

Ensign Clarke, who was present from the beginning, states the commencement of all the various incidents relating to Vydenadah's punishment to have been at ten o'clock; and there are many circumstances which confirm that particular.

Thirdly, Gopal Naig's declaration, which at first conveyed the idea that he had seen Mr. Cochrane beat Vydenadah till he was tired of beating him, was rendered of no consequence, by his afterwards declaring, in answer to a question put to him by the Committee, that he had not seen Mr. Cochrane himself beat Vydenadah.

Besides the question put by the Committee to the Sepoys concerning the number of lashes given by each, the following question was put by the Committee :

QUESTION—How many lashes do you suppose Vydenadah received altogether?

ANSWERED by Mootal Naig—I did not count the lashes; and cannot tell.

ANSWERED by Cundama Naig — *I believe about a hundred lashes.*

Gopal Naig does not appear, in the course of his examination, to have specified any number of lashes that was given by himself or others.

From the specimen which has now been given of Mr. Smith's *exaggerated description* of the punishment inflicted either by Mr. Cochrane, or by the Sepoys, it will probably be thought unnecessary to make any further comment on the infidelity of that part of his Report.

Paragraph Eighth of the REPORT.

“ One of the witnesses, Ensign Clarke, said, that during the punishment, he (Vydenadah) agreed to deliver up the original cadjans, which were sent for, and delivered accordingly.”

OBSERVATIONS ON Paragraph Eighth of the REPORT.

If there are some parts of the Report liable to the blame of exaggeration, there are other parts which are certainly very free from that imputation :

imputation : But it has happened unfortunately, that while *exaggeration* has been employed in articles which had the appearance of being *unfavourable* to Mr. Cochrane, the opposite quality of *under-stating* is to be found only in those which might have the appearance of being *favourable* to him.

In the whole course of the Report, Mr. Smith has abstained from giving any precise account of the crimes of a public nature whereof Vydenadah had been guilty, and from connecting these with the punishment publicly inflicted on him by Mr. Cochrane's orders ; he has abstained too from mentioning the urgent necessity there was for Mr. Cochrane's discovering the true accounts relating to the grain sent to the army—which accounts were in the possession of Vydenadah, who, before the punishment commenced, and even during a considerable time after its commencement, obstinately persisted in denying that he had either the accounts in question, or the original cadjans from which they were made out, till, in the course of the punishment, the truth was unwillingly extracted from him, and the original cadjans produced, upon which the punishment immediately ceased.

Mr. Smith has totally omitted to take any notice of that *material circumstance* of the punishment *ceasing* the moment that Vydenadah had acknowledged that he had the original cadjans in his possession, and agreed to deliver them up. This is so *very material*, that it is surprising how it could have escaped Mr. Smith's attention, especially as he must have perceived from thence that it was entirely in Vydenadah's own power, not only to have *abridged the punishment*, but to have *avoided it altogether*, if he had at once agreed to deliver up the accounts or cadjans which he had secreted, and which were so essentially necessary to Mr. Cochrane for making up his public accounts.

In Paragraph seventh, when Mr. Smith had occasion to talk of the robbery committed by Vydenadah, he was pleased to describe it only as the *supposed robbery* ; and in Paragraph eighth, now under consideration, he has described the incidents so very briefly, that no person could be able, from the perusal of Mr. Smith's Report alone, to understand either what was meant by the *original cadjans*, or to perceive what a material circumstance it was in Mr. Cochrane's favour, that these original cadjans had, after the most ob-

stinate.

stinate denials on Vydenadah's part, been found in his possession, and delivered up in consequence of the punishment.

Mr. Smith must have had before his eyes Ensign Clarke's examination, at the time when he extracted from it the very few words which he has inserted in Paragraph eighth above recited ; but it might have been expected that he should have thought it proper to bring under the view of the Directors, some other parts of Ensign Clarke's testimony, which might have tended to throw additional light on this subject, and to prove, that in the whole matter Mr. Cochrane acted, not from private pique or animosity, but from public motives ; particularly the following paragraph in Ensign Clarke's declaration, would have shown that the great object of the punishment was to get possession of the public accounts.

Ensign Clarke's words are:—" Mr. Cochrane often stopped the punishment to ask him for the accounts, which he persisting to know nothing of, at last Mr. Cochrane sent for his mother and family, and desired the mother to persuade him to produce the accounts, which he still persisted to know nothing of ; and the punishment had just recommenced, when the mother begged it might be discontinued, which was done," &c.

It would also have been natural to mention, on the subject of the punishment, that the following question had been put to Ensign Clarke by the Committee at Negapatam :

QUESTION—Did the punishment of Vydenadah appear to you at the time so severe as to be likely to occasion his death ?

To which Ensign Clarke answered, *It did not.*

Paragraph Ninth of the REPORT.

" The beginning of January 1785, a Copy of the Proceedings of the Committee was delivered to Mr. Cochrane, and afterwards the witnesses were sent for to Madras ; and upon being examined on oath, are said to have confirmed their testimony given at Nagore."

OBSERVATIONS ON Paragraph Ninth of the REPORT.

On the 10th of January 1785, Mr. Cochrane was permitted by the Board of Madras to take a Copy of the Proceedings and Report of the Negapatam Committee, for which he had applied to the Board on the 30th of December preceding.

On the 11th of January, Mr. Cochrane wrote a Letter to the President and Council as follows :

Letter from
Mr. Coch-
rane to the
Board, Jan.
11, 1785.

“ Having availed myself of your Order of the 10th instant, of per-
“ using the Report and Proceedings of the Committee from Negapa-
“ tam, and being anxious that no further delay may take place in a
“ full investigation of all the Charges against me, I beg leave to re-
“ peat my request of the 8th instant, that I may be furnished with
“ Copies, or that I may have permission to take from the Records
“ Copies of every Petition, Minute of Council, or Letters sent or re-
“ ceived on the subject of the Charges against me, with the Orders
“ under which the Committee made their enquiries; which, although
“ they may be sufficient to induce a minute examination upon oath,
“ are not, as I conceive, full enough to put me on my trial agreeable
“ to the laws of England, which requires the fullest and best evidence
“ of facts the nature of the case will admit.

“ The *mother of Vydenadah* the first—the next material witnesses,
“ *Vellaroyen* the brother-in-law, *Soobramany Pilla* the doctor, and Ser-
“ jeant *Hawkins*, likewise *Mootiah*, who has stood forth as my Accuser
“ before the Honourable Board, have neither of them appeared for
“ examination;—I therefore request, that *they*, together with the evi-
“ dences in the inclosed list, may be immediately ordered to this Pre-
“ sidency, that a legal investigation may take place, from the full exa-
“ mination of those persons upon their corporal oaths, or in such
“ manner as may be deemed most binding upon their consciences, that
“ the truth may be brought forth, and justice done accordingly..

“ *List of Evidences that Mr. Cochrane thinks are necessary to appear at*
 “ *Madras to be examined touching the Charges exhibited on the Record*
 “ *of Consultation.*

“ *Colundee*, the mother of Vydenadah ; *Vellaroyen*, the brother-in-law
 “ of Vydenadah ; *Soobramany Pilla*, the doctor ; *Serjeant Hawkins*, of
 “ the 7th battalion of Sepoys ; *Mootiah Moodelly*, the accuser ; the Cut-
 “ wall ; the following four Sepoys, Gopal Naig, Mootai Naig, Cunda-
 “ dama Naig, Cawder Cawn ; the four following Pallankeen Boys,
 “ Nachiapah, Aya Permaul, Washea, Narrain ; Woodundee, Vencata-
 “ Suba-Chitty, Shankarapilla, Doffery, Chitty, Armogum, Velliadem,
 “ Nagapah Moodelly, Ensign Somers Clarke, Mr. Bantleman, Lubby
 “ Tomby and his brother, and Mahomed Tomby and Madana Sahib,
 “ inhabitants of Karrical.

(Signed) BASIL COCHRANE.”

On the 18th of January the Board wrote to Mr. Fallofield, desiring him to send to the Presidency all the persons named in the list signed by Mr. Cochrane, &c.

On the 29th of January Mr. Cochrane wrote to the President and Council as follows :

Jan. 29,
1785, Letter
from Mr.
Cochrane to
the Board.

“ I have to acknowledge the receipt of Mr. Secretary Freeman’s
 “ Letters of the 16th and 25th instant, in answer to my Letters of the
 “ 8th, 11th, and 17th.

“ *Mootiah*, *Colundee*, the mother of Vydenadah, and *Vellaroyen*, the
 “ brother-in-law to Vydenadah and brother to Mootiah, being arrived
 “ at the Presidency, I most earnestly request that the Honourable Board
 “ will be pleased to direct that a Bench or Quorum of Justices may
 “ meet as soon as possible to swear Mootiah to the truth of the three
 “ Petitions he has signed, and now appears upon record against me ;
 “ also to examine *Colundee*, the mother of Vydenadah, and *Vellaroyen*
 “ the brother-in-law, and all such evidences for or against as may be
 “ produced, and to adjourn from time to time as they may see
 “ proper.

“ My reason is, that my accuser may be fixed to support the Charges
 “ he has given in against me ; and that he may have full time to pro-
 “ duce every possible evidence ;—therefore the sooner the examination
 “ is commenced upon, the better.”

Feb. 9. 1785.
 Mr. Coch-
 rane to Se-
 cretary Free-
 man.

On the 9th of February Mr. Cochrane wrote to Mr. Secretary Free-
 man as follows :

“ Accompanying this you will receive two Letters to the Right
 “ Honourable the President and Council, inclosing two packets to the
 “ Court of Directors, of the same tenor and date—one copy of which
 “ I request may go a number of the packet by the *Pigot*, now under
 “ dispatch—the other to remain as a Record at this Presidency.”

The dispatches which Mr. Cochrane sent home by this occasion,
 addressed to the Court of Directors, were prompted by that anxiety and
 solicitude which every man who has any regard to his reputation must
 feel, for justifying his character and conduct to those in whose service
 he is employed ; and in the course of that justification he could not
 avoid expressing his feelings at the degree of consequence which had
 been given to anonymous or vague and ill-founded charges against him,
 and at the delays or hesitation in putting an end to the vexations he
 had met with.

In consequence of those Papers sent in by Mr. Cochrane, the Pre-
 sident, Lord Macartney, upon the 9th of February, drew up a Paper
 of Paragraphs to be sent in circulation to the other Members of Council,
 and proposed to make part of the General Letter from the Board
 to the Court of Directors ; which Paper expressed dissatisfaction
 at the representations which Mr. Cochrane, at the eve of closing
 a packet, had sent to be forwarded to England ; and the general
 turn and complexion of the Paragraphs thus drawn up by the President
 certainly was not conceived favourably for Mr. Cochrane.

The President's proposed Paragraphs to the Court of Directors being
 sent round to the different Members of Council, Mr. Turing, one of
 the Members, gave in a Minute on the 10th of February, containing
 the following objection to part of it, to wit : “ I object to the paragraph
 “ beginning ‘ in the mean time,’ not thinking it proper or necessary to
 “ throw out a general reflection upon the occasion of what from the
 “ evidence

Mr Turing's
 Minute, •
 Feb. 10,
 1785.

“ evidence adduced can in my opinion only be considered as an *unfortunate accident.*”

Upon the same 10th of February 1785, Mr. Dent, one of the Members of Council, gave in a Minute, stating his opinion on the whole matter of the complaints and proceedings against Mr. Cochrane. This Minute of Mr. Dent's will be found to be very material, both on account of the contents of the Minute itself, and because the same Paper shews Lord Macartney's observations upon Mr. Dent's Minute; which observations are placed on the margin of the Minute given in by Mr. Dent, and are signed by Lord Macartney.

Mr. Dent's
Minute,
Feb. 10,
1785.

As Mr. Smith has totally omitted to take any notice of this Minute of Mr. Dent's, or of Lord Macartney's Observations on the margin of it, the Memorialist has thought it proper to insert them completely in the Appendix, especially as Mr. Dent's Minute was sent home, as he himself expresses it, because he thought it highly proper that the East-India Company should be fully acquainted with the different opinions of the Members on the subject of Mr. Cochrane's Case.

On the 11th of February a General Letter was wrote by the Board at Madras to the Court of Directors, in which the paragraphs proposed by Lord Macartney respecting Mr. Cochrane's business were adopted with some few alterations.

On the 17th of February Mr. Cochrane addressed a Letter to the President and Council, repeating his former wish, that a full and legal investigation of his conduct might take place, and that *he was ready to stand his trial on the Charges given in against him* by Mootiah his accuser; and earnestly requesting that the Board would take the necessary steps for *granting him a speedy trial, agreeably to the laws of his country.*

Feb. 17,
1785. Letter
from Mr.
Cochrane to
the Board

On the 19th of February Secretary Freeman acquainted Mr. Cochrane, by Letter, that agreeably to the desire expressed in Mr. Cochrane's Letter of the 29th January, the Board had resolved to assemble at the Fort House, on Monday the 21st, for the examination, on oath, of the witnesses already arrived at Madras, on the Charges brought against him by Mootiah.

On Monday the 21st of February, Lord Macartney, Alexander Davidson, and James Daniel, Esquires, met and formed themselves into

Meeting of
the Bench of
Justices,
Feb. 21,
1785.

into a Bench of Justices.—and on Wednesday the 23d they met again ; and so soon as they had finished the swearing of such of the witnesses as had been examined at Negapatam, who were arrived at Madras, and appeared on the part of the prosecution, they adjourned.

On the 28th of February Mr. Cochrane having received no notice of any further Meeting of the Justices to finish the business, wrote the following Letter to Mr. Chafe, the Clerk to the Justices :

“ SIR, I shall be obliged to you if you will inform me at what
“ time the Bench of Justices will meet again, to finish the examination
“ of the witnesses, as I am very anxious for the same being completed.”

To which Letter Mr. Cochrane received the following Answer from Mr. Chafe, dated 28th February :

“ SIR, I have this instant been favoured with your Letter of this
“ day’s date ; and, in reply, inform you, I never knew the Justices met
“ for the purpose of examining witnesses on the 21st and 23d instant,
“ —they assembled to swear the evidence whose depositions were
“ taken at Nagore ; and I am unacquainted when it is their intention
“ to meet again.”

From the state of the Proceedings of the Bench of Justices, signed by their Clerk, on the 24th of February, it appears that they had confined their functions merely to the swearing of the witnesses whose examinations had been taken by the Committee at Negapatam, upon their declarations, without oath ; and it also appears that there had not been any cross-examination of these same witnesses when they thus came to Madras ; it further appears that they did not proceed to the examination of any witnesses who had not formerly been examined at Negapatam.

In the close of the Report thus made by the Clerk, it is mentioned that the Bench, on the 23d of February, adjourned *sine die*.

Mr. Cochrane, who had not attended the examination of the witnesses at Negapatam, had flattered himself that when the witnesses were brought to Madras to be examined on oath, he would have been allowed an opportunity of cross-examining those already examined at Negapatam ; and likewise an opportunity of examining each other witnesses as

had knowledge of the matters in question, and who had been sent for to come to Madras for that purpose.

Particularly, he hoped that the Bench of Justices would have thought proper to take the Examination of *Cholundee*, the mother of Vydenadah, and *Vellaroyen*, his brother-in-law, who had both of them particular occasion to know the circumstances of the case.

Mr. Cochrane was the more confirmed in these expectations, because, in his Letter to the Board of the 11th January 1785, both these witnesses had been mentioned as persons necessary to be examined; and their names were inserted in the List of Witnesses which accompanied that Letter,—which List had, by orders from the Board, been forwarded to Mr. Fallofield, with directions to him to give his assistance in forwarding all those witnesses to the Presidency. In consequence whereof the mother and brother-in-law of Vydenadah had actually arrived at Madras; and Mr. Cochrane, by his Letter to the Board, of the 29th January, had notified their arrival, and had earnestly requested that a Bench of Justices might meet as soon as possible to examine the *mother and brother-in-law of Vydenadah*, and all such evidences for or against as might be produced; and to adjourn from time to time as they should see proper.

Mr. Cochrane, however, was never able to prevail upon the Bench of Justices to extend their functions further than to the ascertaining upon oath the examinations which had been previously taken at Negapatam; neither was he able to prevail upon them to meet again in relation to these affairs, after they had, on the 23d of February, adjourned *sine die*.

On the 15th of May 1785 Mr. Cochrane received from Mr. Secretary Freeman the following Letter :

“ In your Letter, under date the 17th February last, addressed to
“ the Right Honourable the President and Council, you applied to
“ them, in virtue of the 44th Section of the Act of the 24th of his
“ present Majesty, therein quoted, to be brought to a speedy trial,
“ agreeable to the laws of your country, on the Charge exhibited
“ against you by Mootiah.

“ In consequence of your application the Right Honourable the Pre-
“ sident and Council stated a case, *conformable to your situation*, for
“ the

15th May-
1785.
Secretary
Freeman to
Mr. Coch-
rane.

“ the opinion of the Judges of the Supreme Court of Judicature in
 “ Bengal. The opinion of the Judges received in reply to the reference
 “ made to them, does not admit that a person, in the particular situa-
 “ tion in which you stand, can be tried by the Court of Oyer and
 “ Terminer at Madras.

“ The Honourable Board therefore now think fit to call upon you, as
 “ a Company’s servant, for your defence against the accusations of
 “ Mootiah, contained in his Petitions to the Honourable Board, copies
 “ of which have already been delivered to you, &c.”

May 27,
 185
 Mr. Coch-
 rane to the
 Board

On the 20th of May Mr. Cochrane, in Answer to Secretary Free-
 man’s Letter of the 15th, addressed a Letter to the Board, in which,
 after resuming the contents, Mr. Cochrane’s Letter proceeds thus :
 “ I most sincerely lament the Supreme Court of Judicature in Bengal
 “ are of that opinion, as I have hitherto flattered myself with the
 “ pleasing hopes of a public legal trial, whereby I should have it in my
 “ power at once to refute the many false charges exhibited against me.”

“ By the third Paragraph of the same Letter, I am informed that the
 “ Honourable Board now think fit to call upon me, as a Company’s
 “ Servant, for my Defence against the Accusations of Mootiah, con-
 “ tained in his Petitions to the Honourable Board, copies of which
 “ have been already delivered to me.

“ In whatsoever character I am called upon to answer before you,
 “ either as President and Council, or as a Quorum of Justices, all I
 “ have now to desire is a fair open investigation, by allowing to be
 “ confronted with my accuser, who, I am humbly of opinion, should
 “ be obliged to support his accusations upon oath, and the testimony
 “ of the witnesses examined *viva voce* in my presence; and, when
 “ the prosecution shall be closed, I may then, as in the case of all
 “ regular trials, have the privilege to enter upon my defence.”

When Mr. Cochrane perceived that the President, &c. delayed and
 hesitated about pronouncing an opinion in his favour, after all the
 Papers which had been given in, and after all the trouble and anxieties
 he had suffered in a business where it was impossible to impute to him
 any malicious intentions, and which, at the most, could never amount
 to more than an *unfortunate accident*, as it is described by some of the
 Members of Council themselves, he was advised to make his Defence

as complete as possible, without confining himself to the testimony of any one witness; the plan recommended to him was to insist on the examinations of the several witnesses who had the best access to know the particulars of what had passed. With this view it was that he had so earnestly requested the immediate examination of the mother and brother-in-law of Vydenadah, who had been sent to Madras for that purpose at Mr. Cochrane's desire, though Mootiah, the accuser, had not thought proper to produce them for examination at Negapatam.

With the same view he was anxious for the examination of *Soobramany Pilla*, the black doctor, who had attended Vydenadah after the punishment; and accordingly Mr. Cochrane had particularly mentioned him in the List of Witnesses which accompanied his Letter to the Board of the 11th of January. But Mr. Cochrane had no idea, that while he was thus shewing every desire on his part to have these material witnesses examined, the dispatches which had been sent home had abstained from doing him justice in that respect, and that impressions could be conveyed, tending to make it believed that the black doctor, who was not examined at Negapatam, had been secreted for answering some particular purpose.

The more particular discussion of what relates to Soobramany Pilla, the black doctor, is reserved for the Observations upon the next Paragraph of Mr. Smith's Report.

Paragraph Tenth of the REPORT.

"The deceased, during his illness, was attended by a black doctor, whose evidence therefore must be material as to the fact, whether the death happened in consequence of the punishment; but although inquiry was made after him, this doctor could not be found, either at the time the Committee was sitting at Nagore, or when the witnesses were afterwards sent to Madras. It seems, however, that he has since been found, and brought to Madras; and Mr. Cochrane says, the doctor was never absent from his house, and that no proper search had been made for him. This man arrived at Madras before 27th May 1785; but it does not appear that he had been examined, or that any defence had been made so late as the end of October following."

OBSERVATIONS on Paragraph Tenth of the REPORT.

In a Paper which, on the 9th of February 1785, was drawn up by the President, Lord Macartney, in order to make part of the General Letter dispatched about that time to the Court of Directors, there was the following paragraph: " But *Soobramany Pilla* the black doctor, " who attended Vydenadah in Mr. Cochrane's house after his punishment, previous to his death, and who seems to be *the most material witness*, is not come (to Madras), nor is he to be found at present, " no more than when examination took place before Mr. Fallofield."

In the precise same terms this observation of the President's respecting the black doctor is entered upon the Consultation Records on the 10th of February 1785; and in Secretary Freeman's Detail of the Proceedings, the same words and observation, with very little variation, are repeated.

In Lord Macartney's Marginal Observations on Mr. Dent's Minute of 10th February, 1785, before mentioned, there are the following expressions: " The black doctor *who has absconded*, or who is not to " be found, *Soobramany Pilla*, would be a *material witness*, as he " attended the deceased."

Mr. Cochrane, after Lord Macartney left Madras, had access to the Records, by order of the succeeding Governor and Council, for all articles relating to himself; and by that means learnt in what manner the Consultation Records, Mr. Freeman's Detail of Proceedings, and other Papers, had represented the matter relating to the black doctor. Mr. Cochrane soon perceived the suspicions which from thence might possibly be entertained of his having some concern in the *secreting* of that man represented to be the *most material witness*, especially as no notice had been taken in these Paragraphs of Mr. Cochrane's having, in the preceding month of January, specified the black doctor as one of the witnesses whom he desired to be brought to Madras for the purpose of examination; which was mentioned both in his Letter of the 11th of January, and in the List of Witnesses which accompanied it. Mr. Cochrane took occasion therefore to write the following Letter to Mr. Fallofield, the Resident at Nagore, on the 25th of October 1785:

" Having

Mr. Coch-
rane to Mr.
Fallofield,
25th October
1785.

" Having, since the departure of the Right Honourable Lord
" Macartney, been permitted to have access to the Records—to my
" astonishment I have found, that in a Detail of the Proceedings
" against me, drawn up by Mr. Secretary Freeman, dated the 27th
" May 1785, and transmitted to the Court of Directors, *unknown to*
" *me*, by the Glatton Indiaman, the strongest marked insinuations are
" thrown out, that *Soobramany Pilla the doctor* was secreted by me,
" and without his evidence the Board could come to no decision on
" the validity of the Charges against me.

" Such unmerited and groundless insinuations, which may serve a
" temporary purpose of injuring me in the good opinion of my Ho-
" nourable Employers, would at once have been refuted, had you in
" your Letter of the 12th of March transmitted to the Board Copy of my
" Letter to you of the 2d of the same month, and done me the justice
" to say, " That owing to my hircarah pointing out where the doctor
" lived, you was enabled to send for and forward him to the Presi-
" dency, remarking at the same time, that he was never absent from
" his home (being within the districts of Nagore), nor had he any idea
" of secreting himself; and owing to the neglect of the people employed
" by you, the necessary inquiry was not made after him, otherwise he
" would have been found at his usual abode."

" As I am now busy drawing up an Answer to the above-mentioned
" partial Detail, I am to request you will favour me with a Reply to
" this Letter, setting forth the real truth of the matter, which I mean
" to enter opposite to that part that touches upon the subject of Soobra-
" many Pilla's absence.

" This I do in candour towards you, and in order to save me the dis-
" agreeable alternative of making comments upon the subject.

" As I am convinced, that had you the most distant idea of the use
" that has been made by Lord Macartney of your *not* informing the
" Honourable Board that the doctor was found at his usual abode, *by*
" *the assistance of my hircarah*, you would have taken the earliest occa-
" sion of undeceiving them; I therefore shall say nothing further on
" the subject, than to assure you that I have the honour," &c.

ANSWER from Mr. FALLOFIELD to Mr. COCHRANE.

Nagore, 31st October 1785.

" I have the honour to acknowledge the receipt of your letter of
" the 25th instant.

“ I can assure you, the Gentlemen of the Committee at Negapatam, most of whom were newly arrived, used their utmost endeavours to find Soobramany Pilla the doctor, and the Cutwall, who was considered as the fittest person to be employed, was repeatedly enjoined to make the most diligent search after him, but no tidings were however received of him *until your hircarah delivered me your Letter of 2d March last, pointing out the place of his abode.* I lost no time in sending for him, and to the best of my remembrance he informed me, *he had not concealed himself, but remained always in one of the villages of the Nagore districts, a few miles from Negapatam, the same wherein he was then found.*”

The above correspondence between Mr. Cochrane and Mr. Fallofield was under Mr. Smith's view at the time of making his Report.

The fact is, that Soobramany Pilla lived at the village of Kadumbravankly in the district belonging to the Nagore Mosque, about five miles from Nagore; and at the very time when the Committee at Negapatam was employed in taking the examinations in October, November, and December 1784, this man was at his usual place of residence.

If Mootiah the accuser had not been conscious, that the facts known to Soobramany Pilla were not favourable to his wishes, there can be no doubt that he could easily have found out the black doctor's place of residence, and brought him to Negapatam, with the assistance of Mr. Fallofield the Resident, who gave his aid for bringing there every witness that was suggested to be material; and in that way many witnesses were examined at Negapatam on the part of Mootiah the accuser, who abstained however from producing for examination, either the black doctor, or the mother and brother-in-law of Vydenadah.

It has been before observed, that Mr. Cochrane did not attend the examinations at Negapatam, either by himself or by any agent of his, in order that the inquiry might have its free course; and accordingly there were not any witnesses produced there on his part, or at his instigation. But when Mr. Cochrane learnt that neither Soobramany Pilla the black doctor, nor Vydenadah's mother or his brother-in-law Vellaroyen, nor Serjeant Hawkins, had been examined at Negapatam, he took the first opportunity of pointing out these omissions to the President and Council by a Letter, which he addressed to them on the 11th of January 1785, the very day after they had given him com-

communication of the examinations taken at Negapatam ; and in that same Letter he requested that these four witnesses specifically named, together with several other witnesses mentioned in a list which accompanied his letter, might be immediately ordered to the Presidency for examination upon oath. In consequence of this application made by Mr. Cochrane, an order was issued to Mr. Fallofield to send all these witnesses to Madras.

In the month of February 1785, Mr. Fallofield wrote to Secretary Freeman, saying, that it had not been in his power to obtain any tidings of Soobramany Pilla the black doctor ; and upon this being communicated to Mr. Cochrane, he, upon the 2d of March 1785, wrote to Mr. Fallofield, expressing his concern that the black doctor had not been found out and examined, and acquainting him of the village where he lived, about five miles from Nagore : Mr. Cochrane further added, that he had ordered his hircarah to wait on Mr. Fallofield, to point out Soobramany Pilla's house.

On the 6th of March 1785, Mr. Fallofield wrote in answer to Mr. Cochrane as follows :

“ I was yesterday favoured with your Letter of the 2d instant ; and
 “ this morning I saw your hircarah, who, with the cutwall and others,
 “ is gone in quest of Soobramany Pilla the doctor. If he can be found,
 “ I shall immediately send him to the Presidency, agreeable to the
 “ Board's orders.”

The doctor was accordingly found at his usual place of residence, where he and his family had long resided. He went to Negapatam the very day he received the message from Mr. Fallofield ; and in a few days set out for Madras, where he arrived upon the 22d of March.

Before his arrival at Madras, the Bench of Justices had declined examining any witnesses but those who had been originally examined at Negapatam ; and, as has been already observed, had adjourned *jine die*. And as Mr. Cochrane's repeated request for a regular trial had not been granted, he was for some time at a loss how to avail himself of the testimony of Soobramany Pilla, and other witnesses who had been brought to Madras for examination. Mr. Cochrane was at length advised to desire the witnesses to appear before a Justice, to declare upon oath every thing they knew in relation to the punishment or death
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of Vydenadah: Accordingly, *Soobramany Pilla* appeared before Mr. Daniel, one of the Justices, and also one of the Members of the Madras Council, and delivered in his declaration upon oath on the 12th of July 1785; an authenticated copy of which deposition was sent over here by Mr. Cochrane, and delivered in to the Court of Directors on the 26th of April last.

The whole of that deposition is inserted in the Appendix to which reference is here made. But the Memorialist, in his Observations upon the twelfth Paragraph of Mr. Smith's Report, will take occasion to point out more precisely some of the material particulars contained in the deposition of *Soobramany Pilla*.

Paragraph Eleventh of the REPORT.

" Mr. Cochrane imputes harshness and improper conduct towards him by the Governor and Council—for which I cannot say that I see the least foundation; but on the contrary, has very greatly delayed the investigation of this transaction, and generally sent in long letters and papers (calculated solely for delay) at the last moment of a dispatch."

OBSERVATIONS on Paragraph Eleventh of the REPORT.

After so many proofs of inaccuracy in Mr. Smith's Report, it may be permitted to doubt at least of the justness of the foundations on which he has ventured to give such a positive opinion upon the particulars alluded to in the preceding Paragraph.

The first part of the Paragraph is an opinion upon the propriety of all the proceedings against Mr. Cochrane; and the second part contains Mr. Smith's condemnation of him, as guilty of great delays in the investigation of the business.

None but those who have carefully examined all the proceedings in this extraordinary business from first to last, and who have attentively perused the *very voluminous collection of Papers* to which it has given rise, can be *qualified* to give so decided an opinion as Mr. Smith has thought proper to give in this part of his Report. Whether Mr. Smith
has

has given sufficient indications of his being *so qualified*, must be left to others to judge. The Memorialist means no reflection upon the abilities of the Reporter—these are generally allowed; but there are other qualities besides abilities which are requisite in a business of very great extent, and where much labour, industry, and faithful attention are indispensably necessary.

Mr. Smith says, *that he does not see the least foundation* for Mr. Cochrane imputing harshness and improper conduct towards him by the Governor and Council. In examining this matter accurately, it would be necessary, in the first place, to enquire whether there really existed any foundations for Mr. Cochrane's imputations and suspicions; and, in the next place, whether these foundations, supposing them to exist, were perceived or not by Mr. Smith the Reporter. As to the last of these two points, the Memorialist finds himself disposed for once to concur entirely with Mr. Smith, that *he did not see any foundations* for Mr. Cochrane's suspicions; but the question still remains, whether he might not have seen them, if he had bestowed any manner of pains to look for them before framing his Report.

With regard to Mr. Cochrane's *ideas* of the conduct of the President, Lord Macartney, and Council towards him, that is a point which, from many peculiar circumstances, is of so very delicate a nature, that the Memorialist may, without any prejudice to his Brother's Cause, be allowed to avoid entering into any minute disquisition upon it; but as Mr. Smith has given a very positive and unqualified opinion upon this point, it would not be quite proper to pass it over altogether unnoticed.

There are two things which it would be in vain to disguise; the one is, that Mr. Cochrane, after so many years faithful and acknowledged exertions in the Service of the East India Company, feeling a consciousness of the character he had acquired, as well as of his innocence in the articles maliciously imputed to him, did think that he was harshly and hardly dealt with, by the reception given by the President, Lord Macartney, &c. to Anonymous Charges brought against him, contrary to the practice which had usually been observed by the Madras Government with regard even to the most indifferent Company's Servants.

• The other particular which it would be in vain to disguise, is, that though Mr. Cochrane's complaints of hardships sustained, might *nomi-*
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nally be applied both to the President and to the Council, yet in fact he considered the persecution which he suffered, as proceeding principally, if not solely from the person who was at the head of that Council, and who in that elevated situation had the chief sway in all matters of public or private concern.

The Memorialist abstains from stating any opinion of his own, either in confirmation of his Brother's impressions, or in opposition to them ; if it should be a matter of any importance to form an accurate opinion on that subject, the best mode of acquiring it, will be, by a careful attention to the rise and progress of the business from the day when the Anonymous Petitions were first presented by the President, in December 1783, down to the date of his last dispatches from Madras by the Glatton Indiaman in May 1785.

But as the terms of Paragraph eleventh of Mr. Smith's Report, so positively exclude the supposition of *any harshness* towards Mr. Cochrane from any part of the Madras Council, it would be doing injustice to Mr. Cochrane, and affording too much credit to that Paragraph of the Report, if the Memorialist were to omit this opportunity of bringing into view the terms of the several Minutes entered upon the Madras Records by Mr. Dent one of the Members of Council, and particularly his Minute of the 31st December 1784, where, after stating that it was owing to the opinion given, and to the arguments used by the President Lord Macartney, that Mr. Cochrane had, upon the first appearance of the Anonymous Petitions, been recalled from his station at Nagore, Mr. Dent concludes his Minute in the following terms :

“ Considering the established good character of that gentleman
 “ (Mr. Cochrane), his rank in this service, and his connections in
 “ Europe, likewise the merits he is entitled to from his long and faithful services to the Company, I am of opinion, that the Right Honourable the President should have been the last man to take *such an active part against him.*”

The preceding Minute of Mr. Dent, one of the Council at Madras, who of course had occasion to be present at the deliberations of the other Members of Council, shews at least that those who had occasion to be acquainted with the *interior* of the business at Madras, did not coincide entirely in opinion with the Company's Solicitor sitting in his
 chambers

chambers in London, and looking only at the *exterior* of those heaps of Papers which had been sent from Madras about this same business.

It is more than probable that Mr. Smith had never read the preceding Minute of Mr. Dent and his other Minutes upon the same subject; and if the day should ever come, that Mr. Smith has leisure and disposition to read the volumes of papers in this business, the Memorialist is persuaded that Mr. Smith will find reason for altering his opinion upon this and upon other parts of his Report, and that he may possibly think himself indebted to the Memorialist for the assistance which a paper formed after much labour and industry bestowed in the perusal and arrangement of the whole mass, may happen to afford him.

The Memorialist will not suffer himself to call in question the purity of the motives which influenced Lord Macartney to take such an active part against his brother Mr. Cochrane; neither would he think it proper to state even a conjecture with regard to the reasons which induced Mr. Dent to think that there were peculiar objections against the President's taking that active part against Mr. Cochrane: It is sufficient for the present purpose of opposing the very decided opinion given by Mr. Smith, that an appeal can be made to a Minute entered upon Record by one of the Members of Council, from which the fact is ascertained, that Lord Macartney did take *an active part against Mr. Cochrane*, and to such a degree, that it had produced some strictures upon it from one of the Members of his Council.

If Mr. Smith had taken the trouble to peruse a subsequent Minute of Mr. Dent's, entered upon the Consultation Records at the date of the 10th of February 1785, he would there have found a direct contradiction to what he has affirmed to the Court of Directors, where he reports, that there is not the *least foundation* for imputing *harshness* towards Mr. Cochrane in the Proceedings by the Governor and Council. The concluding Paragraph of Mr. Dent's Minute of the 10th of February 1785, is in these words:

“ Therefore, from the foregoing circumstances, I think the latter
 “ part of the Note to the Honourable Court now proposed, is not ap-
 “ plicable, and seems *too harsh upon Mr. Cochrane*, who appears to
 “ have done all in his power to promote the enquiry—and have only
 “ to add, that as it is highly proper the Company should be fully
 H “ acquainted

“ acquainted with the different opinions of the Members on this subject, I am to request that this opinion may go home a Number in the Packet with the rest of the Proceedings.”

That the import of the above Paragraph of Mr. Dent's Minute may be rightly understood, it is proper to observe, that the Note to which he alludes, and which produced his commentary of *too much business* against Mr. Cochrane, was a Note which had been framed by the President, Lord Macartney, in order to make part of the General Letter then proposed to be sent from the Board at Madras to the Court of Directors, and which had been sent in circulation to the different Members of the Board for their approbation.

The last part of Paragraph eleventh of Mr. Smith's Report, contains a very decided opinion against Mr. Cochrane, imputing to him *great delays* in the investigation of this transaction.

By the charge contained in this part of the Paragraph, Mr. Smith has afforded the most conclusive proof against himself, that he either never has read, or never read with attention the various proceedings in this business; and Mr. Smith will have the mortification to find, that in imputing to Mr. Cochrane delays in the investigation of the business, his opinion is destitute of support from any quarter, for it will be found, that on this point Lord Macartney has given an opinion totally opposite to that of Mr. Smith.

It is impossible, indeed, to read the whole history of the proceedings from first to last, without being impressed with the strongest conviction of Mr. Cochrane's earnest solicitude and indefatigable exertions for promoting the most speedy and effectual enquiry into the truth of the charges against him, and for adopting every mode of trial which in its consequences might produce either a sentence of condemnation or a sentence of acquittal.

The length of this Memorial has been considerably increased even by the brief statement of the various proceedings; but one material object of that statement, was, that the Court of Directors might perceive from thence the unwearied efforts Mr. Cochrane has employed for pushing on an enquiry into the merits of the case, and for avoiding every delay that could prevent or obstruct that enquiry, and it was judged the more proper, that this Memorial should contain that history

of the proceedings, because it would afford the best refutation of that Paragraph of Mr. Smith's Report, where he has, in direct opposition to the most convincing proofs, arraigned Mr. Cochrane of wilfully delaying the investigation of the Charges against him.

To compleat the refutation of Mr. Smith's assertion concerning Mr. Cochrane's supposed delays, it is only necessary here to add the opinions of Lord Macartney the President, and of Mr. Dent one of the Members of Council on that subject.

In Mr. Dent's Minute of the 10th of February 1785 before mentioned, and which he requested to be sent home to the Court of Directors, there is the following Paragraph:

" Mr. Cochrane appears to have done all in his power to promote the inquiry." Opposite to that part of Mr. Dent's Minute, Lord Macartney has on the margin wrote and signed, as follows: " *Mr. Cochrane certainly has been very active and desirous to bring this matter to an investigation, and the Board has certainly aided him in doing so, by performing their duty.*"

Paragraph Twelfth of the REPORT.

" Upon the whole, the circumstances of the case, furnish very strong suspicion that the death of Vydenadab was occasioned by the severity of the punishment inflicted on him."

OBSERVATIONS on Paragraph Twelfth of the REPORT.

The Memorialist cannot help wishing, that Mr. Smith, instead of resting the matter on his own opinion or assertion, had pointed out by what particular witnesses or in what particular part of the proofs taken, he has discovered sufficient authority for the preceding Paragraph in the Report.

To any person wishing to make a faithful and accurate Report of the circumstances of the case, it would be a much more easy, and one would think a much more agreeable task, to point out the proofs which

shew that the death of Vydenadah was not occasioned by the punishment; than to find out in this case any solid proofs of an opposite tendency.

As Mr. Smith has permitted himself totally to keep out of the view of the Directors *every circumstance of proof* that could tend to shew that Vydenadah's death had *not* been occasioned by the punishment inflicted on him, the Memorialist finds himself under the necessity of supplying Mr. Smith's omissions, by stating some of the material articles of proof on this head.

At the examination of Ensign Clarke, who was present during the whole course of Vydenadah's punishment from first to last, the following question was put to him by the Committee at Negapatam.

QUESTION—Did the punishment of Vydenadah appear to you at the time, so severe as to be likely to occasion his death?

To which question, Ensign Clarke made the following positive answer—" *It did not.*"

One of the witnesses produced to the Negapatam Committee by Mootiah the accuser of Mr. Cochrane, was *Woodendee*, and this witness who appears to have been very much connected with *Vydenadah*, declared upon his examination, that he went to visit Vydenadah on the *third day* after he had been punished, and that four or five days afterwards, being told that Vydenadah was dead, and carried to his house, he went there and saw the body, and accompanied the corpse to the burying place. The following Questions were put to this witness by the Committee at Negapatam.

QUESTION—Did you at the time you saw Vydenadah suppose his life was in danger?

ANSWERED by Woodendee—*No such thought struck me!*

QUESTION—Did Vydenadah, when you saw him, express any apprehension that he should die?

ANSWERED—*No.*

QUESTION—Did you see the corpse of Vydenadah at his mother's house?

ANSWERED—*Yes.*

QUESTION—Were there any wounds upon the body of Vydenadah likely to have produced his death?

ANSWERED—The thought did not occur to me at the time, and the body was laid on the back.

Shankarapilla

Shankarapilla another witness produced by *Mootiah* the accuser, was asked by the Committee at Negapatam—Did Vydenadah's punishment appear to be severe?—To which question the witness's answer was—
 “ *I cannot say.* ”

On this part of the subject, there is an obvious remark, which will not escape the attention of the Honourable Court of Directors: The remark is this, That if it had been a true fact, or if a general opinion had prevailed in that part of the country where Vydenadah was punished and died, that his death had been occasioned by his punishment, there would have been no difficulty in finding a great number of witnesses, who would have proved that fact to the Committee at Negapatam, which was kept open for near three months for the purpose of examining witnesses in relation to the charges against Mr. Cochrane. The deficiency of proof on this point, is therefore a very strong argument in favour of Mr. Cochrane, that the death was not occasioned by the punishment, especially considering the industry that was exerted by *Mootiah the Accuser*, in collecting all manner of evidence that could tend to support the Charges against Mr. Cochrane, and the advantage *Mootiah* had by personally attending the examinations at Negapatam, while Mr. Cochrane neither went there himself, nor employed any agent to appear for him; so that there was not even any cross-examination of *Mootiah's* witnesses on the part of Mr. Cochrane—and yet, from what has been above stated it appears, that the answers received even from one of *Mootiah's* witnesses, *Woodendee*, upon questions put to him by the Committee, give no reason to presume that the death was occasioned by the punishment, but operate directly in favour of the opposite opinion.

The evidence which the Memorialist is now to take notice of, confirms the testimonies above stated, and will serve to render this matter still more clear.

It has been already mentioned in the Observations upon Paragraph. 10th, that Mr. Cochrane found himself under the necessity of taking the depositions or affidavits of certain persons at Madras, after the Bench of Justices had declined examining any witnesses, other than those who had been examined at Negapatam.

Among the witnesses thus examined upon oath, there were *Soobramany Pilla* the black doctor, Mr. *Crawford* sub-assistant to the hospital

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at Madras, and *Serjeant Hawkins*. The whole of the depositions of these three persons are inserted in the Appendix; but it is thought proper to take notice, in this place, of some of the material particulars contained in these depositions.

In *Soobramany Pilla's* deposition, there are the following particulars:

First, That the deponent was not present at the punishment of *Vydenadah* on the 3d of November 1783, and did not arrive at *Negapatam* till the third day thereafter; on the evening of which day, he ordered some physic for *Vydenadah*, and attended him thereafter till the time of his death, which happened on the 9th November, in the evening.

Secondly, He has deposed that during the time of his attendance on the said *Vydenadah*, neither the said *Vydenadah*, nor his mother *Colundee* nor any other people who were always present and attending upon him, ever complained of any ill treatment from *Mr. Cochrane*, or imputed his sickness to any other cause than that of a sickness in his belly, by being bound with stoppage of urine, and a difficulty of breathing, with feverish complaints.

Thirdly, That before his first interview with *Colundee*, the mother of *Vydenadah*, he the deponent had heard of *Vydenadah's* having been publicly punished by order of *Mr. Cochrane*, which was the reason of his prescribing the decoction of bamboo leaves and the other articles which he prescribed on the 7th of November, being the usual purge given to people that had been flogged; but on being informed, on the 8th of November, that no blood had passed by stool, he this deponent prescribed other medicines on account of the *fever, windiness, and shortness of breathing*.

Mr. Crawford, assistant-surgeon to the hospital at Fort St. George, deposes, " That some time in the month of December 1782, while he " was residing in the hospital at *Negapatam*, one *Vydenadah*, conicoply, " or writer to the Honourable *Basil Cochrane*, called upon this depo- " nent by desire of *Doctor Falconer*, and requested medicines of this " deponent to cure a flux, which he, the said *Vydenadah*, said he was " afflicted with: This deponent saith, That on examining the said " *Vydenadah*, this deponent found that he *Vydenadah* had an obstruc- " tion in his liver, for which this deponent gave *Vydenadah* medicines: " This

" This deponent further saith, That having been ordered to Tanjore
 " with the sick and wounded, he was not able to effect the cure : This
 " deponent saith, That about the 7th or 8th of November 1783, he
 " arrived at Negapatam, and remained there two days with Serjeant
 " Hawkins, belonging to a Company of the Seventh Carnatic Battalion
 " of Sepoys, then stationed at Negapatam, under the command of
 " Ensign Clarke, who resided in a room in the cutchery, adjoining to
 " the house Mr. Cochrane lived in : This deponent further saith, That
 " coming into the cutchery, and passing by a room, the door of
 " which opens into the cutchery, and was then open, he this depo-
 " nent was called into the room by the name of " Doctor ;" upon
 " which this deponent answered, and went into the room, where he this
 " deponent found the aforesaid Vydenadah, conicoply of Mr. Cochrane,
 " who told this deponent that he had been lingering with the afore-
 " mentioned disorder ever since the deponent's departure from Ne-
 " gapatam ; that he never found any remedy for it, and thought he
 " should soon die : This deponent saith, That he examined the said
 " Vydenadah, and found *he had the same obstruction as he had before,*
 " when this deponent left him, accompanied with a great difficulty in
 " breathing and fever, the same as in the case of a man that is attacked
 " with the liver complaint : This deponent saith, That he informed
 " Vydenadah he had no medicines with him, and was thereby pre-
 " vented from rendering him any assistance : This deponent then left
 " the said Vydenadah, and went to the adjoining room, where Ser-
 " jeant Hawkins was, whom this deponent made acquainted with the
 " dangerous case of Vydenadah !"

Serjeant Hawkins of the seventh Madras Battalion, in his deposition
 taken before Alexander Davidson, Esq. upon the 9th of April 1785,
 deposed, " That about the 7th or 8th November 1783, one William-
 " Henry-Robert Crawford, sub-assistant Surgeon, arrived at Negapatam
 " from Tanjore, and remained with him in his room in the cutchery for
 " two days, when he proceeded to Tranquebar on his way to Madras :
 " That during his stay at Negapatam, he informed this informant, that
 " he had visited Vydenadah Mr. Cochrane's servant, in the adjoining
 " room, and found him very ill, adding, that he was an old patient of
 " his, and would certainly die."

In the same deposition of Serjeant Hawkins, he gives a particular account, that in the evening of the 3d of November 1783, after Vydenadah's punishment, he went by Mr. Cochrane's order to the room where Vydenadah was, for the purpose of taking down in writing every thing that could be learnt from him on the subject of his accounts: That *Vydenadah* dictated to Vencatarayloo, who went along with Serjeant Hawkins, a Paper, whereof he Serjeant Hawkins made out a Copy, and the account so taken down in writing, was that same evening delivered by Serjeant Hawkins to Mr. Cochrane.

From this deposition of Serjeant Hawkins, one remark occurs, that if Vydenadah had been so severely flogged as was alledged in one part of Mr. Smith's Report, he would not probably have been in a condition that same evening to dictate the Paper mentioned by Serjeant Hawkins; neither would Mr. Cochrane and Serjeant Hawkins probably have thought of chusing that evening to employ Vydenadah in dictating that paper.

Another observation which presents itself from considering jointly the depositions of Soobramany Pilla and Mr. Crawford, is, that the symptoms which attended Vydenadah's case at the times when visited both by the black doctor and the English surgeon, were symptoms which had no connection with the punishment he had suffered, but were connected with a disorder to which Vydenadah had been subject before the time of his punishment, and for which he had formerly been a patient to one of the very persons who gave this testimony concerning him.

Paragraph Thirteenth of the REPORT.

“ But there is no jurisdiction in India by which he can be tried; and in case there was, it is scarcely possible, at this length of time, that he should be convicted.”

OBSERVATIONS on Paragraph Thirteenth of the REPORT.

The Memorialist apprehends, that Mr. Smith has been under a mistake in supposing that there was no jurisdiction in India by which this
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Case could be tried; and the mistake may be owing to his not attending to the circumstances relating to *Negapatam*, and the right by which that place has been held since the conquest of it from the Dutch.

This is not the case of an offence charged to have been committed by a British subject within the *lands or territories of any native Prince or State of India*; and therefore does not call for the discussion of the questions whether such offences committed before the statute 24 Geo. III. c. 25, may be tried and punished under the new provisions of that act by the competent jurisdictions, or whether the provisions of the 44th section of that statute extend to the case of Madras?

Negapatam is under the dominion of Great Britain, by right of conquest from the Dutch East India Company, who were in possession of that place before the present family of Tanjore Rajahs, or any neighbouring race of Indian Princes had any establishment in these parts of the Carnatic; and were held by that Dutch East India Company by the same tenure as the English now hold Madras.

Negapatam being thus acquired by right of conquest, the laws of the conqueror must take place *there*, as exercised in the British dominions in India; and consequently there is no solid objection to Mr. Cochrane's being tried by the Court of Oyer and Terminer at Madras in its ordinary jurisdiction—the exercise of which is, in point of justice, not more necessary for the punishment of the guilty, than for the justification and protection of the innocent.

There is some reason to think, that the Case which was sent by the Madras Government to Bengal, for the opinion of the Judges there, did not specifically state the particulars of Mr. Cochrane's Case, with the circumstance of the punishment and death of the person in question having taken place at *Negapatam*, under the dominion of Great Britain by right of conquest.

No copy of the Case sent to Bengal was communicated to Mr. Cochrane, either before or after the opinion of the Judges there was taken upon it: A copy was given to him of the opinion received from the Bengal Judges; but in the whole course of that opinion, there is ~~no mention~~ of Mr. Cochrane's name, nor any thing that bears allusion to the case of an offence charged to have happened at *Negapatam*,

which, on that very account, was under under circumstances very different from offences charged to have happened within the lands or territories of *a native Prince or State in India*. The opinion of the Bengal Judges must be regulated and explained by the Case that was laid before them, on which that opinion was founded; and the Memorialist has the more reason to think that there had been some imperfection in the Case sent by the Madras Government to Bengal, because, upon a Case stating the real circumstances of the offence charged to have happened at *Negapatam*, and mentioning the tenure by which that place is held, the Memorialist has received the opinion of able Counsel in England, that Mr. Cochrane might have been tried by the Court of Oyer and Terminer at Madras in its ordinary jurisdiction.

• Paragraph Fourteenth of the REPORT.

“ Mr. Cochrane seems himself to have been conscious of having acted very wrong, for immediately after the death, he not only gave money for the funeral, and for support of the deceased’s family, but offered money for the payment of his debts, which it is not to be supposed he would have done in favour of a man whom he accused of great misbehaviour, if he had not thereby had a view of stopping an inquiry into this business.”

OBSERVATIONS on Paragraph Fourteenth of the REPORT.

Nothing can be more unjust and ill founded, than the whole of this Paragraph of the Report, and the imputations are the more unjustifiable, because the aspect under which Mr. Smith has presented this matter, and the inferences which he has thought proper to make, are totally unsupported, and in many respects are directly refuted by the proofs.

The simple and genuine matter of fact is narrated in Ensign Clarke’s deposition, who was present at all that passed, and has given an account of it in the following words:

“ On

“ On the 9th of November, in the evening, Vydenadah died, and on my informing Mr. Cochrane of it, he expressed his concern, and gave orders for the corpse to be carried to the house of his family.

“ The next morning at breakfast, Vydenadah's mother came to Mr. Cochrane, and made a request of the jewels belonging to her daughter-in-law, which I was informed had been deposited by Vydenadah in part payment of the grain he had embezzled, belonging to the Honourable Company.

“ She said the jewels were necessary for the ceremony to be observed in the funeral, which Mr. Cochrane gave up to her in my presence.

“ And on the old woman declaring that her deceased son was her only support, and that she had no money to perform the funeral ceremony, Mr. Cochrane informed her, that the same wages which had been allowed Vydenadah, should be continued to his brother-in-law, a boy fourteen years old, and ordered some money to be given her for the charges.

“ He then directed that the ceremony should be performed in the most public manner, and that his *servants of the same cast* should attend; it was accordingly done between the hours of nine and eleven in the forenoon.”

If Mr. Smith took the trouble of reading the relation of the matter of fact thus given by a gentleman of character, and by a gentleman who was present at what past, it must appear extraordinary how Mr. Smith could permit himself to represent under such black colours, those circumstances of Mr. Cochrane's behaviour, which were purely and naturally the effect of humanity, towards a helpless old woman, who by the loss of her son had been deprived of her only support, and who had not the means of affording a decent funeral to the son she had lost.

Would there not have been more reason to reproach Mr. Cochrane with barbarity, if he had refused to give some little aid to this helpless woman in her distressed situation, or refused to afford some assistance for having her son decently interred.

What he did in these respects, he did not do privately; but openly; he made no secret of the sort of aid he gave on that occasion.

If Mr. Cochrane, instead of sending Vydenadah's corpse to the house of his family, and instead of assisting his friends to have a public and decent funeral, had ordered the corpse to be privately and suddenly interred, which might have avoided any expence, would he not have been more exposed to Mr. Smith's criticisms? and from the disposition which has appeared in the course of the Report, such conduct on Mr. Cochrane's part must infallibly have drawn upon him the severest animadversions from the Reporter.

Upon the most simple and natural acts of humanity, Mr. Smith has founded the harshest imputations to Mr. Cochrane's prejudice. He states them as proofs of Mr. Cochrane's being *conscious* that he had acted *very wrong*, and proofs that he had a view of *stopping an enquiry* into this business.

It was not easy to frame a more cruel or a more injurious imputation, but fortunately the whole tenor of the proceedings, and of the proofs in this business, serves as an antidote to the poison that was thus meant to be conveyed.

It appears that Mr. Cochrane's conduct, from first to last, has been quite the reverse of that which would have been observed by a man either conscious of guilt, or desirous of stopping inquiry.

The impression which Mr. Smith has endeavoured to convey, to the Court of Directors in these respects, never was entertained even by Mr. Cochrane's enemies at Madras, nor by that part of the Madras Government which might be supposed to be most adverse to him; and there is evidence on this point which Mr. Smith himself must acknowledge to be decisive against this part of his Report. It is this:

In the Minute already mentioned of Mr. Dent, one of the Members of Council, dated 10th February 1785, there is the following Paragraph:

“ It appears that Mr. Cochrane gave strict orders that every possible
 “ care should be taken of Vydenadah after the punishment, and that
 “ the funeral ceremony was performed in the most public manner,
 “ and that no steps whatever were taken on the part of Mr. Cochrane
 “ to conceal it.”

Opposite to this Paragraph in Mr. Dent's Minute, and particularly to that part of it which says, that no steps whatever were taken on Mr. Cochrane's

Cochrane's part to conceal it; Lord Macartney has on the margin expressed himself in the following words: "*There is no doubt of it.*" This is a complete confirmation on the part of Lord Macartney as well as of Mr. Dent, that Mr. Cochrane had not deserved the charge which Mr. Smith has now endeavoured to bring against him.

The immediate subsequent part of Mr. Dent's Minute is in these words: "*Therefore the most that can be said of it is, that it was an unlucky accident, even supposing that the man's death had been hastened by the punishment, which is by no means proved.*"

On the margin of that part of Mr. Dent's Minute, and immediately opposite to the words *unlucky accident*, Lord Macartney expresses himself thus: "*The Board never supposed otherwise.*"

In a former part of this Memorial, it has been already observed, that Lord Macartney, on the margin of another part of Mr. Dent's Minute, had declared, that "*Mr. Cochrane had certainly been very active and desirous to bring this matter to an investigation.*"

If any circumstance were requisite to give additional weight to the testimony which Lord Macartney, as well as Mr. Dent, has given in Mr. Cochrane's favour upon the particulars now mentioned, it would arise from this, that on the perusal of the whole of the marginal observations made by Lord Macartney upon Mr. Dent's Minute, it is abundantly evident, that there was no remarkable partiality on his Lordship's part to Mr. Cochrane's side of the question; on the contrary, the pains there bestowed in combating various parts of Mr. Dent's reasonings, which were favourable for Mr. Cochrane, as well as the similar attempts in various Minutes drawn up by Lord Macartney himself in the course of this business, could not have been exceeded by the exertions of the most able and ingenious Counsel devoting his genius and industry to that object.

In such circumstances, the clear and decided opinions of the Resident, and one of the Members of the Council at Madras, so favourable to Mr. Cochrane upon the very points which Mr. Smith has represented so very harshly against him, must afford the completest refutation of that part of Mr. Smith's Report.

Paragraph

Paragraph Fifteenth of the REPORT.

“ If Mr. Cochrane is to be tried, it must be by a special Commission to be granted under the statute of Henry VIII. ; and this trial can have no effect, unless the Commission is appointed to sit at Madras. But it seems important to the Court to consider what is fit to be done respecting Mr. Cochrane, as a Company’s Servant, to prevent the imputation of their encouraging and countenancing the misbehaviour of their Servants towards the Natives of India : Whether the circumstances of the Case are sufficiently strong to convict Mr. Cochrane of the Murder or not, it is certain that Vydenadab was punished in a severe and unusual manner ; and whatever may be Mr. Cochrane’s fate, it cannot be doubted that the Natives are strongly impressed with the idea of this punishment having been the cause of his death.

(Signed) JOHN SMITH.”

23d April 1786.

OBSERVATIONS on Paragraph Fifteenth of the REPORT.

In the course of the Observations on Paragraph thirteenth, the competency of a trial in India, by the Court of Oyer and Terminer at Madras, has been shewn, which affords an answer to the first part of Paragraph fifteenth, now under consideration.

Mr. Smith, in the second part of the Paragraph, has shewn his anxiety for preventing the *imputation* of the Court of Directors encouraging and countenancing the misbehaviour of their Servants towards the *Natives of India* ; and it is not impossible that this suggestion may have had considerable influence in producing the proposed Sentence of Dismission, which was founded upon, and instantly followed Mr. Smith’s Report.

However laudable Mr. Smith’s zeal and anxiety may be for preventing any possible imputations against the Directors, one cannot help observing, that in this part of the Report he seems more anxious about *appearances* than *realities*. The first and essential point that ought to be

be settled is, whether the Company's Servant has been guilty of any, and what sort of misbehaviour; and, supposing him to have been guilty of some offence, the second point is, what sort of punishment is best suited and proportioned to that offence: But it is a strange rule of justice to begin first by a severe punishment, without any enquiry into the reality or degree of the offence.

The Court of Directors would certainly not wish to inflict on one of their faithful Servants, a punishment that is *not deserved*, for the sake of avoiding a *possible imputation* on themselves—which imputation, if made, would *not be founded*.

In more than one part of the Report, it seems as if Mr. Smith were distressed with the apprehension that Mr. Cochrane, if tried, might not be *convicted*; and the remedy he has for that distress is, by rendering it immaterial whether he is convicted or not, by punishing him without either trial or conviction. In this part of the Report, there is the following expression: "Whether the circumstances of the Case are sufficiently strong to convict Mr. Cochrane of *the murder* or "not," &c. Here it seems to be taken for granted, that a *murder* was committed—that Mr. Cochrane was *guilty of that murder*—and that the only thing in doubt is, whether the circumstances of the Case are sufficiently strong to *convict him of that murder*.

This is a strange way of representing a Case, where, taking it in the strictest and severest manner against the person accused, there would be two essential questions: The first, whether, in point of fact, the man's death had been occasioned by the punishment? and, secondly, whether, even upon proof of that fact, it could be construed into *intentional murder*, or imputed only to *unforeseen and unfortunate accident*?

In the last part of the Report, Mr. Smith expresses himself thus: "*It is certain* that Vydenadah was punished in a severe and unusual manner; and whatever may be Mr. Cochrane's fate, it *cannot be doubted* that the Natives are strongly impressed with the idea of this punishment having been the cause of his death."

The facts which are here stated by Mr. Smith as *certain*, and which *cannot be doubted*, are facts which are by no means supported, on the contrary, are contradicted, by the proofs which have been taken in
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this business. The Memorialist will not take up the time of the Court by resuming those parts of the proof which afford a direct refutation of the assertions thus made; he will only beg leave to call to their remembrance the result of the evidence which has been already stated for shewing, that in the opinion of the most credible witnesses who were present at the inflicting of the punishment, and of those who afterwards saw Vydenadah, his death was not occasioned by any severity in that punishment.

In the last part of the Report it is said, that it *cannot be doubted* that the Natives are strongly impressed with the idea of this punishment having been the cause of the death of Vydenadah.

It is incumbent on the Reporter to point out the evidence from which he has learnt with such certainty these impressions of the *Natives*; it is certainly not in the course of the proofs taken either at *Negapatakam* or at *Madras*, that he could have acquired this intelligence; on the contrary, the fair result of the evidence taken at these places is, that there was no such *prevailing opinion* or *impression* among the Natives: But perhaps Mr. Smith may be of opinion, that it is proper that a faithful Servant of the Company should be sacrificed, *lest* the Natives should happen to have such an impression as he has ascribed to them, and for the purpose of guarding against the chance of the Directors being blamed for not shewing more attention to the Natives.— If arguments of this sort are to be admitted, there is no Servant of the Company's, however meritorious, whose situation would not be rendered perfectly precarious.

For quieting the alarms which Mr. Smith seems to entertain about the *impressions of the Natives* in this case, it may not be improper to observe, that few cases could ever occur where there could be less hazard of the Natives in India taking a strong interest in the event which had happened, or of their feeling apprehensions from its consequences.

It was well known, and must have been obvious to all the natives, that this man *Vydenadah* had been guilty of very enormous crimes, and that his crimes were such, that by the laws of every civilized country, his life must upon trial have been forfeited for his offences.

They must also have seen, that he was not in the situation of an innocent man or of a man guilty of trivial offences, who had been wan-
tonly

only punished by his master; on the contrary, that his master had not been actuated by any private pique or malice, but had publicly punished his servant, in a manner agreeable to the general and long established Oriental Customs, not only for breach of trust and dishonesty towards himself, but also for crimes of a public nature.

Finally, they must have seen, that it was in the power of the person punished, either to have *abridged the punishment*, or to have *avoided it altogether* by a more early confession of his crimes, and delivering up the accounts which he had stolen.

Upon the whole, they could not but be satisfied, that even if the death, which happened at the distance of several days, had been in any degree occasioned by the punishment, still it could not at the worst be considered as more than an *unfortunate accident*, without any intention on the part of the master to deprive the servant of his life.

In these circumstances, there surely can be no manner of reason for Mr. Smith's raising alarms about the *impressions* of the *Natives* in this case, or for his inducing the Directors to act upon these *supposed impressions*, as a good ground for exercising severity towards a faithful zealous servant of the Company, lest they should incur blame to themselves for not punishing Mr. Cochrane without either conviction or trial.

The tendency of Mr. Smith's suggestion, and the substance of his argument on this point, may in a few words be reduced to this proposition; that in order to give to the *Natives in India* a proof of the *humanity* of the India Directors, they ought to inflict a punishment of the severest nature, right or wrong, upon one of their European servants.

C O N C L U S I O N.

The Memorialist has now finished the painful task of stating the various essential particulars of a very singular and interesting Case, and of arranging the contents of an uncommonly voluminous collection of Papers, to which the peculiar circumstances of that Case had given rise.

This task, unpleasant as it has been, became indispensibly necessary, because, without it, there was no possibility of understanding the real merits of the Case itself, or of discovering whether a faithful or unfaithful representation of them had been given in the Report drawn up by the Company's Solicitor.

When the officer of a Public Company is directed to examine the merits, and to report his opinion upon the Case of an individual, whose character, situation, and every thing valuable to him in life are at stake, it is natural to expect that such Report should proceed on an examination of all circumstances *favourable* or *unfavourable*, to the person whose interests are thus deeply concerned, and that the Report itself should afford the clearest conviction that the author of it had examined the whole Case, attended to every thing material *for* or *against* the person in question, and that the opinion formed by him upon the whole, was the result of complete knowledge of the subject, and of a cool, dispassionate, and impartial judgment upon the merits.

If this description shall appear to be truly applicable to the Report which has been made by Mr. Smith in this Case of Mr. Cochrane, then it will not be disputed that it was a good foundation for the Directors to proceed upon in their deliberations.

But if, on the other hand, it becomes evident from a comparison of Mr. Smith's Report with the Papers which he either did examine or ought to have examined, that the Reporter did not possess a complete knowledge of the subject, or that possessing it himself, he did not chuse to communicate that knowledge to the Directors who had reposed the most implicit reliance upon him for full information and impartial judgment; in either case, it must be allowed, that the Report, instead of influencing the minds of the Directors, or superseding the necessity of a thorough examination by themselves, must naturally and necessarily encrease the reasons for such examination.

It is by no means surprising, that the Report made by Mr. Smith should have produced impressions highly unfavourable to Mr. Cochrane; it would have been much more surprising, if such a representation of his conduct as that which the Report contains, had not excited a strong degree of prejudice against him in every liberal mind, while the fidelity of that representation was completely relied upon.

.But the Memorialist cannot doubt that the justice and humanity of the Court of Directors will most readily induce them to lay aside every unfavourable impression that could ever have been produced by that Report, so soon as they shall be convinced by the proofs appealed to, that the Report to which they have hitherto trusted, had mis-stated some very material facts, exaggerated and coloured others in a manner not authorized by the evidence, and totally omitted many facts and circumstances highly favourable for Mr. Cochrane, and essential for rendering to him impartial justice.

The Memorialist, who regrets exceedingly the unavoidable length of this Paper, will not allow himself to add to it, by here resuming the great outlines of the Case. He flatters himself, that by the order and arrangement which has been observed in stating and examining every part of the Report, it will not be a very difficult matter to discover upon each branch of it, whether the state of facts and inferences given by the Reporter, or those contained in the progressive observations upon his Report, have been the most solidly founded, and the best supported by evidence. By this test the Memorialist is very willing and desirous that his brother should stand or fall in the estimation of the Directors, and that his fate should be decided.

One observation he cannot avoid making, because it is of so striking a nature, that it must produce some degree of surprise. It is this : That in the whole course of the Report relating to a great variety of articles of conduct, there is not to be found any one fact or circumstance in favour of Mr. Cochrane, or any suggestion or observation favourable either to his conduct or to his motives in the matters in question.

It would have been a Case, such as seldom occurs, and a very unfortunate one, indeed, for Mr. Cochrane, if his had been of such a desperate nature and complexion as not to afford room for any one thing being said in his favour, whether in refutation or in diminution of the Charges which had been brought against him. But whoever takes the trouble of perusing the preceding parts of this Memorial, with the Evidence to which it refers, must be satisfied, that the real circumstances of Mr. Cochrane's Case deserved a very different representation of them from that which has actually been given by the Reporter.

The Memorialist is very unwilling to ascribe to any man, improper motives or improper prejudices: He is disposed to consider the objectionable parts of Mr. Smith's Report, as proceeding from that multiplicity of business which could not easily admit of his investigating accurately the particulars of a Case, whereof the true knowledge could only be attained after a great deal of labour bestowed, and after the perusal of a great collection of Papers and of Evidence.

The Memorialist cannot help thinking, that Mr. Smith will himself regret that he had not perceived the true state of the Case, and those various essential particulars which have now been brought under view. He will feel, perhaps, with some degree of compunction, what calamities his hurry and inadvertence has occasioned, or was likely to occasion, to a meritorious and misrepresented Servant of the East India Company.

The calamity with which Mr. Cochrane has been threatened, is of a very serious nature—that of Dismissal from the Company's Service, after *Seventeen Years constant residence in India*—from which circumstance of itself, as well as from the rank which he has attained in the Service, he had every reason to flatter himself that he was now fast advancing to the period of reaping the fruits of many years labour and faithful services, especially as the beneficial consequences of rank in the Service, and long residence in India, are now better secured than ever they had formerly been to the Company's Servants.

But the disappointment in that respect, which would attend a Dismissal from the Service, is not to be compared with the superior misfortune of having his character and reputation, and his future prospects in any part of the world, ruined, by a Sentence of Dismissal, and that Sentence necessarily connected with the imputations of Cruelty and Murder.

Instead of deserving this fate, the Memorialist, upon the best grounds, and from his reliance on the justice and humanity of the East India Company, flatters himself that, upon an attentive perusal of what has now been submitted to the consideration of the Court of Directors, and upon the strictest scrutiny of the Evidence itself, with the official Papers from which this Memorial has been drawn up, the Honourable Court will find just and sufficient grounds for adopting one of the two measures now to be mentioned.

The *first*, and most desirable, is that of a complete and honourable acquittal of Mr. Cochrane, by the Court of Directors themselves, after the most full and due consideration of all the circumstances of his Case.

The *second* is, that if any doubt should happen to remain with regard to Mr. Cochrane's being entitled to that immediate acquittal, that the Court of Directors will be pleased to refer the whole matter to the Government of Madras, with directions to the President and Council there to make diligent enquiry into all the particulars and circumstances of Mr. Cochrane's Case ; and with powers to them either to decide thereupon themselves, or to report their opinion, in order that the Court of Directors may hereafter pronounce such judgment as the real circumstances of the Case, ascertained by a faithful Report, shall appear to merit.

In respect whereof, &c.

DUNDONALD.

London, 12th July, 1786.