

What were the dimensions of the room in which the Rajah Nundocomar was confined?

Nundocomar had two rooms, which had belonged to the gaoler and his family, who gave them up for his accommodation. I cannot recollect the exact dimensions; but as near as I can, I think they were about 15 feet square each.

How were they floored?

The inner room, in which Nundocomar resided, was boarded. I am not sure whether the outer room, where his servants resided, was boarded or not. It was either boarded or terrassed.

Are you sure it was not boarded?

No.

Do you know of what cast the servants of Nundocomar were?

No.

Did you enquire?

I did not.

Did any one from Sir Elijah Impey enquire?

Not that I know of.

What provision was made for dressing his victuals before the Pundits were consulted?

I do not know of any, except that there was a fire place in the outer room.

No complaint was ever made by Nundocomar of the room being boarded, of

the cast of his servants, or any want of accommodation for them, nor of the fire-place, or want of proper convenience for cooking.

What sort of a fire-place?

Such as is usual in that country.

Usual to whom?

I speak of the usage of Europeans. I know nothing of the usage of the natives.

Was any enquiry made on that subject?

Not that I know of.

The Court had, in June 1775, no such officers.

The Pundits did

not become part of the establishment of the Court, till 3d Feb. 1777. Vide Consultations of that date. The Court never had more than two Pundits. Four were consulted. Appendix I. No. 15.

Were not the Pundits you speak of officers of the Supreme Court, and paid as such?

I believe they were.

Were they not removeable at the pleasure of the Court?

I do not know whether they were or not—I should presume they were.

How could what this man said before that Committee possibly be made evidence in the House of Lords?

Did they consult the learned Bramins at Kishnagur, or any other eminent college of Pundits in Bengal?

Not that I know of.

Did they consult the Pundit Bramins that were then assembled at Calcutta, for the purpose of making a digest of the Gentoo laws?

I do not know whom they consulted.

How soon did the Pundits deliver their opinions after they were consulted?

I believe the objection of the prisoner to eat and drink was made known to the Judges the eighth of May, by a message from the Council delivered by the sheriff; it was on the same day, to the best of my recollection, that the Pundits delivered their opinion.

Did they state how expiation was to be made for any irregularities in food, in case the Mahah Rajah was hanged?

Not that I recollect.

Then an extract from the report of the Committee to whom the petition of John Touchet and John Irving, agents for the British subjects residing in the provinces of Bengal, Bahar, and Orissa, and their several dependencies, was referred, was here directed to be inserted.

‘ (*) There being at this time a Bramin in England who is a subject of a Gentoo government, your committee judging it to be the most authentic source of information concerning the usages and religion of the Hindoos, requested his attendance; and the particulars of his examination being interpreted

* Read from pages 52, 53, 54. of the said Report.

‘ by

' by Charles William Boughton Rouse, Esq;
 ' a member of your committee, are—That is
 ' name is Honwontrow—That he comes from
 ' Poonah, a Gentoo government, of which
 ' Sittarah is the capital—That it is governed
 ' by the Peshwah, who is a Bramin—That he
 ' is come to England on the part of Ragonaut
 ' Row, with letters to the King and the East
 ' India Company—That he is a Bramin—
 ' That his cast as well as all others is obliged
 ' to observe particular rules and modes of life
 ' —That the object of worship is alike to all
 ' casts; but that there are many sects and
 ' distinctions, each of which has its peculiar
 ' rules—That there are four principal casts,
 ' and within these there are a great many
 ' others; and that it is criminal for any
 ' Gentoo to transgress the rules of his particu-
 ' lar cast—That he may lose his cast entirely;
 ' or, according to the nature of the offence,
 ' it may admit of expiation.—Then being
 ' asked, Whether some of these expiations are
 ' not expensive and troublesome? he said,
 ' Without expence and trouble, how can ex-
 ' piation be made? That it would be propor-
 ' tionable to the crime; for instance, brimhat-
 ' ter, or killing of a Bramin; strehatta, or the
 ' killing of a woman; barhatta, or the killing
 ' of a child; gowhatta, or the killing of a
 ' cow; are the four great offences that require
 ' the most rigorous expiations; and the degree
 ' of criminality is nearly alike—That he must
 ' make one distinction, that it can only be
 ' done by consent and direction of learned
 ' Bramins—That in case of a rich person, the
 ' expiation is large sums given in charity; if
 ' of low condition, long pilgrimages, as far as
 ' twelve years, without shoes, and naked feet,
 ' would be enjoined—That by the laws and
 ' customs of the Gentoos a Bramin might
 ' possibly commit such a crime as to incur the
 ' punishment of death, for instance, wilful
 ' murder;

' murder; but there is one thing, *it is not* There is nothing to corroborate the testimony of this man in any of the petitions or addresses of Hindoos, or complaints or petitions of Nundocomar as to the consequence of suffering death by hanging, or any distinction between that death and death by the sword.
 ' *right to hang a Bramin: if he is to be put to*
 ' *death, it should be with a sword.*—At the same
 ' time the witness added, That he never heard
 ' of an instance in which, under an Hindoo
 ' government, a Bramin was put to death.
 ' Then being asked, Whether there is any
 ' other crime besides wilful murder, for which
 ' a Bramin can be punished with death? he
 ' said, The prince may take his life for some
 ' great breach of trust, or crime against the
 ' state; but hanging would not be the punish-
 ' ment—The punishment of death is not in-
 ' flicted for smaller matters; but what other
 ' crimes can merit death?—*That hanging is, by*
 ' *the Hindoos, considered as a great pollution;*
 ' *and further, it is the belief of the Hindoos, that*
 ' *a man who suffers death by the sword has pardon*
 ' *for his offences; but if he dies by the halter, he*
 ' *dies with his sins upon him—That a person*
 ' *dying by suicide or by the halter, cannot have* Nundocomar's funeral rites were performed.
 ' *his funeral rites performed—That the body of a*
 ' *hanged Bramin is so polluted, that another will*
 ' *not touch it.*—And being asked the particular
 ' reason, the witness said, How can I tell you
 ' the reasons for it? such is our ancient re-
 ' ligion. It is a general principle of faith,
 ' that an Hindoo should die placed upon the
 ' earth.—Being asked, Whether there are not
 ' crimes by which Hindoos may lose their cast?
 ' he said, There are; for instance, that he,
 ' being a Bramin, could not eat any thing
 ' prepared by the hands of the Persee (who was
 ' then sitting by him), that if he did he should
 ' lose his cast; and that if he had done it of
 ' his own free will, it could not be expiated;
 ' that, though a Gentoo should have resisted,
 ' if he be forced violently into an act of im-
 ' purity, it will rest with the learned Bramins,
 ' whether to restore him to his cast again, or
 ' not.—That they can do nothing in it but by
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murder; but there is one thing, *it is not right to hang a Bramin: if he is to be put to death, it should be with a sword.*—At the same time the witness added, That he never heard of an instance in which, under an Hindoo government, a Bramin was put to death. Then being asked, Whether there is any other crime besides wilful murder, for which a Bramin can be punished with death? he said, The prince may take his life for some great breach of trust, or crime against the state; but hanging would not be the punishment—The punishment of death is not inflicted for smaller matters; but what other crimes can merit death?—*That hanging is, by the Hindoos, considered as a great pollution; and further, it is the belief of the Hindoos, that a man who suffers death by the sword has pardon for his offences; but if he dies by the halter, he dies with his sins upon him—That a person dying by suicide or by the halter, cannot have his funeral rites performed—That the body of a hanged Bramin is so polluted, that another will not touch it.*—And being asked the particular reason, the witness said, How can I tell you the reasons for it? such is our ancient religion. It is a general principle of faith, that an Hindoo should die placed upon the earth.—Being asked, Whether there are not crimes by which Hindoos may lose their cast? he said, There are; for instance, that he, being a Bramin, could not eat any thing prepared by the hands of the Persee (who was then sitting by him), that if he did he should lose his cast; and that if he had done it of his own free will, it could not be expiated; that, though a Gentoo should have resisted, if he be forced violently into an act of impurity, it will rest with the learned Bramins, whether to restore him to his cast again, or not—That they can do nothing in it but by

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Nundocomar's funeral rites were performed.

Vide Appendix to Mr. Francis's defence, the last No. at the end: "His body was delivered to the Bramin to be burnt."

This shows different customs prevail in different parts of India with regard to Bramins.

None of these objections were ever made by Nundocomar himself.

‘ the order of the Shaster—That they can eat
 ‘ only the things that are permitted them by
 ‘ the rules of their cast—that he has heard the
 ‘ Bramins of Canooge eat some kinds of flesh;
 ‘ but that if the Bramins in his country eat
 ‘ meat, they would lose their cast—*That a*
 ‘ *Bramin cannot eat his food unless prepared by*
 ‘ *another Bramin*—that if he should eat food
 ‘ dressed by a person of another cast, it would
 ‘ be an impurity.—That indulgences would be
 ‘ allowed to persons under an extreme illness,
 ‘ or such hunger as might take away power of
 ‘ judgment; but that if he should only be
 ‘ hungry, and had the power of distinguishing
 ‘ persons, no deviation from rule would be
 ‘ allowed.—Being asked, Whether there are
 ‘ any distinctions as to vessels or places of
 ‘ cookery? he said, There are; that for in-
 ‘ stance, he could not dress his food at the fire
 ‘ in the room where he was then sitting—*nor*
 ‘ *could he dress it in borrowed vessels—nor could he*
 ‘ *dress it upon a wooden floor*, but if there was
 ‘ a span of earth upon the floor, he might.—
 ‘ That if a man of another cast, or of no cast,
 ‘ was to touch him at his meals, or whilst he
 ‘ was dressing his food, or was to enter into
 ‘ the space allotted by him for the dressing his
 ‘ food, he should be obliged to throw away the
 ‘ victuals; and if an Hallachore, or man of no
 ‘ cast, should come into the room where his
 ‘ victuals were, the whole house must be
 ‘ washed before he could eat in it again—
 ‘ That if in the open air an Hallachore should
 ‘ touch him, he should be obliged to wash
 ‘ himself.—That some casts would be ob-
 ‘ liged to wash their cloaths and body, others
 ‘ only their body; and some low casts would
 ‘ not be obliged to wash at all.—And being
 ‘ asked, Whether he had not suffered great
 ‘ difficulties in the journey from his own
 ‘ country to England? He said, Yes, very
 ‘ great;

great; that from Bombay to Mocha, though the voyage lasted 27 days, he never eat any thing but what he brought with him, such as sweetmeats and preserved fruits, and pumpkins and vegetables, and drank the water he brought with him, and never tasted any food drest on board the ship. That when he arrived at Judda, the Governor, who is a Mahomedan, examined his baggage, and ordered him into confinement in the same house with the Perses; that the Governor sent him victuals two or three times every day; but for two whole days he neither eat nor drank any thing; that they were surprised at his not eating, when they had sent him so good a dinner; and that after some difficulty he made them understand, by means of a boy who spoke his language, that being a Bramin, he could not eat their victuals; that when he instructed them what his customs required, they furnished him with a tent, and other necessary conveniencies for dressing his victuals, which he then did with his own hand. Being asked, What is their mode of confinement of a debtor? He said, in the first place, it is not usual to confine them; but if the person should be refractory, and disobey the orders of the magistrate for discharging the debt, perhaps he would place a guard upon his house; if his debts amounted to more than his effects, the magistrate would then order distribution, but he never touches the images or ornaments of the place of worship, or of the apartments of the women and children, nor the furniture of the house; and that the guard suffers nobody to go in or out without his permission; but that it is not the business of the guard to prevent the victuals coming in, unless he has a special order from the magistrate, for the business of the guard is to prevent any thing being carried out; that if the person has committed a crime,

This may sting a great doubt on this man having been a Bramin. It is not only the difficulty of eating which would prevent a Bramin or Hindoo, even of a lower cast, from performing such a voyage, without loss of cast; for the cast would infallibly be lost by the necessary polluting of water consequent to the evacuation of his natural excrements into the sea. Gani-sham Doss, who came to England with Major Graham, lost his cast by this means, and could never recover it; he afterwards turned Christian. If this man had, by this means, lost his cast, according to the ideas of the Hindoos in Bengal, he would have been rendered infamous, and his testimony would have lost all credit. This man goes further; he says, he becomes Hallachore, is considered as dead, and his funeral rites are not performed. *Vide post.*

' crime, and the magistrate wishes to discharge
 ' him, he may give such an order; that he
 ' must not, even in that case, disgrace the wo-
 ' men. That it sometimes happens, that a
 ' Prince presses a Zemindar for payment of his
 ' rents, and sends a guard upon his house; that
 ' if the Zemindar is absent, and has not the
 ' money to pay, he absconds; but then the
 ' guard will not do any thing to affect his wo-
 ' men; that if he should seize the property of
 ' a Zemindar, it would not be justifiable to
 ' touch his religious ornaments, or his wo-
 ' men's apartments; that besides, nothing is
 ' got by ruining a Zemindar, who is the para-
 ' mount proprietor of the land. Being asked,
 ' What dealings are allowed to the Bramins?
 ' He said, he is prohibited from trading in
 ' salt, spirituous liquors, oil, butter, shoes, and
 ' from low trades; that an Hindoo is obliged
 ' to wash in a tank, or river, at least once a
 ' day; that washing in a river is best; if he
 ' cannot do that, he must wash in a tank, or
 ' with water, in his own house; that not to
 ' wash at all would be an impurity; that he
 ' cannot eat without, except in case of sick-
 ' ness. That if an Hindoo is excluded his
 ' cast, he is disgraced, and becomes Hallachore,
 ' and is considered by his family as dead; that
 ' even his funeral rites are performed, and his
 ' face is never to be seen afterwards. That
 ' the Hindoos consider the water of the Ganges
 ' as sacred, and vow to wash in it on parti-
 ' cular occasions; that long pilgrimages are
 ' considered as expiations; that the inferior
 ' casts of Hindoos pay respect to the superior;
 ' to a Bramin particularly the highest; that
 ' wealth is nothing in competition with that
 ' degree of rank; that the low people may
 ' drink the water in which a superior has
 ' washed his feet—that he himself would drink,
 ' and think it would be right to do it, of the
 ' water in which a Bramin, learned in their
 ' books,

' books, has washed his feet ; but it would be
 ' a disgrace to the Bramin to suffer Hallachores
 ' or base people to do it.—Being asked, Whe-
 ' ther the lower castis are not much offended
 ' when they see the higher, such as the Bra-
 ' min, treated with indignity and disrespect, or
 ' whether they are pleased?—He said, If a
 ' Rajahpout sees an indignity offered to a Bra-
 ' min, he will risk his life to protect him—that
 ' even the lowest castis of Hindoos would not
 ' be pleased to see a Bramin degraded—that
 ' what a Mahomedan might think upon it, he
 ' does not know.—The witness further said,
 ' That under a Gentoo government, the charges
 ' of recovering a debt are a fourth part, which
 ' goes to the magistrate, and makes part of the
 ' public revenue—That in his country women
 ' are not so much secluded as among the Ma-
 ' homedans; but it would be a disgrace if they
 ' went into courts of justice.—That if he had
 ' guests at his house his wife might come in
 ' with the victuals, but could not sit down
 ' with men.—That he has heard that the Ra-
 ' jahpouts and people of Bengal confine their
 ' women more than the Marattas—that they
 ' will not permit them, particularly those of
 ' rank, to be seen.—That in his country the
 ' mode of recovering a debt from a woman is
 ' for the magistrate to send to her to satisfy the
 ' creditor; if she refuses he orders her, if she
 ' be a woman of character, to be brought to
 ' his house—she is carried in a covered car-
 ' riage, and received by his women, but is
 ' never compelled to attend the cause in a
 ' public court; and even if the magistrate
 ' himself speaks to her there will be a curtain
 ' between them.—He said also, That it is
 ' usual for women in his country to burn
 ' themselves on the funeral pile of their hus-
 ' bands—and that the custom prevails also in
 ' Bengal, and other parts of Indostan.'

Then the witness was asked,

What report did Dr. Murchison make when he returned, after having seen Nunducumar in prison?

I beg to refer to an affidavit made by Dr. Murchison on that subject.

The said affidavit is as follows :

F ‘ (*) This deponent, Kenneth Murchison, surgeon, maketh oath, and saith, That on or about Wednesday, the tenth of May, one thousand seven hundred and seventy-five, Sir Elijah Impey, Knight, requested him, this deponent, to go to the gaol in which Maha Rajah Nundcomar was then confined, and to report to him the said Sir Elijah the state and condition of the health of the said Nundcomar; that in consequence of the said request, he the said deponent went to the said gaol, where he found the said Nundcomar extended on the ground, in a seemingly weak and helpless condition; that the said Nundcomar (as the interpreter told this deponent) declared that he had received no manner of sustenance since the Saturday next preceding that day; and that the said Nundcomar spoke in a low and feeble voice.—And this deponent further said, *That he felt the pulse of the said Nundcomar, that his pulse appeared to him not weak but regular, and not as he should have expected in a man who had fasted so long. And this deponent further saith, That he does not mean to say that he had not fasted that length of time; but if he had really fasted so long, it was an extraordinary case, and inconsistent with the symptoms which in the best of his judgment believes must have appeared.* And this deponent further saith, That on his return to Sir Elijah, he made his report to the effect above

* Read from the same Appendix.

‘ mentioned ;

‘ mentioned ; and further acquainted the said
 ‘ Sir Elijah, that if in fact he had not eat or
 ‘ drank during the time above mentioned, it
 ‘ was necessary he should take sustenance be-
 ‘ fore the next morning.

‘ KENNETH MURCHISON.’

‘ Sworn this 17th day of January

‘ 1776, before me,
 ‘ E. IMPEY.’

Then the witness was asked,

Was any one with the Maha Rajah in the same room ?

No other prisoner ; his servants occasionally attended him ; *the rooms occupied by him and his servants were quite detached from the rest of the prison, on the opposite side of an area.*

Were the rooms purified after the gaoler and his family had left them ?

They were entirely cleaned out, and all his furniture removed.—The Sheriff and myself frequently went to the prisoner, who expressed himself satisfied with the conduct of the gaoler, in token of which he gave him, before his execution, a valuable ring.

Who is Doctor Murchison ?

He is a surgeon in the service of the East India Company, and was the medical gentleman who attended Sir Elijah Impey’s family.

Was he not a dependant on Sir Elijah Impey, and under his immediate patronage ?

He came out surgeon in the same ship with the Judges, and was patronized by him.

Did he not live in Sir Elijah Impey’s house ?

I believe not ; he was very often at his table.

Did he not procure by Sir Elijah Impey’s means some considerable advantage in Oude or elsewhere ?

I have heard that his being sent to Oude was considerably owing to the interference of Sir Elijah Impey

in his favour, but I do not know of my own knowledge, but I believe it. This was some time afterwards, I do not recollect particularly when.

Do you not know whether, on the same day that Mr. Murchison was appointed, two other gentlemen, a Mr. Gody, who was surgeon of the ship that General Clavering came out in, and a Mr. Harwood, were not also appointed to the service of the Nabob Vizier; and whether all these appointments were not made in consequence of an application from the Nabob for three surgeons?

I was acquainted with Mr. Gody, and recollect hearing of his appointment, and that he went to Oude. —The third gentleman mentioned I do not recollect, not having heard of his appointment, nor do I recollect that the three appointments were on the same day, nor have heard whether it was at the requisition of the Nabob. Mr. Gody was the surgeon of the ship General Clavering came out in.

How old was you at the time of Nundocomar's trial?

About twenty years and a half.

Did you then hold any other office but that of deputy Sheriff?

I was appointed one of the sworn clerks in equity on the resignation of Mr. Newman, which I think was before the trial.

On whose recommendation had you that appointment?

On an application to all the Judges.

To all equally?

They all concurred in it.

Who proposed it to them?

I applied first to the Chief Justice, and then to the other Judges.

Did you go out with Sir Elijah Impey?

I did.

Had

Had you been admitted an attorney in England?

I had not.

What other offices did you afterwards hold?

I was afterwards in partnership with Mr. Nailer, who two years afterwards was made attorney to the East India Company. Some time afterwards I was made joint attorney to the East India Company with him, and on his death succeeded him as their attorney on record. I had no other appointment.

Who recommended you to be attorney to the Company?

The occasion of my being appointed attorney to the Company first of all was, Mr. Nailer's being committed for a contempt of the Court; and I received that appointment without having applied for it, or without any particular recommendation.

Was you not partner with Mr. Nailer when he was committed for the contempt;

I was.

Did you hear any reason assigned why the whole of the blame and punishment came to fall upon Mr. Nailer?

The reason was, that the whole business which incurred the blame and punishment had been done by him.

How came you, being Mr. Nailer's partner, to have nothing to do with it?

We had a great deal of business, and we divided it between us. He being immediately the Company's attorney, was generally the person who transacted that part of the business in which the Company were concerned.

What was the salary of your office, as attorney to the Company?

The attorney to the Company, I believe, as such, had 300 rupees a month.

Had you any other allowance or emoluments?

We made out bills on the Company for the business done for them, and were allowed one third more than

than the bills, which allowance was latterly struck off.

To what did your bills amount, one year with another?

I submit whether I should answer that question; as not appearing to be applicable to the charge.

And the witness was directed to withdraw.

And being again called in;

The question was repeated.

Every sum received, from the establishment of the Court down to March 1780, by the Company's attorney, is stated in the general appendix to the report on Touchet's petition, N^o 40, bills and salary included. I continued their attorney till December 1780, but I do not recollect the particular sums received between March and December 1780—That account is signed by the accountant general, and I have no doubt is correct.

Whether the paper you saw in Mr. Justice Le Maistre's hand, purporting to be a draft or copy of the indictment, was altogether in Mr. Justice Le Maistre's hand, or interlined, or otherwise corrected?

I have a very imperfect recollection of the paper; and not such as enables me to answer the question.

Recollect yourself, was there not some other hand-writing on the paper?

I have no recollection of any other hand-writing on the paper.

Do you recollect where you first saw it?

I do not.

Are you sure that it was not given to you by Sir Elijah Impey?

I am.

How do you know that, as you do not recollect how it came into your hands?

I have not said that it came into my hands. I have some idea of having seen such a paper; had I had it in my

my possession, I should have recollected more of it.—I cannot recollect when I saw it, nor with whom.

Whether Sir Elijah Impey and Mr. Justice Le Maistre did not live on terms of great intimacy and apparent confidence?

I have no other mode of collecting the intimacy between them, than from their visiting each other frequently; but *Sir Elijah Impey was not more intimate with Mr. Justice Le Maistre than with the other Judges, I think not so much so, as their habits of life were not so similar. Mr. Le Maistre was in India without his family, the other Judges had their families with them.*

Whether you do not know for certain that Mr. Le Maistre had a very particular confidence in Sir Elijah Impey's superior knowledge in his profession, above his own?

I do not.

Was it generally believed that he had?

No;—not that he had any particular confidence.

Have you reason to believe that Mr. Le Maistre would have ventured to make the draft of a very critical indictment, without consulting Sir Elijah Impey?

I am by no means certain, and indeed have considerable doubts, whether Mr. Le Maistre did make the draft—but if he did, *I have not the least reason to believe, nor do I think that the Chief Justice had any knowledge of it.*

Did you live a great deal in the family of Sir Elijah Impey in 1775, and till you left India?

I did.

Did you know the late Mr. Alexander Elliot?

Yes.

Was Mr. Elliot very intimate with Sir Elijah Impey?

He was very intimate.

Was it supposed there was a particular friendship between Mr. Elliot and Sir Elijah Impey?

There was.

What

What was the general character of Mr. Elliot amongst the gentlemen in Bengal?

One of the highest characters I ever knew a man to possess; and I believe the most deservedly and the most universally given.

Did not Mr. Elliot act as interpreter on the trial of Nundocomar?

Yes.

Did you ever hear Mr. Elliot express any disapprobation of the proceedings on the trial?

I did not—He assisted me very much in compiling the trial afterwards.

Do you conceive that there was any diminution in the friendship of Sir Elijah Impey and Mr. Elliot after that trial?

Not the least.

From the idea you entertain of the character of Mr. Elliot, do you think that if Mr. Elliot had conceived the execution of Nundocomar was a legal murder, that he would not have broken off all connection with Sir Elijah Impey?

Certainly—I think Mr. Elliot would not have undertaken to carry the trial home, which I understood he did, if he had thought that the Court had acted wrong in the course of the trial.—As I understand that the intention of sending it by him, instead of trusting to any other channel, was, that he who had so complete a knowledge of the business, might clear up any misrepresentation that should be made concerning it.

How do you know that Mr. Elliot did bring the trial to England?

I have heard it mentioned that it was to be delivered to him, and on his return from Europe he called on me, and in the course of his conversation mentioned that he had had it printed.

Did Mr. Elliot also bring home the trials of Roy Rada Churn and Mr. Fowke?

He did,

Was

Was you in Court when Mr. Hastings and General Clavering were examined at the trial?

Yes.

Did you recollect Mr. Hastings giving in evidence upon oath, that he had no concern directly or indirectly in the prosecution of Nundocomar?

I wrote the trial soon after it had passed, when the impression of what had passed remained strong upon my mind. — It appears to be part of Mr. Hastings's evidence, but I do not particularly recollect it.

Was there any particular connection between Mr. Hastings and Mr. Elliot?

There was.

Was there a great friendship between them?

I believe a great friendship.

Do you know what was the cause of Mr. Elliot's going to England in 1775?

I understood that he went on some particular business of Mr. Hastings's; but I do not know the nature of it.

Was there any intercourse kept up between Sir Elijah Impey and Mr. Francis?

There was.

After the condemnation of Nundocomar, did all intercourse cease between them?

It did not.

Did it continue as before, or did that circumstance make any alteration in the intimacy between them?

It continued down to the time of my leaving India.

Were they mere visits of ceremony that passed, or did they appear sociable?

They appeared friendly visits.

Who was the Sheriff in 1775?

Mr. Macrabie.

What was he?

He was brother-in-law to Mr. Francis, and lived in his family.

Did

Did Mr. Macrabié ever mention to you, that he thought Nundocomar was treated with severity by the Judges?

No.

What time did you quit India?

In December, 1780.

Whether any circumstances had happened previous to your quitting India, which caused a suspension of that intimacy which subsisted between Mr. Francis and Sir Elijah Impey?

There was a suit against Mr. Francis in the Supreme Court, in which there was a judgment against him; which, I believe, for a time suspended the visits between them.

Were the Judges divided upon that judgment?

They were.

How were they divided?

Sir Robert Chambers was of one opinion, and the Chief Justice and Mr. Hyde of another. Mr. Le Maître was dead at that time.

Do you know whether there was any intimacy between Mr. Le Maître and Mr. Francis after the condemnation of Nundocomar?

I had no opportunity of observing it myself, but I have understood they were often in company together.

You have said first that there was an intercourse—then, that there was an intimacy between Sir Elijah Impey and Mr. Francis;—on what facts do you assert that there was an intimacy between those persons?

I have seen Mr. Francis very frequently at Sir Elijah Impey's house on sociable terms, such as did not appear to me visits of ceremony. As to other fact I can only recollect one instance, which was that of a gentleman being sent up the country in consequence of an application from Lady Impey to Mr. Francis, through Mr. Francis's interest, and that was a Mr. Edwards.

Do you mean to assert that Mr. Francis's compliance with the request of Lady Impey or any other proof
he

he could give of any respect for her Ladyship, was an unquestionable proof of any intimacy with her husband, meaning by intimacy, friendship with her husband?

I have mentioned the circumstance to the Committee, how far it will warrant such an inference is a matter of opinion.—I did not mean to say, or to give the Committee to understand, nor did I say, there was any friendship between Mr. Francis and Sir Elijah Impey, but that their visits did not appear to me to be ceremonious.

Do you mean to assert that after the judgment given in the suit against Mr. Francis, he and Sir Elijah Impey did never dine or sup together at the house of either of them, or at other places as before?

I do not—I think the contrary, and that I have seen Mr. Francis at Sir Elijah Impey's after that.

In the trial of the suit against Mr. Francis were the facts tried, the judgment pronounced, and the damages assessed by two of the Judges, in direct contradiction to the clear, positive, explicit, and argued opinion of the other Judge?

The indictment was given contrary to the opinion of Sir Robert Chambers, for which dissent he gave his reasons at length.

Did not Sir Elijah Impey and Mr. Justice Hyde give their reasons for their judgment at large?

Sir Elijah Impey did—But I do not recollect Mr. Hyde did more than concur in his opinion.—I was attorney for Mr. Francis in this cause, and after the judgment, which he was dissatisfied with, I had instructions to draw a petition of appeal, which I accordingly drew, with the assistance of the counsel in the cause—This petition was sent to Mr. Francis, and returned to me, with his determination not to appeal.

How old was Mr. Elliot at the time of Nundocomar's trial?

I don't know, he appeared to be about three-and-twenty,

Have you ever heard that he was bred to the law in any

any branch, or practised in any branch of that profession?

I never heard he was, nor do I believe it.

On what ground do you, who acted as an attorney, chuse voluntarily to reveal the secrets of your client?

I thought the question called for an explanation of what I knew concerning the transaction.

What appeared to you to be the particular question that called for that explanation?

The question to which the explanation was given.

And then the witness was directed to withdraw.

And being again called in;

He was asked,

Whether the Pundits sent to Nundocomar belonged to the Court or the government?

I think they were the Pundits of the court, but I am not certain.

Whether during the trial of Nundocomar you remarked any instances of partiality in the Chief Justice in favour of the prosecution, or any leaning against the prisoner?

I did not.

Do you recollect the circumstance of the witness Kissen Juan Dofs being called in at the particular request of the prisoner, at the end of the trial?

I do.

Do you think, from the manner in which that witness gave his last evidence, that the observations of the Chief Justice on the witness's testimony were well founded?

I presume the question is confined to the difference of the conduct in the witness when he was last called, and on his former examination—it was so remarkable, that it could not escape the observation of any person who had seen him give his former evidence. And I think the Chief Justice's remarks upon it were well founded.

What was your age at the time?

Twenty years and an half.

The Court had no Pundits till 3d February 1777. Vide the orders of Council and letter to the Judges of that date.

In what situation was you at that time?

I was there as Under Sheriff.

Did you consider yourself at that time as under any obligation to Sir Elijah Impey?

I did, as under great obligations to him.

Did you compile the account of all the proceedings contained in the book printed by Cadell, under the title of Nundocomar's Trial?

I did.

Did you compile the whole by the direction of the Judges?

I did.

Did the Judges approve of the whole contents of that book as it now stands?

I understand they did; and I have lately applied to Mr. Cadell, in order to know whether he had the original copy in his possession.—He had it not; but he then shewed me his authority for printing it, which is a letter in the hand-writing of Mr. Justice Hyde, signed *by all the Judges* I think, declaring the trial to be authentic, and authorising him to print it.

Vide the authority to Mr. Cadell, signed by all the Judges,

as asserted by Sir Elijah Impey—²more evidence of the full concurrence of Sir R. C. The authority is confined to printing the trial of Nundocomar.

The witness desired to explain a part of his evidence given on a former day.—*I was asked, whether the trial was printed at Calcutta? and I answered, no.—I beg leave to add, there were no printers or printing at that time in Calcutta, nor till some time afterwards.*

Vid. his evidence ante 4. and Appendix. l. No. 16, 17.

And then he was directed to withdraw.

No. 8.

Mr. James Durnford called in, and examined.

WAS you clerk to Mr. Justice Le Maistre in the year 1775?

Yes.

Did you ever see the indictment against Nundocomar for forgery in the hand-writing of Mr. Justice Le Maistre?

I believe not.

Are you sure you have not seen it?

I am not quite sure that I have not seen it, but I believe I have not.

Do you know who drew that indictment?

I do not.

Did you ever make a fair copy of it yourself?

I do not recollect that I did.—Perhaps I may have done it, but I have no recollection of it at this time.

Did you ever see it as it stands in print?

I have not.

What time do you think it would take you to copy it?

I do not recollect the length of it, it is so long since I saw it.

And then the witness was directed to withdraw.

To report a progress, &c.

No. 9.

Veneris, 29^o Die Februarii, 1788.

Committee of the whole House on the Articles of Charge of High Crimes and Misdemeanors, presented to the House against Sir Elijah Impey, Knight, late Chief Justice of the Supreme Court of Judicature at Fort William in Bengal.

EDWARD BABER Esquire, called in, and examined.

THE report from the Committee on the petition of John Touchet and John Irving, agents for the British subjects residing in the provinces of Bengal, Bahar, and Orissa, &c. being referred to ;

Part of the evidence given by the witness before the said Committee, as stated in the said report, pages 62 and 63, was shewn to him at the bar, and is as follows :

‘ Your Committee again examined Edward Baber Esquire; who said, he was at Muxadabad at the time of the execution of the Mar Rajah Nunducumar, and believes that event was much discussed among the natives of that city.—And being asked, what opinion the natives entertained of the application of the English criminal law in that case ? said, *that it was a very severe application, and it caused a good deal of alarm.*—And being asked, From what particular circumstances did that alarm arise ? said, He apprehended that the alarm arose from the ignominy as well as severity of the punishment of crimes not deemed capital with them, and the fear that the law might be applied to causes however remote.—Being asked, What was the rank of the Mar Rajah Nunducumar in that country ? said, He was a Bramin of the first rank, and his station had been also the first in the government,

Mr. Baber was Clerk of the Court which tried and convicted Rada-chund Metre for forgery, on the 2 Geo. II. c. 25 and signed the Proceedings, App. I. No. 2.

' vernment, namely, prime minister to the Na-
 ' bob of Bengal.—And being asked, What was
 ' the general moral character of the Mar Ra-
 ' jah among the natives? answered, A very bad
 ' one.—And being asked, If the people were not
 ' very much pleased to find a man of that high
 ' rank and that bad moral character brought
 ' to strict justice for his offences? he said, He
 ' believed that however much he might be dis-
 ' liked, the trying him by the English laws
 ' was not at all pleasing to them.—Being ask-
 ' ed, Whether most of the offences that are
 ' capital by the law of England are capital by
 ' the laws of Indostan? said, They are not.—
 ' And being asked, If, from his knowledge of
 ' the country, he thought that the punishments
 ' allotted by the law of the country to offences
 ' were sufficient to preserve peace and good or-
 ' der? said, He did; and for this reason, that
 ' he has frequently heard from the natives ac-
 ' counts of the commendations of the regula-
 ' tions and good order of the police of the
 ' country, before the English had any concern
 ' with it.—Being asked, Whether he thought
 ' the natives considered a capital punishment
 ' was more than necessary for an offence like
 ' that imputed to the Mar Rajah Nundúcomar?
 ' said, They certainly did consider it as severe,
 ' because, exclusive of the peculiar reverence
 ' they pay to a Bramin, the crime itself, com-
 ' mitted by one of the lowest cast or rank, is
 ' not capital.—Being asked, If there was not
 ' much transaction through the medium of
 ' writing, and greatly affecting property of all
 ' kinds in that country? said, Yes.—And be-
 ' ing asked, Would it not tend greatly to the
 ' security of that property, and consequently
 ' to the increase of the commerce and welfare
 ' of that country, if this crime of forgery was
 ' punished in a severer manner than it is usually
 ' punished in the country courts? said, That
 ' in his opinion he did not think it would.—
 ' And

And being asked, Whether this severe punishment is not much desired by persons in trade, or concerned in money transactions? said, He does not think it is; and thinks he may add, that they would be better satisfied if their own customs continued, than to be obliged to adopt severer laws.—Being asked, If the English law, which inflicts capital punishment on various kinds of felonies, under their various descriptions, would not be acceptable to the natives, as affording a further security to property? said, He does not think they would; on the contrary, he believes they would be shocked at the various descriptions of our capital punishments.—Being asked, In what manner he conceives our laws of transportation would be applicable to the state and manners of that country? said, He thought it would be worse than the capital punishments, because the Hindoos had much rather suffer death than be promiscuously put on board a transport, as criminals, where every law of religion, their manners, and customs, must be violated.—Being asked, If he knew or had heard that it is usual to sentence criminals in certain cases to labour on the public works? said, He knew it is the law and custom of the country.—Being asked, If he ever heard that the men sentenced to this punishment in Calcutta were set at liberty by the authority of the Supreme Court? said, That he had heard this act much talked of by the natives of Muxadabad, who spoke of it with great surprise and apprehension; and amongst the Europeans, it was considered as mad an act as that of Don Quixote setting free the galley slaves.—Being asked, If this act did not produce many ill effects in the country? said, He did not know, he was absent from Calcutta at the time, but that he had heard that many of the inhabitants of Calcutta maintained private guards

' of their own, to protect their houses and property.—Being asked, If he had not heard that the Khoran admits of a composition for several offences, and even for murder? said, Yes.
 ' —Being asked, If that licence has not produced great mischiefs within the province? said, Not that he knew of.—Being asked, If murder was a common crime in Bengal, or the other provinces? said, He does not think it is; they are far from a sanguinary people, and very averse to shedding blood.—Being asked, Whether, from his knowledge of the manners, customs, and dispositions of the people, he thought it would be a matter of extreme difficulty, or perfectly odious, to introduce a trial similar to that by jury in the native courts? said, That arbitration is a very common and a very ancient practice amongst them, which being something of the nature of a jury, might perhaps be modified to something still nearer to it.—
 ' Being asked, If he ever heard that Rada Chund Metre, a Gentoo, was condemned at the court of oyer and terminer at Calcutta for forgery, previous to the arrival of the judges of the Supreme Court of Judicature? said, Yes; he was not executed, he was recommended to his Majesty's mercy by the Governor General and Council, at the request of the inhabitants, and received the King's pardon.—Being asked, If he knew upon what grounds he was recommended to mercy? said, That the petition fully stated it.—Being asked, If there had been any formal promulgation of the heads of the English criminal law to the natives of the provinces, or any abstract published under authority, in any of the country languages, of the English civil and criminal law, or of the modes and rules of practice in the English courts? said, Never, that he heard of.—Being asked, As he was chief of a provincial division, could such

The witness was
 Clerk of the
 Court. Vide the
 Proceedings,
 App. I. No. 2.

‘ such a promulgation have been made without
 ‘ his knowledge? said, Certainly not.’

And then the witness was asked,

Did you in substance give that evidence before the
 Select Committee, and do you abide by it?

And the witness having perused the evidence
 now shewn to him, said as follows :

May I be permitted to say, that I was at Muxadabad, 100 miles from Calcutta, not only at the particular period of this transaction, but for a considerable time before and after; that I know not of any of the facts that relate to the prosecution or the condemnation of Nundocomar; but what I had the honour to state to the Select Committee, and which I here confirm, related to the general operation and the general application of the English penal laws to the natives of India?

Do you then confirm that evidence?
 I do.

And then the witness was directed to withdraw.

No. 10.

Major RENNEL called in, and examined.

The report from the Committee on the petition of John Touchet and John Irving, agents for the British subjects residing in the provinces of Bengal, Bahar, and Orissa, &c. being referred to;

Several parts of the evidence given by the witness before the said Committee, as stated in the said Report, pages 52 and 60, was shewn to him at the bar, and is as follows :

‘ Major Rennel also informed your Committee, That the Gentoos are attached to
 ‘ their customs and manners in a remarkable
 ‘ degree—That they tend to keep them se-

[P] 4

‘ parate

'parate from all the rest of the world—That it
 'is very much against their inclinations to ab-
 'sent themselves from their places of residence,
 'and that few occasions can make them remove
 'to any distance from their native spot—That
 'he considers the inhabitants of Bengal, Bahar,
 'and Orissa, as a people in a state of civiliza-
 'tion hardly inferior to that which prevails in
 'Great Britain, in respect to manners—That
 'their behaviour to each other is exceedingly
 'polite—That they discover nothing of that
 'ferocity visible among some of the lower or-
 'ders of men in Europe—That they are ex-
 'ceedingly servile to their superiors, and be-
 'have with mildness and lenity to their inferi-
 'ors, as far as relates to their exterior deport-
 'ment; but that the lower people, when they
 'have had the ascendancy over Europeans,
 'have always behaved with insolence—That
 'even since the provinces have been in total
 'subjection, the inhabitants have manifested
 'the utmost impatience under our government
 '—That in the course of his duty, as Sur-
 'veyor General, he was often attacked by
 'people belonging to Zemindars, partly, he
 'imagines, with the view of plundering him,
 'and partly because they looked upon him as
 'an intruding stranger—That he does not ima-
 'gine there are a thousand natives who under-
 'stand English, and that they live in the prin-
 'cipal cities, and serve as interpreters to Eu-
 'ropeans—That Hindoo women never appear
 'in the public functions of their Zemindaries,
 'or on any other occasions; that it would
 'bring disgrace upon their cast—That during
 'his thirteen years residence, he never saw a
 'Rajah or Zemindar's wife, excepting one,
 'who was going to burn herself on her hus-
 'band's funeral pile—That he remembers an
 'instance, when an officer of government be-
 'ing about to measure the ground on which an
 'Hindoo's house stood, after some scuffle, broke
 ' open

‘ open the door of the zenana, or women’s apartment, upon which the master of the house immediately destroyed himself, by cutting his throat; and that he has also heard upon the very best authority, of another instance, in which an Hindoo’s house being on fire, and a multitude assembled in the street, the master of the house, rather than expose the women to the view of the multitude, thrust them into an inner apartment, and was there burnt to death with them.’

‘ Your Committee again examined Major James Rennel, who said, That at the time of the execution of the Mar Rajah Nunducomar, he was at Dacca; that it occasioned much surprise and terror on the minds of the natives there.—And being asked, What opinion they entertained of the application of the English criminal law in that case? said, They were apprehensive the English law would impute crimes to them which they did not understand; and that the execution of Nunducomar was a degree of punishment so novel and unexpected, that, pending his trial, and till his execution, nobody supposed he would be executed.—And being asked, If they did not know that forgery was a crime? said, They certainly knew it was a crime, but never deemed it a capital one; nor was it ever so punished in their courts.—And being asked, Whether the opinion of the people at Dacca, that Mar Rajah Nunducomar would not be executed, arose from an idea that it would be impossible to obtain justice against a person of his rank and power? said, That amongst the lower sort of people he believed it did; but the better sort imagined that it was meant to terrify others from committing forgery by proceeding to sentence.—He had long ceased to be a man of power.’

And

And then the witness was asked,

Did you in substance give that evidence before the Select Committee, and do you abide by it?

And the witness having perused the evidence now shewn to him, said,

That was the evidence I gave, and I abide by it.

And then the witness was directed to withdraw.

To report a progress, &c.

No. 11.

Mercurii, 16^o die Aprilis 1788.

Committee of the whole House on the Articles of Charge of High Crimes and Misdemeanors, presented to the House against Sir Elijah Impey, Knight, late Chief Justice of the Supreme Court of Judicature at Fort William in Bengal.

Mr. THOMAS CADELL, bookseller, called in, and examined.

WHAT are those papers which you have there?

The trial of Nundocomar, published by the authority of the Supreme Court of Judicature in Bengal.

And the said book, intituled, "The Trial of Maha Rajah Nundocomar Bahader, for forgery;" published by authority of the Supreme Court of Judicature in Bengal, was delivered in.

Then the witness was asked,

Have you that authority here which was given to you?

I have.

When

When did you receive that authority?

In a letter from Mr. Elliot, dated London, May 3d, 1776.

The witness delivered in the said letter; as also a letter from the Judges to Mr. Elliot, dated Fort William, 10th August 1775; and a letter from Mr. Maclean to the witness, dated Harley Street, 4th May 1776.

The said letters were read, and are as follows:

‘ Sir,

‘ When I quitted Bengal, Sir Elijah Impey, the chief justice of Bengal, authorized me to say, that the trial of Mahah Rajah Nundocomar was drawn up from his and the other Judges notes.

‘ London,

‘ I am,

‘ May 3d, 1776.

‘ Sir, &c.

‘ ALEX. ELLIOT.’

‘ To Mr. Cadell,

‘ Bookteller,

‘ in the Strand.’

‘ Sir,

‘ We give you full power and permission to print and publish, if you think proper, the trial of Maha Rajah Nundocomar, as authentic from the copy which has been delivered to you.

‘ We are,

‘ Sir,

‘ Your most humble Servants,

‘ Fort William,

‘ E. IMPEY,

‘ August 10th, 1775.

‘ ROB. CHAMBERS,

‘ S. G. LE MAISTRE,

‘ JOHN HYDE.’

‘ To Alexander Elliot, Esquire.’

‘ Sir,

‘ In case any person should question the authority by which you have published the trial of

‘ of Nundocomar, and the other trials, viz.
 ‘ that of Radachurn and the Messrs. Fowke,
 ‘ this is to authorize you to say, that these
 ‘ trials have been transmitted to me from the
 ‘ best authorities in Bengal, and that I am
 ‘ power you to make use of my name in say-
 ‘ ing so.

‘ I am,

‘ Harley Street,

‘ Sir,

‘ 4th May 1776.

‘ Your humble Servant,

‘ L. MACLEANE.’

‘ Mr. Cadell.’

And then the witness was asked,

Did not you publish some other trials of Nundocomar and others, besides that now delivered in?

I published some other trials; and I think Nundocomar’s was amongst them.

Why did not you bring those other trials with you?

I understood the only trial that it was expected I should bring here was that trial of Nundocomar, which I have now brought.

What made you understand that?

Both from Sir Gilbert Elliot and Sir Elijah Impey.

On what occasion did Sir Gilbert Elliot apply to you for any trial?

I was served with an order of the House, and I waited on Sir Gilbert Elliot.

When?

When I was first served with the order of the House; and I wished to know to what I was to be examined.

Are you sure that Sir Gilbert Elliot made any distinction between one trial and the others?

No—I am not certain as to that; but I understood, from the order of the House, that the trial I have now brought was the only one I was to bring.

Did you understand so from the order of the House, or from your conversation with Sir Gilbert Elliot?

I under-

I understood it both from Sir Gilbert Elliot and Sir Elijah Impey.

Whether all the trials are not usually bound up together in one volume?

Generally together—also separately.

Did you understand from Sir Elijah Impey that only the trial for forgery was to be brought?

I did.

On what occasion did you receive that intimation from Sir Elijah Impey?

I understood from Sir Gilbert Elliot that my presence was no longer necessary—I was then informed by Sir Elijah Impey that it was necessary; and in consequence of that I attended this day, to authenticate the publication of that trial.

On what day was it you received that intimation from Sir Elijah Impey?

I cannot say.

Was it lately?

I had a note from Sir Elijah Impey, to remind me to attend the House, to authenticate the publication of that trial.

Have you the other trials here—very near?

Yes.

You will withdraw, and bring them to the committee.

The witness withdrew.

And being returned, he delivered in a book, published by himself, containing the said trial of Nundocomar for forgery; and also the trial of Joseph Fowke, Francis Fowke, Maha Rajah Nundocomar, and Roy Rada Churn, for a conspiracy against Warren Hastings, Esquire; and that of Joseph Fowke, Maha Rajah Nundocomar, and Roy Rada Churn, for a conspiracy against Richard Barwell, Esquire; to which are prefixed several

several depositions, and an examination into the claim of Roy Rada Churn to the privilege of an ambassador, as Vakeel of Mubareck ul Dowla.

And then he was directed to withdraw.

PHILIP FRANCIS, Esquire, a member in his place, being called upon to know, Whether he would consent to be examined upon the matter of the charge against Sir Elijah Impey, relative to Nundocomar?

Mr. Francis informed the committee, That he had put into writing the substance of what he had delivered to the House in a speech on a former occasion, in answer to that part of Sir Elijah Impey's defence which he considered as an accusation against him on the subject of the petition of Nundocomar, burnt by the hands of the common hangman; and he now offered a copy of the said speech to the committee, and desired that they would permit him to deliver it in, and that they would order it to be entered on their minutes.

Which the committee not agreeing to;

Mr. Francis informed the committee that he was ready to be examined.

And he was examined accordingly, as follows:

Did you intend by your motion for burning the petition of Nundocomar, and by your minute of the 16th of August 1775, to express an opinion, that the contents of the petition were false; or, did you intend to express any opinion whatever respecting the conduct of the Judges, or any of them, in the trial of Nundocomar?

On that occasion I meant to avoid expressing any opinion whatever on the conduct of the Judges; and neither on that, or any other occasion, did I ever express an opinion, that the contents of the petition were false.

What did you mean by the word 'libellous,' in your minute of the 16th of August?

I meant to make a distinction between an accusation which supposes, and is produced by an accuser, and which is properly an accusation, and an accusation without

without an accuser, which, in my apprehension, is a libel. By accuser, I mean a person responsible for the charge contained therein.

What did you mean by the expression ‘wholly unsupported?’

The paper came before the Governor General and Council without a responsible accuser, without a witness or evidence of any kind to support it.

What did you mean by the expressions ‘I therefore hope its being destroyed in the manner proposed will be sufficient to clear the characters of the Judges, so far as they appear to be attacked in that paper?’

After the motion for burning the paper was agreed to, Mr. Hastings objected, that a copy of it nevertheless stood upon our records, and by that means would find its way to the Court of Directors, to his Majesty’s ministers, and to the public. As I thought that that paper, whether true or false, was no evidence against the Judges, it was my opinion that it ought not to make any impression against their characters. I therefore proposed, that even the entries of it should be expunged. I did not mean to say, that the character of the Judges would be absolutely cleared, but conditionally, that they would be cleared so far as they appeared to be attacked in that paper—That qualification was cautiously and intentionally put in by me. In this part of my evidence, when I speak of the character of the Judges, I refer specially to the trial and execution of Nundocomar.

Have you ever expressed your sentiments in consultation on any other occasion respecting the circumstances which constitute a libel?

Yes—In the month of March preceding I delivered to the Council a Persian paper from Nundocomar, the contents of which I did not particularly know. Mr. Hastings objected to my conduct; and asked, How did I know whether I had not presented a libel to the Board, or to that effect. My answer to that part of his minute was recorded in the following terms:

Extract of a minute of Mr. Francis, March 21st,
1775.

The Governor General, who had long expected the appearance of such a letter, and was apprized of the contents of it, made no objection however to its being received and read at the Board. When the man who advances a specific charge declares himself ready to come forward and support it, and to hazard the consequences of failing in his proofs, it may still indeed be presumed that the charge is false, but it does not partake of the nature of a libel. A libeller advances charges which he does not intend, or is unable to make good: When called upon to appear and produce his evidence, he shelters himself sometimes in the obscurity, sometimes in the superiority of his situation, and leaves the accusation without an accuser, to operate as far as it can in the opinions of men against the honour and reputation of the party accused. Rajah Nundocomar is not an obscure person in this country, nor does he in this instance act the part of a libeller: He is himself of very high rank, he publicly accuses the Governor General of misconduct in his office, and desires to be heard in person in support of his charge.

Had you any other reasons, besides those expressed in the minutes, for moving to burn the petition of Nundocomar?

Undoubtedly I had.—My secret predominant motive for proposing to destroy the original paper produced by General Clavering, was to save him and him alone from the danger to which he had exposed himself by that rash inconsiderate action; yet the step I took was not immediately taken on my own suggestion. As soon as Mr. Hastings proposed that a copy of the paper should be sent to the Judges, Colonel Monson started at it, and desired me to go with him to another room.—He then said, “I suppose you see what the Governor means. If the Judges get possession of the paper, Clavering may be ruined by it.” My answer was, “Why, what can they do to him?” To that he replied, “I know not what they can do; but since
“ they

"they have dipped their hands in blood, what is there they will not do?"—He then desired me to move that the original paper should be destroyed by the hands of the common hangman.

What do you mean by 'they'?

I suppose it means the Judges—the Court in general—but I must add, that certainly, in his contemplation and mine, the person especially alluded to must be Sir Elijah Impey.

What reason had you for supposing that Colonel Monson particularly alluded to Sir Elijah Impey, when you say, that by the word 'they,' was meant the Court in general?

And the question being waived for the present;

Mr. Francis proceeded in his answer to the question respecting his reasons for moving to burn the petition of Nundcomar.

He then desired me to move that the original paper should be destroyed by the hands of the common hangman. This short conversation passed very nearly, I firmly believe, if not precisely, in the terms in which I have related it.

Then the question being repeated, What reason had you for supposing that Colonel Monson particularly alluded to Sir Elijah Impey, when you say, that by the word 'they,' was meant the Court in general?

Mr. Francis said, The word 'they' must literally apply to the Court—it is a form of speech; but I can have no doubt but that in Colonel Monson's application, and in my apprehension of it, it must relate specially or principally to Sir Elijah Impey.

Whence do you derive that idea, that Colonel Monson's application must have related to Sir Elijah Impey?

From our conversations on the subject, in which we had in our own minds invariably fixed on Sir Elijah Impey the principal lead in the proceedings of the Court, which we thought severe to Nundcomar.—I

[Q]

do

do not mean to say that we acquitted the other Judges of all blame, but we knew that Sir Elijah Impey, both by his place, authority, and temper, had a very considerable dominion over the Court.

Did you agree with Colonel Monson in the apprehensions he expressed of danger to General Clavering from the paper?

Yes.—I thought on his first suggestion, and agreed with him in opinion, that if the paper should be transmitted to the Judges, it might subject him to a prosecution for a libel against the king's court of justice, the consequence of which might be very distressing, if not ruinous to him—my object, therefore, as well as that of Colonel Monson, was at all events to get rid of the original paper.

Do you know what were the reasons of General Clavering for not reading the petition of Nundcomar before his execution?

No.

Had General Clavering, and the majority of Council, made any applications on former occasions to the Judges in favour of Nundcomar?

Yes, several times.

Mention the instances, and what was the success of those applications?

On the 8th of May 1775, a petition was received from Rajah Nundcomar to the Governor General and Council, which concludes with the following words:—"The honourable President, I am well assured, is fully sensible of the facts I allude to.—It may be requisite to explain to the rest of the Honourable Members of the Board, that the institutions of our religion strictly enjoin a number of ablutions, prayers, and other ceremonies, to be performed by the sect of Brahmins, before they can take any kind of food.—Nothing of this can be performed in the place where I now am; and could even these obstacles be surmounted, the place itself, as being inhabited by men of a different religion, would prevent my receiving any sustenance,

sustenance, without breaking those rules which I have hitherto religiously observed. I, therefore, humbly request that I may be permitted to reside, under as strict a guard as may be judged requisite, in some place where these objections may be obviated."

After a long and careful examination made by the Board into the truth of this representation, I moved, "That the sheriff, and his deputy, should be directed to wait on the Chief Justice, on the part of the Board, to represent to him the situation of the Rajah Nundcomar, whose religion, as he had informed the Board, had obliged him to deny himself sustenance in the particular circumstances of his present confinement; and to desire the Chief Justice would consider of granting the prisoner such relief as might be consistent with the strict security of his person to answer to the charges brought against him; and that a copy of the latter part of the Rajah's petition to the Board should be delivered to the sheriff." Colonel Monton and General Clavering agreed.

The Governor General said, "I object to the motion, because the same representation may be made by the prisoner himself to the Chief Justice; and I think, therefore, it would be improper that it should be conveyed to him through the authority of government."

In reply to this message, Sir Elijah Impey, in his letter of the 9th of May, thought proper to say, "I must make it my request, that the Maha Rajah may be acquainted by the Board, that if he has any further application to make for relief, he must address himself immediately to the Judges, who will give all due attention to his representations; for should he continue to address himself to the Board, that which will and can only be obtained from principles of justice, may have the appearance of being obtained by the means of influence and authority, the peculiar turn of mind of the natives being to expect every thing from power, and little from justice."

In another letter, dated May 15th, 1775, he says, "I did not nor do not question the authority of the Board in receiving petitions—I carefully restricted what

[Q] 2

I said

I said to this individual prisoner—I did not desire his petitions should not be received, but when received, if they were to require any thing from the Judges, or the Court, that the answers given to those petitions should be, that he must apply himself directly to the Judges;—and this I did to avoid the imputation, I then alluded to, and which would be equally derogatory to the character of the Council, as that of the Judges.”

“The particular reason which called upon me in this case to make that requisition, was the reports publicly circulated in this town, that if the Judges could not be prevailed upon to release the Maha Rajah, he would be delivered by force.”

On the 30th of May the Chief Justice thought fit to write us a very long letter (on the subject of our interposition in behalf of Nundcomar), in which he said: “As to communicating petitions to the Judges, I apprehend that no Board, even of the highest authority in England, can refer any matter either to a court of justice, or any Judge thereof, otherwise than by suit legally instituted.”

On the 23d of June the Chief Justice declared from the bench, that the Governor General and Council, whom he considered as nothing more than as agents of the East India Company, could only apply to the Court by humble petition; and that the Court could not receive in future any letters or messages but in that form.

“Extract of a declaration from the bench, made by Sir Elijah Impey on the 23d of June 1775.

“The Company, as well as all other appellants, must not claim it, but prefer an humble petition. This being thus explained to prevent any further altercations of this nature, the Court must inform the Board that they cannot (respect being had to the dignity of his Majesty’s courts, and the welfare of the country) receive in future any letter or messages but in that form.”

On the 27th of June we transmitted to the Judges a translation of a letter addressed to the Governor General

neral and Council, in favour of Nundcomar, by the Nabob Mubarick ul Dowlah, Subadar of the provinces of Bengal, Bahar, and Orixá; titular indeed, for to that state was he reduced, but the only rightful representative of the sovereignty, and still acknowledged to be the Nazim, or chief criminal magistrate of the country.—Whether the Judges gave any answer to that specific application from the Nabob through the Governor General and Council, I cannot discover; I rather suspect that as Sir Elijah Impey knew the reference had passed unanimously at the Board, he thought it best to take no notice of what he could not condemn without a censure of his friends. On the 20th of June the Governor General and Council had resolved to address the Judges in behalf of the Nabob's Vakeel, for whom we claimed, as well on the part of the prince whom he represented, as on the part of our government, by whom he was received, the rights and privileges of a public minister. Mr. Hastings and Mr. Barwell dissented, and refused to sign the letter.

The following is an extract from the answer which the Judges sent us the next day by a Master in Chancery.—“That the Court is of opinion that all claims of individuals ought to be made to the Court directly by the individuals, and not by the authority of the Governor General and Council. That it is contrary to the principles of the English constitution, for any person or persons to address a court of justice by letter missive, concerning any matter pending before such court; and that the higher the station of the person or persons so addressing, the act is the more unconstitutional.”

The unanimous opinion of the Court, delivered (on the 1st of July) by the Chief Justice, in consequence of a letter signed J. Clavering, George Monson, P. Francis.

“It is with the deepest concern we find the Council still persist to address the Court by letter on subjects pending in Court, or on which the Court have given their opinion; and that, notwithstanding the frequent declarations and unanimous opinion of the Court upon the impropriety of that mode of address.”

[Q.] 3

I said

I said before that I did not know positively what were General Clavering's reasons for not reading or producing the petition of Nundcomar before his execution.—If I may be allowed to judge of them from circumstances, and from conjecture, it appears to me beyond a doubt, that he thought that any farther applications from us in behalf of Nundcomar would do no good.—He might have other motives.

Have you and the other members of the majority expressed your opinions in consultations, or in your public dispatches, either before or after the 16th of August 1775, concerning the conduct of Sir Elijah Impey, or any other of the Judges, in the trial of Nundcomar?

There are several minutes of ours, written both before and after the execution of Nundcomar, in which our opinion of the real principle and purpose of that proceeding is very strongly and very explicitly declared.

Minute of Mr. Francis, April 24th, 1775.

“I beg leave to observe, that a prosecution for a conspiracy is now instituted, or is intended to be instituted, against Maha Rajah Nundcomar and others, the tendency of which seems to me to be to prevent or deter him from proceeding in making good those discoveries which he has laid before the Board. I cannot but think that the East India Company, and consequently this Board, have a very great concern in every step taken in that prosecution, whether it be actually begun, or intended.”

Minute of General Clavering, 8th May 1775.

“In reply to what the Governor General has just said, I conceive that the protection of the inhabitants of Bengal is immediately trusted to our care; and that it properly belongs to us to represent to the Judges such matters as may appear to us wherein they have acted improperly, either wilfully or ignorantly.—In the present instance, they probably are ignorant how much a close confinement may endanger the life of this man, which is of so much importance to the public
for

for proving an accusation which he has made, of venality in the Governor General."

Extract of a minute of Clavering, Monson, and Francis, September 15, 1775.

"After the death of Nundcomar, the Governor, we believe, is well assured, that no man who regards his safety will venture to stand forth as his accuser.

"On a subject of this delicate nature, it becomes us to leave every honest man to his own reflections. It ought to be made known, however, to the English nation, that the forgery of which the Rajah was accused must have been committed several years; that in the interim he had been protected and employed by Mr. Hastings; that his son was appointed to one of the first offices in the Nabob's household, with a salary of one lack of rupees; that the accusation which ended in his destruction was not produced till he came forward and brought a specific charge against the Governor General, of corruption in his office."

D^o of D^o.

"We agree with Mr. Hastings, that not only he himself, but many other persons in this settlement, have reason to thank God, as he expresses it, for the institution of this Court."

D^o, dated 21st November 1775.

"It seems probable such embezzlement may have been universally practised. In the present circumstances, it will be difficult, if not impracticable, to obtain direct proof of the facts. The terror impressed on the minds of the natives by the execution of Maha Rajah Nundcomar, is not to be effaced; for though he suffered for the crime of forgery, yet the natives conceive he was executed for having dared to prefer complaints against the Governor General.

"This idea, however destitute of foundation, is prevalent among the natives, and will naturally deter them from making discoveries which may be attended with the same fatal consequences to themselves. Punishment is usually intended as an example to prevent

the commission of crimes; in this instance, we fear, it has served to prevent the discovery of them."

D^o, 21st March 1776.

"Some of the facts with which he (Mr. Hastings) has been personally charged, have been proved; the presumptive evidence in support of the rest will, we apprehend, lose none of its force by the precipitate removal of Maha Rajah Nundcomar."

Has Sir Elijah Impey expressed in any official correspondence an opinion that you and the other members of the majority had given a testimony favourable to their conduct in the trial of Nundcomar, by your motion, and by the minutes of the 16th of August 1775?

Never to my knowledge; on the contrary, Sir Elijah Impey's letter to the Secretary of State, dated the 20th of January 1776, appears to have been written on purpose to vindicate his character from aspersions uniformly thrown upon it by Clavering, Monson, and Francis, for his conduct in the business of Nundcomar; to charge them with having constantly imputed to the Court the most atrocious motives for their conduct, by strong insinuations, malignant sarcasm, and severe censure; and to accuse us of attempting on sundry occasions to over-awe or reduce the authority of the Supreme Court.

I beg leave to read a few short passages out of this letter.

"1. The Governor General has, within few days, communicated to me several minutes, signed by General Clavering, Colonel Monson, and Mr. Francis.—They are severally fraught with direct charges or plain insinuations against the characters of the Judges, and the conduct of the Court of Judicature.—Some seem more particularly levelled at me.

"2. The crimes either directly charged upon the Judges, or indirectly insinuated (which I think we have more reason to complain of as being less liberal) are of so horrid and detestable a nature, that if they were well grounded ought to subject each of them to the highest punishment a parliamentary impeachment can

can inflict; and brand their names with infamy to the latest posterity.

" 3. I do sincerely attribute the offensive parts of the paragraphs to imaginations heated by party disputes; and entertain so high a sense of the honour of the gentlemen, that, at a period some distance from the events, which shall have given time for their judgments to cool, they will themselves be shocked at what they have wrote, and be willing to retract the charges.

" 4. A public notification is professedly made to the English nation, by which it is attempted to persuade them, that a court of judicature, established by his Majesty for protecting the natives of this country, and the East India Company, from the violence and oppression of the Company's servants, has been by the Judges converted into an execrable instrument in the hands of Mr. Hastings, of destroying the innocent native for the sake of protecting the guilty servants of the Company.

" 5. It should be known, that the conduct of the Council to the Judges, and to the prisoner during his confinement, had raised an universal belief in the natives, and even among the Europeans, that the prisoner would be protected from justice in defiance of the Court.

" 6. Raja Gourdass (son of Nundcomar) has caused it to be intimated to me, that he was very desirous to pay his respects to me, but is positively enjoined (he must mean forbidden) entering my house by members of the Council."

I shall read but one short paragraph more out of this letter.—To understand it you should know, that in one of our minutes we had said we were ignorant of any attempt to over-awe or reduce the authority of the Supreme Court.—In answer to this Sir Elijah says,

" I must refer to the letters sent me by the Council in May last, concerning Nundcomar—the letter addressed to Mr. Justice Hyde and Justice Le Maistre—the universal tenor of the minutes of the Council, whenever the conduct of the Judges made part of their consultations."

Do you understand that the oath of secrecy, taken by the members of Council in their several departments, admitted of any communication to strangers, on imposing a similar oath on such strangers?

I do not remember the terms of the oath, but my opinion of it is, that we were not at liberty to communicate the proceedings of the secret department, in the terms of the question, except to our private secretaries, or others necessary in the dispatch of our business—that was unavoidable; when we did so, we bound them by the same oath. This is all I recollect on the subject. I am not sure, but I think, that towards the latter part of my continuance in the Council, the taking of this oath by the members of the Council fell into disuse.

What do you understand to have been the secret department, properly so called, of the government of Bengal?

The secret proceedings are styled by that title at the head of them.

Whether, from the terms of the oath, as far as you recollect, it was a breach of the oath, or a breach of duty, to communicate to any person a paper produced before the Board, under an oath that he was not to communicate it; and more particularly still, if it was to a point that did not properly belong to the secret department of government?

By communicating to strangers, in my former answer, I meant strangers in India, not letters to Europe, on which there was no restraint that I know of;—with respect to the distinction stated in the last question, it is very difficult for me to decide for the scruples or conscience of another.—Speaking for myself only, I think, that if it was once resolved, and much more, if I myself agreed to enter any particular proceedings in the secret department, I was bound to keep it secret in the spirit of the oath. It has been suggested to me that there was a latitude in the oath, which might include persons not in the relation of secretaries or assistants—I cannot take upon myself to say that others might not bona fide understand it so.

What

What effect had the trial and execution of Nundcomar on the enquiries carried on by the Board into his accusation against the Governor General?

I think that in effect it defeated them.

What effect had it on other enquiries of the same nature into the abuses and corruption of the Company's servants, or others?

As to abuses committed by the lower ranks of the service, it might possibly not affect them, but I am convinced that it did impress a general terror on the natives, with respect to preferring accusations against men in great power.—They were naturally afraid to appear, and we were very unwilling to expose them to what appeared to them and to us a manifest danger.

Did there appear in your observation any, and what degree of connection, between Mr. Hastings and Sir Elijah Impey, in the year 1775?

It appeared to me that there did subsist between them a very close intimacy and connection.

Were the accusations of Nundcomar against Mr. Hastings generally known and talked of at Calcutta?

Yes—it could not be otherwise.

Are you in possession of a copy of any part of the proceedings in the indictment of Nauderah Begum and others, for forgery, in 1779, and of the opinion delivered by Sir Robert Chambers on that occasion, on a motion for quashing that indictment?

Sir Robert Chambers gave me a book containing his opinion on that occasion.

The committee was moved, that an extract of a letter to the Court of Directors, dated Fort William, 2d August 1775, and signed E. Impey, R. Chambers, S. C. Le Maître, J. Hyde, might be read.

And the same was read, and is as follows:

‘ Add

(*) Add to this, that the continual obligation of defending every act we do, however regular, which these Gentlemen (ignorant of the grounds of our proceedings, and not supposed, by their stations, to be much conversant with law) may conceive to be wrong, must keep us in a perpetual state of disquiet and uneasiness, and totally take away that respect and veneration which the people ought to entertain of the persons and judgments of their magistrates, of which, at present, we feel ourselves to be in full possession, and which we attribute, in a great measure, to that confidence necessarily arising from seeing that our judgments have, in every instance, been unanimous, whatever representation may be made to the contrary.'

Then the book given to Mr. Francis by Sir Robert Chambers being delivered in, the following passage was read from the opinion of Mr. Justice Chambers, delivered by him in the Supreme Court, on the motion for quashing the indictment against Nauderah Begum and others, who were indicted on the statute 2 Geo. II. cap. 25. for forging, publishing, &c. two deeds in the Persian language.

' 1. To the first of these objections, that the statute does not extend to this country, and to all the arguments delivered by Mr. Tilghman in support of it, Mr. Lawrence has given one concise and general answer, viz. that this point has been already decided.

' Now it is true, that there have been in this country two convictions upon this statute: the first was that of Radachurn Metre, an in-

(*) Read from No. 19, in No. 3 of the General Appendix to the Report from the Committee to whom the petition of John Touchet and John Irving, agents for the British subjects residing in the provinces of Bengal, Bahar, and Orissa, was referred.

' habitant

‘ habitant of Calcutta, who was capitally con-
 ‘ victed thereon in the year one thousand seven
 ‘ hundred and sixty-five, and afterwards par-
 ‘ doned; but that trial was before judges whose
 ‘ decisions we are not used to hear cited as of
 ‘ authority, because in fact they neither were,
 ‘ nor pretended to be much acquainted with
 ‘ law. The other was the conviction of
 ‘ Nundcomar, who was tried before this
 ‘ Court; and to any opinion declared by this
 ‘ Court no man can pay more deference than I
 ‘ do, even when I am so unfortunate as to dif-
 ‘ fer from my brethren.

‘ It is also true, that in this last-mentioned
 ‘ case the question whether the statute
 ‘ 2 Geo. II. now extends to this country, did
 ‘ undergo some discussion; for though no mo-
 ‘ tion was made for quashing the indictment
 ‘ by the prisoner’s advocates, I did myself, when
 ‘ he was brought up to be arraigned, propose
 ‘ in court that it should be quashed; and gave
 ‘ my reasons, which (as it frequently happens
 ‘ in all courts) were not thought convincing
 ‘ by my brethren, though they had convinced
 ‘ me.

‘ But I suppose I need hardly inform Mr.
 ‘ Lawrence, that no one decision of any court,
 ‘ particularly concerning the exercise of a power
 ‘ in any degree discretionary, ought to be con-
 ‘ sidered as so binding and conclusive, that
 ‘ either a judge or an advocate should be re-
 ‘ strained from maintaining a doctrine contrary
 ‘ thereto, upon any case newly arising. For
 ‘ my own part, I hold myself bound to give
 ‘ my opinion on this objection, although ano-
 ‘ ther may, I believe, be found sufficient to
 ‘ quash the indictment, because it appears to
 ‘ me to be of importance, both to the prison-
 ‘ ers, and to others who may hereafter be in-
 ‘ dicted on the same statute; and because I
 ‘ think, that where life is concerned, no opi-
 ‘ nion

‘ nion ‘deliberately formed should be withheld.’

Then Mr. Francis said,

I beg leave to add, that Sir Robert Chambers, in conversation with me, has repeatedly affirmed to me the same fact, of which indeed I had other information, and has repeatedly complained of the injustice done to him, and to his character, by the total omission of all mention thereof in the printed Trials.

From whom had you that other information of Sir Robert Chambers’s opinion?

I cannot particularly say from whom, but it was publicly known.

Can you account for the circumstance, that after Sir Robert Chambers had given an authority under his hand to print the trial of Nundcomar, from a copy accompanying that authority, how he should afterwards complain that he was ill used, in his opinions being left out in that copy?

I positively assert the fact, that he did so complain: I am not bound to account for the whole of the transaction; but my belief is, that Sir Robert Chambers did conceive that the printed trial was not a true and complete copy of the manuscript trial, to which, as the question states, he gave his assent,

Did you not, on a former occasion, declare that you, General Clavering, and Colonel Monson, made a great distinction in your opinion of the judges;—that they had a perfect good opinion of Sir Robert Chambers; that they considered Justice Hyde as a good man; but they looked on any thing as improper and mischievous which came from Sir Elijah Impey, and only doubted whether Mr. Justice Le Maistre was not too much under Sir Elijah Impey’s lead;—and whether, in consequence of that opinion, your principal reason for condemning the petition of Nundcomar as a libel was not that it involved the whole Court?

I will state precisely what I said.—I asserted then, as I assert now, that it was a libel on the whole Court of Justice,

Justice, in the strict and proper sense of the word. The dreadful charge contained in it included all the judges, concerning two of whom (Sir Robert Chambers and Mr. Hyde) we never had a suspicion of the motives which we attributed to Sir Elijah Impey, though I am far from acquitting them of all blame. Concerning another of the Judges, the late Mr. Le Maistre, though we saw him united in the closest intimacy with the Chief Justice, and ready to support his opinion on all occasions with a degree of zeal and passion, which, however sincere, was not to be excused, yet in that which constitutes the deadly guilt of the transaction, we never suspected him to be concerned; in a confederacy, I mean, with Sir Elijah Impey, to take off Nundcomar, in order to save Mr. Hastings from the effect of that man's evidence.

Did you, in any one minute of yours, or declaration, or in any official transaction made in Bengal respecting the Supreme Court, discriminate Sir Elijah Impey from the rest of the Judges?

I do not recollect that we did, nor do I think we could—the act, on the face of it, was the act of the Court; but it appears plainly that we did make the distinction I have lately stated, for even Sir Elijah Impey himself says, “Some of the charges seem particularly levelled at me.”

Did you, on a former occasion, declare in this House, that your apprehensions and Colonel Monson's were for General Clavering's personal safety?

I said, our apprehensions were for General Clavering's safety; whether I said personal safety or not, I cannot positively affirm, but I am ready to say now, that if it had been possible for the Court to have given that act a construction by which General Clavering's personal safety could be affected, I think he would have been in great personal danger—I am sure his fortune would have been at stake; the Judges were all powerful, and gave whatever interpretation they thought fit to their own jurisdiction.—We were no lawyers, and had no lawyers to assist us.—Sir Elijah Impey, soon after the apprehension of Nundcomar, had en-

deavoured to fix an imputation which could only relate to us, and among us principally, to the Commander in Chief, that there was a determination to rescue Nund-comar by force.—General Clavering was so alarmed at it, that he thought it necessary to make an affidavit in Council, that he never had conceived, or heard of, such an intention in any person—if such a charge could have been fixed on him, I am sure he would have been in very great danger indeed.

Did not you know, by the express words of the charter, that the members of the Council were not liable to be arrested in their persons, but for treason or felony; and did you not likewise know, they had the whole power, civil and military, in their hands?

I know that the law and the charter gave us that security; whether it would have been a real one or not, if we had fallen into any legal snare, I very much doubt. The question supposes that we had the whole civil and military power at our command—I beg leave to state to the Committee what our situation was:—we were a bare majority of the Council, and were publicly declared by Sir Elijah Impey, from the Bench, to be nothing more than agents of the East India Company.—We had against us the Governor General, who was the first, and executive Magistrate of the Government, and another member of the Council—We had against us the Chief Justice, and in effect the Supreme Court—We had against us another powerful body in that settlement, called the Board of Trade, consisting of the Company's senior servants—We had against us in general all the rest of the service, and almost all the Europeans of every description—This was the predicament in which we three stood alone, with very few exceptions indeed.—The cause in which Mr. Hastings was concerned was considered as the cause of the whole settlement—You cannot judge whether our apprehensions were well or ill founded, unless you could place yourselves in our situation—This at least is certain, that if Sir John Clavering, in that state and temper of the settlement (I mean at that time, for it altered afterwards), had been indicted and found guilty of a libel, the

the Supreme Court might have fined him his whole fortune, which he must have instantly paid down—his remedy, if any, would have been by an appeal to the King and Council in this country.

When and where had Sir Elijah Impey the daring insolence to assert, that persons appointed by a British Act of Parliament (the same authority under which he himself acted) were mere agents of the East India Company?

On the 23d of January 1775, the Chief Justice declared it from the Bench.

‘ (*) The Lord Chief Justice’s Reply to the
‘ Resolutions of the Governor General and
‘ Council.

‘ The Court with very great concern perceive,
‘ that a message sent by the first Officer for the
‘ purpose of preventing a correspondence, which,
‘ if carried on, must end in altercation, has been
‘ esteemed by the Council a want of respect in
‘ the mode of delivering it, and has produced that
‘ very altercation, which in the first instance
‘ ought to be stopped; therefore the Court will
‘ not make one single observation on the want of
‘ address to the Court, or the subject matter of
‘ their papers. Those who first end a dispute,
‘ which may be of so much consequence to the
‘ public, in our opinion act with the most dignity,
‘ and deserve best of the public. The issue of
‘ this business sufficiently evinces the impropriety
‘ of the mode of application by the Governor
‘ General and Council. If the Company thought
‘ it right to apply, there are but two modes in
‘ which it could be properly done. Though
‘ neither the Crown nor the Company have an
‘ Attorney General, the Company has a standing

* Read from a book intituled, Bengal Appendix, No. 32, E. being
Extract of Secret Consultations, Fort William, 26th June 1775.

‘ Counsel; a motion might have been made by that Counsel. If they did not think proper to instruct their Counsel, but meant to address us themselves, the proper mode was by petition; it is the mode the charter has prescribed for the East India Company, whose agents the Governor General and Council are: an appeal, under the circumstances prescribed in the act, is a matter of right, to preserve that decency necessary in application to his Majesty’s Court of Justice. The Company, as well as all other appellants, must not claim it, but prefer an humble petition; those are the words of the charter;—it is a false point of honour to decline it; there is nothing humiliating in it, it is mere matter of form. This being thus explained, to prevent any further altercations of this nature, the Court must inform the Board, that they cannot (respect being had to the dignity of his Majesty’s Courts, and to the welfare of the country) receive in future any letters or messages but in that form.’

When the Court uses this expression, ‘ the East India Company, whose agents the Governor and Council are,’ do you understand that to imply an affirmation, that the Governor General and Council are nothing more than agents of the East India Company?

Not generally—but with respect to the point in question, namely, addresses from the Governor General and Council to the Supreme Court—it is my opinion that the words meant to convey, and do convey, that they considered us in no other light than as agents of the East India Company; and that we must proceed, as all other suitors did, by humble petition.

Whether, at the period in which you have described the Company’s servants to be united against the majority of the Supreme Council, who were in fact the Government, the Governor issued any one order to the army which was not faithfully obeyed?

All

All the orders to the army were signed by all the members of the Council; and I have no doubt but they were obeyed.

If an order had been issued by General Clavering, the Commander in Chief, to any one corps composing the army, in consequence of instructions from the majority, do you think that that order would not have been obeyed?

If the order had been signed by us three alone, without the names of Mr. Hastings and Mr. Barwell, and if it had been at the same time intimated, as in that case it undoubtedly would, that it was an illegal order, or against the sense of the Supreme Court, and that therefore it had not been signed by Mr. Hastings and Mr. Barwell, I then am of opinion, and I state it only as an opinion, that it would not have been obeyed; but that was an extremity that we had too much regard to our duty, and to the safety of the great Government committed to us, ever to think of hazarding.

Did you know the late Mr. Elliot?

Yes.

Did you know his family and connections in this country?

I had no connection with them, but I knew who they were.

What was the general character of Mr. Elliot?

As far as I know he bore a remarkably good one.

Do you conceive it possible, that Mr. Elliot would have suffered a trial to be printed which was particularly intrusted to him, and at which trial he had himself interpreted, without taking care that it was strictly agreeable to the copy which he had received from the Judges?

I was very little acquainted with Mr. Elliot; but I do firmly believe, from all that I have heard of his character, that he was incapable of being party to such a fraud: if there was such a fraud, my belief is, that he was imposed on; that is, that the copy to which Sir Robert Chambers gave his assent was not precisely and

completely the copy delivered to Mr. Elliot.—This is only my opinion : I can state nothing more upon it.

What reason have you for that opinion ?

I can state no other reason for it but the perfect good character that young Gentleman bore.

From your conversation with the natives in general, and the inhabitants in general of Bengal, what was the general character of Nundcomar ?

And the question being objected to ;

To report a progress, &c.

T H E E N D.

E R R A T A.

- Page 13 line 9 for material, read materials.
 23 — 5 for oppression, read opposition.
 24 — 22 for would have, read will.
 26 — 6 for perused, read penned.
 31 — 21 for province, read provinces.
 39 — 23 for tells, read tell.
 39 — 29 for gives, read give.
 40 — 14 for judgment, read judgments.
 55 — 24 for words, read word.
 62 — last, for letter, read a letter.
 63 — last but one, for in; read lie.
 67 — last but one, for Clavering and Colonel Monson;
 and, read Claverings, Colonel Monson, and.
 80 — 7 for of, read for.
 80 — last, for wrote, read written.
 93 — 23 for to, read of.
 95 — in the margin, for 13; read 3.
 104 — 2 for lordships, read lordship.
 105 — last but three, for spoke, read spoken.
 107 — 16 for question, read questions.
 112 — 23 for Ro, read Ru.
 121 — 3 for years, read days.
 124 — 5 for wrote, read written.
 125 — 20 for Maharajah, read Mohun Persaud.
 130 — 13 for wrote, read written.
 135 — 10 for Nunderah, read Nauderah.
 139 — last but one, for as to, read of.
 139 — last, for and, read but.
 157 — 1 for by its, read its.
 157 — 6 for from extending, read extending.
 158 — in the fac simile, beginning is omitted.
 158 — last but one, me should be erased.
 159 — 12 and joining with should not be erased.
 164 — 5 for from extending, read extending.
 164 — 22 for from extending, read extending.
 173 — last but three, for are those, read those.
 177 — 8 for to, read should.

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