the motives, becauſe I thought it my duty; but I think it neceſſary, for my own character, to declare, that I had *the orders of my ſuperiors* to employ this man. He never was, in any period of my life, in my friendſhip or confidence; never.

Queſt. Did you, directly or indirectly, *countenance or forward the proſecution* againſt Maha Rajah Nundocomar?

Anſ. I never did; I have been on my guard; I have carefully avoided every circumſtance which might appear to be an interference in that proſecution.

Queſt. At what time did you employ him particularly?

Anſ. It was about the removal of Mahomed Reza Cawn, and the making new arrangements. His intereſt and inclination were contrary to Mahomed Reza Cawn's, and he was thought fitteſt to deſtroy the influence of Mahomed Reza Cawn, till the new arrangements ſhould be confirmed.

It was in evidence at the trial, that Mr. Palk, judge of the Adaulut, had confined him. It was notorious that Mr. Vide App. III. No. 18. Evidence of Mr. Farrer, Counſel for the priſoner, who fully corroborates this part of the defence, and proves more than Sir Elijah aſſerts. He proves an intention to commence the criminal proſecution long before the Supreme Court was eſtabliſhed. Applications to him for the purpoſe immediately on his arrival, before Nundocomar had preferred any accuſation, and accounts for the proſecution not having been commenced before.

This order was given through Mr. Alderſey, then a member of the Council, Mr. Haſtings himſelf being then abſent from Calcutta.

Haſtings had ordered him to be releaſed: This of itſelf was ſufficient to prevent any native inhabitant of Calcutta from commencing a proſecution againſt him, for there was then no other criminal court at reſort to but that in which Mr. Haſtings preſided. It was in evidence alſo, that the proſecutor had it *not in his power* to commence a criminal ſuit, even in the court in which Mr. Haſtings preſided, or in any other court, *before the time at which the indictment was actually preferred*; for the *forged inſtrument* was depoſited in the mayor's court, and *could not be procured* from thence: It was not reſtored to the party intitled to it till after the records and papers of the mayor's court had been delivered over to the Supreme Court. One main cauſe aſſigned for erecting the Supreme Court, was, that the Company's ſervants either preſided in, or could influence, the other courts. The Supreme Court, the only court where Mr. Haſtings's influence could not extend, ſat for the firſt time towards the end of October 1774. In June 1775, at the firſt effective court of oyer and terminer and gaol delivery held by that court, the indictment was preferred and tried. That the endeavouring to procure the papers from the mayor's court was intended as "*a ſtep* taken" towards a criminal proſecution, before Nundocomar became

Vide Mr. Farrer's evidence of influence in Mayor's Court having prevented this proſecution, App. III. No. 1. page 107.

Mr. Farrer's evidence proves ſteps had been taken. Ibid.

became the accuſer of Mr. Haſtings, I have no evidence to prove; but that no *effectual ſteps* could have been taken I have given ſatisfactory proof. As there had been no delay in the proſecution, as the point of time when the proſecution was brought was the *firſt poſſible point* of time when it could be brought, no preſumption whatſoever could ariſe from lapſe of time, or the coincidence of the proſecution of Mohunperſaud, with the accuſation before the council, or from the unavoidable accident of the proſecution not having been commenced until he had become the accuſer of Mr. Haſtings. That the accuſation was the cauſe of the proſecution of Nundocomar by another perſon; that it had been the ſubject of a civil ſuit in the Dewanny court, there was no legal evidence; the proceedings themſelves, or authenticated copies, ought to have been ſhewn; parole teſtimony was not admiſſible. It did not lay on the *proſecutor* to produce them. Had they tended to the defence of the priſoner, *he* ſhould have produced them: His *not* doing it, at leaſt induced a ſtrong ſuſpicion that they would *not have made for him*: That ſuſpicion was ſtrengthened by the evidence given that he had been impriſoned by Mr. Palk, the judge of the court in which the proceedings were ſuppoſed to have been had. The matter therefore having

The proſecutor could not obtain the forged inſtrument till 27th April 1775, without which he could frame no indictment. App. III. No. 1.

On the 6th of May, Nundocomar was committed; the firſt effective ſeſſion held by the Supreme Court, was 3d June, at which ſeſſions he was indicted and tried. App. III. No. 1.

That this ſuſpicion was well founded, vide Evidence of Mr. Farrer, App. III. No. 3; Mr. Rous, App. III. No. 5.

been in a civil court, as he made it no part of his defence, but choſe to keep back the evidence, furniſhing a fair preſumption againſt him, it could not with juſtice have been applied by the court to fling an imputation on the proſecution, nor did it give any appearance that the proſecution bore any relation to the accuſation againſt Mr. Haſtings.

Articles, page 2. From premiſes thus laid down it is affirmed that Nundocomar "was an object of eſpecial protection from the circumſtances in which he ſtood:" "That it was

Ibid. page 3. *my bounden and ſacred duty*, as chief juſtice, to afford protection, ſo far as it might come within the limits of my function and office ſo to do." What is meant by the nature of the protection to be afforded, and what is aſſerted to be within *the legal limits*

Ibid. *of the functions of my office*, is clearly defined by the next paragraph: By that, I am in expreſs words charged with *a breach of duty*, becauſe "I entertained the ſaid proſecution, and did permit the ſaid capital *indictment to be tried by a jury* of Britiſh ſubjects."

Allowing it to have been within *my power* (which it certainly was not) to have quaſhed the indictment, diſmiſſed the proſecution, and ſtopped its being tried by a jury:—Was it *my duty* ſo to have done? That it formed any part of my duty I do

do moſt ſtrenuouſly deny. It was the duty of the court to have no knowledge but from what appeared in court. It was the duty of the court to be paſſive, not active; to admit all ſuits legally inſtituted, not to repel or invite them. On the contrary, had I followed the conduct preſcribed by the charge—had I rejected the indictment, I ſhould have been guilty of a *breach of duty*: The 2 Geo. 2. was in force in Calcutta; the proſecutor had a right to demand redreſs under it: To have refuſed it, would have been a *denial of juſtice*. Had I taken ſo decided a part as to have flung out the indictment on the ground of the priſoner having been the *accuſer of Mr. Haſtings*, how could I have juſtified the caſting that imputation on the proſecution, without any evidence being laid before the court that any accuſation exiſted? Had there been evidence of an accuſation, with *what* juſtice to the community at large could the court have adjudged that to be a ſufficient cauſe for not putting the priſoner on his trial? If ſuch indemnities were held forth to informers, what man would have been ſafe in his property, liberty, fame, or life? What kind of informers were likely to be brought forwards? Thoſe who by their crimes were ſubjected to the laws, and had been thereby taught, that by ſimply preferring accuſations they would be protected from the juſtice of the laws.

The

Articles, page 2.

The charge indeed ſets forth, "that Nundocomar had *publicly* accuſed Mr. Haſtings of various peculations and other corrupt practices in his office before the council general, a majority of which received the ſame, and inſtituted an examination and inquiry into the truth thereof; that the accuſations were in writing, and ſpecified with great minuteneſs the particular charges and all circumſtances relating thereto, and were not contradicted by the ſaid Warren Haſtings, who, inſtead of confronting his accuſer, challenging inquiry, or refuting the charges, thought proper, under pretence of his dignity, to decline all defence, and to diſſolve, in an arbitrary and illegal manner, the ſaid council general at various times, when met to inquire into the ſaid charges; and did otherwiſe by every means in his power, whether legal or otherwiſe, oppoſe and reſiſt the examination of the ſaid charges, affording thereby ſtrong confirmation of the truth thereof, and manifeſting ſtrong apprehenſions of the conſequence, with which the ſaid accuſation would threaten him, if inquired into or ſuffered to proceed."

As this is ſo minutely and circumſtantially detailed in the article, it will be ſuppoſed to have been before the court, or at leaſt to have been within my knowledge. How otherwiſe can it affect *me*? But the circum-

circumſtances were not only not in evidence, but were in truth not known to me nor the other judges. By rumour, and by rumour only, it was known that Nundocomar had preferred ſome accuſations againſt Mr. Haſtings for corruption in his office; the accuſations, which are ſaid to have been *publicly* brought, were preferred to the council in their *private* department, where each member was under *an oath of ſecreſy:* If the priſoner was an object of the *ſpecial protection* of the court, "from the circumſtances in which he ſtood as an accuſer," that claim ſhould have been laid before the court in evidence, and formed part of the defence; the particulars of the accuſations, the opinion of the majority of the council of their truth, the proceedings on them, the conduct of Mr. Haſtings, the grounds on which the majority thought the accuſations could be maintained, were all matters capable of eaſy proof; they were proper ſubjects to go to a jury: They certainly would have been given in evidence had it been true, as is averred, "that they were ſuch as could leave *no doubt in the mind and opinion of any perſon acquainted therewith, that the proſecution was ſet on foot with a view to defeat the accuſation againſt Mr. Haſtings.*" Why was the evidence kept back? Why were not the court and jury acquainted therewith?

with? If they could leave *no doubt in the mind and opinion of the jury*, the jury could not have *heſitated* to acquit the priſoner. If the judges *muſt have been convinced*, it would have been their *duty* to have directed the acquittal: This was the only mode by which protection could have been legally given to him: They were *not* thought ſufficient to produce that conviction when the tranſactions were recent; if they *had* been, they would have formed a material part of the defence. Why then is it averred they muſt produce ſuch conviction, now at the diſtance of thirteen years from theſe tranſactions? To the whole proceedings it is objected as fatal, and an aggravation, "in *an high degree*, that Sir Robert Chambers, a perſon deeply ſkilled and learned in the laws of England, did make a motion from the bench for quaſhing the indictment on the ground of its illegality, as founded on the 2 Geo. 2. c. 25. which had not the force of a law *in India*, and was not binding on the *inhabitants of the ſaid provinces*; that he gave his reaſons, and that I overruled them."

Articles, page 4.

Had the propoſition of Sir Robert Chambers been made on thoſe grounds I hope I have ſtated ſufficient reaſons for my not adopting them: For the caſe before us was not that of all *India*, nor of the *inhabitants of the provinces at large*, but of *Calcutta*; and of an *inhabitant of Calcutta*, for

an offence committed *in Calcutta*; had his reaſons been ſuch as were made for him, they would not have applied: But he knew we were trying *an inhabitant of Calcutta*, and did not make ſo nugatory an objection. The ſuppoſed motion is faſhioned for the purpoſe of tallying with the grounds of the Article.

Though I ſubſcribe to the character of that learned judge, and though in all matters in which I was not bound by oath to exerciſe my own judgment, I ſhould moſt willingly ſubmit to his authority; yet in the caſe then judicially before me, I thought it my duty to conſider his reaſons before I acquieſced in his propoſal. It is true, he did propoſe that the indictment ſhould be quaſhed; but this he did more *in favorem vitæ*, and from the natural lenity of his diſpoſition, than from any ſound reaſon in law. He *wiſhed* to have him tried on a ſtatute that did not inflict a capital puniſhment. I have my notes with me, which being written at the time, carry the ſtrongeſt internal marks of authenticity, and are open to the inſpection of any Member of the Houſe. By them it appears, that Sir Robert Chambers propoſed that an indictment ſhould be framed on the 5th of Elizabeth, thinking *it optional* in the Court to adopt that ſtatute, inſtead of 2 Geo. 2. c. 25. It was a propoſition, I ſpeak poſitively for myſelf, that I ſhould; and I believe the other judges would

Vide Mr. Farrer's Evidence, App. III. No. 1.

would have been glad to have concurred in, if the Court could have proceeded on that ſtatute.

By his propoſing to enforce the ſtatute of the 5 Elizabeth, he clearly affirmed the doctrine, that the ſtatute law of England with regard to forgery was then the law of Calcutta.

He did not ſuggeſt a reaſon, nor have I been able to find one, that if it was competent to introduce the 5 Elizabeth by a royal charter, why it was not equally competent to introduce 2 Geo. 2. by the like authority. That both the ſtatutes could ſtand together; and that it was optional in the court to chooſe the ſtatute which it liked beſt, I thought impoſſible, on clear principles of law; for I underſtood it to be an undoubted maxim in law, that whenever a ſtatute conſtitutes that offence which was a *miſdemeanor* to be a *felony*, the exiſtence of the *miſdemeanor* is deſtroyed and annihilated; or, as lawyers expreſs it, *the miſdemeanor is merged in the felony*. The 2 Geo. 2. having made forgery, which was *a miſdemeanor*, both at common law and by the 5 Elizabeth, to be *a felony*, the offence at law and by the 5 Elizabeth were both *merged*; and neither the common law or *the 5 of Elizabeth* were any longer exiſting laws with regard to forgery. The 2 Geo. 2. c. 25. became the *only* law by which forgery was a crime; the court therefore muſt

muſt have proceeded on that ſtatute or not at all. If forgery was not a *capital offence in Calcutta*, it is *no* offence *there*. If the ſtatute could not have been put in force, it would have operated as *a pardon* for the offence, which the legiſlature intended it to puniſh with more ſeverity. This, as moſt other arguments with which I have troubled the Houſe, were made uſe of by me in court to ſupport the indictment. By theſe I then underſtood that Sir Robert Chambers was *convinced*; he moſt certainly *acquieſced*; I never underſtood him to have been over-ruled; and his *ſubſequent conduct*, if any doubt could be entertained, proves moſt manifeſtly that he was not; for he not only ſat through the whole trial, but concurred in over-ruling every objection in arreſt of judgment; aſſented to the ſumming up of the evidence; was preſent and concurred in the ſentence. In vindication of the character of that learned judge, and to ſhow that he was not in any of thoſe acts prevaricating, but concurred, not in appearance only, but in fact, I beg leave to read a paragraph of a letter written to the Court of Directors, and ſigned by him and all the other judges on the 2d of Auguſt 1775: "Add to this, that the "continual obligation of defending every "act we do, however regular, which theſe "gentlemen (ignorant of the grounds of "our

Report of Committee, to which Tuchett's petition was referred, App., reference to No. 3—No. 19.

" 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 REPRE- " SENTATION MAY BE MADE TO THE " CONTRARY. ———

" We have the honour to be,
" Honourable Sirs,
" Your moſt obedient
" and humble ſervants,

" (Signed) E. IMPEY.
" Fort William, R. CHAMBERS.
" 2d Aug. 1775. S. C. LE MAISTRE.
J. HYDE."

Sir Robert Chambers here ſuſpects that repreſentations would be made of a difference of opinion, and *denies it* by anticipation.

Nundocomar was executed on the 5th of the ſame month, two days only after this letter was wrote; nor can it be ſuppoſed by thoſe

thoſe who would ſupport the character of Sir Robert Chambers againſt mine, that this letter, dated ſo near the execution, was written with this diſtinction ſecretly reſerved in his breaſt, that he agreed in the judgment, but diſſented from the execution. To this his known honour, uprightneſs, and openneſs of character, forms the ſtrongeſt negative. But there is undeniable evidence of his actual aſſent to the execution. All the judges, Sir Robert Chambers included, ſigned the Calendars, which (the Supreme Court having adopted the practice at the aſſizes in England) are the only warrants for execution in Calcutta. There are two Calendars ſigned by the judges; one is delivered to the ſheriff, the other remains as a record of the Court; the Court appoints no time for the execution.

The ſheriff executes the judgment at a convenient time, according to his diſcretion. Not expecting this article, I have not the Calendar itſelf, but I can poſitively aſſert the fact. And the under-ſheriff, now in England, if called on, will thus far ſupport my teſtimony, that he had the Calendar as his warrant; that it would have ſtruck him as extraordinary, if not ſigned by the four judges, and that no ſuch obſervation occurred to him, and that he from thence concludes it was ſigned by the four judges.

He was called, but not examined to this; vide Mr. Tolfrey's Evidence, App. III. No. 6, 7.

But to ſhow his opinion more fully, and that he not only approved the proceedings had, but would have carried the legal conſequences of the conviction even beyond the execution, I have in my hand a letter from him to me, written the day on which Nundocomar was executed, propoſing to me to give orders to the ſheriff for the ſeizure of the effects of the convict.

"Dear Sir,

"As I underſtand that Nundocomar has been executed this morning, I ſubmit it to your conſideration, whether the ſheriff ſhould not be immediately ordered to ſeal up this day (if he has not done it already) not only the books and papers of the malefactor, but alſo his houſe and goods. Among his papers, if not ſecreted, it is ſaid there will be found bonds from many perſons, both black and white, againſt whom I conceive that writs of *ſcire facias* ſhould be directed by us as ſupreme coroners.

"I am alſo inclined to think, that a commiſſion ſhould iſſue under the ſeal of the Supreme Court, to perſons appointed by us to enquire after his effects at Moorſhedabad and elſewhere; but this I have not ſufficiently conſidered, and only mention it now, that you may think of it. In England the commiſſioners are uſually named by the attorney general; and, as there is no

no ſuch officer here, perhaps we ought to name them.

"However, the firſt ſtep to be taken by the ſheriff ought not, I think, to be delayed a minute. If you are of the ſame opinion, you will, I ſuppoſe, give orders to the ſheriff, if you have not done it alalready, and will appoint ſome time for us to meet and conſider of the ſubſequent proceedings. I am,

Dear Sir,

Saturday noon. Your's ſincerely,

ROBT CHAMBERS."

But as the charter had not appointed any officer to ſecure eſcheats and forfeitures, I did not eſteem it to be the duty of the Court to act as eſcheator for the Crown, and therefore declined giving ſuch orders. Could Sir Robert Chambers himſelf, after his public concurrence, in contradiction to the letter ſigned by him, and his zeal to proſecute the effect of the conviction to its utmoſt conſequence, wiſh to be defended by a denial of his approbation both of the judgment and the execution? Could he himſelf, if preſent at your bar, or in any court of juſtice, be received, to make this defence in direct oppoſition to his own acts, both private and public?

That any appeal was preſented I have no recollection; and it is extraordinary

that ſuch a fact ſhould have eſcaped my memory. Had Sir Robert Chambers differed in opinion on it, it is impoſſible I could have forgotten it. But as an honourable Member has given evidence of the fact, I will not oppoſe my memory to his teſtimony; and even if my evidence could be received in a caſe in which I am ſo deeply intereſted, yet poſitive evidence to a fact muſt and ought always to have more weight than a negative aſſertion of not recollecting it.

I am ſure that gentleman has ſaid no more than what he knew, or thought he knew; yet I have great reaſon to believe, that a petition delivered by the priſoner, deſiring to be reſpited and recommended to his Majeſty's mercy, has been, after a long lapſe of time, confounded with an appeal. At all events, if there was an appeal, it muſt remain on record, or there muſt be ſome minute of its rejection: The proof of the exiſtence or non-exiſtence of which, as well as an authenticated copy of the Calendar, I ſhould have brought from Bengal, or procured ſince, had I entertained the moſt diſtant ſuſpicion that this charge could have been preferred againſt me.

The powers given to the Court in caſe of appeal and recommendation to mercy, are both ſtrict, and the different intents for which they are given muſt be attended to,

before it be pronounced a breach of duty to refuſe the one or the other.

The authority by the charter in caſe of appeal is in theſe words: "And it is our further will and pleaſure, that in all indictments, informations, and criminal ſuits and cauſes whatſoever, the ſaid Supreme Court of Judicature at Fort William in Bengal ſhall have the full and *abſolute power and authority to allow* or *deny* the appeal of the party pretending to be *aggrieved*, and alſo to award, order, and regulate the terms upon which ſuch appeal ſhall be allowed in ſuch caſes in which the ſaid Court may think fit to allow ſuch appeal." An appeal therefore muſt ſhew matter of grievance, which, in the opinion of the Court, is ſufficient to call his Majeſty's attention, for the purpoſe of exerciſing his judgment on. Clauſe of charter reſpecting an appeal.

The power in caſe of reſpite is this: "We do hereby authoriſe and empower the ſaid Supreme Court of Judicature at Fort William in Bengal to reprieve and ſuſpend the execution of any capital ſentence, wherein there *ſhall appear, in their judgment, a proper occaſion for mercy*, until our pleaſure *ſhall be known*; and they ſhall in ſuch caſe *tranſmit to us, under the ſeal of the Supreme Court* of Judicature at Fort William in Bengal, a ſtate of the ſaid caſe, and of the evidence, and of *their reaſons for recommending the criminal to our mercy*; and in the Clauſe reſpecting reſpite.

mean time they ſhall cauſe ſuch offender to be kept in ſtrict cuſtody, or deliver him or her out to ſufficient mainprize or bail, as the circumſtances ſhall ſeem to require." The recommendation for mercy muſt ſtate reaſons, which the judges, *in their opinion, think ſufficient to induce his Majeſty to extend his mercy.* The firſt is in the nature of a right, impeaching the judgment; the ſecond is matter of favour, ariſing from the particular circumſtances of the caſe. In the appeal, the party aggrieved muſt ſtate the particular matter of *grievance*, which muſt ariſe from the illegality of the proceedings, the defect of the evidence, matter in arreſt of judgment improperly over-ruled, the miſconduct of the jury or judge.

To make the diſallowing of the appeal criminal, the charge ſhould have ſtated the grounds of grievance, if any exiſted. As the appeal is not producced, it does not appear whether any, or which, of theſe matters were alledged; if no matter of grievance was alledged, there can have been no breach of duty in rejecting the appeal: It muſt have been rejected, becauſe it ſhewed no cauſe for allowing it.

The Petition of Appeal, as ſtated in Mr. Farrer's Evidence, App. III. ſhowed no matter of grievance.

It is not pretended that Sir Robert Chambers's propoſition was the ground of the ſuppoſed appeal, or that he again urged it on the appeal: If he did not, it is an additional proof of his acquieſcence: If over-

ruled at the trial, why did he not urge it on the appeal?

The granting of a reſpite, and recommending to mercy, is not a power to be exerciſed at mere will: After the conviction, neither the law, nor the charter, requires that the judges ſhould aſſign reaſons for carrying the judgment *into execution.* The law is their rule, and they are bound to execute it: It is in caſe of their *not executing it*, that they are bound to aſſign their reaſons. They muſt be reaſons which the judges, in their opinions, think ſufficient to induce his Majeſty to extend his mercy. They cannot reſpite and recommend to mercy without ſolemnly tranſmitting theſe reaſons to his Majeſty "under the ſeal of the court." Should the judges have done it, if in their conſciences they thought this not a caſe for mercy?

I ſhall now examine whether the court could, conſiſtently with their duty, tranſmit to his Majeſty any of the reaſons ſuggeſted in this article, or any other reaſon, as ſufficient to induce him to extend his mercy.

Could they ſtate that Nundocomar was *a native inhabitant of the provinces*, and that he was *not ſubject to the law*, and that *it was, as to him, an ex poſt facto law?* The repreſentation would have been fallacious; for he was *an inhabitant of Calcutta*, on

whom the law was binding, and the *law preceded the crime.* It made no part of his defence.—Should Sir Robert Chambers's objection be ſtated, it was not founded in law; he had waved it, and agreed with the court *in toto*, and muſt have joined in rejecting the appeal, if any appeal was in fact preſented.

Should it have been ſtated that the priſoner was ignorant of the law, and that it had not been publiſhed with ſufficient notoriety in Calcutta; that would have been to deceive his Majeſty. The conviction of Radachund Metre, the petition of the Hindoos, the reſolution of the Council, the publication of the pardon, all falſify it.—Should the time that had elapſed between the commiſſion of the crime and the proſecution have been aſſigned? The intermediate time being ſatisfactorily accounted for, it would have been miſleading his Majeſty to ſtate it: The benefit of the obſervation on the diſtance of time was *in favorem vitæ* allowed the priſoner by being left to the jury.

Should any proceedings in the civil court have been aſſigned as a reaſon? Would it have been proper to tranſmit the bare facts, without ſtating the ſuſpicion ariſing from the non-production of them? With theſe ſuſpicions ſtated, would it have remained a cauſe for the King to extend his

his mercy? That there had been ſuch proceedings, though there had been no legal evidence of them, was ſtated to the jury in the ſumming up, without any comment whatſoever.

If the petition from Mobarick ul Dowla, as ſet out (of which I have no recollection), was preſented, could that have been a ground, ſuppoſing Mobarick not in fiction, but in truth, to have been ſovereign with independent power over the inhabitants of Bengal; would it have been proper for him to interfere in judicial proceedings in Calcutta? How could the inhabitants of his dominions, if he had dominions, be affected by a ſentence carried into execution in an Engliſh town, not in his dominions? By what means could he know, or have any opinion, whether Nundocomar was or was not guilty? What did he know of the malice of his proſecutor, or who were his proſecutors? Was it from him or the governor general and council, that the judges were to learn the merits of Nundocomar from ſervices to the Engliſh nation? But when the true ſtate of Mobarick is conſidered, would it have been treating his Majeſty with proper reſpect, if the court had made that uſe of ſuch a petition? Articles, page 6.

Should the injury to the relations and to the caſt of the convict, or that any diſturbances

turbances were neceſſarily expected to ariſe among the Hindoos, have been aſſigned? Time, fact, and experience have ſhewn that it could not have been done with truth. His ſon, Rajah Gourdaſs, had been recently before the execution placed, and continued for a long time after it, in an high office: He and his relations enjoy their caſt without any prejudice, and are in no leſs rank and eſtimation than their anceſtors. No diſturbances whatever have been occaſioned by it among the Hindoos from that time to this. Many evils were predicted; yet not one in fact has happened, either to his family or to the Hindoos in general, notwithſtanding the credit thoſe predictions might have acquired in England. In the caſe of Radachund Metre, an Armenian had been proſecutor. In this caſe an Hindoo was proſecutor; the original information was by Hindoos; his conviction was chiefly on the evidence of Hindoos: There was more reaſon for the judges to draw inferences from their acts, as to the prejudice the execution would do to their caſt and religion, than from any ſurmiſes and repreſentations made by other perſons, and which have in fact turned out to be untrue.

Should his rank and opulence have been ſtated? It was proper thoſe facts ſhould be left to the jury for them to draw inferences

ences againſt the probability of his having committed the crime; but when the crime had been clearly proved to their ſatisfaction, they remained aggravations, not mitigations: They were left to the jury, and the inference in favour of the priſoner was pointed out to them.

Should the circumſtance ſtated in the charge of his having been indicted by Mr. Haſtings and others on a conſpiracy of bringing falſe accuſations, have been aſſigned as reaſons for mercy? A jury had, on one of thoſe indictments, found the charge to be true, and there was no apparent relation between the two proſecutions.

At this time indeed Nundocomar had accuſed Mr. Haſtings; but on what ground was it to be imputed to the proſecution, that the accuſation was the cauſe of bringing it forward, when, in truth, there is no period at which it could have been brought on before? There had been no voluntary delay in the proſecutor; the inſtant he thought he could obtain juſtice, he applied for it; could then this ſimple coincidence of circumſtances, ſo accounted for, furniſh a reaſon to be ſubmitted to his Majeſty? If ſo, Nundocomar's caſe would have been extraordinarily fortunate. Till the erection of an independent court of juſtice, the proſecutor was deterred from preferring his indictment,

Vide Mr. Farrer's Evidence, App. III. No. 1, 3.

ment, by an apprehenſion of the protection publicly known to be given by Mr. Haſtings to the criminal. Abuſes of this nature were what the Court was intended to remedy.—At the only time the proſecutor could prefer it with hopes of ſucceſs, Nundocomar would have purchaſed immunity by exhibiting an accuſation againſt the perſon who had before ſhielded him from juſtice.

Should it have been ſtated as a reaſon to his Majeſty that Nundocomar had preferred an accuſation againſt Mr. Haſtings? Who was the accuſer, and who was the accuſed? It was notorious to all India, that Nundocomar had been the public accuſer of Mahommed Reza Cawn without effect, though ſupported by the power and influence of Government. He had been convicted before the judges of a conſpiracy to bring falſe accuſations againſt another member of the council. Againſt whom was the accuſation? not againſt Mr. Haſtings, cenſured by this Houſe; not againſt Mr. Haſtings, impeached before the Houſe of Lords; not the Mr. Haſtings, for whom the ſcaffold is erected in Weſtminſter-hall; but that Mr. Haſtings, whom I had heard the Prime Miniſter of England in full Parliament declare to conſiſt of the only fleſh and blood that had reſiſted temptation in the infectious climate of India; that Mr. Haſtings, whom the King and Parliament of England had

ſelected

ſelected for his exemplary integrity, and entruſted with the moſt important intereſt of this realm. Whatever *ought* to be my opinion of Mr. Haſtings *now*, I claim to be judged by the opinion I *ought* to have had of him *then*. What evidence had the judges that the accuſation of Nundocomar was true? how could they know that they were ſcreening a public offender in the perſon of Mr. Haſtings, ſo lately applauded, ſo lately rewarded by the whole nation? Ought the judges to have taken ſo decided an opinion, on the guilt of Mr. Haſtings, as to grant a pardon to a felon, and aſſign as a reaſon that the convict had been *his* accuſer? With what juſtice to Mr. Haſtings could this have been done—with what juſtice to the community? Who could have been ſafe, if mere accuſation merited indemnity?

In the next charge I am ſeverely cenſured for obſervations made in the courſe of commenting on evidence to the prejudice of the defendant's cauſe, and to the Gentlemen of the Patna council in a cauſe regularly before me. How much more ſhould I have been ſubject to cenſure, had Mr. Haſtings been *at this time*, in the opinion of this Houſe, the man that he was *then* underſtood to be in *India*, by this *Houſe*, and by the *nation at large*, if I had gone out of the cauſe, and wantonly defamed and prejudged him without any evidence to give colour to the outrage?—

but

but though it would have been unjuſt in me or the judges, either to have ſuggeſted theſe reaſons as coming from the Court, or to have adopted them without poſitive proofs on the ſuggeſtion of others; yet, if that part of the Council, who were convinced of the guilt of Mr. Haſtings, had made a repreſentation to the judges, that there were probable grounds for the accuſation, and ſhown thoſe grounds; if they had ſtated (as well they might, if the notoriety was, as the charge repreſents) that there was juſt reaſon to believe "that the proſecution was at the inſtigation of Mr. Haſtings or his partizans, with a view to ſcreen him, and not for the ſake of procuring juſtice againſt the convict;" there can be no doubt but the judges would have reſpited the criminal, even though there might not have been evidence ſufficient to convince them. They would have tranſmitted to his Majeſty the repreſentations of the council as the cauſe for the reſpite, and left it to him to judge of the validity of their reaſons. If the judges had not yielded to that repreſentation, they would indeed have incurred great reſponſibility: If the Gentlemen of the Council ſo thought, it would have been juſtice to the criminal, it would have been juſtice to the Court, and a duty they owed to the Public, to have made that application. But what their real

real opinion was, will appear hereafter by their public and ſolemn acts. Conſiſtent with that opinion they could not have made ſuch a repreſentation.

If there was no reaſon that could juſtify the Court in recommending the criminal to mercy, there were many againſt it: The defence, in the opinion both of the judges and jury, was a fabricated ſyſtem of perjury.

The jury requeſted that the priſoner's witneſſes might be proſecuted. After the trial it became matter of public notoriety that the defence had been fabricated, and the witneſſes procured to prove it by an agent of the priſoner. App. to Report on Touchett's Petition, References to No. 13, 25.

One of the judges, Mr. Juſtice Lemaiſtre, had declared that a large ſum of money had been offered to him to procure a reſpite. A public viſit had been paid to the criminal with much parade by ſome members of the Council, after he had been accuſed of the conſpiracy, as appears by the evidence of Major Webber at the trial of the King againſt Fowke and others. That the Governor General and Council had publicly interfered with proceedings of the judges who committed the offender, appears by the minute of the Governor General and Council, of the 8th May 1775, which I have obtained from the India Houſe. That the Secretaries and Aid-de-camps of the members Vide Major Webber's Evidence, App. II. No. 9.

Vide theſe Minutes in the Evidence of Mr. Tolfrey, App. III. No. 7. D.

bers of the Council viſited him after his commitment for the felony, and that even the ladies of the families of General Clavering and Colonel Monſon were in the habits of ſending their compliments to him in the priſon, appears by affidavit of Yeandle in the Appendix of the Report of a Committee. Had formal and oſtentatious viſits been paid by perſons of high rank, by perſons at the head of adminiſtration in this country, to a man charged with a criminal offence, it would probably have been thought highly indecorous. Should the compliments of their principal officers, of the ladies of their families, be daily and ceremoniouſly preſented to a felon in Newgate, could that be preſumed to be done without the knowledge and approbation, if not at the inſtigation, of the heads of the families? Would not this in England from ſuch perſons, be juſtly eſteemed as bordering on an inſult or reproach to public juſtice? But in Calcutta, among the natives of India, where etiquette and decorum is kept up with a ſcrupulous anxiety unknown in Europe, among people where ladies are held ſo ſacred, that even the mention of them for the complimentary purpoſes of inquiry after their health, would be conſidered as a breach of good manners, the effect of ſuch viſits and ſuch compliments, muſt be much ſtronger, and the intention of

Vide Affidavit of Yeandle, Mr. Tolfrey's evidence, App. III. No. 7. E.

of them could not poſſibly be miſunderſtood. What effect the conduct of theſe Gentlemen had on the criminal himſelf, will appear by the ſame affidavit of Yeandle, who ſwears that "he (Nundocomar) always conceived hopes of his being releaſed even to the day before his execution, when *he wrote a letter to the Council for that purpoſe*; and that meſſages were continually ſent by him to General Clavering and Colonel Monſon, and anſwers returned:" "That he always underſtood, from Maha Rajah Nundocomar and his attendants, that it was *from the influence of General Clavering and Colonel Monſon*, that he expected his enlargement."

Vide Affidavit of Yeandle, Mr. Tolfrey's evidence, App. III. No. 7. E.

That letter was burnt by the hangman by order of Council.

That it had the effect on the natives in general to induce them to believe that he would be releaſed by the authority of ſome members of the Council, will appear by theſe two affidavits which I will take the liberty of reading; the one was made by Mr. Alexander Elliot, ſon of the late Sir Gilbert Elliot, the other by Mr. Durham, both of whom held offices which enabled them to have an intimate knowledge of the opinions of the natives.

"Alexander Elliot maketh oath, and ſaith, That by his office of ſuperintendant of the Khalſa records in Calcutta, he is neceſſarily connected with the native inhabitants of

Calcutta, and has acceſs to hear the reports and opinions prevalent among them: That ſince the confinement of Marajah Nundocomar, he has been often told that a report was current through the town that Rajah Nundocomar would be releaſed by General Clavering or the Council. This deponent further ſaith, That he underſtood, from the perſons with whom he held converſation on this ſubject, that ſuch a report was generally believed among the native inhabitants of Calcutta.

ALEXANDER ELLIOT.
W. P.

Sworn before me, 19th May 1775,
E. IMPEY."

(A true Copy.)

Copy of a paper in the Secretary of State's Office, which accompanied the copy of a letter ſigned E. Impey, dated Calcutta 20th January 1776, received from the Eaſt India Houſe the 19th Auguſt following.

(Signed) WILLM POLLOCK, firſt clerk in the Secretary of State's Office for the home department.

" Hercules Durham maketh oath, and ſaith, That by his office of aſſiſtant in the Court of Phouſdary Adawlut of Calcutta, he is neceſſarily connected with, and has acceſs to hear, the reports and opinions prevalent among the native inhabitants of Calcutta: That

That ſince the confinement of Marajah Nundocomar, he has been often told by natives, that it was a general report through Calcutta, that the Rajah would be releaſed from confinement by the orders of the General, who was his friend. And this deponent further ſaith, That he has found it very difficult to convince the natives to the contrary of this report.

HERCULES DURHAM."

Sworn before me at Fort William in Bengal, 19th May 1775.

E. IMPEY.

(A true Copy.)

Copy of a paper in the Secretary of State's Office, which accompanied the copy of a letter ſigned E. Impey, dated Calcutta, 20th January 1776, received from the Eaſt India Houſe the 19th Auguſt following.

(Signed) WILLM POLLOCK, firſt clerk in the Secretary of State's Office for the home department.

Theſe affidavits were tranſmitted to the Secretary of State, incloſed in a letter of the 20th of January 1776, and are therein referred to by the letters A and B, though that letter forms No. 28 in the references to No. 3 of the Appendix; and though all the other vouchers referred to in that letter, except one which I ſhall have occaſion to produce

Committee to which Touchett's petition was referred.

produce in my anſwer to the third charge, are inſerted in that Appendix, theſe affidavits, by ſome accident, have been omitted, I now ſupply that defect by copies which I have procured from the office of the Secretary of State.

Theſe are no ſecret affidavits; they were communicated by me to the Governor General and Council, before they were ſent to England.

Theſe opinions, both of the natives and of the priſoner, were, no doubt, equally injurious to thoſe gentlemen.

Though theſe incidents ought not to have operated againſt the priſoner, had his caſe been ſuch as would have afforded grounds for recommending him to mercy, and though they did not operate againſt him, yet of themſelves they could be no ingredients for reſpiting the ſentence. The Judges thought the execution of the convict, under all circumſtances, neceſſary to the vindication of public juſtice, inſulted by the publicity of the perjury by which the defence had been attempted to be proved, and to the very eſſence of the reputation of the Court, againſt the imputation of timidity, dependence, and corruption. It was neceſſary to the obtaining the confidence of the natives at the firſt inſtitution of a new Court, not only that it ſhould be, but that

it ſhould appear to be, incorrupt and independent.

That no poſſible aggravation might be wanted, it is finally ſtated, that "it was my duty to be counſel for the priſoner, but that I wilfully failed altogether in that duty, and became the *agent* and *advocate* for the proſecution, and pronounced a charge, with a moſt *groſs and ſcandalous partiality*, dwelling on points favourable to the proſecution, and paſſing lightly over ſuch as were favourable to the priſoner, and manifeſting, through the whole proceedings, *an ardent wiſh, and determined purpoſe, to effect the death of the priſoner.*" "That I barely touched on ſtrong and valid objections to the competency and credit of the witneſſes for the proſecution, and *falſely and knowingly* repreſented them as credible and unimpeached."

The having wilfully failed in the duty of aſſiſting the priſoner, and having been the *agent of the proſecutor* throughout the trial, and in ſumming up the evidence, I feel affecting my moral character to the very root. Conſcious as I am how much it was my intention to favour the priſoner in every thing which was conſiſtent with juſtice; wiſhing, as I did, that the facts would turn out favourable for an acquittal; aided as that wiſh was by the knowledge of the reſponſibility of my ſituation, both

before God and man, and by the certainty, from the then temper of the Council, that there were thoſe who would tranſmit to England the worſt repreſentations that colouring could expreſs; it has, I own, appeared moſt wonderful to me, that the execution of my purpoſe has ſo far differed from my intentions, that any ingenuity could form an objection to my perſonal conduct as bearing hard on the priſoner.

What ſtatement of the trial the gentleman who drew this article, is in poſſeſſion of, or from whom he received his information, will appear in the evidence which will be laid before the Houſe: Candour would not ſuffer ſuch a charge to be exhibited without ſome evidence to ſupport it: What it can be, I am totally ignorant. I myſelf know of no other evidence of what paſſed at the trial, or of the charge to the jury, than the account of it printed by Cadell. The copy ſent for printing was reviſed by all the judges, and an authority for the printing it was ſigned by all the judges, Sir Robert Chambers included. This voluntary act is another proof of his full concurrence. That account I believe to be authentic, except where there are ſome literal miſtakes.

I do not underſtand it to be my duty to act as a fee'd advocate for the priſoner; and to labour his acquittal, at the expence of juſtice.

juſtice. I conceive the meaning of the expreſſion, that it is the duty of a judge to be council for a priſoner, to be this—That it is his duty not to ſuffer any undue advantage to be taken of him; to give him every advantage the law will allow; to ſee that the law is not ſtrained againſt him; that no improper evidence is admitted againſt him; and to lay before the jury every obſervation that can with juſtice be made in his favour. To ſhew that I did not decline, but ſcrupulouſly diſcharged, that duty according to my ſenſe of it, I muſt beg leave to read ſuch extracts from the trial as I eſteem a full anſwer to this moſt horrid charge.

Extracts from the printed Trial.

Counſel for priſoner. I admit the Maha Rajah had the letter. Page 10. The truth of moſt of theſe paſſages is confirmed by Farrer; vide his evidence, App. III. No. 4.

Counſel for crown. Read the letter.

Court. Go through with your evidence.

Counſel for the crown. The letter does not ſay that the ſeal was received; but it acknowledges the receipt of the letter, and the ſeal was incloſed in the letter.

Court to priſoner's council. Do you ſee the conſequence? Do you mean to admit it?

Counſel. I have duly weighed what your lordſhips ſaid, and therefore will not admit it.

Printed trial. Page 16. *Court.* The books muſt be produced, as we cannot receive parole evidence of their contents.

Page 20. *Queſt.* Did Bollakey Doſs make any will?

Anſ. He left a power of attorney.

Court. The probate is the only proper evidence.

Page 27. [The priſoner deſired he might aſk Rajah Nobkiſſen a queſtion.]

Court. Let him conſult his counſel before he aſks the queſtion. [The queſtion being overheard by Nobkiſſen, he ſaid, Maha Raja Nundocomar had better not aſk me that queſtion; upon which Nundomar declined aſking the queſtion.]

Court to the jury. You muſt receive no prejudice from this; you muſt forget the converſation, and judge only by the evidence.

The jury ſaid they would only judge by the evidence.

Page 35. *Court.* This account is properly no evidence; It is not delivered in by an executor, and very little would ariſe from it if it had been ſigned by an executor; for as the

the money had certainly been paid, whether properly or not, the executor would have brought it into his account, otherwiſe he would himſelf have been chargeable with it.

[He, the witneſs, proves a ſeal of Bollakey Doſs to three envelopes which had been opened, and which the counſel for the priſoner offered in evidence, but was overruled by the court, there being no ſignature from Bollakey Doſs to the papers incloſed, nor any proof whoſe hand-writing they were, or that thoſe papers were originally incloſed in the envelopes; becauſe, if they were allowed to be given in evidence, they might impoſe what papers they pleaſed on the court, by putting them into the envelopes. The jury having deſired to look at the papers, the foreman obſerved it was an inſult to their underſtanding to offer thoſe papers in evidence as papers of the date which they purported to be of.] Printed trial, Page 59.

[The counſel for the priſoner ſpeaking in a warm and improper manner to the jury:]

Court. This is a manner in which the jury ought not and ſhall not be ſpoke to. The priſoner ought not to ſuffer from the intemperance of his advocate: You, gentlemen of the jury, ought not to receive any

any prejudice to the priſoner on that account, nor from the papers themſelves, which, not having been admitted in evidence, you ſhould not have ſeen; and, having ſeen, whatſoever obſervation you have made, you ſhould forget: It is from what is given in evidence only you are to determine.

Jury. We will receive no prejudice from it; we ſhall conſider it the ſame as if we had not ſeen it; we ſhall only determine by the evidence produced.

Printed t ial, Page 81. [The counſel for the priſoner inſiſted upon giving parole evidence of the contents of the account given to her. Mr. Juſtice Le Maiſtre objected that ſuch evidence could not be admitted, as no proof was produced to ſhew that any endeavours were made for the attendance of the widow, or the original papers in her poſſeſſion; to which objection the court acceded, but allowed the evidence in favour of the priſoner.]

Page 92. Memorandum. Two of the witneſſes, Ramnaut and Bulgovind, that were on the back of the indictment, not having been called for by the proſecutor, and it having been obſerved by the court, and the counſel for the priſoner being told that they might call for them, the counſel for the priſoner ſaid he was well acquainted with, and could give the reaſons why the counſel for the proſe-

profecution had not called them, and that he ſhould immediately call them.

[The counſel for the priſoner informed the court that he had ſomething to ſay.] Printed trial, Page 107.

Court. By all means let us hear it: But would it not be more proper for you to aſk him what it is, that you may judge what he has to ſay?

Counſel. I know it is not improper.

Court. What is it?

Anſ. The Maha Rajah deſires that Kiſſen Juan Doſs may be aſked further as to the Curra Nama.

Court. Has he any thing elſe to ſay?

Anſ. Nothing elſe.

Court. Do you chuſe to aſk the queſtion, or that Maha Rajah ſhould aſk them himſelf? You had better aſk them.

After having read the indictment and the evidence, and obſerved to what counts the jury were to apply their attention: In the charge my firſt obſervation was—"That by the laws of England the counſel for priſoners tried for felony are not allowed to obſerve on evidence to the jury, but are to confine themſelves to matter of law; but I told them that if they would deliver to me any obſervations they wiſhed to be made to the jury, I would ſubmit them to you Page 109.

you and give them full force, by which means they will have the ſame advantage as they would have had in a civil caſe. Mr. Farrer has delivered me the following obſervations, which I read to you in his own words, and deſire you to give them the full weight which, on conſideration, you may think they deſerve."

I then read Mr. Farrer's obſervations from his notes.

" Mr. Brix (the other counſel for the priſoner) has communicated to me the following obſervations."

I then read the obſervations of the other advocate in like manner.

Vide the *notes of* Meſſrs. Farrer and Brix, App. II. No. 7, 8.

For the fidelity with which I read theſe obſervations, and for the authenticity of the ſeveral vouchers I have or ſhall read, or allude to, I beg to refer to the originals in poſſeſſion of an Honourable Member * of the Houſe, who will be ready to ſhew them to any gentleman willing to inſpect them.

For the juſtice and candour with which I commented on them, I muſt appeal to the trial, as the quotation is too long to trouble the Houſe with.

Printed trial, *Page 112.*

In obſerving on the evidence of Nobkiſſen, I ſaid " I muſt again caution you againſt receiving any impreſſion unfavourable to the priſoner from the heſitation, doubts, or exclamations of this witneſs, or

from any other circumſtance, except what he actually depoſed to."

In going through the evidence for the crown, the only remarks in ſupport or diſcredit of the witneſſes are theſe: Printed trial, Page 113.

"The character of Cummaul O Deen was inquired into from Coja Petruſe. You have heard his anſwer. Subornation of perjury was endeavoured to be fixed on him by the evidence of Huſſein Alli; but as to Cawda Newas nothing was proved. As to the ſeal-cutter, his converſation with him ſeems rather to ſtrengthen than impeach his credit."

Attempts were made by Monohun, and other witneſſes, to impeach Mohunperſaud by particular facts of attempts to ſuborn and by general character, you muſt judge how far they have ſucceeded; they totally failed in the ſame attempts as to Cummaul O Dean." Page 117.

My only general remark on the witneſſes for the priſoner immediately follows:

"It is to be obſerved likewiſe, that no perſon has been called to impeach the witneſſes brought by the defendant."

I cannot obtrude on the patience of the Houſe ſo far as to detail my obſervations on particular circumſtances, or enter into a diſcuſſion of the propriety of them, that I muſt of neceſſity leave to the candour of thoſe who will take the pains of examining them.

The

The concluſion of my obſervation was this:

Printed trial, Page 117. "There are many obſervations to be made in favour of the priſoner, and I am ſure your humanity will prompt you to enforce them, as far as they will bear.

"I before ſaid that the defence, if believed, was a full refutation of the charge; it is not only ſo, but it muſt fix an indelible mark of infamy on the proſecutor.

"There are four poſitive witneſſes of the actual execution of the bond by Bollakey Doſs. In oppoſition to Comaul's evidence, there are as many to prove that the witneſs atteſting was another Comaul.

"Matheb Roy was not mentioned by the evidence for the Crown. Four witneſſes ſaw him atteſt it, and two other witneſſes (one of them his brother) likewiſe prove that there was ſuch a perſon.

"In oppoſition to Rajah Nobkiſſen and Pattock, who ſwear the name Sillabut to the bond is not of Sillabut's hand writing, four witneſſes ſwear poſitively to the having ſeen him write it.

"Much depends in this proſecution on the evidence of Mohun Perſaud; you muſt judge how far his credit has been ſhaken; moſt of you know him; you muſt determine how far he deſerves credit, and how probable it is that he would, through malice, or any other corrupt motive, accuſe an innocent perſon of a capital crime. If you think

think him capable of it, you ſhould not give the leaſt attention to his evidence. He ſwore poſitively to the bond produced by Maha Rajah Nundocomar, and for which the Company's bonds were given, being the ſame bond that was produced in evidence; he ſaid he knew it from circumſtances, but did not explain what thoſe circumſtances were. This I mention as going to his credit only; for the whole defence proceeds on identifying this bond, and proving it a true one.

" You will judge how far he is contradicted by Kiſſen Juandoſs as to the army books, and which of the two are to be believed. An imputation was attempted to be thrown on Mohun Perſaud for preventing Gunga Biſſen from attending, who was ſaid to be able and willing to appear as a witneſs; but that has been cleared up to the full ſatisfaction of us, and I do not doubt to your ſatisfaction likewiſe. He could not be called by the proſecutor on account of his intereſt, and no prejudice ſhould accrue to the priſoner for not calling him for the ſame reaſon.

Viſier is a falſe print in the Trial.

" The council for the priſoner having urged the hardſhip of this proſecution being brought at this diſtance of time, you have heard, when Mohun Perſaud firſt ſuſpected the forgery, and when, by Comaul's declaration,

tion, he had reaſon to be confirmed in the ſuſpicion.

" You have heard, when the papers were delivered out of Court, if there has been any deſigned delay, and you think Mohun Perſaud had it in his power to carry on an effectual proſecution before he has, it is a great hardſhip to Maha Rajah Nundocomar, eſpecially as the witneſſes to the bond are all dead; and you ought to conſider this among the other circumſtances which are in his favour; though to be ſure this hardſhip is much diminiſhed, as there were ſo many witneſſes ſtill alive who were preſent at the execution of it.

" There are two pieces of written evidence relied on by the priſoner; one, the entry in the book from the Kurra Nama, on account of the agreement of the ſums; and you will find that the ſums, ſaid by Kiſſen Juan Doſs to be contained in the Kurra Nama, viz.

Durbar expences,	6 : 000 : Ro.
Bond, batta, and premium,	69 : 630 : 7
Do amount to the ſum of	75 : 630 : 7

which is the ſum in the entry.

" The other is the account delivered by Mohun Perſaud and Pudmohun Doſs, ſubſequent to the account delivered in by Pudmohun

mohun Doſs, in which Pudmohun Doſs had taken credit for this ſum; and the ſubſequent account likewiſe contains it. I do not think much can be drawn from this; for the ſums had, as Mohun Perſaud ſays, been paid, and therefore they certainly would take credit for them, to prevent their being charged with them. This they would do, were the monies properly or improperly paid."

"There is *certainly great improbability* that a man of Maha Rajah Nundocomar's rank, and fortune, ſhould be guilty of ſo mean an offence for ſo ſmall a ſum of money.

"*It is more improbable*, as he is proved to have patronized and behaved with great kindneſs to Bollakey Doſs in his life-time, that he ſhould immediately, after his deceaſe, plunder the widow and relations of his friend."

"There does likewiſe *appear to have been a ſuit in the Adaulet*, which muſt have been a civil ſuit; but it does not indeed appear that Mohun Perſaud was a party; and indeed for what reaſon I know not, *neither ſide* have thought fit to produce the proceedings."

"I have made ſuch obſervations on the evidence as the bulk of it, and the few minutes I had to recollect myſelf, would allow me to make."

" You will conſider the whole with that candour, impartiality, and attention, which has been ſo viſible in every one of you during the many days you have ſat on this cauſe. *You will conſider on which ſide the weight of evidence lies; always remembering, that in criminal, and more eſpecially in capital caſes, you muſt not weigh the evidence in golden ſcales; there ought to be a greater difference of weight in the oppoſite ſcale before you find the priſoner guilty. In caſes of property, the ſtake on each ſide is equal, and the leaſt preponderance of evidence ought to turn the ſcale; but in a capital caſe, as there can be nothing of equal value to life, you ſhould be thoroughly convinced that there does not remain a poſſibility of innocence, before you give your verdict againſt the priſoner.*"

" The nature of the defence in this caſe is ſuch, that, if it is not believed, it muſt prove fatal to the party; for if you do not believe it, you determine that it is ſupported by perjury, and that of an aggravated kind, as it attempts to fix perjury, and ſubornation of perjury, on the proſecutor and his witneſſes."

" You will again and again conſider the *character of the proſecutor and his witneſſes, the diſtance of the proſecution from the time the offence is ſuppoſed to be committed, the proof and nature of the con-*

confeſſions ſaid to be made by the priſoner, his rank and fortune. Theſe are all reaſons to prevent your giving a haſty and precipitate belief to the charge brought againſt him; but if you believe the facts ſworn againſt him to be true, they cannot alter the nature of the facts themſelves; your ſenſe of juſtice, and your own feelings, will not allow you to convict the priſoner, unleſs your conſciences are fully ſatisfied beyond all doubt of his guilt; if they are not, you will bring in that verdict, which, from the dictates of humanity, you will be inclined to give."

"But ſhould your conſciences be thoroughly convinced of his being guilty, no conſideration, I am ſure, will prevail on you not to give a verdict according to your oaths."

I now moſt anxiouſly requeſt, that before any credit be given to theſe extracts, that the members of the Houſe (but how can I expect they will undertake ſuch a work?) will carefully ſcrutinize the trial, and conſcientiouſly examine whether there be any the minuteſt circumſtance which can juſtify, or even give a ſemblance of truth, to this moſt cruel imputation. Nay, I will go further, and boldly aſk, whether the whole tenor of my conduct does not evince

to every mind open to candor, that the ſentiments in my breaſt were diametrically oppoſite to thoſe that are laid to my charge? I claim no merit from performing that part of my duty; but painful and humiliating to the laſt degree it is, to be put under the neceſſity to prove in evidence what are no more than ordinary acts of humanity, that I may gain the credit of being a man, leſt I may be deteſted as a monſter. I feel, I tire the Houſe; my anxiety to obviate this horrid imputation, I hope, will be admitted as an excuſe.

As far as the charge of partiality is general, it is out of my power to give it a more particular anſwer.

Two inſtances are afterwards ſpecified; firſt, in the caſe of Kiſſen Juan Doſs, a witneſs for the priſoner, whom (it is ſaid) "I laboured at great length with unwearied pains, ingenuity, and art, to diſcredit, on ſlight, trivial, and inſufficient grounds."

Second, in the caſe of a witneſs for the proſecution, who is not named, in whom (it is ſaid) "I had perſonally witneſſed before the proſecution, falſity, prevarication, venality, and infamy in former proceedings againſt the priſoner; and after the trial, while the priſoner lay under ſentence of death, in other inſtances, and by ſtronger proofs in other proceedings; and that from

the declaration and confeſſion of the witneſs, he was a perſon of infamous character, and not to be believed."

"That this raiſed a ſtrong preſumption of the innocence of the criminal, or at leaſt threw great doubts on his guilt."

The firſt part is applied to the trial; the ſecond to the refuſal of reſpite.

The name of the ſecond witneſs not being brought forward, I have nothing to lead me to diſcover which witneſs is alluded to. I have carefully read the trial, and every note of proceedings which I am in poſſeſſion of, and can by no means identify the witneſs, or find any perſon to whom the obſervations can apply; I am therefore at a loſs how to obviate that part of the charge. This however is certain, that the conviction of the priſoner did not depend on the teſtimony of any one witneſs. Let the teſtimony of any witneſs, except the proſecutor, be diſcredited, I think I may affirm that there will ſtill remain evidence unimpeached, abundantly more than ſufficient to maintain the conviction.

As to the caſe of Kiſſen Juan Doſs, the material witneſs for the priſoner, whoſe teſtimony is ſuppoſed to have been overruled on frivolous pretences, his evidence would have been material to the priſoner, had he proved to the ſatisfaction of the jury that the proſecutor was privy to certain en-

tries in a book of accounts called a Kurra-namah. Though examined particularly to this, he never diſcloſed the circumſtance, notwithſtanding he knew the materiality of it; nor had the counſel for the priſoner ever examined to it, nor in the end was he called for that purpoſe by the counſel.

On the laſt day of the trial he is thus introduced.

" [The counſel for the priſoner informed the court that the priſoner had ſomething to ſay.]"

Printed trial, Pages 107, 108.

Court. " By all means, let us hear it; but would it not be more proper for you to aſk him what it is, that you may judge of what he has to ſay?

Counſel. " I know it is not improper.

Court. " What is it?

Anſ. " The Maha Rajah deſires that Kiſſen Juan Doſs may be aſked further as to the Curra Nama.

Court. " Has he any thing elſe to ſay?

Anſ. " Nothing elſe.

Court. " Do you chuſe to aſk the queſtions, or that Maha Rajah ſhould aſk them himſelf? You had better aſk them."

Being examined, his evidence was this:

Queſt. " Did you ever explain the Curra Nama you ſpoke of to Mohun Perſaud?

Anſ.

Anſ. " Mohun Perſaud went in his palenkine to the houſe of Maha Rajah, and I followed after. I do not know what converſation paſſed between Maha Rajah and Mohun Perſaud. Maha Rajah ſent for the Curra Nama to his own houſe; Mohun Perſaud was preſent when I read it. The Curra Nama was afterwards ſhewn to Pudmohun Doſs.

Queſt. " When you ſhewed the Curra Nama to Mohun Perſaud, what did he ſay?

Anſ. " He ſaid nothing.

Queſt. " Did he make no objection?

Anſ. " He did not ſay a word of it in my hearing; he only ſaid, " the ſpace of ſix months is written."

Queſt. " Did Mohun Perſaud ſee Bollakey Doſs's name written to it?

Anſ. " He did.

Queſt. " Why did Mohun Perſaud deſire you to go to Maha Rajah?

Anſ. " He deſired me to go along with him.

Queſt. " Why?

Anſ. " He did not tell me any thing particular. I explained to him the Nagree paper.

Croſs Examination.

Queſt. " What was the ſum mentioned in the Curra Nama?

Anſ. " I ſaw a promiſe in favour of the governor and Mr. Pearſon; likewiſe an account of a bond for jewels; and laſtly, for 35,000 rupees on account of teeps. To the article of the bond for jewels, no ſum was ſpecified: There were ſums ſpecified to the Maha Rajah and the governor, but I do not recollect what they were.

Queſt. " Is the Curra Nama, you now mention, the ſame you made up the books from?

Anſ. " It was the ſame; but I did not extract the account: Pudmohun Doſs did.

Queſt. " Who produced the Curra Nama—Mohun Perſaud or Maha Rajah?

Anſ. " Maha Rajah ſent for it from his houſe: There was another Perſian letter.

Queſt. " Did you point out to Mohun Perſaud the name of Bollakey Doſs on that paper?

Anſ. " Mohun Perſaud took the paper in his own hand, and read it.

Queſt. " Was this the firſt time you had ſeen the paper?

Anſ. " Mohun Perſaud took me to the houſe; Pudmohun Doſs ſhewed me it before.

Queſt. " Why did you not mention this before?

Anſ.

Anſ. " Mohun Perſaud forbid me to mention it: He has given me no victuals for theſe four years.

Queſt. " Did you then remember it?

Anſ. " Mohun Perſaud had forbid me to tell.

Queſt. " As you were ſworn to tell the whole truth, and have mentioned this Curra Nama ſo often, why did you not mention this circumſtance before?

Anſ. " If nobody aſked me about it, why ſhould I tell the bad actions of Mohun Perſaud?

Court. " Becauſe it is to ſave the life of an innocent perſon.

Anſ. " Now you aſk me the queſtion, I recollect it: I did not before.

Queſt. " Who have you converſed with ſince laſt night?

Anſ. " I went down to examine the papers, came here, went home, and did not ſee or converſe with any one laſt night.

Queſt. " Have you ſpoke to any body to-day?

Anſ. " I went to the Houſe of Mr. Jarrett to converſe with a Nagree Mohurer.

Queſt. " Were there any other people at Mr. Jarrett's?

Anſ. " There were ten or twelve people.

Queſt.

Queſt. " Did you converſe with any of them?

Anſ. " I did not: I converſed with my own man.

Queſt. " Did you ſpeak to your own man about the Curra Nama?

Anſ. " I did not ſpeak to any one: I ſpoke to nobody but the court.

Queſt. " Did you not ſend a written account to Maha Rajah of every thing that you knew?

Anſ. " I did write a Perſian letter to Maha Rajah: Maha Rajah wrote a Perſian letter to me: Having read it, I wrote him an account of books and accounts, and a few words of circumſtances that happened before Bollakey Doſs's death.

Queſt. " Did you in that paper relate this circumſtance?

Anſ. " So far as related to Pudmohun Doſs I did.

Queſt. " Did you write that paper for the purpoſe of acquainting the Maha Rajah of all you knew?

Anſ. " I did inform him of all the circumſtances but this.

Queſt. " Why did you not inform him of this?

Anſ. " Mohun Perſand deſired me to ſay the words were eraſed and ſcratched out,

out, and therefore I did not ſay any thing about it.

Queſt. " When did Mohun Perſaud deſire you to ſay this?

Anſ. " He told me a great while ago, before Balgovind, of all the circumſtances.

Queſt. " Did you mention in your letter, that you wrote to Maha Rajah what Mohun Perſaud had ſaid to you?

Anſ. " No.

Queſt. " Why did you not, can you tell any honeſt reaſon?

Anſ. " Becauſe I am a ſervant to Gungabiſſen, and Mohun Perſaud is his attorney, and Gungabiſſen lives with Mohun Perſaud.

Queſt. " Did you ſhew Mohun Perſaud the letter you wrote to Maha Rajah?

Anſ. " I did not; I only wrote to Maha Rajah to acquaint him with the accounts.

Queſt. " Did you write nothing but concerning accounts?

Anſ. " I muſt own the truth; I did not write to Maha Rajah any thing about this circumſtance; Mohun Perſaud is a great man, he told me not.

Queſt. " Was not Maha Rajah a greater man than Mohun Perſaud?

Anſ. " I was much afraid of Mohun Perſaud.

Queſt.

Queſt. " Did you recollect this circumſtance at the time you wrote this letter?

Anſ. " I did not.

Queſt. " If you had recollected it, would you have wrote it?

Anſ. " I certainly ſhould.

Queſt. " Then your being afraid of Mohun Perſaud was not the reaſon why you did not write it?

Anſ. " I am much afraid of Mohun Perſaud.

(Queſtion repeated.)

Anſ. " I was afraid of Mohun Perſaud.

(Queſtion again repeated.)

Anſ. " I did not recollect it.

Queſt. " The being afraid of Mohun Perſaud, and the not recollecting it, are two different reaſons; both of them cannot be true: Was it becauſe you was afraid of Mohun Perſaud, or becauſe you did not recollect it?

(No anſwer could be procured.)

Queſt. " When did Mohun Perſaud firſt bid you mention it?

Anſ. " He took a written paper from me; in this written paper he made me write ten words I did not know, and leave out ten words I did know.

Queſt. " Do you mean that Mohun Perſaud occaſioned you to write to Maha Rajah?

Anſ.

Anſ. " Mohun Perſaud and I were on bad terms when the affair was in the Adawlet. I gave evidence in favour of Maha Rajah: The complaint was, that Maha Rajah had taken money oppreſſively; I gave evidence that he did not.

Queſt. " Was you at that time afraid of Mohun Perſaud?

Anſ. " No; I was not afraid at that time.

Queſt. " Were you afraid of Mohun Perſaud when you ſaid that the books of the army were ſeparated from Bollakey Doſs's other papers by his order?

Anſ. " Mohun Perſaud forbid me to tell I am afraid of him.

Queſt. " When was it Mohun Perſaud told you not to mention it?

Anſ. " I believe a year and half or two years ago. In the late proſecution Maha Rajah told me, if I would write out a paper, I ſhould have my wages; I did write out a paper, I do not know the particulars.

Queſt. " Did that paper contain all you know of this tranſaction?

Anſ. " I wrote it out, and I copied it.

Queſt. " Did Mohun Perſaud tell you what to write, or did you tell him?

Anſ. " Mohun Perſaud wrote it out firſt; he uſed to tell me when I wrote it out,

out, he would pay me the wages: It remained ten or fourteen days on the bed of Gungabiſſen.

Queſt. "Did Mohun Perſaud at any other time, except the time laſt mentioned (about two years, or a year and a half ago), deſire you not to mention it?

Anſ. "In the paper he gave me to copy this is not mentioned, which I obſerved could not add any thing to it.

(Queſtion repeated.)

Anſ. "No; about two years, or two years and a half ago, he told me two or three times, but never told me ſince I put him in mind I knew another circumſtance.

Queſt. "Did he ever mention it but theſe times?

Anſ. "No.

Queſt. "When did you receive the letter from Maha Rajah?

Anſ. "It is eight, ten, or fifteen days ſince I got Maha Rajah's letter."

This is tedious, and without a knowledge of the reſt of the trial, I fear almoſt unintelligible.

Printed trial, page 115. My obſervations made to the jury on this evidence, are in theſe words: "Kiſſen Juan Doſs delivered all his evidence, till this morning, with ſuch ſimplicity, and with ſuch

ſuch an air of candor and truth, that I gave full aſſent to every thing he ſaid, and I am extremely chagrined that there has ariſen any cauſe to ſuſpect any part of his evidence. He mentioned a paper which he calls a Curra Nama, in which the whole of this tranſaction was written, and which was acknowledged and ſigned by Bollakey Doſs, though the entry made in the book after the death of Bollakey Doſs, by order of Pudmohun Doſs, and purporting to be in the lifetime of Bollakey Doſs, carried marks of ſuſpicion with it; yet I own Kiſſen Juan Doſs had ſo completely gained my confidence, that I gave implicit credit to him. Many attempts were made to eſtabliſh it in evidence, which failed of legal proof; but as I thought ſo well of Kiſſen Juan Doſs, and as it would have been extremely hard, if ſuch a paper had exiſted, that the priſoner ſhould be deprived of the benefit of it, I ſaid (*having firſt aſked the conſent of my brethren*) that, though it was not ſtrictly evidence, I would leave it to you to give ſuch weight to it as you thought it deſerved. I ſtill leave it to you; and if you believe that ſuch a paper ever exiſted, it would be the higheſt injuſtice not to acquit the priſoner."

" Attempts were made to bring this to the knowledge of Mohun Perſaud; and if it did exiſt, and was in the knowledge of

Mohun Perſaud, this proſecution is moſt horrid and diabolical. Mohun Perſaud is guilty of a crime, in my apprehenſion, of a nature more horrid than murder."

"But I own what paſſed after the counſel for the priſoner had cloſed his evidence, has very much weakened the confidence I had in Kiſſen Juan Doſs. The counſel did not deſire that he ſhould be called, aſſigning (as is uſual) for their reaſon, that they had forgot to examine to any particular point which was contained in their inſtructions; but we are informed "that the Maha Rajah had ſomething to ſay:" All that he ſays is, That he deſires Kiſſen Juan Doſs may be further interrogated as to the Curra Nama. The queſtion then is immediately put to him, Whether he ever explained the Curra Nama to Mohun Perſaud? and then he gives the account of Mohun Perſaud's having ſeen it at Maha Rajah Nundocomar's."

"When he is examined to the reaſon of his not having told it before, all that ſimplicity, all that air of truth and candor, which we had remarked in him, inſtantly vaniſhed; his looks were caſt down, his tongue faultered, he prevaricates, he contradicts himſelf, he did not ſeem the ſame man; "he did not tell becauſe he was not aſked; he did not mention it to Maha Rajah Nundocomar in his letter, becauſe he was afraid of