

ARTICLES

OF

CHARGE

OF

High Crimes and Misdemeanors.

AGAINST

Sir ELIJAH IMPEY, Knight,

Late Chief Justice of the Supreme Court of Judicature
at FORT WILLIAM in BENGAL.

*Presented to the House of Commons, upon the 12th.
Day of December, 1787,*

By SIR GILBERT ELLIOT, BART.

SECOND EDITION.

L O N D O N :

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FIRST CHARGE.

NUNDUCOMAR.

THAT many Complaints having been made, previous to the year 1772, of the imperfect Manner in which Justice was administered in the Provinces of Bengal, Bahar, and Orissa, under the British Courts of Justice existing within the said Provinces at that Time, and those Complaints being principally founded on the Difficulty which the Native Inhabitants of the said Provinces laboured under, in obtaining Justice against the Servants of the East-India Company and their Agents, in Courts wherein the Servants of the said Company presided, and in which the Judges themselves appeared, in many Instances, to have a common Interest with the Parties complained of, in screening the Injuries and Offences committed by Europeans against the native Inhabitants, and in suppressing, defeating, and discouraging such Complaints; and were in all Cases obnoxious to the Suspicion of being influenced in their Judgments by British Authority, on which their private Fortunes altogether depended; and Parliament having,

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ving, in the Years 1772 and 1773, obtained, by the Reports of its Committees, full and authentic Information concerning the said Grievances, and many other Abuses and Defects in the Government and Management of the Territorial Possessions of the East India Company in India, and particularly concerning the defective Administration of Justice therein, did pass an Act, in the 13th Year of His present Majesty, intituled, "An Act for establishing certain Regulations for the better Management of the Affairs of the East India Company, as well in India as in Europe," by which, amongst other Provisions and Regulations therein contained, His Majesty was "authorized and impowered, by Charter, or Letters Patent under the Great Seal of Great Britain, to erect and establish a Supreme Court of Judicature at Fort William in Bengal," which Court was to enjoy and exercise certain Powers and Authorities described in the said Act. And His Majesty did, in pursuance and by virtue of the said Act, grant a Charter of Justice accordingly, bearing Date in the 14th Year of His said Majesty's Reign, and did erect and establish such Supreme Court of Judicature, and did appoint Sir Elijah Impey to be Chief Justice thereof. That the said Act, passed in the View of remedying the Defects aforesaid in the Administration of Justice within the said Provinces, and of rendering the Judges of the said Supreme Court altogether unconnected with, and independent of, the said East-India Company, and of their Servants abroad, and affording thereby a Place of Refuge for the oppressed Inhabitants of the said Provinces, whether British or Native, from the Exactions, Vexations, and Injuries of the East India Company, or their Servants

in Authority there; and also in the View of affording to the said East India Company itself, the Means of obtaining Justice against the Frauds and Misdemeanors of its Servants, in a Court which should be independent of, and unconnected with, the said Servants, did provide that the Chief Justice and Judges of the said Supreme Court should be appointed by His Majesty, and not by the East India Company, or by any of its Servants, and should be removeable from their said Offices of Chief Justice and Judges of the Supreme Court by His Majesty, or His Successors, and not by the said East India Company, or any of its Servants; and did further grant to the said Chief Justice and Judges large and ample Salaries, sufficient to remove any Temptation of seeking to increase their Fortunes by any other and indirect Means, and rendering themselves thereby dependent on the Servants of the said East India Company; and did further strictly forbid the said Chief Justice and Judges to accept of any present or pecuniary Reward, other than their said Salaries, or to carry on, or to have any Concern in, any Traffic or Commerce, either for themselves, or for the Account of any other Persons; and the manifest Spirit and Intention of the said Provisions and Regulations was to secure the Independence of the said Supreme Court of Judicature, and to keep the Administration of Justice pure and separate from all political Views, Transactions, or Connections whatever; and the main and principal Object of the Establishment of the said Supreme Court, and of the Provisions and Regulations relating thereto, was the general Protection of the native Inhabitants of the said Provinces against the Oppressions of the said

Company's Servants, and more particularly the special Protection of the Native Inhabitants, who should accuse and complain of the said Company's Servants, and particularly in the Instances in which the said Servants so complained of should possess the highest Authority, and should be most able to oppress the said Native Inhabitants, and to resent their Complaints and Accusations.

THAT the said Sir Elijah Impey was well acquainted with the said Provisions and Regulations, and with the salutary Objects proposed thereby, which are obvious in themselves, and which the said Sir Elijah Impey was well apprized of, as appears by many Declarations and Professions made by himself, both in Writing and publicly from the Bench, expressive of the Sense he entertained of the said Provisions and Regulations, and of their Object; and the said Sir Elijah Impey did accept of the said Appointment in the full and perfect Knowledge of the Duties and Obligations attached thereto, and did thereby render himself responsible for any Neglect, Breach, or Violation thereof.

THAT the said Sir Elijah Impey was appointed to the said Office at London, in the Year 1774; and did arrive at Fort William in Bengal, in the Month of October in the same Year; and did immediately, or soon after, enter on the Discharge of the said Office of Chief Justice.

THAT, soon after the Arrival of the said Sir Elijah Impey at Calcutta, and the First Establishment of the said Supreme Court, Warren Hastings, Esquire, at that Time Governor General of Bengal, was publicly accused of various Peculations, and other corrupt Practices, in his said Office of Governor

Governor General, by a Native of high Rank and of great Eminence in the said Province of Bengal, named the Maha Rajah Nunducomar. That the said Accusations were made by the said Maha Rajah before the Council General, a Majority of which received the same; and instituted an Enquiry and examination into the truth thereof, as it was their Duty to do, and in Obedience to the particular and recent Instructions given by the Court of Directors of the said East India Company, when the said Members of the Council General were appointed to their said Offices. That the said Accusations were in Writing, and specified with great Minuteness the particular Charges, and all Circumstances relating thereto, and were not contradicted by the said Warren Hastings; who, instead of confronting his Accuser, challenging Enquiry, disputing or refuting the said Charges, thought proper, under Pretence of his Dignity, to decline all Defence, to dissolve, in an arbitrary and illegal Manner, the said Council General, at various Times, when met to enquire into the said Charges, and did otherwise, by every Means in his Power, whether legal or otherwise, oppose and resist the Examination of the said Charges, affording thereby strong Confirmation of the Truth thereof, and manifesting strong apprehensions of the Consequences with which the said Accusation would threaten him, if enquired into, or suffered to proceed.

THAT a Majority of the said Council General having refused to suppress the said Accusation, and having declared their Determination to proceed in its Investigation, notwithstanding the illegal and unwarrantable Opposition made thereto by the
 Person

Person accused, he the said Warren Hastings endeavoured to defeat the said Accusation, by prosecuting the said Maha Rajah in the Supreme Court, for a Conspiracy against him, and several other Persons holding high Stations in the Company's Service; and immediately after the Commencement of the said Prosecution for the said Conspiracy, but before any Indictment for the same had been found, or any Trial thereof, a direct Attack was made on the Life of the said Accuser of the Governor General, by indicting the said Maha Rajah Capitally before the Supreme Court, for a Forgery, said to have been committed by the said Maha Rajah Five Years before; which pretended Forgery had been, and still was at the Time of the Commencement of the said Prosecution, the Subject of a Civil Suit in the Dewannee Adaulut, a Country Court of Justice, and no Steps had been ever taken to make the same a Matter of Criminal Prosecution, and much less of a Capital Indictment, until the said Rajah had become the Accuser of the Governor General. That the Circumstances aforesaid could leave no Doubt in the Mind and Opinion of any Person acquainted therewith, that the said Prosecution was set on Foot with a View of defeating the said Accusation brought by the said Maha Rajah against the said Warren Hastings; and the same was considered as a political Measure, contrived either by the said Warren Hastings, or by his Party and Adherents, to extricate the said Warren Hastings from his said desperate Condition, and calculated at the same Time both to revenge the said particular Accusation brought against the said Warren Hastings, and effectually to deter all other Natives of the said Provinces

Provinces from attempting the like in any other Instance against the said Warren Hastings, or any other European.

THAT the said Maha Rajah was entitled to Justice from the said Supreme Court of Judicature in common with other Men, and more particularly as being a Native Inhabitant of the said Provinces; but he was most peculiarly, and above all, an Object of their especial Protection, from the Circumstances in which he stood, and which had given Occasion to the said Prosecution. For he was a Native Inhabitant of the said Provinces, and he was engaged in an Undertaking which had been deemed hazardous and fatal for Natives before the Establishment of the said Supreme Court, but which it was the principal and proper Object of the said Establishment to render safe to all Persons, whether Native or European, namely, the Accusation and Detection of corrupt and evil Practices in the Servants of the East India Company enjoying Power and Authority in the said Provinces. That it was therefore the bounden and sacred Duty of the said Sir Elijah Impey, as Chief Justice of the said Supreme Court, to afford Protection to the said Maha Rajah, so far as it might come within the Limits of his Functions and Office legally so to do. But he the said Sir Elijah Impey did, on the contrary, in Violation of his said Duty, in direct Opposition to the Letter and the Spirit of his Commission, contrary to every Principle of English Law, and of general Justice, become in Effect the Abettor and Instrument of the said Warren Hastings, or of his Partizans, in the said wicked and unprincipled Attack on the Life of the said Accuser; and the said Sir Elijah Impey converted

verted His Majesty's Commission and Authority, the Laws of England, and the sacred Character of Magistracy, into a new Means of Impunity, and a new and additional Engine of Revenge, Oppression, and Terror, in the Hands of those whom he was commissioned to controul.

THAT, in pursuance of the said corrupt and abominable Design, to defeat the said Accusation, by putting the said Accuser to death, he, the said Sir Elijah Impey, did entertain the said Prosecution, and did permit the said Capital Indictment to be tried by a Jury of British Subjects, and did pass Sentence of Death on the said Maha Rajah, and did refuse to grant an Appeal therefrom, and did refuse to respite the said Sentence until His Majesty's Pleasure should be known, and did order and cause the said Capital Sentence to be executed on the said Maha Rajah, in a Manner shocking to the religious Opinions of all the Gentoo Inhabitants within the said Provinces, although the said Maha Rajah was not within the Criminal Jurisdiction of the said Supreme Court, which had no legal Authority to try the said indictment under the said Act of the 13th Year of his present Majesty, and although the said pretended Crime, of which the said Maha Rajah was indicted, was not Capital in India, either by the Gentoo Law, or the Mahomedan Law, or the English Law; but the said Indictment was completely illegal, and ought to have been quashed, and every Step in the said Prosecution, from the Indictment to the Execution of the said Sentence, was plainly and directly contrary to the Law of England, and unwarranted by the Act of Parliament, or the Charter of Justice, under Pretence and Colour of which the said Sir
Elijah

Elijah Impey put the said Accuser of the Governor General to Death pending his said Accusation; and although the said Proceedings were still more manifestly contrary to the first and plainest Principles of natural and general Justice, and could not have been justified even by their Conformity with English Law, if such Conformity had existed, which it did not; and it would have been on that Account the Duty of the said Chief Justice to respite the said Sentence till His Majesty's Pleasure should be known, even if the Letter of the Law had constrained him to pronounce the said Sentence, which it did not; and although the said Trial, Sentence, and Execution, tended, in the Circumstances above recited, to defeat the principal and most salutary Purposes of the said Commission, and, instead of encouraging the Native Inhabitants to seek Redress in the said Supreme Court, and in the Laws of England, against the Oppressions of the said Company's Servants, must have increased, and did accordingly increase, the Terror and the implicit Submission of the said Native Inhabitants under their Wrongs, by impressing them with an Opinion that the authority of the said Company's Servants was now augmented by the Subserviency of the said Supreme Court, which armed the said Servants with new and more terrible Powers, and placed the Lives as well as the Fortunes of the said Native Inhabitants at the Mercy and at the Discretion of the said Servants.

THAT the said Trial, Sentence, and Execution, were contrary to Law, and not warranted by any legal or competent Authority,

First, because the said Act of Parliament of

His present Majesty, which authorised his Majesty to grant the said Charter, and to establish the said Supreme Court, did also describe, limit, and define, the several Powers and Jurisdictions to be exercised by the said Supreme Court; but it did not confer on the said Supreme Court (nor authorise His Majesty to confer the same) any Criminal Jurisdiction whatever, in any Case whatever, over the Native Inhabitants of the said Provinces; and, albeit the said Charter did nevertheless contain Clauses for conferring Criminal Jurisdiction over Native Inhabitants of certain Descriptions, and in certain Circumstances, in the said Charter particularly mentioned, yet the said Charter was not competent, without the Authority of Parliament, and contrary to the Meaning of the said Act, to confer such Criminal Jurisdiction, by any legal, valid, and sufficient Authority; and the said Sir Elijah Impey, being conversant in the Laws and Constitution of England, well knew the Insufficiency of the said Charter to that Effect, and is responsible for acting under an Authority which he knew to be invalid and unwarranted in Law. And the said Sir Elijah Impey is the more responsible on Account of the Invalidity of the said Charter, because he declared from the Bench, that he had been himself principally consulted and employed in drawing and preparing the said Charter, after he knew that he was to be appointed Chief Justice of the said Supreme Court, and that the Powers, which by his Advice were illegally inserted in the said Charter, were to be exercised by himself, and were therefore in Effect conferred by himself on himself.

THAT

THAT the said Proceedings were contrary to Law,

Secondly, Because the said Maha Rajah was held to be subject to the jurisdiction of the said Supreme Court, under the Authority of the said Charter, as having been an Inhabitant of the said Town of Calcutta, at the Time of his committing the said pretended Forgery; but it was unjust to make him amenable to the said Supreme Court, and subject to a foreign Law, and all the Penal Consequences thereof, on that Account, because he was brought to Calcutta by Force, and detained there a Prisoner, by Order of the President and Council, at the Time aforesaid; and, if the said Construction of the said Charter should prevail, it would be easy to bring any Native Inhabitants of the said Provinces within the Criminal Jurisdiction of the said Court, and subject them to the Penal Law of England, by first dragging them in Chains to Calcutta, and then treating them as Inhabitants of the said Town within the Meaning of the said Charter, and as becoming by such compulsive Inhabitaney amenable to the said Supreme Court, and to English Law.

THAT the said Proceedings were illegal,

Thirdly, Because the Act of the 2d of George the Second, Chapter 25, which rendered Forgery a capital Felony in England, did not extend to India, and no Indictment or Prosecution thereon, against any Person, whether English or Native, resident in the said Provinces, could be legal, or maintained in Law; for no Act of Parliament can be construed to extend to any foreign or dependent Dominion of Great Britain beyond the Seas, nor beyond the Realm of England, unless it be so expressed in the

Act; and there is no such Expression in the said Act of George the 2d, to extend the same to India, or to any other of His Majesty's Dominions beyond the Sea. But, on the contrary, the Operation of the said Act is clearly and manifestly, by the Preamble, by the Provisions of the said Act, which are applicable to England alone, and incapable of being applied to any other Country or Place, and by the whole Purview of the said Act, strictly confined to the Realm of England; and the said Act contains an express Proviso, that it shall not extend even to Scotland. That the said indictment ought therefore to have been quashed; and the Guilt of the said Sir Elijah Impey, in refusing to quash the same, and in executing a capital Sentence on a Native of India, under the said Act, is aggravated, in a very high Degree, by the consideration that Sir Robert Chambers, one of his Brethren on the Bench, and a Person well and deeply skilled and learned in the Law of England, did make a Motion from the Bench for quashing the said Indictment, on the Ground of its Illegality, as being founded on the said Statute of George the Second, which had not the Force of Law in India, and was not binding on the Inhabitants of those Provinces; and the said Sir Robert Chambers delivered his Reasons for the said Opinion; but the said Sir Elijah Impey did over-rule the same, and did reject the said Motion, and did proceed and persist, not only in the illegal Trial, but also in the Execution of the said illegal and capital Sentence.

THAT the said Trial, Sentence, and Execution, were contrary to Natural Justice,
First, Because the said Crime of Forgery was
not

not Capital by the Laws of the Country of which the said Maha Rajah was a Native and an Inhabitant; and it is repugnant to the Principles of Justice, of Humanity, and of Reason, to subject a whole Nation to the Penalties of a Foreign Law, more especially when that Law is incompatible with the Opinions, Manners, Habits, and Religion of the said Nation, and when the said Foreign Law is written (when written at all) in a Language not understood by the said Nation, and is in a great Measure unwritten, and therefore both unknown and impossible to be taught to the said Nation, and is administered by Forms with which the said Nation are utterly unacquainted, and by Persons with whom the said Nation cannot converse, and is, in all these, and many other Respects, utterly inapplicable to, as it was in fact framed without any Contemplation of, the said Nation. And the said Statute of George the Second could be binding in India only on the general Ground that the whole Body of the English Penal Law was transplanted, without Distinction, Selection, or Modification, into the said Provinces, and became binding on the said Native Inhabitants; which Supposition is nowhere supported by the said Statute or Charter, and is utterly repugnant to Reason and Justice: and the said Sir Elijah Impey has himself expressed, on other Occasions, his Opinion of the Inconvenience and Mischief of "inflicting the same Punishments which are inflicted in England for the like Offences;" and the Practice of the said Sir Elijah Impey, and of the said Supreme Court, has accordingly been to depart, in various Instances, from the Letter of English Law, and to modify it according to their Discretion,

cretion, in such Manner as appeared in those Instances to render it more applicable to the Circumstances of the said Provinces, and of the Inhabitants thereof. And the said Sir Elijah Impey did therefore deem it competent for him to depart from the Rigour of Penal Statutes, and was not bound, according to his own Principles and Practice, to adhere to it more in this than in other Cases; and his Pertinacity on the said Trial of the said Maha Rajah, in a Case of Life and Death, is on that Account the more unwarrantable, and the more obnoxious to the Imputation and Suspicion of a corrupt and dishonest Motive.

THAT the said Proceedings were contrary to Natural Justice,

Secondly, Because the only Pretence under which the said Indictment, Sentence, and Execution, could with any Colour be justified, was the Operation of His Majesty's said Charter of Justice, which the said Sir Elijah Impey falsely pretended to be sufficient for establishing the Criminal Jurisdiction of the said Supreme Court, and the English Penal Law, over the Native Inhabitants of the said Provinces; but the said Charter of Justice was not granted by His Majesty till the Year 1774, and did not reach Calcutta, nor was published there, until the Month of October in the said Year; whereas the said pretended Forgery was alledged to have been committed by the said Maha Rajah in the Year 1770, and was therefore not Capital, even under any British Charter, whether competent to make it so or not, at the Time of its said pretended Commission; and the said Charter of Justice granted by His present Majesty could operate on, or be applied

applied to, the said Case only as an *ex post facto* Law, which is contrary to the universally received and acknowledged Principles and Practice of all rational Societies and civilized Nations, and is a Tyranny not to be justified under any Act of a British Parliament, or any Charter of a British King, and is utterly repugnant to the Spirit of English Law, and to the Practice of English Tribunals, and is shocking to the English Character and Manners; and the Application of an *ex post facto* Law by the said Sir Elijah Impey as aforesaid, in a Case of Life and Death, would alone, if there were no other Circumstance to aggravate the Guilt thereof, remain a Stain on the English Name, which nothing can efface but a national Disavowal and Condemnation thereof.

THAT it is a Maxim of our Law, which in England is not thought incompatible with a due and wholesome Administration of Justice, that in Criminal Prosecutions the Judge on the Bench is Counsel for the Prisoner; and the Practice of British Judges, whom the said Sir Elijah Impey was commissioned to represent in India, is consonant to the said Maxim, which is not more founded in Mercy than in Justice; for the Counsel and Advocates for Prisoners are not permitted, in Capital Cases, to address the Jury, and the Prisoner, being often unskilled in Business, unaccustomed to address public Assemblies, distracted and depressed by his Situation, or otherwise unqualified to plead his own Cause, would lose the fair Advantage to which he is entitled, of commenting on the Evidence, observing on the comparative Credit of the Witnesses, and furnishing to the Jury the Lights and Assistance of which they stand in need in long and intricate Enquiries,

Enquiries, if the said Defect in Criminal Trials was not supplied, and perhaps fully compensated, by the said Practice of the Judges, who take especial Care, both during the Trial, and in their Charges to the Jury after the Evidence is closed, that the Accused shall have the full and fair Advantage of all that is favourable in his Case. That without such Assistance from the Bench, in the helpless and forlorn Condition of Prisoners standing on Trial for their Lives, Innocence would be frequently overborne and confounded, even in England. But the said Assistance from the Bench is still more requisite in dispensing the Penal Laws of England to the Native Inhabitants of India, since the Ignorance of Prisoners, being Natives of the said Provinces, both in the Law and in the Language of the Court which is to pronounce on their Lives, must utterly disqualify them for making any Defence for themselves. That the said Sir Elijah Impey did, on One Hand, conform to the Practice of English Courts, by refusing to permit the Counsel for the said Maha Rajah to address the Jury on behalf of their Client; and he was the more bound not to omit or to neglect the said other Practice of English Judges, which supplies the Prisoner's Loss of Assistance from the Bar, by the Vigilance and Authority of the Bench: But the said Sir Elijah Impey not only wilfully failed altogether in that important Branch of his Duty, but became in Effect the Agent and Advocate of the Prosecutor, and pronounced a Charge, when he summed up the Evidence given on the said Trial, with the most gross and scandalous Partiality, dwelling on all the Points which appeared favourable to the Prosecution, and either omitting altogether,

gether, or passing lightly over, such as were favourable to the Prisoner, and manifesting, throughout the whole Proceeding, an ardent Wish and determined Purpose to effect the Ruin and Death of the said Maha Rajah. That the said Partiality and the said Purpose are particularly obvious in his Observations on the Evidence of a certain Witness named Kissen Juan Dofs, which, if true or believed, the said Sir Elijah Impey did himself admit, must acquit the Prisoner, but which he laboured at great Length, and with unwearied Pains, Ingenuity, and Art, to discredit, on slight, trivial, and insufficient Grounds; while he barely touched on the strongest and most valid Objections, both to the Competence and Credit of certain other Witnesses, on whose Evidence the Conviction of the said Mahah Rajah rested; and the said Sir Elijah Impey was not contented with passing slightly over the said several Objections to the said Witnesses, but did falsely, and knowing himself the Falshood thereof, represent the said Witnesses as credible and unimpeached in their Characters; although the said Sir Elijah Impey had himself personally witnessed Falshood, Prevarication, Venality, and infamy in One of the said Witnesses, in former Proceedings before himself, and respecting the said Maha Rajah; and the said Sir Elijah Impey had again, after the Trial and Conviction of the said Maha Rajah, on the Evidence of the said Witnesses, and while the said Maha Rajah lay under Sentence of Death, in consequence thereof, further Instances and stronger Proof, in other Proceedings also before himself, and from the Confession and Declaration of one of the said Witnesses himself, made and delivered in his own Presence, that he

the said Witness was a Person of infamous Character, and ought not to be believed on his Oath. But the said Sir Elijah Impey did nevertheless refuse to respite the said Sentence, and did cause the same to be executed, although the said Circumstances did raise a strong Presumption of the Innocence of the said Maha Rajah, and did at least throw great Doubt and Uncertainty on his Guilt.

THAT, by virtue of the Statute and Charter aforesaid, Authority is given to the Chief Justice and Judges of the Supreme Court of Judicature, in criminal Cases, to grant or to refuse an Appeal from the Judgment of the said Court, as they shall think proper. That, after Judgment of Death had been passed on the said Maha Rajah, a Petition of Appeal was presented on his Behalf to the said Supreme Court. That the Circumstances aforesaid of Doubt, both in Point of Law and Fact, and more especially the Difference of Opinion between Sir Robert Chambers, One of the Judges, and the said Sir Elijah Impey and the other Judges, on a Point which involved the Legality of the whole Proceedings, and which directly affected the Life of the said Prisoner, did render it the Duty of the said Sir Elijah Impey to grant the said Appeal. That the manifest Injustice of subjecting the said Maha Rajah, a Native of India, to the Penalty of Death under a British Statute, for a Crime which was not liable to the Punishment of Death by the Native Laws of the said Provinces; and the Establishment thereby of a general Principle, by which the Native Inhabitants became liable to all the penal and local Statutes of England, without Distinction or Modification, and in some Instances to the Penalty of Death, for Actions which, although not agreeable
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to the Manners of England, and for that Reason forbid by the English Law, are not forbid by the Laws of India, and are not even criminal in themselves, but are universally practised by all the Native Inhabitants of the said Provinces, and the Impossibility that the Legislature could intend to establish a Principle so tyrannical and so absurd, even although the Letter of the Statute or Charter had been capable of bearing such a Construction; that the said several Considerations did render it further the manifest Duty of the said Sir Elijah Impey to grant the said Appeal. That the peculiar Situation of the said Prisoner, as the Accuser of the said Warren Hastings, and the strong Grounds which the same afforded to believe that the said Prosecution was set on Foot, not for the ordinary Purposes of Justice, but for other and unjustifiable Purposes, did also further increase the Propriety and Necessity of granting the said Appeal.

THAT the said Sir Elijah Impey did, notwithstanding all the said Considerations, and in Opposition to his manifest Duty in all the said Respects, refuse the said Appeal.

THAT the said Supreme Court had also, by virtue of the said Statute and Charter, Authority, to reprieve and suspend the Execution of all capital Sentences, until His Majesty's Pleasure should be known; and several Applications were made on Behalf of the said Maha Rajah to the said Court, for the said Purpose; and, particularly an Application was made for the said Purpose by Mobarach al Dowla, Nabob of the said Provinces, which, amongst other Grounds urged therein, did especially represent the Ruin and Trouble which would be occasioned to the Inhabitants of his Country, and the Rigour and Hardship which would ensue, if

Transactions which had happened before the Arrival of His Majesty's Charter, should be tried by the English Law lately introduced, and punished capitally, although not liable to such Punishment by the Laws and Customs of his Country; and did also set forth the former Services of the said Maha Rajah to the English Nation, his, the said Nabob's, own Conviction of his Innocence, and the probable Malice of his Prosecutors, who had long been his declared Foes.

THAT all the Considerations, which rendered it, as aforesaid, the Duty of the said Sir Elijah Impey to grant the said Appeal, did also render it his Duty to reprieve and suspend the Execution of the said Sentence of Death, until His Majesty's Pleasure should be known; more especially since it was impossible that the Objects of Justice could in any Event be defeated thereby; for the very Imprisonment of the Maha Rajah, during so long an Interval as must have elapsed before the Signification of His Majesty's Pleasure could be received in India, would have amounted to a Punishment as severe as the Crime of the said Maha Rajah was liable to, either by the Laws and Customs of the said Maha Rajah's Country, or even by those of England, previous to the said Statute of George the Second,

THAT, notwithstanding the many powerful and obvious Considerations aforesaid, the said Sir Elijah Impey did refuse to respite the Execution of the said Sentence, and did cause the same to be executed accordingly.

THAT the said Sir Elijah Impey's proceeding to try the said Indictment of a Person not within the Jurisdiction of the said Supreme Court, on a penal and capital Statute which did not extend to India, and was not Law within the said Provinces; and

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and the partial and undue means by which he procured the Jury to convict the said Maha Rajah, on false and insufficient Evidence; and his Refusal to grant the said Appeal, and to respite the said Sentence, notwithstanding all the several Circumstances and Considerations aforesaid, do evince and demonstrate a corrupt Interest of the said Sir Elijah Impey in the Destruction of the said Maha Rajah, for Purposes detestable in themselves, but much more detestable in the said Sir Elijah Impey's peculiar Station.

THAT the said Trial and Execution were contrary to Law, and were contrary to Justice, and were repugnant to the Spirit and Intention of the Establishment of the said Supreme Court; and disappointed therein the just and salutary Object of His Majesty and of the Parliament; and brought Disrepute and Shame on the said Supreme Court at its first Institution; and deprived the said Native Inhabitants of the said Provinces of all Confidence in the English Law or Justice; and deterred all Native Inhabitants from daring to accuse or complain of any European, who might in future injure or oppress them; and gave just Grounds to the Native Inhabitants of the said Provinces, and to the rest of the World, for believing that the said Proceedings were the Fruit of a corrupt and wicked Confederacy between the said Sir Elijah Impey and the said Warren Hastings, or his Abettors, for the Purpose of screening the said Warren Hastings from a just Accusation, by accomplishing the Death of his Accuser; and that the Law of England was made the Engine and Instrument of the said Confederacy; and the said Sir Elijah Impey was, and is, in all and singular the said Particulars, guilty of High Crimes and Misdemeanors.

SECOND CHARGE.

PATNA CAUSE.

THAT in the Year of our Lord 1772, the Power and Authorities relative to the Ordering, Management, and Government of the Territorial Acquisitions and Revenues in the Provinces of Bengal, Bahar, and Orissa, then being in Possession of the United Company of Merchants trading to the East Indies, were exercised by the President and Council of Fort William, in the Province of Bengal aforesaid, the Office of President being then held by Warren Hastings, Esquire, late Governor General of Bengal.

THAT the said President and Council, in the Year, &c. aforesaid, did establish certain Provisions and Regulations for the due and regular Administration of Justice throughout the said Provinces, and for that Purpose constituted and erected, in certain Districts of the said Provinces, certain Courts of Justice called Mofussal Dewannee Adawluts, to each of which Courts the said President and Council nominated and appointed a certain Officer or Judge, called a Supervisor, with full Powers, &c. &c.

THAT the said President and Council did further establish certain Rules, Orders, and Regulations, for the Conduct of the said Supervisors, and the

the due Administration of Justice in the said Courts; which Rules, Orders, and Regulations, were framed with due and particular Attention to the Customs, Habits, Manners, Laws, and Religion of the Native Inhabitants of the said Provinces, as well Mahomedans as Gentoos; the said President and Council reserving to a Court of Appeal, called The Sudder Dewannee Adawlut, consisting of the said President and at least Two other Members of the Council, the Right of hearing Appeals, in all Cases whatsoever, from the said Courts of Mofussal Dewannee Adawlut.

THAT in or about the Year of our Lord 1773, the said President and Council, having such Authority as aforesaid, did further establish certain other Provisions for the better Administration of Justice in the said Provinces; in pursuance of which the said Office of Supervisor was abolished, and the said Districts were changed into Divisions, several of the said Districts forming one Division; and all the Powers, Rights, and Authorities exercised by the said Supervisors, were transferred and vested in a Provincial Council; which said Provincial Council was to consist of a President and Four other Members, being covenanted Servants of the Company aforesaid: That the said Provincial Council so constituted and appointed as aforesaid, were empowered to be, sit, and act, as Courts of Justice and Boards of Revenue for the said Divisions, and were further enjoined, when sitting and acting as such Court of Justice, to follow and obey the same Rules, Orders, and Regulations which had been followed and obeyed by the aforesaid Supervisors, at such Time as they the said Supervisors were used and accustomed

ed to sit and act as Judges of the said Courts of Justice for the said Districts as aforesaid.

THAT the said President and Council, having such Authority as aforesaid, did duly create and establish a certain Provincial Council at Patna in the Province of Bahar aforesaid, with full Powers to be, sit, and act as a Court of Justice in the Province of Bahar aforesaid. That the said Provincial Council of Patna, as well as all and every other Provincial Councils so appointed as aforesaid, were, according to the true Intent and Meaning of the said Regulations, &c. used and accustomed to refer such Suits and Actions as seemed to them, from being involved in Questions of Mahomedan Law, to require such Reference, and where the Parties to the said Suits or Actions were or should be Mahomedans, to certain Moulavies, or publick Officers of the Mahomedan Law, called by the Name of the Cawzee and Mustees, which said Cawzee and Mustees were ancient and known judicial Officers of the Mahomedan Government in Hindostan, previous to the Establishment of the British Government there; the Cawzee being, under such Government as aforesaid, the Judge of all Claims of Inheritance or Succession, and the Mustees being the Expounders of the Law; the Province of the said Mustees being, after having heard the Parties and *Evidences*, to declare the Law, applicable to the Cases in Question; and the Province of the said Cawzee being to pronounce Judgment accordingly: That as often as any such Reference was made, the said Cawzee and Mustees were used to examine the Suits and Actions so referred to them; and having heard the Parties, by their Vakeels or Attornies, and the Evidence on
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both Sides, according to the Laws and Customs of the Mahomedans, were used to deliver into the said Councils a Report upon the said Suit or Action so referred to them as aforesaid, agreeable to the said Mahomedan Customs or Laws, whereupon the said Councils were used to give and pass Judgment in the said Suit or Action, subject to an Appeal to the said Court of Sudder Dewannee Adawlut aforesaid, and to no other Court of Jurisdiction whatsoever: That the act of the 13th Year of his present Majesty, Cap. 63, which abolished the said Presidency at Fort William in Bengal as aforesaid, and appointed in lieu thereof a Governor General and Council, with full Powers for the ordering, managing, and governing the said Territorial Acquisitions being in the Possession of the United Company as aforesaid, did not in anywise repeal or annul any of the said Powers and Rights so vested in the said Provincial Councils by the President and Council of Fort William as aforesaid: That the said Governor General and Council, having full Powers for the ordering, managing, and governing the said Provinces as aforesaid, did continue the said Provincial Council of Patna, as well as the said other Provincial Councils, in the Use and Exercise of all their said accustomed Powers, Rights, and Authorities as aforesaid, subject to Appeals to them the said Governor and Council, as constituting the said Court of Sudder Dewannee Adawlut, and to no other, in all Cases whatsoever: That the said Cawzee and Mustees, being such Officers of the Mahomedan Law as aforesaid, did, to the Knowledge, and with the Consent and Approbation of the said Governor General and Council, exercise the Powers and Duties of hearing and determining

Causes between Mahomedans so referred to them by the said Provincial Council as aforesaid, and did report upon the same in Manner and Form as they had been used and accustomed to do ever since the Establishment of such Courts as aforesaid, under the Authority of the British Government, and were, by their Skill in the Laws, Languages, Manners, Customs, and Religion of the Native Inhabitants of the said Provinces, eminently qualified for the Execution of the aforesaid Trusts reposed in them : That at Patna aforesaid, in the Province of Bahar aforesaid, in the Year of our Lord 1777, a certain Suit was commenced in the Court of the Provincial Council of Patna, then and there sitting and acting as a Court of Justice, between Bahader Beg Khan, Nephew and adopted Son of one Shabbaz Beg Khan, deceased, a Native of Caboul, and Nauderah Begum, Widow of the said Shabbaz Beg, in which the said Bahader Beg claimed his Share of the Inheritance of the Deceased, according to the Mahomedan Law, and did present a Petition to the said Provincial Council of Patna, stating his Right to the said Inheritance, and that the Widow was secreting and removing the Effects of the Deceased, and therefore prayed, that the Officers of Justice should be stationed to prevent such Removal, “ and that an Order should be issued to the “ Cawzee, to ascertain his Right, and having established his Right, that the said Cawzee should “ give Information to the said Provincial Council, “ in order that he, the Petitioner, might obtain “ his Right:”—That such Suit, the Parties being Mahomedans, according to the Prayer of the said Petition, and the Practice of the Courts, was referred by the said Provincial Council to a certain Cawzee,

Cawzee, and certain Mufties, by Name Cawzee Sadhi, Mufti Baructoolah, and Muftie Gullaum Muckdoom, being Officers versed in the Mahomedan Law, belonging to the said Court, according to the usual Practice of the said Provincial Council of Patna, and the true Intent and Meaning of the Powers, Rights, and Authorities so continued to them by the said Governor General and Council of Bengal as aforesaid, and the true Intent and Meaning of the said Regulations, according to the Tenor of which it was their Duty to administer Justice in the said Province of Bahar : That the said Suit was duly proceeded upon, according to the Usage and Practice of the Courts aforesaid ; and the said Cawzee and Mufties did, according to the Duty of their office, the Practice of former Times, and the absolute Command of their Superiors, examine the Witnesses, and did regularly report the Evidence, and their Opinion upon the Validity of certain Deeds, under which the said Nauderah Begum did claim the Property of the Deceased, to the Provincial Council, and after recapitulating the Evidence, did conclude the same in Substance, as follows :—“ That as it appeared to them, from their Enquiry, the Will and Deed of Gift under which the Widow claimed, were spurious, and not deserving of Credit, from many Circumstances ; that as the contradictory Relation of Coja Zekereah (the Representative of the Widow) did confirm their Belief of their being so, as an Ekrar Aum, viz. another of the Deeds relied on by the Widow, was not of itself sufficient to secure Succession to the Inheritance, and as the Marriage Settlement, which was another of the Deeds relied on by the Widow, was not produced to them, and as Coja Zekereah founded the Widow's Claim upon all the Three

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together,

together, and as, in short, every Thing urged on the Part of Coja Zekereah wanted Support; and on the other Hand, Bahader Beg's Story appeared clear and explicit; they therefore recommended, that, exclusive of some Property in *Ultungawh*, which composed no Part of the Inheritance, all the Property of the Deceased should be divided into Four Parts, whereof Three should be given in Trust to Bahader Khan, his Father being the legal Heir of the Deceased, and himself the adopted Son, and the remaining One to Nauderah, the Widow of the Deceased:" —And the Provincial Council aforesaid did, upon receiving the above Report, and the same not being excepted against, nor in anywise objected to (although the said Nauderah Begum, or her said Representative or Vakeel the said Coja Zekereah, had notice thereof), give Judgment according thereto; which said Judgment neither was at the Time, nor has it been since, appealed against, nor anywise objected to, according to any of the Forms in Use in the said Provinces, for appealing from, or impeaching Judgments given by, the Provincial Councils.

THAT in consequence of the said Judgment, a Perwannah or Precept was issued to the said Cauzee Sadhi, Mustie Baructoolah, and Mustie Gulyaum Muckdoom, by the said Provincial Council, for the Execution of the said Judgment, according to the Tenor thereof: That the said Cauzee Sadhi, Mustie Baructoolah, and Mustie Gulyaum Muckdoom, whose Duty it was to execute the Process of the said Court, did, according to the Exigency of the said Perwannah or Precept, and according to the best of their Judgment and Ability, execute the same; That subsequent

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to the said Judgment and the Execution following thereupon, the said Nauderah Begum did, on the Day of _____ in the Year of our Lord 1779, commence an Action of Trespass, in the Supreme Court of Justice hereinafter mentioned, against the said Cauzee Sadhi, Mustie Baructoolah, and Mustie Gulyaum Muckdooni, for the Part which they had taken in making the said Report, and in executing the Judgment aforesaid, according to the Orders and Commands of their Superiors, and against the said Bahader Beg, for the Part which he had taken in claiming his Rights as aforesaid.

THAT, in pursuance of the said Act, made in the Thirteenth Year of the Reign of His present Majesty, certain Letters Patent issued under the Great Seal, appointing and establishing a Supreme Court of Judicature at Fort William in Bengal, with Power to exercise all Civil and other Jurisdiction, in Manner and Form as is in the said Act and the said Letters Patent mentioned: That Sir Elijah Impey, at that Time Elijah Impey, Esquire, was nominated and appointed, by the said Letters Patent, to the Office of Chief Justice of the said Supreme Court of Judicature.

THAT the Powers and Jurisdiction of the said Supreme Court are, by the said Act of Parliament and Letters Patent, strictly and clearly defined and limited: That the said Elijah Impey, and the other Judges of the said Supreme Court, had, by the said Letters Patent, full Power and Authority to make such orders for their Proceedings "as the Justice of the same should seem to require," and to hear the respective Allegations of Parties, and to give Judgment "according to Justice and Right:" That the said Court of Judicature was formed upon Principles materially different from those which
form

form the Basis of English Courts of Justice, the Judges of the said Court of Judicature having the Province both of Judge and Jury assigned to them; and the said Supreme Court, or the Judges of the same, were not bound to adopt Modes and Forms of Proceeding inapplicable to the Principles of its Formation, and to the State and Condition of the Inhabitants of the Country over whom they were to administer Justice; but, on the contrary, were bound to govern and demean themselves, in Cases within their Jurisdiction, according to the Laws of England, as nearly only as the Circumstances and the Condition of the Case might seem to require, and “so far as the Circumstances and Occasions of the “said Provinces” (meaning the Provinces of Bengal, Bahar, and Orissa) “and People” (meaning the Natives of the said Provinces) “should admit and “require:” That the said Sir Elijah Impey well knew that he was not bound to follow strictly and technically the Forms and Proceedings used in the Courts of Law in England, and well knew that it was his Duty to accommodate both the Principles and Practice used in the Courts of Law in England to the Manners, Customs, Laws, and Religion of the Native Inhabitants over whom he was sent to administer Justice; that such Accommodation was essential to the great Ends of Justice, and to the fulfilling the beneficent Intentions of the Legislature, and the gracious Commands of His Majesty, communicated to the said Impey by the said Letters Patent, and to the determining according to Justice and Right,

That the said Sir Elijah Impey has frequently declared it to be his Duty to vary the Forms of Proceedings, and to depart from and vary the Rules of Pleading used in the Law of England, according

to the Circumstances of the Country, and has frequently exercised the Power and Authority so to do.

THAT the said Sir Elijah Impey is therefore highly culpable and grossly criminal, if ever he permitted the rooted Prejudices of the Native Inhabitants of Bengal, &c. to be shocked, their Principles of Government overset, their Judges and Magistrates disgraced, and their Laws and Religion violated, by too strict an Adherence to Laws formed for another State of Society, other Manners, and a different Religion : That the said Sir Elijah Impey was still more grossly criminal if he permitted all this to be done from a rigid Adherence to Form and not to Substance, to technical and minute Niceties, and not to leading, solid, and essential Principles ; and such a Conduct, if ever followed, cannot be ascribed to Ignorance or Error in Judgment (if Ignorance in a Chief Justice could be an Excuse), but must be ascribed to Injustice, Partiality, Corruption, and an outrageous Lust for Power and Authority.

THAT the said Supreme Court was by no Part of the said Act of Parliament or Letters Patent, authorized to supercede the established Powers and Authorities of the Courts to which the Native Inhabitants of the said Provinces had been accustomed to resort for the due and regular Administration of Justice, according to their own Manners, Forms, Laws, Customs, and Religion ; or in any Case whatsoever to hold Pleas of Trespass, &c. against any of the said Natives, of what Religion soever, except in the Cases hereinafter mentioned, that is to say, 1st. Where such Native should be, or should have been, directly or indirectly, in the Service of the United Company of Merchants trading to the East

East Indies ; and Secondly, where the Cause of Action should arise upon Contract or Agreement in Writing above the Value of 500 current Rupees, and wherein the said Parties should have mutually agreed, that in Case of Dispute, the Matter should be determined in the Supreme Court ; in which last Case only the Supreme Court was authorized and empowered, whenever any such Action should have been first commenced in any of the Country Courts of Justice, on the Petition of either Party suggesting such Agreement in Writing, on Oath, to award and issue a Writ or Precept directed to either of the said Parties, commanding him or them immediately to surcease proceeding in the said Suit, and was thereupon itself empowered to hear and determine the said Suit.

THAT the said several Powers exercised by the Provincial Councils as aforesaid, and permitted by the said Act of Parliament and Letters Patent to be exercised by the said Supreme Court of Judicature, were wholly distinct, separate, and independant Powers and Authorities.

THAT the said Provincial Councils were not in anywise bound to proceed according to the Laws of England : That from the very Nature of their Constitution, and the Objects principally within their Jurisdiction, such Proceedings would have been impossible, because the Laws, Manners, Customs, and Religion of the Natives of the said Provinces differ essentially and fundamentally from the Laws, Manners, Customs, and Religion of the British Subjects.

•THAT the said Supreme Court possessed no Jurisdiction, either Original or Appellant, over the said Provincial Courts, and was not authorized, under any Pretence whatsoever, to control or interfere with
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the Process of the said Courts : That, in the single Case of a written Agreement between the Parties in a Cause, the said Supreme Court was authorized to stay Proceedings by a Writ directed to the Parties ; but that the said Writ could not extend to the Judges of the said Provincial Court, in any Case or under any Pretence whatsoever.

THAT the said Provincial Councils, and the Members and Officers thereof, were not therefore, in anywise or under any Pretence whatsoever, responsible to the said Supreme Court, for any Acts done or omitted to be done by them in the Exercise of their Judicial Administration.

THAT as neither the final Judgment nor the intermediate Process of the said Provincial Councils was, either directly or indirectly, subject to the Control of the Supreme Court ; so neither could the Officers, appointed by the said Provincial Councils to execute such Process as should be directed to them, whether intermediate or final, be taken or understood to be, in anywise or under any Colour or Fiction whatsoever, subject to the Authority of the Supreme Court.

THAT the said Impey well knew, that if it had been in the Contemplation of the Legislature of this Country, providing, as they endeavoured, a Remedy for the Defects and Failures of former judicial Establishments, by the Creation of the Supreme Court, to entrust the said Court with the Administration of Justice among the Natives, it could not possibly have escaped their Wisdom or their Benevolence, to have invested the said Supreme Court, either with a direct and intelligible Authority to hear and determine all Causes between the Natives in the first

Instance, or with an ultimate Appellant Jurisdiction from the Sentence of the said Country Courts.

THAT the said Sir Elijah Impey well knew that the Intention of Parliament was directly opposite to such a Construction; having himself declared from the Bench, upon his Arrival at Bengal, that the said Letters Patent were not meant in anywise to extend to the established Courts of Judicature, to which the Native Inhabitants of the Provinces had been accustomed to resort.

THAT an Action of Trespass was commenced as aforesaid by the said Nauderah Begum, against the said Bahader Beg, and the said Cawzee and Muftees, for the Acts done by them as aforesaid, the one as Suitor, and the others as Officers acting under the Orders of the Provincial Council as aforesaid.

THAT in Prosecution of a wicked and arbitrary Design of extending his own Authority and that of the said Supreme Court, in the Provinces of Bengal, Bahar, and Orissa, and of destroying the Confidence of the Natives in the Administration of Justice, in their own Courts, and the established Government under which they lived, of rendering the due and regular Execution of those high Trusts with which the Judges of the Mahomedan Law were invested, dangerous to themselves, and unprofitable to the People, he the said Impey did proceed in the said Cause to Trial and Judgment.

THAT in the Course of the Proceedings in the said Action, the said Elijah Impey did betray many Instances of gross and notorious Injustice, and of flagrant and malicious Partiality, contrary to the sacred Obligations of his Office, to that Purity of Character

Character necessary for the adequate Discharge of its Duties, and to the solemn Pledge of his Oath.

THAT by the Letters Patent constituting the said Supreme Court of Judicature, and in Prosecution of the beneficent Design of accommodating the Laws of England to the Circumstances and Situation of the Inhabitants of Bengal, Bahar, and Orissa, the said Supreme Court were authorized, in all Civil Suits, to issue a Precept in the Nature of a Summons to the Defendant, containing a short Notice of the Cause of Action, and commanding the Party to appear before them, upon a Plaint being filed of Record in the said Court; and if the Cause of Action should be personal, and of more Value than 100 Current Rupees, and the same should be verified by Oath, or Affirmation, as the Case might require; or if the Party filing the Plaint as aforesaid should by Affidavit verify, *to the Satisfaction of the said Supreme Court of Judicature, a Case of such enormous personal Wrong* as should, in the Opinion of the said Court, require Security for the Appearance of the Defendants; then the said Supreme Court were authorized to issue, in lieu of such Summons as aforesaid, a Writ or Warrant to the Sheriff, commanding him to arrest such Defendant, and to take from him Security, to be approved of by the said Supreme Court, that he would stand to and perform the Judgment of the same.

THAT the true Sense and Meaning of the above, and other Clauses in the said Letters Patent, was, that Parties might not be held to bail on frivolous Accusations, or in Sums far exceeding the possible Amount of their Fortunes; and lest that, which was only a Means of compelling an Appearance and Obedience to such Judgment as should be pronounced,

nounced, should be converted into an Instrument of grievous Oppression : That the said Impey well knew that the Exaction of exorbitant Bail is one of those arbitrary Devices, by the Help of which the worst and most profligate of Judges have been used in the worst of Times to trample upon the Liberties of Mankind.

THAT the said Impey well knew, that by the Practice of the English Courts of Justice, no Bail whatsoever, except common or nominal Bail, is required in Actions of Trespass, Battery, Assault, Conspiracy, and false Imprisonment, unless upon Motion, or Order made by a Court or a Judge : That such Order never is made without due Enquiry into the Nature and Circumstances of the Transaction ; and when made, the Sum in which Bail is required is modified according to the Circumstances and the Situation of the Defendant, lest such a Security should be more oppressive than any possible Consequence of appearing, and lest to be accused should become in itself a worse Punishment than to be convicted.

THAT the said Elijah Impey, disregarding the wholesome Provisions of the Letters Patent under which he acted, the mild Practice of British Courts of Justice, although he has, in other Instances, endeavoured to cover his Crimes, and shelter his Oppressions, by an Adherence to the Principles and Practice of those Courts in Cases where the same were not applicable to the Situation and Circumstances of the Natives, Inhabitants of Bengal, Bahar, and Orissa, and in open Contempt and Defiance of the Spirit of the English Law, did, without any due and sufficient Enquiry into the Nature of the Case, or the Situation of the said Defendants,

fendants, and with a view to harass and oppress the said Defendants in the said Action, and procure them to be imprisoned for a long Time, previous to the Trial of the said Action, wantonly, knowingly, and maliciously issue a Writ against all the said Defendants, with a Clause, in which the Sheriff, having the Execution of the said Writ, was directed not to admit the said Defendants, or any of them, to Bail, under the enormous Sum of Four hundred thousand Rupees, or Forty-four thousand Pounds, a Sum greatly exceeding that in which it is well known that Offenders, accused in the most solemn Manner of the most atrocious Crimes and Misdemeanors, have been admitted to Bail; and the said Impey was thereby guilty of deliberate Cruelty and wanton Oppression towards the said Defendants, and of a daring Infraction of the Principles of Justice.

THAT the said Writ was, on the 13th of December 1777, executed on the said Bahader Beg and the said Cauzee Sadhee; that the said Cauzee was seized in the public Street, in the midst of his Attendants, as he was returning from the Exercise of the Duties of his Office in the Dewannee Cutchery, one of the Courts of Criminal Justice in Patna aforesaid.

THAT this disgraceful Arrest struck the Inhabitants of the City of Patna with universal Consternation: That such a Proceeding against a Person standing in the high Rank and important Office of Cauzee, was peculiarly repugnant to the Manners and Prejudices of the Natives: That such public Arrest of a Magistrate tended either to degrade the said Defendant in the Opinions of Men, by impressing them with the Belief of his Guilt, or to render the Administration of British Justice an

an Object of Disgust to the Natives, by creating in them an Apprehension of its unexampled Severity.

THAT in consequence of the enormous Sum in which Bail was demanded as aforesaid, and in consequence of the unjust Rigour and wicked Orders of him the said Sir Elijah Impey, (who, if he had made any Enquiry into the Nature of the Case charged upon the said Defendants, must have known that the said supposed Trespass was committed by them acting in their Official Capacity and under the Orders of their Superiors, and that they were Men in Circumstances and Situation of Life far from opulent) the said Defendants must have been dragged to Calcutta, a Place situated at the Distance of 500 Miles from their Families and Friends, and must have languished in Prison, had not the Provincial Council, astonished at the grievous Oppression of the Case, and justly alarmed for the Consequence of this Proceeding, and the Effect it was likely to produce on the Minds of the People, agreed, Two Days after the said Arrest of Cauzee Sadhee, to offer Bail for his Appearance at Calcutta; assigning the following Reasons for taking on themselves to offer the said Bail, in their Letter to the Governor and Council at Fort William :

“ The Seizure of the Cauzee in this disgraceful
 “ Manner, coming from the Execution of his Office, has struck a general Terror into the Inhabitants of this City. We thought it therefore
 “ expedient, for the Honour of the Government, and Preservation of its Authority, to offer the
 “ Bail required, for the Enlargement of one of its
 “ First Officers; and we were greatly disappointed
 “ when we found it could not be effected without
 “ further Orders from the Court.

“ Much

“ Much more might be said to shew what little
 “ Respect can be expected to be paid in future to
 “ the Decrees of the Dewannee Courts, the total
 “ Inconsistency of this double Government, and the
 “ Cruelty and Hardships which Individuals are ex-
 “ posed to by it; did we not know that these Cir-
 “ cumstances are too apparent to need further Ar-
 “ guments from us, and that the Inconveniences
 “ attending such an incongruous System, must appear
 “ in their proper Light to you. So far we have
 “ taken the Liberty to act, and we flatter ourselves
 “ our Conduct will meet with your Approbation.

“ The Business of the Phoufdarry must be totally,
 “ and of the Dewannee Courts in a great Measure
 “ suspended, till Measures are taken for the Release-
 “ ment of the Cauzee; nor can we expect the other
 “ Officers of these Courts to carry any Orders of Con-
 “ sequence into Execution, till they are assured of
 “ Safety and Protection in the Discharge of their
 “ Duty.”

THAT on tendering the said Bail to the said
 Amount, the Sheriff's Officer having the Execution
 of the said Writ, informed the said Provincial Coun-
 cil, that he could not, agreeable to his Instructions,
 accept of any Bail without first mentioning it, and
 receiving further Orders from the Court.

THAT the said Sheriff's Officer further inform-
 ed the said Council, that his Orders in this Case
 were particularly strict, and that the Parties could
 not, as it was usual for Persons arrested, be allowed
 to remain in their own Houses until the Time for
 carrying them away, but must remain in Boats on
 the River till he had further Directions in what
 Manner to dispose of them.

THAT in consequence of the refusing the said
 Tender

Tender of Bail, and of the said further Orders given to the said Sheriff's Officer, the said Cauzee Sadhi was dragged from his House, and kept in hard and rigorous Confinement for a long Time in a Boat on the River, that is to say, until the said Sheriff's Officer could send to Calcutta in the Province of Bengal, at the Distance of 500 Miles as aforesaid, and until he could receive an Answer and further Directions as to the Disposal of the said Prisoners; and that the said Cauzee and Bahader Beg were not set at Liberty until Sixteen Days after the said Arrest, at which Time the said Sheriff's Officer had received Instructions from Calcutta aforesaid to admit all the Defendants to Bail.

That when the said Action of Trespass, so commenced as aforesaid by the said Nauderah Begum against the said Defendants, came on to be tried in the Supreme Court before the said Elijah Impey, Bahader Beg Khan, one of the Defendants to the said Action, did offer a certain Plea, in the Nature of a Plea to the Jurisdiction of the Supreme Court, setting forth, that he was not within the Jurisdiction of the said Supreme Court, he the said Bahader Beg being neither directly nor indirectly in the Service of the East India Company, being only a Security for One of the Renters of Part of the Districts in the Provinces aforesaid.

THAT in Support of the said Plea William Young, Esquire, One of the Members of the said Council at Patna, deposed, " That he did not
 " know that the said Bahader Beg held any Employ
 " under the Company, or under the Provincial
 " Council at Patna: That he could not hold any
 " such Employ without the Knowledge of him, he
 " the said William Young: That the Provinces of
 " Ghidore

“ Ghidore and Amertoo were let to farm to one
 “ Zulficar Ali, between whom and the said Pro-
 “ vincial Council written Engagements had been
 “ entered into ; and that the said Bahader Beg was
 “ Security for the said Zulficar Ali : That the Secu-
 “ rity was sometimes in fact the Principal, but that
 “ there was nothing particular to make him, the said
 “ Young, suspect that Bahader Beg was the Prin-
 “ cipal : That until Failure of the Principal, it is
 “ not a Question with Government whether they
 “ shall come upon the Security for the Balance.”

THAT nevertheless the said Impey did, by a forced and unjustifiable Construction of the Act of the 13th of His present Majesty, and the Letters Patent issued in consequence of the said Act as afore-said, and by a forced and unjustifiable Perversion of the Evidence of the said William Young, Esquire, maintain and decide, that the said Bahader Beg was the real Farmer of the said Districts of Ghidore and Amertoo, and was thereby within the Meaning of the said Act and Letters Patent ; and under those Pretences did disallow and over-rule the said Plea to the Jurisdiction of the said Supreme Court.

THAT the violent and arbitrary Proceedings of the said Impey, in thus extending the Jurisdiction of the Supreme Court to Persons over whom the said Act and Letters Patent had given him no Authority whatsoever, was not only an Act of great Injustice and Oppression towards the said Bahader Beg, in subjecting him to the Power and Influence of Laws which he could not know ; but was calculated to excite (and did in Fact excite) a general Alarm among all Ranks of Persons, and deter the Natives from undertaking the Management or Improvement of the Farms ; and tended thereby

essentially to injure the Revenues and weaken the Authority of the India Company.

THAT, in consequence of the Opinion delivered by the said Impey on the said Plea to the Jurisdiction, whereby it was declared, that the having once held a Farm, or been a Security for a Farmer of the Revenues, shall subject such Person for ever after, in all Cases whatsoever, to the Jurisdiction of the Supreme Court of Judicature, various Petitions and Remonstrances were presented to the said Provincial Council of Patna: That in particular the principal Natives and Renters of the rich Province of Bahar did, by Petition and Remonstrance to the said Council, represent the extreme Hardships and Misery of their Situation, stating, “ That they had not the smallest Knowledge of the Laws and Customs of the English Court; that those Laws were formed for another State of Society, Religion, and Country; that their own Courts were regulated by the Laws and Customs of their own Country, and that the Gentlemen appointed to preside in them, were ordered to decide according to the ancient Constitutions; that to these they repaired without fear; they pleaded their Causes themselves, or through their Vakeels, in their own Manner, no Expence or Delay attending the Process; that the Regulations were so framed that Justice might be dispensed to all, and yet a due Attention and Support be given to the Collections; that Farmers and Zemindars were not to be called in, on any Account, during the Season of the Harvest; but that since the Decision of the Supreme Court, no one would pay the least Regard to the Time when the Settlement and Collections most required their Presence in the Pergunnah Sareffa,

“ but

“ but that they might be dragged away by a War-
 “ rant in the Night, without having Time to settle
 “ their Affairs.

“ That many of them could not pay a Deputy
 “ to take Charge of the Collections; and that if they
 “ could, the Ryots would not regard a Deputy when
 “ they should see the Principal seized like a Robber,
 “ and hurried away to a Place whence it was pos-
 “ sible he might never return.

“ That Consequence and Authority are absolute-
 “ ly necessary to enforce the Collections, for that
 “ the Ryots are always glad of any Pretext to elude
 “ the Payment of their Rents; but who would
 “ venture to enforce the Payment of them, when
 “ he should render himself liable by it to an Action
 “ of Trespass in an English Court of Justice? and
 “ to be dragged away, to the Distance of 4 or 500
 “ Miles, at the Suit of the most litigious or con-
 “ tumacious Person in the Pergunnah.

“ That even after Acquittal their Case is equally
 “ deplorable: Turned forth from Prison at an im-
 “ mense Distance from his Friends and his Home,
 “ the Farmer, on his Return, finds his Credit lost,
 “ and his Farm, his sole Dependance, perhaps
 “ ruined, or gone into other Hands, while he is
 “ still answerable for his Arrears to Government,
 “ with whom no Plea of what he had suffered
 “ would be heard in Mitigation.

“ That having then, for the first Time, after
 “ the Supreme Court had existed Four Years,
 “ heard of their being amenable to its Jurisdiction,
 “ and not having been aware of it at the Time they
 “ made their Agreements with Government, they
 “ beg to relinquish their Farms, and retire with
 “ their Families into another Country.”