Hindoo, and that right is forfeited on his ceasing to be a Hindoo, the proposed enactment is clearly subversive of the principle on which that law is founded; and however equitable it may appear in theory, as it cannot be enforced in favour of a convert without depriving his unconverted brethren of that which, under their own law, had been forfeited by him, and had devolved on them, they have good ground for questioning its justice.

If a majority of the Hindoo people were converted to Christianity, or if any considerable number of Hindoos, possessed of property to be affected by this measure, had been converted, there would have been more reason for setting aside the provisions of the Hindoo law against apostates from that religion; but if the proportion of such converts to the great body of the Hindoo community is small in the extreme, which is the case among all but the very lowest classes, this measure not being called for by the people, and not being necessary for the public good, is certain to be attributed to a design to favour the operations of the missionaries, by giving a new encouragement to converts.

It may be said that this encouragement is not new, for that it was given by Regulation VII. of 1832 of the Bengal code, and the present measure is described as an extension only of the principle of that Regulation. But that Regulation is stated by the Calcutta Memorialists to have become a dead letter, and certainly has been seldom acted on. Besides, when it was passed, the practice of publishing regulations before enactment was not in force, and the people had no opportunity of objecting to their provisions beforehand.

This measure is now submitted to the public, at a time when the minds of the Hindoos are in a state of much excitement, arising from the injudicious proceedings of some missionaries engaged in the education of native youth; and the general confidence in the establishments conducted by those gentlemen has been so much shaken, and the Hindoos have been so much alarmed lest their children should be taught to forsake their religion, that a great effort has been made to establish a school to be supported by Hindoo gentlemen of rank and property, expressly for the purpose of excluding missionary teachers from the new missionary,* and of drawing to it as many pupils as possible from the schools of the missionaries.

* Q^y^ school.

At such a time the enactment of a law such as that proposed will act as a new encouragement on the part of the Government to the efforts of the missionaries, and will be considered as such by the natives. Sect. IX., Reg. VII. of 1832, was not enforced, and its extension to Madras and Bombay had not been called for at those Presidencies, and there was no necessity for the Government departing from that cautious policy in all matters touching the rights, feelings and usages of the people which has been invariably inculcated by the home authorities, and which by preventing a suspicion that the missionaries were acting in accordance with the Government views, or that Government was in any way connected with them, has really facilitated their operation without compromising the Government or alarming the people.

The only clause in the *Lex Loci* Draft, and which would have reconciled me to passing those portions of it which affect rights and property, independent of religious belief, is in the last proviso of Sect. XI.; for if it is declared, that by renouncing his religion a man shall not lose any rights of property, it follows as a corollary, as a matter of reciprocal justice, that he shall not by renouncing his religion

religion deprive any other person of any rights or property. In the case of a Hindoo convert to Christianity, it required the latter provision to make the former one equitable and just. But it was found that one was inconsistent with the other, for the convert could not recover that which, according to Hindoo law, he had forfeited, from the party who succeeded to it in his forfeiture, without depriving that party of rights and property.

In the draft of separate Act now under consideration no such provision is attempted, and I consider this proposed law more open to objection in some respects than the sections in the proposed *Lex Loci* Act which it is intended to supersede.

I have not been a party to the consultations which have led to the project of establishing in India the practice of passing private laws for compromising difference between individuals, and do not, therefore, know the grounds on which it has been recommended. It is open, I think, to much objection.

It would lower the dignity of the Supreme Government to be brought forward on trifling occasions as meddling in the administration of justice, and it would not be desirable to be perpetually reminding the people by public acts of the Government of an event in the history of the country which they regarded as an infringement of their rights, and as an arbitrary encroachment on the part of the Government, I would much prefer empowering some inferior authority to act in the matter.

But, independent of this point, I foresee much difficulty likely to attend the working of the proposed law, as far as concerns Hindoos and converts from Hindooism, which are the principal or the only classes to which it would practically apply. There is an attempt to distinguish by law rights which may be exercised and enjoyed by an apostate from the faith of his family, from rights which cannot be exercised and enjoyed by him without outrage to the religious feelings of those of his family who continue steadfast to their faith, and to put him in possession of the former, and to adjudge him compensation for the latter. This would involve the consideration and decision of most complicated questions; and it is, I think, going beyond what strict justice to the convert requires. Those rights which the convert cannot exercise without outraging the religious feelings of his family he may without injustice be considered to have relinquished, and voluntarily thrown away, when he abjured the faith to which they were attached, and justice does not require that his family should compensate him for the loss. Though the point is left undefined in the Draft Act, the unconverted members of the convert's family are, I presume, the only persons from whom it is contemplated to exact this compensation; and if we consider how many and various may be the rights which the convert might claim, and which fall under the description of those for which he would be entitled to compensation, and they are all likely to be mixed up with religious duties and domestic details, which ought not on slight grounds to be made matters of controversy in our courts of law, I cannot but think that it would be wiser not to afford to the convert the encouragement which such an Act as that proposed would afford him, to enter into a course of litigation of a nature so irritating to the parties concerned in it, and so perplexing to the courts which would have to decide on the matters in dispute.

To describe one or two of the simplest questions which would come before the courts, will show the hardship to the unconverted members of a convert's family of being dragged into a court of law, and compelled to make compensation.

In a Hindoo family all the members of it commonly reside in the same dwelling, inherited probably from their forefathers; they partake of their meals in common, and have a common fund for their domestic expenditure. If one of such a family becomes a Christian, he can no longer be permitted to reside in the same house with the rest, or to eat with them; and when by an act of his own he has placed himself in a position of voluntary separation from domestic intercourse with his relations, and has forfeited his right to apartments in their dwelling, and to share their meals, he might, under the proposed Act, sue them for compensation for the value of his share of the family dwelling, and all the conveniences and advantages which by residing there he would have enjoyed.

Again, in a family of brothers possessing in common land and other property, the income of which has been bequeathed by their parent, or has been devoted by themselves for the expense of certain religious observances, such as the rites which are performed for the *manes* of their ancestors, or any other duties of their religion, if one of the brothers is a convert to Christianity, he would, under the proposed

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proposed Act, have an actual law to obtain from his brethren his share of his income, or compensation in lieu of it.

It scarcely may be said, that a law which would give rise to such claims as these would inflict more hardship and injustice on Hindoo families than any to which the Hindoo convert is at present exposed. Such a law would serve, indeed, to remove disabilities and privations which one man knowingly, and of his own free will, has brought upon himself, but not without inflicting pains and penalties on a whole family, and giving offence to the feelings of all connected with them.

There are other kinds of property exclusively of a temporal nature, and not necessarily involving any connexion with domestic arrangements, such as zemindaries, rent-free lands, and money embarked in mercantile operations, in which members of Hindoo families are partners; and if this proposed Act is finally enacted, I would strongly recommend that it should be so framed as to affect only property of this description. This I should propose to effect by excluding from the rights which a convert may recover, all such as attach to the performance of religious rites, and such as are of a purely domestic nature.

I must take this opportunity of remarking, that the letter addressed to the chairman of the meeting at Madras, in reply to the memorial of the Hindoo community, against that part of the *Lex Loci* Draft Act which was considered by them as a breach of faith on the part of the British Government, did not meet with my assent.

I would not have advised the Government to make any reply to that memorial, till the reply could have referred the memorialists to such alteration in the manner of legislating on the subject as is now proposed; and moreover, I consider some of the arguments used in that letter as inconclusive, and the tone of it is not exactly that which the Government of India should, in my opinion, assume.

In whatever way the present Draft Act may be disposed of, I must beg leave to suggest, that if it be published for general information, and I conclude that the usual course will be followed, although this Act stands as an amendment of Sections X., XI. and XII. of the proposed *Lex Loci* Act, ample time be allowed for the people in all parts of India to understand, and, if they please, to comment on its provisions. Acts of trifling importance compared to the comprehensive measures contemplated in the *Lex Loci* Act, have had much longer intervals allowed between their first and second readings than was given to this.

In my opinion, time enough should be allowed between the first and second readings of Acts of this nature, involving great principles of policy or jurisprudence, for their transmission to Europe, and for the communication of any opinions which the authorities there may desire to send to us for our consideration; and in the earlier discussions on the proposed *Lex Loci* Act, I always understood that it had been resolved in Council to refer the papers connected with it for the consideration of the Court of Directors before we took any further steps towards legislating on the subject.

(signed) *T. H. Maddock.*

9 June 1845.

MINUTE by the Honourable Sir *Herbert Maddock*, dated 14 June 1845.

Legis. Cons.
2 Aug. 1845.
No. 30.

THIS Draft was published during my absence from Calcutta.

Had I supposed that the first step towards the enactment of the proposed law would have been so soon taken, I should have recorded such observations on the subject as had occurred to me on a full consideration of the proposed law before I left the Presidency. But as the original project of the Government Commission had been upwards of three years before Government, and all the members of the Government whose written opinions are on record were averse to some parts of the proposed enactment, and the opinions of the different authorities who had been consulted were divided, there was no reason to suppose that no further discussion would be thought necessary till the proposed law had been laid before the public.

I have thought it necessary to offer this explanation why the remarks which I am about to make were not submitted at an earlier period, and I think I may now be permitted, without offence, to comment on the measure as freely as I

should

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should have done if the Draft had not been published, and the question was as open to discussion as it was when I left Calcutta in January last.

The existence in any country of a diversity of laws is an evil attended with much difficulty and inconvenience to those who have to administer justice to the people, but it is an evil that will inevitably be found to prevail in any empire which is so extensive as to number amongst its subjects many tribes and nations of diversified habits and religion, and adhering to the various laws and customs which have come down to them from remote antiquity. India has a population about half as great as that of the whole of Europe, and there is a much wider separation from one another among the tribes of which it consists, than exists among the nations of Europe; it is not surprising, therefore, that we should experience difficulty and inconvenience in administering to all their own laws, and should deem it expedient to substitute for many various laws some general code that would be applicable to all.

Such was the object of the British Legislature when it declared it to be expedient that "subject to such special arrangements as local circumstances may require, a general system of judicial establishments and police, to which all persons whatsoever, as well European as natives, may be subject, should be established in the said territories at an early period; and that such laws as may be applicable in common to all classes of the inhabitants of the said territories, due regard being had to the rights, feelings and peculiar usages of the people, should be enacted, and that all laws and customs having the force of law within the same territories should be ascertained and consolidated, and, as occasion may require, amended." *Vide* Sect. 53, 3 & 4 W. 4, c. 85.

Doubts may have been entertained as to the possibility of realizing a design of such vast extent as is here propounded. It was evidently the object of the Legislature that the laws to be enacted under the authority of the above-quoted section of the last Charter Act should embrace, in their application, the two great classes of Hindoos and Mahomedans, of which the population of India mainly consists; and though the accomplishment of this object may have been found impracticable, it does not appear to accord with the views of the Imperial Parliament that we should now sit down to legislate separately for all classes of people in India not being Hindoos and Mahomedans, and endeavour by a new law to perpetuate the distinction between them and their fellow subjects, or at least to increase very greatly the difficulty of any future attempt to obliterate the distinction, and to establish uniformity in the judicial system.

Viewed in this light, the proposed measure, whatever may be its merits in other respects, falls far short of what was contemplated by the Legislature, and would impede, rather than promote, the ultimate object which the Legislature had in view; for as I understand the Act of Parliament, our chief attention should, in our general legislation, be given to the enactment of laws "applicable to all classes of the inhabitants." The idea of framing these codes of substantive law for the "three great classes of which the population of the Indian empire consists;* viz. Hindoos, Mahomedans, and persons who are neither Hindoos nor Mahomedans," has originated with the Law Commission. The plan rests, as far as I am aware, on no other authority.

* *See* Note (*g*) appended to Draft of Lex Loci Act.

The project of the *Lex Loci* Act must, however, have been framed on the supposition that such is the course of legislation approved and sanctioned by sufficient authority, or that if there are not to be three codes for the three classes described above, there may be a code applicable to the third class distinct from the laws which may be applicable to Hindoos and Mahomedans.

But this is not the case, at least it was not the case till the publication of the Draft conveyed to a certain extent the sanction of Government to its provision, and I am therefore disposed to regard the project of the Law Commission as a suggestion of that learned body quite of a novel nature, and open to discussion as any other question submitted for the consideration and decision of the Government; and further, I am of opinion, that seeing in the plan of legislation which has originated with the Law Commission a wide departure from that which was contemplated by Parliament, it would not be inconsistent with our duties to frame ere we entertain it, and to consult the authorities at home ere we proceed further in the matter.

It is probable, I think, that the Honourable Court of Directors have expected us to adopt this course; for in their letter, No. 24, dated 6th October 1843, in reply to that from this Government, No. 6 of 1843, dated 17th March, with which were submitted the minutes of Mr. Bird, the President of the Council, of Mr.

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Prinsep and Mr. Amos; they enjoin, as in the para. quoted below* to report to them what further consideration this important and difficult subject may have received, from which it is to be inferred, that they calculated on our proceeding further towards actual legislation in a matter so much disputed, without reporting to them the arguments and reasoning which had led the present members of the Government to form opinions on the subject different from those which were then before them in the minutes of Mr. Bird, Mr. Prinsep and Mr. Amos.

But be that as it may, the measure must now come before Council in a new shape, since it has been resolved to propose a separate enactment in place of Sects. X., XI. and XII. to be taken out of the *Lex Loci* Draft, and the question may, if it is thought proper, be referred to the Home Authorities.

As to the necessity, in the first place, of declaring the *substantive law of the place* in these territories, which the Law Commissioners say is doubtful, but which I should rather say is no matter of doubt, as it is never referred to or inquired after in the Company's Courts, the arguments adduced by the Commissioners have failed to convince me that such a measure is necessary. Those arguments might be strengthened, if the basis on which they rest was more clear and better defined. We want a precise definition of what is meant by the negative term, "every person not being a Hindoo or Mahomedan." Without this, it must be all vague conjecture who are the people, and what are their numbers, that we are making the subjects of our legislation. The Law Commission should have laid before us some statistical information regarding the various tribes in India, which are neither Hindoo nor Mahomedan, and should have given us some account of the laws and usages already prevailing among such tribes, before they can ask us to disfranchise them of their ancient laws or customs which stand in the place of laws, and imposing upon them an unknown law imported from a strange land, without asking their consent, or waiting to ascertain whether it is better adapted to their feelings, prejudices and modes of life, than the customs which it is to supersede. We want further information as to aliens, whose numbers are said to be increasing, as to persons whose legal connexion with their country, or the country of their ancestors, is interrupted by illegitimacy, whose number are described as great and increasing, as to the Armenian inhabitants, of whom there is said to be a large number.

Without information on these points, I cannot judge of the necessity of a law of this kind, the necessity of which should depend, as one of its conditions, on the relative number of those who are labouring under any disabilities from which the rest of the people are free, and from which they require to be relieved by a law of this kind; for, unless it is required by some considerable number of people so situated, and will be beneficial to the majority to be affected by it, I should not deem it expedient to adopt it. Measures of this nature should not rest on the plea of their tendency to diminish inconvenience and difficulty in the administration of laws. This should be held a matter of minor importance. The main points for consideration should be what is most conducive to the public good, and what is best for the interests of the classes concerned, and most acceptable to them. The public good will no doubt be promoted by every improvement of the law. Only one class, as far as I am aware, and that is the numerous class called East Indians, has applied to the Government to fix their legal position on a footing similar to that in which they would be placed by the *Lex Loci* Act. I do not understand the Parsees and Armenians, though they complain of difficulties in their present condition, to have made a similar application. There are Europeans, not British subjects, and aliens residing in India, who would probably be glad to be placed under the same law with the English residents. But we have no account of the number of these classes. They are not so great but that the law of England might for the present be applied to them without much hardship or inconvenience. This would hardly be done with respect to the East Indians, who are a numerous body, located in all parts of the country, and I would not apply this law to any of the people of Asia resident in India, without their consent; and if any measures are taken to bring any of these classes under the law of England, pending the compilation of a general code to supersede the partial use of that law, it should be effected by an Act specifying what classes are to fall under the operation, rather than by declaring

* Para. 8. "You will be careful to report to us the further consideration which this important and difficult subject may have received."

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declaring all people not being Hindoos or Mahomedans subject to it. I should of course exclude from any such system all those native tribes whose population is very great, which by the *Lex Loci* Draft Act would appear to fall under the description of persons not being Hindoos or Mahomedans; for it is not to be imagined that the Budhist joins the many aboriginal tribes of Gonde Bheels, and which occupy an extensive region in the centre of Hindoostan, the Mugs of Arrakan, or the Sikhs of the North Western Districts, though none of them are either Hindoos or Mahomedans, can be in a fit condition for the introduction of such a law; and to attempt to impose it on them would be repugnant to the intention of the Legislature, which has made no distinction in the Charter Act between them and Hindoos and Mahomedans, when directing that regard should be had to the right feelings and usages of the people, without specification, and without exception.

If, then, we exclude all these tribes, and leave them to enjoy their own lands and usages, the only remaining class that is important in point of numbers is that of East Indians. This class really wants a system of law. It has grown up from the time of the Portuguese settlers, many of whose descendants still remain in Bengal, and has been increased in modern times by the offspring of Englishmen, women of the country, and their descendants, and is at present in a very anomalous position: still the law of England would not be suitable to their condition.

I would remark on the preamble of the Draft Act, that besides not thinking that the Judges in the Company's Courts have felt any doubt as to what is now the substantive law of the place, I doubt whether it is quite correct to say that "a practice has grown up in the Courts of the East India Company of administering to every person not being a Hindoo or Mahomedan, in all cases not specially provided for, the substantive law of the country of such person, whenever such law is not inconsistent with equity and good conscience." I rather imagine that in cases of persons not being Hindoo or Mahomedan, justice is administered to Hindoos or Mahomedans, that is, according to the dictates of equity and good conscience, and that evidence is taken, or reference is made to the head authority procurable, in order to ascertain what are the laws or customs of the litigants in matters of marriage, inheritance, dower, bequest, or any other matter, in which the decision ought to be guided by the laws or customs of the litigants, whether they happen to be Hindoos or Mahomedans or not, the only difference being, that the authorities are nearer at hand, and more accessible in one case than in the other.

And with respect to the declaration in the preamble of the proposed Act, that "the Courts of the East India Company now administer English substantive law to such British subject, whenever such substantive law is not inconsistent with equity and good conscience, as an inference might thence be drawn that no difficulty will attend the introduction of English law as *the law of the place*, and that our Judges in the Mofussil are competent to decide controverted points of English law," I must object to any such conclusion, as I do not believe that the Company's Judges generally have had any legal education or training which could qualify them to decide such points; they must refer them for the opinion of better authority, just as they would do disputed points between Frenchmen or Americans, Jews or Burmese.

I agree with the Law Commissioners that the diversity of laws which the East India Company's Courts may have to administer, is likely to occasion inconvenience and difficulty. It has always occasioned inconvenience and difficulty, and till this shall be removed by the enactment of some general code applicable to all classes, we must submit to the evil as the necessary consequence of our position in this country.

The evil would not be removed by the introduction of a mutilated portion of the law of England, as proposed by the Law Commissioners, nor by that law with all the improvements that it has received up to the present day. The inevitable consequence of that introduction would be the entire dependence of the Mofussil Judges on the opinions of lawyers and attorneys, who in such circumstances must be allowed to practise in the courts of the interior with a fair field before them for the promotion of vexatious litigation; and this evil would in all probability be increased by an increased number of appeals from the decisions of the Mofussil Judges to the superior Courts. A long time must elapse ere we could expect that the legal knowledge of our district Judges would make them independent of such practitioners. Before the Law Commissioners recommended a measure which must lead to such consequences, it would have been satisfactory if they could have given us a report of the general effect of the introduction of English law in the

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Presidency towns. It is to be gathered from some of their proceedings, their opinions on this point would not be favourable; and while they contemplate the expediency of a great reform in the entire judicial system at the Presidencies, it would seem premature to adopt their suggestion for the extension of a system which they design to reform, unless the exigency of the case was much greater than they can show it to be.

And whatever may be thought of the difficulties and inconveniences of administering a diversity of laws in the cases for which the proposed Act is to provide, it is deserving of consideration that the practice of our Courts would show that we experience the same kind of difficulties and inconvenience in administering the laws of the Hindoos and Mahomedans. There are two great sects of the latter, which acknowledge different texts and interpretations of the Koran, and there are innumerable varieties of usages and customs holding the place of law among the different tribes and castes of Hindoos and Mahomedans. Our Judges endeavour wisely and justly to decide every case that comes before them according to the law or customs of the parties engaged in it, whatever sects of Hindoos or Mahomedans they may belong to. They do the same in the cases in which the parties are not Hindoos or Mahomedans, so that really the inconvenience and difficulty for which this Act is proposed as a remedy would remain unaltered, except in any small portion of the cases that come before the Courts.

I am averse to prolong these remarks. I regret exceedingly to find myself on this occasion opposed in opinion to the Governor-general and my other colleagues, conscious as I am of the legal ability and experience, in which I am wanting, that are requisite for the proper handling of a difficult and intricate matter like that under consideration. But I feel nevertheless that I should be failing in my duty if I were to shrink from the delivery of my opinion on this important subject, and that opinion is, that much as we require a law of common reference applicable to all orders and classes of men in this country, the law of England is not suited for the purpose, and that our wants in this respect cannot be supplied entirely but by a code framed especially for the British dominions in India.

14 June 1845. (signed) *T. H. Maddock.*

MINUTE by the Honourable *C. H. Cameron*, dated 23 June 1845.

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2 Aug. 1845.
No. 31.

I ENTIRELY concur with Mr. Millett, and have only to add a few words to what he has so well stated.

I think it is to be regretted that Sir Herbert Maddock, as he considers some of the arguments in our letter to the Madras memorialists as inconclusive, and the tone of it not exactly that which the Government of India should in his opinion assume, did not communicate these sentiments to his colleagues before the letter was sent to Madras, and point out the particular arguments and expressions which seem to him objectionable.

The communication of these sentiments after the letter has been sent is obviously too late to answer any practical purpose.

With respect to Sect. XI. of the *Lex Loci* Act, I will only observe that it was rendered necessary by the proposed enactment of the *lex loci*, and would be quite out of place and unmeaning in the present Act, which has no connexion with that general provision.

I agree with Sir H. Maddock in his objections to the passing of private laws on this subject, and think it would be most desirable to dispense with that provision, if we can devise any general expressions which will exclude from the operation of the Act the cases which ought to be excluded. I have made an attempt to do this, which I now circulate for the consideration of my colleagues, and even if it is not a completely successful attempt, I should prefer it to the expedient it is meant to supersede.

The two classes of rites which I have excepted, are rites which involve the performance of ceremonies connected with mosques or temples, and rites which, according to Hindoo or Mahomedan doctrines, would occasion personal pollution, such as conjugal rites, or a rite to shave the males of another.

The Act is much shortened by this change, for the same provisions will answer both for the Supreme Courts and the Company's Courts.

23 June 1845. (signed) *C. H. Cameron.*

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MINUTE by the Governor-general, dated 18th July 1845.

1. I CONSIDERED it expedient, in the state in which the *lex loci* measure had been left, that a full opportunity should be afforded, not only of considering its policy, and the clauses in the Act by which it could practically be made a part of the judicial system of India, but of ascertaining by the publication of the Draft Act the impression which the measure was likely to make on the native portion of the community.

2. It was also desirable to bring this question to a decision for other reasons. It is now 12 years since the British Legislature in the Charter Act declared it to be expedient that at an early period a general judicial system should be established applicable to all classes of the inhabitants, "due regard being had to the right feelings and peculiar usages of the people."

3. The Law Commission was accordingly appointed and made its Report on the 31st October 1840.

4. On the 11th of May 1841, the Governor-general in Council recommended that the Law Commission and the Draft Act should be promulgated, in order that the numerous classes whose interests were concerned might have an opportunity of considering and understanding the precise nature and probable effects of the measure.

5. The Draft Act was accordingly prepared by Mr. Amos and the Law Commission on the 22d May 1841.

6. In this Draft Act, persons having changed their religion were protected from forfeiture of rights or property in consequence of having renounced their creed. In the course of the year 1841, Mr. Amos states, that nothing further was done by Lord Auckland, in consequence (he presumes) of a pressure of urgent and important matter. Mr. Prinsep, in a minute of April 1842, objected to some parts of the law, and Mr. Amos in replying to his objections stated, that he understood the general opinion of the Supreme Council to be, that the proposed Act drawn up by the Law Commission would be highly beneficial. He was himself favourable to the proposed law.

7. The President, Mr. Bird (Lord Ellenborough having left Calcutta for the Upper Provinces), thought it would be dangerous to legislate until opinions were less divided; but Mr. Bird subsequently approved of the principle of the Act as Governor of Bengal.

8. The papers were sent home, and on the 17th of March 1843, the Court of Directors desire that any further consideration which this important and difficult subject may receive may be reported to them.

9. The late Governor-general was for some months in the Upper Provinces each year while he was in India, and the question was not brought forward when he was in Council, the state of the country not being favourable during the larger portion of that time to the introduction of the measure.

10. The latter end of January last the subject was resumed in Council. It appeared to me most desirable that the Draft Act should be published in order that the opinions of all classes of the European and native community should be collected. It also was advisable that the Judges of the Supreme Court should be requested to favour the Government with their suggestions on the proposed Act.

11. On general principles of equity and justice there appeared at no time to have been any difference of opinion in passing those portions of the proposed law, by which any person of whatever creed or class should be protected from forfeiture of property in consequence of changing his religion. In consideration of such a measure, the policy was of course the important point for our decision.

12. I found on reference to past proceedings that the weight of authority greatly preponderated in favour of the measure; one of the most learned and most experienced of the Indian Judges, Sir Hyde East, had in his examination before Parliament in 1830, previous to the renewal of the last Charter Act, earnestly submitted that no native of India should forfeit any right of property on account of his profession of any particular faith or doctrine.

13. It also appeared by a despatch from the Court of Directors of 2d February 1841, that this subject was brought by them to the notice of the Government of

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India, in which despatch they state their opinion to be unchanged as to the expediency of making the powers of Government instrumental in the conversion of the natives either directly or indirectly; but they at the same time remark that the neutrality which ought to be observed on this subject does not require that converts to Christianity should be placed in a less advantageous position than other persons.

The Honourable Court also state in the same despatch, that it would be more consonant to the principles on which they have always professed to act; namely, that of perfect religious equality, that no disabilities should exist by regulation on account of religious belief; and we are confirmed in our wish, by the fact that none such exist at Bombay, and that no inconvenience has, as far as we are informed, been the result.

14. In alluding at the same time to the evidence given by Sir Hyde East, the Court of Directors desired to know to what extent conversion to Christianity exposes the convert or his descendant to the loss of property and other civil rights, and what means can with propriety be taken to relieve them from such disadvantage.

15. These just and tolerant principles were acted upon by the Governor-general in Council. The Regulation No. VII., 1832, of the Bengal code, was made, promulgated, and duly communicated to the Court of Directors in a despatch of 3d January 1832.

16. As regards this portion of the measure in which the feelings and prejudices of the native Indian population are concerned, the chief question is, whether it is advisable to extend the Bengal Regulation to every other part of India?

* *Sic orig.*

17. It is admitted that the greatest* and indifference have pervaded the native mind, and to such an extent is this time* acknowledged by an influential Hindoo of Calcutta, that many have put their names to the memorial, ignorant of its contents, and the object for which it was drawn up. It was impossible by mere conversation within the reach of Government to arrive at any conclusion or fresh information as to the feelings of the great classes on this subject; viz. the Hindoos and Mahomedans. The proposed Act has been published not only in the Government Gazette, but has been inserted in the native newspapers. Every means usually taken on these occasions has been resorted to, and nothing that I am aware of has been omitted in order to obtain this practical information; ample time also has been given for objections to be brought forward against the measure.

18. The result has been most gratifying; five months have elapsed, and one memorial from Madras, with another from Calcutta, and one or two separate memorials, is the amount of objection taken by the Hindoo portion of people to this portion of this important measure; not one memorial has been presented by Mahomedans.

19. I own that this result has exceeded my expectations. The imputation of making sudden innovations affecting the religious feelings of the native population is one more easily made than refuted; but in this case, I have certainly felt that if the public mind was prepared for the extension of the Regulation of 1832 to the other parts of India, it was the duty of the Governor to give effect to a measure the principle of which had been already approved by the Court of Directors as applicable to Bengal, and which would rescue the Government of India from the inconsistency and cruelty of fostering and patronizing the Hindoo College and other public institutions for native education, whilst we refused to give protection to the pupils who, preferring truth to superstition, were liable to forfeit their property because they had changed their religion.

20. In all these colleges superintended by members of the Government forming the Council of Education, no religious books are taught, no religious interference is permitted, and no preference is given on account of religious creed. The most perfect toleration is observed, and a decided abstinence from any attempt to make proselytes. What is the consequence? A native of rank, learning and wealth has given this answer: He says, speaking of the Hindoo College, "Has it not been the fountain of a new race of men amongst us from that institution, as from the rock from whence the mighty Ganges takes its rise? A nation is flowing in upon this desert country to replenish its withered fields with the living waters of knowledge. *Have all the efforts of the missionaries given a tittle of that check to the superstition of the people which has been given by the Hindoo College?*"

21. As

21. As Governor of Bengal, I have passed a resolution, that the native youth of all castes and conditions educated in the various schools and colleges, whose abilities and studious habits, combined with integrity, have given to them a superior claim to be preferred for their merit, shall be employed in the public service as vacancies may occur.

22. This measure, one of the first which I took after my arrival, had been recommended to my attention by the chairman of the East India Company, in the address made to me on the part of the Court, expressly informing me that it was the desire of the Court to encourage education among the people of India, with a view of cultivating and enlarging their minds, of raising them in their own and our estimation, and of qualifying them for the more responsible offices under our Government. With reference to education, I was advised to exercise great prudence and caution, in order to avoid even the appearance of any interference with their religious feelings and prejudices, and to maintain on such points the strictest neutrality.

23. No interference is proposed by this part of the measure, which has now been familiar to the Court for the last 12 years, in the Regulation of 1832, expressly enacted to guard against the evil which the Court itself had pointed out; and in every proceeding of the Government the strictest neutrality is observed.

24. Would it be reasonable or honest, after having stimulated young men for a series of years to improve their minds in English literature, arts and sciences, and when the . . . . . * of this system are beginning to declare that although the Government has systematically taken the pains to enlighten them, it is not their intention to protect them from the confiscation of their property; would it be justifiable to force them, as the only mode of evading this penalty, to become hypocrites by concealing the fact of their conversion? I make these observations freely, because there is no part of the policy of the East India Company in which I more cordially agree, than in the wisdom of their instructions by which their civil servants of every class are enjoined to take no part in questions affecting the religion of the native population.

* *Sic orig.*

25. On the question of the right of the Government of India to pass this portion of the Act into a law, the arguments used by Mr. Cameron in the reply to the Madras memorialists, form, in my opinion, a clear and convincing answer to their objections; and as the draft proposed letter was circulated to the members of Council before it was sent, I regret that Sir H. Maddock did not favour the Government with the arguments by which he considers that the Secretary's letter might have been improved.

26. Giving to these two memorials the consideration which is due, I cannot but remember (adverting to the alleged breach of faith) that 15 years ago certain Hindoos petitioned for their ancient right, as connected with their religion, of burning their widows alive, and that 12 years ago the very right which the Madras memorialists claim of punishing liberty of conscience by confiscation of property was abrogated in Bengal without a remonstrance.

27. With regard to the *Lex Loci* Act, Sir T. H. Maddock objects that it falls far short of what the Imperial Legislature intended, and that the present attempt, by perpetuating the distinction between the Hindoo and the Mahomedan population, will greatly increase the difficulty of any future attempt to obliterate the distinction, and to establish uniformity in the judicial system.

28. In my view of the measure, the limitations proposed have the merit of being provident and safe. The only innovations, as far as religious feelings are concerned, relate to the 3d clause, taken out of the *Lex Loci* Act, by which, in a separate enactment, it is proposed that the existing regulation should be extended from Bengal to all India.

29. To this extent, that measure being separated from the *Lex Loci* Act, is a step in advance, suited to the progress which education is making; and in policy I am satisfied that the more gradually any of these improvements are introduced the better. I consider the limitation judicious, on account of its moderation, and in my humble judgment that step can be taken prudently and safely at the present time.

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30. But if the basis on which the laws are to be made and administered in India is to be one of toleration and of justice, due regard being had to the feelings and prejudices of the people, and to the policy which our peculiar position in India demands, it is surely expedient, without any unnecessary interference with Hindoo and Mahomedan laws, to improve the state of British law in accordance with that clause in the Charter Act which directed the Governor of India 12 years ago to do so at an early period.

31. The application of the proposed law by magistrates in the Mofussil will not require them at once or suddenly to administer a new code of English law. Those magistrates will thereby be required to administer law according to the Regulations now in force, until the new digest be published by authority. They will administer the same law to any foreigner, not being a Hindoo or Mussulman, which they now administer to an Englishman, and in this respect their duties will be less complicated than at present. A European or an American will be treated as he would be if he resided in any one of Her Majesty's colonies, and be subjected to the same law as the colonies, and be subjected to the same law as an Englishman in that colony. In our Supreme Courts, the foreigner is tried by English law; and the foreigner in the Mofussil will be subjected to East India Company's law, the same as is applied to the Englishman in the Mofussil.

32. Parsees, Armenians, Jews, Greeks, residing within the limits of the Supreme Court, are now under the law administered by those Courts in Calcutta, Madras and Bombay.

33. In the Mofussil they will have English East India Company's law, as contained in the Regulations, except in cases of religion and adoption, where the peculiar customs of each sect or class will be ascertained as they are at present. The step proposed to be taken, even if it were to proceed no further at present, will have the effect of approximating the system in the East India Company's courts in point of uniformity to those of the Supreme Courts at each Presidency; and although the mere attainment of uniformity, unaccompanied by future amendments, would be a scanty and unsatisfactory ground for legislation, yet all admit that the nearer the Supreme Courts, or the Mofussil Courts, can be brought together in their practice, and the nearer the approach can be made to English law without its technicalities or special pleading, the safer and better will be the administration of justice in India.

34. If these technicalities are to be introduced with the proposed digest, I should very much prefer the more imperfect system of the East India Company's Regulations. If this mischief should ensue, it will be in direct opposition to the framers of the Act.

35. On this part of the subject, I need only refer to the written opinions of the three learned Judges of the Supreme Court at Calcutta.

36. The Chief Justice, Sir Lawrence Peel, and Sir Henry Seton have both declared the object of the proposed Act to be unexceptionable, and have offered their valuable assistance to aid the framing of a digest for this purpose.

37. As to the apprehensions of litigation and special pleading, I considered it advisable to address the Chief Justice; and I now append to this Minute, with his permission, his letter of the 17th July on this subject. He states, that the digest would introduce into the Mofussil no difficulties, subtleties or technicalities whatever, and that the fears on that subject are wholly groundless. The digest, in his opinion, would be readily enacted, and would not displace Regulation law, but would displace personal laws of all people except Hindoos and Mahomedans, which, as at present, would remain inviolate; and he concludes by saying, that he has no hesitation in fully concurring in the recommendation of the Law Commission.

38. Sir John Grant declares, as a lawyer, irrespective of his objection to the wording of the clauses, that the policy of the proposed Act will be certain to produce consequences beneficial to British India.

39. The Judges of all the Supreme Courts, and all the Sudder Courts (except the N. W. Sudder), are unanimous in their approbation of the proposed law. It is approved by all the members of the Government, except one.

40. I feel

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40. I feel convinced, in common with these learned personages, and with very inferior means of coming to a conclusion as to the probable working of such a law, the object of the measure is unexceptionable, and that its policy will be beneficial; I therefore am bound to sanction the attempt to gain these advantages. It has never been intended to pass the *Lex Loci* Act without first referring to the home authorities. But if the law were to be passed before the digest was prepared, the existing Regulations would continue to be in force in the Mofussil; thus, if the digest were even to be deferred, the Regulation law in the Mofussil would in the mean time be administered with more simplicity and uniformity, by displacing personal laws, than it is at present. The existing system attempts to administer to individuals the laws of every country in the known world.

41. It is five years since the Law Commission made its Report, suggesting the mode of giving effect to the declared injunctions of Parliament 12 years ago, that this subject should be considered by the Government of India at an early period. Four years have also elapsed since the Report of the Law Commission and the Draft Act were promulgated; it therefore appeared to me to be expedient, that at this period of tranquillity the question should no longer be hung up, but be now deliberately decided.

The whole of the papers should be prepared for transmission to the Court of Directors by the next mail.

(signed) *H. Hardinge.*

To the Honourable Sir *Lawrence Peel*, &c. &c. &c.

My dear Sir Lawrence,

Legis. Cons.
2 Aug. 1845.
No. 33.

I SHOULD be much obliged to you, in reference to our conversation of yesterday, if you will give me the advantage of your opinion as to what may be expected to be the practical working of the "*Lex Loci*" Act, assuming that a digest of English law, suited to the condition of India, were prepared and promulgated in addition to the existing Regulation.

If the effect of introducing such a digest in the Mofussil would be to render the administration of justice more complicated, difficult and uncertain than it is at present under the Regulation law, such a result would be a most serious and fatal defect in the proposed measure.

On the other hand, assuming that the subject will be less vague and more precise on many important points than the existing Regulations, nevertheless, if the improvement is inevitably to be attended with the risk of our Provincial Courts being overlaid by the technicalities and special pleadings of our Courts in England, that result would be a fatal objection to the improvement sought to be obtained.

But if, on the contrary, the administration of the digest law can be rendered so little liable to this objection on * the existing Regulation law (which I understand will be the case), the fears of those who apprehend that the Mofussil Courts will become the sources of vexatious litigation are groundless.

* *Sic orig.*

There are various other considerations connected with the practical working of the proposed law so familiar to you, who have so long and so ably practised in and presided over our Indian Courts of Law, that I should infinitely prefer, if you will permit me, at once to request you to give me your view of what will be the effects (beneficial or otherwise) of the proposed Act, not losing sight of the instruments which we shall have in the provinces to carry such a law into daily operation, and assuming that the people to whom the law is to be applied should remain, as to castes and creeds, much on the same footing as at present.

I assure you, I as well as my colleagues are very thankful for the aid you are at all times so ready to afford.

Believe me, &c.

Calcutta, 15 July 1845. (signed) *H. Hardinge.*

(True copy.)

(signed) *C. Hardinge,*
Private Secretary.

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Lex Loci.

Legis. Cons.
2 Aug. 1845.
No. 34.

My dear Sir Henry,

THE questions which your letter proposes to me I am enabled to answer without delay, because I have previously given the subject a full and anxious consideration. The *Lex Loci* Act, if accompanied by a digest of such parts of the English law as it was deemed expedient to introduce into the Mofussil, would introduce no difficulties, subtleties or technicalities whatever. It is, in my opinion, indispensable to the success of this experiment that a digest should form a part of it, which might readily be enacted. Sir Henry Seton's and my recommendation of the measure proceeded on this view. I need only refer you, on this point, to our letter to Government. This, Mr. Cameron assured me, would be consented to, but he was desirous that the actual enactment of the Act should not be postponed, although he was willing that its operation should be suspended until after the completion of such a digest. Some misconception appears to prevail in some quarters on this subject.

The law proposed to be introduced is not the whole body of the English law, but a certain written and digested portion thereof, suitable to the condition of those to whom it is to be applied; the subject will be best explained by showing negatively what would not be introduced. The process, the forms of special pleading, the rules of evidence, the mode of trial, the process to execution,—none of these would be introduced. A suit in the Mofussil under the *Lex Loci* Act, if enacted, would, for any thing that that law proposes to the contrary, proceed in precisely the same course in which any other suit proceeds; the mere difference would be, that instead of taking evidence as to the law of foreigners of all nations from doubtful sources, the Judges would look to a written digest of the law for a rule to govern their decisions in the cases to which the Act would extend. The only part of the English law (using the term "substantive law" as applied by the Law Commissioners) in which any degree of subtlety or technicality is to be found, is that of real property, which is certainly an abstruse and difficult branch of the law; that, however, is to be introduced; and I am quite at a loss to understand how technicality or subtlety can be imputed to the body of the English law which this Act, as I now explain it, would introduce. I am sure that instead of recommending its adoption, I should most earnestly have recommended its rejection, if I had thought it open to this objection. I may observe, in addition, that the English law as to contracts, the most fruitful source of litigation, is so much in harmony with the Mahomedan and Hindoo laws as to contracts, that it very rarely happens in our courts, which are bound to administer to Hindoos and Mahomedans their respective laws as to contracts, that any question arises on the law peculiar to those people in actions on contracts. The Regulations make no provisions on the subject now under consideration; the English law would not displace Regulation law, but, as I have observed, would displace personal laws of all people; of course the personal laws of Hindoos and Mahomedans are to be held inviolate, but there is no rational ground for maintaining personal laws in other cases. Is a magistrate in the Mofussil likely to have less difficulty in adjudging a question between Frenchmen upon the code of France, than upon the English digest? Will he know more of the laws of Portuguese, Armenians, Jews, &c., than of the laws contained in a plain written digest of the English law? Without going so far in praise of the English law as some have gone, I can say with truth, that I think it an excellent system of laws, and that it should be of inestimable benefit to enact for the general mass of people in the same empire, save those for whom necessity required peculiar laws to be retained, one and the same body of laws. This could not be done by a code enacting a mere body of laws, for it would not do to supersede English law in an English dependency closely connected in commercial relations with the parent state; and a code or a digest embodying the main principles of the English law differ only in name. I have, therefore, no hesitation in saying, that I most fully concur in the general recommendation of the Law Commissioners on this subject, qualified as I have above explained, and that I think the fears of technicalities or subtleties wholly groundless. I should not have thought my opinion would influence many, but as you think so, it is both my duty and my wish to give you my assistance in this as well as in all other matters on which you may do me the favour to consult me.

I have, &c.

(signed) *Lawrence Peel.*

MINUTE

No. 3.
Lex Loci.

MINUTE by the Honourable *C. H. Cameron*, dated 1st August 1845.

Legis. Cons. 2 Aug. 1845. No. 35. *Lex Loci.*

THE *Lex Loci* Act is approved by all the Sudder Courts except one (the North West Sudder*), and by all the members of Government except one. Sir Herbert Maddock's objections to details have been made by others, but those it is necessary here to examine. I propose to apply only to the objections made by Sir Herbert Maddock and the N. W. Sudder to the principle of the Draft. Sir Herbert Maddock concludes his minute with the proposition, "that our wants in this respect cannot be supplied entirely but by a code framed especially for the British dominions in India."

I even go further, and think that our wants cannot, under existing circumstances, be supplied by such a code; for as long as the Hindoos and Mahomedans retain their present opinions, I do not think our code of substantive law for British India a possible thing.

Our code of procedure is possible, and our penal code has been actually framed; but our code of substantive law is constantly, with due regard to the feelings of the people, impossible, so long as the two great religious communities of Hindoos and Mahommedans continue in their present opinions.

Even in England, that portion of the people who resemble the Hindoos and Mahomedans in following a law which is part of their religion (I mean the Jews) have never been brought completely under the *lex loci*, and probably never will be so long as they continue Jews. I do, indeed, hope and believe that the ultimate result of that English education to which the Governor-general has given so great a stimulus, will be such a change in the opinions of Hindoos and Mahomedans as will make them desirous of being admitted to the *lex loci*; but in the mean time neither the Law Commission nor I, individually, desire to force it upon them; neither, I should suppose, does Sir Herbert Maddock, who is at this very moment resisting a proposition (admitted by himself to be abstractedly just and right) for ceasing to administer in our courts a part of their law which is oppressive to persons who are no longer of their faith.

There are, no doubt, certain provisions of substantive law which may, with great advantage, and without any considerable inconvenience, be applied to a variety of different systems; such, for example, is the law of prescription; and upon this subject the Law Commission has already presented several Reports and a Draft Act, intended to regulate the extinction and creation by lapse of time of the rights of every individual in British India. Their Reports and this Draft are now under the consideration of Government. The Draft is quite unlimited in its application to races and persons, and so far it will satisfy some of the conditions under which Sir Herbert Maddock seems to suppose the Law Commission to be placed; but then it is not a whole code, but only a portion of law which admits of easy separation from the rest, and, therefore, according to that construction put by Sir Herbert Maddock upon the Charter Act, on which I am now about to remark, it does not come up, in point of magnitude, to that Parliamentary standard to which every production of the Law Commission must conform.

Sir Herbert Maddock seems to suppose that the Law Commission and the Legislative Council are prohibited by the statute from improving the legal condition of any separate portion of the people, and strictly confined to such measures as shall at once improve the condition of the people.

This very extraordinary doctrine is not indeed stated by Sir Herbert Maddock in so many words; but I do not know what other precise meaning to attach to the early part of his minute down to the words, "it does not appear to accord with the views of the Imperial Parliament that we should now sit down to legislate separately for all classes of people in India, not being Hindoos or Mahomedans, and endeavour by a new law to perpetuate the distinction between them and their fellow-subjects, or at least to increase, very greatly, the difficulty of any future attempt to obliterate the distinction and to establish uniformity in the judicial system."

Before I proceed to contest Sir Herbert Maddock's construction of the Charter Act, I must observe, that to represent us as endeavouring "by a new law to perpetuate

* The North West Sudder, as it was constituted in the year ——, did approve, but the present Court is of a different opinion.

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petuate the distinction between them (Hindoos and Mahomedans) and their fellow-subjects" is a very invidious way of characterizing what we are really doing. We are really doing no more in this respect than recognizing a distinction which unhappily exists in spite of us, and which we cannot avoid recognizing in our legislation, without a total disregard of the feelings of the people. How the enactment of our law, a *lex loci* for all persons for whom no special provision exists, will increase the difficulty of assimilating the legal condition of Hindoos and Mahomedans to that of their fellow-subjects, is not explained.

In my opinion the enactment of such a *lex loci* as is recommended by the Law Commission will have the exactly opposite tendency.

For suppose a Hindoo or a Mahomedan to lose his religious attachment to the law derived from his sacred books, and to become desirous of living under a law framed solely upon considerations of justice and utility, under the present system he must either remain as he is, or plunge into a more unorganized chaos of equity and good conscience. I do not mean that this is a just description of the equity and good conscience now administered in the Mofussil. The Judges there have organized their equity and good conscience by moulding it, whenever they can, upon the law of the nation to which the parties belong. But in the supposed case of a person desirous of abandoning his own law, and permitted to do so, there would be no other provision for him than the unorganized chaos I speak of. But now let us suppose the *lex loci* enacted comprised in a written digest, and from time to time amended by the Legislature, and we have a real object of attraction to a national mind. It is good to live under the same system of law as one's more civilized fellow-subjects; it is good to live under a system of law in which the principles of justice and utility are unencumbered by theological dogmas; and these advantages the Hindoos and Mahomedans, as their prejudices gradually drop off, may be expected to perceive; but without a *lex loci* these advantages cannot be perceived, for they cannot exist.

If the meaning is that the mention of the Hindoos and Mahomedans in the law, as separate classes, will put them in mind that they are separate classes, the answer is, that they cannot possibly forget that fact; and even if they could forget it without a memento, they already have a memento, both in the laws of the Presidency and the Mofussil, when they, and they alone, are designated by name as entitled to their own laws, all other classes being left in the Presidency to English law, in the Mofussil to equity and good conscience.

The construction put by Sir Herbert Maddock upon the 53d Section of the Charter Act appears to me neither to be reasonable in itself, nor to be forced upon us by the words of the Act. He quotes only the preamble, which sets forth the ultimate object which the Legislature had in view in establishing a Law Commission, which object the Law Commission and the Council are undoubtedly bound always to bear in mind; but if Sir Herbert had passed on from the preamble to the enacting part of the Section, he would have seen that "the said Commissioners shall from time to time suggest such alterations (not as may be *applicable in common to all classes of the inhabitants* of the said territories), but as may *in their opinion be beneficially made in* the said Courts of Justice and Police establishments, forms of judicial procedure and laws, due regard being had to the distinction of castes, difference of religion, and the manners and opinions prevailing among different races in different parts of the said territories."

If the words of the statute had been ambiguous, I should have thought a construction which confines the Law Commission to the recommendation and enactment of such laws only as may at once be applicable in common to all classes of the inhabitants of these territories, inadmissible from its unreasonableness. But the words of the statute are not ambiguous; the Commissioners are from time to time to suggest such alterations as may in their opinion be beneficially made, keeping in view the object set forth by the Legislature in the preamble.

It appeared to the Commissioners that the establishment of a *lex loci* in this the only country in the world having a civilized Government in which there is none, would be a beneficial alteration, and they have accordingly suggested it.

This is the question we have now to consider; and I pledge my reputation, as a lawyer, to my colleagues, that in considering and adopting this recommendation of the Law Commissioners, they will not violate the provisions of the Act from which their legislative power is derived.

We lately sent home a project of the Law Commission for a reform of the judicature in the Presidency towns; and we now learn that it has been submitted to the

the law officers of the Crown and Company. Are we to expect that these learned persons will reject the scheme without examination of its merits, on the ground that the people of the Mofussil have been left out of the plan? whereas the Law Commission have only authority to suggest "*a general system of judicial establishments and police, to which all persons whatsoever,* as well Europeans as natives, may be subject."

I do not expect this result, but it ought to follow if Sir Herbert Maddock's construction of the Charter Act is a sound one.

Sir Herbert Maddock says, the proposed measure falls far short of what was contemplated by the Legislature. "This is quite true; the measure falls short, just as a messenger sent from London to Windsor falls short of what was contemplated by the sender when he got no further than Hounslow." But when Sir Herbert Maddock adds, "and would rather impede than promote the ultimate object which the Legislature had in view," he asserts a proposition for which I cannot discover a particle of evidence.

If the Law Commission were proposing, for the first time, to give Hindoo law to Hindoos, and Mahomedan law to Mahomedans, it might be accused of perpetuating distinctions, but with what plausibility it can be accused of doing so, merely because it provides a law for other people, is not discernible to me.

Neither would these distinctions be perpetuated if the Law Commission were to digest the Hindoo and Mahomedan laws. The Hindoos and Mahomedans look with religious reverence upon their own laws as contained in their own sacred books; they certainly would not look with that feeling upon codes or digests made by the Law Commission, though they might be disposed to acquiesce in the use of them as presenting the principles of their own laws in a more compact and regular form.

Before I consider Sir Herbert Maddock's remarks upon the classes who are to be subject to the *lex loci*, I wish to correct what seems to me to be great misapprehensions on his part, and on the part of the N. W. Suddur, as to the nature of the proposed *lex loci* itself.

He says, "Before the Commission recommended a measure which must lead to such consequences (consequences which he has been suggesting), it would have been satisfactory if they could have given us a report of the general effect of the introduction of English law in the Presidency towns. It is to be gathered from some of their proceedings that some of their suggestions would not be favourable; and while they contemplate the expediency of a great reform in the entire judicial system at the Presidencies, it would seem premature to adopt their suggestion for the extension of a system which they design to reform, unless the exigency of the case was much greater than they can show it to be."

It would indeed seem premature; nay, it would not only seem premature to adopt such a suggestion of the Law Commission, but altogether absurd and inconsistent in that body to make such a suggestion.

I will proceed to show in detail that the suggestion made by the Law Commission is totally different; but before I do so I must remark that when Sir Herbert Maddock undertook to describe the plan of the Law Commission as an extension of the judicial system of the Presidencies, while they themselves contemplate a great reform in that system, he ought to have made himself sure, by a careful perusal of their . . . . . on the *lex loci*, that their plan is really such as he represents it. If he had followed that course, he would have seen that what may at first sight seem inconsistent, is in truth nothing more than a suggestion of opposite remedies for the opposite defects of the Presidency and Mofussil systems; no more really inconsistent than it is to think ice a luxury in summer, and fire in winter.

Sic orig.

At page 31 of the Law Commission's Report, Sir Herbert Maddock would have found the following passage:—

"We firmly believe that English law, taken together with the supplement and corrective of English equity, constitutes a body of substantive law which is not surpassed in the qualities for which substantive law is admired by any of the various systems under which men have lived." We are, indeed, persuaded that a code framed out of these materials would be a better thing than the materials in their present form, but we know of nothing else that would be better; yet, notwithstanding these great merits, the rude and cumbrous way in which the settlement and corrective of equity is applied to law, the intricate expense and dilatory proceedings which the suitor must have recourse to before he can get the rules of

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law or of equity, or of both, applied authoritatively to his case, and the facility which is thus afforded to each party to vex and harass his antagonist, form such an enormous drawback to the merits of the whole *corpus juris*, substantive and adjective, taken together, that we should be very sorry to lie under the responsibility of having recommended the introduction of it into any place where it is not *de facto* established. Two sets of Courts, one set prohibiting the suitor from proceeding in the other set, or if too late for that, taking from him what the other set has awarded him, is an argument which cannot be contemplated with any satisfaction by those who desired that any justice should be administered speedily and cheaply, and in a manner intelligible to the people; yet that is a true account of the relation in which courts of equity stand to courts of law in the English system, which has been introduced into the Indian Presidencies; the anomalous and extravagant features are exaggerated beyond those of the parent institution. That the Chancellor should order a man not to apply to the courts of law for his legal rights; that the courts of law should be bound to affect neither to know nor care whether the Chancellor has done so or not; that the Chancellor should not be permitted to hear *vivâ voce* evidence, but should be obliged to send his suitors to ask the courts of law to do it for him; that the courts of law in their turn* should not be permitted to order witnesses to be examined by commission, but should be obliged to send their suitors to ask the Chancellor to do it for them; these, and other things of the same stamp, do not look like the production of political wisdom. We know, in fact, that the only explanation which can be given of them is not to be sought in jurisprudence, but in history. But a copy of these things which has been established in the Presidencies of India, bears still fewer marks of design. It might actually happen, according to established rules, that the Judges of the Supreme Court sitting in equity should command a suitor not to apply for justice to themselves sitting at law; "And that if the suitor should disregard the command, and make the application, they would be bound to be ignorant of what they had done when sitting in equity, and to refuse to pay any attention to it, or even to listen to the statement of it. It is true that this case is never likely to be realised in practice; but arrangements so unreasonable seem to us calculated to bring the administration of justice into contempt, even if they produce no practical mischief. How much more, when, as in a case which has lately been decided at this Presidency, the unreasonableness of the institution may be traced in its mischievous effects upon the fortunes of the suitors!"

Further on, the Law Commission, after exemplifying the mischief of English procedure by a remarkable case, observe, "Such is the scheme of procedure, according to which the principles of English law and English equity are applied to the transactions of life; and no one can be surprised that persons not having sufficient acquaintance with the subject to distinguish accurately between the procedure and the substantive rules, should look upon the whole system with the distaste and alarm which ought to be excited only by one portion of it. If such a case as this had occurred in a Mofussil Court, being, as each of them is, not a Court with two sides, one deciding according to law and the other according to equity, but a Court deciding according to law as modified and corrected by equity, this frightful waste of time and money could not have taken place. The Court having been once fairly put in possession of the facts by pleadings and evidence, would have proceeded to decree to the plaintiff his legal rights, if there were nothing inequitable in them; if there were, then his legal rights modified and corrected by equity."

Sir Herbert Maddock cannot have been aware of this passage when he supposed that the Law Commission, in proposing the *lex loci*, were proposing the extension to the Mofussil of that system which they had designed to reform in the Presidencies.

But besides this passage, the term "substantive law" (especially as the Commissioners have been careful to explain by a note what sense they attached to it) ought to have prevented Sir Herbert Maddock from falling into this mistake.

So also ought the careful preservation in the Draft Act of the whole body of the Regulations. In truth, I can only account for this mistake by supposing that Sir

* This has been remedied by a late statute, but it is characteristic of the plan, if that is the name applicable to such a distribution of judicial powers.

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Sir Herbert Maddock has paid more attention to the statements and arguments of the only judicial authority which is opposed to the *lex loci*, viz. the North West Suddur, than to those of its authors.

He has been misled, I apprehend, by various expressions contained in the letter of the North West Suddur, which do seem to imply that the Judges understood the *lex loci* as superseding the Regulations. Thus they say that this enactment will deprive the suitors "of a law which has been hitherto administered with efficiency, and has been found to provide adequately for all their judicial wants, which is as intelligible and accessible to the suitors themselves as it is to the Courts charged with its administration, and will subject them to laws of which neither suitors nor courts are cognizant."

The law of which the suitors are here said to be deprived, and which is described as intelligible and accessible to the suitors and the courts, cannot be the French, Dutch, Spanish law, &c., nor the last American law, or the non-existent law of the East Indians. It must then be Regulation law; and, indeed, in the next page it is expressly called "Regulation Law."

The Suddur Court have here totally misconceived the *lex loci*, and perhaps have led Sir Herbert Maddock to misconceive it.

So far from abolishing "Regulation Law," it does not repeal a single Regulation, nor a single provision of a Regulation.

The Regulations are the code of procedure for the Mofussil Courts. The law of procedure is to remain precisely as it now is. It may require amendment, but this Act is not intended to amend it; this Act is only intended to fill up, as regards Armenians and East Indians, that space in the Mofussil system which, if not absolutely void, is now occupied only by the very thin and unsubstantial aliment of equity and good conscience, and, as regards foreigners, to substitute a living body of English law for the phantoms of French, Spanish, Dutch and Portuguese law, which are worked when persons of those nations happen to be suitors in the Mofussil Courts.

Besides the apprehension entertained by Sir Herbert Maddock and the North West Suddur, that the *lex loci* is to sweep away the Regulations, there seems also to be an apprehension entertained by the Suddur Judges (whether Sir Herbert Maddock shows this apprehension, I am not certain) that the *lex loci* will introduce a formidable array of difficulties hitherto unknown in the Mofussil.

This, if the fact be so, is a very remarkable misconception. The *lex loci*, any rational system of law, is not a creation of difficulties, but a solution of (or at least an attempt to solve) difficulties which exist in the facts of society quite independently of law. As well might it be supposed that the difficulty of finding a ship's place at sea is created by the mathematical and astronomical treatises which have been written, and the elaborate tables which have been constructed with a view to solve that difficulty; as well might it be supposed that the difficulties of medicines and surgery arise out of the physicians' and surgeons' library, instead of being inherent in the complicated diseases and accidents to which human nature is liable.

This great misconception seems to be the foundation of the objections urged by the North West Suddur, and further to give rise to the derivation * error of dwelling upon the difficulties of administering the *lex loci*, and passing over those of administering the present system instead of making a fair comparison between the two, which is the only true road to a sound practical conclusion.

* *Sic orig.*

The difficulties exist in the facts of society, in the transactions between men and men; and the real question is, Will the Courts be better able to solve these difficulties with the help of the *lex loci*, or without that help?

The fundamental misconception, if it really exists, appears in the note of Mr. Davidson, one of the Suddur Judges, which is referred to and adopted by the Court.

3. In reference to the above questions, we have first to inquire, "What are the particular branches of the substantive law of England which, under this Act, are henceforth to be the law of the vast territory its operations will embrace, and for an extensive and very valuable section of its population? It may suffice to enumerate a few principal heads of English law relating to commerce, which our native Judges may be immediately called on to give effect to, and which comprehend the rights, obligations and interests involved in the various forms and objects of mercantile contract in respect (in some degree) of the form of instruments, the parties to the contract, the matter stipulated, the legal interpretation

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of the articles of the contract in connexion with the performance or infraction, the avoidance or determination of the same, and wherein, including all the legal rights and liabilities, mutual and externally relative, of partners, principal and agent, the law of bailment, of sale, with the law of stoppage in transit or of warrantry of law, &c. &c., the law relating to bankruptcy and to landlord and tenant. Now the English law in regard to the above relation, as in operation in England, may be looked upon as being at least as much a law of precedent judgments as the common and statute law, which those judgments declare and apply; and the proposition that this commercial law be administered in India, what does it import, but that there should be such analogous adjudication on the part of the Indian Court arising out of an instructed prepense aim* thereunto, as that the law enforced should in the Courts of both countries be, as nearly as circumstances will permit, the same?"

* *Sic orig.*

It would seem from this that Mr. Davidson and the Sudder Court suppose that all the complicated subjects which he has above enumerated will be introduced into the North West Provinces by the enactment of the *lex loci*; that but for that enactment they would have no existence in those provinces.

For if this is not the meaning, something still more extraordinary than this must be meant; we must understand Mr. Davidson and the Sudder Judges to give it as their deliberate opinion, that though the difficult questions belonging to the subjects above enumerated do arise, the Courts are better able to solve them by getting what help they can from the law of the country to which the parties belong, or when that resource fails them, by inventing a solution for the occasion, than by seeking for it in the *lex loci*.

The fitness or unfitness of the Judges, whether European or native, which is so much insisted on, has but little to do with the question. If they are unfit to administer the *lex loci*, can they be fit to administer the present system (I am not speaking of the Regulations, which will prevail under the *lex loci*, just as they do now), to Englishmen, to foreigners, to Armenians and East Indians?

Suppose a question of partnership or of principal and agent to arise between an Armenian and an East Indian, is it seriously meant that the Judges, European and native, can better fulfil the ends of judicature by inventing a law of partnership, or of principal and agent, for the occasion, than by inquiring what is the English substantive law applicable to those relations?

I will describe as concisely as I can what the English substantive law, as introduced by the *lex loci*, will be.

The English law, divested of its procedure, of its feudalism, and of its statutes of local application, is mainly the result of three things,—

1st. Of the meditations of the great philosophic jurists of Rome.

Recollecting the various cases that had arisen, and imagining the various cases that might arise, they, with unrivalled sagacity, devised a body of principles and distinctions for applying equity and good conscience to the complicated affairs of men.

2. Of the similar meditations of the great English lawyers, following in the footsteps of the Romans, but generally exhibiting their doctrines in the form of decisions upon cases actually arising for decision, or in treatises in which decided cases are compared and discussed.

3. Of the Statutes enacted by the British Parliament.

I am not here speaking of those Statutes which have little or no connexion with jurisprudence, like the Customs Laws or the Navigation Laws, nor of those for eradicating feudalism, like the Act of Charles the Second, abolishing the feudal tenures, nor of those for amending the procedure. I am speaking of Statutes for supplying those positive rules essential to a satisfactory administration of justice, which cannot be supplied by jurisprudence.

A jurist may show that the property of a deceased intestate ought to be divided between his wife and children, or that a state demand ought not to be enforced, or that long and uninterrupted possession of an estate ought to make a title, or at least a defence to the possessor.

But Statutes are needed to say arbitrarily in what proportions the property of a deceased intestate shall be divided between his wife and children; in what number of years a demand shall be considered state; in what number of years uninterrupted possession shall grow into a title or a defence.

When

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When these arbitrary rules are already provided by the Regulations, as in the two last-mentioned instances, they will continue after the enactment of the *lex loci*, precisely as they now are when they are not provided by the Regulations, as in the first instance they will be introduced by the *lex loci*.

I believe the above is a fair description of the law which will be introduced into the Mofussil by the proposed enactment, and it does appear to me, that for any set of men to say that they can invent for each occasion better rules than those which have been thus created, would be the height of vanity and presumption.

I am far from attributing any thing like this to the N. W. Sudder. I believe them to mean (however erroneously) either that the questions to be solved do not arise under the present system, and would arise under the *lex loci*, or supposing that the questions do arise, that it is *easier* for them and their subordinates to invent rules for each occasion, than, destitute as they are of the knowledge of the English law, to acquire and apply such knowledge.

But this is not the real question. The real question, as Sir T. H. Maddock will admit, is, not what is easiest for the Judges, but what is best for the suitors.

Waiving that consideration, however, I think this is a great mistake. To invent rules for the occasion, fit for general application, would, in the circumstances in which the Company's Judges are placed, require an almost superhuman genius for jurisprudence; to learn such rules, when introduced by the *lex loci*, will require only industry and attention; and as for some time the cases to be decided by the *lex loci* will be few, the amount of industry and attention required will not be overwhelming.

Undoubtedly, measures should be adopted for giving professional education to the Company's Judges, and the Law Commission has already in its answer to Lord Ellenborough made recommendations on the subject.

These recommendations, however, have of course only reference to future judicial officers. Happily, for the present purpose, we have help nearer at hand. Happily we have now a prospect of being able to publish either in one whole, or in successive parts, a digest of the *lex loci*, which will very greatly facilitate the administration of it by the Company's Judges, even before any material improvement can take place in their professional training.

It may be collected from the letter of the N. W. Suddur and Mr. Davidson's note, that a written digest of the *lex loci* will practically remove all their objections, and there will then remain only Sir Herbert Maddock in opposition to the measure.

Sir Lawrence Peel and Sir Henry Seton have most obligingly offered to undertake with me the preparation of this digest. I have never engaged in day-work with more sanguine hopes of making myself useful to a large portion of mankind. I only hope that the home authorities will sanction the passing of the *Lex Loci* Act at once; the Act itself fixing a period for its coming into operation sufficiently distant to allow of the digest being published before its arrival.

As regards myself, it would of course be my duty to labour at the digest, even without any assurance that it will not ultimately be laid upon the shelf; but it can hardly be expected that Sir Lawrence Peel and Sir Henry Seton, who are volunteering their valuable assistance, should give it, unless they are certified that their labour will not be expended in vain. It would scarcely be respectful to ask them to do so. It is also highly desirable that the civilized classes, who stand so much in need of a *lex loci*, should have, with the least possible delay, the full assurance that their wants will be supplied.

A great deal is said in the letter of the N. W. Suddur, and in Mr. Davidson's note, about the absurdity of native Judges administering the *lex loci*.

I have already remarked, that the fitness or unfitness of the Judges, European or native, has but little to do with the question, seeing that they now exercise jurisdiction over all the people, and over all the subjects, simple or complex, over whom they will be called upon to exercise it under this Act.

But it may be well to explain what my views are with respect to the exercise of such jurisdiction by native Judges.

Any one, says Mr. Davidson, who has made even cursory examination into the legal subject above enumerated, will at once perceive how vain, and almost ludicrous, is this legal injunction to a native Judge to administer in his Court, on certain occasions, a certain portion of the Law Merchant of England, or modify it, if necessary, by equity!

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But Mr. Davidson does not see that it is still more vain and ludicrous to enjoin a native Judge, either to do this same thing, because he deems it consistent with equity and good conscience in respect of French law, Dutch law and all other laws, as well as English, or to enjoin him to invent, from the resources of his own Hindoo or Mahomedan mind, a law for settling a mercantile question between two Christian European suitors.

The truth is, that the law as it now stands provides against these difficulties. The native Judge may, by the existing law, be directed to send up all such cases to the European Judge, and unquestionably they ought to be so directed.

Mr. Davidson says: "If the law is to be passed, I would desire that the Courts of primary jurisdiction for cases falling under the law should be none other than those of the Zillah and City Judges, from whose decision an appeal should lie to the Suddur Dewanny Adalut, and that finally the case should be open to a special appeal to Her Majesty's Supreme Court at Calcutta."

That the Zillah and City Judges should in general be the courts of primary jurisdiction under the *lex loci*, is my own opinion; but I would not enact that they always be so by law. Sometimes there may be an European Sudder Ameen as competent as a Zillah Judge; and sometimes the question to be decided may be a mere question of fact, which the parties themselves may wish to have settled by the nearest tribunal.

I think, therefore, that a direction to the native Judges, under the existing rules, to send up to the European Judges all cases involving disputed questions of law, is a better arrangement than denying jurisdiction to the native Judges.

I have done now with the law to be introduced by the *Lex Loci* Act; but I must say a few words upon the law (if it may be so called) which will be superseded by that Act. I wish to do this, for the double purpose of showing that the Law Commission have not misapprehended the actual state of things, and that it is such a state of things as no man can regret to see displaced by a rational system of law, such as I have just described.

The Law Commission are supposed by Sir H. Maddock and by Mr. Davidson to have misconceived the actual state of things.

"I doubt," says Sir H. Maddock, "whether it is quite correct to say that a practice has grown up in the Courts of the East India Company of administering to every person not being a Hindoo or Mahomedan, in all cases not specially provided for, the substantive law of the country of such person, whenever such law is not inconsistent with equity and good conscience."

I rather imagine that in cases of persons not being Hindoo or Mahomedan, justice is administered much in the same way that it is administered to Hindoos and Mahomedans; that is, according to the dictates of equity and good conscience; and that evidence is taken, or reference is made to the best authority procurable, in order to ascertain what are the laws or customs of the litigants in matters of marriage, inheritance, dower, bequest, or any other matter in which the decision ought to be guided by the laws or customs of the litigants, whether they happen to be Hindoos or Mahomedans or not, the only difference being, that the authorities are nearer at hand, and more accessible in one case than in the other.

Now this is not the only difference; there is another difference sufficiently remarkable in itself, but all-important as regards the matter here in question between Sir Herbert Maddock and the Law Commission. The Mofussil Courts are directed, by express enactment, in what respect they are to administer Hindoo law to Hindoos, and Mahomedan law to Mahomedans; when, therefore, they endeavour to ascertain what are the provisions of the laws (and they have Hindoo and Mahomedan officers provided for that purpose), they are obeying the express commands of the Legislature; when they inquire into any other law, they do so merely as a means of getting at the equity and good conscience of the case. Sir Herbert Maddock, then, in endeavouring to correct the statement of the Law Commission, has himself fallen into error.

Mr. Davidson also professes to correct the Law Commission; in doing so, however, he does not fall into any error, but he appears to me merely to state over again, in a different form of expression, the true doctrine which had been announced by the Commission.

Mr. Davidson's statement is as follows:—

"The Mofussil Courts, it is said, do, in adjudicating the cases of such suitors (British

(British subjects), follow British law when equitable, and when not, do administer to such suitors legal rights, modified and corrected by equity.

"There appears to be some misconception here as to the principle which binds the Indian tribunals on the occasions referred to. The law says, (Reg. II., of 1803, Sect. 17.) in cases for which no specific rule shall exist, the Judge shall act according to justice, equity and good conscience; that is to say, when a rule of law exists, applicable to the case, that rule shall be enforced; on the other hand, when no provision of law exists, the Judges shall make law, not follow actual law, but frame such a rule for the case as justice, equity and good conscience may require; and in the adjudged cases cited in the notes and Report on this Draft Act, the Judges, in seeking to ascertain what the foreign law (*i. e.* British, French or Armenian) might be, adopted that mode, not as being bound to administer that law pure or modified, but because they deemed it consistent with justice and good conscience to give to the suitor the law of his own country, when not bound to give him Regulation law."

Now this, so far from being a correction of any misconception on the part of the Law Commission, is merely saying over again in other words what the Law Commission has itself said.

At page 22 of their printed Report, the Law Commission said, "The Mofussil Courts have had to decide some cases, though hitherto, probably, very few, in which they have felt that the equity they are to administer must follow some law."

"The doctrine they have adopted is, that there is no *lex loci* in British India, and their practice has been to ascertain, in the best manner they could, what was the law of the country of the parties before them."

I can see no difference in substance between this statement and that of Mr. Davidson.

The truth is, that every court of equity and good conscience must endeavour to fulfil men's reasonable and conscientious expectations. These expectations are created either by laws or by contracts; a court may sometimes know these expectations merely by looking at a contract; but where there is no contract, or where there is a contract which leaves something to be implied by law, a court can only know the expectations of the parties by looking at the laws out of which they arise. This was what led the English courts of equity to the maxim, "*Æquitas sequitur legem.*" Those courts were not bound by any statute to look at the law, but they found there was no administering equity without doing so. Precisely in the same way, the Mofussil Courts, though they are only bound by express enactment to look at Hindoo and Mahomedan law, have found that in other cases, when the Regulations give them no help, they must, if possible, look at some law or other.

This led them, in their peculiar position, to look at the law which each suitor would get in his own country, if he happened to have a country, and at the law contained in two old Armenian codes, the proper study only of antiquaries.

Perhaps they did right in this; perhaps in a country where no *lex loci* exists, or where, at any rate, they conceive no *lex loci* to exist, the Judges were right in supposing that the expectations of the parties would have reference to the laws of their own country; but to cling to this polyglot equity and good conscience, in preference to single English equity and good conscience, when the latter is offered to them by competent authority, is a course of which the reasonableness is not discernible.

Taking, then, the existing state of things, either from the description of the Law Commission, or from the description of Mr. Davidson, which seems to me correct and congruous with that of the Law Commission, or even from Sir H. Maddock's description, which I think is incorrect, when it varies from that of the Law Commission, I ask, with some confidence, whether any thinking men can regret to see that state of things superseded by one rational and equitable system of law?

Having now, I hope, removed all misapprehensions as to the nature of the *lex loci*, and as to the nature of that which the *lex loci* is to supersede, I proceed to consider Sir Herbert Maddock's remarks upon the classes who are to be subject to it.

Sir Herbert Maddock says, "As to the necessity, in the first place, of declaring *the substantive law of the place* in these territories, which the Law Commissioners say is doubtful, but which I should rather say is no matter of doubt, as it is never referred to or inquired after in the Company's Courts, the arguments

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adduced by the Commissioners have failed to convince me that such a measure is necessary. Those arguments might be strengthened, if the basis on which they rest was more clear and better defined; we want a precise definition of what is meant by the negative term, 'every person not being a Hindoo or Mahomedan;' without this, it must be all vague conjecture who are the people, and what are their numbers, that we are making the subjects of our legislation."

Now, it is of the very essence of a *lex loci* that the definition of the persons subject to it (except in the rare case where it includes every person in the country) should be negative; and to say that you will not have a negative definition, is simply to say you will not have a *lex loci*. In all countries, and in all ages, the persons subject to the *lex loci*, when there is one, are all persons in the country who do not fall within any of the positive descriptions of classes for whom special provision has been made. Who are the persons subject to the *lex loci* in England? all persons in England who do not fall within the excepted classes of foreign ambassadors, Jews, &c.

It is always the excepted classes that are defined or described in positive terms. It is no doubt important in all countries that great care should be taken to make the proper exceptions. In this country it is pre-eminently important, because the classes to be excepted are so numerous, and so deserving the benevolent attention of the foreign Government which has undertaken to rule and protect them.

The exceptions made by the Draft Act are,—

I. Hindoos and Mahomedans.

This exception is perhaps too unqualified; perhaps the Hindoos and Mahomedans ought only to be excepted, in respect of so much of their law as is now administered to them under the statutes and the Regulations, and brought under the *lex loci* for the rest.

II. All persons professing any other than the Christian religion in respect of marriage, divorce and adoption.

III. All races and people not known to have been ever seated in any other country than British India in respect of any law or usage immemorially observed by them, and now enforced by the Courts.

This last qualification, which perhaps ought to be more distinctly expressed in the Act, is necessary, lest we should unawares be giving a sanction to laws and customs which the Courts do not now enforce on account of their immorality, or for other reasons.

The third exception will, I apprehend, give to "Budhist Jains, the many aboriginal tribes of Gonds, and Bheels, &c., which occupy an extensive region in the centre of Hindoostan, the Mugs of Arracan, and the Sikhs of the North West districts," all the exemption from the *lex loci* which it is right they should have.

These are the classes which Sir Herbert Maddock seems to think particularly require exemption from the *lex loci*, and they are left by virtue of the above provision precisely in the legal condition in which they are now placed. Their laws are not confirmed to them by express enactment in the Regulations, as those of Hindoos and Mahomedans are, but they are taken into consideration by the Mofussil Courts, who mould their equity and good conscience upon those laws, and who will continue to do so after the *lex loci* has been enacted.

Sir Herbert Maddock says, "Only one class, as far as I am aware, and that is the numerous class called East Indians, has applied to the Government to fix their legal position on a footing similar to that in which they would be placed by the *lex loci*. I do not understand the Parsees and Armenians, though they complain of difficulties in their present position, to have made a similar application."

But if Sir Herbert Maddock had read the whole of the Report of the Law Commission he would have seen that the Armenians of Bengal, in a petition to the Governor-general, dated the 10th September 1836, not only have made such an application, but further allege that they are entitled to English law in the performance of a promise made to them at the time of their settlement in the country.

This alleged promise is contained in an agreement between the East India Company and Cogee Phanoos Calendar, an eminent Armenian merchant, which agreement is dated 22d June 1688.

It is true that the Parsees have not made such an application; but the Parsees have had ample time to consider the Draft. They are a very intelligent race, and very

very watchful as regards their own rights and interests. It is within my personal knowledge that the attention of the heads of their tribe here and at Bombay was attracted to the Draft when it was published, and that they applied for and were furnished with a copy of the Law Commission's Report.

I feel quite sure, therefore, that they are not hostile to the measure, since they have not testified any desire to oppose it.

Sir H. Maddock says, "We want further information as to aliens, whose numbers are said to be increasing, as to persons whose legal connexion with their country or the country of their ancestors is interrupted by illegitimacy, whose numbers are described as great and increasing, and as to the Armenian inhabitants, of whom there is said to be a large number.

"Without information on these points, I cannot judge of the necessity of a law of this kind; the necessity of which should depend, as one of its conditions, on the relative number of those who are labouring under any disabilities from which the rest of the people are free, and from which they require to be relieved by a law of this kind.

"For unless it is required by some considerable number of people so situated, and will be beneficial to the majority to be affected by it, I should not deem it expedient to adopt it."

Does Sir Herbert Maddock really doubt whether the aliens, Armenians and East Indians in British India amount to "some considerable number of people," that he calls for statistics to satisfy him that they are worth the attention of the Legislature?

If he does, I am persuaded that the doubt is confined to his own breast. Whoever has read the evidence given to the Committees of Parliament at the last renewal of the Charter, will have seen that the existence of large and important classes in a state of legal destitution is treated by the witnesses as a matter of notoriety. Very soon after my arrival in this country, I began to think how their wants could be best supplied; but I confess that it never entered into my head to go through the preliminary ceremony of counting their numbers. Statistical information is always a useful thing; but here is a flock wanting to be fed, and in my opinion we had better feed them first, and count them afterwards at our leisure.

But even if the classes to be subject to the *lex loci* did not amount to some considerable number of people, this would be no reason for not enacting the *lex loci*, for the number is certain to increase; and in the meantime the *lex loci* would do good as far as it goes, though the good might at first be of small moment.

The North-west Sudder Court have also made this objection, and I dare say that, as regards the provinces under their jurisdiction, it has a sufficient foundation in fact.

In order to show how little necessity there is in the N. W. Provinces for the *lex loci*, they observe, "as regards the extent of litigation in which the parties for whom the Council profess to legislate are engaged, it is a fact susceptible of substantiation, by reference to the records of this Court, and all the subordinate tribunals, that it composes an almost infinitesimally small proportion of the civil business annually instituted and disposed of in these Courts."

This is not very consistent with their apprehension previously expressed of "the magnitude of the change which it is designed with so little preface or preparation to introduce."

"The magnitude of a change which is to affect only an almost infinitesimally small proportion of the civil business" of the Courts, ought not to be very alarming.

But whether the Sudder are right when they speak of the magnitude of the change, or when they speak of the almost infinitesimally small proportion of the civil business which will be affected by it, the argument for a *lex loci* will equally remain unanswerable. There is in British India no general law applicable to all persons, not specially provided for, whether these persons are many or few, whether their causes form a large or a small proportion of the civil business of the Courts, whose causes ought to be decided by some law. If there are many causes now decided without law, the *lex loci* will be a great change. If there are few causes now decided without law, the *lex loci* will be a small change; in either event, the change will be as great, and no greater, than the necessity for the change. The magnitude of the remedy is co-extensive with the magnitude of the defect, whatever that may be.

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Having now, I trust, shown—

First, That the Law Commission have not violated the provisions of the Charter Act:

Secondly, That the law to be introduced is a good one, and that the Law Commission are not inconsistent in proposing it:

Thirdly, That the system to be suspended has been correctly understood by the Law Commission, and is not a good one:

Fourthly, That a negative definition of the classes to be subject to the *lex loci* is what the occasion calls for, and that the proper positive exceptions have been made of the classes who are to be wholly or partly exempt from the *lex loci*:

I have only to remark upon one more objection made by Sir H. Maddock to the Act, founded upon the mass of inconvenience which it will leave without remedy.

"And whatever may be thought," he says, "of the difficulty and inconvenience of administering a diversity of laws in the cases for which the proposed Act is to provide, it is deserving of consideration that the practice of our Courts would show that we experience the same kind of difficulties and inconvenience in administering the laws of the Hindoos and Mahomedans. There are two great sects of the latter which acknowledge different tenets and interpretations of the Koran, and there are innumerable varieties of usage and custom holding the place of law among the different tribes and castes of Hindoos. Our Judges endeavour, wisely and justly, to decide every case according to the law or custom of the party engaged in it, whatever sect of Hindoos and Mahomedans they may belong to. They do the same in the cases in which the parties are not Hindoos or Mahomedans, so that really the inconvenience and difficulty, for which this Act is proposed as a remedy, would remain unaltered, except in a very small portion of the cases that come before the courts."

This looks like a recurrence to the argument already urged by Sir H. Maddock, and already answered by me, that the Law Commission is prohibited by the statute from recommending any measure of improvement which falls short of universal application, for I can hardly suppose that Sir H. Maddock means seriously to object, upon grounds of utility and convenience, that because we have not proposed to remedy at once all the defects in the legal condition of all the inhabitants of the country, therefore we ought not to have proposed a remedy for some of those defects. Must we leave the French, German, Spanish and Portuguese sojourners in India without any law, but what the Judges can discover to be that of their own country? Must we leave the Armenian and East Indian communities, who have no country but British India, without any law at all, merely because we are not prepared to settle all the disputes between Soonies and Shias, in the interpretation of the Koran, or to reconcile the conflicting doctrines of the Mitacshara and the Dayabagha?

This would be like insisting that nobody should presume to suggest a specific for dropsy, unless he will also undertake to cure all the diseases of the liver, or as if Government should prohibit the operation of couching throughout these territories, because that operation will not enable the deaf to hear, nor the dumb to speak.

If the Law Commission had pretended that they were proposing an universal panacea for all the legal disorders of India, Sir Herbert Maddock's remarks might have been useful for the purpose of exposing and abating so ambitious a pretension; but the Law Commission have explained over and over again that though their *lex loci* is a large measure, it will have no effect at all upon the two great religious communities who compose the majority of the people of India.

Any legislation, of which the object is to reconcile the discussions between the different schools of Hindoo lawyers and Mahomedan lawyers, must be of a wholly different nature from this *lex loci*; we cannot without injustice impose an English system upon those two great communities in respect to those matters in which their own laws are secured to them by the Regulations, as long as they are attached to those laws, and when those laws are not oppressive to other classes. But upon all the inhabitants of this great empire, in so far as they have not laws or immemorial customs of their own, we can confer as a boon such an English system of substantive law as I have above described.

Sir Herbert Maddock appears to doubt whether, even if a *lex loci* is to be introduced, the English law, with the necessary modifications and adaptations, should be adopted for the purpose.

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The only reason which I can imagine in justification of any other course would be the previous introduction of some other *lex loci* by some other European power. Of this we have an example in the maritime provinces of Ceylon, where the Dutch had introduced their own modification of the Roman law, which still continues under our government, and I think very properly, to be the *lex loci* of that Asiatic territory.

But in continental India there is nothing of the kind; we acquired it from the native powers. The native laws are religious and personal laws; and it would seem to me nothing less than preposterous to introduce into this, the greatest and richest of the Queen's dependent dominions, any *lex loci* not founded upon that of the dominant nation.

Here I should have closed this very long minute, were it not that as Sir Herbert Maddock seems to impute to my recommendations the object, or at least the tendency of perpetuating the distinctions which unhappily exist in this country, and as those distinctions are intimately connected with differences of religion, I am anxious that my real views should be understood; I am the more anxious, because in the Council of Education I have found myself opposed to zealous and conscientious men, whose motives I admire.

Some time ago a present of religious books was sent by some religious society to the Council of Education, with a request that we would place them in our libraries; I voted against the acceptance of these books, because I thought if we in any way allowed ourselves to become the instrument of a religious society, we should endanger the objects for which we were constituted; the instruction of the natives in the science, literature and morality of Europe. But it must not be inferred from this, that I am opposed to the conversion of the natives; I freely confess that I do not think the conversions made by the missionaries generally of much value. I believe that the only safe and effectual road to conversion is that very one we are now pursuing, the instruction of the natives in the science, literature and morality of Europe; it is the only safe one, because it is the only one to which the natives themselves do not object. That it is the only effectual one, I should hardly have ventured to lay down, if I had not the authority of a man who had deeply meditated this subject, and surveyed all history with reference to it,—I mean the late Dr. Arnold, who in one of his letters from the neighbourhood of Rome thus expressed himself, "Even in things eternal they (Greece and Rome) were allowed to minister. Greek cultivation and Roman policy prepared men for Christianity, as Mahomedanism can bear witness; for the East, when it abandoned Greece and Rome, could only reproduce Judaism. Mahomedanism six hundred years after Christ justifies the wisdom of God in Judaism; proving that the eastern man could bear nothing more perfect."

This Greek cultivation and Roman policy, handed down, improved by the great men of modern Europe, and of our own country in particular, we, through our legislative and our public institutions, are now imparting to the natives of India.

(signed) *C. H. Cameron.*

Calcutta, 1 August 1845.

MINUTE by the Honourable Sir *George Pollock*, dated 5 August 1845.

Legis. Cons.
2 Aug. 1845.
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SINCE the subject of the *lex loci* was first discussed after my arrival, I have considered the Act not only desirable, but to be one of justice to those who are now ruled by no law applicable to themselves.

If we are to judge from the very feeble opposition that has been made to the introduction of the Act, it may be inferred that it will be well received by the public generally.

I have not now time to go over the question in detail, even if I were better able to do so than I really am; but even if I had time, I could only express in other words, and with less force, what has already been so well urged in favour of the *lex loci*. I, therefore, consider it unnecessary to do more than express my entire concurrence in the very elaborate and able Minute of Mr. Cameron. Since reading Mr. Cameron's Minute, I have perused that of the Governor-general, which is accompanied by a copy of Sir L. Peel's letter on the same

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subject, both fully concurring in the measure. The arguments advanced by the Governor-general are so much to the point and are so conclusive, that to my mind they must carry conviction with them.

(signed) *G. Pollock.*

5 August 1845.

NOTE by the Honourable Sir *T. H. Maddock*, dated 6 August 1845.

Legis. Cons. 2 Aug. 1845. No. 37.

I HAVE read the Minutes of the Governor-general and Mr. Cameron on the *Lex Loci* Act. As the Governor-general wishes them to be sent home by to-morrow's mail, I shall not detain them to offer some remarks on Mr. Cameron's Minute.

This may be done hereafter at leisure.

(signed) *T. H. Maddock.*

6 August 1845.

Legis. Cons. 2 Aug. 1845. No. 38.

MINUTE by the Honourable *F. Millett*, dated 6 August 1845.

Proposed Act for providing that religious belief shall not affect the rights or property of the person entertaining such belief.

IF I have apprehended correctly the remarks contained in his Minute of the 9th instant, Sir H. Maddock admits that the principle of the proposed law is essentially just; but he would not bring it into operation until a majority of the Hindoo people were converted to Christianity, "or until a considerable number of Hindoos possessed of property to be affected by this measure had been converted."

But if the principle of the proposed law is essentially just, its opposite, *i. e.* the principle that change of religious belief shall cause forfeiture of property, must be essentially unjust; and it is not reasonable to postpone the abrogation of such a principle until its injurious effects have been exclusively felt, and when no *ex post facto* law can effectually remedy the evils inflicted by it.

Not only does justice, but consistency also, demand at our hands the enactment of a law such as that proposed. The British Parliament has declared, that "it is the duty of England to promote the interest and happiness of the native inhabitants of the British dominions in India, and that such measures ought to be adopted as may tend to the introduction among them of useful knowledge and of religious and moral improvements; and that, in furtherance of the above objects, sufficient facilities ought to be afforded by law to persons desirous of going to and remaining in India for the purpose of accomplishing those benevolent designs." It must surely be the duty of Government to protect from forfeiture of rights and property those who would otherwise be subjected to it through the operation of those very means which Parliament has sanctioned and enjoined.

Stat. 53 Geo. 3, c. 155, s. 33.

Sir H. Maddock objects to the law under consideration, because "the proportion of (Christian) converts to the great body of the Hindoo community is small in the extreme among all but the very lowest classes," * and because "it is submitted to the public at a time when the minds of the Hindoos (of Calcutta) are in a state of much excitement, arising from the injudicious (as he considers them) proceedings of some missionaries engaged in the education of native youth; and the general confidence in the establishments conducted by these gentlemen has been so much shaken, and the Hindoos have been so much alarmed lest their children should be taught to forsake their religion, that a great effort has been made to establish a school, to be supported by Hindoo gentlemen of rank and property, for the purpose of excluding missionary teachers from the new seminary, and of drawing to it as many pupils as possible from the schools of the missionaries."

There seems to me some inconsistency in these objections. Sir H. Maddock objects, because the proportion of converts to the great body of the Hindoo community is small in the extreme. Will he not object equally, or even more, when the proportion of converts shall have become large, and the Hindoos have consequently become "much alarmed lest their children should be taught to forsake

* In a former part of his Minute he regards it as doubtful whether any persons, even in our capital towns, have been converted. but those of the lowest caste, whose families possess little or no property.

forsake their religion ?" But waiving this, I would observe that the excitement alluded to was caused by certain conversions which took place at least a month subsequently to the promulgation of the Draft Act, in which the proposed provisions were originally embodied; and that so far as this Presidency is concerned, those provisions contain only the law as now in force.

Similar causes of excitement are constantly recurring; and if the passing of the proposed law is to be declared for every such event, it is difficult to say to what indefinite period it may be postponed. If it be impolitic on this ground to pass the law now, it is probable that every succeeding year it will become more so.

As respects the missionary institution alluded to, former instances of conversion have usually thinned the ranks of the pupils for a time; but the excitement has soon passed away, and I am informed that from the time of its establishment to the late occurrences, their numbers had been steadily and continuously increasing. Whether there is at this time any falling off in consequence of them, does not appear.

Sir H. Maddock has misapprehended the intent of the latter part of Sect. XI. of the *Lex Loci* Draft Act. According to his view of it, it would nullify Section XII. of the same Draft; whereas it was only intended to prevent a person, to whom the *lex loci* had become applicable, from depriving others of property to which by their own law they would be entitled.

For example: a Hindoo father dies, leaving two sons and a daughter, having previously to his death become a convert to the Christian faith. By the Hindoo law, the sons would inherit the father's property in two equal shares; by the English law, the daughter would be entitled to share equally with the sons; her claim would be barred by the provision in question.

By the Mahomedan law, the share of a daughter is half the share of a son, whenever they inherit together. Supposing the daughter a Christian convert, her share by the English law would be half the whole property, but under the above provisions she would claim only the share allowed her by the Mahomedan law.

I will not advert to that part of the Minute in which objections are urged to the provision in the new Draft for passing private laws, further than to remark, that I believe we have all felt the great difficulty of this part of the subject. By Section 13 of the *Lex Loci* Draft Act, all the questions contemplated in it were left to the decision of the Court of Appeal, and it was at the urgent recommendation of the Judges of the Supreme Court that the present alteration was made. If, by further consideration and discussion, a less objectionable method of overcoming the difficulty can be devised, I shall deem it very satisfactory.

I do not think any fresh publication of the proposed provisions is called for. The *Lex Loci* Draft Act, in which they were originally incorporated, was published at Calcutta on the 1st February, at Madras on the 11th February, and at Bombay on the 20th ultimo, and doubtless appeared in all the native newspapers. It is not likely that we shall receive any fresh memorials on the subject, or, if received, that they will contain any new arguments against the measure.

As respects the home authorities, I may observe, that the provisions now standing as Sects. 8 and 9 of Reg. VII., 1832, of the Bengal code, were founded on a despatch from the Honourable Court, dated 2 February 1831, and were duly communicated to the Honourable Court in a judicial despatch, dated 3 January 1832, and drew forth no remark.

On the subject of the *Lex Loci* Report and Draft Act, despatches were written to the Honourable Court on the following dates: 1 February 1841, 29 November 1841, 17 March 1843; and replies received, dated 14 December 1842, and 6 December 1843.

I beg to draw your attention to the following facts, as contained in a Minute on Indo-British law, prepared by the missionaries in Calcutta in the year 1830, and submitted to the Government of India with their memorial in May 1841.

"This being the general interpretation of the law in Bengal,* persons becoming Christians have never, to our knowledge, thought it worth while to apply to the courts of law with the view of recovering the property they formerly enjoyed. Being aware that a legal decision would be against them, they have submitted to the total loss of their property on embracing the Christian faith, in preference to incurring the great expense of attempting to regain it in a court of justice

* Before the passing of Regulation VII. of 1832.

No. 3.
Lex Loci.

with no hope of redress. The following, among other recent instances, we are acquainted with.

"Thekem Dees, a Kayastha, the nephew of Gurn Prusad Babo, on becoming a Christian, was entitled to 5,000 rupees, ancestorial property, which was all relinquished.

"Jagamaheen, a Radhi Brahmin, was of a most respectable family. His relations were zemindars, and lived near Barrackpore. The ancestorial and acquired property which he would have enjoyed before his death, but of which he suffered the loss through becoming a Christian, is estimated by several Hindoos well acquainted with him and his circumstances, to have been at least 20,000 rupees.

"A man of the name of Naraput Singh, of the Brahminical caste, is the son of the late Paran Sing, who was a wealthy zemindar, near Gyah, in the province of Behar. On his demise, his property (which consisted of six mouzas, realising an annual rent of about 16,000 rupees) descended in the following manner; viz., three mouzas, producing 8,000 rupees a year, to Naraput Sing, and the other three mouzas, producing a like sum, to the children of his brother. Soon after this event, Naraput Sing came to Calcutta, and there embraced Christianity. This intelligence was no sooner communicated to his cousins, the other party included in his father's will, than they seized upon his property, and have retained possession of it ever since, now upwards of 20 years. The Rev. Mr. Ward, one of the Serampore missionaries, advised with several magistrates on the subject, particularly with the Judge of the Court at Gyah; but being informed that according to the Hindoo law, as administered in the Provincial Courts, he (Naraput Singh) had forfeited all claim to his property, he advised him to submit to the loss, rather than engage in a lawsuit, which must, according to the present Regulations, be decided against him. He has, therefore, now (1830) suffered the loss of his property for the last 20 years, the amount of which, after deducting Government taxes, &c., exceeds 100,000 rupees, which he has forfeited merely for becoming a convert to Christianity. At present Naraput Singh is engaged as a native preacher in Calcutta, under the patronage of the London Missionary Society; should it be considered necessary, the most indubitable evidence can be obtained to substantiate the above facts.

"Besides these, Kashi Mittre, deceased, Kashi Nath, a Brahmin, and now employed at the Baptist Mission Press, and many others, who lost considerable property, from 1,000 rupees to 3,000 rupees each, might be mentioned as instances in which the injurious consequences of the law have been suffered by Hindoos becoming Christians."

I will only add that a case occurred in the 24 Pergunnahs about a year ago, in which a Brahmin convert sued his brother for his share of their paternal property, real and personal, under Sec. 9, Regulation VII., 1832. The suit was terminated by a compromise.

(signed) *F. Millett.*

19 June 1846.

I take the opportunity of these papers coming again to me to make a further observation, which is, that however small the proportion of Christian converts to the great mass of the population in particular places, their numbers are far from inconsiderable. In the Kishnaghur district, in Bengal, they amount to about 3,000; the same in Tanjore, in the Madras Presidency, and in the Tinnevelly district to upwards of 20,000.

(signed) *F. Millett.*

6 August 1845.

MINUTE by the Honourable *F. Millett.*

Legis. Cons.
2 Aug. 1845.
No. 39.
Lex Loci.

As this project has undergone the fullest discussion, I shall not consider it necessary to do more than offer a few general observations upon it; I trust, however, that the brevity of my remarks will not be taken as the measure of my sense of the magnitude of it.

As a member of the Law Commission and of Government, I have deliberated long and anxiously upon the subject, and the result has been a firm conviction of the necessity, the policy and the manifold advantages of the measure. Should the

the Draft ever be passed into a law, I shall regard it as the commencement of a new era in our judicial administration.

I entirely concur in the Minutes of the Governor-general and Mr. Cameron, including the, to my mind, complete and satisfactory answer of the latter to the objections urged by the Judges of the Sudder Court at Agra against the introduction of the *lex loci* into the provinces.

The whole of my Indian life up to the period of my being called to the Presidency was spent in the judicial branch of the service; but amidst the advantages I have since enjoyed in the studies and researches to which I was led by the nature of my duties in the Law Commission, and in personal intercourse with men skilled in European jurisprudence, I have often been impressed with a painful sense of the deficiencies under which I attempted to discharge the arduous and responsible functions of a Judge.

The liberal education which the Honourable Company's civil servants receive in England, and the course of instruction, including lectures on law, which they pass through at the East India College, so far tend to qualify them for the duties to which they are destined; but from the moment of their arrival in this country, those who are eventually to become the administrators of justice are laid under no necessity to study any system of law, and very few spontaneously engage in the pursuit, perhaps none, to any considerable extent.

Bound as Judges to abide by the expositions of the law officers in cases determinable under the Regulations according to the doctrines of Hindoo and Mahomedan law, in all other matters they are left, speaking generally, to their own uninstructed discretion; and in addition to all these unfavourable circumstances, an officer, under the judicial system now prevailing in Bengal and Madras, is called to perform the duties of a civil Judge of Appeal, and regulator of all the courts of original jurisdiction under him, without having himself previously tried a single suit, or transacted any civil judicial business, except in minor matters, in connexion with the office of Collector of Revenue. I sincerely hope that we shall, ere long, see a remedy provided for all these evils. Never before did such an opportunity offer, and if lost it may never occur again.

We have already conveyed to the Judges of the Supreme Court at Calcutta our thanks for the assistance they have rendered, and are prepared to render, in furtherance of this important work; and I cannot help recording individually my grateful sense of their cordial and truly valuable co-operation.

Fortified by the opinions they have expressed, and adverting also to the origin of the law which will be provided for India by this Draft, as described by Mr. Cameron, I am inclined to think that at least the Law of Contracts* (perhaps with a few exceptions) might safely be made applicable to all the inhabitants of British India; when the digests shall have been prepared, enacted and translated into the vernacular languages, they will be much more accessible to the great body of the people than the Hindoo and Mahomedan laws in the Sanscrit and Arabic languages, and in point of compendiousness and arrangement the inferiority of the former will be immense.

In the discussions on this subject of the *lex loci*, remarks have been incidentally made on the system of native education pursued by the Government. My own opinion is, that a plan of education which excludes religious instruction is essentially defective; but looking at the peculiar circumstances of this country, I do not think that, consistently with a due regard for the feelings of the people, we could go further, at least for some time to come, than to open a class for religious instruction in our schools for such of the pupils as might themselves desire to take advantage of it. To this extent I should be very glad to see a change of system, but

* Sir Francis Macnaghten, in his "Considerations on the Hindoo Law," speaking of the law of contracts, pp. 403, 404, says, "I have merely given some of the leading texts which relate to the law of contracts; and to my mind the system (generally speaking) appears to be rational and moral; no less moral, and possibly more rational, because it is in a great degree abstracted from the Hindoo religion, and dependent upon others alone, upon principles which are universally admitted, which are inimitable in themselves, and which cannot but be eternal in their duration." And again,—

"There are certainly extravagances, although I have not brought them forward even in this part of the system; but if a prevalence of common sense is to be discovered in the laws of the Hindoos, it must be sought for in that portion of them containing the precepts by which dealings between one man and another are to be regulated."

Regarding the similarity between the Mahomedan and civil laws respecting sales, debtors and bailments, *see* the Preliminary Remarks to Macnaghten's "Principles and Precedents of Mahomedan Law."

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but bearing in mind the uniform and explicit orders of the home authorities on this subject, I feel that such a step could not be taken without their previous permission.

(signed) *F. Millett.*

6 August 1845.

HOME DEPARTMENT.—LEGISLATIVE.

No. 22 of 1845.

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

As promised in our despatch of the 5th ultimo, No. 19 of 1845, we have the honour to transmit the accompanying correspondence with the Judges of the Supreme Courts and other authorities, and minutes recorded by the Members of this Government, respecting the Draft of the proposed Act published on the 29th January 1845, for declaring the *lex loci* of India.

2. We also transmit copies of the memorials which we have received from certain Hindoo inhabitants of Madras and from the Dhurrwa Seebha and other Hindoos, also from several reverend missionaries in Calcutta, commenting on Sections 11 to 13 of the Draft Act, together with our replies to the former of these parties.

3. These replies have led to some discussion at this Board, which your Honourable Court will find in the minutes under transmission.

4. It is our intention to separate from the Draft regarding the *lex loci* the three sections above referred to, and to embody them in a separate enactment.

We have, &c.

(signed) *H. Hardinge.* *Geo. Pollock.*
T. H. Maddock. *C. H. Cameron.*
F. Millett

Fort William,
7 August 1845.

MINUTE by the Honourable Sir *Herbert Maddock*, Knight.

Legis. Cons. 6 Sept. 1845. No. 4. *Lex Loci* Act.

I SHOULD have wished, after reading the Minutes of the Governor-general and the Members of Council on this subject, to have offered some further remarks in addition to, and in some measure in explanation of, my Minute of June 14th, in order that they might have been sent to England along with all the other papers that were transmitted by the "Precursor" steamer on the 7th instant; but I had no opportunity of perusing those Minutes in time to admit of my doing so. The Governor-general's and Mr. Cameron's Minutes reached me the day before the mail was closed; those of Mr. Millett and Sir George Pollock did not reach me till it had been despatched. A wish having been expressed in Council that no delay should attend the transmission, I was compelled to defer writing anything more on the subject then, but hope to be permitted now to record the following observations, in order that they may be forwarded by the earliest opportunity to the home authorities.

The Draft Act, published on the 25th of January 1845, provides that, "from and after the —— day of —— in the year 1845, the substantive law of the place in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts aforesaid, shall be so much of the substantive law of England as is applicable to the situation of the people of the said territories, as is not inconsistent with any of the codes of Bengal, Madras or Bombay, or with any Act passed by the Council of India, or with this Act."

What exact portion of the law of England would have been introduced under such an enactment, it would be difficult to decide. The expression "*so much of the substantive law of England as is applicable to the situation of the people,*" is too vague to admit of any certainty or uniformity in the interpretation that might be given to it. But there would be introduced some portion of the law of England

to

to be administered in all the Courts in all "the territories subject to the government of the East India Company," and attended of necessity with all the forms and technicalities of the law of England; for the Act contains no provision for simplifying the forms, or for getting rid of the technicalities of the law of England.

When the Law Commissioners, in 1840, made their Report on the subject, and submitted their first *Lex Loci* Act, of which the present Draft is a corrected version, they intimated their intention of preparing a code or codes of substantive law, as the law to be administered under the *Lex Loci* Act. It might have been well if the Government of that day had intimated to the Law Commissioners that they would postpone the consideration of the *Lex Loci* Act till it should be accomplished by the codes to be administered under it. But this was not done; and when the Draft Act of January 25th, 1845, was published, Government had no intimation that the codes alluded to in 1840 were completed, or in progress, or in any way commenced upon.

I had, therefore, to consider what would be the effect of the law proposed on the 25th of January last, if it should be enacted without any reference to the codes alluded to upwards of four years before, and which were to be reckoned a necessary adjunct of this Act, but of the completion of which there was no indication.

The main objection that I felt, and still feel, to passing this Act, before the preparation of the machinery by which it may hereafter be made to work easily and equitably, was, that it would introduce, for a time at least, and in my opinion most unnecessarily, a complicated and abstruse form of law, which, with our present means, it would be difficult, if not impossible, to administer, and this, too, when no pressing necessity could be shown,* and no reason was adduced why we should not wait till we could make the measure proposed to be effected complete and perfect.

If the first artificer in the world should ask me to purchase from him a beautiful and well-finished watch-case, for which he proposed to construct the most perfect set of works that art could accomplish, and on my declining the offer, should propose to place in the case some old-fashioned works, that he acknowledged would not keep good time, but would cause trouble by their decayed state and irregularity of movement, I might promise to purchase his watch-case as soon as the new and perfect works were put into it; but I should be foolish to buy the case without them, or to take it for use with works that would be of more annoyance and injury to me than to go without any watch at all.

On similar grounds, I objected to passing the *Lex Loci* Act, and it is to be remembered that when this measure was first proposed by the Law Commission, and a prospect was held out of their future labours being directed to preparing the codes by which this preliminary measure was to be rendered complete, that learned body consisted of three members and a secretary, besides the honorary president; and when the Draft Act was published in January 1845, the Commission was reduced to one member without a secretary; and it was as much owing to accident as design that the Commission had not ceased altogether to exist. Such being the case, if, between 1840 and 1845, no progress had been made in the preparation of the promised codes, and, as far as I can judge from any information before Government, that had not been commenced upon, can it be thought surprising that I or any person should despair of their completion, and should conclude that if the Draft Act of 25th January 1845 became law, there would follow all the evil and difficulties which nobody denies would attend the introduction of the forms and technicalities of the English law into the Company's Courts, and this for an indefinite period?

The Governor-general supposes that under this law "the existing Regulations would continue to be in force in the Mofussil, and the Regulation law would be administered with more simplicity and uniformity by displacing personal laws, than it is at present." This will be the effect to the extent prescribed in the Act; that is to say, wherever the provisions of the law of England are inconsistent with the Regulations or with the Acts of the Legislative Council of India. When so much of the substantive law of England as is applicable to the situation of the people,

* There would have been no difficulty in ascertaining the number of foreigners located in the interior, and the number of cases in which they and East Indians were concerned in the Mofussil Courts.

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Lex Loci.

people, shall be also consistent with the law of the Regulations, it becomes, under this Act, the law of the place; and to whatever extent, be it great or small, the law of England is thus introduced, it must come attended with its own forms and technicalities, till these shall be got rid of by some other enactment.

Mr. Cameron thus illustrates the effect of this Act, as maintaining Regulation law, and introducing English law: "But Statutes are needed to say arbitrarily in what proportions the property of a deceased intestate shall be divided between his wife and children, in what number of years a demand shall be considered state, in what number of years uninterrupted possession shall grow into a title or defence."

"Where these arbitrary rules are already provided by the Regulations, as in the two last-mentioned instances, they will continue after the enactment of the *lex loci* precisely as they now are: where they are not provided by the Regulations, as in the first instance, they will be introduced by the *lex loci*;" which is to say, that cases for which the Regulations have no rule, will be decided according to the law of England, as far as it is applicable to the people.

Now, however willing I am to introduce into our Indian legislature the equitable principles of English law on any points where our Regulations are defective, I have an insuperable objection to the introduction into the Mofussil Courts of one tittle of the forms, and technicalities are so interwoven with the system of English law, that without them it would in effect cease to be English law. The same equitable principles are to be found enunciated in the codes of most civilized nations as in our own code. If the Law Commissioners had in this Act proposed only, until their code of substantive law should be ready for enactment, to follow in certain instances the principles of English law, discarding altogether the procedure of English courts of law, the objections to passing this Act would have been greatly diminished.

But it is argued that the present *Lex Loci* Act is not a final measure. It was declared at the time of laying it before Government to be intended to frame codes of law freed from all objectionable forms and technicalities, to supersede, when they should come into operation, the use of the law of England as now administered. I am perfectly aware of such intention having been entertained, and I am rejoiced to find that although, when this Act was published, January last, there was not, in consequence of the Law Commission being nearly dissolved, any solid ground for expectation, that their intention could ever be realized, and I therefore discussed the merits of this Act as a measure standing by itself; there is now opening before us a good prospect of the accomplishment of the desired work at no distant period; and I agree entirely with Sir Lawrence Peel in his opinion of the expediency of postponing the enactment of the *Lex Loci* Act till that work is completed, and may form an accompaniment to the Act. Sir L. Peel says: "The *Lex Loci* Act, if accompanied by a digest of such parts of the English law as it was deemed expedient to introduce into the Mofussil, would introduce no difficulties, subtleties, or technicalities whatever. It is, in my opinion, indispensable to the success of this experiment, that a digest should form a part of it, which might readily be enacted."

There can be no doubt that this is a wise and statesmanlike mode of treating the question. When the digest or the substantive law which is to be enforced under the Act comes before Government, we shall be able to consider the two together as parts of one great consistent measure of reform. We may, if we please, call the digest a digest of English law, but it will in reality be a digest of law abstractedly, and is likely to be as exempt from the objectionable adjuncts of English law as from those of any other code.

To pass this Act as a preliminary step, still seems to me to be altogether premature, and not consistent with the object aimed at, unless some pressing necessity existed for such a departure from the ordinary course of legislation.

I have urged before that no such necessity has been shown, and I may now dwell with still more reason on the same topic. Then I could not but regard the *Lex Loci* Act as a measure which, though not intended to be final, was very likely to be so. Now that we have the option of passing this Act at once, without the apparatus required to render it useful or beneficial, or if, waiting patiently till that apparatus is ready to accompany it, the necessity of adopting the former course should be placed beyond all doubt before we are led to select it, our choice is between, on the one side, a written code of the laws which we propose to give to the people, expressed in plain language, with a form of procedure freed from the intricacy

intricacy and expenses of the English law, and, on the other, *so much of the substantive law of England as is applicable to the situation of the people, as is not inconsistent with any of the codes of Bengal, Madras or Bombay, or with any Act passed by the Council of India, or with this Act.*

This explanation of my views will show, that much of the objections which have been made to the arguments advanced in my Minute of June 14 are wanting in application. So far am I from opposing the complete scheme of the Law Commission, that I think it does not go far enough; and I am happy to find Mr. Cameron, disposed to coincide with me in this respect. In allusion to the exception of the Hindoos and Mahomedans from the operation of the *Lex Loci* Act, Mr. Cameron, in his Minute, dated August 1st, observes, "This objection is, perhaps, too unqualified. Perhaps the Hindoos and Mahomedans ought only to be excepted in respect of so much of their laws as is now administered to them under the Statutes and the Regulations, and brought under the *lex loci* for the rest."

This sentence cannot be read without giving scope to serious reflection on the best mode of dealing with the rights of these classes on an occasion like the present. Without pretending to decide what was the abstract view taken of this subject by the Legislature in passing the Charter Act, and creating the Law Commission, there can be no doubt of this, that the further we can equitably proceed towards uniformity in our judicial institutions in India, the more fully we shall follow out the design of the Imperial Legislature. The Law Commissioners propose to except all persons not being Christians in respect of marriage, divorce and adoption, and all the native races of India in respect of any law or usage immemorially observed by them. What is there more from which we can except Hindoos and Mahomedans? I plead my ignorance for not venturing to answer this question myself; but I would suggest it as worthy of submission to those high legal authorities, from whose labours we may expect a comprehensive digest of law for India. Exceptions so wide as to include cases of marriage, divorce and adoption, and all other cases which may be ruled by local law or usage, are as ample as Hindoos and Mahomedans now enjoy, or as any people can claim to enjoy; and such being the case, it is worthy of consideration whether there will be any necessity to mar a wise scheme of general uniformity, by excepting Hindoos and Mahomedans from all other classes of men in this wide empire; my former allusion to these classes being segregated from the rest of the people, by the framers of the *lex loci*, as an objection, has, it is true, not met with any favourable reception. I shall nevertheless be happy to find that on a full and candid inquiry it may be found practicable to remove such an objection.

And I would further suggest, that in framing the digest of law, we make provision to allow the excepted classes to have their disputes decided by the general law, whenever they prefer it, to the laws or customs of their own sect; thus making all men subject to the same law, excepting when they claim exemption, and desire to have their cases decided by another law. Such a measure could hardly be considered an infringement on any man's rights, and if once introduced, will lead by certain though slow steps to the gradual disuse of reference to the institutes of Munnoo and Mahomet.

When we shall have given to all men who choose to avail themselves of it a plain and intelligible code of substantive law, providing for the easy decision of all ordinary disputes regarding rights and obligations, people in general will learn to be satisfied with the administration of such a law, and will in time cease to refer to authorities in which civil and religious duties are jumbled together in a manner so confused and intricate as to render them unintelligible, and oftentimes contradictory, excepting in those matters to which the prejudices of sect and caste attach some degree of religious importance. In all the ordinary transactions of the world, as between man and man, people will learn to prefer submission to a known and intelligible code, made familiar to them by multiplied copies in the vernacular dialects, and by the daily practice before their eyes in the courts of law, to references to Pundits and Moolvees, for interpretations of the hidden mysteries, or the ambiguous import of the text of the Shasters or the Koran.

These suggestions carry us so far beyond the proposition before Government in the path towards the attainment of our object of making our laws, as far as circumstances will admit, applicable to all classes of our subjects, that, standing in some degree alone in my opinions on the subject now under discussion, I feel some diffidence in submitting to them what I recommend is at least deserving of consideration;

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sideration; and if it should, after due deliberation, be considered impracticable, it will be satisfactory, both for us and for our successors in office, that the questions should have been discussed before they were decided to be impracticable.

16 August 1845. (signed) *T. Maddock.*

HOME DEPARTMENT, LEGISLATIVE, No. 24, of 1845.

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WE have the honour to forward herewith copy of a Minute recorded by your colleague, Sir Herbert Maddock, with reference to the several minutes transmitted to your honourable Court with our despatch, No. 22, dated the 7th ultimo, on the subject of the Draft Act for declaring the *Lex Loci* of India.

We have &c.

(signed) *H. Hardinge.* *Geo. Pollock.*
T. H. Maddock. *C. H. Cameron.*
F. Millett.

Fort William, 6 September 1845.

No.

— No. 4. —

SECOND SUPPLEMENT TO APPENDIX ATTACHED TO THE REPORT ON CIVIL JUDICATURE IN THE PRESIDENCY TOWNS, dated 15 February 1844.

To the Honourable *C. H. Cameron* and *D. Elliott*, Esquires, Indian Law Commissioners.

Honourable Sirs,

No. 4. Second Supplement to Appendix to the Report on Civil Judicature in the Presidency Towns.

THE Judges of the Supreme Court of this Presidency have had the honour to receive from you a letter of Sir Erskine Perry, addressed to the Honourable the Governor of Bombay in Council, dated Malcompait, 22d May 1844. As this letter contains a reply to that portion of my Minute of the 13th February 1844, addressed to you, which questions the propriety of adopting Sir Erskine Perry's plan of reforming the mode of procedure in the Queen's Supreme Courts of Judicature in India, which plan he propounded in a Minute of the 3d June 1843, addressed to the Law Commissioners, I think it necessary to submit to you some observations upon it. That plan is embraced in five propositions, stated in the Minute, which are as follows:

1. All suits shall commence on the personal application of the party to the Judge, on oath if required, and a summons or capias shall thereupon issue.

2. On summons, &c., being served, the parties shall attend before the Judge in open Court; and if any matter shall appear to be in dispute, a day shall be fixed for the hearing, and the proceedings in the suit regulated.

3. All evidence shall be given *vivâ voce*, and the parties in the suit shall be examinable on oath at any stage of it; but in certain cases, to be regulated by the Judges, the presence of witnesses and parties may be dispensed with, and evidence may be received in a written form.

4. In every case the Court shall decide on the principles of law or equity arising out of the facts, without reference to the form of suit.

5. All cases shall be decided on the merits, or adjourned till further facts can be procured to enable such decision.

Of these propositions, I combated the 1st, 2d and 4th; to the 3d, I stated and entertain no objection. If adopted, it would be proper, however, to subject to certain restrictions the right of one of the parties to examine his adversary; unrestricted, it would be turned to purposes of vexation and oppression.

The Judges of this Court having embodied their unanimous opinions upon the subject of law reform in a Minute which was drawn up by myself, incorporating in it some important and valuable suggestions from Sir H. W. Seton, their next step was to propose to the Government that the Judges should frame a Draft Act in conformity with their opinions upon the reform proper to be adopted, to be laid before the Government for its consideration. To this proposal a favourable reply was received. The Draft Act is now far advanced, and will shortly be laid before the Government and the Law Commission. The plan of this Act is one of reform of the existing procedure. If the real defects of the existing system are remediable, surely it would be more agreeable to the cautious system of reform which has prevailed in England, in all things to reform the old, than to try, as is recommended, a new system of procedure. I think it right to express my opinion, in the first instance, that the defects imputed to the existing system are overcharged. Those imputed to the mode of procedure on the plea side of the Court, in the letter now under review, are, that "essential facts are often shut out, by which many decisions pass irrespective of the merits of the case." That parties are often "turned round on the pleadings," or put out of Court by a failure to prove a notice or signature; and that these instances are so many "that every practitioner's memory will furnish him with innumerable cases at the assizes where these things have happened;" and it is added "that the volumes of reported cases are equally full of decisions where the interests of the suitors have

been concluded for ever on some blunder or other of their legal advisers, and wholly irrespective of merits."

The reference here is not to Bombay, Madras or Calcutta, but to England. It is not shown how often these consequences have ensued in the Supreme Court at Bombay. How they could occur in that Court to the extent suggested, if an excellent rule passed by Sir Edward West be still in force there, I am at a loss to understand, since under that rule and the lately enlarged powers of amendment in the cases of variances between allegations and proofs, which I take it for granted are in force in Bombay, the Court would be able to obviate the greater part of the imputed miscarriages. That rule provides "that the Court may at any time before or at the trial of any cause, amend any formal errors or mistakes in the plaint upon such terms as justice may require." And it is added, that "the above rule shall be considered to extend, in particular, to cases of contract in which too many parties may be joined as plaintiffs or defendants, if the Court shall be of opinion that the defendant has not been misled by the mistake, and that justice will in the particular case be obtained by the amendment." If a pleading be defective and be demurred to, the party is always permitted to amend, if he will swear that he has any merits. The technicalities of special pleading sometimes, not frequently, however, produce expense, by giving rise to demurrers on points of form, and it is a serious evil, but one not irremediable. My own experience here, first at the bar, and afterwards on the bench, and for nearly sixteen years as a constant attendant on courts of justice in England, both at the assizes and in London, enables me to say, first, that at Calcutta, during the whole period that I have been conversant with the business of the Supreme Court, failures on points not going to the merits of the cause are of very rare occurrence indeed. My memory supplies me with no instances of any decision against the merits on such grounds: it supplies me but with two instances of a party pleading a plea not applicable to his alleged ground of defence; in those cases the Attorney had put the pleas on the record without consulting Counsel. But I have every reason to think that there were no merits in either case to be excluded. As to England, my experience enables me to say that the number of such failures is very small indeed, proportionably to the whole number of causes. The comparison must be made between the whole number of causes and the causes in which such failures take place. I am not defending the continuance of the causes which lead to such failures; a remedy may and ought to be applied to them. It has been erroneously assumed that in the Supreme Court of this Presidency, justice is often defeated by reason of errors of procedure. It has even been supposed that ejectment suits were in danger of being defeated here by outstanding terms. Outstanding terms are not in use here, and rarely are they in use in commercial places. The change in the law as to variances has almost put an end to failures of the kind imputed. A failure to prove a notice or a signature, a failure to lay a foundation for the reception of secondary evidence, may occasionally exclude some facts from being in evidence, a failure ascribable in general to the negligence of the party. But this may be remedied by an adjournment of the cause. If the law does not now give full effect to such a remedy, ample powers of adjournment, and still more ample powers of amendment than now exist, may be conferred. No change is proposed in the rules of evidence; therefore wherever the rules of evidence exclude the truth now, they would equally effect that exclusion under the new system; and amendments in the law of evidence, even to the reception of the evidence of the parties, are as easily applicable to the existing system as to any that could be substituted for it. The objections above referred to are applied only to common law proceedings. To the proceedings in suits of equity the objections are different. The length of the pleadings in equity suits is a serious evil. To make the remuneration of the practitioner depend on the length of the proceedings is a mischievous practice, and should be corrected. The emoluments of attorneys are not high; but it is required to place them, as to this, on a different footing. The nature of the remuneration should be such that it should not be more burthensome to the suitor than is necessary for the required object. It is immaterial whether certain suits be instituted in a court of law or a court of equity in considering the question of their reasonable cost. Many of them are of a nature to require time and repeated adjournments, from the length and intricacy of the accounts or transactions involved in them, the exact nature of which is often unknown to both litigants. Such suits, if instituted, whether the examination be by witnesses *vivâ voce* or by written depositions, whether the inquiry be conducted

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in Court, or before the Master, cannot but be long in duration, and heavy in expense. Where both parties are honest and wise, the investigation of matters of mere account is referred in referrible cases. The mere substitution of one form of procedure for another will not, in the cases under consideration, prevent the cause being both long and expensive. The very nature of many suits renders it indispensably necessary that there should be pauses, and long pauses, in the conduct of them. A man alleges a case of spoliation, or other case of secret fraud, the circumstances of which are not clearly known to him, though the fraud or spoliation is on strong grounds of probability believed. The fraud or spoliation may not have been committed by the party sued, though he may be answerable in respect of property affected by it. The very nature of such a case, not an unfrequent one, renders it impossible to have the cause decided at one hearing. The plaintiff must often allege his case conjecturally. The defendant must have time to consider the case, inquire into circumstances, deliberate on his answer, and prepare that answer with thought and care. A *vivâ voce* examination alone would neither be beneficial to the plaintiff nor fair to the defendant. The answer, when obtained, throws new light on the plaintiff's case. He amends it, and asks a further answer. This may, again, be such that the plaintiff, with a view to new or further relief, may think it the wisest course to amend. All this would take place in the so-called natural mode of procedure. Finally, all the knowledge that either side can gain from the other being obtained, it is to be considered whether the evidence so furnished be sufficient, and time must be had to consider whether the plaintiff will proceed with or abandon his suit, or seek for further evidence ; all these necessary pauses may be opprobriously termed delays, the word being understood in an evil sense ; but it is obvious that such pauses are essential to the safe conduct of such investigations. Even under the most simple mode of procedure, before a lay Judge, adopted by the parties, without legal advocates, or settled forms of procedure, with confrontation and oral pleading, and with no precedent or rules to bind or govern, the course of inquiry into a transaction of this character would assume a shape little different from the one supposed, and in which delays analogous to those occasioned by amendments would be indispensable. The evils imputed to the equity courts are generally overcharged, because a comparison is instituted between a mode of procedure applicable to comparatively simple cases and one framed to meet those of the greatest complexity. We proposed to resort in equity to summary procedure in simple cases, and to regular procedure in others ; the real objection, as it appears to us, being the indiscriminate application of regular procedure to all cases. The summary procedure, where it has been adopted, as in bankruptcy and in some cases of equity jurisdiction, has been successful, and we are not disposed to reject the benefit of this experience by any alarm at the statement that summary suits last for 20 years in Prussia.

On the plea side delay is not imputable. Whatever be the defects of the procedure there, it need work no delay. A plaintiff sometimes does not press on his suit, but he cannot be long delayed in its prosecution. That suits even on the plea side are expensive, I admit, but not to a degree exceeding the expenses of similar suits in English Courts, or in other Courts in this country trying causes of equal magnitude, or in most colonial courts elsewhere. It is not shown that under the proposed new system the cost of a suit would be reduced, and it appears to me to be quite an erroneous view of the subject to attribute the cost of a suit on the plea side to the form of procedure. Except in special cases, where the service of process, the travelling expenses of witnesses, or the execution of commissions at a distance cause great expense, the larger portion of the cost of a suit is in the remuneration of professional agency. Sir Erskine Perry appears to think that this would not be diminished under the system which he recommends ; he says, " I entertain, indeed, a strong conviction that the existence of a simple system of procedure would open a much wider field for forensic talent and employment than at present. The elicitation of truth amidst conflicting statements, the clear exposition of principles from circumstances immersed in matter, and the logical reasoning required to bring these principles within the rules of the law, are operations that will be so immeasurably better conducted by men trained in legal science and controversy at the bar than by the common herd of mankind, that it seems to me clear their services can never be dispensed with ; and if so, *all that money now spent in useless procedure will form a larger fund for their employment*." One of my objections is, that the costs would frequently be increased by the necessity of resorting to professional agency in the preliminary

proceedings before the Judge. The expenses of witnesses and of the service of process would not be affected by the change; the expense of pleadings is trifling, except as it includes fees to counsel, and the counsel's whole receipts would not be diminished; nothing then would remain but the fees of court. Now, it is not contemplated that the costs of maintaining the Court establishments by the new system should be thrown upon the Government instead of upon the suitors. If the Government is willing to ease the suitor by taking a portion of this charge on itself, it would, no doubt, be a considerable relief, but that relief would not be the consequence of the substitution of one system of procedure for another. It has not, indeed, been attempted to be shown that the proposed scheme would diminish the costs of a suit; my own belief is, that it would enhance them.

Reference has been made to the Small Cause Court at Bombay. I do not doubt that this Court has worked well, and I should be exceedingly glad to give my assistance to the working of a Small Cause Court on the same plan. It has this advantage over other Small Cause Courts, that it has Judges as highly qualified as those who preside over Courts which try the causes of the more affluent. I think this a great advantage, and the Judges of this Presidency have offered to procure it for suitors by giving their services as the Judges of a Small Cause Court. But the Small Cause Court at Bombay is not conducted upon the plan recommended in the propositions which I combated. It does not appear to differ from other Small Cause Courts, where the procedure is according to the course of the common law, except in this, that the parties are examinable, and to this I never stated any objection. Sir Erskine Perry states, that during the time he has known it, no decision has passed there except on the merits. I believe the same may be truly predicated of many Small Cause Courts in England, proceeding according to the course of the common law, the causes being of a simple kind, and the appropriate pleadings presenting little difficulty. The difference in our views, however, respected not the best mode of trying small causes nor pauper suits, but the propriety of superseding, by a plan which he suggested, the whole civil procedure of the Courts on all sides of them, and without exclusion of any causes from its operation. In the Bombay Court there are pleadings; an officer is interposed between the Judge and the suitor; he acts as the legal adviser of both parties; he puts the pleadings into their form; the errors are considered as official mistakes, and are corrigible; but the experience of the success of such a Court so proceeding, as to simple cases, affords no answer to my objection to the adoption of the five propositions above enumerated. These did not recommend the mode of procedure prevailing in the Small Cause Court, but a different mode of procedure, which was termed "the natural mode," consisting of a preliminary examination into the facts of the case, and a partial decision on them, and then, "if there appeared to be a cause of action," a regulation of the form of procedure, which regulation was to follow such investigation. This plan was to be applied to all causes indiscriminately, one effect of which would be the abolition of a Court, the excellence of which was admitted on all sides for the purposes to which it was limited.

The propositions to which it is assumed that my objections applied, are thus stated in the letter to the Bombay Government. The following three articles form the basis of the system of procedure which I ventured to propose, and which the Law Commission also adopt as the rules of practice for their proposed new Court:—

1st. *Vivâ voce* examination of witnesses as the general rule.
2d. Examination of parties to the suit.
3d. Appearance of parties before the Judge in the first instance, and oral pleadings under the authority of the Court.

The propositions to which my Minute referred are those which I have set forth in the commencement of this letter. They appear to me to be far from identical in meaning with the three propositions lastly enunciated.

To oral pleadings and the appearance of the parties before the Judge, in the sense in which the Law Commissioners recommended them, I then offered no objection; although I entertain objections to both, because it was my object to discuss merely the propriety of adopting the propositions which the Minute contained. In one sense, every thing that a litigant utters before his Judge, may be termed an oral pleading; but the Law Commissioners, in recommending a resort to oral pleadings, declare in favour of the principles on which that form of procedure

cedure is based, whether the allegations be delivered orally or in writing. The strictures contained in the following passages from the Minute struck at the principles of the science, its aim at separation of the law from the fact, and its effect in bringing the allegations down to certain and definite disputed points. "In reprobating equity practice, however, so strongly as I do, I by no means wish to have it supposed that I desire to supersede it by that of common law, or to make special pleading the channel for bringing controversies before the Court. On the contrary, I think it wholly unsuited to the country. A creature of English lawyers, and arising out of the simple *vivâ voce* pleadings of suitors at the bar, it has shaped itself at home into perhaps not an ineligible mode of trying certain questions, but wholly with reference to the peculiarity of the tribunal before which it is employed. All the rules of special pleading which have been framed with reference to any definite object, have had in view the separation of the law from the facts, so as to *enable the former to be disposed of by a tribunal sitting in one place*, and the *latter by a different tribunal sitting in another*. The facts having to be tried by a jury, who are collected at some trouble and expense *from different parts of the country, and who can only be held together for a limited* period of time, it naturally *became an object to reduce the issues to be tried to the narrowest possible point on which the parties could be content to fight the question.* Juries also being composed of men caught at random, and in whom the accomplishment of reading even was not considered a *sine quâ non*, it became further desirable not to complicate the record, or bother their brains with more than a single question. Hence the various rules having these objects in view. But it is needless to observe on the total inapplicability of any one of them to a Court which combines the provinces of a judge and jury, to a Court permanently fixed, which has no duties to call it away to private business at a distance, and which may sit *de die in diem*, to dispose of every question that may fairly arise in the case; to a Court, finally, composed of educated lawyers, who, it may be taken for granted, would not object to a party bringing forward his case on a double aspect, *i. e.* in two different forms, when such a course is legitimately founded on the facts. The application of special pleading to the trial of facts in this country, I believe to be in its results as follows: that often the true point in dispute is not elicited at all; that often the law and the facts are so jumbled up together that a hasty decision is called for from the judges on the former, and which after being pronounced, it is too much to expect from the fallibility of human nature can easily be made to appear wrong to the tribunal who pronounced it; lastly, that when it does enable cases to be tried on the merits it condemns the losing party to 1,200 rupees costs, and that even when he does not defend the action at all, it condemns him to 450." Such were the views entertained as to the origin and operation of the existing system.

I proceed to point out other differences between the two plans; viz. that now under consideration and recommended by the Law Commissioners, and the one originally proposed in the five propositions. The Law Commissioners propose to proceed experimentally. No probationary scheme was recommended in the minute. Their Court would have jurisdiction at the outset over common law causes alone. The other plan would have embraced all suits of whatsoever character. The Law Commissioners follow the general plan of averment first, and trial after. The other proposes a preliminary trial prior to the framing of the allegations. The Law Commissioners do not propose to confer on the Judge the power of prohibiting a suit or a defence upon disbelief of the honesty of either. Sir Erskine Perry contends that this power ought to be conferred. Lastly, the Law Commissioners do not recommend that a party may sue for one thing and recover for another, or that a defendant may plead one legal defence and prevail on another not pleaded, or plead a legal defence, and prevail on an equitable right disclosing itself amongst the evidence, which would be the necessary consequence of the other system, but only that the legal right of either party shall not be subjected to the risk of failure through errors in procedure.

My objections are then stated thus: "1st. The plan proposed is not applicable to Calcutta, because it throws additional duties on the Judges, and their time is already fully occupied." This was not alleged as to mere oral pleadings, or the appearance of the parties before the Judge. The Judges of this Presidency procured an Act to be passed enabling them to sit apart in cases where before that Act they could not do so, and they then wrote to the Government, stating that they thought they should be able by a division of their judicial labours to give the attendance of one of their body as a Judge of a Small Cause Court. The

proposal that one Judge should sit alone to try all causes, has not their concurrence. The Court in civil cases performs the functions of a jury; and it may be questioned whether the abridgment in any way of these functions is a step in the right direction.

"2d. The plan requires a Judge of higher qualities than can be found; and even the highest qualifications would not be sufficient to ensure success, because such Judge would have too much power."

The first part of this objection was directed by me, and confined to the hypothesis of the exclusion of professional aid; which hypothesis I did not adopt.

The last part of it is a distinct objection. With uncontrolled professional aid, a Judge of high attainments might work the plan efficiently; but with professional aid, I cannot understand how the plan would work satisfactorily, unless the management of the cause was left uncontrolled. To enable the Judge to control the management in such a case, is to confer a dangerous power, too great to be generally entrusted, odious in its character as repugnant to the free spirit of English institutions, and one not likely to be acceptable to British subjects, including a bar and attornies, whether in England or India. A failure by the Judge in such an instance of control would subject him to obloquy and derision. To these evils would be added in most cases delay, expense and inconvenience, arising from preliminary proceedings incurred before arriving at the stage where suits now begin, viz. the filing of the plaint. This is the substance of my objections on this head, which in the condensation of them are not accurately conveyed.

Another objection of mine is stated as follows:

"3d. Equity would be administered blindly and erroneously, *because the Judge would not be certain that all the facts were before him.*" My objection was that the facts would often not be evolved on which the equity ought to be decreed. This objection applies to the proposal, that the suit may be instituted for one purpose, and a recovery be had for another. If this were to be the rule, then no doubt it would be necessary to abolish special pleading, and to leave the allegations of either party at large, instead of reducing them to precise issues; for there would be no advantage in bringing the allegations down to a point, if evidence not pertinent to the issue were admissible.

The objections of mine, arranged as the 5th, 6th, 7th and 8th in the classification of them in the letter before referred to, are put forth when arguing on the hypothesis of the exclusion of professional agency. That exclusion, I observed, would multiply error and uncertainty, and so increase litigation, which increase also would spring from the inability to resort to the opinions of counsel. The reference to Courts proceeding according to the dictates of natural justice, equity and good conscience, is merely illustrative; I never thought or asserted that it was proposed to work any change in what is termed substantive law, but only in procedure; nor should have been suspected of confounding distinctions so elementary.

My objection that the system introduces a violent change is met thus: "The objection as to the inability to introduce the scheme gradually and without violent change has been so completely anticipated by the cautious provisions of the Law Commission that it is unnecessary to notice it further." It was recommended in the Minute to abolish the whole existing procedure, without option to the suitor, without experimental trial. The Law Commissioners recommend the creation of a new court upon their plan, confining its jurisdiction in the first instance to common law causes, with the option to the suitor to use the old procedure by resorting to the existing court; their recommendation is not objectionable on this ground, but the cautious provisions of the Law Commissioners, instead of removing, add weight to my objection.

It is nowhere said by me "that the natural mode of procedure will not enable the facts of each case to be brought before the court." Sir Henry Roper having stated his fears that Sir Erskine Perry's plan, if adopted, would, by its effects on the profits of professional agents, deprive the parties of their assistance, I examined the probable operation of that system under either aspect, stating at the same time my belief that such consequences would not result, at least at Calcutta. Supposing the parties to be deprived of such professional aid, I said the proposed procedure would fail in many cases in bringing the facts, and the law appropriate to the facts, correctly to the notice of the Judge; but on the other hypothesis of

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the existence of such professional aid, I raised no such objection; my objections in that case were, that if the management of the procedure rested with such agents as I thought it ought to rest, then a needless, inconvenient and expensive preliminary proceeding in a suit would take place, of no benefit to the suitor; but that, on the other hand, if the management were to devolve on the Judge, it would inspire jealousy and dissatisfaction; his errors would be viewed with very different eyes from the errors of a Judge deciding in the present mode, and that it would be a course at variance with the freedom of action which the spirit of our laws encourages.

It is conceded that, if deprived of professional aid, the Judge would often pro nounce law of a worse quality, that is, error, there being no degrees as to the qualities of law. The objections which I stated to the plan, in this aspect of the case, are not met.

It is therefore incorrect to state that I assume that the "natural mode" will not elicit the facts in either case.

The rules of evidence properly forbidding the introduction of proofs irrelevant to the points in issue, it could rarely happen, if the rules of pleading be maintained, that all the facts connected with a new case, of which facts in evidence might open a view, would be elicited. Independently of the dangers of surprise, and that fraudulent parties with some sinister object might present their case not in its true light, there would in every case be the uncertainty whether facts did not exist of which the party might not know the importance on the legal or equitable bearing of the case, and it could scarcely ever be safe to pronounce a decision on a case of a different character from that of the one presented originally. These were my objections, not that it was recommended that law as well as equity should give place to the dictates of each Judge acting according to his views of natural justice and equity. This case is merely glanced at as an element of uncertainty in cases where such a rule prevails.

It remains only to consider the answer to my objection that too much power would be conferred on the Judge. It is said, in answer to this, the Judge may now nonsuit; nonsuit he cannot, unless the plaintiff choose to submit. The plaintiff may and does frequently refuse to be nonsuited; and if he choose to be nonsuited, he may sue again and again. Over the defendant the Judge has no power of control, unless application be made to his favour, as to plead several pleas or the like; when he may impose terms. There is not the least resemblance between the two cases. The truth of all the facts in the plaintiff's case is assumed when a nonsuit takes place on the ground that he has not established a legal right to sue. It is proposed that a Judge not believing the facts which, if true, would give a right of action, should not allow the suit to be instituted. By parity of reason, if he suspect, or, which is the same thing, believe, on a part hearing, a defence to be fraudulent, he must refuse leave to plead. This at least is what I infer from the following passage in the letter:—"In the majority of cases, say five out of six, in which recourse is had to courts of law, the resistance of the defendant is founded either on want of means or the desire to stave off the claim for a time by reliance on the law's delay. With respect to such cases, I apprehend that it can hardly be disputed that too great facility cannot be afforded to plaintiffs to enforce their legal claims; and that no evil can be incurred, but, on the contrary, great advantages to public morality, by withdrawing from dishonest or tricksy defendants all opportunity of defeating their opponents by chicanery. This class of cases, therefore, presents no difficulty as to their being disposed of in the first instance, by the appearance of the parties before the Judge, without any preliminary expense." This might be so if the dishonest defendant admitted himself dishonest, and submitted to the claim, awed by the presence of the Judge. I think there is no ground for supposing such a result. A plaintiff brings an action on a written instrument, purporting to be signed by the defendant; the parties are summoned; the defendant says it is not his writing, and signed without his authority, and denies the contract. The Judge disbelieves him; the defendant offers to prove it so; is the Judge to say, "I will not give you the opportunity; you shall not by your dishonest conduct harass the plaintiff?" Is not this in effect deciding the cause at its very outset? Put the converse; the Judge believes the defendant; is he to dismiss the suit on his impressions? for it cannot be said in either case that the cause is heard unless each party has the right of bringing his witnesses; then, if this be conceded, they will come with

their witnesses, counsel and attorneys on the preliminary investigation. Their neighbours may suspect the nature of the case, may even know how the truth is; the Judge can know nothing about it. He must not act even on private information, but only *secundum allegata et probata*; to permit it to be otherwise would give rise to the most foul suspicions, and would often occasion the greatest abuses. The cause must either be decided then, or left to be brought in the usual way on the parties' statements of their rights. I am at a loss to understand how the Judge can distinguish between the real and the alleged facts, without in effect adjudicating upon them, and how this can be done with a view merely to determine how the alleged facts shall be stated. It cannot be certainly known till the facts are all known, whether a defence is dishonest or *bonâ fide*; it may be suspected. The administration of an oath to either party as to the truth of his case, affords practically little security against vexatious or dishonest litigation; this practice does prevail in many cases. In the Ecclesiastical Court each party may compel the other to swear to the truth, or his belief in the truth, of his allegations. In practice it is of little or no avail; a fraudulent defendant put to his oath generally does not hesitate to support his fraud by perjury; a fraudulent plaintiff, if put to his oath, would seldom hesitate to swear to the truth, or his belief in the truth of his case. Upon a confrontation, even, and a public examination, with cross-examination to boot, the result would generally be false swearing, positive contradiction, conflicting statements; the Judge might suspect where the truth lay, but he could have no such conviction as would justify him in acting on his impressions. The only course to be adopted would be to proceed on the statements of either party, as at present, with a view to the hearing. I have no knowledge whether Sir Erskine Perry's observations on the character of causes be correct as applied to Bombay, but they do not correctly describe the causes which are heard before us at Calcutta as defended causes; most of these, from whatever motives the claims or defences may spring, are difficult of decision, from the great conflict of testimony in them; and it would be impossible for any Judge to dispose of them by any investigation short of regular trial. In *ex-parte* cases it would not be safe to dispense with a trial of the plaintiff's title and claim to damages. It is obvious that in no case would the plaintiff be wholly saved the expense of a suit, even where the defendant meant not to dispute any part of the plaintiff's demand, since the plaintiff must needs have a suit instituted, the plaint prepared, and the process of the court awarded against the defendant before he could lay a foundation for a judgment; he would not, of course, forego the power over his debtor that a judgment would give him. This preliminary expense would not be saved by the new plan, nor do I see any prospect even in such a case of its being materially reduced; the mere expense of drawing a plaint would be spared, nothing more, and that would be balanced by the new sources of expenditure before alluded to.

The Law Commissioners' recommendations are now urged on the Bombay Government by Sir Erskine Perry. It detracts, in my mind, much from the weight which I should otherwise give to his recommendations, that he views them as substantially the same with the mode of procedure which he recommended. I do not intend now to discuss the soundness of their views as to the general fusion of law and equity; as to the preference of assessors to juries, or as to the propriety of giving an appellate court a discretion to decide otherwise than according to law. Without discussing these and some minor points of detail, on which I differ from them, I must, with unfeigned respect for their opinions, state, that I believe their recommendations as to oral pleading, the framing of writs, and the power of demurring and pleading simultaneously to the same pleading, would all be found inconvenient and mischievous in their exercise.

Some inconveniences, in my opinion, are inseparable from bringing the Judge and the suitors into close communication before the hearing of the cause. These have not place, or, at all events, in a less degree, if, as at Bombay in the Small Cause Court, an officer of the Court, and not the Judge, act as the professional adviser of the suitors; it is to the application of either system to cases where the necessity for it does not exist that I object. I think there are no grounds for supposing that the facts would be better elicited, or the pleadings more skilfully framed under the new system. I believe it to be of very rare occurrence, that that which the party means to advance as his case is mistaken by or not revealed to his professional advisers. Its truth they cannot always know, nor would the Judge be at all more informed upon the point, or have better means or more ability to discover it.

it. The inquiry is not at this stage into the truth of the facts, but whether all facts the client should allege are alleged. It is in my opinion an incorrect supposition, that the Judge in general would frame the proceedings more skilfully than counsel. In simple cases no error does or can creep in without the most culpable carelessness; and such errors are of such exceedingly rare occurrence, that they cannot furnish grounds for a change attended with many serious inconveniences. Nor would the devolution of such business on a court necessarily in every case guard against similar risks. In complicated cases, an action is rarely brought into a Court without the previous opinion of counsel upon it. Now if it could be safely assumed that advocates are always inferior in diligence, quickness, learning and sound judgment to Judges, it might be contended then that errors would be less frequent if the Judge did the preliminary work which now falls to the advocate. The bar in India, however, stands to the bench in India, in no different position, as to the above qualifications, from that in which the bar in England stands to the bench in England, where the superiority is by no means always on the side of the court over all barristers. It may, I think, safely be predicted that there would be no such blind confidence in the Judge, that a party having a claim to enforce, would be content to attend alone, and state his case to the Judge, trusting to his penetration and skill. He would come in the majority of cases attended by his counsel and attorney. The Judge would not always be able to hear his application the moment he was ready to make it; other claims would be under consideration. Some cases would require to be adjourned. New attendances would be the result; occasionally there would be arguments and the citation of authorities, attendances to remove the impressions of the Judge, and to correct the mistakes both of fact and law into which he would not unfrequently be in danger of falling. If the Judge, thinking the action untenable, dismissed the case, an appeal would lie, and pending the appeal the plaintiff might lose his evidence, or the defendant become insolvent, or leave the jurisdiction; the very publicity of the plaintiff's proceedings would be a warning to a fraudulent defendant to go out of the jurisdiction. Even after the Judge had settled the plaint to his own satisfaction, it would be sometimes necessary to consult with counsel whether the plaintiff could safely proceed with the record in that state. The Judge's pleadings being demurrable, and Judges not infallible, and clients and their advisers not cringing or timorously complaisant, the Judge's pleadings would be occasionally laid before counsel for approval; but when these sources of expense and delay were exhausted, new ones would open. No succinct and printed form of writ would there be at hand which would merely require to have a few blanks filled in and to be sealed; a special writ, reciting the whole plaint, must be framed in the office in every case, which would require in the majority of cases to be translated; and often several copies must be made. The expense of this would be considerable. The delay would often be attended with most serious consequences; every party who could afford it would certainly attend by counsel on the second appearance, and it would rarely be safe for either party to come so unattended. Then would come applications to excuse attendance, moved on affidavits. How easy it would be to allege the causes admitted as grounds of excuse, and to support such by affidavits, it is superfluous to point out. These applications would be resisted. Motions for attachments against absent parties would be frequent; these motions would be resisted; the expense of forcing attendances would be heavy; imprisonment for contempts frequent; there would be danger, from the full communication of the case of each party to his opponent, that perjury and forgery would even more abound than at present, and that attempts would be made to intimidate or corrupt witnesses, whose names would probably transpire. On the other hand, the anticipated advantages are expedition, a more accurate knowledge of facts, and a more skilful pleading of those facts, resulting, as it appears to me, from the presumed superiority of the Judge over the professional advisers of the party; an opinion, if entertained, unfortunately too flattering of the industry, quickness, discernment, learning and skill of Judges, who would, under the plan proposed, be called upon to show themselves at once good attorneys, good advocates and good Judges.

The proposed resort to oral pleading is considered to be a return to a former practice of the English Courts. The Judge, however, never framed the pleadings of the party, or directed the framing of them, when what is termed oral pleading was in use. The practice of it is to be learned only from the Year Books. The earliest Year Book goes not further back than the reign of Edward II. Lord

Coke says, "It is worthy of observation, that in the reigns of Edward II., Edward I., and upwards, the pleadings were plain and sensible, but nothing curious, evermore having chief respect to the matter, and not to forms of words; but even in those days the forms of the register of original writs were then punctually observed, and matters in law excellently debated and resolved." It is said by Lord Hale in his History of the Common Law of England, that in the reign of King John, "we find frequently, in the records of his time, fines imposed *pro stultiloquio*, which were no other than mulcts imposed by the Court for barbarous and disorderly pleading; and from whence afterwards that common fine arose *pro pulchre placitando*, which was indeed no other than a fine for want of it." "In the reign of Edward Third," says Lord Coke, "pleadings grew to perfection, both without lameness and curiosity; for then the Judges and professors of the law were excellently learned, and then knowledge of the law flourished; *the serjeants of the law, &c., drew their own pleadings.*" Hence it appears that the Judges fined for unskilful pleading, instead of aiding parties to plead: that pleading reached its excellence, its brevity and regard to substance, when serjeants, &c., drew the pleadings; and its decline is attributed, by Lord Hale, in a great degree to the over-nicety of construction of words by the Judges themselves, in which, indeed, he says, the counsel participated. It is obvious, therefore, that pleading may be reformed by referring to the ancient models of brevity and precision, without devolving on the Judge the duties which then fell on the advocate. Expedition was no result of oral pleading. On the contrary, imparlances were its fruit, and some delay must necessarily result from it. It is not my intention to enter upon an investigation of the origin of pleading, in what courts it first had its rise and came to perfection; nor of the origin and early nature of juries; nor of the distribution and despatch of business in the courts of the kingdom at those early times; but it is sufficient to say, that I believe Sir Erskine Perry's facts, on which he supports his theory as to the system of pleading in a passage which I have before quoted, are not only not supported by, but are at variance with, the best historical accounts we have of the history of the Common Law of England.

I have, &c.

Court House,
22 February 1845.

(signed) *Lawrence Peel.*

To the Honourable *C. H. Cameron* and *Daniel Eliott*, Esqrs., Members of the Indian Law Commission.

Supreme Court House, 14 February 1845.

Honourable Sirs,

I HAVE had the honour, as well as my learned colleagues, the Chief Justice and Mr. Justice Seton, to receive from you a copy of the letter of Sir Erskine Perry, Puisne Justice of the Supreme Court of Bombay, of date the 22d May 1844, addressed to the Governor in Council of that Presidency; and the learned Judge having in that letter observed on the minute of Sir Lawrence Peel, the Chief Justice of the Supreme Court here, of date the 13th February 1844, which minute was stated in the letter of the Judges of this Court to your Honourable Board of that date to contain the opinions of us all upon the matters it referred to, I think it right that your Honourable Board should be in possession of my individual views, stated by myself, upon the subject of that minute, and the learned Judge's observations. In concurring in the statement that Sir Lawrence Peel's Minute embodied the opinions of us all, I intended to state that it did so in all that was material to the questions raised; and to that opinion I adhere.

I think it may be proper to preface the expression of my reconsidered opinion with an avowal which may lessen its weight with such as are more disinclined to be ranked among the *laudatores temporis acti* than I am; namely, that in the course of now not a very short life, during which my attention, however imperfectly, or with results of however little value, has been pretty constantly turned to affairs of a public nature and to questions of law, I have never observed any total abrogation, or even very sweeping reform, of what has been established for ages in matters of government legislation

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or jurisprudence, which I did not think I could trace, even in the minds of men of learning and ability, either to an imperfect consideration of the actual result and mode of operation of existing institutions, or a dangerous love of novelty, or an ill-considered aim at what was mistaken for simplicity, but would be found to be in truth the mother, if not itself the essence, of practical confusion. I confess, therefore, that I have approached the question raised by Sir Erskine Perry with great distrust, and my opinion must accordingly be taken with this allowance by such as think an allowance necessary in this respect.

Sir Erskine Perry commences by observing, that "one of the most valuable boons which it lies within the competence of Government to confer upon this vast country consists in the establishment of a rational, intelligible system of law, founded upon the fixed principles which enter more or less distinctly into every scheme of jurisprudence, and adapted to the habits and customs of the different classes of the community, and that in the two systems of law dispensed by the British in India, namely, by the Supreme Courts at the Presidencies and the Company's Courts in the Mofussil, there appear to be defects of such magnitude and importance as to render either of them incapable of rendering that service to the community which is predicable of a rational well-constructed code.

In paragraph 2 it is said that "such a system," by which I presume is meant "a rational well-constructed code," "administered on simple rules of procedure, may be safely affirmed to be the most potent instrument which a conquering nation possesses for securing the confidence and preserving the allegiance of its conquered subjects."

A rational and intelligible system of law (and every system to be rational must be intelligible) for the administration of justice in matters of civil right, must be adapted to the habits and customs of every community which it affects; for out of their habits and customs arise many of their most important civil rights. If inconvenient, they may be altered by law like other civil rights. They are part of the *objects*, not the *means* of administering justice. I am not aware of any essential defects in the *system of law* dispensed by the Supreme Courts,—and in the Mofussil there is no *system of law*. *A rational and well-constructed code* of laws is a thing which, not being of an imaginative frame of mind, I can form no conception of it till I see it, if by that is meant a new invention to be framed by learned and speculative men. But I am quite certain that no such invention can be framed by human intellect which shall be adapted to the habits and customs of any community. The laws of every country grow up with the habits of the community. The most important part of them, the *lex non scripta*, or what by English lawyers is called the Common Law, is nothing else than its customs, which the other part of the laws, the *lex scripta*, or the body of the enactments of the Legislature, has occasionally endeavonred in particular parts to settle, to correct, to improve or to abrogate, as the necessities arising in the progress of society appeared to require. Such laws, therefore, cannot but be adapted to the habits and customs of the community, since they have grown out of them, and are in truth the written as well as the unwritten declaration of them; not a system which seeks upon some imagined principles to correct or remodel them, or to substitute others in their stead. A learned man, who would systematize them, invents nothing, but arranges what he finds established. This was done at Rome by the private lawyers, Gregorius and Hermogenes, and under the authority of the emperors, *i.e.* of the legislature under Theodosius and Justinian. So in England the law as declared by the decisions of the Courts has been compiled and arranged under its different heads by Plowden, Fitzherbert, and Comyn and Viner, &c. But neither the Roman lawyers or emperors, or the English lawyers, invented or suggested any thing, but arranged in a more or less perfect and systematic form what they found to be established as the rules of the law. Their compilations were digests of the laws as they stood, not newly invented codes.

The customs of nations which concern the relations of domestic life, as marriage and concubinage, the relation of father and child, of guardian and ward, of master and slave or servant, may be peculiar to the nation or the part of the globe which it inhabits. Thus they were in many respects different in ancient Rome from what they are in modern Europe. They are different in Europe from what they are in Asia. They are different among the descendants of the ancient Persians who inhabit Asia from those of the Mussulmaun inhabitants of Asia, and the Hindoos, as are those of the Mussulmauns and Hindoos from each other. The rights of succession and the religious creeds and observances are also different;

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among which latter are to be ranked the distinctions of caste among the Hindoos. These customs and customary rights must be considered sacred by a just conqueror, so long as they continue to preserve their hold upon the manners and happiness of the people; and his laws, if just laws, will protect them from violation. But the relations and rights which arise out of the dealings and transactions of life in the common intercourse of society, classed by the Roman lawyers under the heads of contracts, quasi contracts, delicts and quasi delicts, or the equitable liabilities incurred by indirect or unintentional wrongs, are so much founded in the essential notions of justice and right common to all mankind, that the ancient law of Rome in these matters will be found to be very nearly the same with that of the nations of Europe and Asia at the present moment. The Mahomedan law upon these questions is said to be copied from the Theodosian code, and certainly most of the precepts of the Hindoo law upon them are contained in the Digest of Justinian. These laws upon these subjects are so much the same with the law of England, that I do not just now recollect an instance of its being necessary to resort upon any of them to any doctrine of Mahomedan or Hindoo law, in deciding a dispute between Mahomedans and Hindoos, except upon matters of prescription or pledge, which being every where matters of positive regulation, must be different in different nations, and the conveyance of land and other immoveable property, to which among Asiatics the feodal principles of the law of England cannot apply. The wisest conquerors and those who succeeded the best were of opinion that the best and most effectual means of securing the confidence and obedience of the conquered was the establishment among them of a good system of law well administered. But they introduced no new codes, but administered justice in Britain according to the Roman law by Roman magistrates, and the actions and process of the Roman law, so that any one who reads Bracton will see that in contracts, quasi contracts, delicts, and those equitable liabilities styled by the Roman lawyers "quasi delicts," in all matters not feodal, the common law of England is founded on the Roman law, learned by our British progenitors from the Romans themselves. Nor in the *system of law* which they administered, or *the constitutions or forms of their Courts*, did they concern themselves with the habits and customs of the conquered community, well knowing that good laws well administered are, with the exceptions I have mentioned, suitable to the habits and customs of every community, and adjudicate justly upon all the rights which arise from those habits and customs, and which are consistent with good morals.

Sir Erskine Perry observes, that in the English law "the careful record of cases upon every doubtful point which some hundreds of years have accumulated affords a 'precedent on the file,' or a rule to be adduced by analogy in every case that arises, and the Judge in delivering such a rule is seen not to be following the dictates or caprices of an arbitrary will, but to be administering the language of the law as laid down by a superior authority." This description of the delivery of the rule by the English Judge, which is perfectly correct, and coincides very much with Montesquieu's, seems to embody the perfection of a *Corpus Juris* practically, unless the rules are bad rules. What follows of the delay, vexation, expense and technicalities which it is said so often interpose to prevent the decision proceeding on the merits of the case, and the impossibility of making the rationale of such results (if rationale there be) intelligible to a nation of foreigners, which combined make the English system of law, in the present form, even less capable than the Mofussil system of rendering those services to the community, which, as above indicated, "a sound *Corpus Juris* is capable of affording," I am compelled to dissent from, as in my opinion founded in mistake; but it is enough to say that it is not proved; and if it were true, it would not lead to very clear conclusions to consider *the mode of applying a system* as part of *the system itself*. The form of a writ does not constitute an essential part of a *Corpus Juris*. It is a material adjunct to the system, and may be so framed as aptly or inaptly to carry the system into effect. But Sir Erskine Perry goes on to remark, that "the mode of administering the law (in the Supreme Courts) is as costly, complicated and dilatory as the natural system of the Mofussil is otherwise." All this, of costly, complicated and dilatory, is without the statement of any facts by which it is proposed to justify it; and I understand the cost and delay of cases in the Company's Courts at least to equal those in the Supreme Courts, with a material difference in the satisfaction afforded to the suitors; and in considering this charge of expense and delay in the administration of the laws of England, which can no longer be classed with the complaints of common and uninstructed persons, since it is preferred by such high authority,

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it were well to remember what very intelligent aud learned men, Blackstone and Montesquieu, have recorded as their opinions upon the necessary structure of the laws of a wealthy and highly civilized people living under the protection of a just Government. "This care and circumspection of the law (of England) in requiring that every complaint be accurately and precisely ascertained in writing, and be as pointedly and exactly answered, in clearly stating the question either of law or of fact, in deliberatively resolving the former after full argumentative discussion, and indisputably fixing the latter after a diligent and impartial trial, must be owned to have given handle in some degree to those complaints of delay in the practice of the law which are not wholly without foundation, but are greatly exaggerated beyond the truth. * * * * Some delays there certainly are and must unavoidably be in the conduct of a suit. * * * These arise from liberty, property, civility, commerce, and an extent of populous territory. * * * * * In Turkey," says Montesquieu, "where little regard is shown to the lives or property of the subject, all causes are quickly decided. The Basha, on a summary hearing, orders which party he pleases to be bastinadoed, and then sends them about their business, but in free states the trouble, expense and delays of judicial proceedings are the price that every subject pays for his liberty, and in all governments," he adds, "the formalities of law increase in proportion to the value which is set on the honour, the fortune, the liberty and life of the subject.

"The Law Commissioners have addressed themselves to this subject, (*i. e.* the simplification of legal procedure) by treating of the fundamental distinction in English practice, between the administration of law and equity; and as the rigid distinction between these two is a favourite 'idol of the tribe' with English lawyers, the Commission have shown, at considerable length, and, as I conceive, with complete success, that this peculiarity in the administration of justice, fraught as it is with so much of the delay and expense alluded to above, is most easily to be abolished in the case of the Supreme Court in India."

"Sir Lawrence Peel," the learned Judge adds, "has carried out these views still further, (App. p. xlvii.) by indicating, in detail, how several of the distinct branches of equity could at once be placed within the jurisdiction of a court of law."

My respect for the learned Judge, and the Law Commission whom he cites, is such that I am compelled to attribute it to my own obtuseness of intellect, that I cannot see how any person acquainted with the practice in English courts of law and equity can fail to discover that this peculiarity which arose in England from accidental causes—the rigid adherence of the common law courts to their own rules, and their defence of them as connected, as they truly in a great measure were, with the liberties of the country, and the encroaching spirit of the civilians and the church, backed by great forensic learning and the mutual jealousy of both parties—has contributed more to the singular perfection of the English law, and the certainty with which it is administered, and the celerity and cheapness of common law proceedings, and the infrequency of lawsuits, compared with the vast multitude of civil relations, of contracts, of injuries, and of equitable liabilities, which subsist in so populous a country, and among a people so advanced in civilization, in wealth and in commerce, than the most refined invention of the ablest speculator could have done or promised to do.

The learned Judge adverts to a confusion respecting what he calls the ambiguous term *equity*, and the cloudy notion which prevails in the world at large as to its meaning. But that ambiguity and cloudy notion not having any place in the mind of any moderately instructed English lawyer, it is unnecessary to notice them here. Suffice it to say that the questions of disputed right which arise in a civilized community may be classed under two general heads; those which concern the ordinary and daily transactions of life, which are of constant occurrence and easy investigation, and demand a prompt decision; and those which arise out of complicated and lengthened transactions, which are of more rare occurrence, which demand a protracted investigation, reiterated inquiry by the Judge, a careful and deliberate consideration on his part, a decision extending over many points and various relations, and affecting, it may be, numerous parties.

In the note appended to the 11th paragraph, the learned Judge states correctly, that "the administration of law and equity by different courts is *peculiar* to England; for although a similar distinction existed at Rome under the terms *Jus civile* and *Jus honorarium*, these branches of the *law* were not administered by different Judges. The Prætor both gave actions, which were of the civil law, and

decreed interdicts and other equitable remedies." The Roman law, as a science, embraced two subjects, *Rights* and *Actions*. *Rights* were regulated partly by the *Jus civile* and partly by the *Jus honorarium* or Prætor's edicts, which were laws issued by the Prætor, and acquiesced in by the Legislature. In like manner the remedies were of two sorts; the *Actiones* of the ancient law, and the remedies introduced by the Prætor. We know very imperfectly the practical mode in which the Roman law was administered. How they proceeded with either description of causes; what was the authority and jurisdiction in the trial of the *Prætor*, and what the power of the *Judices*,—in different descriptions of cases we do not accurately know; but we know that the modern nations of Europe who have adopted the Roman law as settled by Justinian, have, with much less practical success than has attended the English method, referred both descriptions of causes to the same tribunal, to be tried by the same description of process, upon libel and exceptions. The nations who have adopted the law settled by Justinian as that to which they gave the name of *Lex Communis*, or the Common Law, are, I believe, the continental nations of Europe, and the Scots in matters not feodal. But it is otherwise in England, the direct authority of the Roman law having ceased in England during the reign of the Emperor Theodosius the Second, and the English having steadily resisted the introduction of what they called the Roman law, namely, the law settled by Justinian,—the unlearned not knowing that their common law was already moulded after the *Jus antiquum*, which existed at Rome before the time of Theodosius. The lawyers of England, therefore, resisted the introduction of the forms of process handed down by the common law, whether accurately copied from those used by the Roman lawyers cannot be certainly known; but it is probable they, at least, very much resembled them; and the churchmen, who were the civilians, were obliged to pretend to a distinct source of jurisdiction to enable them in a separate court of their own to deal with cases of those descriptions which they very wisely saw the course of proceeding in the English courts disabled them from doing complete justice in. The jealousy of the law courts, and the confidence reposed in them, much to their honour, by the Parliament and the people, made it necessary for the new court of the Chancellor to abstain from pretending to administer the *law*, and he declared therefore that he dealt in nothing but what he called *equity*, which he pretended to distinguish from *law*; and that his only, or at least chief means of arriving at the truth in these cases was through the conscience of the party whose conduct or whose right was called in question. In his assumption of this which was supposed a limited and extraneous jurisdiction, the courts of law, with some occasional and partial opposition, acquiesced, and it being found, as the affairs of society became more complicated, that the cases increased with which the courts of law could not deal satisfactorily, and which the Chancellor, with his more lengthened proceeding and more deliberate investigation, could thoroughly unravel and justly decide, he was permitted to monopolize a large description of cases, to the great advantage of the suitors.

If the separation between courts of equity and courts of law is to be done away with, one of these courses must be resolved on: either, 1st, To abandon the due investigation of complicated transactions, and such as have extended over long spaces of time; or, 2dly, To abandon the prompt decision of ordinary and daily transactions, rendering a horse cause, as anciently before the Court of Session in Scotland or the Parliament of Paris, a species of suit in Chancery; or, 3dly, A common transaction of bargain and sale, an account extending over several years, a complicated trust, by which the affairs of many different persons are required to be administered, and various other matters of difficult inquiry and decision must be all tried in the same manner with a cause in a Court of Requests, by which, if justice could be administered between the parties, no point of law can be declared from which any man practising in the court may be able to advise a future client whether to institute or whether to defend any subsequent suit. Their attachment to *ancient forms* as well a sto *ancient principles*,—a quality more valuable in courts of justice and in the character of a people than some modern philosophers, who are not aware of the mischiefs of a departure by a free state from the *mores majorum*, seem willing to allow—led the English courts of law to adhere to ancient forms and rules which in some cases prevented the easy and perfect administration of justice. This threw another class of cases into the Court of the Chancellor, not as being in their nature such as to require the protracted investigation to which his mode of proceeding was adapted, but such as demanded a species of redress

which the ancient forms of courts of law did not enable them to afford. This no doubt was a defect in the structure of those courts. On the other hand, the proceedings in courts of equity are with as little doubt capable of some material improvements. The defects in the courts of law cause an unnecessary delay and expense in some cases, which, but for those defects, might be disposed of in the same manner as other cases which concern the ordinary and simple and daily transactions of life. The want of those improvements in courts of equity causes somewhat greater delay and expense than are quite necessary to their duly proceeding in the causes proper to their investigation. It cannot be reasonable upon those accounts to break up and demolish venerable institutions, which have administered justice hitherto in the most civilized, the freest and the wealthiest nation of Europe, with a degree of accuracy and precision which has never been known in any other country in the world, for the purpose of substituting what is called a natural, but which is, in truth, a rude, untried and ill-digested proceeding, suited, as it appears to me, only to a state of society little advanced from barbarism. Surely it were wiser to leave the essential distinction between what is called equitable jurisdiction and legal jurisdiction where it is—to correct defects in the procedure in equity where it may be done with safety—and to extend the powers and amend the process of courts of law, where a deficiency in those respects is the only cause which compels the parties to resort to equity—the case being in its nature fit to be investigated and decided at law.

It is a mistake, which I must express my surprise that the learned Judge should have fallen into, to assert that "Sir Lawrence Peel in his Minute has carried out still further the views of the Law Commission to abolish the fundamental distinction in English practice between the administration of law and equity." Nothing, I can affirm with certainty, was further from the intention with which that Minute was framed by Sir Lawrence Peel, and acquiesced in by Sir Henry Seton and myself; and I cannot avoid saying that the Minute distinctly and unequivocally declares our opinion that that fundamental distinction ought not to be and cannot safely be abolished.

The suggestions of that Minute, with regard to improvements in the administration of the law, are confined to the following heads:

1. That the substance of the system of special pleading is well calculated for a court constituted like the Supreme Courts of Judicature on their plea sides, but that many of its technicalities of after-growth are not necessary to be retained.

2. That an equity suit aims at too much in aiming at settling all the rights between all the parties interested to any extent in the subject-matter of the litigation; and that in courts constituted like the Supreme Courts of India, much may be done in the simplification and improvement of a system of equity which it has not hitherto been found practicable to effect in England.

3. That some causes which are now confined to the Ecclesiastical or Admiralty sides of the Courts, might with advantage be transferred to the Plea side.

4. That that part of the jurisdiction of equity which arises from defects of the common law, may be done away with by enlarging the powers of the court on its Plea side, and remedying some defects of the common law; and thus expense and delay be saved to the suitors.

Lastly. It is stated that a large portion of matters will still remain subject to equitable jurisdiction, and suggestions are offered for simplifying in some respects the practice in equity.

How it should be supposed that a Minute expressing these objects, and confined to them, should either be intended to carry out, or should in fact carry out views of abolishing in the Supreme Courts in India the distinction in English practice between the administration of common law and equity, I know not. I do not complain of a misrepresentation which I know to have originated in mistake; but it is necessary I should protest against it, because it is directly opposed to the opinion I have entertained since I first became acquainted, early in my professional life, with the essential distinction between the results of the mode in which civil justice is administered in England by separate courts of law and equity, and in Scotland by one court exercising a mixed jurisdiction administering both.

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I practised, as a young man, in the Court of Session before I was called to the English bar; and after several years' attendance on the Court of King's Bench and on the Northern circuit, finding that my private affairs required a longer residence during the year in Scotland than was consistent with the professional life of an English lawyer, I again returned to the Scots bar; and during all the time I had not infrequent opportunities of meeting some of the greatest lawyers of their time at the Bar of the House of Lords upon cases appealed from the Court of Session. My own opinion was confirmed by theirs, that the excessive length of the written and printed pleadings and arguments in that Court, the consequent expense and delay of the proceedings, the indistinctness with which principles of law were frequently applied to the facts elicited, the difficulty of finding fixed and naked rules of law established or admitted, the frequent and, not seldom, the wide differences of opinion among the Judges, were all to be attributed, in great measure, to the mixture of the jurisdiction of a court having to deal with complicated transactions extending over a great length of time, involving the unravelling, and adjusting long and intricate accounts, or arising out of trust and confidence, to all which cases justice requires that rules of investigation and decision shall be applied, suited to the particular nature and required by the particular difficulties of the case, with a jurisdiction having only to deal with transactions of bargain and sale, letting and hiring, borrowing and lending, and other ordinary contracts and liabilities, the facts of which are thoroughly investigated at a sitting, and the rule of law applicable to them generally pronounced at once without any doubt or hesitation, or if any such doubt arises, the question of law being fully discussed in one argument by counsel, and settled by a short deliberation of the Judges in their closets. The habits of mind generated by the one and the other of these judicial occupations are extremely different, and the occupations being confounded, it is found that the habits of minds, not of unusual perspicacity, become so too, neither exhibiting the promptness and certainty required by the one jurisdiction, nor the patience and deliberation required by the other. But a still more material evil was seen to exist in the proceedings of the Court of Session; namely, that this mixture of jurisdiction rendered the process the same in cases essentially differing in their nature, and requiring methods of investigation wholly different. There seems to be in the provisions and practice of the law of Scotland relative to *actions* no other defect than this, that whatever be the nature of the right in question, or of the investigation which its ascertainment demands, the *mode of proceeding* must be the same; all actions, with the exception of a few summary actions in some special cases requiring the immediate interposition of a judge or magistrate, and some five or six *brieves of inquest* issuing from Chancery—being *actions by summons*, which, whether they be *petitory actions*, whose object is to establish and enforce a right, of what nature soever it may be known to the law—or *possessory*, for the restoration of the lost possession of lands or moveables—or *declaratory*, for the finding and declaring the existence or non-existence of a lawful right of what nature soever, without any petitory or possessory conclusion, must all be brought before the Court by a *summons*, in which the plaintiff, there called the pursuer, sets forth, not in technical language, the nature, extent or grounds of his complaint or cause of action, and the conclusions which by law he is entitled to deduce, accompanied by a citation to his adversary to appear.

To this summons the defendant puts in *defences*, in which he states his whole defences; dilatory, if he has any, and *peremptory*, which go to the merits of the case, either denying the facts stated in the summons, or relying on other facts which he avers will countervail them, or alleging considerations of *bona* or *mala fides*, or arising *ex æquo et bono*, which ought to have the same effect, or stating at one and the same time, and in one and the same paper, forming part of the record, several or all of these defences. It being uncertain what aspect the cause would assume, little care was taken by the court or the counsel, in the times of which I speak, to restrain the summons and defences within the limits of strictness and correctness of averment or denial, provided the language was intelligible to what Lord Coke would call a *common intent*; and the parties were left to adjust the precise enunciation of the points truly contested in future stages of the cause, (Bell's "Principles of the Law of Scotland"). It has been the object of the Legislature, since those times, to correct much of this inaccuracy; but a great deal of it will not fail to strike an English lawyer as necessarily arising from a want of separation between judicatures so different in their nature, and the procedure adapted

adapted to one of which must of necessity be so ill adapted to the other, that an attempt to combine them in one can only defeat their usefulness. That it did so in Scotland, I apprehend to be quite certain, and I think I may say that this was the opinion of Sir Samuel Romilly and Lord Eldon.

The evil of having the same judges to decide causes of law and of equity, I consider one of no small magnitude, but this without entire remodelling of the constitution of the court by the Charter, and an addition probably to the number of the Judges, cannot be remedied. But at least we have at present different machinery for carrying out the two jurisdictions, which avoids the greater evil of the two, and I cannot see why we should relinquish the advantage which we have.

I think no man can read the *Plaidoyer* of a French advocate, without perceiving that the same evil existed in France, arising from the same cause.

In paragraph 12, Sir E. Perry says, "That one of Her Majesty's Supreme Courts in India constitutes a tribunal, to which, by an effort of the mind, four or five different characters must be attributed at every sitting of the Court, and in all of which characters different rules of law, different rules of evidence, and different modes of seeking out the truth are recognized as the governing doctrine." Against this, as being a description of the Court in which I have the honour to sit, or of the Supreme Court of Bombay while I had the honour of sitting there, I must take leave to protest. I have never been conscious of such an effort of mind as the learned Judge alludes to, and I must protest against the assertion that there are *different rules of law* on different sides of the Court, unless in the sense of the forms of procedure being part of the *law of the Court*, or the nature of the right to be enforced being a *rule of law*. Most certainly the *rules of evidence* are the same, except that in Ecclesiastical and Admiralty cases, as in treason, two witnesses are required; nor are there any different modes of seeking out the truth, except that in equity the defendant must answer on oath. In the next paragraph, the learned Judge refers to a communication which he says he had the honour of making to the Law Commission in June 1843, in which he had urged the adoption of a system similar to that proposed by the Law Commission, induced thereto by observing, on the one hand, the extreme expense and delay of the prevailing procedure on the common law and equity sides of the Supreme Court at Bombay, and on the other hand, the cheapness and satisfaction to the suitors with which claims under 350 rupees were disposed of in the Small Cause Court there by a procedure similar in its nature to the system proposed.

I have not heard that the structure of the Small Cause Court at Bombay has been altered since I had the honour of sitting in it, and I will presently show that few things can be more different one from another than the procedure in that court in my time from the system, or rather the scheme, proposed by the learned Judge and the Law Commission, if these schemes can be considered as the same.

But it is material, in the first place, to observe, that it appears to have been lost sight of here that the object of the institution of courts of justice in civil matters among a civilized people is twofold;—1. To decide the particular questions which may arise between parties who come before the court; 2d. To secure so well-considered and authoritative a decision upon the point of law involved in the question, as may go a considerable way to settle that point of law, so as to prevent probably 20 future suits involving that point, and such a course of uniform and well-considered decisions, that four or five consecutive decisions upon the point may prevent the institution of any more suits upon the same point in all time to come. This second object, greatly the most important to the community, does not appear to have been kept in view by Sir Erskine Perry or the Law Commission, and that which constitutes the evil of the expense necessary to be incurred in order to ensure this object, for no expense which is necessary to ensure it can be in itself an evil, is not noticed. This consists in the expense of obtaining a benefit for the public being thrown upon the litigant, whose individual interest is confined to the decision of his own cause, he having no interest in establishing rules of law but as one of the public, by which public, therefore, the expense of the whole machinery of the court necessary to this purpose ought to be borne, leaving to the suitor no other expense to defray but that of obtaining an advocate and an attorney to do that for him which he cannot so well do for himself. It is true that an accurate system of pleading renders it necessary for a suitor to incur this expense. But if this were otherwise, the poor and the ignorant can seldom state in the simplest form a plain case with accuracy, and never a complicated one; and the well-

instructed and the rich, or the busy, do not desire to be relieved from this expense, since they are much better employed in following their usual occupations than in conducting their suits in courts of law when they happen to have any. It being of importance to the public, that the poor as well as the rich should obtain justice, the state ought to provide them with an advocate and attorney where necessary. There is an evil, no doubt, in this, but the power of the pauper to harass his more wealthy opponent would be greatly lessened by leaving the latter nothing to pay but his counsel and attorney.

As to the continuance and improvement of a strictly logical system of pleading and fixed forms of action, I will only say that I think a deviation from this course would find great difficulty in recommending itself to men of forensic experience, considerate judgment and logical minds; and I am sure it would entirely fail in so doing, if they had happened to know the effects the absence of such system and such forms produces where justice, nevertheless, is administered by able and instructed Judges under an admirable code of laws. These effects it has been my fortune to see exemplified in the Court of Session in Scotland; the pleadings upon which the suit commenced being loosely drawn, the fact was not separated from the law, nor the distinct fact brought out on which the case was to bear; and I remember nothing better than the complaints this excited on the part both of the bar and of the Lord Chancellor in the House of Lords on appeals from Scotland, and the numerous cases which were necessarily sent back to the Court of Session for re-investigation and revision, after all the expense of a long litigation in that Court and an appeal to the House of Lords had been incurred. It at length attracted the attention of Parliament, and Lord Grenville applying himself to the question, under the advice and with the assistance of all the ablest Scots lawyers and some of the ablest English lawyers of the day, it was agreed, that the remedy lay in the providing a separate tribunal for the ascertainment of the facts in ordinary cases where the facts were disputed, which tribunal, having no power to decide any question of law, must of necessity separate the one from the other, and introduce a system of correct and precise averment. Struggling against much opposition from those who, like the learned Judge and the Law Commission, saw nothing in compulsory precision but difficult technicalities, Lord Grenville's Bill for the re-introduction of jury trial in civil causes in Scotland, after its disuse for centuries, at first experimentally, for a limited number of years, became a law. Before its time expired its benefits were universally acknowledged, and it was incorporated, with some improvements, into the body of the Scottish law. I was well acquainted with every step taken in reference to this measure, and know that the matter most constantly present to the minds of its promoters was the admirable effects of the system of pleading in the law of England, and the evils attending the want of at least a system resembling it in its essential characters in the law of Scotland. To create this at once by legislative enactment was felt to be impossible; but as much was done as could be done to insure the correct framing of issues to be sent to the jury. At length the Act 6 Geo. IV., c. 120, was passed with the view of compelling a clear and precise averment of the facts and of the law relied on, an early production of the written evidence, and compelling the written pleadings composing the record to exhaust the matter which forms the case of the plaintiff and the case of the defendant, both in fact and in law, to assume in substance, if not a logical form, the principle of strictly logical and analytical reasoning, and to close the record so made up before the cause is set down for trial by the jury, if upon the fact, or by the Court, if upon the law; it being the duty of a Judge by the Statute to examine the pleadings which have been put in by the parties, "to see that the cause is fully pleaded, and the pleas necessary to exhaust it duly stated, and to require the parties to add what is defective before closing the record." So sensible were the framers of these Acts, and the Parliaments which passed them, of the importance of establishing and preserving a marked distinction between the modes of investigation necessary in what we in English Courts call equity causes and common law causes, that while the Court of Session is empowered in the first description of cases to send down such issues to be tried by jury as it may think desirable to have so tried, all cases sounding in damages are directed to be remitted at once to be tried by jury (6 Geo. IV., c. 120, s. 28, 1 Gul. IV., c. 69, s. 2.)

If any one takes the trouble to read the above Statute, 6 Geo. IV., and Mr. Bell's short exposition of the improved system of Scotch pleading under it in his admirable little work entitled "Principles of the Law of Scotland," above cited,

under

under the head "Principles of Pleading," 4th ed., p. 639, I think he will come with certainty to these conclusions: 1. That all the men of science and legal practice who took part in that measure were agreed as to accuracy in pleading, and a distinct separation of questions of fact from questions of law being essential to the administration of justice in all matters brought under the cognizance of a court of law. 2. That the English system of pleading is greatly preferable to the improved system of Scottish pleading, notwithstanding what Mr. Bell says in favour of the latter, since it requires no interposition of the Judge till the hearing of the cause, unless some interlocutory matter should arise. 3. That nothing can be more visionary than to suppose that the statements necessary to be put on the record in order to the decision having any certainty and effecting a final settlement of the dispute, can be made either orally or in writing by illiterate men, or by educated men whose minds have not been trained to the application of logic to legal investigations.

"Although the analysis," says Mr. Bell, "furnishes the *principle*, the *mode* of pleading (in the Court of Session) is far removed from any logical form, and skilful pleaders, while they keep the analysis in their minds as furnishing the criterion of perfect and exhaustive pleading, have in practice to cast their pleading into the shape of condescendance (articulate statements of facts) and *pleas*. It is to be observed, however, that the art of drawing a condescendance and pleas depends on a perfect understanding of the exhaustive process of reasoning by which the debateable ground of a cause is completely gone over." Is it thought that all this, which is essential to the statement of a cause, in order to a just, complete decision, can be done by parties not bred to the study of logic and of law? Yet is there nothing technical in a Scotch condescendance and pleas? I cannot listen without great doubt and hesitation to reasoning not based on experience and the evidence of facts, with the view of overturning a system which has had the approving experience of centuries adorned by the most illustrious men who have ever existed, nor consent to experiments on the recommendation of speculative reasoners, where, whatever benefit is prophesied, it cannot be denied that failure will throw into inextricable confusion all that most dearly concerns the comfort and happiness of mankind in the transactions of life. The learned Judge does the Judges of this Court the honour to free them from the report of reluctance to aid the cause of *law reform*, and I hope that I, for one, cannot be reproached justly with being an enemy to any description of legal, political or social reform; but pulling down one structure and building another, is not, I think, to *reform*, which in my apprehension means an adherence to the old plan of the structure, taking away what has been incongruously added, replacing what has fallen into decay, strengthening what requires it, and suiting to modern convenience such parts as may admit of slight alterations, without disturbing the general character of the edifice.

I have said above that few things can be more different one from another than the procedure in the Small Cause Court at Bombay, in my time, was from the scheme proposed by Sir Erskine Perry; that scheme he explains to be based on the following three *articles*:

1. *Vivâ voce* examination of witnesses as the general rule.—To this I see no objection, if, under the exception of a considerable number of inquiries in equity, which may be as well, if not better, conducted in the Examiner's office, without occupying the time of the Court, which may be better employed.

2. Examination of parties to the suit.—To this also I see no objection under certain limitations and restrictions.

3. Appearance of parties before the Judge in the first instance, and oral pleadings under the authority of the Court.

To this I do certainly see the strongest objections, and it is so far from being similar to the procedure in the Small Cause Court at Bombay, unless its principle be altogether altered, that it is directly opposed to it. Then the party desiring to institute a suit went to the Clerk of the Court, then an intelligent attorney and a clever man, and stated to him what it was to be complained of. The Clerk questioned him, and learnt his case, as if he had been his private attorney; he then

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learnt the names of his witnesses, and gave him subpœnas to serve on them, and also cited the defendant to appear in the first instance before him, the Clerk. He then proceeded to learn from him, in like manner, what he had to say in his defence, and the names of his witnesses, for whom he also delivered subpœnas. The Clerk, having thus made himself master of the case of both parties, stated in court first for the plaintiff his case, and called and examined his witnesses. After which, he stated the case of defendant, and examined his witnesses, taking the utmost care in my time that both cases should be fully and fairly before the Court, and frequently, after having stated the plaintiff's case most energetically, evincing great zeal and ingenuity on the part of the defendant to refute the arguments he had used for the plaintiff, sometimes to the great amusement of the by-standers. The cases being all simple, and the proceedings summary, the pleadings were simple also; but the rules of law were strictly adhered to in the evidence received and in the decision. In this way justice was cheaply, and I think as well, administered as the reliance to be placed upon the testimony of the witnesses admitted. But all this while the Judge never saw the parties, or heard of the subject or nature of the dispute, till they appeared before him for the trial and decision of the cause. There was no practical objection to this procedure, except that the decisions could settle no point of law, and the questions were of such a nature as seldom, if ever, to raise points of law. In my time it worked admirably.

But what resemblance has this to a procedure where the Judge who is to decide the cause is to have the parties before him in the first instance, not as Judge, but as their mutual legal adviser, hearing their statements, first from one, I presume the plaintiff, and advising or rather directing him how to proceed, and how to frame his plaint, or rather his complaint, as I suppose it is all to be oral, and what witnesses he ought to subpœna; then from the other advising him in like manner how to prepare his defence, and how to state it, correcting the logical errors, if logic is to be admitted, into which, in his ignorance, he may have fallen, and what witnesses to subpœna in support of it? Nor can it be of much importance whether the Judge hears the parties separately or both together, except for the altercation which he will have to witness in the latter case. But the Judge is to do more, as I understand, and I think he must of necessity do more, as his advice will be taken as a command, or at least such an intimation of judicial opinion as it would require uncommon hardihood to oppose, by instituting or defending a suit in opposition to the advice either given or insinuated. The Judge, therefore, is in truth to determine whether the plaintiff shall proceed with his action, or be permitted to come before the Court at all, or the defendant to propound any defence; and if they feel their way, so as to induce a belief that they may proceed without great imprudence, the Judge is to control their proceedings in the case, which he is afterwards, on the proceedings so instituted, to decide; and this course is not to be confined to simple and ordinary matters, but to causes of all descriptions, how complicate and how intricate soever, in the facts to be unravelled, without any provision for placing upon a record the precise facts in dispute to be proved, the precise answers to them, or the precise questions of law to be decided. It cannot be presumed that it is meant that no such precise averments are to be made and recorded. But the whole method and process of working out these matters are to be left to the science and perspicacity of the Judge, who has no materials with which to proceed in working out these problems, but the necessarily confused, indistinct, probably scarcely intelligible, oral narrations of illiterate men in most cases, of men incapable of reasoning accurately in almost all.

Independently of the undue bias which must in many cases be induced upon the mind of the Judge before he tries the cause, and will be imputed to him in all cases, I apprehend that to state any but the simplest case of common law, under such circumstances, intelligibly, would be difficult accurately, to a clear and final result impossible, even to Lord Kenyon or Lord Eldon, if they were alive.

I have, &c.

(signed) *J. P. Grant.*

To

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Second Supplement to Appendix to the Report on Civil Judicature in the Presidency Towns.

To the Right Honourable the Governor-general in Council, &c. &c. &c.

Honourable Sir,

THE Government of Bombay informed me, in October last, that the Government of India requested to have the opinions of the Judges of the Supreme Court of Bombay, respecting the Report of the Law Commissioners, dated the 15th of February 1844.

Shortly after I had begun to write upon the subject, interruptions arose from private matters, and immediately afterwards a term and a session occurred, so that I was unable to conclude writing the observations I have now the honour to transmit, until the middle of December, since which period much time has been lost through the dilatoriness of the purvoe employed to copy what I had written.

I have, &c.
(signed) *H. Roper.*

Bombay, 10 January 1845.

As the Judges have been requested to give opinions on the Report of the Law Commissioners, dated the 15th of February 1844, it is scarcely open to me to say that my opinion is expressed in my letter of the 4th of August of the previous year, which, as forming part of the Supplement to the Report, has already been submitted to the Government of India. That letter commented on Sir Erskine Perry's suggestions for changing the mode of administering justice, and therefore has reference to the Report, in which similar plans and opinions are proposed and advocated. When the letter was being written, I had no reason to suppose there was any such unanimity between Sir Erskine Perry and the members of the Law Commission, and it appeared to me that the Commissioners had not invited any discussion on the subject. I therefore limited myself to a few general observations; and when afterwards aware that Sir Erskine Perry's Minute had been favourably entertained, I was glad to find the Judges at Calcutta had canvassed it more fully; and it might be sufficient for me to say that, with some slight qualification, I concur in their opinions as expressed in the Minute of Sir Lawrence Peel, dated the 13th of February 1844.

Sir Erskine Perry's Minute and his subsequent letter of the 22d May are auxiliary to the Report, together with which they have been printed, and they are obviously relied on as supporting or confirming the letter. I shall therefore controvert certain positions in the Minute and letter, to which I cannot assent, and some of which have, I think, a tendency to prevent a dispassionate consideration of the subject; but I shall first point out a minor inaccuracy, which cannot affect the general principles contended for. In the 48th paragraph of the Minute, it is proposed that by an Act of the Government the interest on unclaimed estates in the hands of the Ecclesiastical Registrar be applied to the maintenance of the projected Court. An Act of the Government could have no such effect; for in default of legatees, next of kin and creditors, those funds are the property of the Crown. If it were notified, not merely in the "London Gazette," which few people read, but also in the principal newspapers of London, Dublin and Edinburgh, that such estates are still unclaimed, the Crown and other parties entitled might become apprised of their rights, and claimants to the eight lacks in question might speedily appear.

An impartial inquiry into the merits and demerits of the Supreme Courts can hardly be obtained in India, where each of those Courts, from its establishment, has been viewed with jealousy by local rulers and members of the civil service of the East India Company, forming the most influential classes of the community. The difficulty is increased, when, as in the present instance, the discussion is chiefly carried on between Judges of those Courts on the one hand, and upon the other the Law Commission, consisting, very differently from the original intention of the Legislature, of three members of the civil service and one gentleman, whose professional practice had terminated long before his arrival in this country. Further difficulties have arisen from the institution of comparisons between the Supreme Courts and those of the Mofussil, to the disadvantage of, and with highly coloured views of the defects of the former; and from a representation that different forms of process for matters of civil, criminal, legal, equitable, ecclesiastical or admiralty

cognizance were adopted in the Supreme Courts, because Sir Elijah Impey and the other Judges first appointed to the bench at Calcutta were under temptation "to form a costly establishment, with a number of offices, to which the different codes of practice were to afford fees, and of which the founders were to have the patronage." These comparisons and positions, if undisputed, might be held undisputable, and I shall first apply myself to the imputation upon Sir Elijah Impey and his colleagues.

I know not whether their respective circumstances exposed the Judges who first sat upon the bench at Calcutta to the alleged temptation, or whether, in exercising their patronage, those Judges afforded reason to believe that offices in the court had been created from unworthy motives. When we consider, however, what has occurred in the United States of America, if we do not see reason to doubt the expediency of administering law and equity by the same modes of procedure, we may at least hesitate to ascribe dishonest views to the first Judges of Calcutta, because in their court, law and equity, and other branches of jurisprudence, were kept separate, being administered by different modes of procedure, as in England.

Mr. Justice Story says:—"In nearly all the states in which equity jurisprudence is recognized, it is administered in the modes and according to the forms which appertain to it in England; that is, as a branch of jurisprudence, separate and distinct from the remedial justice of courts of common law. In Pennsylvania it was formerly administered through the forms, remedies and proceedings of the common law, and was thus mixed up with legal rights and titles, in a manner not easily comprehensible elsewhere. This anomaly has been in a considerable degree removed by some recent legislative enactments. In some of the states of the Union distinct courts of equity are established; in others, the powers are exercised concurrently with the common law jurisdiction, by the same tribunal, being at once a court of law and a court of equity, somewhat analogous to the case of the Court of Exchequer in England. In others, again, no general equity powers exist; but a few specified heads of equity jurisprudence are confided to the ordinary courts of law, and constitute a limited statutable jurisdiction."

In the tribunal above described as analogous to the Court of Exchequer in England, equity is administered in the same manner as in the Supreme Courts in India. One object of the Report is to have equity administered, as formerly in Pennsylvania, through the same forms, remedies and proceedings as the common law, if not through "the forms, remedies and proceedings of the common law." Whether equitable and legal rights and titles might not thus become "mixed up in a manner not easily comprehensible elsewhere," may be worthy of consideration, especially as legislative enactments have been required to check such evils in Pennsylvania, inhabited by a shrewd people, fully awake to their own interests, and amongst whom equity jurisprudence had no existence till 1790, long after Pennsylvania had ceased to be subject to the British Crown. Indeed it is worthy of remark, that in several of the countries now included in the United States, there was no equity jurisprudence whilst they continued colonies of Great Britain, bu at present there are few states in which it has not been adopted, and in nearly al the states in which it now exists, it is administered in the like modes and forms as in England, separate and distinct from the justice of courts of common law; and this state of things has been established since the Revolution. In Pennsylvania, where equity jurisprudence was according to the system contended for by the Law Commissioners, legislative remedies for that system have been resorted to. What the evils and remedies were, I have at present no means of ascertaining; for I have but one or two books relating to American law. I find the equity jurisprudence of Pennsylvania in question, in the case, Sims, Lessee, *versus* Irvine, in the Supreme Court of the United States, in the year 1799, and again in Hoblingsworth *versus* Fry, in the Circuit Court, Pennsylvania district, in the year 1800. In the last case, Mr. Paterson, a Judge of the Supreme Court, said, "There is a strange mixture of legal and equitable powers in the courts of law of this state. This arises from the want of a distinct forum to "exercise Chancery jurisdiction, and therefore the common law courts *equitise* as far as possible." But neither of those cases discloses the nature of the evils alluded to, and I now merely rely on what has occurred in the United States as ground for doubting whether Sir Elijah Impey and his brother Judges were actuated by sordid views in keeping law, equity and other branches of jurisprudence separate at Calcutta, and administering them by different modes of procedure as in England.

Under

Under the Charter of the Supreme Court at Calcutta, it was imperative on Judges to administer justice in its several branches according to modes and forms analogous to those appropriated to them respectively in England. After prescribing the mode of procedure in actions at law in general terms, the Charter provided that the Court should be a court of equity, and administer justice in a summary manner, "as nearly as might be, according to the rules and proceedings of the High Court of Chancery." Criminal justice was directed to be administered in such or the like manner and form, or as nearly as the condition and circumstances of the persons and the place would admit of, as courts of oyer and terminer and gaol delivery did or might in England; and with respect to the Ecclesiastical and Admiralty jurisdictions, a slighter conformity to modes of procedure in use in the analogous jurisdictions of England was enjoined. A passage from Sir Elijah Impey's convincing speech at the bar of the House of Commons on the 4th of February 1788 is prefixed to the copy of the Charter inserted in the first volume of the Rules and Orders of the Supreme Court, &c., edited by Mr. Smoult and Mr. Ryan. It thence appears that the draft of the Charter in question had been perused by Lord Thurlow, altered by Lord Loughborough, revised by Lord Walsingham and Lord Bathurst, and commented upon by them all respectively when in office. We may conclude that they approved of the provisions of the Charter, and that the Judges of Calcutta, in organizing the Court, could not have disregarded the opinions of such men.

It would be misapprehension to suppose that such evils as are exemplified by the statement of the case of Poonjia Cawnjee *versus* Abdool Raheem Khan, in Sir Erskine Perry's Minute, section 18, are of common occurrence under the present system of equity jurisprudence at Bombay. The Bill was short, and might have been answered within less than 15 weeks, but there may have been overtures for peace in the interim; and it does not appear when the counsel and attornies respectively received their instructions. A purvoe employed to copy the interrogating part of the Bill, not seeing the usual words "whether" and "how otherwise," in that part by which, in case assets should not be admitted, it was required that an account should be set forth, altogether omitted copying that passage, and hence the answer was defective in not setting forth an account. Within 12 days after the exception had been taken, the further answer was put in. The cause might have been heard in the next term, and without any evidence being taken, for the defendant's answer admitted the complainant's claim, but denied assets. The complainant, however, successively filed two amended bills, each so copious as to require a new engrossment. The object was to extract full accounts, independently of proceedings in the Master's office. Notwithstanding the authority of White *versus* Williams, and Leonard *versus* Leonard, and that class of cases, it appears to me that such a course should be wholly disallowed. There was nothing analogous to it in the old action of account which the Judges at Calcutta now propose to restore, thus impliedly consenting that, to some extent, the system I object to shall be discontinued.

Two years elapsed after filing the rejoinder before the case was brought to a hearing, when a decree for an account was taken *by consent*. The delay, I conceive, could not have occurred had the plaintiff been determined to speed the cause, but he may have been influenced by the following motives, to which a gentleman, who, as acting Master in Equity, became acquainted with the suit, assured me that much delay in the Master's office was attributable. The defence was want of assets, and this gentleman informs me he understood that the complainant, apprehending the defence might be made good if the account were taken immediately, deferred proceeding in order that further assets might be got in, and that interest upon the amount already received might accumulate. There are circumstances consistent with this view of the matter, for when the first answer was filed, a large portion of the assets (9,051 rupees), ultimately received, had not been recovered by the executor. The complainant did not bring the decree into the Master's office until more than three months after its date, and from that time up to January 1838, a period of nearly two years, only 11 effectual meetings were had before the Master, whereas the complainant might have taken out as many warrants as he pleased. From the 12th of April 1840 to the 10th of February 1841, that is to say, in a period of 10 months, there was only one attendance at the Master's office. Some delay may have arisen from the gentleman who was Master in 1836 having become insane. Another gentleman

was appointed to act for him till he resumed his office in, I think, 1837, but he soon became ill again, and was obliged to relinquish his appointment.

To me it appears, not only that the case is peculiar, but that the description of it in the Minute is somewhat coloured; for we therein find a period of above 12 months, which it is said elapsed between a demand for payment and the filing of the bill, put forth as a portion of the law's delay. The Minute also is inaccurate as to some of the particulars of the case. It is said, "The plaintiff, having a claim against the testator of between 2,000 and 3,000 rupees, applied to the defendant for payment of his debt, and, at all events, for an account of the testator's assets; but the defendant refused both one and the other. The plaintiff was therefore forced to file his bill, &c." There was no evidence of any such application for an account of the testator's assets prior to filing the bill. It is not even alleged in the bill that any such application was made. The complainant's claim was founded on a bill of exchange drawn in his favour upon the testator. It was stated in the bill in equity that the testator accepted the bill of exchange as security for the drawer, and also that the testator paid to the complainant a small portion of what was due upon the acceptance, and that after the testator's death the defendant had accounted with the drawer, and had been credited in, or had received value for, the full amount for which the testator had become liable by the acceptance. But there is not a word in the bill of any prior application for an account of the testator's assets. After alleging, as a pretence on the part of the defendant, his declaration that he had no assets, the usual charge to the contrary is added in these words: "Whereas your orator charges the contrary thereof, and so it would appear if the defendant would set forth as he ought, but which he refuses to do, a full, true and particular account," &c. Even this charge was not admitted by the answer, in which the defendant fully admitted the plaintiff's claim, and offered to account for the assets.

It is said in the Minute that the answer was excepted to, and on argument a further answer was ordered. The origin of the exception I have already mentioned. There was no argument of the exception. No order for a further answer was made, and within 12 days after the exception was put upon the file the further answer was put in; circumstances tending to show, as the fact was, that the omission has occurred through the oversight of the defendant's counsel. After nearly three years' litigation the complainant took, by consent, the same decree which he might have had upon bill and answer within the first five or six months.

It is said in the Minute: "A long litigation of nearly four years took place on these points in the Master's office, when a Report was presented altogether against the defendant. This Report was excepted to by the defendant, but all his objections were overruled." It should have been added, that owing to an error of the Master, the defendant was charged with 17,263 rupees too much. Had that error not occurred, the testator's estate would have been found indebted to the defendant, whose defence, want of assets, would thus have been established. It was ordered, on further directions, to the effect that the error should be rectified, and with a view to costs, I presume, that the Master should inquire and report whether certain property received by the defendant had been fairly brought to account. The defendant, in an account annexed to his answer, and in another account filed in the Master's office, had given credit for considerably less than the just amount; the Master, therefore, reported that the defendant had not fairly brought to account the property in question. Exceptions were taken, but overruled. Finally, it is said in the Minute, "a decree on all points raised by the defendant was made against him, when a further controversy was raised by him as to his non-liability to costs on the ground of being an executor." The cause had come on upon the exceptions and for further directions, and the exceptions being overruled, the only points remaining were, whether the defendant had made out his defence, want of assets, and who should pay the costs of the suit? The estate was found indebted to the defendant in 884 rupees, so the result of the suit as to the principal point, want of assets, was decidedly in his favour. Still he was ordered to pay to the complainant all the costs of suit, and as he had acted dishonestly in filing false accounts, I think, if the court had power to do so, it exercised a sound discretion in ordering him to pay the costs. In Robinson *versus* Elliott, 1 Russell, the result of the account in the Master's office was, that there were no assets unadministered, but the executrix was charged with more than she had admitted in her answer,

and

and therefore, although the bill as against her was dismissed, it was dismissed without costs. The case before Sir Erskine Perry was much stronger. In Nicholson *versus* Wordsworth, Lord Eldon intimated that where a bill is dismissed, a defendant may be ordered to pay the costs; and see Mortimer *versus* Orchard, before Lord Loughborough, and Anon. 4 Madd. 273. In this country the courts exercise a very wide discretion in such matters, but I am not aware of any exact precedent for the order in question, and therefore feel no surprise at there having been a controversy as to the liability of the defendant.

In my letter of the 4th August 1843, I expressed opinions that stagnation in the China trade and in mercantile affairs in general had latterly caused litigation to decrease; that such effect was temporary, and that there was then nearly as much business in the Court at Bombay, as there had been at any time during the 10 preceding years. This view was in no respect refuted by the schedule of cases heard, and actions tried during the years 1840, 1841, 1842, annexed to Sir Erskine Perry's Minute. In the 4th paragraph of the Minute, that schedule is referred to as showing the amount of business in the Court. In the 6th paragraph it is said, that although the number of suits in the Mofussil Courts is annually increasing, those in the Supreme Court decline in a like ratio; and in a note upon the latter statement it is said, "The number of plaints filed on the common law side of the Court have fallen off 20 per cent. during the last three years, as taken on an average of the preceding 10 years." It follows that the schedule thus adduced as evidence of the small amount of business in the Court, had merely reference to that period, in which there had been the least business during the 13 preceding years, and so far from there having been evidence of an annual decline of business, the schedule showed that the amount of business in the year 1842 exceeded that of either of the next two preceding years. In fact the schedule tended to establish my belief, that interruption of the China trade had caused a decrease of litigation, and that such effect was merely temporary. The opium was surrendered in March 1839, and in the Dewallee of that year, scarcely any accounts were adjusted. European and native merchants exerted themselves to induce creditors in the bazar to show forbearance to their debtors, as was in evidence before the Committee of the House of Commons appointed to inquire into the surrender of the opium. Hence, in 1840, the first year to which the schedule referred, there was but little doing; there was but still less in the following year; but towards the end of that year, the trade was to some extent resumed, and it became certain that compensation for the opium would be granted, and accordingly in 1842 law business considerably increased. It had still further increased when my letter of August 1843 was being written, and it may be concluded that a further improvement has taken place, inasmuch as the first three terms of the present year have been insufficient for the transaction of business and sittings after each term have been required.* My opinion is further confirmed by that of a professional gentleman of considerable experience. He has expressed his belief that the amount of wholesome litigation in the Court at "Bombay has increased rather than diminished," adding that "much business is now kept out of the Court that in former days probably would have found its way there." Above four years ago, I understood from Mr. Cochrane, who had been at the Calcutta bar, that more solid business was transacted in the Court of Bombay than in that of Calcutta, where I believe much time was formerly occupied in disposing of demurrers, exceptions and such like proceedings, which unless founded on some substantial question, and not upon mere points of form, have been, for several years, utterly discountenanced at Bombay. On the whole, I doubt whether at the present period Judges are more occupied at Calcutta than at Bombay, especially as at the latter place three of the criminal sessions for the present year have already occupied above 52 days, with the exception of Sundays and two or three holydays, and the fourth session is yet to come. But the criminal business during the present year has been unusually heavy, and one case occupied nine days, and another three days.

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* During the fourth term, which commenced and concluded after the above passage had been written, there was but very little business, and it was all disposed of in a very few days. This has been chiefly attributed, and, I believe, justly, to the absence of principal counsel, and to the illness of an attorney who was in considerable practice. He became unable to transact business shortly before the term began, and died a day or two before the term ended.

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In my letter of the 4th of August 1843, I said the cost of litigation in the Supreme Courts was very great, and ought to be diminished; but the expenses incurred on the Plea side of the court at Bombay are, I believe, somewhat incorrectly stated in the 8th and 9th paragraphs of Sir Erskine Perry's Minute, and in the Schedules to which they refer. His estimate is, "that a defended cause in the Supreme Court costs the losing party about 1,200 rupees; that an undefended cause costs about 450, and that even in the causes when the defendant confesses the claim, or gives a cognovit on the first opportunity he has to do so, the expenses amount to no less than 189 rupees." It appears that the number of cases from which this calculation was made, included those cases in which, owing to peculiar circumstances, such as references to arbitration, special motions, &c., extraordinary costs were incurred. This, although the estimate may be correct, as giving in one sense the average amount of costs in each of all the cases forming the mass of the litigation in question, it seems erroneous to intimate, as in the 9th and 22d sections of the Minute, that in an ordinary action such expenses are incurred. The taxing officer has furnished me with tables and calculations upon the subject, founded on examination of the registry of bills of costs in his office for the same three years specified by Sir Erskine Perry. The officer tells me he has taken "the cases which appear to him to determine the general and usual costs in defended causes, undefended causes and cognovits for those several years. Where the costs included arbitrations, special motions or matters of exception, they are not inserted, as the costs in such cases are special rather than general."

According to the taxing officer's estimate, corroborated by tables which accompany his statement, the cost of a defended action to the losing party is about 800 rupees; (Sir Erskine Perry's estimate is "about 1,200 rupees,") the costs of an undefended action are about 192 rupees; (Sir Erskine Perry's estimate is "about 450,") and where a cognovit or confession of the claim is given, the average costs have been 147 rupees; (Sir Erskine Perry's estimate is "189 rupees.")

The amount of fees to counsel in the defended cases, from which the above estimate was made, has also been ascertained; and thence it is stated that on an average 239 rupees have been paid to counsel in a cause, leaving about 561 rupees for the remuneration of attornies on both sides and the officers of the court.

These costs, in my opinion, are too high; but considering that during the five years, including 1839 and 1843, judgments were recovered by plaintiffs in the Supreme Courts in 338 causes, defended and undefended, for the amount in the whole of 1,769,970. 2. 1½., and that the taxed costs of the plaintiffs in such cases amounted in the whole to 53,890. 3. 76., being at the rate of about 3 per cent. upon the sums recovered, I doubt whether there be such disproportion as is intimated in Sir Erskine Perry's Minute, between the cost of suing in the Supreme Court and in the courts of the East India Company. In the latter, according to the Second Bombay Regulation of 1827, section 52, and Appendix L., the fees to a vakeel for prosecuting or defending a suit are 3 per cent. on the amount sued for, if not more than 2,000 rupees; if the amount exceeds 2,000 rupees, and does not exceed 10,000, 3 per cent. on 2,000 rupees of the amount, and 2 per cent. on the remainder; in suits for value not exceeding 20,000 rupees, 3 per cent., or 2,000 rupees of the amount, 2 per cent., or 8,000 rupees of the amount, and 1 per cent. on the remainder. Though the fee upon any amount above 20,000 rupees was formerly half per cent., I believe it is now fixed at 1 per cent. Each party is generally bound by special agreement to pay a much larger per-centage to his own vakeel, in the event of his succeeding, sometimes one-fourth; sometimes, it is said, one-half. I have known evidence of such agreements on two or three occasions before the Supreme Court at Bombay. The stamp tax on law proceedings is also very heavy. (*See* Bombay Regulation XVIII. of 1827, Appendix C. D. E. and F.)

Suits for small amounts may be conducted at a cheaper rate in the Mofussil Courts than in the Supreme Court; but the larger the value sought to be recovered in the former tribunals the greater becomes the cost, and in an extravagant ratio, especially as appeals from such courts so frequently occur. In 1834 or 1835, there was a decree against one Heerachund Bedreechund in the Supreme Court, for upwards of 14 lakhs, and another man is now defendant in a suit in which about 14 lakhs are claimed from him. What enormous sums might be levied from parties to such suits in a Mofussil Court, by way of charges for stamped paper fees to vakeels, and the share of the vakeel of the successful party! The Bombay Government

Government being engaged in a suit about a village in Guzerat, producing about 12,000 rupees per annum, the case went before the Privy Council. The Government, I understand, had to pay 60,000 rupees as costs, of which, perhaps, one-half were costs incurred in this country. I have been furnished with the following case, which has recently occurred. Two Hindoo women disputed the right of heirship to a wealthy Shroff. One of them obtained a certificate of heirship, which was confirmed by the Sudder Adawlut. The other filed a suit to annul it, and obtain possession of the property. She stated the property in dispute at one lakh, (it is said to be many lakhs). The stamped paper for the plaint was therefore 1,000 rupees. The Assistant Judge dismissed the suit on the statements in the plaint, without taking evidence. The costs of both parties were 3,941 rupees. On appeal the Judge reversed the first decree, without taking any evidence, and merely annulled the certificate of heirship. The costs of both parties in that appeal were 3,186 rupees. They have a further appeal pending before the Sudder Adawlut, the costs of which will be about 2,480 rupees to the unsuccessful party, exclusive of fees to her own vakeel, and irrespective of the private agreement for bonus or per-centage upon which the successful party will be liable.

I believe the expense of suing in the Supreme Court, chiefly arises from the cost of office copies of the pleadings and fees to the officers of the Court. If those officers were paid by the Government, as it is proposed the officers of the projected Court shall be, or if compensation were given to present holders of offices, pleadings might be delivered between the parties, instead of being filed. They might be handed in at or shortly before the trial or hearing, and would furnish materials for making up the record. Under such a system, the costs of suitors in the Supreme Court would be much less, I believe, than those at present incurred in the Courts of the East India Company.

Of late years, much has been done with a view to lessen the expense of pleading in English courts of law and equity, and much more I think might easily be done. In equity, all formal parts of pleadings should be excluded. Merely the legal effect of written instruments should be set forth. Answers might be confined to traversing the plaintiff's case, and stating the defendant's, and no admissions could be required in the answer, if the plaintiff were allowed to read as admitted whatever was not denied. Perhaps the complainant should not be permitted to anticipate the defence in his bill; anomalous pleading and much nicety and repetition would thus be avoided. The introduction of *vivâ voce* examination of witnesses in equity, and of both parties, as well in law as in equity, would at once abolish the preparing interrogatories for witnesses, and the interrogating part of the bill. Or if the *vivâ voce* examination of parties, be held inexpedient, they might be examined on interrogatories founded on the bill and answer. If, however, *vivâ voce* examination were adopted, the same precise statement of matters of evidence at present usual in the bill and answer should be no longer requisite, and thus much benefit might result to the parties; see Hall *versus* Maltby, 6 Price. Cross bills might thus be abolished, and a defendant in equity might be permitted to ask the Court to declare instruments sued on fraudulent, and to order them to be cancelled. Several other changes might be suggested.

The expense of litigation probably operates, not progressively, or in causing a gradual or annual decrease of business, as seems to have been supposed, but by prescribing limits proportional to the value of matters in dispute, so as to preclude having recourse to a costly tribunal for what may not be worth heavy charges for a suit. The Supreme Court is a forum unsuitable to small matters, which should be disposed of in some such Court as that proposed by the Law Commissioners, more simply and less expensively organized. Courts of the latter description can also, in their manner, decide affairs of greater moment, and whether their jurisdiction should therefore be unlimited, appears to be a question arising on the Report. Unless their ability to dispense justice be fully equal to that of a Supreme Court, I conceive their authority should not be extended. No doubt such Courts will be popular, for recourse may be had to them on cheap terms. In general they will be resorted to in the first instance, to the exclusion of any more costly tribunal, charges for suing in which will not be incurred, unless upon appeal, if permitted, from alleged erroneous decisions of less expensive Courts. It is proposed to allow an appeal from the Court of the Law Commissioners; but how greatly is a right prejudiced by an erroneous decision in the first instance! How difficult does it then become to obtain justice by appeal! There is usually a disposition in the superior Court to uphold the judgment already given, which must have considerable effect

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even when the case is tried *de novo*, and where credit to any extent is given to the inferior tribunal for accuracy as to facts, how completely may points of law be swamped by an improper finding! Courts of Appeal are not always, or perhaps often, resorted to where error has occurred, and even when applied to are but imperfectly corrective. It is, therefore, important to adopt means for dispensing justice as fully as may be in the first instance, especially considering the many ways in which imperfect administration of law has pernicious effects upon society. A better description of tribunal may be costly, but the expense should be defrayed by the state or by suitors. I believe much moral and political mischief results from defective Courts, and that therefore they should have but a limited operation. To a certain extent they have been hitherto necessary evils, for without them claims of small amount would have remained unsettled. If their jurisdiction cannot be restricted to such matters without expense to the state and to the richer classes of suitors, I still believe it consistent with the interests of the community that the state or wealthy suitors should bear the cost of maintaining better Courts for more important affairs, having original and not merely appellate jurisdiction. Such superior tribunals influence inferior Courts in various ways, and tend to purify them not a little. Into what state would Courts of Requests and judicatures of that description degenerate in England, if the Courts at Westminster were abolished, or what would the Small Cause Court at Bombay in a few years become, if the Supreme Court were not within view of the Judges at that Presidency and the public?

Thus, unless the forum proposed by the Law Commissioners should be better constructed, and capable of arriving more nearly than the Supreme Courts at a perfect administration of justice, I think its jurisdiction should be limited to small affairs, and that its being the cheaper Court should be accounted a matter of secondary importance.

But the superiority of such a Court as means of distributing justice seems to be thought sufficiently established by several criterions. It is said, in the first place, that it would carry off the business from the Supreme Court; I have no doubt it would, for, as being the less expensive Court, suitors, even the wealthiest, would resort to it; they would first try their chance there, and only have recourse to a more expensive tribunal if the latter had cognizance of appeals from the former, and an appeal had become necessary or expedient; and thus matters might go on till such evils had resulted from a bad judicial system as rendered a change or remedy indispensable. If measures were taken to enable honest litigants to sue upon the same terms with regard to charges in either Court, the Supreme Court might, and, I believe, would, be preferred.

The unfitness of Supreme Courts for the distribution of justice is also contended for on the ground that their business gradually decreases, whilst that of the Mofussil Courts is annually increasing. I have already dwelt on the alleged progressional decrease of business in the former Courts, and I trust have shown that it did not exist; and if the business of Mofussil Courts has increased as compared with that of Supreme Courts, it may be that such a state of things has arisen from the comparatively defective administration of justice by the former. Rights will be invaded or withheld under a very imperfect judicature, more frequently than where the administration of justice is comparatively equable and certain, and I have long believed that the common notion of natives of India being more litigious than the rest of the world, has arisen because the very imperfect judicial system under the India Company engenders litigation, which they who are blind to existing defects ascribe to a peculiar character in the people.

The relative merits of Supreme and Mofussil Courts can scarcely be estimated from the quantities of business transacted in them respectively. Appeals to the Supreme Court from subordinate jurisdictions are almost unheard of, for the latter tribunals are chiefly occupied in small matters not worth the expense of an appeal. In each of the Mofussil Courts, except the lowest, there is much business from appeals; no slight evidence of a defective judicial system.

The leading or principal natives at Bombay are greatly averse to appearing as litigants, which they seem to consider as a disgrace. During the last September term there was an important case respecting a ship called the "General Wood," which would have been kept back had not an English merchant consented to appear as sole plaintiff on the record; several natives were joint owners, but declined

declined to let their names appear. I am not aware that such feelings have much influence in the Mofussil.

Chief members of the native community at Bombay seek to acquire importance as patrons or protectors, and to this end are much employed in inducing litigants to accept their mediation. Much apprehension of their displeasure is apparently felt, and considerable sacrifices are made to propitiate them. With that view, in a recent case, a party compromised for a sum of money, an indisputable claim to a much larger amount, full payment of which could have been easily enforced.

The Supreme Court gives little encouragement to fraudulent or frivolous suits, a description of business, which, I have been told, is rife in the Mofussil; and by the advice of both branches of the profession at the Presidency, much litigation is prevented respecting matters which give employment to the provincial Courts.

Lastly, the Supreme Court only exercises jurisdiction over comparatively important matters, those of minor consequence being disposed of in the Small Cause Court and the Court of Requests. The Zillah Courts entertain the most inconsiderable suits—suits for less than a rupee.

Under such circumstances, it is difficult to draw comparisons founded on the quantities of business which the Courts in question respectively dispose of. I believe there is excessive litigation in the Mofussil Courts, and I attribute the excess to a very faulty judicial system.

Many years ago, on first arriving in this country, I also was told and swallowed much as to the excellence of provincial Courts, till certain particulars from time to time came to my notice, which somewhat abated previous estimates of their merit. At length, about the year 1832, a case for opinion detailed proceedings in a suit respecting a very simple matter, which had been carried through inferior country courts into the Sudder Adawlut. In every stage, such errors and improprieties were said to have been committed that I utterly disbelieved the statement, and in writing my opinion expressed unqualified disbelief accordingly. Some months afterwards a gentleman in the civil service of the Company told me he had read the opinion, and assured me that the case had been truly stated. Such an authority left no room for doubt, and such proceedings, I am confident, could not have occurred unless under a grossly defective judicial system. Prejudice may influence my judgment of such matters, but I rely on the opinion of others, whom I believe impartial, as well as upon my own, in professing a belief that the Company's Courts are unequal to the administration of justice, owing to several causes, some of which it may be useful to specify, as similar evils will, I think, affect the Court of the Law Commissioners.

Civil servants who preside in the Company's Courts have had no professional education or experience. Hence, they imperfectly comprehend rights and wrongs involving nice distinctions, or modified or rendered complex by manifold relations arising from the business of life, and they have no power of ascertaining how, in like cases, legal principles have been previously applied. Unguided by rules of law or evidence, they are easily misguided in various ways, through prejudice or passion, and being left much in their own power, they may allow others to exercise power over them. They become partisans more frequently, and when thus affected are more mischievous than professional judges, for they are less under control. It often happens that the Serishtadar has great influence with the European Judge of a provincial Court, especially as such Judge is generally but imperfectly acquainted with the language in which the proceedings are carried on. I am told he is seldom able to read or write it without difficulty. The proceedings are therefore read to him by the Serishtadar, who also records the evidence; and although the Judge may sometimes dictate the *words* of the decree, I understand that is not always or often the case, and the decree is almost uniformly written by the Serishtadar. What power may not that officer possess; and where the Judge is ignorant, or indolent and confiding, what mischiefs may or must arise!

Sir Erskine Perry expressed his disapproval of unprofessional Judges in a Minute upon the inexpediency of establishing at Bombay a Small Cause Court similar to one proposed to be erected at Calcutta in the year 1843. The Minute was sent to the Government of Bombay, along with a letter I had written on the same subject, dated the 6th January 1844. It appears, from the 2d and 13th Sections of the proposed Act for establishing the new Court recommended by the Law Commissioners,

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missioners, that such Court will be subject to the defect in question, and that all the Commissioners thereof, except the chief, may be without any legal education. Difficulties in law may easily escape the observation of an unprofessional Commissioner; and it is not improbable that, in his ignorance, he may make light of them or disregard them, especially as ample scope for self-sufficiency is provided, by leaving it dependent on his opinion of his own ability, whether the suit is to be proceeded with before him, or to be transferred to the Chief Commissioner.

On a former occasion, I observed that there is no expression of sound public opinion in India, where the presence and intervention of professional men are the most effectual, if not the only, checks upon the errors and infirmities of a Judge. That great benefits otherwise arise from the employment of counsel is apparent, from Sir Erskine Perry's letter to the Government of Bombay. In the 30th paragraph he says: "The eminent advantage of such (legal) assistance is so obvious, that no one would fail to avail himself of it, when within his reach, if his rights or possessions became the subject of legal discussion." In the 29th paragraph he says: "It is true, that in such cases (where parties are not wealthy enough to employ the assistance of counsel) the Court, in the absence of any forensic advocacy on either side, would often fail in discovering points material to the issue, points which the parties themselves might be blind to; and the law delivered would be frequently inferior in quality to what it would have been after hearing all that legal acuteness and industry could suggest."

In this country the advantages accruing from the employment of counsel are peculiar to the Supreme Courts; for although there are vakeels in the Courts of the East India Company, they are ignorant men, of very inferior station in life, and are incapable of instructing or controlling the Judges before whom they practise. They are permitted to contract with their clients for additional rewards or commission in case of success, and hence they become seriously interested in the result, and are under temptation to tamper with witnesses and to resort to other fraudulent proceedings.

In the last paragraph of my letter of the 4th of August 1843, I intimated my belief that the establishment of such tribunals as the Law Commissioners recommend would cause the annihilation of the bar at each Presidency, or that, at all events, counsel would seldom be employed. Sir Lawrence Peel is of opinion that such a consequence would not ensue, at least at Calcutta, and I have no doubt that if it did not take place at Calcutta it could not at Bombay. Sir Erskine Perry thinks the projected courts would open a much wider field for forensic talent and employment. After long consideration I retain my original impressions about the matter, for the following reasons:—

In the Small Cause Court at Bombay, so much referred to for its supposed similitude to the Court of the Law Commissioners, counsel are but little employed. Sir Erskine Perry says, "The eminent advantage of legal assistance is so obvious that no one would fail to avail himself of it, when within his reach, if his rights or possessions became the subject of legal discussion." My experience of the Small Cause Court leads me to a different conclusion. The dealings of many litigants therein prove them to be men of substance, and some money dealers who often resort to it are personally known to me, and I have no doubt they are wealthy, and yet counsel are seldom employed in that Court, and very seldom indeed by those who, from frequent experience, may have acquired greater skill in the conduct of their suits. The clerk or officer of the Court, if applied to, becomes agent and legal adviser to both parties, pretty much as the Judges of the Court of the Law Commissioners are to act. But although the agency of attornies is thus dispensed with, it often happens that a party, distrusting the officer of the Court, and reluctant to confide in one who is the confident of the other party, employs a native lawyer to manage his case, and it is chiefly where native lawyers thus conduct the business that counsel are retained for the trial. The chief reason for thus resorting to professional assistance may be, that although the officer of the Court nominally prepares the brief, the native lawyer often adds observations or the names of witnesses, and probably extracts some additional fees for himself. This alone may induce the native lawyer to advise his client to retain a barrister; for when we find that counsel are not much employed by suitor of skill and experience, it may be doubted whether the services of counsel are so beneficial in the Small Cause Court as in tribunals differently constituted; and the retaining of counsel in the Small Cause Court seems but little dependent on

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the difficulty or simplicity of the case. In causes of some difficulty, even between wealthy parties, barristers are not usually employed, whilst they are sometimes retained for the trial of very simple matters. Generally, when counsel appears, the case, however simple, lasts much longer than it would otherwise, and cannot be so summarily disposed of.

Sir Erskine Perry says, in a note to the 30th paragraph of his letter to the Government of Bombay: "The elicitation of truth amidst conflicting statements, the clear exposition of principles from circumstances immersed in matter, and the logical reasoning required to bring these principles within the rules of the law, are operations so immeasurably better conducted by men trained in legal science and controversy at the bar, than by the common herd of mankind, that it seems to me clear their services can never be dispensed with." To me, on the other hand, it seems clear their services will be dispensed with whenever they can be dispensed with, and that they can be dispensed with in such a Court as that recommended by the Law Commissioners and in the Small Cause Court at Bombay. The fact that in the latter Court they are, to a very great extent, dispensed with, in some degree establishes the proposition.

Professional aid is costly, and although the above-mentioned advantages arise from it, and therefore great benefit to society, yet the expense falls directly upon suitors, and will not be incurred if success can be obtained without it. The Court of the Law Commissioners will be, like the Small Cause Court, so constructed, that although barristers may practise therein, their assistance may yet be dispensed with, and when employed by one party only, may sometimes tend to the prejudice of the client, owing to the infirmities of the Judge. I believe it is essential to the advancement of justice that both parties be represented by counsel, and that will not always, or perhaps, often be the case, where practically, as in the Small Cause Court, the employment of professional aid is optional, and the retaining a barrister on one side does not render it necessary or expedient that the other party should appear by counsel also. In such a tribunal, where neither litigant is assisted by counsel, the Judge endeavours to decide impartially, and his efforts may be successful, although, as Sir Erskine Perry observes, he may often fail in discovering points material to the issue, and the law delivered may frequently be inferior in quality to what it would have been, after hearing all that legal acuteness and industry could suggest. If counsel appear for one only of the parties, the Judge may fail in his efforts to be impartial, for it lies upon him to be legal adviser on the other side; it depends on him alone to combat fallacies and sophistries advanced by the barrister, his competitor; his feelings may, and, I believe, often do, become interested to the injury of his judgment; a leaning to the side he advocates is engendered, and he may unconsciously become a partisan. Perhaps these considerations have weight with the experienced suitor in the Small Cause Court; if he and his opponent be alike without professional aid, they are so far on equal terms; should his adversary alone have counsel, he may think the Judge may therefore lean towards himself; and on his part he may be reluctant to be the only one to retain a barrister, lest the Court should contract a leaning to the side unprovided with such support. In criminal trials, if there be no counsel for the prosecution, I think a culprit has less chance of escaping when defended by counsel than if he be without such assistance, unless there be some point of law decidedly in his favour which might escape the notice of the Court, or unless there be a good defence, to be substantiated by witnesses, for examining whom professional skill may be important. I have reason to believe that persons under criminal charges have sometimes been advised to the like effect.

The grounds on which I thus account for the services of counsel being to a great extent dispensed with in the Small Cause Court at Bombay, will equally affect the Court of the Law Commissioners, in which I therefore think professional aid will be very seldom resorted to, although it is probable that native lawyers and other law practitioners, like vakeels in the provincial Courts, will often be secretly consulted. Indeed, the 18th section of the proposed Act for establishing the Court, should it become law, will in itself go far to exclude counsel from practising. A power in the Judge to declare whether the assistance of a lawyer was reasonably required or not, I have no doubt would often be capriciously exercised, according as piques or partialities arising from the deportment of counsel and various other causes might influence the Judge's mind. Besides, the unprofessional Commissioners will be in a great degree incompetent to form

 opinions

opinions on the subject, and it is not improbable that barristers may refuse to practise before them; but little utility or satisfaction can arise from discussing points of law with men wholly ignorant of the science.

If the services of professional men be virtually excluded, the evils pointed out by Sir Erskine Perry must arise, and Judges will often fail in discovering points material to the issue, and the law delivered will be frequently inferior in quality. If the Court of the Law Commissioners should be defective in such important particulars, and if it should become, as is intended, and I doubt not will be the case, the only Court at each Presidency, must it not prove highly detrimental to the prosperity and morals of society?

Other defects in the provincial Courts arise from the mode of pleading therein. In the 4th Bombay Regulation of 1827, rules for pleading are prescribed; they are so general that under them a very good system might be pursued; but the pleaders and the Judges in those Courts are unprofessional, and, perhaps, very properly under such circumstances, there are no provisions for enforcing conformity to the rules, which in practice are but little attended to. I have now before me some specimens of the pleading which in fact occurs; they are prolix, inconclusive, impertinent, argumentative, declamatory and discursive. Hence, not only are they more protracted than pleadings in the Supreme Court, at least on the Plea side thereof, but departures in pleading are frequent; the grounds of suit and of defence are shifted; immaterial issues arise, and matters really important are overlooked; moreover, it frequently becomes difficult to ascertain whether any and what issues have arisen, or whether any and what evidence is required; problems which, under the 23d Section of the Regulation, the Judges of the Courts in question have to solve, and to that end are obliged to consult and have intercourse and interviews with the parties, whereby prejudices and prepossessions are engendered. So far as pleadings in the Court projected by the Law Commissioners shall be prepared by unprofessional men, I have no doubt the evils alluded to, as occasioned by ignorant pleaders, will arise; and since the pleaders, whether professional or unprofessional, are also to be the judges, and further, are to act as legal advisers to the parties, I am confident they will very often become partisans, arbitrary and unjust, especially as in a short time there will be no other tribunal in view to control or afford a better example, and as counsel, if my opinion be correct, will seldom or never practise in the Court of the Law Commissioners.

It is said that pleading or special pleading is inapplicable to India, because "it is almost impossible that a race of men like special pleaders should flourish in this country; and from the remarks of Sir L. Peel, Sir Erskine Perry gathers that the Statute of Beaupleader is as much a dead letter at Calcutta as it is at Bombay." During my experience of nearly 16 years at the latter Presidency, I have seen several barristers whose reasoning powers were well developed, and who, I believe, are and were (for some are dead) not incompetent as pleaders. Pleaders go wrong occasionally in England, more frequently in India; but in the latter country they are pretty much on a par as to the science with the Judges before whom they practise. Consummate skill, however, is by no means essential either to the bench or bar, and it is obvious that pleaders, however imperfect, are more likely to attain the ends of pleading by aiming at a perfect system, than by avowedly adopting one which is inaccurate and incomplete, or by disregarding the rules of pleading altogether. A great deal of what is complained of as technicality in pleading, is founded on analysis of the intellectual faculty, and is in conformity with and in furtherance of the operations of logical minds occupied in determining a dispute. There was a time when, through excessive strictness, the end was often sacrificed to the means, justice to a blind adherence to certain rules prescribed for its attainment, but by due relaxation of which their object is frequently secured. Accuracy should be required to a salutary extent, or the rules of pleading, as in the provincial Courts, will soon be disregarded, and it is very difficult to ascertain the medium between over-indulgence and being extreme to mark what is done amiss.

If a just remission of rules and due indulgence as to amendments be truly and uniformly aimed at by the Courts, the whole system will be progressively ameliorated, and the mischiefs of occasional or frequent error will be greatly remedied. Sir Erskine Perry commends the practice in the Small Cause Court of referring all technical errors in the pleadings to the jeofail of the clerk. Such a practice may be safely carried to an unlimited extent in that Court where the officer acts

as agent to both parties; under such a system, it seems impossible that a technical error can mislead either party. In the Supreme Courts it might be a rule that, at the trial, no pleading shall be held invalid on account of verbal or technical error; that the Court shall decide what is verbal or technical error; that all mistakes which shall not have misled the opposite party shall be deemed merely technical or verbal; and that where such mistakes have occurred, the pleadings shall be construed and altered according to the meaning of the parties.

For a long period, as already mentioned, demurrers for matters of form have been discountenanced in the Court at Bombay, and are therefore very rare; but previous to the trial certain errors in pleading may be objected to, which, with a view to enforce due attention and skill in pleaders, ought not to be excused; for instance, errors which preclude the opposite party from logically taking issue. Such defects may be considered by some persons as merely technical or verbal, but they are substantial, and not merely formal.

The Court at Bombay has exercised such powers with respect to amendments, &c., as are conferred on Courts of Record and Judges at Nisi Prius in England by the 3 & 4 Will. 4, c. 42, sec. 23, 24. In this the profession appeared to acquiesce, and perhaps the authority might be assumed, or the like ends obtained under the clauses in the Charter directing the Court to give judgment according to justice and right.

The Law Commissioners object chiefly or solely to the mode in which neglect of the rules of pleading is visited upon suitors, and the consequent mischief. They allege that this can only be remedied by what they term oral pleading, but which in fact is written pleading, prepared by the Judges or Commissioners of the Court. Sir Erskine Perry, on the contrary, proposes to abolish pleading altogether, What he terms oral pleading, consists in the story of each party being told orally, and if there be no consequent reduction to writing, there is in fact nothing that a logician can call pleading, especially if every suitor is to tell his own story, without professional aid. He obviously advocates the total abolition of pleading, because in the 22d section of his Minute he repudiates an essential quality of every system of pleading, the separation of the law and fact; and in the 28th paragraph he even denounces the petition and answer system, of which he says, "This mode of procedure contains within itself all the inherent defects of special and equity pleading. The suitor's story is not told by himself, but by his legal adviser." In the previous sentences he had said, the petition and answer system "has uniformity and simplicity to recommend it. Any one can draw a petition. No inveterate forms oppose themselves as obstacles to prevent the Judge from finding his way to the fact in the case." He cannot mean to intimate that although a petition be uniform, simple and free from inveterate forms, so that "any one can draw a petition," it necessarily contains within itself all the inherent defects of special and equity pleading, or that the story told in a petition is necessarily told, not by the party himself, but by his legal adviser. This 28th paragraph, in fact, imports that a party himself, and not his legal adviser, should tell his story to the Court; and that a party is not even to employ the simple uniform petition, which any one can draw, as a vehicle for his story, but should tell it orally himself, without using any written pleading whatever. The note upon the 21st paragraph of his letter to the Government of Bombay, it appears to me, confirms this construction. He therein concedes to the Law Commissioners "the use they propose to make of certain rules of special pleading which have been found effective in practice," and subsequently adds, "I conceive, however, that if written pleadings are abolished, and with them, the greater part of the technicalities with which written pleadings are accompanied, it is a misnomer to apply the designation of special pleading to a new system in which only a few of its rules are adopted." Thus, he contemplates the abolition of written pleadings, and five minutes' reflection will convince many a man, that if written pleadings be abolished, no logical pleading can easily be carried on; in fact Sir Erskine Perry intends there shall be no pleading whatever beyond the telling of his story by each party, for there is nothing in the Minute to import, that according to his plan anything further is to take place, although we may conclude the Judge or officer is to be at liberty to make notes.

The Law Commissioners, on the other hand, propose a widely different system; for they intended that from the oral pleading of the parties, or other agents, written pleadings shall be framed, not by a professional adviser indeed, but by the Commissioner or Judge. Nor do they intend, as Sir Erskine Perry assumes, to

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use certain only of the rules of pleading; for in their Report they say, "In the Supreme Court there are the elaborate rules of English pleading, calculated for the most part, as we believe, to produce the best results, when they are observed;" and further on they say, "The logical rules which constitute the essence of pleading are of universal application;" and, using the words of Mr. Serjeant Stephen, they term special pleading "a fine juridical invention," and they object to the oral pleading in the Court of Requests as not being subjected to any rules; whilst the rules they prescribe in their Draft Act, Section XII., for pleading in the intended Court, might embrace an elaborate system. That they intend a pleading much more special than Sir Erskine Perry advocates, is apparent from their precepts to separate law and fact; that pleas be kept distinct from demurrers, and that no plea be double or argumentative, &c. There are no provisions, however, for enforcing adherence to the rules, which I have, therefore, no doubt would soon become, like rules for pleading in the provincial Courts, mere dead letter. Through want of skill and experience, the unprofessional Commissioners would be incompetent to carry out the system, and through want of responsibility, and consequent inattention, the professional Commissioners would soon become almost equally inefficient; and therefore, even as matters stand, I have no doubt that pleadings at law, in the Supreme Courts, are more concise and sufficient than pleadings would be under the system of the Law Commissioners.

In the 11th paragraph of his Minute, Sir Erskine Perry expresses himself to the effect that, "so far as his experience goes, the immense expenditure which attends a trial in the full Court is not rewarded by bringing the case to be tried a whit more satisfactorily before the Judges," than it would be brought before them in the Small Cause Court. I have already said that barristers are seldom employed in the Small Cause Court, but by the passage above quoted Sir Erskine Perry does not mean that no benefit results from the attendance of Counsel at a trial; such a construction would be irreconcilable with the opinions subsequently given in his letter to the Government of Bombay as to the advantages accruing to Judges and suitors from professional services. He intimates, I conceive, that the written forms adopted for bringing a case to trial in the Small Cause Court are as effectual and satisfactory as the mode of pleading in use in the Supreme Court. I concur in that position so far as the jurisdiction of the Small Cause Court and the forms of declaration used therein are concerned; but thus far there is little difference between the latter Court and the Supreme Court. The process of the Small Cause Court is confined to actions for debts and liquidated damages, in which the cause of action does not exceed 350 rupees. A very simple form of declaration is prescribed, which in itself affords but little information as to the nature of the claim preferred, a knowledge of which is acquired by the Judge, and perhaps by the defendant, from statements made by the officer, and from the bill of particulars which accompanies the declaration. Thus there is little that can be called pleading on the part of the plaintiff in that Court, especially where the claim is founded on an *indebitatus assumpsit*; and the like observations may be made as to similar actions in the Supreme Court; for the money counts are as simple and as brief as the counts adopted in the Small Cause Court, and in themselves afford as little information as to the ground of action. The same also may be said of other forms of declaration used in the Supreme Court. What can be more general or vague than a declaration in trover or ejectment; what particulars of the suit can be collected from such preliminary pleadings? In each Court the declaration on a bill of exchange or promissory note is somewhat more explanatory, for it describes the note, and shows whether the defendant is sued as drawer or acceptor, &c. But since the new rules were established, the counts on bills and notes in the Supreme Court are as simple and brief as declarations on such instruments in the Small Cause Court. On the whole, it seems to me, that in actions for debts and liquidated damages, and for several other matters, it signifies little what form, or whether any form, of declaration be adopted. It is only requisite that the defendant have notice of the claim preferred, and that may be communicated in various and very simple ways. When relief is sought, either in law or equity, upon unusual grounds, more precision in the introductory pleading may be expedient.

If, therefore, the declarations used in the Small Cause Court be similar to those employed in like cases in the Supreme Court, it may well follow that, so far, a case for trial is brought before a Judge as satisfactorily in the one court as in the other. But my concurrence in the opinions of Sir Erskine Perry on this subject goes no further; for in the Small Cause Court there is virtually no pleading at all on the

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part of the defendant, who alleges he is not indebted, or makes some statement equally vague, and under such a plea is permitted to adduce any matter which may form a defence to the action. Although this answers in a Small Cause Court, where the officer acts as agent or legal assistant to both parties, and is thus previously apprised of the defence to be set up, I cannot think, with Sir Erskine Perry, that a case is not brought before the Judges more satisfactorily in the Supreme Court than in the Small Cause Court; for, in my opinion, the procedure in the Small Cause Court is chiefly defective, because the officer of that Court acts as agent and legal adviser to both plaintiff and defendant. The mode of pleading in question may be the best which could be adopted under what thus appears to me a very imperfect system, but it does not remedy what I consider the defect, and that mode of pleading would be insufficient in the Supreme Courts, where, as in the Superior Courts in England, the respective litigants have each his own professional agent and adviser. Formerly, in those courts, a very vague, general style of pleading on the part of the defendant was admitted in cases of the same description with those within the jurisdiction of the Small Court; but in order to obviate the consequent inconvenience, and the necessity thereby engendered for the plaintiff coming armed at all points, new rules requiring greater precision in pleading on the part of defendants were prescribed, first in England, and afterwards in the Supreme Courts of India. Still, in many important matters, great latitude of pleading is allowed to defendants in the Superior Courts, as well in England as in this country; but the effect of the new rules has been the introduction of greater precision in pleading by defendants, and considering that those rules were framed by the Judges of England, we may hesitate to yield to the opinions of those who would virtually abolish pleading altogether.

But the Small Cause Court at Bombay, it is argued, has succeeded, and therefore the proposed Court must be successful. The jurisdiction of the Small Cause Court is limited; that of the proposed Court is to be unlimited. The Small Cause Court co-exists with the Supreme Court, a better tribunal, affording to Judges, suitors and the public an example, as I believe, of a better administration of justice; and the Judges, being chiefly occupied in the latter Court, are less liable to become arbitrary, negligent or ignorant. The proposed Court will soon become the only tribunal at each Presidency; for, as the cheaper forum, it will carry off all business from the Supreme Court, especially as it is probable the Judges of the former will be unable to resist a leaning on their parts towards the plaintiffs. It is well known how business increased in the Court of Common Pleas in Ireland owing to Lord Norbury's inclination to the plaintiffs.

In the 30th section of his Minute, Sir Erskine Perry speaks of examination of the parties as adopted in the Small Cause Court at Bombay, and in the 39th paragraph of his letter to the Government of Bombay he says, the parties are examinable in that Court at each stage of the inquiry, and that, therefore, in every case where conflicting testimony occurs, immense advantage is obtained by the power of sifting the parties themselves. I hence conclude that Sir Erskine Perry, when presiding in the Small Cause Court, examines and sifts the parties. I have myself gone as far as I have seen other Judges go in that Court; that is to say, when a case has been nearly brought to a conclusion, and it has become almost certain whether the plaintiff or the defendant would succeed, I have asked the losing party if he had any thing to say with respect to such and such matters, obstacles to his success. This I have done, not intending to rely upon what the party might say, but in order to obtain a clew to further evidence, if any, and because it often happens that the officer of the Court has not been fully informed by the parties, or has failed to elicit all the particulars of the case. I have never seen any other Judge go further in the Court in question. Sir Erskine Perry's practice may be very salutary, but I am not aware of the law or custom by which it is authorized.

I incline to think that the *vivâ voce* examination of parties to suits in law and equity would have a beneficial effect. If that procedure be expedient and should be legalized, it would in itself work an important change, and greatly reduce the expense of litigation. It might be as well to try such an experiment before having recourse to the greater innovations recommended by the Law Commissioners. Against such a measure it may be strongly urged, that thereby the

system of intermediate agency between the Court and the suitor is violated; that system by which, to use the words of Sir Lawrence Peel, "in spite of natural inequalities, the powerful and the weak, the negligent and the ignorant, the bold and the timid are enabled to meet in equal terms on the arena of justice." It is said that to place suitors on equal terms, you should take their examinations, as well as their pleadings, from their law agents, giving to the other side the power of excepting to insufficient answers or examinations, and relying on the penalties against perjury and the characters of the practitioners as protections against falsehood and fraud. The mental qualities of suitors are indeed as various as their physical strength. One party may be dull, ignorant or old; his memory may have failed, he may be agitated or nervous. If required to answer, on the instant, to matters contained in a bill or answer, or to things relating to the subject of dispute in an action at law, he may make incorrect statements or admissions to his prejudice, because he makes them without due and just qualifications. Very different would be the situation of an able, bold or cunning person, self-possessed and fertile in resources and explanations. To a considerable extent, however, the like objections apply to *vivâ voce* examination of witnesses. It may be replied, indeed, that the statements or answers of a party may be looked upon as admissions, without due allowance being made for mental or physical infirmities, or without its being perceived that anxiety as to the result, or other matters, so agitated the examinant as to incapacitate him from doing justice to his case. Are Judges incompetent to the full perception and consideration of such matters, and the making just allowances accordingly, or are jurors supposed equal to these arduous duties, which are frequently entrusted to them when trials of issues are directed by the Court of Chancery? However these queries should be answered, the feeling in England is adverse to the *vivâ voce* examination of parties, and although under decrees in equity the Master is directed to examine witnesses *vivâ voce*, if he thinks fit, he is only allowed to examine the parties on interrogatories.

I do not greatly advocate the *vivâ voce* examination of parties, upon the ground that Judges may derive assistance from observing the demeanour of the plaintiff and the defendant. Unless in peculiar instances, where deportment is strongly marked and of a very decisive character, I think it unsafe to allow the demeanour even of an ordinary witness to have much influence on the mind. Judges, jurors, barristers unemployed in the pending suit, and by-standers, often differ widely in their respective estimates of the demeanour of a witness, and very fallacious opinions, I believe, are often formed by those who much rely on such criterions. In my opinion, indeed, the most formidable objection to the *vivâ voce* examination of parties is, that it would to a great extent violate the system of intermediate agency between the Court and the suitor, and place Judges in a situation in which they would be particularly liable to contract sympathies, antipathies and prejudices, or to indulge, strengthen or give effect to such affections, if pre-existent, or otherwise derived. In the 2d page of Mr. Gresby's book on Evidence, there is the following note: "Doubtless a Judge will occasionally betray a feeling or a bias of which advantage may be taken: suitors are said sometimes to have assumed the appearance of poverty in order to find favour in the eyes of Lord Hale." Sir Herbert Compton told me that the leaning of the Court to pauper parties was matter of observation at Calcutta, and I have heard it strongly hinted at in the Court at Bombay. But, as already suggested, if the *vivâ voce* examination of parties be inexpedient, might they not be examined on interrogatories? Might not each party, as well at law as in equity, be permitted to file or deliver interrogatories for the examination of the other? Pleading in equity might then be abbreviated. Bills of discovery, with reference to actions at law, might be abolished; and if defendants in equity were to be considered acting parties, and entitled to call upon the Court to order fraudulent instruments to be cancelled, &c., cross bills might be also disallowed. A bill to enable plaintiffs and defendants to examine each other on interrogatories was brought into the House of Lords by Lord Wynford several years ago, but was thrown out, being opposed by the present Lord Chancellor and Lord Eldon.

Shortly before Mr. Anderson acted as Governor of Bombay, he told me it was intended to establish at Calcutta a court similar to the Small Cause Court at Bombay, and he asked what I thought of the latter. At that time, I had no idea the discussion now pending could arise, and so far, my reply, that it required great care to prevent the Small Cause Court from becoming a nuisance, was perfectly impartial.

partial. That opinion was founded on experience as counsel as well as upon the bench. I thought that as, in the Court in question, Judges were to a great extent uncontrolled and unassisted by counsel, the proceedings were sometimes over summary, the law delivered of inferior quality, and material points of law and fact undiscovered or unnoticed. Evils of the latter description, I thought, frequently arose from the officer of the Court acting as agent for both parties, by one or other or both of whom he often was distrusted, and was thus kept in the dark as to important features in the case. It is a common allegation of the officer that he has been unable to get such a party or parties to attend upon him. Even when sufficient attendance of parties is attainable, the officer cannot be expected to feel the same zeal or to exhibit the like energy or skill on behalf of either of the suitors, or for both, as would be evinced by a professional assistant for one party only. Moreover, as the officer acts as agent and legal adviser to both parties, and has personal intercourse with them in those capacities, he is very liable to contract a bias to one side or the other, and, I think, almost always does so. The Judge, it seems to me, is very much in the power of the officer, who states the case on both sides to the Court, and the party against whom the officer has a leaning is pretty much in the predicament of having his case stated by his opponent's counsel. Owing to the above circumstances, it appears to me that the Court for Small Causes, though a good Court of the kind, and useful, holds out great encouragement to fraudulent litigation, and does injury, to some extent, to the welfare and morals of society. It may be said that many of the evils alluded to are attributable to the intermediate agency of an officer; whereas in the Court of the Law Commissioners, the Judges are to perform those duties which devolve upon the officer in the Court for Small Causes. I do not, however, impute any wilful misconduct to the officer of the latter Court. I merely think he is influenced as a Judge or any other man would be, if similarly circumstanced; that the Judges of the projected Court will be influenced in the same manner, and that as they are to have greater power, greater evils will ensue.

It appears from the Draft of the Act prepared by the Law Commissioners that in the intended Court the plaintiff, or, under certain circumstances, his agent, is to appear before a Judge or Commissioner of the Court, and orally, or in writing, lay the case before the Commissioner, who thereupon, and from what he may elicit by examination of the plaintiff or his agent, is to frame the declaration. If the Commissioner discerns any cause of action, the defendant is to be summoned or arrested as the case may require; and he, or, under certain circumstances, his agent, is to appear before the Commissioner, who may examine him, and who, in the presence of both parties or their agents, is to proceed to take the pleadings and settle the demurrers and issues of fact.

Whatever renders a Judge active in conducting a cause is bad in principle and inconsistent with his functions; an axiom which, in every stage of procedure prescribed for the intended court is wholly disregarded. Whilst unusually extensive powers are given to the Judge, the system of intermediate agency between him and the suitor is violated throughout, and accordingly prejudice and passion will have ample room as well as ample grounds to operate.

In the first instance, the Commissioner is to discharge those duties which an able, upright attorney performs towards a client preferring a claim against another person. He is to hear or receive the statement of the claimant; elicit, by queries or otherwise, further information, if expedient; for which latter purpose he is to be armed with power to punish prevarication or falsehood, and he is then to determine in his own mind whether there be any valid cause of action. I think all this would be better done by an attorney, to whom, as being his own agent, and of his own selection, and not a Judge, the party might be more candid and unreserved. I have the less doubt the attorney would be more effective than the Commissioner, because the latter is also to act as agent and legal adviser to the defendant, and the plaintiff will be most reluctant, I believe, to confide the whole matter to the Commissioner, and will endeavour to conceal weak points, and whatever may, in his opinion, have an injurious effect upon his case; all which an attorney might be able to discover. The like observations may be also made respecting the Commissioner's agency for the defendant. Should either party appear to shuffle, with a view to better his case, the Commissioner, whether he impose a penalty or not, may contract a bias against him; but I think his leaning will usually be against the defendant, for his more active agency will in

general be exercised for the plaintiff, with whom, to some extent, he may identify himself accordingly. Besides, much delay and many adjournments will often occur before the case of each party can be fully understood in order to being duly expressed in the pleadings; and the Commissioner will want zeal and inducement to exert such energy, skill and patience with respect to either of or both the litigants as would be exercised by a responsible counsel or attorney acting for one party only; and in the absence of professional control and assistance, the Commissioner's conduct may be arbitrary; he may fail in discovering material facts and points, for parties themselves may be blind to facts as well as points of law, if they do not perceive how they affect the case; and the law delivered may be frequently inferior in quality.

Not only are Judges and the parties themselves blind to important matters of law and fact, which with professional aid would be discovered, but it often happens that where a Judge perceives a point, he at first considers it untenable, and if alone would unhesitatingly overrule it, and yet the same point is afterwards put by counsel in a different light, and becomes the principal feature in the case. It may be said parties are to be at liberty to employ attornies and counsel in the intended Court, but for reasons already given, I think they will seldom have such assistance, especially as they can only have it under restrictions; and the Draft of the Act obviously imports that the Commissioners are in general to discharge those duties which are now usually performed by attornies or counsel. In general, therefore, it is to rest with a Commissioner, professional or unprofessional, unchecked and unaided by counsel, to determine whether the plaintiff has stated a good cause of action; in other words, whether the action is to be instituted or not, and also, whether any and what points of law or issues of fact are to be raised. These last-mentioned matters must be left to his discretion, unless it shall be incumbent on him to take every demurrer and raise every issue suggested by the parties; in the latter case endless prolixity and nonsense must ensue, and if he is to exercise discretionary power in such particulars, he will be often subjected to reproaches and upbraidings, not always unjust, from the unsuccessful party.

Although Sir Erskine Perry discards written pleading altogether, the Law Commissioners adopt them. As already mentioned, my own conviction is that pleadings at law in the Supreme Court are already more concise than pleadings will be under the system of the Law Commissioners, and I have no doubt that pleadings in equity might be reformed so as to secure a like result. The Commissioners of the intended Court, whether professional or unprofessional, would find it difficult to frame declarations or pleadings more brief, and yet sufficient, than those most commonly in use on the Plea side of the Supreme Courts. In the more unusual pleadings there is much room for improvement. Abbreviation is difficult and laborious, and considering how irresponsible the Commissioners of the proposed Court will be, as compared with barristers and attornies, I think that after a little time their pleading will be inadequate and prolix. In brevity of pleading, I therefore believe, nothing will be gained under the proposed system, and but little, if any thing, in the cheapness of drawing pleading. Most or very many of the pleadings now used at law are drawn by attornies, and for them a comparatively small rate of remuneration is charged; but whether pleadings be drawn by attornies, barristers or judicial commissioners, they must be paid for in one way or another. Under the new system, Judicial Commissioners are to perform the part of attornies, counsel or officers of court; and thus a much greater number of Judges will be required, and if such Judges are to be remunerated upon any thing like the same scale as civil functionaries in the service of the India Company, they must be highly paid, and yet the greater portion of their duties will be such as are now performed by barristers and attornies. A great portion of their pay may thus be considered as costs for their services in acting as attornies or counsel and in drawing pleadings; and upon striking a balance between such costs of drawing pleadings under the projected system, and costs as they might be reduced under the existing system, I am confident there would be little, if any, difference in favour of the former. Such costs of drawing pleadings by Judicial Commissioners would probably be extracted in some way from the suitors; but if not, they must fall wholly upon the Government; and if Government were to pay salaries to officers of the Supreme Court, instead of leaving them to be supported by fees, pleadings might be delivered between the parties,

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and the expense of pleadings would then be little if any thing beyond that incurred in drawing them.

Sir Erskine Perry believes he has fully met and refuted Sir Lawrence Peel's objections; it appears to me he has done neither. I shall not, however, go at any length into the argument, but limit myself to observing that Sir Erskine Perry assumes that those objections are resolvable into two propositions:—"First, The proposed plan will introduce misdecision, and consequently uncertainty, into the law. Second, The plan gives the Judge too much power." As to misdecision, he says: "This class of objections proceeds upon two assumptions: First, That the proposed procedure will not bring the facts in each case to the notice of the Court. Second, That upon the facts so brought, the Judge will decide on arbitrary notions of justice and equity, and not on the substantive law of the land." This last position he terms an assumption altogether untenable and gratuitous, because "no change is proposed to be made in the substantive law of the land, but only in the mode in which the controversies of suitors are to be brought forward, in order to have that law applied to them." What he calls the first assumption, viz., "that natural procedure will not bring out the facts," and which he imputes to Sir Lawrence Peel, he says, "is therefore all that needs to be noticed." After asking, "what arguments have been brought forward by Sir L. Peel to warrant this assumption?" he says, "To me it appears that the great advantages of the scheme consist in its aptitude to admit of all facts in issue between the parties being readily brought before the Court, and that it is directly calculated to obviate those evils in the existing system, by which essential facts are often shut out, and by which so many decisions pass irrespective of the merits of the case." He then alludes to cases at the assizes in England, in which, through mistakes of pleaders and negligence of attornies, the parties have been turned round on the pleadings, or put out of court by a failure to prove a notice or signature, and concludes by saying, the volumes of Reports "are equally full of decisions, where the interests of suitors have been concluded *for ever* on some blunder or other of their legal advisers, and wholly irrespective of merits."

There are few professional men but will deny that this last assertion, as to interests of suitors being concluded *for ever* on some blunder of their legal adviser, irrespective of merits, is warranted by any thing that occurs in England at the present day, and I am not aware that there has been any instance of the kind at Bombay. As to parties being "turned round on the pleading," I certainly think the Court at Bombay has not shown ready liberality in these matters, although on some occasions, to prevent the results in question, effective measures have been adopted, and adjournments granted from day to day, and even from term to term. I cannot at this moment recollect any case in which a party has been so "turned round," of late years, at Bombay; and if Judges have not already the power I think they possess, of remitting rules and adopting measures to meet the exigencies alluded to, such power might easily be conferred, and its exercise rendered incumbent on the courts. The mischiefs mentioned by Sir Erskine Perry could not indeed occur under the system he proposes, for thereby, as already shown, written pleading is to be altogether excluded; the parties are to tell their stories orally, and are not even to make use of petitions which "any one can draw," lest the story should be told, not by the party himself, but by his legal adviser; and as there is no provision for reducing the oral pleadings into written pleadings, conformable to the plan of the Law Commissioners, parties cannot be turned round on the pleadings.

But the first assumption ascribed to Sir Lawrence Peel is, "that the proposed procedure will not bring the facts in each case to the notice of the Court;" and one of the objections resolved into this last proposition is, that "the plan requires a Judge of higher qualities than can be found, and even the highest qualifications would not be sufficient to ensure success, because the Judge would have too much power." It appears to me, that to fulfil the duties of attorney and counsel to each of two adverse litigants, a man requires very high qualities indeed—qualities rarely, if ever, to be found; that some of the difficulties of acting in this double capacity are but little diminished, whilst others equally formidable arise, where the same person also undertakes the office of Judge between the parties, and that he who presumes to exercise such various and inconsistent functions will probably fail in his duty as a Judge, especially as in each capacity he will have very great discretionary power,—power which, from the infirmity of human nature and the want of

adequate control, must occasionally or often be abused. It therefore seems to me that owing to the difficulty of the various duties assigned to the Judicial Commissioner in the intended Court, and the occasional or frequent abuse of the discretionary powers entrusted to him, the proposed procedure, although it may often bring the facts in a case to the notice of the Judge, inasmuch as the party, when not himself blind to them, may disclose them, yet that such facts may be distorted, disregarded or made light of as ignorance, prejudice or passion may suggest, and that, under the like influence, the law applied may oftentimes not be the substantive law of the land, but such law strained, shortened or misinterpreted as occasion may require.

But in the 23d paragraph of his letter, Sir Erskine Perry mentions what he considers preventive checks upon undue exercise of power by Indian Judges; to wit, "the Judges of the Supreme Courts have very little of the moral support which Judges in England derive from the influential classes of society." Therein, it appears to me, lies the greatest danger. Moral support would sustain them when right, and abandon them when wrong. Upheld thereby, they would disregard the cabals or opposition of those whose fraud, violence or injustice were corrected or impugned in the administration of the law, and the apprehension of losing such support would greatly tend to keep them within due bounds. Unaided and uncontrolled by this moral influence, they may truckle, temporize or shrink from uncompromising performance of their duties, or they may overstrain their power for their own gratification or that of others.

Sir Erskine Perry further intimates that the local governments and governing classes feel that the Supreme Courts have hitherto, in some slight degree, controlled them. The existence of any independent Court in the country would produce the like effect. As he observes, however, the restraint, although lightly and temperately administered, can scarcely prove otherwise than galling, and I believe it has long been their object to remove it, and various proceedings of the Law Commission are obviously tending, in various ways, to its removal, and to the establishment of courts of a very different character. Under such circumstances the local governments and governing classes may be, as Sir Erskine Perry leaves us to infer, very anxious to detect judicial errors; but the same feelings which occasion this anxiety indispose them to afford that moral support already mentioned, and which, by being attendant on a Judge when right, and forsaking him when wrong, is the chief security for due administration of justice. In fact, the local governments keep carefully aloof, unless when cases are brought forward in which they are intimately concerned, and that is but seldom; for there is scarcely an instance of a prosecution for an offence by a civil servant being instituted in the Supreme Court, such matters being almost uniformly disposed of by secret committees; and as to civil cases, there is generally such a leaning on the bench towards the ruling power as deters many a suitor from going to law. A man must have a strong case to succeed where he is opposed to the local government; and when at the bar, I have several times advised against the institution of suits against the East India Company, or where the Government of Bombay upheld the opposite party, not because I thought the client had not a fair demand, but because I was convinced the Court would lean against him so strongly, that even if he obtained a verdict he would probably be saddled with his own costs, or that very inadequate damages might be awarded. Still the Supreme Courts are some check upon power, which would otherwise be more without control. Notice must be taken by the Government of glaring offences of civil servants, and redress for civil injuries must often be accorded, because the Supreme Court is open to aggrieved parties if they choose to proceed in it; and if driven to seek redress in that way, publicity and inquiry are at least attainable; for where attornies and counsel practise, they cannot well be evaded, and in courts such as the Supreme Courts, there are, even in this country, some strong restraints upon the Judges.

Another supposed preventive check is mentioned in the following terms:—"The public press represents the interests of the executive classes almost exclusively, and, therefore, has additional motives to the tendency of a public press generally to keep a rigid look out for judicial peccadilloes." The newspaper trade has a demoralizing effect on those engaged in it. In India especially, the European societies being very limited, individuals frequently come into collision, petty party feelings and personal likings and dislikings are engendered, and when newspaper editors assail or applaud a man, professedly on public grounds, it often happens they have been instigated by some dishonest, paltry motive; hence, although

although their misstatements of facts are mischievous and annoying, their opinions are usually considered worthless. Each Indian newspaper primarily represents the selfish interests, opinions, party feelings, piques and prejudices of particular individuals or cliques who are proprietors, or of its editor, and in a small society these concerns are so paramount and absorbing that public spirit has but little opportunity to operate. If it be made worth while to the proprietors or the editor, directly or indirectly, as it often is, the newspaper will advocate the views of the executive classes, and not otherwise. But the argument may be put into a small compass. Sir Erskine Perry does not ascribe the representation of the interests of executive classes by Indian newspapers to high or public feeling. It has rarely sprung from so pure a source. Hence, however the public press may look out for judicial peccadilloes, its censure, as its praise, must fail of having full effect, and the preventive check in question must to some extent be feeble and ineffectual.

Lastly, Sir Erskine Perry thinks the bar in this country "more prone to concur to any carpings and cavils at judicial authority than to support it, even in its due exercise, by their moral influence." That the bar in India are not so useful in the latter respect as the English bar, I cannot deny, and, no doubt, unworthy characters are to be found at the bar as well as in other walks of life, but they are soon detected, and become insignificant. Still I fear the animadversions of the bar upon the exercise of judicial authority in this country are frequently correct, and I have no doubt they are more felt by the Judge, and have greater effect upon him, than observations from any other quarter, and are more effectual than any other check. There are always some men in the profession whose respectability, knowledge of law and honourable feelings are unquestionable; whose opinions cannot be disregarded, and who will abide by a Judge in good report or evil report, so long as they think he has fairly done his duty, and who will only impugn his conduct when they honestly think him in the wrong. I, therefore, think the bar form, indeed, a preventive check, but not because of their proneness to concur in carpings and cavils, a quality which must tend to lessen their moral influence and ability to control.

Each of these supposed restraining powers, except the last, is represented as arising from the peculiar situation of Judges of the Supreme Courts; they are, therefore, inapplicable to the Court proposed by the Law Commissioners, the Judges of which, it may be inferred, from the Draft of the Act accompanying the Report, are to be appointed by the Governor of Bengal, and are to be paid each such a salary, respect being had to his qualifications, as to the Governor-general in Council shall seem meet. It requires no great discrimination to perceive that such Judges will be circumstanced very differently from Judges of the Supreme Courts; that they will have a strict connexion with the local Governments of the country from which their appointments will have been obtained, and upon which the amount of each respective salary is to depend; that they will seldom or never be placed in anything like conflict with the governing classes of the community, by which and by the press, so far as it may represent the interest of those classes, such Judges will accordingly be upheld; neither can these supposed restraining powers apply to the Court proposed by Sir Erskine Perry. Should the tender of his services be accepted, and should he be appointed Chief Commissioner of such Court, either at Calcutta or Bombay, he will have been appointed by the local Government; in whatever light he may view himself, he will not be viewed by others as a Judge of the Supreme Court, and he may not experience any want of that species of moral support, the want of which he has relied on as restraining the abuse of judicial power.

Judges in the colonies, I understand, are to some extent dependent on the local rulers; and I have been assured that defects in the administration of justice consequently arise, although in each colony there is usually a large European population, not forming a part of the executive class, but mixing therewith, influencing and controlling it, and although English colonists, if seriously injured, may become so clamorous as to make themselves heard in Downing-street or at Westminster, and, therefore, local rulers may study to appease them. In this country, however, there are but few Europeans not included in or employed under the executive class; the influence and power of which class is therefore paramount. The natives have no intercourse on equal terms with the executive European class, or with Europeans in general, and the difficulties they encounter in seeking relief in England are notorious; hence one ground of the expediency of having

in this country Courts independent of and unconnected with the local authorities, and which after all has been but imperfectly effected.

Sir Benjamin Malkin, it appears, carried out at Singapore and approved of a system somewhat similar to that proposed by the Law Commission. His judicial qualities are highly spoken of, and under him the system may have worked better than could be expected under a Judge of less estimable qualities and inferior attainments; still I should receive with great caution the opinion of a Judge as to the operation and effects of a favourite system. I should prefer the evidence of the suitors and practitioners, if any, who may have had experience of the Court during the period he presided in it. A Judge may imagine he has done a great deal of good in cases in which the profession or the public think he has shown himself a decided partisan.

Warnings of danger from the abuse of judicial power have been represented as uncalled for, and Mr. Bentham is charged with having gone ludicrously far in the surveillance he proposed to exercise over Judges; but lawyers of experience, including Mr. Fearne, have concurred in the following sentiments of Lord Camden: "The discretion of a Judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable."

It is intended that the new Court shall administer equity as well as law. It is to have cognizance of matters within the jurisdiction of courts of common law, but it is to apply the rules of English equity, whenever those rules would be held applicable, if such matters came under consideration in a court of equity. In short, when equity would affect any matter brought forward in the proposed Court, equity jurisprudence is to be administered forthwith.

Many cases of fraud, accident, and even trust, as cases of bailment, and that large class of cases in which the action for money had and received is maintainable, have long been cognizable at law, though formerly considered proper objects for a court of equity. The Judges at Calcutta, as I understand them, are of opinion that the jurisdiction of courts of law might be extended to all cases of accident, mistake, dower and partition, account when not involving the execution of a trust, administration of assets, and, to a considerable extent, to demands for specific performance. It seems to me that whether a case coming under any of these heads of jurisdiction could be properly taken cognizance of by courts constituted differently from courts of equity, would depend upon its particular circumstances. If the object of the suit were single, or not very complicated, and there was but one class of plaintiffs, and but one class of defendants, all persons in each class having a unity of interest in the subject, it might be disposed of by a court constructed like a court of law, but in such a tribunal it would be difficult to dispose of a suit to which there were numerous parties, all standing in different relations to the matter, such matter being manifold and complex.

The procedure recommended by the Law Commissioners is represented as all-sufficient, and equally adapted to all cases, whether of legal or equitable cognizance. If it be indeed so, there could be but little gained by transferring matters of equity to law in the Court they propose to erect, and it might be better to preserve the present distinction between legal and equitable jurisdiction, and to appropriate to each a particular side of the intended Court; for such a measure might prevent them from being mixed up, as Mr. Justice Story says, "in a manner not easily comprehensible elsewhere." So, also, in the Supreme Courts, if pleadings and proceedings in equity were rendered sufficient without being redundant, there would be but little, if any, advantage in the transfers from equity to law which the Judges of Calcutta advocate. I concur in their views, subject to the qualifications mentioned in the last paragraph, and if the existing procedure in equity is to remain unaltered, I have no doubt that much good would often result from the measures they propose; but such good would arise because a man could sue at law cheaper than in equity. Whether a matter of equity be brought forward in a court of law or in a court of equity, it should be introduced by appropriate pleadings. A simple matter of equity might be brought before a court constituted as a court of law, by means of pleadings perhaps equally brief with those usually resorted to in such a court: Why should it not be brought forward in like manner in a court of equity? Putting summary procedure out of the question, if a complex matter of equity could be disposed of in a court constituted as a court of law, it could only be by means of pleadings of much greater length, and more

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complicated and numerous proceedings, than would be necessary for such subjects as are usually committed to courts of law. But why, in a court of either description, should the length of procedure be disproportionate to the subject? and does not the difference in this respect between a court of law and a court of equity chiefly arise from those peculiarities in the latter, for which in a former part of these observations I have suggested remedies? Would not the adoption of *vivâ voce* examination of witnesses in equity in itself work a great and salutary change? Might not summary procedure, as exercised in bankruptcy, and such measures as the Judges of Calcutta suggest in the last paragraph of Sir Lawrence Peel's Minute, be introduced with good effect? and if all or many of these alterations were accomplished, wherein would the procedure at law have advantage over that in equity? and, in such a state of things, what benefit would result from transferring to law particular branches of equity jurisdiction, except so far as courts of law might thus be enabled to dispose of a simple matter of equity incidentally or unexpectedly arising in the course of an action at law? Courts of law already exercise power for such purposes to a considerable extent, to wit, in cases of accident, mistake and fraud, and in such circumstances as occurred in Legh *versus* Legh, and the cases mentioned in note (*a*) 1 Bos. and p. 448.

The Law Commissioners seem to aim at an unlimited extension of the last-mentioned power; judging from their arguments on such subjects, they claim for their court authority to dispose of any matter of equity, however complicated in character, or whatever number of persons may be interested therein, which can arise respecting the subject of an action at law. Judging from those arguments, they apparently contend that such matter of equity should be summarily disposed of in a court of law, upon the same pleadings alone as the action of law required, irrespective of the equitable matter, and with the parties to the action at law alone before the Court.

The Law Commissioners adopt the imperfect report of Rattle *versus* Popham, 2, Strange, 992, and state that case as follows: "It appeared that upon a marriage settlement a power was given to every tenant for life, when in possession, to limit the premises to any woman he should marry, for her life, by way of jointure, and in lieu of dower. The tenant for life made a lease for 99 years, determinable on the death of his wife. Lord Hardwicke, in a court of law, held the lease not to be warranted by the power." They add, apparently on the authority of the report of Zouch and Woolston by Burrow, the following words therein attributed to Lord Mansfield: "The widow brought her bill in the Court of Chancery, and Lord Talbot, arguing from the same premises, the power and the lease, without any other circumstance, held the lease to be warranted by the power." According to the same report, Lord Mansfield stated that Lord Talbot had declared, "it was not a defective, but a blundering execution of the power, and had decreed the defendant to pay all the costs, both at law and in equity."

The report in Strange is erroneous, because it is therein stated, that the power was to limit by way of jointure and in bar of dower; whereas it appears from the report of the case in Chancery, as given in Sir Edward Sugden's work, upon the authority of the Registrar's book, that the power was not to give an estate in bar of dower, but the power was "for Walter when he should have any estate in possession in the premises for his life, by any deed, to assign, limit or appoint to or for the use of or in trust for any woman or women that should be his wife for her life, in lieu of jointure, all or any part of the premises, to take effect from his decease." Thus he was left at large to make a provision for his wife, and it was not essential that such provision should be in bar of dower. Had it been so, the execution of the power would have been erroneous, for the additional reason that the estate given by Walter Savage was no bar of dower. The statement of the case in equity, as attributed to Lord Mansfield in the report in Burrow, is perhaps erroneous in several respects, but is certainly wrong in this, that it is therein said Lord Talbot "decreed the defendant" (Savage the remainder man) "to pay all the costs both at law and in equity." In Sir Edward Sugden's work the decree, upon the authority of the Registrar's book, is stated in the following words: "It was decreed that the plaintiff should be quieted in the estate comprised in the jointure-deed during so much of the 99 years as she should live, and the defendant was to pay unto the plaintiffs their costs of the suit; and the injunction formerly granted in this cause for stay of the defendant's proceedings at law against the plaintiffs was to be continued."

Thus it appears the defendant was not decreed to pay the costs at law as well as in equity; and when we detect so material an error, it is not unreasonable to suppose that in other respects also, with regard to this case, either Lord Mansfield may have been wrong in making the statements ascribed to him by the reporter, or the latter may have been wrong in imputing them to Lord Mansfield. The latter supposition seems to have been embraced by Lord Redesdale; *see* Shannon and Broadstreet, 1 Sch. and Lef. 70, 71. The account of the case in Ambler, 342, so far as it goes, corroborates that given in Sir Edward Sugden's Appendix. The statement regarding Burlton and Ux. *versus* Humphries and others, in Canc., imputed to Lord Mansfield in 4 Burrow, 2056, is another instance in which either Lord Mansfield mis-stated the case, or the mis-statement was wrongfully ascribed to him by the same reporter. Amber, 256, and Clarke *versus* Parker, 19 Vesey, 20, 21.

With respect to Rattle and Popham, Lord Mansfield is represented to have said, that "Lord Talbot, arguing from the same premises, the power and the lease, without any other circumstances, held the lease to be warranted by the power." I shall endeavour to show that Lord Talbot did not maintain any such doctrine. Lord Mansfield is represented to have asserted that Lord Talbot said "it was not a defective, but a blundering, execution of the power." No such expression is imputed to Lord Talbot in the report contained in the Appendix to Sir Edward Sugden's book, although some at least of the dicta of Lord Talbot on the case are therein professedly given; nor is any such expression attributed to Lord Talbot by the Master of the Rolls in Alexander *versus* Alexander, or by either of the Lords Commissioners, Willes and Wilmot, in Churchman *versus* Harvey, or by any other authority in any instance in which Rattle and Popham or Newport and Savage has been mentioned. In fact, Newport and Savage is always classed amongst those cases in which relief has been given against the defective execution of powers, and it is clearly an instance of defective execution within Lord Redesdale's definition in 1 Sch. and Lef. 63.

But whether Lord Mansfield was wrong or not in making such statements and using such expressions regarding the case of Rattle and Popham, is unimportant, except so far as error in those particulars may detract from that weight which so high an authority might otherwise possess. His conclusion respecting this point of equitable jurisdiction was no doubt conformable to his opinions on similar subjects. It may be assumed that he held, that as the Statute of Uses makes good at law whatever is a good power or execution in equity, it followed that whatever was an equitable, ought to be deemed a legal, execution of a power.

Unquestionably the same construction of a power should prevail at law as in equity, and so it does. A power to limit an estate of freehold is construed at law as not authorizing a grant of a different species of estate, as a term for years; and the same construction prevails in equity, which, however, goes further; and although holding the grant for years is not warranted by the power, yet, if there be no fraud, and the grant was made for meritorious consideration, will make a decree, which without declaring the estate for years to have been duly made, will yet relieve the grantee by securing to him the enjoyment of it, consistently with the intention of the grantor, and of the person who created the power. The distinction was apparent to the Law Commissioners, but they have not embraced it. They say, "Lord Redesdale admits that whatever is a good power or execution in equity, the Statute of Uses makes good at law, but he implicitly denies that such an execution of a power as the lease in the case of Rattle and Popham is good in equity. According to him, it is only such an execution as a court of equity by its peculiar mode of acting will make good." They then proceed insisting upon the opinions of Lord Mansfield and Mr. Justice Wilmot, as given in Burrow, as authorities, and conclude, "that the only reason why a court of equity acts in such cases in the peculiar mode alluded to, is for the purpose of making such an execution of a power good at law." Now, in this the Law Commissioners are quite wrong; for to take the case they have themselves selected, although if the execution of the power in Rattle and Popham could have been, or had been, held good at law, there would have been no necessity for the court of equity to act, yet the decree respecting Rattle and Popham did not make the execution of the power in that case good in law, or declare it to be good in any respect. The decree left the execution bad at law, and merely provided, on consideration of the circumstances, that the remainder man should not avail himself of the defect. No conveyances were directed, and the matter remained at law as before the decree

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in equity, except that the remainder man was enjoined from proceeding at law by ejectment, or from disturbing the possession of the widow. It seems the bill was in the nature of a bill for quiet possession. Cockshot and Parke, Tothill's Rep. 177. Hughes *versus* Modern College, 1 V. Senr. 187, Prac. Regr. 254, &c. Equity acts, in such a case, not by making or declaring that which is bad to be good, but by exempting the case, in consideration of its peculiar circumstances, from the general operation of the law.

In Wykham *versus* Wykham, 18 Vesey, 415 and 423, Lord Eldon puts the matter somewhat more explicitly than Lord Redesdale, in the following words: "I am not surprised that any one attempting to execute this power should have considerable difficulty how to do it. He could not get far wrong in equity, as, being for a meritorious consideration, it would do in equity in almost any form in which that intention was clearly expressed. I say, it would do in equity, as although the phrase is frequently met with in the common law reports, that what is not a good execution of a power at law cannot be a good execution in equity, if by that is meant that what cannot be sustained as a good execution of a power at law cannot be sustained in equity, I do not agree with that interpretation. Though not a good execution of a power *any where*, it may be that which a court of equity will take care to have executed. I therefore agree with Lord Redesdale, with the same difference expressed in his observations upon Lord Mansfield's language in Burrow's Reports; not admitting as doctrine to be maintained, that what a court of equity will substantially support as a good execution of a power in equity is therefore a good execution at law; notwithstanding it is confidently there stated, that there can be no difference in the execution of a power at law and in equity. If it is to be understood a strict literal execution, viz., that it was duly executed, that must be the same both in courts of law and equity; but that a court of equity will enforce the substantial intention of the person executing, where a court of law cannot deal with it, is, I apprehend, extremely clear." See also Butcher *versus* Butcher, Gooday *versus* Butcher, 1 V. and B. 93 and 98, and 9 V. 393. So also in Clarke *versus* Parker, 19 Vesey, 21, 22, Lord Eldon observes: "Lord Mansfield, in Long *versus* Dennis, says further, 'I mention these cases to show that the court ought not to make strides in favour of a forfeiture;'" and then Lord Eldon proceeds thus: "The strides, if any, were the other way. What follows resembles his observations on the execution of powers. I agree in the next passage, that there can be but one true legal construction of a condition; but if the proposition is that a court of law can hold a condition to be performed in all circumstances in which a court of equity says, *though it is not performed*, relief shall be given against the *non-performance*, that is utterly unfounded."

The phrase "a good execution of a power in equity," is a loose expression, signifying, not that the execution is good *any where*, to use the words of Lord Eldon, but that a court of equity, accounting the execution bad, but considering that the act done evinced the intent of the party who had the power to execute the same, and finding there was meritorious consideration on behalf of the appointee, will secure to the latter such benefit as can be granted consistently with the respective intentions of him who created and of him who meant to execute the power. That such is the true construction of the phrase, and that, with a view to give relief, equity holds the execution bad, and looks upon the defective act, not as good, but merely as evidence of intention, several considerations tend to establish. If equity held the execution literally good, it should relieve even a volunteer, whereas it only grants relief where there is meritorious consideration. If equity in such instances held the execution literally good, it would be in effect to maintain the absurdity that to limit an estate for years was consistent with a power to limit for life; but to limit for 40 years consisted with a power to limit for 10 years. Equity would relieve the meritorious party intended to be benefited by such an excessive execution as last alluded to. It would secure to him the use for 10 years, and no longer. It would do so, holding the execution bad, as at law, although the loose expression "the execution is good for so much" might be employed.

If verbal inaccuracies are made ground for the position that what is held bad at law is held good in equity, an accurate expression commonly used in equity might be quoted to disprove the fallacy. An execution bad at law is frequently called in equity a defective execution, which expression imports that equity considers it defective.

No. 4.
Second Supplement to Appendix to the Report on Civil Judicature in the Presidency Towns.

Whether the Law Commissioners be right or wrong in asserting that Lord Mansfield never meant to say that Lord Talbot found fault with the decision at law in Rattle *versus* Popham, it is quite clear that, according to the report in Burrow, Lord Mansfield himself did find fault with that decision; and upon the ground that Lord Talbot, "arguing from the same premises, the power and the lease, held the lease to be warranted by the power, and said it was *not a defective*, but a blundering, execution,"—words importing that the execution was good at law—a blundering execution, but not a bad one. Sir Edward Sugden, however, shows, 1 vol. 516, that Lord Talbot clearly held the execution bad at law, inasmuch as, sitting in a court of equity, he held, as appears from the Report of Newport and Savage, that it was a mere blundering, but a defective, execution. Lord Mansfield's argument is: the decision at law was erroneous, or the execution, which at law was held defective, would not have been declared in equity, on the same premises, not to be defective. Sir Edward Sugden's position is, that in equity the execution was declared to be defective, and that therefore the argument of Lord Mansfield fails. If the execution was held defective as well in equity as at law, the construction of the power at law and in equity was the same; in each forum the execution was considered bad.

Lord Redesdale, in Shannon and Broadstreet, and Lord Ellenborough, in Burne and Prideaux, deny Lord Mansfield's imputations on Rattle and Popham to be well founded. Those imputations, so far as appears, went on the idea that the execution had been held in equity not to be defective. Lord Redesdale obviously considers that it was held defective in equity in the same sense as at law; and perhaps Lord Ellenborough may have entertained the same opinion, for he arrived at the same conclusion, namely, that Lord Mansfield's imputation on the decision at law, in Rattle *versus* Popham, was ill-founded, and that imputation, as already shown, was maintained upon the position that the execution had been held good in equity.

In maintaining his views as to legal and equitable jurisdiction, Lord Mansfield had advantages in the case of Rattle *versus* Popham, for the decision therein at law was questioned upon other grounds than those assigned in 2 Burrow, 1147. That decision went upon the resolution in Whitlock's case, and that resolution, it has been argued, was a mere *obiter dictum* (*see* Burne *versus* Prideaux), and has been said to have been held too nice; also, the power extended only to a single life, and there was no injury to the remainder man by reversionary or concurrent leases. But at present there is no doubt that in Rattle and Popham the execution was bad, for the power was to limit a freehold, whereas only a chattel was appointed; and the differences between the estates in quality in the qualifications they respectively confer, and with respect to executions, forfeitures, barring dower and the right of the remainder man to suffer a recovery are irreconcileable.

If the notions of the Law Commissioners were fully carried out, a man, in an action of ejectment, might acquire or retain possession of land in which he had agreed, but not in writing, to purchase from the owner of the fee a term of 100 or 200 years, paying a small rent for the same, the parol agreement being followed by such circumstances as in a court of equity would entitle the vendee to a specific performance, but which circumstances wholly depended on parol evidence. There would be no record either of the parol agreement or of the subsequent circumstances in the proceedings at law; indeed, the purchaser's rights might be admitted without action, and in either case, whether his claims were litigated or not, at the end of the term the respective rights of the parties then entitled, if not utterly forgotten, would merely rest upon tradition.

Moreover, the Law Commissioners follow Lord Mansfield in maintaining that in actions of ejectment, such as Rattle *versus* Popham, a court of law should recognize title in an appointee under a power defectively executed, if there be circumstances in the case that would entitle the appointee to relief in equity. One of the results of establishing this doctrine would be, that a party entitled to an estate for a term of 30 years might recover possession on an instrument purporting to appoint an estate for a much longer period, or a party entitled to one species of estate would recover upon an appointment of an estate of a different description. It would not appear upon the proceedings in an action of ejectment how much the lessor of the plaintiff was entitled to, a point upon which the decree of a court of equity would be explicit. If a party who had thus recovered in ejectment continued in possession for some years, the remainder man might have difficulty in enforcing his rights, and, at all events, the title-deeds, muniments

and

and assurances of property would be inconsistent with the actual rights of the parties. Where a court of equity relieves an appointee under a defectively executed power, without decreeing conveyances conformable to the equitable rights of the parties, the existing appointment is inoperative at law, and under it no possession can be recovered which, by lapse of time or otherwise, might confuse, obscure or alter just rights, and the decree in equity explains and rectifies the whole matter; nor can the Law Commissioners say that the court of law should declare the rights of the parties or decree conveyances. They follow the opinions and arguments of Lord Mansfield regarding actions of ejectment, in which no such proceedings are admitted; indeed, they contend (Report, page 29) that a court of equity directs a conveyance merely for the purpose of conferring a good title at law. It would follow that a conveyance must be wholly useless where a good title is already recognized at law. Equity decrees conveyances in order that they may answer the ends of conveyances, in order that they may establish, secure and evidence good titles both in law and equity. It is generally expedient that such conveyances should exist for the security of property, and to prevent litigation; and with the like views, if existing conveyances be inconsistent with the rights of the parties, the execution of perfect conveyances is frequently expedient, and where proper cases for such interference are made out, equity may decree accordingly; but it is imperative in a court of equity, where an equitable title is bad at law, to have it made good at law by a conveyance. Equity may leave the title bad at law, as in Newport *versus* Savage, and without decreeing any conveyance, may secure to the parties, by equitable process, the enjoyment of their several rights.

These are but a few of the evils which may arise where, to use the expression of the American Judge, Mr. Paterson, "there is no distinct forum to exercise Chancery jurisdiction, and the common law courts equitise as far as possible." A court of law, in order to dispose of matters of equity connected with an action at law, would have to go into all the circumstances of the case, for upon such circumstances, and not merely upon a particular instrument or deed, the equity would depend. To determine even whether there was meritorious consideration, it might be requisite to go into many circumstances not apparent on the deeds before the court, and not duly brought before the court either by the plaintiff or the defendant, and if the rights of the parties depended upon matters of equity rather than, or as well as, matters of law, many more parties might be interested in the matters of equity than were before the court with respect to the matters of law. It might also happen that the matters of equity were by no means, or but insufficiently raised or brought forward by the pleadings, and might therefore take one or both the parties by surprise, and the determination of matters of equity, without proper pleadings and records, would cause confusion and obscurity in the administration of justice. To such difficulties, Mr. Justice Kelly alluded in Lessee of Massey *v.* Touchstone, an action of ejectment, in which the pleadings were general, not an action for breach of contract, in which the pleadings explicitly put forth the circumstances of performance and non-performance. He then drew the general conclusion that a Judge in a court of law should leave equity to its proper tribunal, and not foreseeing any attack from the Law Commissioners, he inadvertently referred to the case then before him as illustrating the evils he referred to. The case was comparatively simple, and did not fully exemplify the evils in question. Thereupon the Law Commissioners fall foul of him, and, as Lord Redesdale says, "looking at particular cases rather than at the general principles of administering justice, observing small inconveniences and overlooking great ones, allege, *inter alia*, that Mr. Justice Kelly seems to have entirely forgotten that the agreement in the case referred to, and all the circumstances of performance and non-performance are beyond all question the proper constitutional subjects of common law jurisdiction," and conclude several pages of matter in the same strain by stating, "that where there is a *legal* agreement, and no formal objection which would preclude the party at law, a court of equity will not decree specific performance unless it is satisfied that the party is under the circumstances entitled to damages at law. That is, the courts of equity hold that in such cases the question whether there is a clear equity, depends upon the question whether there is a clear title to damages at law."

As a portion of the premises to this conclusion, the Law Commissioners have adopted the doctrine, that because before Lord Somer's time, courts of equity would

would not even entertain a suit for specific performance of an agreement until the plaintiff had first recovered damages at law for the breach of it, "therefore," according to the Chancellors who preceded Lord Somers, "not only were the courts of law competent to this investigation (whether a party asking for specific performance of an agreement has a clear equity), but they are the only courts which are competent to it." *See* the Report, pages 40 and 41.

The Law Commissioners thus assume that previous to the time of Lord Somers, courts of equity sent a party, applying for a specific performance, to try his right at law, *in order that the court of law might investigate whether he had a clear equity*. But the true ground for thus sending the party to try for damages at law was not that assigned by the Law Commissioners, probably not even that which is usually assigned, namely, to try whether the plaintiff had a *legal* right, *i. e.* whether the agreement was legal, and the breach of it a wrong; points which in those early times a court of equity, it has been supposed, might have been unwilling to assume a right to determine. But as Mr. Butler expresses it, "the grand reason for the interference of a court of equity, is that the imperfection of legal remedy, in consequence of the universality of legislative provisions, may be redressed. Hence, for a length of time after the introduction of equitable judicature into this country, it was thought necessary, that before equity should interfere, this imperfection should be manifested by the party's previously proceeding at law, so far as to show, from its result, the want or inadequacy of legal redress, and his claim for equitable relief."

If the defendant, in Lessee of Massey *v.* Touchstone, had brought his action against the lessor of the plaintiff for breach of contract, in not making the lease, "all the circumstances of performance and non-performance" would have been before the court of law, so far as was necessary to ascertain whether a lease had been made, whether there had been any breach of contract, and, if so, to estimate the damage; but not with a view to determine whether, if the agreement were unperformed, Lord Massey should be compelled to perform it. The question whether a broken contract should be specifically performed, depends, not merely upon "the circumstances of performance and non-performance," important in an action for breach of contract, but upon other or all the circumstances of the case. Not only does equity sometimes relieve by granting a specific performance where damages may not be recoverable at law, but sometimes it will refuse a specific performance where damages may be recovered at law; the rescinding and decreeing specific performance of contracts being in the discretion of the court. If a plaintiff's title be involved in difficulties which cannot be immediately removed, equity will not compel the defendant to take a conveyance, though he might at law be subject to damages for not completing his purchase. 1st Fonbl. 190, note (*i*), and see Mortlock *v.* Buller, 10 V. 292. Thus, irrespective of the particular case before Mr. Justice Kelly, the circumstances of performance or non-performance which are brought before a court of law with a view to damages for breach of contract to make a lease, do not necessarily include those circumstances upon which it must depend whether a specific performance of that contract will be decreed in equity. The latter are not "the proper, legitimate, constitutional subjects of common law jurisdiction." The Judges at Calcutta propose to make them so, but they are not so at present, and were not so at the time when the Report of the Law Commissioners was being written.

As I think all courts should be empowered to examine parties, if not *vivâ voce*, at least upon interrogatories, I think such a court as that proposed by the Law Commissioners should possess the power in question, and if an outstanding term should be set up in an action of ejectment, should be authorized to determine the effect of such term upon the same principles as a court of equity.

It is necessary to dwell upon those cases, much insisted upon by the Law Commissioners, in which Judges have expressed opinions regarding the boundaries of legal and equitable jurisdiction which have been long since overruled. No one doubts or questions that the latter decisions are the more reasonable, and must prevail.

The Law Commissioners deduce from Moses *vs.* Macfarlane, and Farquharson *vs.* Pitcher, "that courts like the Court of King's Bench, ought to be furnished with the means of doing justice in all cases within their jurisdiction, and that courts of conscience,

conscience, inasmuch as they cannot be furnished with such means without great risk of injustice, ought not to be suffered to exist at all." If the Superior Courts could dispose of claims of small amount at a proportional expense, courts of conscience and tribunals of that description might be dispensed with; but hitherto no court, in any considerable degree capable of a sound administration of justice, has been contrived or established in which the expense of litigating small demands has not been excessive, as being disproportionate to the matter sued for. Thus courts of conscience and Courts of Requests for deciding petty matters have been hitherto necessary evils.* For the reasons already given, it appears to me, that the Law Commissioners propose to erect but a very bad description of court of conscience; a court which cannot be maintained without great expense to the country, if not to the parties, and which will be the more mischievous, because it is to exercise unlimited jurisdiction.

I have long thought that, under the judicial system at present existing, a court should be debarred from entertaining a suit or action in which it could not administer complete justice; therefore that a court of law should have no jurisdiction over cases in which the effect of the judgment at law would directly or indirectly be annulled in equity. In an action at law the moment it appears, although not specially pleaded, that matter of equity, beyond the jurisdiction of courts of law, is involved, or incidentally comes in question, so as immediately to affect the rights of the parties, I think the plaintiff should be non-suited on such terms as to costs as a just discretion might direct. In this sense I think that an equitable title might be set up in ejectment as a bar to the further progress of the action.

I have already dwelt in general terms upon the question whether a court engaged in administering law should be allowed to "equitize," and if so, to what extent. Lord Eldon has said of the separation of courts of law and equity: It "mainly contributes to the complete and effectual administration of justice in this country, and secures to the people an administration of justice to an extent and in a degree such as are unknown, and must be ever unknown, where that separation is not effectually made and observed." He perhaps overrated the effects of the separation alluded to, and it certainly appears to me that in some instances the separation need not be observed so strictly as at present. But the Law Commissioners would wholly abolish it. The weight of authority is indeed against them: but they make light of it, and assail even Lord Redesdale, to whom they impute the following sophism: "The Scotch Courts are bad. The Scotch Courts administer law and equity together. Therefore courts which administer law and equity together are bad." It is fortunate for the memory of Lord Redesdale, which must otherwise have been grievously damaged through this perversion of his argument by the Law Commissioners, that what he did say is contained in his judgment in Shannon *vs.* Brodstreet, and is published in the report of that case. But experience as well as authority is opposed to the views of the Law Commissioners. I have shown what have been the results of experience in these matters in the United States of America, and the experience which England had of the Court of Exchequer, although equity was administered therein as distinct from law as could well be in a court administering both law and equity, was the chief reason why the equitable jurisdiction of that Court was taken away and given to the Court of Chancery in the year 1841.

I have no doubt that if the proposed changes be salutary for India, it would be at least equally salutary for England to effect similar changes in that country, and therefore there is reason to believe that these propositions of the Law Commissioners will be duly canvassed by competent jurists before their adoption in India permitted.

(signed) *H. Roper.*

Legis. Cons. 25 Oct. 1845. No. 6.

From *G. A. Bushby*, Esq., Secretary to the Government of India, in the Home Department, to the Honourable the Judges of the Supreme Courts of Judicature of Bengal, No. 758; Fort St. George, No. 751; and Bombay, No. 752; dated the 25th October 1845.

Honourable Sirs,

We have the honour to transmit to you the accompanying printed copy of a Second Supplement to Appendix of the Report of the Indian Law Commissioners, dated the 15th February last.

Second para. for letter to Bombay.

We shall feel obliged if you will have the goodness to direct us to be furnished with duplicates of the Reports noted below;* the original having been mislaid.

We have, &c.

(signed) *T. H. Maddock.* *Geo. Pollock.*
F. Millett. *C. H. Cameron.*

Council Chamber,
25 October 1845.

(No. 749.)

Legis. Cons. 25 Oct. 1845. No. 7.

From *G. A. Bushby*, Esq., Secretary to the Government of India, to Secretaries to Governments of Bengal, No. 749; Fort St. George, No. 737; and Bombay, No. 738; dated the 25th October 1845.

Sir,

In continuation of my letter, No. 38, dated the 3d August 1844, I am directed by the Honourable the President in Council to forward to you the accompanying printed copy of a Second Supplement to Appendix of the Report of the Indian Law Commissioners, transmitted with Mr. Officiating Secretary Davidson's letter of the 15th February 1844.

I have, &c.

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

Council Chamber,
25 October 1845.

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* From H. Sir H. Roper, Knt., dated 31st January 1845, on the subject of the proposed establishment of a new Court of Justice at Calcutta. From H. Sir E. Perry, Knt., dated 26th January 1845, and its enclosures, on the subject of the proposed reformed system of procedure in the Supreme Court of Bombay.

— No. 5. —

No. 5.
Third Supplement to Appendix to the Report on Civil Judicature in the Presidency Towns.

THIRD SUPPLEMENT TO THE APPENDIX ATTACHED TO THE REPORT ON CIVIL JUDICATURE IN THE PRESIDENCY TOWNS, dated 15 February 1844.

To the Right Honourable the President of the Council of India in Council.

Right Honourable Sir,

I HAVE the honour to transmit to you the copy of a letter which I have addressed to the Honourable the Governor of Bombay in Council.

I should not have ventured to address the Supreme Government directly upon this subject, had it not been that the enclosed letter is a reply to a Minute of the Chief Justice of Bombay, containing statements affecting my accuracy and general title to confidence, which has been forwarded to the Governor-general in Council.

As inaccuracies and even gross exaggerations are not unfrequently to be found on the part of those who step forward to recommend public improvements, the charge is too plausible and endamaging to allow me to rest one moment without meeting it with a solemn denial, and furnishing the proofs on which that denial is based.

I have, &c.

(signed) *E. Perry.*

Supreme Court, Bombay,
25 January 1845.

To the Honourable the Governor of Bombay in Council.

Honourable Sir,

I HAVE learnt, with much pain, that Sir Henry Roper has addressed an elaborate Minute, not only to the Government of Bombay, but also to the Governor-general of India in Council, in which he imputes to me the having presented "highly coloured views" and "incorrect statements" in my official Minutes to Government of matters connected with the Supreme Court of Bombay.

2. I do not believe that the Chief Justice attaches the same degree of moral culpability to these charges as I do, for he evidently thinks that so much passion is necessarily engendered in India in the discussion of even abstract questions like law reform, that even Judges may be pardonable if they do not exhibit themselves quite exempt from the grosser frailties of partisanship. What, therefore, from any other man I should hear charged with more emotion than I would willingly describe, I listen to in calmness (though, perhaps, not without a struggle) from Sir Henry Roper.

3. I cannot, however, conceal from myself the conviction that, whatever degree of blame the Chief Justice may attach to the fact of another Judge putting forth exaggerated and incorrect statements of judicial matters, still he believes that I have done so, and by the solemn and public manner in which he has recorded his belief, the charge goes forth against me, to all the world possibly, a charge made by the Chief Justice of that Court in which I have sat by his side as a colleague for nearly four years. It is incumbent upon me, therefore, not only in regard to the great public question in controversy, but also to my own character and reputation, that I should not let a moment slip in hastening to vindicate myself from imputations which might otherwise adhere to me indelibly. In doing so, I trust that the Government will bear with me for a short time whilst I enter upon more personal details than would, under other circumstances, have been excusable.

No. 5.
Third Supplement to Appendix to the Report on Civil Judicature in the Presidency Towns.

4. I would first premise that the paper which is alleged to contain these coloured statements was written by me, after a very minute and careful inquiry, in answer to an official letter of the Law Commissioners, addressed to Sir Henry Roper and myself; that after I had finished it I submitted it for the inspection and approval of the Chief Justice, first of all, because it was due to him that he should be acquainted with all I did officially, and secondly, because I was sanguine enough to hope that he would concur with me in recommending a proposal to rectify those evils in the procedure of our Court which I felt confident that he could not deny. With this hope I abstained from forwarding my Minute for a whole month, and although I had repeated communications with the Chief Justice during that period upon the subjects contained in my Minute, not one word of disapprobation or questioning of any of the facts or even opinions therein stated ever fell from his lips. I failed, it is true, in persuading him to add the sanction of his name to the recommendations I had made; but in the joint letter which we drew up together on forwarding my Minute to the Law Commission, it is impossible to trace other than a most harmonious spirit existing between us.

Appendix (A.)

5. In confirmation of what I have above stated, I venture to subjoin a contemporary note which I made at the time in my own private journal of my studies and pursuits.

6. Two months after I had laid this Minute before the Chief Justice, he also wrote upon the subject to the Law Commissioners, and although his hostility to any reform being made in the Supreme Court at the hands of that body is very apparent, and although I then learnt, for the first time, his objections to some portion of the reasoning I had advanced, still I considered that in the main our speculative views were not widely different, and his tone towards me was undoubtedly courteous, and even complimentary. But his Minute speaks for itself, as it is printed in the Appendix of the Law Commissioners' Report.

Report, dated 15 February 1844, from the Law Commission to the President of Council in India. App. p.XXI.

7. From that moment till the perusal, three days ago, of the Chief Justice's Minute, that is to say, for a period of 16 months, he has never given me the least reason to suppose that he entertained any doubts whatever as to the accuracy of the facts I had advanced, or as to the law I had delivered in Poonjia Cawnjee's case.

8. Having premised these matters, which I have done at some length, in order to correct the notion that might otherwise have arisen, that there had been any want on my part of frank and cordial communication towards my colleague, I pass them over, and proceed to the much more important question between us; namely, as to the correctness of the statements advanced by me.

9. The matters alleged by me as facts, upon which the charges of coloured views and incorrect statements appear to be based, are, so far as I can discover, three;—the proceedings in Poonjia Cawnjee's case; the expenses of litigation in the Supreme Court of Bombay; the irretrievable injury frequently inflicted upon suitors by decisions upon technicalities. I will discuss these in their order.

Printed with the Law Commissioners' Report. App. to VIII.

10. First, in Poonjia Cawnjee's case, I gave, to the best of my ability, in my Minute of 3d June 1843 (paras. 18 and 19), as clear a sketch as was compatible with great brevity, of the proceedings in a suit which lasted for ten years and a half. Sir Henry Roper has also entered into very minute details of that case, and in the course of it he intimates, that certain of the facts are wrongly stated; that the whole description of it is "somewhat coloured;" and taking upon himself the assertion of a fact* (the non-existence of assets) in total contradiction to the Judge before whom that fact was in controversy, he throws grave suspicions upon the judgment delivered.

11. Now, in the first place, I must respectfully protest against the *obiter* criticism of the Chief Justice on a decision with which he had nothing to do, and of which he

* The Master expressly reported, that the defendant was chargeable with 15,873 Rs., the plaintiff's claim being only (with interest) 4,503 Rs. This report was excepted to, but all the exceptions were overruled; it is incorrect, therefore, to state, that "by an error of the Master the defendant was charged with 17,263 Rs. too much." At the instance of the Court (Ch. Jus. Audrey), the plaintiff's counsel assented to a certain compromise, by the result of which the estate was found indebted to the defendant in 884 Rs.; but this ultimate balance had nothing to do with the defence set up, of want of assets, although the defendant's counsel argued, as Sir H. Roper now argues, that that part of the defence was made out.

he has no official knowledge whatever.* If the decision were wrong, it might have been appealed against, at least I apprehend so; for the costs alone must have exceeded 10,000 rupees; but it was acquiesced in by the parties, and therefore, like other cases, must be considered to have passed *in rem judicatam*. That doubts should be thrown by one Judge upon the decisions of another, where living parties are concerned and serious questions involved, appears to me to be a course fraught with the highest inconvenience.

12. But, further, Sir Henry Roper, in his account of the case, states many matters that were never heard of by the Judge who disposed of the case, and he states other matters in a very different manner to that in which they were stated at the bar. I was at a loss to understand how the Chief Justice came by any knowledge at all on the subject, as he never conferred with me on the point, never, that I am aware of, read the judgment in the case, and certainly never read my notes of the arguments of counsel at the bar. On sending, however, for the papers in the cause, I discovered, what, if I before knew, I had forgotten, that Sir Henry Roper, whilst at the bar, had been the counsel for many years of the unsuccessful defendant.

13. But in order to demonstrate that my description of this case is correct to the letter, both of the facts on which the judgment proceeded and the course of defence attempted, I subjoin in the Appendix a transcript of the Judge's note of the arguments relied on by counsel, and of the Judgment subsequently delivered. It will be seen by these, that the case was very learnedly argued, and that the judgment, whatever may be its value in other respects, was prepared after a long industrious inquiry into all the points brought before the Court. Waving, therefore, all questions of judicial etiquette, I fearlessly oppose my statement of the case, the statement of a Judge who had pronounced the decision under the most solemn sanctions, to the imperfect recollection and unofficial knowledge of a former counsel in the cause.† Appendix (B.)

14. Sir Henry Roper further remarks on this case, that "it would be misapprehension to suppose that such evils as are exemplified by the statement" of it in my Minute "are of common occurrence." I have no need to combat this proposition; I never asserted that it was a common occurrence for a suit involving a simple claim on a bill of exchange to last as long as the siege of Troy. The unfortunate country where such procedure could exist as *the rule*, must be far advanced in the stage of social dissolution. I cited this case as an illustration of the amount of harassment and vexation which a dishonest defendant is able to inflict upon his opponent by the means of equity procedure. I re-affirm that the illustration is a happy one; but I will add my most solemn conviction that the case is by no means anomalous, and that many companions to it might be selected from the records of the Supreme Court during the last 10 years, with even aggravated features; and the conclusion I draw is, that the system which thus baffles the most vigilant Judges and officers of the Court in their efforts to administer justice, ought to have its blots pointed out to Government by those who are most interested to maintain the honour and respectability of the Court, and who alone are able to suggest and carry out useful amendments.

15. The next point respects the expenses of litigation on the Common Law side of the Court. These, Sir Henry Roper affirms, have been incorrectly stated by me, and he cites the taxing officer's estimates, to show that the costs of a defended action are about 800 rupees; whereas I state them at about 1,200 rupees. Similar disproportions are shown in the other sums given by Sir H. Roper and myself, all of which will appear more clearly by the following table:—

COSTS

* In the June term and sittings of 1842, Sir H. Roper was seriously indisposed, in consequence of which nearly all the business in Court, and, amongst others, the case of Poonjia Cawnjee, had to be disposed of by me.

† I am bound, however, to acknowledge one blot which Sir Henry Roper has pointed out in my statements. I mentioned that the defendant's first answer was ruled insufficient *on argument*; it seems that the fact was, the defendant admitted its insufficiency *without* argument. I believe I committed an error, but it is so wholly insignificant that it is trifling to waste one word upon it.

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Costs of suing on the Common Law side of the Supreme Court at Bombay.

According to Sir Henry Roper.	Rupees.	According to Sir Erskine Perry.	Rupees.
Costs of defended Action - -	800	- - -	1,200
Ex-parte Causes - - -	192	- - -	450
Cognovits - - - -	147	- - -	189

16. Here there is a direct issue of fact between us, and I proceed to produce the proofs, to show that I have advanced no temerarious or incorrect calculations. When, in 1843, I was preparing my materials for a Minute on the Supreme Court, and had arrived at that portion which related to the costs of litigation in ordinary cases, I sent to the taxing officer for a return of the bills of costs actually taxed during the years 1840, 1841, 1842, and I have now the honour to transmit to Appendix (C.) Government the paper I received from that officer. It will be perceived by this return, that my figures as to the costs of litigation are faithfully copied from his results. The principle which I kept in view in framing my calculation was, that the point to be ascertained was not the minimum sum for which an action might possibly be conducted under the most favourable circumstances, but what the actual costs of litigation are under ordinary circumstances. I therefore considered that a period of three years was sufficiently long to give a fair average of the costs of litigation in each suit. But as I was apprehensive that this average might be too high, from the extraordinary costs which might have occurred in special cases, I took the precaution of applying a correction in the following manner. I sent for the taxing officer's books, and selected a dozen cases from the year 1842, most of which I well recollected, and in none of which any extraordinary costs or procedure had occurred. They were, in short, the ordinary run of cases which are tried at our bar. On calculating the joint costs of plaintiff and defendant, I found that the costs to the losing party were not less than Rupees 1,378. 14. and probably more from the costs between attorney and client not being all taken into account. I have the honour to forward the estimate on which Appendix (D.) the above is founded.

17. With this verification of the actual average on all cases during a period of three years, I unhesitatingly placed the latter amount in my Minute, and I now affirm, that so far from being exaggerated, it is probably not less than 200 rupees below the actual average, from the absence of the costs between attorney and client, which I have before noted.

18. If, however, I had committed a blunder on this subject, it might have been leniently dealt with. The costs of litigation is a subject of which a Judge has no professional knowledge whatever; it is a matter wholly within the province of the Master, and it is always a matter of accident (I regret the fact) that the Judge hears what the expenses of suing in his own Court are. On a new technical subject, therefore, involving calculation, an error might well have crept in, without calling for severe reprehension. A very remarkable instance of such error occurs in Sir Henry Roper's own Minute. In comparing the costs of suing in the Supreme and Mofussil Courts, he states that in the five years from 1839 to 1843 inclusive, the taxed costs of the plaintiffs amounted to Rs. 53,890. 3. 76. being about three per cent. on the sums recovered; he then goes on to show what the per-centage allowed by law to vakeels is on suits in the Mofussil, in order to prove that there is no great inequality between the two Courts. But in the return from which Sir Henry Roper has taken his results, he has failed to see that a large proportion of plaintiffs did not have their costs taxed at all, and that the column containing the amount of costs is only the sum of those bills of costs which were actually taxed. The calculation, however, is not only wrong on this point, but Sir Henry Roper has altogether omitted to take into account the amount of the defendant's costs, so that, upon the whole, his estimate of the costs of suing in the Supreme Court is erroneous by probably not less than 150 per cent.

19. I proceed

19. I proceed to the third point. In para. 26 of my Minute of 22 May 1844,* I appealed to the memory of Nisi Prius practitioners, and to the Term Reports, for instances of innumerable cases "where the interests of the suitors have been concluded for ever on some blunder or other of their legal advisers, and wholly irrespective of merits." Sir Henry Roper affirms that "there are few professional men but will deny this last assertion," &c.

20. Here, again, we are at direct issue; and I content myself with appealing to the same tribunal which I before selected, namely, experienced Nisi Prius practitioners, and the Law Reports. It would be a curious examination before a Committee of the House of Commons, if the leaders of the different circuits and the law reporters of the Courts at Westminster Hall were examined on their oaths as to all the cases they could bring forward where plaintiffs, with probable good cause of action, had been obliged to desist from further prosecuting their claim on account of the preliminary expenses which they had been put to in consequence of some error on the part of their legal advisers, having exhausted the whole of their available funds. I am not disposed to inveigh against attornies as of a more obdurate or avaricious turn of mind than their fellows, but attornies are men, and are governed by the ordinary motives of mankind; and though here and there a self-sacrificing professional adviser may be found who will advance out of his own pocket sufficient funds to bring a poor man's cause into court, it is needless to observe that such exceptional case will much more frequently occur in romance than in real life.

21. Sir Henry Roper rather appears to dwell upon my use of the words *for ever*; but of course he gives me credit for being lawyer enough to know that a decision on a technical point does not *legally* bind the suitor for ever, at least does not always do so, for frequently after such a decision it is impossible to bring forward the case again in any form. But in any case the ability for a poor man to bring forward his claim in court, is like his ability to enter the City of London tavern, very much dependent upon the length of his purse.

22. I have thus, I trust, completely vindicated my character for accuracy and trustworthiness. I may, perhaps, be considered too sensitive in my anxiety to repel charges which, in all probability, were not intended to denote any moral obliquity; but I confess that, by the standard of morals to which I desire to conform, a deliberate assertion of important facts which are untrue, and the untruth of which it is especially within the province of the asserter to ascertain, implies either such a mal-organization of the intellectual faculties, or such a moral obtuseness to the sacred interests of truth, that if I were not capable of repelling the aspersion, I should feel myself wholly unworthy of the estimation of all honourable men.

23. I have felt, indeed, doubts, whilst entering into the above minute details, whether any such defence was demanded from me; and I think that if the Minute which has called it forth had been confined to the Government of my own Presidency, where I am known, and where Sir Henry Roper is also known, I should have rested in calm security on the strength of my own reputation; nor in the feeling that the attack was innocuous,

. . . . . "telumque imbelle, sine ictu,"

should I have arrogated any merit to myself for my silence.

24. But reflecting that Sir Henry Roper's Minute has been addressed to places where the accuser is only known as the Chief Justice of Bombay, and the accused as an inferior Judge of the same Court, and calling to mind the internal evidence which the paper bears of its having been in preparation for months, I felt that it was my imperative duty to make equally public, and at the earliest possible moment, the solemn refutation which it lay within my power to give.

25. In conclusion, I have only earnestly to entreat the Government not to allow this passage of arms, which has unfortunately occurred between the Chief Justice and myself, to draw off their attention from the important subject in which it has sprung up as a mere incident. A noble opportunity, as I conceive, presents itself to this Government for conferring upon the community the greatest blessing which it is within their competence to bestow; I mean an efficient, rational and cheap tribunal for the solution of all questions respecting legal rights and obligations.

26. In

* Printed as a Supplement to Appendix of the Report, *ubi supra*.

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26. In the very long discussion which Sir Henry Roper has bestowed on the Law Commissioner's Report, much acute remark, though somewhat discursive, is to be found; much from which I see no reason whatever to dissent. The evils in the constitution of the Small Cause Court I have long been fully alive to. I have done my best to correct them, so far as it was open to me by law as it stands; and where those evils required the hand of the Legislature to remove them, I have done all within my power to point them out. The necessity for checks upon Judges, in the form of enlightened public opinion, is one of the firmest-rooted maxims I possess within the whole province of jurisprudence; and I rather smiled to find myself brought forward as the impugner of Mr. Bentham's doctrines on the subject.

27. But with regard to the more minute objections which Sir Henry Roper has advanced against the court of natural procedure, I trust I may be allowed, with all respect, to observe that he is scarcely master of the subject. It would be sufficient, therefore, to refer him to a mass of printed works which have issued from the presses both of England and the continent, during the last few years, and especially to the works of Mr. Bentham, to prove that he has occupied himself in refuting dangers which are wholly imaginary.

28. He appears surprised to find that the Law Commissioners and myself have been contemporaneous in our recommendation of a court based on similar principles; and he seems to entertain suspicions that something like "previous communications" may have existed to produce this unanimity. An acquaintance with the works I have alluded to, would have indicated the source from which the proposition emanated.

29. Again: Sir Henry Roper imagines that he has fastened an absurdity on my opinions with respect to pleading, inasmuch as he supposes that in my proposition for oral pleading, I would wholly discard the advantages which the art of writing has conferred upon mankind, and especially upon that portion of it who are engaged in litigation. The meaning of the distinction used by jurists of "oral pleadings" and "written pleadings," has thus wholly escaped him; for oral pleadings no more mean that they should not be put into writing than unwritten law means that it is not to be found in printed volumes. Indeed, the history of our own system fully proves that the special pleading, of which the Chief Justice is so warm an advocate, was, for a very long period, wholly oral;* and the account which Bracton gives (folio 372 *b.*) of the conduct of a suit in court, affords almost an exact *English* precedent of the procedure which it is proposed to introduce into Bombay. So far from omitting to record or put in writing the oral pleadings of the parties, I expressly alluded to the "authentic records of proceedings of the court when necessary," which it would behove the Judges to secure; and I did this with Mr. Bentham's volume on "Procedure" before me, where the most admirable analytical forms for all species of actions and demands are traced out.

See para. 32 of first Minute, App. p. 14, *ub sup.*

30. The main argument which seems to be relied upon by Sir Henry Roper for a severance of the courts of law and equity, appears to be that experience in America has pointed out the necessity for it, and the case of Pennsylvania is quoted. Without stopping to observe that this line of argument, as well as the instance cited of the Court of Exchequer in England, points to the necessity for two Supreme Courts, one of law, the other of equity, a proposition which has never been thought of for India, I will merely enter my protest against being referred to America for notions on law establishments.

See Bentham's Works, Vol. 4, p. 66, *et seq.*

31. The United States of America have blindly, though perhaps unavoidably, copied all their legal institutions, as they wanted them, from those of the parent country; one State adopting this set of provisions, another State another, just as the exigency of the moment required, without the least portion of science or philosophy pervading their systems. That flourishing, but youthful, country has been far too much occupied hitherto in applying its thews and muscles to subdue the physical nature around them, to have been able to spare time in making contributions

* "As the appearance (of the parties) was an actual one, so the pleading was an *oral* altercation in *open Court, in presence of the Judges.*" Stephen on Pleading, 2 ed. p. 30. The *italics* belong to the learned Serjeant.

contributions to the moral sciences; and the consequence has been that in the department of law, so far as I am aware, not one work of original or profound thought, with the exception, perhaps, of Mr. Livingston's Criminal Code for Louisiana, has yet emanated from the American press. In ameliorations of this science, as in most others, it is still the lot of America to follow in the wake of England; and I trust that the latter country, in the noble words of Milton, "will not forget her precedence of teaching nations how to live."

32. The very author whom Sir Henry Roper cites, and whose industry and talents as an elegant compilator I willingly acknowledge, Mr. Justice Story, leaves the question as to the expediency of dispensing law and equity by one system or two, entirely an open one. He says, in the work quoted from, "Whether the one opinion or the other be most correct in theory, it is most probable that the practical system adopted by every nation has been mainly influenced by the peculiarities of its own institutions, habits and circumstances, and especially by the nature of its own jurisprudence, and the forms of its own remedial justice."

33. He thus appears to think that all countries will be prejudiced in favour of the legal institutions they are used to, without inquiring into their value, which undoubtedly is the case; but as the Hindoos have no prejudice whatever in favour of the English Court of Chancery, and as all their jurisprudence, like that of most nations in the world, except the English, contemplates one system and one set of courts only, it is clear that if the question is to be decided on prejudices, the argument is in favour of the Law Commissioners' proposal; and if the prejudices of the English interfere or clash with those of the natives, we learn from most high authority, "that the laws ought to be adapted rather to the feelings and habits of natives than to those of Europeans."

1 Story, Equity Jurisprudence, Section 36.

34. I am unwilling, however, to weary the Government with further disquisition. Abstract reasoning upon the subject has, as I conceive, been exhausted, and that which is required is a practical experiment of a court upon the principles in question. An approximation to such principles exists in the Small Cause Court at Bombay, and it is easily within the power of Government to ascertain whether that Court, faulty and imperfect as it is, has proved satisfactory to the public by its mode of administering justice or otherwise.

Report from the Select Committee of the House of Commons on the Affairs of the East India Company, 16 August 1832.

35. The difficulty of introducing beneficial legal reforms in England has arisen generally from the opposition of the legal classes. Lawyers, even where they are not animated by exclusive views to their own interests, being prone, in the language of Lord Bacon, "to reason in the fetters of their forms and precedents," rather than upon "the broad principles of reason;" but, fortunately, the liberal and unprejudiced tone of mind which characterises the large body of the European Executive in India pervades also the legal classes at Bombay in both branches of the profession. I am thoroughly convinced that not the least undue opposition would be offered to the trial of a system holding out benefits to the public, and by many of the profession I am persuaded that it would be hailed as a vast boon.

De Augm. Scient. Vol. 9, p. 82, ed. Montague. "Jurisconsulti placitis obnoxii et addicti judicio sincero non utuntur, sed tanquam e vinculis sermocinantur."

36. The other objection alluded to by Lord Bacon as one open to be made to propositions for legal amendment, will, of course, be present to the mind of the Government; I mean that such propositions, however fair to view and plausible in speech, are often impracticable. A great many well-meaning men are desirous of contributing their mite to the fund for human improvement, but their zeal oft overruns their knowledge; and it is the part of an intelligent Government to discriminate between that which is sterling, and the base money of ignorant conceited pretenders.

37. I have never concealed from myself the difficulties and obstructions which oppose themselves to the introduction of amendments in the law, even on the part of "wise and excellent men." We are told from high authority, that the following are motives which are ever likely to be active in raising this opposition:—1st, A kind of superstitious veneration in men long educated in the profession and practice of the law for *its very forms and proceedings*, beyond what is just and reasonable; 2d, An over-jealous fear that it may be possible some unthought-of inconvenience may emerge; 3d, A jealousy lest any thing offered for the amendment of what is amiss may give a handle to others to ravel the whole frame of it.

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38. "But notwithstanding all these difficulties and obstructions, I think that good and wise men may and ought to make some prudent essay even in this great business, and with very good success, both to their own reputation and the public benefit."*

39. Such is the conclusion of the greatest Judge, who ever adorned the English bench, and such I firmly believe to be the conclusion of all enlightened statesmen.

I have, &c.

Supreme Court, 21 January 1845. (signed) *E. Perry.*

(A.)

EXTRACT from Private Journal of Sir *Erskine Perry.*

July 1st, 1843, Saturday. Despatched yesterday to the Law Commission my Minute on the Supreme Courts, recommending at great length a reformed system of procedure, in accordance with Bentham's theory, and in accordance also with what has in a great degree sprung up of itself in our Small Cause Court at Bombay. I have taken a great deal of pains with the paper, and let it lie by me for a month after I had written it, in the hopes, first of all, of getting Sir Henry Roper to accede to its views, so as to forward it with our joint sanctions; and secondly, because I did not choose to commit myself to recommending so sweeping a reform with any thing like haste. Sir H. Roper made no objection whatever to my plan, assented, indeed, to its main conclusions, and found no fault with the details; but he either takes so little interest in law reform, or is so diffident of himself, that I could not succeed in persuading him to give any opinion on the subject, although the matter is forced upon us by the Queries of the Law Commission.

After I had forwarded my despatches, I began reading Lord Hale's Tract on the Reformation of the Laws, and after reading his denunciation of the tendency to innovations of the law, by hasty thinkers, ambitious men, arrogant self-opinionated reformers, &c., I began to ask myself whether I came within any of these categories; but when I read afterwards his still stronger criticism on the evils of not attempting to reform the law at all, and of the moods of mind which deterred men the most fit for such a task, such as "Judges and other sages of the law," and reflected that the latter course, amongst lawyers, is much the most frequent, whereas any hasty attempts to introduce alterations has never been fairly attributable to them, I shut up the book with a quiet conscience. I ought to mention that I submitted my plan before I sent it to the *sagest* man here, Mr. Anderson, the ex-governor, calling down upon it from him the most unreserved criticism; he encouraged me, however, with the highest eulogiums, and stated "what a blessing it would be for Bombay if the plan could be introduced, which it could be," (he says) "I am convinced, without the slightest difficulty."

(B.)

REPORT of the Argument of Counsel and Judgment in the Case of *Poonjea Cawnjee* v. *Abdul Rahim Khan*; extracted from the Note-book of Mr. Justice *Perry.*

Thursday, the 30th June 1842.

Present,—The Honourable Mr. Justice Perry.

Poonjea Cawnjee *versus* Abdul Rahim Khan.

Mr. Howard on further directions.

Testator died 15 August 1830; Bill filed 14th January 1832.

Defendant's answer admitted debt, and applications to pay, and set up want of funds, and large debt due to himself.

Reads answer.—He claimed 31,000 as due to him; Master allowed him 10,000. He excepted to Master's report, and 6th exception was, that that Master should have allowed Rs. 13,000.

Fraud.—Master found Rs. 15,873, balance in hand, due to plaintiff. Stables sold by him to his brother, nominally for Rs. 6,000; then Rs. 2,000 lent, and the whole mortgaged to him; Rs. 8,000; clear fraud; and therefore costs.

2 Atk. Hyde, *v.* —— Master found the sale fictitious. Exceptions taken. States facts as to collections of debts; horses.

Lawson *v.* Copeland, 2 Br. Ch. Ca. So it appeared here; defendant negligent in getting in Mahomed Aga's debt; took his bond, although alleged he was insolvent. Then history of sale of horses never explained; and Master charged him with the whole; Court then put it to me whether I would admit the horses properly taken for debt, Rs. 17,000. I did admit.

Whereupon

* Sir Matthew Hale, Tract on the Amendment of Laws.

Whereupon order made by consent. And Report is—

Horses not properly brought to account; therefore several cases of fraud.

Also Master states outstanding debts, one of 31,000, another of 1,500. Yet in last examination, Ali Cawn states he has paid the debt (1,500) to the estate.

Therefore should pay costs. First Report charged him with Rs. 58,000; that went on principle of charging him with whole of Ali's estate, but must be altered, because horses to be substituted for Rs. 17,000. The value to be charged for them is to be ascertained from estimate given by his own witness, Aga Goolam, Rs. 12,000; said the horses (50) were sold 500 apiece.

But that may be when 30 other horses sold, but these 19 horses worth much more; one of them sold for Rs. 1,200.

If executor employs agent to sell horses of estate, and agent sells horses of his own at same time in lump, duty of executor to ascertain what agent's horses were worth. Therefore not justified.

He never took steps to inquire. Agent said horses were worth 11,000 or 12,000 rupees.

Master has allowed defendant on debt of 10,000 rupees. Interest, 8,106 rupees to February 1839.

On another debt, which defendant alleges he was security for, Master has allowed 9,000. Result of schedule—Master to be charged Rs. 68,000

53,124 allowance to defendant.

15,783

Question, whether this fair way to treat creditor? who sued at once; and kept at arm's length for so many years.

Then as to outstanding debts, his own witness says he has paid it.

I say, first, defendant should be charged with 12,000 for horses, under date 1 July 1832.

2d. With debt of Sudjee Ali Cawn, 1,525 rupees.

3d. That Master should calculate over again what is due to defendant by taking last receipt, July 1832, and then strike a balance, and charge the defendant an interest on that balance, and allow him no interest from that time.

That Master should inquire, whether taken proper steps to get in the large outstanding debts, and whether he should be charged with any portion.

Lastly. That he should pay taxed costs also for annual rests. Dickinson on S. S. If executors are guilty of fraud or negligence, are liable as to costs. 1 Madd. 290.

So as to interest; if executor has assets, to pay interest. And does not so; must pay interest.

When horses were seized, there were other horses which might have been seized. Clear our horses were worth more than he sold them for. Reads Campbell *contra*. Even if this, a case between Europeans, sufficient to show costs, not to be granted, much less payment and other matters which cannot now be considered; *à fortiori* between natives. Whole delay from laches of plaintiff. Bill was filed January 1832; our Answer, April 1832; where was negligence there? They then amended; shows no delay. Not justifiable for creditors to push on suit where no assets. Only question now as to costs; if creditor pushes on litigation when no costs.* 11 Law Journal, Jan. 1842. King *v.* Harrett, A distinction, this not a suit for administration of assets; but to obtain his own debt.

* Should be assets; *E. P.*

Defendant always admitted debts stated; our large debt not admitted. We said our debt was 12,000, and that we were liable on guarantee for 12,000 more. Master has allowed 11,000; what fraud in that? Suppose we claimed more than proves in law to be owing. Judges bound to temper the rigour of English law between natives; especially law of executors, which is unknown to them.

As to stables, said we claimed credit for selling for more than value. Transaction between brothers; not very accurately calculated perhaps; perhaps other considerations; but Govt. Maistry has sworn they were worth 4,000 rupees. So we took a mortgage. I say, therefore, evidence of two valuers justified our round assertion of value; also, that of other stable-keeper.

Then if party afterwards become indebted, quite prudent in him to take security, and an affair between brothers. We still estimate value at 4,000; we were and are ready to take them at 8; but where is the fraud to fix costs?

Principle of law laid down, that Master has charged several items, not because received, but because so chargeable by the law of England. Very favourable for me, according to my principles. 1 Myl. and Cr. 92.

Very doubtful, even by that law, whether executor would be chargeable. Cites 1 Crompton and M. 402; Pennington *v.* Henley.

As to the amount due on the horses, the Master has found we ought to be charged with 9,000 rupees. If, as other side alleges, we ought to be charged with more, should have excepted to Master's report. Question not open.

Then as to bond, said fraud. That we took bond for simple contract debt. Great advantage in taking it. No devastavit. Reasonable discretion. Another question, whether it made us legally responsible for the debt. As to outstanding debts; faintly urged. Not made out we received them. All that disposed of in 1st exception to Master. Another case as to costs, Blewitt *v.* Jacob, 240; Robinson *v.* Elliot, 1 Russ. 599; 1 Russ. *v.* Myl. 426.

Howard, reply,—As to stable in 2d answer this, (reads)—The bond was given between 2d and 3d answers; prevented us from obtaining debt. Alleges that he was insolvent. Said if he had suppressed bond, it would have been otherwise. Condition of bond is to pay him personally. Executor, mere description. At the time when we were screwing him up to admit assets, he takes upon himself to take bond, and he was accordingly charged with it. This as to stables.

(Reads 2d answer)—Master's finding value, 8,000 rupees, was excepted to, and confirmed; that question settled. The sale found fictitious and fraudulent. Sufficient to decide question as to costs.

Then as to Aga Goolum's retainer of 1,800 rupees; he was at very time a debtor to estate. Then as to statement of Master's finding that 9,000 rupees sum to be charged with, he only finds that that sum has come to hands of defendant. Master could not state under the decree what defendant ought to be charged with for horses.

Defendant, in his second answer, set up debt due to himself, 31,967. Trying to stop us *in limine*. Master in last report finds a balance to us of 15,000 rupees. Then as to outstanding debt, Ali Cawn says he has paid it. Where is large debt of 31,000?

C. A. V.

Thursday, 21st July 1842.—JUDGMENT delivered by Sir *Erskine Perry*.

THE question which remained to be considered in this case, when it came on for further directions, was, whether, on the one hand, the defendant, as executor, had not subjected himself to costs by carrying on a harassing and fraudulent defence, and whether, on the other, the plaintiff had not disentitled himself to them by having commenced and carried on his suit when there were no assets from which his claim could be satisfied? This made it necessary for me to go through the proceedings in the cause; and I have also looked into the authorities.

The simplicity of the rule at common law which gives costs to the winning party, however doubtful his claim may have been, and however much a subject for fair litigation, saves so much painful inquiry, and is based on such sound principles, as to recommend itself for adoption wherever the discretionary power of the court is left free to act; and it is evident that the course of decisions in equity is gradually conforming itself to such rule, leaving a margin, however, for exceptional cases where undue litigation has been carried on, or where meritorious trustees have been made parties; Vancouver *vs.* Bliss, 11 Ves. 463. Millington *vs.* Fox, 3 M. y. c. 338.

But if this be the rule to be applied generally, even when a party may have had fair grounds for contesting a claim, which is afterwards established in court, how much more forcibly must it apply when a just claim is resisted, and a series of defences set up, the falsehood and untenableness of which can only be established by a ruinous expense and years of litigation?

The facts of this case may be stated in half a dozen lines. The plaintiff has a claim against the defendant, as executor of Abdul Kurrim Khan, who died in 1830, for 2,500 rupees; after much application to him for an account and for a payment out of the assets, both of which the defendant refuses, the plaintiff files his bill in January 1832.

The defendant puts in an insufficient answer, but an answer which, if true, would completely defeat the plaintiff's right of action, and subject him to costs if he proceeded; for he states that there are no assets to pay the debt of plaintiff, and that all that has come to his hands of the testator's estate is of very inconsiderable amount, and wholly insufficient to pay his just debts and funeral expenses. Now, after a litigation of ten years' and a half duration, protracted to this extent, be it observed, entirely by the delays interposed by the defendant, it turns out that all the defences set up by the defendant in his first answer are untrue.

There are assets; there were, long before the Bill was filed, assets of a very considerable amount; and when all the deductions are made, which a very favourable interpretation for the defendant has allowed him; assets five times exceeding in amount the original claim of the plaintiff.

If, again, one follows step by step the proceedings in the cause, we find that the defendant has been driven into every admission and every fact in his knowledge necessary to be made known; for a decision in the cause has been wrung from him, only, as it were, at the point of the sword, and after all means of defence within his reach had proved fruitless.

But what system of law must that be which enables a party to resist successfully for 12 years the payment of a just claim, to put up all sorts of defences, to interpose all kinds of

of delay, and finally, when judgment of the court is against him upon each and every point, absolves him from any portion of the costs to which his harassing and dishonest procedure have exposed the plaintiff?

The grounds upon which it has been sought to bestow this immunity on the defendant are, as it would seem, two; first, that even as between Europeans, the defendant, as executor, would not be liable to costs; and secondly, even if he were so liable, still that, as a native, the rigorous rules of English law are not to be applied to him.

This second objection I disposed of during the argument; and I need only repeat now, that I should be doing great injustice to the native population generally if I relaxed one iota of any rigorous rules which may serve to keep executors to the due execution of their trust. No one is called upon to be an executor; the office is in all cases accepted voluntarily, often with eagerness; but as it is an office which gives a man the handling of other people's money, a court of justice cannot be too vigilant in maintaining all due checks upon it; and I have seen nothing in this country to induce me to relax any portion of this vigilance in favour of native executors.

The main ground, therefore, upon which the defendant must rely, is, that having been sued *en autre droit*, and no conduct of his having made that suit necessary, or caused any needless expense, he is entitled to the favourable interposition of the court in respect to costs. Undoubtedly courts of equity have always been ready to protect trustees from any portion of the costs of a suit in which they are made parties solely in respect to their representative character, and independently of any conduct or misconduct of their own; and so, also, even where a trustee has conducted a defence harassingly and with impropriety, though the court will visit him with costs for such part of his defence, still, if he were brought into the suit as a necessary party, and it was not *occasioned* by any conduct of his, the court will not throw upon him the whole costs; Tebbs *v.* Carpenter, 1 Madd. 296. The application of this principle enables me to dispose of this case; for having satisfied myself that the defence, subsequent to the filing of the Bill, was such as ought to cast the defendant in costs for so much of the proceedings, I only have to look to the defendant's original answer to see that his misconduct in refusing to account originally made the suit necessary, and therefore throws upon him that portion of the costs also; Anon. 4 Madd. 273.

It remains only to examine the cases which the defendant relies upon.

The first is King *v.* Hammett, 11 Law 1, ch. 14, the marginal note of which is, "a simple contract creditor filed a creditor's bill, having been *correctly* informed by the administratrix of the estate of the accounts, and that judgment creditors would consume all the assets; the plaintiff was ordered to pay the costs;" and that case I take to be perfectly good law. But I am of opinion that the converse of the case equally holds; and that when the executor *incorrectly* informs that creditor of the estate of the assets, refuses an account, and protracts a suit through 10 long years, he should be ordered to pay costs; and that is the case here. Bluett *v.* Jessop, Jac. 240, may receive the same answer; for there it appeared that there were no assets available for the plaintiff's demand, and the defendant said so in his answer; here there are assets, and the defendant denied it in his answer. Robinson *v.* Elliot, 1 Russ. 599, and Goring *v.* Everest, 1 R. and M. 426, fall within the same category.

I am, therefore, of opinion that the defendant has wholly failed in making out any ground to be exempted from payment of costs, and the onus lay on him to do so. A good deal of discussion took place at the bar as to the fraud in the defence, but I have not thought it necessary to base my judgment on the particular instances relied upon. There is a class of men who cannot be made to pay their just debts without the strong arm of the law; and if I may judge, from the line of defence adopted in this action, the defendant is one of them; but, at all events, I can have no hesitation in deciding that such a defence as has been here made is unwarrantable and fraudulent, and subjects the party making it, whether trustee or principal, to the costs of suit.

(True copy.)

(signed) *O. W. Ketlun,*
Clerk to Mr. Justice Perry.

No. 5.
Third Supplement to Appendix to the Report on Civil Judicature in the Presidency Towns.

(C.)

RETURN of all the Costs taxed in the MASTER'S OFFICE at *Bombay*, during the Years 1840, 1841, 1842; distinguishing defended Causes from Ex-parte and Cognovit (undefended) Causes.

1840.

DEFENDED CAUSES.						EX-PARTE CAUSES.			COGNOVIT CAUSES.		
Plaintiffs' Costs.			Defendants' Costs.			Plaintiffs' Costs.			Plaintiffs' Costs.		
425	1	0	521	2	0	698	1	0	130	1	0
436	3	0	517	3	50	290	2	0	489	1	75
295	2	0	1,996	2	50				123	2	50
866	2	50	825	2	0	2)988	3	0	107	0	0
500	2	50	132	1	0				55	1	0
478	0	0	571	3	0	494	1	50	206	1	0
1,688	3	0	1,639	0	0				124	2	0
751	3	0	368	1	0				157	1	0
407	2	0	597	0	50				88	2	0
347	0	0	325	3	50				99	1	0
860	3	0	794	0	50				302	2	0
467	3	0	387	0	0				106	3	0
594	2	0	536	3	0				160	0	0
560	2	0	625	0	0				148	2	0
486	1	0	537	1	0				157	3	0
509	1	0	938	2	0				127	1	0
411	2	0	745	0	0				155	1	0
627	0	0	476	0	0				97	2	0
413	1	0	365	3	0				142	1	0
596	1	0	264	3	0				317	1	0
626	1	0	379	2	0				223	1	0
2,578	1	0	425	1	50				205	3	0
929	3	0							147	3	0
439	2	50	22) 13,970	3	0				144	1	0
458	0	0							212	0	0
869	0	0	635	0	13½				162	3	0
342	3	50							130	3	0
597	0	0							157	1	0
464	2	0							128	1	0
770	1	0							96	3	0
424	2	0							121	1	0
1,851	3	0							122	0	0
782	1	0							150	0	50
528	1	0							152	3	0
263	1	0							134	3	0
2,811	2	0							98	1	0
403	1	50							116	1	0
659	3	0							153	1	0
400	2	0									
596	3	0							38) 6,053	2	75
469	0	75									
1,790	3	0							159	1	23
1,379	2	75									
655	3	50									
414	1	0									
588	2	0									
665	2	0									
47) 34,486	3	50									
733	3	69									

1841.

1841.

DEFENDED CAUSES.						EX-PARTE CAUSES.			COGNOVIT CAUSES.		
Plaintiffs' Costs.			Defendants' Costs.			Plaintiffs' Costs.			Plaintiffs' Costs.		
415	0	0	236	0	0	303	3	0	131	2	0
258	1	0	570	1	50	482	1	0	254	1	0
906	1	0	215	0	0	568	1	0	218	2	0
1,102	1	50	307	0	0				140	2	0
670	2	0	772	1	0	3)1,354	1	0	141	3	0
789	3	0	517	1	0				258	2	0
266	1	0	354	1	0	451	1	66¾	80	2	0
266	3	0	236	0	0				160	1	50
416	3	50	351	1	0				191	3	0
377	1	0	789	0	0				218	2	0
676	2	0	336	3	0				141	0	0
624	2	0	454	0	0				190	1	0
878	2	50	218	0	0				301	0	0
1,155	2	67	673	3	0				113	0	0
453	3	0							113	3	0
559	1	0	14) 6,030	3	50				151	1	0
340	0	0									
360	2	50	430	3	10¾				16) 2,806	1	50
608	0	0									
533	0	0							175	1	59⅓
793	2	0									
21) 12,452	2	67									
592	3	96½									

1842.

761	1	0	1,123	2	0	411	0	0	291	3	0
468	3	0	777	1	0	405	0	0	88	2	0
647	3	0	412	3	0	385	3	0	176	0	0
460	3	0	548	2	0				213	3	0
285	0	0	347	3	0	3) 1,201	3	0	173	2	0
334	1	0	573	1	0				286	2	0
797	3	0	1,756	1	0	400	2	33⅓	181	3	0
592	0	0	399	2	0				138	1	0
498	2	0	442	0	0				156	1	0
404	1	0	115	0	0				148	1	0
703	0	0	369	2	0				171	3	0
1,143	2	0	724	2	0				407	3	0
337	0	0	695	2	0				143	3	0
346	1	0	569	0	0				289	1	0
695	0	50	554	2	0				636	1	0
330	3	0	939	2	50				193	2	0
813	3	0	405	0	0				186	1	0
352	3	0	368	2	50				100	0	0
526	0	0	616	3	0				133	1	0
676	3	0	673	2	0				201	1	0
676	3	0	428	3	0				683	0	0
329	2	0	709	1	0				358	0	0
440	0	0	529	0	0				150	2	0
419	3	0							262	1	0
653	2	0	23) 14,079	1	0				195	0	0
653	3	0							103	2	0
713	2	0	612	0	56½				237	2	0
669	0	0									
604	1	0							27) 6,307	1	0
792	0	0									
480	3	0							233	2	44¾
461	0	0									
32) 18,069	0	50									
564	2	64									

No. 5.
Third Supplement to Appendix to the Report on Civil Judicature in the Presidency Towns.

(D.)

RETURN of Taxed Costs in Twelve defended Actions tried in 1842, where there were no extraordinary Circumstances to mark the Cases.*

PLAINTIFF'S COSTS WHEN THE VERDICT PASSED FOR HIM.				DEFENDANT'S COSTS WHEN THE VERDICT PASSED FOR HIM.			
1. Doe d. Jejeebhoy *v.* Doolubdas	615	0	0	1. Dadabhoy Pestonjee *v.* De Cruz	673	0	0
2. Nursingdass *v.* Tribhowandass	695	0	0	2. Pellamberdass Wittuldass *v.* Khooshaldass	724	0	0
3. Edmunds *v.* E. I. Company	813	0	0	3. Muccondass *v.* Ogilvie	695	0	0
4. Cassin *v.* Govind Ramjee	676	0	0	4. Gonsalves *v.* De Cruz	569	0	0
5. Sherefally *v.* Sorabjee	554	0	0	5. Jaickund Bhinojee *v.* Moorajee	939	0	0
6. Lickee *v.* Gunput Bapsia	792	0	0	6. Hamaboye *v.* Bhawoo al Gopal	529	0	0
Average Costs of each Plaintiff	690	12	0	Average Costs of each Defendant	688	2	0

TOTAL Average Cost of a defended Suit to the parties - - *Rs.* 1,378 14 0

To the Right Honourable the Governor-General in Council, &c. &c. &c.

Right Honourable Sir,

I HAVE to submit the accompanying observations upon Sir Erskine Perry's letter, dated the 25th of January 1845, addressed to the Honourable the Governor of Bombay in Council, and I have to beg that the observations now transmitted, as also the document which, in order to correct an error, I had the honour to forward on the 25th instant, may be considered as supplemental to my observations upon the Report of the Law Commissioners, dated the 15th of February 1844, and the other documents to which that Report refers.

I have, &c.

Bombay, 31 January 1845. (signed) *H. Roper.*

HAVING yesterday received a copy of a letter, dated the 25th January, addressed by Sir Erskine Perry to the President of the Council of India in Council, as also a copy of a letter written by Sir Erskine Perry to the Governor of Bombay in Council, copy of which it appears was transmitted along with his letter to the President of the Council of India in Council, I must add a few observations to those I have already made upon the Minute and Letter of Sir Erskine Perry, relating to the establishment of a new court of justice.

I reluctantly engaged in the controversy in question, for not only do I think that legislative discussions by Indian Judges should be discouraged for several reasons, but I was aware that projectors of law reforms often express themselves in unmeasured terms of those who differ from them in opinion, and I was unwilling to expose myself to misrepresentation or reproach. I also knew that in controversy it was difficult to avoid using strong expressions, and feared I might myself give occasion for fretfulness or anger. Accordingly, in the first instance, I represented to Sir Erskine Perry that the Law Commissioners had not invited any discussion of the subject.

* As the costs of the winning party only are usually taxed, it has been found necessary to take the calculations from twelve actions, instead of six.

subject. His reply convinced me that any further representation to that purport would be ineffectual. And yet it seems to me, from Sir Lawrence Peel's Minute, that the Judges at Calcutta did not believe that the letter they had received from the Law Commissioners invited any such discussion, and that the Judges at Calcutta merely entered into the matter because a copy of Sir Erskine Perry's Minute had been sent to them. It also appears to me that the Law Commissioners in their Report show that they were rather surprised at Sir Erskine Perry having brought forward the question. I never supposed for a moment that Sir Erskine Perry and the Law Commissioners had arranged by "previous communications" that their recommendations should be contemporaneous, and although Sir Erskine Perry, in his last letter to the Government of Bombay, has distinguished by inverted commas the expression, "previous communications," as if he attributed it to me, I am not aware that such a phrase or suggestion is to be found in any of the observations I have written. Sir Erskine Perry may have conversed upon the subject when at Calcutta, and may thus have become aware of some of the views of the Law Commission. Whether he did or not, is of no importance, that I can see; and I merely assigned my ignorance of the unanimity which existed between Sir Erskine Perry and the Law Commissioners, as an excuse for the superficial manner in which I first treated the subject. Had I been aware of the similarity of their views, and that Sir Erskine Perry's Minute would be so much relied on, I should at once have gone into the matter much more fully.

Being urged by Sir Erskine Perry to write upon the subject, I relieved myself from the task upon as easy terms as I could for the reasons already given, and in doing so I expressed my dissent briefly, and in terms complimentary to Sir Erskine Perry. I little knew, at that time, that what had passed between us would be entered in a private journal, or that the course I had pursued with a view to avoid unprofitable discussion, would be recorded as establishing that I was an enemy to legal reform; and I cannot but think that private journals which are occasionally to be made public, are rather formidable, as rendering character insecure, and social and official intercourse very perilous.

Last April Sir Erskine Perry asked me if I had seen the Report of the Law Commissioners, and informed me that a copy had been sent to him. I did not, however, see his copy, and afterwards, having applied for one myself, the Law Commissioners sent it to me, at the same time informing me to the effect that it was sent as a favour, and that I was not officially entitled to it. I should not have considered myself at liberty to submit to the Government comments on a document thus received, had I been otherwise disposed to write about it; but I felt no such disposition, for I wished to avoid trouble and discord, and the Judges at Calcutta had, I thought, said enough upon the subject. Meanwhile Sir Erskine Perry had gone to Mahabuleshwar, and I had no idea that he was writing or had written any thing further about the matter, until some time after his letter of May 1844 had been sent to the Government of Bombay. In June he sent to me a copy of that letter, and when I had read it, being still anxious to avoid trouble and dissension, I returned it, simply observing, that if the Government wished for my opinion I supposed it would be asked for.

From the like feelings, when the Government of Bombay informed me that the Government of India requested the opinions of the Judges, I, for a time, forbore to write upon the subject, and told some friends that I should not give any further opinion about it. It was represented to me that I ought to state my views of the matter, and that due respect for the Government of India rendered it incumbent on me to do so. Accordingly I commenced to write; but being interrupted by peculiar circumstances of a private nature, gave up for some weeks the intention of proceeding with it. I resumed during the November term, but being interrupted by the December session, and being anxious, if writing at all, to go rather fully into the question, I had not finished, what I admit is a very discursive and tedious essay, till the middle of December. But whatever may be its demerits, I was most anxious to avoid giving avoidable offence. I, therefore, not only altered two or three passages, which a gentleman upon whose judgment and good feeling I relied, and to whom I read the essay, and who also read it over himself, objected to as likely to prove offensive; but I also struck out other passages which he thought were of a different description, but which I feared might be misconstrued. I mention these particulars to show that I have not intentionally offended. If the discovery or disclosure of erroneous statements of

facts has excited anger, however I may regret it, I cannot see that I should or could have avoided it; for had I failed to make such discovery or disclosure, the task imposed on me would have been still more imperfectly performed.

When the observations had been copied, they were transmitted to the Government of India, simply because I had been officially informed that the Supreme Government required them. It is true that whilst they were being written, and, even after they were completed, I did not consult Sir Erskine Perry respecting them. I merely followed the course he had pursued with respect to his letter of May 1844 to the Government of Bombay, of which I did not know or hear any thing till weeks after it had been sent to the Government. In like manner, after the last October session, he wrote to the Government of Bombay respecting important matters connected with the court, and I had no information on the subject till a copy of his letter was sent to me by the officer of the court. I accidentally heard that afterwards another letter upon important subjects had been sent by him to the Government; and it was not till weeks after I had the information that he wrote to me, saying he had addressed a letter to the Government respecting the Small Cause Court, and either that the prothonotary would give me a copy, or that he had desired the prothonotary to do so. I sent for the copy; it was not forthcoming. At length I asked the prothonotary for it. He demurred; intimated that he had not been desired to give me a copy; but said, that if I told him I was to have a copy, it should be given to me. I declined going further, for I apprehended there might be something in the letter which it would be unpleasant to me to read. I do not object to Sir Erskine Perry thus communicating his views to the Bombay Government without consulting or communicating with me. He gives them as his own opinions, not as mine or as ours jointly; but it leaves me equally at liberty to write my opinions, especially regarding matters not official, such as his Letter and Minute and the Report of the Law Commissioners, without previously communicating them to him. Accordingly, upon the late occasion I followed the examples he had set me.

But it is made a matter of reproach against me, that "for a period of sixteen months I never gave Sir Erskine Perry the least reason to suppose that I entertained any doubts whatever as to the accuracy of the facts he had advanced, or as to the law he had delivered in Poonjia Cawnjee's case." Had I been aware, from the sketch or outline of his Minute, which Sir Erskine Perry sent to me in May 1843, or from any other source, that the facts he had advanced, or the law he had delivered in Poonjia Cawnjee's case, were doubtful, I should then have expressed those doubts to him accordingly, but I should have endeavoured to avoid controversy with him upon the subject. I did not become aware that such law and facts were doubtful until last October, when I began to write upon the question. The mischief had then been done; the errors made public. It was incumbent on me to disclose them, and I appeal to professional men, whether in the notice I took of them I did not put the best construction on the matter, notwithstanding what Sir Erskine Perry has expressed in his last letter to the Governor of Bombay in Council.

I have spoken of the sketch or outline of his Minute which Sir Erskine Perry sent to me in May 1843; for what he did send to me on that occasion was not the Minute itself, as ultimately sent in by him, but a rough sketch or outline only. So far as I can recollect, there were blanks left, to be filled up with schedules and details. I read it in a cursory manner, making a few memoranda in pencil of what appeared to me the more material topics, and to which, in case I should have occasion to write upon the subject, I intended to allude. Sir Erskine Perry afterwards sent to me the letter dated the 29th of June (either the draft or the fair copy), which he wrote to the Law Commissioners, and along with which his Minute, dated 3d June, was, I believe, transmitted to Calcutta; but I have no recollection of having ever seen that Minute in its mature and perfect state; and my firm conviction is, that I never did see it until the printed copy was received by me from the Law Commissioners. This conviction is strengthened by recollecting that when at the bar I had been much annoyed at an oversight of mine, as counsel for the defendant. Abdool Rahim Khan, having given occasion to an exception to his answer, and as the exception had immediately been submitted to, a statement in any sketch or Minute shown to me, to the effect that such an exception had actually been argued, could scarcely have escaped my attention, for the names of the parties were familiar to me, owing to that very exception; and a few days before the case had come on for further directions before Sir Erskine Perry, in

in the June term 1842, I had been enabled to attend the Court for a day or two, and had then inquired from the bench, in presence of Sir Erskine Perry, whether I had not been counsel in the cause; and on receiving an affirmative reply, said that I should not attend when the cause should be again brought forward. I have no recollection of having seen, in any sketch or Minute, previously to October last, any statement that such exception had been argued, and my conviction is that I had not; consequently I cannot but think that no such statement was contained in the sketch or outline sent to me in May 1843. When I received the printed copy of the Minute and Report, &c. from the Law Commissioners in May 1844, I concluded I had already read what the Minute contained in the sketch or outline sent me by Sir Erskine Perry, in May 1843; and although I observed schedules or lists in the printed copy, whereas I believed they had been omitted in the sketch or outline, I did not enter into or read them, for I supposed they were consistent with what such sketch or outline had contained; and I therefore limited myself to a very cursory perusal of the Report of the Commissioners and the Minute of Sir Lawrence Peel. When, however, I was persuaded to write upon the question, I read all the papers, including Sir Erskine Perry's Minute, carefully through; and thus became aware, for the first time, that the last-mentioned Minute differed in some respects from the sketch he had forwarded to me in May 1843, and which it appeared to me had been improved upon, so that the Minute was more perfect in style than the sketch: and then, also, for the first time, I perceived the statement, that the exception to Abdool Rahim Khan's answer had been argued. On observing it, my attention was roused. I inquired whether that was not the cause in which I had been counsel, and whether I had not drawn the answer. On receiving a reply in the affirmative, I desired the Registrar to send the papers to me; and on examining them, observed that the statement of the exception having been argued was an error. Sir Erskine Perry makes light of it, as solitary and trifling; but I considered it important; and on further examination of the case, also discovered, that although it was stated in the printed Minute of Sir Erskine Perry, that an application for an account of the testator's assets had been made prior to filing the bill, yet that in fact there was no evidence in the cause, or ground for stating that any such application had been made. The importance of this last error with respect to costs will be apparent from the anonymous case, 4 Madd. 273.

It further appeared, that no notice had been taken in the printed Minute of a mistake committed by the Master, the effect of which was, that a balance had been found due from the defendant; whereas, but for the mistake, the balance would have been in his favour. I was for some time puzzled to account for this mistake, and for the mode in which it was corrected; but the Master himself explained to me that he had committed it, by debiting the defendant with the whole amount of a certain portion of a debt due to the estate, but which portion the defendant had compromised, by receiving certain horses which had produced a much smaller sum; that he, the Master, had thus overcharged the defendant, because he had considered the defendant's answers to interrogatories as unsatisfactory and evasive, &c. I at first could not perceive that this objection had been made the subject of exceptions; but the counsel for the plaintiff told me that it was, and that the exceptions were overruled on technical grounds, the Judge expressing his opinion that it should be referred back to the Master to consider whether the compromise was not fair and reasonable under the circumstances; and he, the counsel, having admitted that it was fair and reasonable, a reference was thereupon made to the Master to correct the error, and to report whether the property actually received on such compromise had been fairly brought to account. On examining the proceedings filed in the Registrar's office, I find such was the case, that the objection to the above overcharge of the defendant was made the subject of exceptions, but they were overruled; the Judge at the same time providing that justice should be done in the matter; and thereupon the counsel for the plaintiff, in order to save time and expense, and because, as he has informed me, he could not successfully resist, admitted that the compromise had been reasonable and fair.

The result of the second reference to the Master was, that the defendant was reported not to have brought fairly to account the sums actually received; but instead of the balance being against the defendant, the testator's estate was found

indebted to him in 884 rupees. His defence had been, that the estate and effects of the deceased, come to his hands, were insufficient to pay the debt he admitted to be due to the complainant, and he claimed a debt to be due to himself, payment of which out of the assets he was entitled to. Such a defence is usually expressed by the phrase "want of assets." Thus the defence, want of assets, was established, and the plaintiff lost his debt in consequence; notwithstanding which, Sir Erskine Perry's printed Minute states, "a decree on all points raised by the defendant was made against him." This does seem to me an important inaccuracy, in proof of which the facts that a balance was found due from the estate to the defendant, and that not a rupee was ordered to be paid to the plaintiff in satisfaction of the debt he claimed, are as insurmountable as they are incontestable; and I submit them, together with Sir Erskine Perry's notes and judgment, &c., which accompany his letter to the Government of Bombay, for the consideration of the profession in India and elsewhere. The ordering part of the decree was as follows, and nothing more:—

"And this Court doth order and decree that the said defendant do pay to the said complainant his costs of this suit, to be taxed by the Master of this Honourable Court."

But Sir Erskine Perry seems indignant at my having canvassed the case, because I had merely been employed in it as counsel; whereas he had officiated as Judge, and hence his conclusions respecting it ought to be above all controversy on my part. My occupation, however, as counsel in the cause ended on the 14th November 1835, when the decree was taken *by consent*. I had nothing to say to the Reports of the Masters, or to any of the exceptions to those Reports, and had left this country, intending never to return to it, long before the argument of the first exceptions. The knowledge of the case I had as counsel merely availed me so far as to quicken my perception of the erroneous statement that the exception to the first answer had been argued, and the detection of that error naturally made me look further into the case. But all the errors were ascertained by the official documents filed as of record on the Equity side of the Court. Moreover, I do not impugn Sir Erskine Perry's judicial decision; I rely upon the final order he made, as establishing that 884 rupees were found due from the estate to the defendant, and that the complainant took nothing by his suit, except, indeed, that all his costs were ordered to be paid by the defendant, a part of the order which, lest it should be attacked, I have done my utmost to defend. Sir Erskine Perry gainsays or misapprehends his own final order in the cause, when he says in his Minute, "a decree on all points raised by the defendant was made against him;" for, as already shown, the result of the suit as to the principal point, want of assets, was in favour of the defendant.

Sir Erskine Perry extrajudicially put forward the case in his Minute as an example. To ascertain whether the details he gave were correct, I did as any other man might do, as Sir Edward Sugden did, to ascertain whether the account of Rattle and Popham, imputed to Lord Mansfield, was correct; I examined the official documents. I did so extrajudicially, and under the impression that the case could never come judicially before me; for the general rule being that there can be no rehearing or appeal upon the question of costs, I believed that if upon that point the decision had been erroneous (which I by no means admit) the defendant was wholly without a remedy. Whether he could appeal to The Queen in Council, is a question I have not investigated or considered.

I do not impute the errors I have disclosed to any the slightest moral turpitude in Sir Erskine Perry; they are easily to be accounted for upon very different grounds, and, as already observed, I appeal to professional men whether in putting them forward I might not have enlarged upon them in much stronger terms. It was important to disclose them, for I could not concur in Sir Erskine Perry's opinions, and therefore wished that his authority should not be held conclusive, but that his recommendations might be narrowly examined before being adopted. In like manner, and with similar views, I thought it expedient to mention what appeared to me to be errors or misconceptions on the part of the Law Commissioners; for although that body, being peculiarly constituted, are not, in one sense, so high authority as Sir Erskine Perry, yet they have statutable weight, for the Governor-general in Council is bound by Act of Parliament "to take their reports into consideration," 3 & 4 Will. IV., c. 85, s. 54.

Sir

Sir Erskine Perry intimates in his last letter to the Government of Bombay, para. 14, that he does not combat my remarks, that it would be misapprehension to suppose that such evils as are exemplified by the statement in his Minute of Poonjia Cawnjee's case are of common occurrence. It may extenuate my error on this point, to say I was misled by the following words referring to the case in the 20th para. of his Minute: "If the case above cited had any extraordinary circumstances connected with it, it might be safely passed over as anomalous, but it is not so, &c."

With respect to the 19th, 20th and 21st paras. of the same letter to the Government of Bombay, I may also plead that Sir Erskine Perry's original remark as to the interests of suitors being concluded for ever, was unqualified by the observations he has now made upon the passage, and by which it appears he did not mean that a decision on a technical point *legally* binds the suitor for ever, or at least always, but that poverty may preclude him from obtaining justice, as illustrated by the usual reference to the ability of a penniless man to enter the London Tavern. The qualification was not originally expressed, and I did not perceive that it was implied. My fear was that the Members of the Indian Governments who are not lawyers, and for whose information the passage was intended, might be greatly misled by it.

Three days before I received the copy of Sir Erskine Perry's last letter to the Government of Bombay, the officer of the Court had informed me of the error regarding costs alluded to in the 18th para. of that letter, and into which that officer had led me, and I forthwith transmitted the correction to Calcutta. I am not at present aware that he has discovered any errors in those other statements of his regarding costs in the Supreme Court, which I have submitted to the Government of India.

With regard to the 29th para. of the same letter, it is very clear, from my observations, that I did not enter into the history or origin of pleading, and had no occasion to quote the passage in Mr. Serjeant Stephen's work which Sir Erskine Perry has cited, or to refer to the extract from Bracton, 372 B., which Mr. Serjeant Stephen has given in the Appendix. There was no apparent ground for ascertaining whether "the meaning of the distinction used by jurists, of oral pleadings and written pleadings, had wholly escaped me," or not, for I had limited myself to noticing the fact, that by oral pleading the Law Commissioners mean one system and Sir Erskine Perry another. In conversation I have two or three times said that Sir Erskine Perry's system was the more rational, as being the more feasible and consistent.

(signed) *H. Roper.*

From *G. A. Bushby*, Esq., Secretary to the Government of India, to the Honourable the Judges of the Supreme Court of Judicature of Bengal, No. 88, Fort St. George, No. 71, and Bombay, No. 70; dated the 24th January 1846.

Leg. Cons. 24 January 1846. No. 12.

Honourable Sirs,

We have the honour to transmit to you the accompanying printed copy of a Third Supplement to Appendix of the Report of the Indian Law Commissioners, dated the 15th February last.

We have, &c.

(signed) *T. H. Maddock.* *F. Millett.*
Geo. Pollock. *C. H. Cameron.*

Council Chamber,
24 January 1846.

Leg Cons.
24 January 1846.
No. 13.

From *G. A. Bushby*, Esq., Secretary to the Government of India, to Secretaries to Governments of Bengal, No. 86, Madras, No. 68, and Bombay, No. 69; dated the 24th January 1846.

Sir,

In continuation of my letter, No. —, dated 25th October last, I am directed by the President in Council to transmit to you the accompanying printed copy of a Third Supplement to Appendix of the Report of the Indian Law Commissioners, transmitted with Mr. Officiating Secretary Davidson's letter of the 15th February 1844.

I have, &c.

(signed) *G. A. Bushby*,
Secretary to the Gov[t] of India.

Council Chamber,
24 January 1846.

(True copies.)

(signed) *T. L. Peacock*,
Examiner of India Correspondence.

East India House,
22 January 1847.