

the 17th January, an innovation into the mode of trial of the native troops: I am also deemed highly culpable for sending this order to the first brigade. I will beg leave to quote the paragraph.

“ The President has also communicated to us the orders you caused to be issued to all the brigades on the 17th ultimo, whereby the black troops are to be subjected to the British laws. Although we earnestly wish to effect a measure which must tend to the better regulation of our army, yet, where the life of every one of them is become forfeitable by laws he is quite a stranger to, we think some time is requisite to instruct them with the nature and consequences of them, ere it can be expected he will tamely submit to such an innovation: and as by far the greatest part of our military force is composed of those very persons who are thus compelled to our mode of government, the consequences of a refractory behaviour must be fatal, and all our endeavours hereafter to effect so good a purpose may be frustrated.

“ We therefore not only deem you highly culpable, in issuing a general order of such importance throughout the whole body of our forces, without previously obtaining our permission, or that of the President, but in transmitting the same down to the first brigade, acting under the immediate orders of the presidency. We must tell you, that had the Select Committee, for such your conduct, dismissed you the service, they would have but done their duty; but as they are willing to think that you did not premeditatedly design an insult upon their or the President's authority, they shall at present content themselves with directing you immediately to revoke the order issued on the 17th ultimo, in the same public manner as it was given out, and with assuring you that a like behaviour on any future occasion will meet with their highest resentment.”

If I stood in need of exculpation, the authority which the council delegated to me, under their hands, and the seal of the Company, dated 30th March 1767, empowering me to appoint general court martials, and

to carry the sentences into execution, the 22d article of the 11th section, and the 5th article of the 15th section of the article of war, would be ample justification; for, according to act of parliament, I am thereby fully empowered to appoint general court martials for the trial of all offences, not only on officers and soldiers, but even in the followers of the army, and causing sentences to be carried into execution; and surely, gentlemen, there cannot be the least impropriety in publishing to all under my command that I am resolved to enforce the act of parliament.

But I mean to shew, that so far have I been from introducing, by this general order, the smallest innovation into the mode of trial of the native troops, that ever since I first received the command of the army in 1765, all offences committed by native troops have been tried by general court martials, and sentences adjudged according to our articles of war; and in the following extracts from the general orderly book, signed by a public officer, five original proceedings of Sepoy general court martials, and an extract of a letter from Colonel Peach, commanding officer of the first brigade, dated the 28th January 1767, are the most incontestible evidence of my assertion.

Extracts from General Orders.

October 12th	—	—	—	1765
15th	—	—	—	1765
June 12th	—	—	—	1766
18th	—	—	—	1766
September 18th	—	—	—	1766
June 1st	—	—	—	1767
October 9th	—	—	—	1767
17th	—	—	—	1767
27th	—	—	—	1767
November 4th	—	—	—	1767

No 1. Original proceedings of a Sepoy general court martial, held near Allahabad, June 2d 1767.

2. D°	—	—	—	September 25th 1767
3. D°	—	—	—	October 13th 1767
4. D°	—	—	—	October 28th 1767
5. D°	—	—	—	December 21st 1767.

All which papers are now inclosed to the Select Committee, by which they will perceive that sentences have been adjudged according to the rules and articles of war, and those sentences been frequently carried into execution.

From hence, gentlemen, it is clearly and incontrovertibly evident, that I have not been guilty of the smallest innovation whatsoever. But it may perhaps be asked, since such has been the established mode of trial, where was the necessity for issuing out this order? There was a necessity—Justice and humanity required it. To set this in the clearest point of view, I must trespass on your patience.

And first it may be necessary to explain the mode which is observed in the trial of offences committed by the native troops. The Court is composed of a president and twelve members, who are duly sworn, agreeable to their different religions, to pass sentence according to justice and equity. The president is always the native commandant of a Sepoy battalion, and the members are either Subadars or Jemidars, of each an equal number. An European subaltern officer superintends. The native troops are tried by their own native officers, but they are tried by British laws; sentences are adjudged agreeable to those articles of war by which we try offenders amongst the European troops, and these sentences are carried into execution in the very same manner as if they were British subjects. This is the established mode of trial, a mode that has been happily introduced amongst our native troops, than which nothing could have so effectually contributed to promote that good order, discipline, and subordination, which has prevailed amongst the native troops throughout the brigades.

But I have frequently had occasion to observe, that many barbarous and inhuman murders were committed by our Sepoys on their women, from motives of jealousy. The general orders of the 11th June 1766 pronounced the sentence of death on Boswan Sing and Dangan Sing, Sepoys in the 18th battalion, for being guilty of murder. These men killed the wife on suspicion of infidelity; the sister for not discovering the wife's

wife's infidelity, and a female servant for being accessory to the intrigue. Although sentence of death was pronounced on these prisoners, yet I reflected, that acts which appeared to us so very barbarous, these unhappy men, from difference of religion and education, doubtless judged necessary to their own honour, and I believe was the consequence of their peculiar principles. I hesitated, and then suspended the execution; for, as I was soon to meet Lord Clive, I determined to hear his sentiments. At Chuprah he perused the proceedings of this Sepoy court martial; he agreed with me in opinion, that some attention was due to the different principles by which the native troops were actuated, and yet we both saw the absolute necessity of preventing individuals in our army from acting so diametrically opposite to the laws of humanity. However, Lord Clive left it to me to carry the sentences into execution or not, as upon further examination I should judge necessary. When the second brigade was recalled from Allahabad, these two Sepoys were brought to Bankipoor, prisoners under sentence of death. You will perceive by the extracts of the general orders, that they were condemned in June. I own I was much at a loss how to act; I could not relieve them, as they acknowledged the murder; and I felt a repugnance within myself to order their execution, because I knew that, amongst their cast, it was not considered a very great crime to destroy a woman that had dishonoured her family. They remained under sentence of death until October; an European was then to be shot for desertion: I thought this a proper opportunity to support the discipline established in the army, by carrying into execution the decree of a Sepoy general court martial, and at the same time to shew some lenity.—The Sepoy who actually committed the murders was executed, the other received his pardon, and was sent out of our provinces. All the troops, both black and white, were present at the execution of the Europeans and Sepoy.

A havildar of the 19th battalion was lately tried for the murder of a woman whom he formerly kept.—The murder was plainly proved in the prisoner; but through the

the ignorance or inattention of the superintending officer, the sentence adjudged by the court martial was contrary to our laws—cutting off his right hand, &c. I directed the court to revise the sentence; but the sentence from revision was almost as improper; I was therefore under the necessity of granting a pardon to the prisoner, although he had confessed being guilty of the murder.

The proceedings of this court martial recalled to my remembrance the dilemma I had formerly experienced concerning those sepoys who were condemned for murdering their women: justice required that the native troops should not be condemned to death by laws of which perhaps many were ignorant; justice required that they should be informed what punishment would be inflicted for such offences, since the punishment would be inflicted whether they were previously acquainted or not. Humanity required that the certainty of such punishment being inflicted should be promulgated to the native troops, that since no other motives could restrain them from committing such barbarous and inhuman acts, possibly the dread of ignominy, and fear of death, might produce a happy effect. To these considerations I will add, that the good order, exact discipline, and due subordination in the army, together with my own peace of mind, required me to give this previous notice. A sepoy condemned for the wilful murder of his wife or mistress it would be wrong to pardon, nor could I permit the sentence to be carried into execution without feeling that repugnance which every man of honour and conscience ought to feel, when he reflected that the life of a fellow-creature became forfeited by laws of which perhaps he might be ignorant, although his ignorance would not save him from the execution of the sentence. After this promulgation, should any sepoy be condemned to die for the murder of his woman, I have discharged my duty by pointing out the consequence of such an inhuman action; and I should sign a death warrant without any other compunction, than that which a benevolent mind will naturally feel when obliged to exercise his power for the administration of justice.

I have

I have now fully explained what motives induced me to issue out the general order of the 17th January. Since the Select Committee must now be convinced that the trial of native troops by British laws is a practice of long standing, and well established in the army, it will undoubtedly afford them satisfaction to perceive their wish upon this subject so happily anticipated, and that it is attended with every advantage which they could expect, without having been productive of any of the dangerous consequences they apprehended.

You have been pleased to direct me immediately to revoke the order issued out on the 17th January, in the same public manner it was given out: Hereby you have reduced me to a great dilemma. Obedience is my first principle; and yet, should I revoke this order, what must be the consequence? If the native troops are not to be tried by the British laws, by what laws are they then to be tried? Are there any other regulations for the punishment of soldiers in the Company's service, whether Europeans or natives? I know of none. What other guide is there to direct a military court in pronouncing sentence against a criminal? What criterion by which a Commander in Chief is to judge of the legality of a sentence, before he gives it the sanction of his approbation? I can never suppose it to be your intentions to release so large a part of our army from all military obligations whatsoever; yet, was this order to be revoked, the native troops might commit offences of all kinds with impunity; I have therefore ventured to suspend the revoking of this order, until I am favoured with your further sentiments. But I must request, Gentlemen, that no interpretation of this delay may be made to my disadvantage; for I have made this representation to you, because I thought it my indispensable duty. If you still continue of the same opinion, the order must be revoked; but I must request you will at the same time send me a new code of laws for the trial and punishment of offenders amongst the native troops, since we have frequent occasion to try offences, and to inflict punishments.

I must now reply to the second part of this accusation.—I am deemed highly culpable for sending orders

to the first brigade, acting under the immediate orders of the presidency. To this I can only reply, that the second brigade is also acting under the immediate orders of the presidency; for I declare I am a perfect stranger to the many detachments made from that brigade, and yet I constantly send orders to the second brigade. I apprehend the Presidency do not send orders to the first brigade concerning its discipline: I suppose that to be my province. During sixteen years service, I have ever seen it practised, that whatever troops send returns to the Commander in Chief, he also sends orders to those troops.—If at any time I send improper orders, I am answerable to you for my conduct.

I am at a loss to conceive to what the Committee allude, in the material transactions regarding the king, which have been carried into the presence by Rajah Kialleram: If the committee will be pleased to be more particular, all the elucidation in my power to give, the Board shall receive. In the mean time, justice to this Rajah Kialleram obliges me to declare, that he has given me many proofs of his attachment and fidelity to our nation; and no part of his conduct pleases me more, than his refusing to accept those pecuniary gratifications which have been tendered to him by the Nabob Sujah Dowlah.

I have the honour to subscribe myself, with great respect,

Gentlemen,

Your most obedient humble Servant,

RICHARD SMITH.

Head Quarters,

at Myr Absels, 2d March, 1768.

To the Honourable Harry Verelst Esquire, President and Governor of Fort William, &c. &c. and to the Gentlemen of the Select Committee.

Gentlemen,

Yesterday I had the honour to receive your letter of the 23d ultimo, in reply to my address of the 7th, when I wrote for your permission to proceed to the Presidency,

Presidency, that I might prepare for my return to Europe. I requested you would favour me with an answer as soon as possible, because I was apprehensive, that with all the dispatch I could use, it would be barely possible for me to accomplish my intention, without I left my private affairs in the utmost confusion. However, rather than remain longer in a situation where I had found my utmost endeavours were exerted to so little purpose, and my zeal for the public service only productive of inquietude to myself, and too frequently interpreted to my disadvantage, I resolved to make this sacrifice of all my hopes and prospects in the service, and of every prudential consideration of a private nature, to that peace of mind which I found it was impossible for me to enjoy whilst I was obliged to maintain a constant warfare with your Board, in defence of my own character and reputation, and in support of a conduct, which was ever dictated by a sincere and earnest solicitude for the welfare of the Company. From your own repeated declarations, Gentlemen, I expected that these motives would have insured me, if not your entire approbation, at least a candid judgment of my actions. How much I have been disappointed, will fully appear to our honourable masters in the course of my correspondence with your Board. Twelve days since, I expected to have received your consent to my request; in the short time which now remains before your last ship will be dispatched for Europe, I conceive it would be impossible for me to adjust my unsettled affairs so as to embark in this ship; but even if this measure could be accomplished, you have not left it in my choice, as it is impossible for me to quit the Company's service at this particular juncture, and at the same time preserve that uniform regard for my own character which I have hitherto maintained. In your letter of the 10th ultimo, which I received a few days since, you have thought proper to write me, that I deserved to be dismissed from the Company's service; that, if you had done your duty I should have been dismissed; and afterwards, you are pleased to menace me with your highest resentment, if I should be so unfortunate as to give offence.

I entreat

I entreat you, Gentlemen, to suspend but for a moment those prejudices which you seem to have conceived against me, and then let me ask of you, either as a collective body, or as individuals, whether, on mature consideration in your breasts, you can approve of a resolution conceived with so much resentment, and expressed with so much asperity—a resolution so unprecedented, as to pronounce me deserving of a dismissal, even before you had heard what I had to offer in my own defence. How little I have merited this very severe menace, my letter of the 2d instant will most clearly manifest. Should I now pursue my intention of resigning my commission, immediately after the receipt of a letter from you that menaced me with dismissal from the service, would not such a conduct on my part give too much room for the world to suspect that I quitted the service of the Company because I was afraid of a dismissal? Here, Gentlemen, conscious integrity is my support; fully convinced of the rectitude of my conduct in public life, and firmly persuaded that no action of mine ever merited a dismissal, or to be menaced with a dismissal; God is my judge, I know not what it is to harbour such a fear. It therefore becomes indispensably necessary for me to demonstrate, not only to you and to my employers, but to the whole world, that my conduct in the station I have the honour to fill has been such as will not permit me to entertain the most remote apprehension of the consequences of your menaced resentment; since well I know that it must be my misconduct only which can justify you in the execution of it.

For the reasons before recited, I find myself under the absolute necessity of suspending my departure from India; and as I do not consider the permission you have granted me to proceed to the Presidency as your consent for my proceeding thither now that I have suspended my departure, I shall not repair to Calcutta until I hear from your Board.

If the Committee shall judge, from what I formerly urged, that I may in person give them a fuller information concerning many important subjects which have
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been immediately under my observation, I shall expect their orders for me to resume my seat at the Board.

I have the honour to subscribe myself,

with great respect,

Head Quarters,

Gentlemen,

At Myr Absuis, the

Your most obedient

4th March 1768.

humble servant,

RICHARD SMITH.

Agreed to make the following reply to the Colonel.

To Colonel Richard Smith, Commander in Chief
under the Presidency.

Sir,

We have been favoured with your letters of the 16th and 19th February, and 2d and 4th March.

We have already assured you that we shall ever repose a confidence in your conduct, unless we shall judge it is tending to the disadvantage of our employers, or to the diminution of our authority as a Committee. Nor would we wish to restrain a freedom of debate, or an intercourse of opinion between the several members of the Select Committee; but for any one member to act independently, or even without previously consulting the sentiments of our Board, is a step we cannot, nor will we ever allow of. Be assured it is our desire to make your situation easy. But we must not forget that it is our duty to render our own respectable.

That we might avoid the disagreeable subject of altercation, we, in our letter of the 13th October, acquainted you of our having submitted the matter in dispute to the decision of the Court of Directors; the same conduct we mean to pursue, except where some late measures of yours oblige us to interpose our authority, and to put a timely stop to regulations which might otherwise produce fatal consequences.

We well know this government has long been endeavouring to introduce into the Sepoy corps such parts of the British martial laws as were not inconsistent with their customs and their religion. But you inform us that the native troops are subjected to the British laws;
and

and send us some courts martial as a proof of your assertion. By these trials we see that the prisoners have been condemned in consequence of a particular article of a particular section of the Article of War, and yet the whole form of the trial is entirely contrary to that which is expressly enjoined by Act of Parliament. The act ordains, that every member shall be a commissioned officer; that a judge advocate shall be appointed; and that the prisoner shall have received his pay in advance. Are these articles complied with in your courts martial? It is plain, from no less than three you have sent down, that the members pass sentence according to their notions of justice and equity, and order such a punishment to be inflicted as is agreeable to their customs, such as cutting off a right hand, cutting off an ear, and slitting an ear. The European officer superintending then searches for an Article of War that may agree with the crime, and it is declared in the proceedings that the court is of opinion the prisoner has violated such a particular article. Is this method of proceeding according to the Articles of War? And have you in the least attended to the Act of Parliament by which you say you are authorized? We will venture to declare in the negative. Nor can we call the declaration of an European officer (that the sentence passed by the Black Sepoy officers, according to their customs, is agreeable to a particular article of war) a subjection of the native troops to the British laws.

Your order of the 17th January leaves no resource, but directs an implicit obedience—The natives have not a choice left of serving or not under the British laws (a right every human being may demand who is not bound in servitude by absolute tyranny). Had the whole corps of Sepoys revolted on this occasion, by what law, either of equity or justice, could they have been tried for such revolt? The Select Committee, too sensible of the fatal consequences which might arise from such an innovation of the privileges of the native troops, did not deem it prudent to issue any orders of this nature, because they merited a most serious attention; and indeed they are very doubtful if such an authority is legally vested in them. It was therefore

therefore most highly improper in you to take a step which they so cautiously avoided, without their previous concurrence, or that of the President. Your sending this very order to troops at the Presidency, was assuming a command more independent of the civil authority, than is consistent with the establishment of this government.

This order might with equal justice and propriety have been transmitted to the Fort Major, to be issued by him in the garrison of Fort William; for a part of the Sepoys may possibly be sent to the army, and be tried by laws which have never been explained to them, or even warned against. We ourselves might have long remained ignorant of such an order, had it not been brought by the commanding officer to the Governor, as a point of duty. And how inconsistent must it appear to have one part of our troops subjected to certain laws, of which the other is totally uninformed! A government thus divided cannot be of long duration. Discipline and subordination we must look for from our field officers, but we will never forget that the power is vested in ourselves.

You tell us that justice and humanity urged you to issue the order—we believe it; nor can we entertain a thought so injurious to your character, as to suppose you were prompted by different motives: but does not justice and humanity equally call aloud on behalf of the criminal, that he should be forewarned of those laws by which he is to suffer?

These considerations on your conduct induced us to pass a censure, which we thought you highly merited, and for which, we doubt not, this committee will stand justified in the opinion of our employers. They also necessitate us to direct, that you do effectually revoke the order of the 17th January, and suffer all proceedings of Sepoy courts martial to be conducted in the manner they were formerly. The order for revoking it we leave to you to give out, in such manner as may the least tend to lessen your authority in the eyes of the army.

We have long observed with concern, that your notions of subordination and obedience have been contrary

trary to ours; and the many disputes that have arisen in consequence, the number of letters written on these subjects, and the innumerable pages of the Committee's proceedings that are filled with debates, instead of being taken up with matters of service to the Company, without producing the desired effect, have determined us to bring the whole to a short issue, by pointing out distinctly to you, Sir, that degree of subordination in which we esteem you, as well as every commanding officer on this establishment, towards the Governor and the Select Committee.

The Governor of this Presidency, by virtue of his appointment of Commander in Chief of all the forces employed under it, has an undoubted authority to issue such orders to the troops as the Select Committee, or he, may judge conducive to the better regulation of the army; and that it is the duty of the commander of the forces, as well as of every other officer in the service of the Presidency, to obey and enforce the obedience of his orders. The Governor being, to all intents and purposes, at the head of every civil and military department, it is both necessary and proper his authority, as such, should be preserved inviolate; therefore it becomes the immediate duty of the commander of the forces, and of every other officer commanding a detachment, not only to send returns to the Governor, but to correspond with him also; giving him immediate information of every detachment made, of any particular orders which may be judged necessary to be issued, and, in short, of all material occurrences whatsoever; that no military appointment shall be made without the Governor's previous concurrence, except in cases of necessity, when immediate notice thereof must be transmitted to him, and his approbation must confirm such appointment; for he being accountable to the Select Committee, and the proper channel through which their orders are conveyed, it cannot admit a doubt but that his orders must be implicitly obeyed by every officer in the army.

These are the points of view in which we regard the Select Committee's and the Governor's authorities;

rities; and we direct the strictest observance of these our orders.

You have our permission to return to the Presidency.

We remain, with esteem,

Fort William,
the 18th March, 1768.

Sir,

Your most obedient
Humble servants.

*EXTRACT of Bengal Select Consultations, the 27th
April 1768.*

Colonel Smith delivers in the two following minutes.

On perusing the proceedings of the Select Committee after my return to the Presidency, I was exceedingly astonished to see, and for the first time, the President's minute of the 10th February. A minute of so extraordinary a nature cannot but engage my particular attention; and I request a copy of it, since I shall undoubtedly deliver a minute to the Committee in answer to that of the President.

R. SMITH.

In my letter of the 2d April I postponed replying fully to the Committee's letter of the 18th March, as I should shortly take my seat at the Board. I now beg leave to lay before you an original paper, containing six articles of war, wrote in the Persian language; as also a translation of the same, signed by the interpreter to the army. An order was issued out by Major Munro, in 1764, to read and explain these articles of war to all the native troops in the army; and by the annexed declaration, made by Captain Fullarton, you will perceive that these articles of war, in the Persian language, were read to the 13th battalion of Sepoys, in which he then served, in consequence of Major Munro's order; and you will also perceive, that they were read to the 9th battalion in 1765, even after the brigades were formed.

I have been thus minute and particular, the more clearly to prove that no innovation whatsoever has been made by me.

The Committee, in their letter, put the following question :—" Had the whole corps of Sepoys revolted " on this occasion, by what law, either of equity or " justice, could they have been tried for such a re- " volt?"—I answer, By those laws which bind every soldier to a due obedience to the established military regulations of the state he serves, unless there be some stipulated exceptions to the contrary ; but I know of none which the native troops enjoy in our service to exempt them from being tried and punished by our laws. I can with equal propriety ask of the Committee, if the whole body of Sepoys should declare they would not march against an enemy, unless certain indulgences were granted to them, by what laws could they be tried for such unfoldier-like behaviour? By no other laws that I know except the mutiny act. —This question does not spring from a supposed case ; —it has happened, and twenty-four Sepoys were sentenced to death by British laws on that occasion, and suffered death accordingly.

Although the members of Sepoy court martials are not commissioned officers in the literal sense of the word, that is to say, that they do not bear commissions, yet they are, to all intents and purposes, in their own corps, what commissioned officers are in the European regiments; they perform all the duties of commissioned officers, they receive pay in proportion, and they are considered in every respect as such among the native troops. I own I did not expect to have heard such an objection as this from the Select Committee. If a Sepoy was tried by European officers, he might with very great propriety alledge, that he was by those who were not only ignorant of his language, but total strangers to his manners and customs; it therefore shews a great tenderness to the Sepoys, in suffering no officer to sit in judgment on them but their own native officers; and although they do not actually bear commissions, yet I am of opinion they are virtually officers of that rank prescribed by act of parliament; as I apprehend the word " commissioned " officers" was inserted to prevent serjeants and other non-commissioned officers from sitting on court martials.

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The suggestion of tyranny certainly might have been spared, for the lenity and indulgence with which we treat the native troops is conspicuous; and it is a well-known fact, that whenever a Sepoy requests his discharge from the service, it is never refused. Here then is an instance of voluntary service far wide from tyranny, and perhaps without parallel in any military service in the world.

If the Select Committee will be pleased to consider, that at the Presidency there is a civil court of judicature, to try and punish all offenders for murder, and other capital crimes cognizable by the civil law, and that at the army we have no other but a military court for the trial of all offences, I think it will effectually destroy the parallel drawn by the Select Committee. There does not remain a doubt, that if any Sepoys now or hereafter belonging to the garrison of Fort William were to join the army, and should there be guilty of any crime for which a court martial should sentence them to death, their pleading ignorance of the law by which they were condemned would not exculpate them. And I must beg leave to ask the Select Committee, if the case would be otherways at the bar of a civil court of judicature? The native inhabitants, who are immediately under the protection of the English government, are liable to be tried for capital offences at our courts of justice, and by British laws. Are they supposed to be better acquainted with the laws of England than the Sepoys? Is our connection with them more intimate than with the native troops receiving our pay, and serving under our banners? For in the trial of crimes cognizable by the civil law, as murder, which is the particular case in question, a general court martial is only the substitute of a civil court of judicature, and cannot give a legal sentence but where no civil court can be assembled.

To conclude this matter, I know not a circumstance of more dangerous tendency, than to suggest to our native troops, that even the shadow of a doubt is entertained concerning the legality of their punishments, since it might be productive of the most fatal consequences to the service. For my own part, I have not

the smallest doubt upon the subject: and what is of far greater importance, the native troops themselves harbour not a scruple, but submit with cheerfulness to our laws. Let us not therefore raise dangerous conjectures in their minds, which otherways would have no existence.

It is for this reason I have hitherto postponed revoking the general order of the 17th January, more particularly as the revocation of that order would have produced no change in the mode of trying our native troops, which has been by British laws for these several years past; and I was directed by you "to suffer all proceedings of Sepoy courts martial to be conducted in the manner they were formerly."

I thought it my duty to make these representations to the Select Committee; and it now remains with the Board to enter into what final resolution shall be judged necessary, which must be immediately carried into execution, since no military courts can be assembled until I receive your orders on this subject.

RICHARD SMITH.

TRANSLATION of a set of military regulations, written both in the Persian and Hindostan languages.

6th Art. Any captain, any officer or soldier, or any other person, who shall begin disturbance, or all who join in beginning it, or the man under any officer or Jemadar, who is gone out (on a detachment) or on any post, shall behave in any manner above specified, so as to excite disturbance, shall suffer death, or such punishment as shall be inflicted by the judgment of all the gentlemen.

N. B. This, in the Hindostan copy, is styled the 2d article.

5th Art. Any officer, or soldier, or Sepoy, or any person who shall attempt to kill (in the Hindostan copy it is rendered "to strike") another with a sword,
or

or * goorzs, or dagger, or bayonet, or any warlike instrument, or pointed bamboo, or whip; or any man who enters into contention, sedition, or dispute with his superior, or stirs up any sedition, or of himself encourages others to sedition, shall suffer death, or such punishment as shall be determined by the judgment of all the gentlemen.

* The goorz is an instrument of war formerly much in use, formed of a short club, with a heavy knob at one end, cased with iron.

5th Section. All officers and Sepoys who have received their pay, and every man who is in the service of the Company, who shall go any where without permission, or shall run away, shall suffer death, or such punishment as shall be determined by the judgment of all the gentlemen.

6th Article. Whatever centinel shall fall asleep on the post where he is stationed, and shall go any where before the guard is relieved, he shall suffer death, or such punishment as shall be determined by the judgment of all the gentlemen.

13th Article. Whatever officer, or soldier, or Sepoy shall run away in an engagement, or shall quit his battalion, company, or guard, or shall abandon either the wood, mountain, or river, or any other post on which he may be stationed, or shall use persuasion with any other person to run away, he shall suffer death, or such punishment as shall be determined by the judgment of all the gentlemen.

2d Article. Every misdemeanor, of the smallest degree whatsoever, which officers and Sepoys may be guilty of, will be brought under the cognizance of a court martial.

(A true translation.)

C. W. BOUGHTON,

Perf. Int. to the army.

Captain Fullarton's declaration, delivered in by Colonel Smith.

In consequence of the mutinous spirit and disaffection of the troops, in the months of August or September 1764, orders were sent to the different detachments at Choprah, Mangie, Petarra, and Sewan, to read and explain the articles of war regularly; and

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that the native troops might have no pretence, on account of ignorance of what was their duty, and of the punishment of any breach of the same, Persian and Hindoostany papers, containing the substance of the articles of war against mutiny, desertion, and cowardice, also the sixth article of the eleventh section, and the second article of the fifteenth section of the articles of war, were sent over by the commanding officer of the army to be read to them, which were read and explained accordingly in both these languages to the thirteenth battalion of Sepoys then on the post of Sewan, to which battalion I belonged, and where I was then doing duty. They were likewise read to the ninth battalion of Sepoys at Bankipaur, in September or October 1765.

J. FULLARTON, captain and aid de camp to the commander in chief.

Agreed, That a copy of the President's minute be sent to Colonel Smith. And the Committee direct the Colonel to send orders to all the commanding officers of brigades, that in the proceedings of all future Sepoy courts martial, the article and section of the articles of war on which the prisoner shall be found guilty must not be inserted.

No. 20.

EXTRACT of a Letter from the Court of Directors of the East India Company to the President and Select Committee of Bengal, dated 11th November 1768.

Para. 40. **I**T is with concern we see an interruption to that harmony which ought to subsist among those who have the principal management of our affairs, more especially as your disputes are with Colonel Smith, a member of the committee, and a gentleman

tleman of whose zeal and abilities we entertain a very favourable opinion ; and we are glad to see by your last advices these altercations are at an end.

41. We much approve your supporting your own authority with firmness and dignity, and you did right in checking what appeared to you encroachments thereon ; but at the same time we think you have in several instances failed in that confidence which is due to the commanding officer, who is at the same time a member of the Select Committee. While a gentleman of his rank in the civil and military was stationed at such a distance as Allahabad, we think it was a mark of confidence due to him, that all the correspondence between the President, the King, and the Vizier, should have passed through his hands ; which was not a mere matter of compliment, but necessary to make him appear respectable in their eyes, and to form his own conduct upon, that it might coincide with your views and sentiments. We cannot but take notice that the Napaul expedition was not only undertaken without consulting him, but the commanding officer of the detachment on that service seems never to have corresponded with him, or sent him his returns, which is contrary to all the rules of military subordination.

A P P E N D I X.

P A R T II.

No. I.

Appendix to the
report of Touch-
et Committee,
Reference to
No. 3—No. 29.
(No. 7.)

ROBERT GHANSIAM DOSS, moonshy to Sir Elijah Impey, knight, maketh oath, and saith, That on Monday next after the commitment of the Mahah Rajah Nundcomar, he this deponent delivered a message to the said Sir Elijah Impey from the said Nundcomar, acquainting the said Sir Elijah that he could not eat, drink, or perform his necessary ablutions, in the place in which he was then confined, without losing his cast. That immediately on the receipt of the said message, the said Sir Elijah dispatched him this deponent to the said Nundcomar, to know how he might be accommodated. To which the said Nundcomar made answer, That he desired him to acquaint Sir Elijah, that the only accommodation consistent with his cast was, that he should live in a house in which no Christian or Mussulman had ever been or should be admitted, and that he might be at liberty to wash once a day in the Ganges.

That on delivering this message to the said Sir Elijah, he desired this deponent to acquaint him the said Nundcomar, that he had no authority to give such direction, but that he would direct the gaoler to give him all accommodation that was consistent with his the gaoler's safety, and that all persons should have free
access

access to him; and this deponent did intimate the same to the gaoler.

Sworn the 16th day

of January 1776,

before me,

E. IMPEY.

ROBERT GHANSIAM DOSS.

No. 2.

ANSWER to the Addresses of the Grand Jury, and free Merchants and Mariners of the Town of Calcutta, delivered by Mr. Elijah Impey, then Chief Justice.

Gentlemen,

I Know nothing that can give me greater satisfaction than that which I received, by your thus testifying your due sense and gratitude to his Majesty, for erecting an independent court of justice in this settlement, and thereby extending the full protection of the English laws to the natives of this country, and to his British subjects at this distant extremity of the British empire.

The protection of the laws is the only constitutional protection that can consist with a free government. Protection by power only is capricious; it may shelter the guilty as well as the innocent.

We can assume no great merit in not allowing the blank subpoenas to issue in the case you allude to. They were moved, for the purpose of being sent high up into the country, though the fact charged was committed in Calcutta, expressly to bring down such witnesses as might come in, though the party applying neither professed to know what the witnesses were to prove, or that such witnesses actually existed. Such subpoenas would be considered by the timid natives as mandates, and, if suffered to have been made use of by wicked men of power and influence, you most truly say, that your reputation, property and lives, could not be safe; it would have subverted that justice which it is our duty to enforce. There is little doubt, had

had they been granted, instead of having those witnesses produced, most of whom you know, and so justly reprobate, we should have had a new troop of false witnesses.

Neither can we assume to ourselves any extraordinary merit or sagacity in detecting the falsehoods of the witnesses produced at the trial. The subject matter of the evidence, the manner of delivering it, and the persons who delivered, made the imposition attempted to be put on the Court, too gross to deceive either the Court, or such bystanders as did not through prejudice wish to be deceived.

Two things operate to make our stations easy to us : the one, that we have a strict rule for our conduct, the law ; the other is, that we do not administer justice privately. The eyes of all the inhabitants of the settlement are upon us ; they by that means become judges of our conduct, and will bestow on us censure or confidence, in proportion as we deserve either the one or the other.

In the present unhappy state of the settlement, we are most sensibly affected, by receiving the public approbation of two such respectable bodies of men, as the grand jury, and the free merchants and mariners of this town ; of a grand jury elected by ballot from all the Company's servants below the Governor General and Council, and from all the substantial inhabitants of this place ; of the free merchants and mariners, a body of men from their situations independent and unbiassed by interest or fear. The voice of the grand jury so elected, and of the free merchants and mariners, is the voice of the settlement.

I entertain the highest sense of the great honour done me by the marks of esteem, which you are pleased particularly to address to me. The first and great satisfaction which I feel in my present situation is, the approbation of my own conscience ; the next, that those to whom I administer justice, bestow their approbation on my conduct, and put full confidence in the rectitude of my intentions.

It is with the greatest alacrity that I accept of the honour proposed me ; for being unconscious of either
 exerting

exerting or possessing any peculiar talents, I understand it at least as much a public testimony of gratitude to his Majesty, for adopting the measure of erecting an independent court of justice in this town, as a personal compliment to the humble instrument of carrying his gracious intentions into execution.

No. 3.

ANSWER to the Hindoo Inhabitants of the Town of Calcutta, delivered by Sir Elijah Impey, Knight, Chief Justice.

Gentlemen,

IT is a great consolation to us, that having been under the unhappy necessity of inflicting a capital punishment on a person of an high cast in your religion, we receive this general and public approbation of our distribution of justice from so numerous and respectable a body of Hindoos, among whom it gives us inexpressible satisfaction to see, there are many of the most principal Brahmins.

It was natural, when you heard that a new law was formed in a remote country by a legislature differing most widely from you in religion, laws, and customs, for the administration of justice in this, that you should be filled with doubts concerning the operation of it, and be strictly observant of the conduct of those who were appointed to carry it into execution: we are happy that your observation of our proceedings has created that just confidence in us, which has so soon caused your doubts to subside, and we feel ourselves the more obliged to you for it, as it hath not escaped us, that some evil-minded persons, disaffected to the establishment of an independent court, have wickedly and maliciously endeavoured to destroy that confidence, and to disturb your minds with apprehensions of the most alarming nature, by attempting to persuade you
that

that your laws and usages, formed on your religion and government, interwoven into your manners and sentiments, and sanctified by the experience of a long succession of ages, were instantly to be over-ruled, abolished, and superseded by the authority of a foreign law; to alienate your minds from the court of justice, and to alarm you in the most sensible manner, you have been told that your marriages with more women than one, would subject you to severe penalties; that which nothing can be more false.

It is true, that in England it is considered as criminal; but the reasons which make it so in England do not exist here. It is considered as criminal there because the religion of England allows but one wife to one man, and the laws there confer certain rights and privileges on that wife only, and suffer her children alone to inherit the estates of their parents: He therefore, who in England marries another woman during the life of his wife, abuses his wife, who has a right that no other shall share in his affections; commits a fraud on the second woman, who cannot enjoy the rights and privileges she was taught to expect; injures his offspring by her, and is guilty of a breach of the laws, and a violation of the religion of his country. It would be absurd, cruel, and unjust to treat such an act as criminal here, where no injury is done by it to any person, and where the laws and religion of the country give a sanction to it. I dwell longer on this subject, and am more desirous of dissipating all doubts that either you or the Mussulmauns have entertained on it, as I know this has been particularly urged, because calculated to sink deep and make a lasting impression on your breasts, as it must universally affect you in your domestic happiness, and in your nearest and dearest concerns.

The pleasure which we feel from these public expressions of your sense of the manner in which we have discharged our duty, grateful as they are to us, is small in proportion to that which we receive from their giving us an opportunity of vindicating our most gracious Sovereign from the calumny of treating you rigorously and harshly in the very instance of his extending his fa-
therly

therly influence and goodness to you, and of assuring you that the new Act of Parliament is with respect to you no new law, otherwise than in giving you an additional security for your lives and properties, by placing the execution of the law, which is to protect you, in an independent court of justice. It makes no alteration in your religion, laws, and usages, or in those of the natives of this country; it leaves them in every respect the same as they were when the new law took place.

For your greater ease and peace of mind, I make this public declaration, that whenever occasion shall require, I hold myself bound to make strict inquiry into, and to pay due attention to the customs and usages of the different natives of this country; and you may depend on the highest respect being had in our decisions to the Shaster and Bebhur, those sacred deposits of your religion and laws: We have already, in the only case which required our being informed of your religion and law, called in and consulted with those venerable oracles, the Pundits, and were guided by their decisions, drawn from the text of the Shaster.

It will be a great ease to us in the farther discharge of our duties, to be furnished, with your observations on those points in which you apprehend any innovations likely to be made, that being apprised of them we may be more cautious in our judgments, if those points should come before us.

The protection of you, gentlemen, and the other natives of this country, was the first and main object that induced his Majesty to place the administration of justice in our hands; and I am sure we shall all esteem ourselves guilty of a criminal breach of trust, if we do not in cases of property, and in all other matters, which may come under our cognizance, labour to the utmost of our power to promote your welfare and to preserve your religion.

Mr. Justice Chambers, and Mr. Justice Lemaistre, will be sorry that their absence from the settlement has prevented them from receiving this address personally from you: but I will with the utmost expedition convey to them the satisfaction they must enjoy from being

being addressed by persons of your rank and estimation.

No. 4.

ANSWER to the Address of the Armenians, delivered by Sir Elijah Impey, Knight, Chief Justice.

Gentlemen,

IT is by no means surprizing, understanding as you did, that new laws were to be introduced among you, formed to rule a nation differing so wide in climate, manners, and religion, from you, that you should take an alarm. It will be with the highest satisfaction I am enabled to acquaint his Majesty, through his Ministers, with what cheerfulness you submit to his laws, and with what gratitude you acknowledge his royal care, extended to these regions so remote from the seat of his empire, and with what warmth you wish, that the salutary influence of his laws may be yet wider extended, and their establishment (if possible) more effectually secured. I will likewise most faithfully transmit your hopes that the laws may hereafter be modified and blended with the immediate national and constitutional peculiarities of this country.

We enjoy great happiness from finding that our administration of those laws has tended to remove the prejudices which you so naturally entertained; and it rejoices me to have it in my power to inform you, that the same gracious wisdom and goodness that prompted his Majesty to extend the benefit of his laws to this country, has prescribed to us by his royal charter, in what manner and how far we are to introduce them, thereby providentially guarding against any inconvenience that might arise from a promiscuous and general introduction of them.

The principles of laws relating to property are universal; to give to every man what is his due, is the foundation of law in all countries and in all climates;

mates; it is a maxim that must be acknowledged by men of all religions and persuasions: religion, custom, and prejudice, do indeed make the same act criminal, or more or less so, in one country than in another.

But his Majesty has already most graciously consulted your religion and customs, and the climates which you inhabit, and has with most fatherly tenderness indulged even your prejudices; it is his royal pleasure that only such of his laws shall be enforced as are conformable to your customs, climate, prejudices, and religion.

We cannot but be sensibly affected by this public approbation of our conduct, given unanimously by so opulent, so respectable, and so independent a body of men, as the Armenians resident in this town.

Did our consciences not co-operate with that approbation, we should feel these expressions of your sentiment as censures, not praises.

We are confident, that if the laws of England are honestly and conscientiously administered, you cannot be disappointed in the effects which you so sanguinely expect from them; and we pledge ourselves, that it shall be our constant study to administer them in such manner that you may derive from them the greatest benefit, and the fullest protection which they are capable of bestowing.

No. 5.

To the Honourable the Court of Directors of the United Company of Merchants of England trading to the East Indies.

Honourable Sirs,

BY means of the letter herewith sent, we take the liberty of desiring your Governor General and Council to transmit the inclosed addresses to you;

[H]

which

Appendix to Report of Committee to which the Petition of Touchett, &c. was referred: references to No. 3—No. 24.

The foregoing addresses, though inclosed, were omitted in the Appendix.

which they by their letter herewith likewise sent have declined.

We nevertheless thought you so much interested in the public administration of justice in these provinces, that we thought it would not be unacceptable to you to receive authentic intelligence of the sense the public here entertain of the benefit they receive from his Majesty's having most graciously erected an independent court of justice at this settlement: we have therefore inclosed them for your information; and are,

Honourable Sirs,

With the greatest esteem and respect,

Your very humble servants,

E. IMPEY,
JOHN HYDE.

Fort William,
September 9, 1775.

It being vacation, Mr. Justice Chambers, and Mr. Justice Le Maistre, are absent from the settlement.

No. 6.

The Deposition of Kissen Jewin Dofs; taken upon oath before us Stephen Caesar Lemaitre Esquire, and John Hyde Esquire, Justices of the Supreme Court of Judicature at Fort William in Bengal, this sixth day of May 1775.

THE deponent says that he was in the service of Bollaki Dofs for twelve or thirteen years, and was so at the time of his death; that he has frequently seen him execute bonds, and other writings; that he, during the time he lived with him, always put his sign manual to them; but that he never saw him put a chop or seal to any of them, though to his common correspondence; on the outside of his letter he used to put a chop, and that such is the custom of merchants and bankers, especially among Gentoos.

Being

Being shown the Persian bond, and asked if in the course of the said twelve or thirteen years he ever saw him put a seal like that to the bond to any bond, he answers, *No*.

That when he signed any papers of business, other than letters, he signed his name in Nagir language, and not in Persian, which language he did not understand to write or read it.

That he never heard Bollaki Doss, during the time he lived with him, complain of having lost any jewels during the time of the war with Cossim Ally Caun, though he lived with him all that time, except some jewels and the goods of several merchants that were mortgaged to him, but never heard Noncumar's name mentioned among them.

The signature of
KISSEN JEWIN DOSS.

Sworn before us the day and
year before written,

S. C. LEMAISTRE,
JOHN HYDE.

No. 7.

Mr. Farrer's Observations. { 1st Count to be sealed.
2d Count to have been sealed.

NO *forgery* upon B. D. because it is not proved to have been forged in his life-time.

No *forgery* upon the executors, because the prosecutor's evidence proves that they were previously informed of the forgery, and voluntarily paid the bond. Paid : D. expressly knew it.

No *forgery* upon the trustees, or residuary legatees, because they had only a *contingent* interest at the time of publication, and not a vested one. It was not an interest *debitum in presenti, sed solvendum in futuro*.

Had they died before the contingency passed, the interest would not have gone to their representatives as such, and as claiming under them, but to the next of kin of Ballakey Dofs; therefore they could not be defrauded.

Persian letters wrote and sealed on the cover in the usual mode of the country, not allowed to be given in evidence by our laws. Letters sent in the usual mode in England would.

Witnesses, all dead.—Transaction stale and long known to the prosecutors.

No evidence of defendant's having forged Bollakey Dofs's seal, for which alone he stands indicted.

The absurdity of defendant's confessing a circumstance which would endanger his life to people with whom he was not on terms of confidence. His refusing three months after to become security for Comal al Deen in his farm;—a thing trifling in its nature when contrasted with the consequences which must naturally be expected to ensue from a refusal. The small degree of credit due to a confession made *only once, and nobody present* but the party and witnesses, *which are the words of Comal's evidence.*

Nothing anyways extraordinary in Comal's mentioning the circumstances of the defendant's confession, as it is well known that in the most common occurrences the natives of this country form the most iniquitous schemes, which are not brought to maturity or disclosed to the public for a much greater period of time than the present, and that then truth and falsehood are so artfully interwoven that it is almost impossible to come at the truth.

No. 8.

*Observations from Mr. Brix.***I**MPROBABILITY of the bond's being forged :

1st, From its being made conditional only, for which there could be no necessity if it was forged, as it rendered the obligation less strong, without any apparent reason.

2dly, From the circumstance mentioned therein of the jewels being robbed; as that very circumstance lessens the value of the obligation, and might entitle the deceased or his representatives to relief in equity.

No. 9.

The Trial of Joseph Fowke, Maha Raja Nundocomar, and Roy Rada Churn, printed for Cadell, page 20.

Captain James Webber being sworn :

Quest. **A**RE you acquainted with Maha Rajah Nundocomar?

Ans. I am.

Quest. How long have you been acquainted?

Ans. Since my arrival.

Quest. Was you bail for him?

Ans. I was.

Quest. Did you ever visit him?

Ans. But once; about three months ago, as the general's aid de camp, and attended him as my duty.

Quest. Who were of the party?

Ans. The General, Colonel Monson, Mr. Francis, Colonel Thornton, Mr. Fowke, Mr. Addison, and myself. The General called on me at my house, in his carriage: it was but an hour or two before that I was given to understand the General meant to pay the visit.

Quest. Did you ever hear the General before or since give any reason for making the visit?

Ans. I do not recollect that I ever did.

Quest. Do you remember the day on which this visit was paid?

Ans. I cannot recollect whether it was the day after the examination, or whether it was before or after I gave bail. I think I recollect it was after the first examination.

Quest. Do you recollect what passed at the visit?

Ans. No. I believe Mr. Fowke might interpret the common compliments.

Quest. Did you not think the visit an extraordinary one?

Ans. No. I did not.

Quest. Did you ever know these gentlemen pay Maha Rajah a visit before?

Ans. I do not know if they had been there before. It is my duty to go on visits with the General; I generally do.

Quest. Did you know the character of Maha Rajah Nundocomar?

Ans. I had heard a bad character of him; but I thought people prejudiced. I heard Mr. Fowke speak well of him.

Quest. Did you know General Clavering pay visits to other black men?

Ans. I never knew General Clavering visit any black man except him and Mahomed Reza Cawn.

Quest. What do you believe was the reason for this visit?

Ans. I believe they visited Maha Rajah Nundocomar, because he had been formerly minister of this country.

Quest. Do you believe they had or had not other motives?

[The above question repeated.]

Ans. I believe they had.

No. 10.

*The Trial of Joseph Fowke, Maha Rajah Nundocomar,
and Roy Rada Churn, printed for Cadell, page 31.*

General Clavering's Evidence.

Quest. IS not this prosecution principally founded on
the evidence of Nundocomar and Roy Rada
Churn?

Ans. No.

A P P E N D I X.

P A R T III.

No. 1.

Lunæ, 11^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.

IT was proposed in the Committee, That Thomas Farrer Esquire, a Member now present in his place, should be examined on the matter of the first charge.

And the said Member being asked by the Chairman, whether he would consent to be examined as proposed;

The said Member informed the Committee, that he desired not to be considered as standing forth as a volunteer witness upon the present occasion, and positively refused to be examined as such if left to his own discretion; but if he is desired to be examined by the Member who has instituted the proceeding, and also by the person accused; or if he is called upon by the order of the Committee, or at their request, which he should consider as equivalent to their order, he is ready to be examined: whereupon, by the direction of the Committee,

mittee, the Chairman informed him, that it was the desire of the Committee that he should be examined on present occasion.

To which Mr. Farrer having consented,
He was asked,
When did you go to India?

And Mr. Farrer having desired to state to the Committee what he knew on the matter of the said charge,

He was asked,

Will you please to give the Committee the information you possess relative to the matter of the first article of charge exhibited against Sir Elijah Impey?

I arrived in Calcutta two or three days previous to the arrival of the judges appointed to carry into execution the appointment of a supreme court of judicature at Fort William in Bengal, which was some time towards the latter end of October 1774.—I was the first person admitted an advocate of that court; on the very day on which the court was formed—I continued senior advocate of that court during the whole of my residence in Calcutta.—The court was formed the latter end of October 1774.—To the best of my recollection a term was immediately held, but no business, scarcely any, was transacted during that term.—I stood for some time the sole advocate of that court; and I believe every person there was very much indeed unacquainted with what the business of an advocate was.—Some little time afterwards other Gentlemen were admitted advocates as well as myself.—*I was applied to before I had been a month in Calcutta, by Mr. James Driver, who had before been an attorney in the Mayor's court, and who had been admitted an attorney in the Supreme Court.*—Mr. Driver stated to me the matter in dispute between Mohun Persaud, as the attorney of Gungabissen, one of the executors of Bollokee Doss Seat on the one part, and Rajah Nundocomar on the other.

He told me, that there then was before the Dewannee Adaulat a suit proceeding between those parties, and, to the best of my recollection, that he himself was concerned in it—but it appeared from the information he had

This proves an intention to prosecute criminally long before the arrival of the Judges, consequently before N. was become the accuser of Mr. Hastings; and that steps had actually been taken for that purpose, as early as March 1774. The Judges did not arrive till 20th October following.

had received from his client, *that Nundocomar, though proceeded against in a civil suit in that court, had committed a forgery—That he had advised his client to proceed criminally against him as for a forgery—by his client I mean Mobun Persaud—and that Mobun Persaud had acquiesced in that advice.—That all the papers of the late Bollokee Dofs Seat were then in deposit in the Mayor's court.—That in order to enable him to prefer a bill of indictment as for a forgery, it was necessary that he should first of all possess himself of the original instrument charged to be forged.—That he had accordingly, in March 1774, moved to have all these original papers, amongst which was the instrument in question, delivered to him, or to his client—but that the motion had been refused—and that the Mayor's court had only offered him attested copies, to make such use of as he should think proper—That an attested copy would by no means answer his purpose, of preferring a bill of indictment, and that therefore he had been prevented from proceeding further in that mode at that time.—This information of Mr. Driver's is confirmed by part of the evidence taken in the printed trial, and at which I was present in the Supreme Court when it was taken from the records in the Mayor's court.*

Mr. Farrer then read extract from the printed trial of Nundocomar—page 86, as follows:

‘ 25th March 1774.

‘ Mr. Driver, attorney for Gungabissen, read a petition from him, stating, that by the order of the Court, all the papers belonging to the estate of Bollokey Dofs were deposited in the Court, among which were twenty-eight bonds, receipts, and vouchers; that he had commenced suits in the Dewannee Adawlet, and wanted the said bonds, receipts, and other vouchers, in order to establish the same; and praying, that they may be delivered to him, giving the usual receipt for the same.

‘ The Court deferred the consideration of the said petition till next court day.

Ordered,

‘ Ordered,

‘ That an officer of the said Dewannee Adaw-
 ‘ let be permitted to attend at the Register’s of-
 ‘ fice to inspect the books, papers, and vouchers
 ‘ aforesaid.’

Then Mr. Farrer said,

The officer of the Dewannee Adawlet was allowed to inspect them, but Mr. Driver was *not allowed the papers themselves.*

Thus the matter rested when Mr. Driver consulted me.—He told me that the Mayor’s court had not been *so entirely free from influence as could have been wished, when proceeding against men of a certain description, such as Nundocomar*; but that now, that a more independent Court was come out, he should advise his client to authorize him to instruct me to make the same motion before the Supreme Court of Judicature, to wit, for the original papers—that he had himself made before without effect in the Mayor’s court—*accordingly I was instructed, and did move on the 25th January 1775.*

Mr. Farrer then read extract from the said Trial—pages 86 and 87, as follows:

‘ 25th day of January 1775.

‘ Mr. Farrer, advocate for Gungabissen, sur-
 ‘ viving executor of Bollakey Dofs, deceased,
 ‘ moves, that two chests, containing papers, ac-
 ‘ counts, and vouchers relative to the ac-
 ‘ counts of the estate of the said Bollakey Dofs,
 ‘ deceased, and also twenty-eight bonds and re-
 ‘ cepts belonging to the said estate, which were
 ‘ deposited in the registry of the late Mayor’s
 ‘ court, at the instance of William Magee, who
 ‘ was constituted attorney of Bridjooseer Goshain,
 ‘ a legatee named in the will of the said deceased,
 ‘ may be delivered to the said Gungabissen.

‘ Ordered,

‘ That the register do look into the proceed-
 ‘ ings of the late Mayor’s Court relative to the
 ‘ above papers, accounts, and vouchers, and inform
 ‘ the court thereof on Monday next the 30th instant.

‘ January 30th, 1775.

‘ Mr. Farrer, advocate for Gungabiffen, surviving executor of Bollakey Dofs, deceased, moves, That two chests, containing papers, accounts, and vouchers, relative to the accounts of the estate of the said Bollakey Dofs, deceased, and also twenty-eight bonds and receipts belonging to the said estate, which were deposited in the registry of the late Mayor’s Court, as mentioned to this court on the 25th instant, may be delivered to the said Gungabiffen.

‘ Mr. Brix, advocate for Seebnaut Dofs and Lauchmon Dofs, administrators of Pudmohun Dofs, deceased, who was one of the executors of the said Bollakey Dofs, deceased, objects thereto.

‘ It is ordered,

‘ That the register do, in presence and with the assistance of Huzzermaul Baboo and Coffenaut Baboo, both of Calcutta, examine the said papers, accounts, and vouchers, bonds and receipts, and separate such as appear to belong to the estate of the said Bollakey Dofs, deceased, from those which appear to belong to the estate of the said Pudmohun Dofs, deceased; and that he do deliver the former unto the said Gungabiffen, and the latter unto the said Seebnaut Dofs.

‘ March 24th, 1775.

‘ Mr. Farrer, advocate for Gungabiffen, surviving executor of Bollakey Dofs, deceased, moves, That two chests, containing papers, accounts, and vouchers, relative to the accounts of the estate of the said Bollakey Dofs, deceased, and also twenty-eight bonds and receipts belonging to the said estate, which were deposited in the registry of the late Mayor’s Court, may be delivered to the said Gungabiffen, they not having yet been examined pursuant

‘ pursuant to the order of the Court of the thirtieth day of January last, owing to Coffinaut Baboo’s not attending.

‘ Mr. Brix, advocate for Seebnaut Dofs, and Lauchmon Dofs, administrators of Pudmohun Dofs, deceased, who was one of the executors of the said Bollakey Dofs, deceased, objects thereto.

‘ It is peremptorily ordered,

‘ That the register do, in presence, and with the assistance of Huzzermaul Baboo, and the said Cossenaut Baboo, in case they both attend, or if one of them only attends, then in presence and with the assistance of such one, examine the said papers, accounts, and vouchers, bonds, and receipts, and separate such as appear to belong to the estate of the said Bollakey Dofs, deceased, from those which appear to belong to the estate of the said Pudmohun Dofs, deceased, and that he do deliver the former unto the said Gungabissen, and the latter unto the said Seebnaut Dofs, and Lauchmon Dofs, administrators of the said Pudmohun Dofs, deceased *within one month from this day*; and in case neither of them, the said Huzzermaul Baboo and Cossenaut Baboo do attend, that the register do examine and separate them in the best manner he can, and deliver such of them to the said parties respectively as he shall think right, within the time aforesaid.’

Then Mr. Farrer said,

I hold in my hand an attested copy by Mr. Tollfree the under-sheriff, of the warrant of commitment of Nundocomar, dated the 6th May 1775—the papers were ordered to be delivered within one month after the 24th of March 1775.

If the Committee think proper, I will read it—signed by Mr. Justice Le Maistre and Mr. Justice Hyde.

Reads

Reads the warrant, as follows :

To the Sheriff of the Town of Calcutta, and Factory of Fort William in Bengal, and to the Keeper of his Majesty's Prison at Calcutta.

‘ Receive into your custody the body of Maha
 ‘ Rajih Nundocomar, herewith sent you, charged
 ‘ before us, upon the oaths of Mohun Persaud,
 ‘ Cummaul ud Dein Khan, and others, with
 ‘ feloniously uttering, as true, a false and coun-
 ‘ terfeit writing obligatory, knowing the same to
 ‘ be false and counterfeit, in order to defraud the
 ‘ executors of Bollokee Doss, deceased, and
 ‘ him safely keep until he shall be discharged by
 ‘ due course of law.

‘ Given under our hands and seals,
 ‘ this sixth day of May, in the
 ‘ year of our Lord 1775.

‘ S. C. LEMAISTRE, (L.S.)

‘ JOHN HYDE, (L.S.)

(A true copy.)

S. Tolffrey,

Under-Sheriff.

Then Mr. Farrer said,

The day after this commitment I was applied to by the attorney of Nundocomar, Mr. Jarret, and informed of what had passed.—*Two or three days after that (I cannot speak exactly to the time) he informed me that Nundocomar, being confined in the common gaol, was not able, on account of the ceremonies of his religion, either to eat or drink, and that he took his situation so much to heart, that he had neither eat nor drank, and we were afraid he would die for want of sustenance in gaol.—I therefore directed Mr. Jarret to apply for an habeas corpus to bring him before the judges.—My intentions were, in case the habeas corpus had been granted, to have proposed, either that he should be admitted to bail, or that the place of confinement should be changed or enlarged.—I should have proposed the place of confinement to have been the New Fort,*

Fort, under the charge of the gaoler, or any other officer the Court should appoint, if he had been refused to be bailed, as I supposed he would be.

I have here, upon the back of the copy of the warrant of commitment, in the hand-writing of Mr. Jarret, an account of what passed before the judges on his application for the habeas corpus. The application was made to Sir Elijah Impey, but it appears that Mr. Justice Hyde was also present,—whether any other judge was present, I do not know.

Reads what is written by Mr. Jarret on the back of the copy of the warrant, as follows :

‘ On attending at the house of Sir Elijah Impey, to obtain a *habeas corpus* to bring up the body of the within prisoner, on producing this copy of the warrant of commitment, and setting forth that the prisoner was ill, and in all probability must die for want of nourishment, as he had not taken any refreshment since he was confined—Sir Elijah said, he could not take upon him to grant a *habeas corpus*, as he was not the justice who committed him—that I ought to apply to those gentlemen, or one of them. Mr. Justice Hyde being present, I then applied to him—he also refused, saying, he could see no end it could answer—that he apprehended his not eating was through obstinacy; that if he died it must be his own fault—Sir Elijah Impey to the same purport. Mr. Hyde said, it rather appeared as though the desire of being brought up was for no other purpose but to make an escape, and therefore he could not assent to it.—Sir Elijah Impey said, that should the sheriff permit him to go out of the walls of the prison to eat, or to drink, or to wash, or the like, that in that case he (Sir Elijah Impey) would himself not call the sheriff in any manner to account, but that he apprehended this application was in direct opposition to the court; that should this man be admitted to bail,

This must be a mistake. Sir Elijah must have understood it to be what it should have been, an order to bring up the prisoner, to which his answer well applies; in case of *habeas corpus* it was no answer.

What was said by Mr Justice Hyde, must have been after he had heard the answers of the Pundits, which vide.

Nundecomar was committed the 6th May; the Pundits were examined the 8th; the application was the 10th; affidavits of Murchison, Tolfrey, and Yeandle, post, 7. E, F, G.

‘ bail, ever after there would be no law for a Bramin;
 ‘ that was he applied to as sitting in court, he
 ‘ should absolutely object to the sheriff’s confining
 ‘ him in any other house or place than the
 ‘ prison.

Present. Major HANNAH,
 Mr. ELIOT,
 Doct^r MUCHISON,
 Mr. TOLFREY,
 Mr. PRITCHARD.

Then Mr. Farrer said:

The first session of Oyer and Terminer subsequent to the commitment of Nundocomar commenced the beginning of June following, Nundocomar had, jointly with Mr. Fowke and Radachund, been bound over to appear at that session on a charge of conspiracy against Mr. Hastings, Mr. Barwell, and Mr. George Vansittart. I think, to answer all these three separate charges, but *I am not sure they were so bound over previous to Nundocomar’s being committed for the forgery.*

The second or third day of the session, on the instance of Mr. Fowke, I moved that the trial for the conspiracy might be brought on, supposing the bills to be found, before the trial for the forgery.—The motion was rejected, that is to say, that the Court would make no order, but that the prosecutors must bring on the trials as should best suit their own convenience.

On the 7th June an application was made by *Mr. John Stewart (the foreman of the Grand Jury I think he was,* and who was the acting Secretary to the Governor General and Council) that Mr. Elliot might be allowed to interpret to the Grand Jury who were then sitting on the bill against Nundocomar:—He did so,—I think he went immediately in my sight from the Court along with Mr. Stewart.—Very soon afterwards, on the same day, the bill was returned and brought into Court a true bill.

I beg leave to state to the Committee now my original plan of defence:—It was, to take as broad a ground of defence as possible,—to make the prosecutor fight his way, inch by inch; and to interpose every objection

Vide Speech,
 p. 66.

Mr. Hurst, not
 Mr. Stewart,
 was foreman of
 the grand jury.
 Vide their names
 to their address.

objection I could possibly devise. On the 8th June, the first thing on the sitting of the Court was, a motion from the prosecutor's counsel to quash the indictment for an error in the dates.—I objected thereto,—that is to say, to quash that indictment, to prefer a new one,—insisting, that the error in dates was substantial matter. The court declared it to be matter of course, and the motion granted. The same day, immediately a new bill was preferred and found.—The prisoner was ordered to the bar to be arraigned.—I prayed, that, on account of his rank, he might not be put into the common prisoner's box, but have a convenient place allotted to him nearer to me, his counsel; nor that he should be obliged to hold up his hand, but be allowed to identify himself by declaring himself to be the person arraigned.—My application was rejected.—He was arraigned, and the indictment read.—I put in a plea to the jurisdiction of the Court, which was read by the proper officer.—I hold the original draught of that plea now in my hand.

Reads it, as follows :

‘ In the Supreme Court of Judicature at Fort
‘ William in Bengal.

‘ Fort William.—To wit.

‘ And the said Mahah Rajah Nunducumar in
‘ his own proper person comes, and having heard
‘ the indictment aforesaid read, and protesting
‘ that he is not guilty of the premises charged in
‘ the said indictment, for plea nevertheless saith,
‘ That he ought not to be compelled to answer
‘ to the said indictment; because he saith, that
‘ the province of Bengal, before and until the
‘ open publication and proclamation of this ho-
‘ nourable Court within the said province, to wit,
‘ at Fort William aforesaid, was regulated and
‘ governed, as to the trial of all crimes, misde-
‘ meanors, and offences committed, or supposed
‘ to be committed, before that time, by Hindoo
‘ natives resident within the said province, by the
‘ proper laws, ordinances, and customs of that
‘ province,

' province, and not by the laws or statutes of the
 ' realm of Great Britain; and that the supposed
 ' crime of which he, the said Mahah Rajah Nun-
 ' ducomar, now stands indicted, is charged by
 ' the said indictment to have been committed
 ' before such proclamation and publication of this
 ' honourable Court as aforesaid. And the said
 ' Mahah Rajah Nunducumar further saith, That
 ' within the said province of Bengal, before such
 ' proclamation and publication of this honourable
 ' Court as aforesaid, there was, and till that time
 ' had been, and now is, a certain Court called
 ' the Phouldary Adawlet, or Zemindars Cutcherry;
 ' and that all and singular crimes, misdemeanors,
 ' and offences committed, or supposed to be com-
 ' mitted, before such proclamation and publica-
 ' tion, by Hindoo natives of the said province,
 ' apprehended or taken for such crimes, misde-
 ' meanors, or offences there, have been, and of
 ' right ought to be enquired of, heard, and de-
 ' termined in the said Court of Phouldary Adaw-
 ' lut, or Zemindars Cutcherry, before the judges
 ' of that Court, or in some other Courts, or be-
 ' fore other judges within the said province of
 ' Bengal, and not in any courts, or before any
 ' justices held or appointed by or under the king
 ' or the laws of the realm of Great Britain.—
 ' And the said Mahah Rajah Nunducumar fur-
 ' ther saith, that in the
 ' said indictment, mentioned the place where the
 ' said offences, contained in the said indictment,
 ' are supposed to have been committed, before
 ' and until such proclamation and publication of
 ' this honourable Court as aforesaid, was and now
 ' is parcel of the said province of Bengal.—And
 ' the said Mahah Rajah Nunducumar further
 ' saith, That he is by birth a Hindoo, and was
 ' born within the said province of Bengal, to wit,
 ' at Moorshedabad in the said province. And that
 ' at the time when the said offence in the said indict-
 ' ment contained is therein supposed to have been com-
 ' mitted, and long before that time, and ever since,
 ' he, the said Mahah Rajah Nunducumar, was resi-
 ' dent

' *dent and commorant within the said province of*
 ' *Bengal, to wit, at Calcutta in the said province.*
 ' And that at the time when the said offence in
 ' the said indictment contained is therein supposed
 ' to have been committed, nor at the time of the
 ' commencement of this prosecution, or of the
 ' preferring of the said indictment to the grand
 ' jury or inquest charged to take cognizance
 ' thereof, nor at any time before or since that
 ' time, he was not, nor now is, directly or indi-
 ' rectly, in the service of, or employed by the
 ' United Company of Merchants of England
 ' trading to the East Indies, nor of or by the
 ' mayor and aldermen of the late Mayor's Court
 ' of Calcutta at Fort William aforesaid, or any
 ' or either of them, nor of or by any other Bri-
 ' tish subject; and this he is ready to verify:—
 ' Wherefore the said Mahah Rajah Nunducomar
 ' prays judgment, if the Court of the Lord the
 ' King here will further proceed upon the indict-
 ' ment aforesaid against him, and that he may be
 ' dismissed from the Court here of and upon the
 ' premises.

‘ THO. FARRER.’

Then Mr. Farrer said,

Against this plea the Chief Justice immediately gave Mr. Tolfrey's evidence ex-
plains this.
 a decided opinion, both as to the matter of fact and
 law contained therein.—The fact which he stated was,
 That the offence was laid to be committed at Calcutta
 —the ground of law was, the Act of Parliament, I be-
 lieve,—the charter and uniform established practice,
 and the case of Radachund Metre in particular.

Then Mr. Farrer was asked,

Was there any demurrer put in to the plea?

There was no demurrer—to the best of my recol-
 lection, the counsel for the prosecution said nothing.

Such was the state of the case to the best of my re-
 membrance.—Mr. Justice Le Maître and Mr. Justice
 Hyde concurred with the Chief Justice in opinion,—I
 do not remember whether Mr. Justice Chambers said
 any thing or not;—Mr. Justice Chambers was present
 —the plea was declared to be in no respect supportable;

This could not be the opinion of the Court: for, by rule of Court, defendants may, even in civil suits, plead over to the action after they have pleaded to the jurisdiction; this was done in the Patna cause. Vide Behader Beg's plea. Report of committee on Touchet's petition. Patna Appendix,

but I was offered leave to withdraw the same, and take time to amend it if I thought I could, *sedente curiâ*: but was asked in the same breath if I had well considered the nature and consequence of a plea to the jurisdiction—to the best of my remembrance that question was asked me by the late Mr. Justice Le Maître—I answered that I had given the point all the consideration in my power—that I conceived the question alluded to the prisoner's right to plead over to the indictment, in case the plea to the jurisdiction should be determined against him.—To that assent was nodded, and the answer of yes, yes, I think, given; and I said that I did conceive, that in clear strictness of law, in the case of a capital felony, the defendant had a right to plead over;—that appeared to me to be dissented to by a shake of the head, and a no, no, from the Bench—from Mr. Justice Le Maître I think in particular, but whether from the rest I cannot say. At all events, however, I said, that the Court had a discretionary power, I was well convinced, to allow the defendant to plead over, and that I could not entertain a doubt of their exercising that discretion, by their allowing him so to do. That also appeared to me not to be acquiesced in, in the Court. The plea to the jurisdiction having been decided against, Mr. Brix, joint advocate in the cause with myself, and I, consulted together; and it not appearing to us that the plea admitted of any substantial amendment, and we, conceiving that we might be able to avail ourselves of the effect of it by a motion to quash the indictment, or by a motion in arrest of judgment; we, for these reasons, but more especially as the Court had so strongly intimated an opinion, that in case the plea to the jurisdiction should not be withdrawn, but left to be formally decided against as upon a record, that in that case the defendant would be precluded from pleading over, not guilty, to the indictment; we availed ourselves of the leave of the Court to withdraw the plea, and it was withdrawn accordingly.

Mr. Justice Chambers immediately called for the indictment—it was handed up to him. After perusing it for some time, he expressed himself to the following effect, as well as I am able to recollect it—That he

had great doubts whether or not the indictment was well laid, being for a capital felony on the 2d Geo. II.—That he conceived that act of parliament was particularly adapted to the local policy of England, and to the state of society and manners there—where, for reasons as well political as commercial, it had been found necessary to guard against the falsification of paper currency and credit, by laws the most highly penal. That he thought the same reasons did not apply to the then state of Bengal. That it would be sufficient, and as far as the Court ought to go, to consider Bengal, in its then state, as upon the same footing that England had been between the statute of 5th Elizabeth and that of the 2d George II.—And that under the clause in the charter, which empowers the Court to administer criminal justice in such and the like manner as justices of oyer and terminer, and gaol delivery, could or might do in that part of Great Britain called England, or as near thereto as the circumstances and condition of the persons and places would admit of, *the indictment might be well laid on the 5th of Elizabeth.*—He therefore proposed from *the bench, that that indictment should be quashed, and that the prosecutor might be at liberty to prefer a new one on the 5th of Elizabeth, or otherwise, as he should be advised.*—This, to the best of my recollection, is the substance of what fell from Sir Robert Chambers.

Why compare the state of Calcutta to the state of England at the time of Q. Elizabeth, rather than at any other period?

Vide this answered in Sir Elijah Impey's Speech.

The Chief Justice immediately proceeded to give his opinion on Sir Robert Chambers's proposal.—If I am asked to state the substance of such opinion, I am afraid I shall not be able to do it so as to do justice to Sir Elijah Impey, and the other two Judges who concurred with him in opinion, or so as to give entire satisfaction to my own mind; but having said thus much, if the Committee wish to know the impression it made on my mind, I am ready to state it to the best of my power.

That he thought the indictment was *prima facie* well laid on the 2d George II. That he had always conceived India, particularly the town of Calcutta (*which was as far as it was necessary to go on the present occasion*), to be greatly commercial, and that in commercial matters, as

well as in matters of revenue, and other money transactions of a public as well as a private nature, the most important, as he conceived, were carried on through the medium of paper currency and credit—and that as to the state of society and manners, that country could by no means be considered as in an uncivilized or uncultivated state; but that on the contrary, civilization had made great progress there, as appeared from history at a very early period—and that it might perhaps be rather deemed to be degenerating and redescending, for want of wholesome laws to enforce a due attention to just dealings, than to stand in need of maturing or bringing to great perfection before such laws could be applied to them.—*That in fact, the particular law in question had been before applied in Calcutta, as well as other criminal laws of England, before the establishment of that Court*—and if I do not very much mistake, he intimated a doubt whether the instrument charged to be forged came within the description of any of the provisions of the 5th of Elizabeth.—That he thought that, *prima facie*, the one statute was as much in force as the other—and that therefore he was of opinion, the indictment was *prima facie* well laid, and *that the trial ought to proceed, and in the course of its progress, evidence be taken how the facts stood on which his opinion was founded*.—This is the impression I have on my mind of it—but I cannot speak with any great degree of certainty at this distance of time, having no note of it.

Mr. Justice Le Maistre and Mr. Justice Hyde concurred in opinion with the Chief Justice, without adding any further reason of their own—and the trial was ordered to proceed. I was very attentive to all that passed, and do not remember or believe that Sir Robert Chambers expressed any acquiescence at that or any other time in Court.—What he might do to the Chief Justice, or the other Judges, amongst themselves, I do not know—nor how far his sitting afterwards on the bench during the whole trial (which he certainly did) may be construed an implied acquiescence, I do not pretend to say.—I most certainly did, and do understand him to have been overruled at the time; nor do I remember that Sir Elijah Impey

Impey then urged any other arguments than those which to the best of my power I have already stated.

So far as my recollection serves me, evidence was taken to these facts from all or most of the principal native inhabitants of Calcutta, who were examined during the course of the trial, and who were certainly persons as well qualified to speak to them as any in Calcutta, being all persons who had been much conversant both in public and private transactions of great magnitude, to wit, Huzzerah Mul Baboo, Cossinaut Baboo, Raja Nobkissen, and Coja Petrusic: So far as my memory serves me, their evidence uniformly went strongly in support of the facts on which Sir Elijah Impey grounded that part of his opinion, which was founded in fact; and, if I do not very much mistake indeed, the same facts were also corroborated by more than one of the Jury, I think, two of them at least.—Very old inhabitants of Calcutta, and men of great business and credit, were sworn for that purpose during the trial. By facts, I mean the state of commerce, paper currency, and credit in Calcutta—and I find at this moment a strong impression on my mind, of my feeling extraordinarily hurt at it, and of my communicating such my feelings to those with whom I was most confidential, the late Mr. Monson and Sir John Claveing, as this was the principal point (independent of the merits of the case itself) on which I depended.—As to any particular acquiescence on the part of Sir Robert Chambers, I can only repeat, that I know nothing of it; nor do I know whether the signing the calendar is only expressive of a matter of fact for the guidance of the Sheriff, to wit, that such and such prisoners had been tried, and found guilty of such and such crimes, and received from the Court such and such sentences, which the calendar was to be his authority for carrying into execution; or whether it is to be considered as an approbation of the sentences themselves. If the fact be that he did acquiesce, it remains to be proved when particularly he did so acquiesce, and the nature and circumstances of such acquiescence. Be this as it may, I have concluded in my own mind, that as no notice is taken in Sir Elijah Impey's printed trial of this proposal of Sir Robert Chambers's, that may be the reason why no notice is taken therein of any evidence given

This very material circumstance seems, at this great distance of time, to have escaped the memory of Sir E. Impey, as it is not mentioned by him.

Vide Letter to the Court of Directors, of 24 Aug. 1775, signed by all the Judges; references to No. 3. No. 19. and Mr. Farrer's evidence, post.

to that point, inasmuch as such evidence did not at all apply to the merits of the alledged forgery, and therefore was not evidence to the jury, but applied simply to the point of law, or discretion (call it which you please), before stated, and was therefore matter of consideration for the Court only.

By the before-mentioned proposal of Sir R. Chambers, I found the motion which I should otherwise have made myself, at least so far as went to the question of the indictment, anticipated, for I should not have entirely concurred with him as to the introduction of the 5th of Elizabeth; and I was extremely happy to find, that a motion from so respectable a Judge, the next in seniority to the Chief Justice, and so duly respectable both as to legal knowledge, moderation, and candour, had been made from the bench in so solemn a manner, as it certainly came with infinitely greater weight from him than it could from me or any other advocate, whose own opinions might be supposed not often to coincide with the motions they might think it their duty to make.

I therefore determined to let that point rest, so far as any specific motion might go, on his proposal, thinking it was impossible to rest it on stronger ground; and I thought at the time, and even till within a few days of the prisoner's execution, that this was a certain presage of his life's being safe, let the event of the verdict be what it might;—and such my opinion I repeatedly communicated both to the prisoner and to his friends, as well as to Mr. Monson, General Clavering, Mr. Fowke, and others; and I advised Nundocomar to make his arrangements in time for sending a proper person to England, to solicit the business on his account, and to return with as much expedition as possible, in case the verdict should be against him.

The before-mentioned point being decided, the arraignment proceeded, when I tendered to the Court the paper I now hold in my hand.

It is signed by Nundocomar's own hand.

Reads it, as follows.

‘Protesting that I am not guilty of the crime
‘whereof I stand indicted, I humbly claim to
‘be tried by my God and my peers, according
‘to the laws to which I was amenable at the
‘time when the supposed fact with which I
‘now stand charged is supposed to have been
‘committed.’

The signature of
NUNDUCOMAR.

Then Mr. Farrer said,

This was rejected, the Court answering, that he must be tried, as any other person must, by the laws and provisions of the charter; and that they could see nothing particular in his case, or to that effect; asking, at the same time, who the Maha Rajah considered as his peers, as stated in the printed trial, folio 1. This offer of this paper being rejected, I immediately tendered this further paper which I now hold in my hand.

It is the original signed by Nunducumar.

Reads it, as follows:

‘My plea to the jurisdiction of this honour-
‘able Court, and my claim to be tried by my
‘God and my peers, being over-ruled and dis-
‘allowed, I am necessitated to submit to the au-
‘thority exercised over me; and therefore, hum-
‘bly protesting against the same, am obliged to
‘acquiesce in such mode of trial as the circum-
‘stances of my case require; which I do accord-
‘ingly.’

The signature of
NUNDUCOMAR.

Then Mr. Farrer said,

The Court became impatient (I beg to be understood, that when I make use of the word Court, I do not mean any particular Judge, when I do I will mention his name), saying, that I must very well know that claims or protests of this kind could not be received or paid

paid any attention to. I alledged, as a reason for my taking measures which might appear out of the common course, the uncommon circumstances and peculiar hardships under which the prisoner stood; particularly enumerating as such, and contending that although the statute under which he was going to be tried, might be in strictness deemed, as it had just been done, to extend to his case, yet that it could never have been in the contemplation of the Legislature at the time of passing it that it should extend to that country, more particularly to a native Hindoo, in a transaction with other native Hindoos, which had passed so long before the establishment of that Court, and in which no British subject was directly or indirectly concerned, and who was moreover wholly unconversant and unacquainted with the laws, language, customs, and forms of proceedings in our courts of justice, or to that effect—The Court cut me short, and the prisoner was called upon peremptorily to plead—Mr. Justice Le Maistre, to the best of my recollection, adding, under the pain of being considered as standing mute.—He accordingly pleaded not guilty, and complied with the usual forms without further opposition. The two papers which I have just given in I myself drew out in Court at the time, Mr. Foxcroft, a gentleman then under my instruction, fair copying the first, while I myself wrote out fair the latter.—I got them both signed by the Maha Rajah in Court, and they are the originals, with his signature thereto in Persian, which I have now produced.

The arraignment being finished, and the defendant having pleaded, it being then late in the day (these proceedings having taken up from 8 o'clock in the morning as per Mr. Justice Le Maistre's and Mr. Justice Hyde's letters, now produced, and printed trial, fol. 2.) the Court adjourned to the next morning, when the trial went on in the usual manner.

Reads the letters, as follows:

‘ Mr. Justice Le Maistre presents his compliments to Mr. Farrer—if the bill against
‘ Rajah

‘ Rajah Nunducumar should be found, he has
 ‘ not the least idea of having him arraigned this
 ‘ afternoon; but would have him brought up
 ‘ to-morrow morning, and thinks the earlier
 ‘ the better, to prevent a crowd, if Mr. Farrer
 ‘ has no objection.’

‘ Wednesday afternoon.’

‘ Mr. Farrer thanks Mr. Justice Le Maistre
 ‘ for his information above.

‘ Mr. Justice Le Maistre and Mr. Justice
 ‘ Hyde present their compliments to Mr. Farrer,
 ‘ and acquaint him they have directed Rajah
 ‘ Nunducumar to be brought up to be arraigned
 ‘ to-morrow, at eight o’clock precisely.’

‘ Wednesday.’

To report a progress, &c.

No. 2.

Martis, 12^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.

Mr. FARRER proceeds:

I BEG to refer to the printed trial, fol. 2 and 3,
 respecting what passed as to Mr. Elliot’s being
 requested to interpret.

Reads it, as follows:

‘ Mr. William Chambers, the principal Inter-
 ‘ preter, not being yet come from Madras, and
 ‘ the

‘ the two assistant interpreters, on account of their
 ‘ imperfect knowledge of English, being deemed
 ‘ insufficient for a trial so long as this was expected
 ‘ to be.—Mr. Alexander Kyn Elliot, superin-
 ‘ tendant of the Khalsa records, a gentleman
 ‘ eminently skilled in the Persian and Hindostan
 ‘ languages, and Mr. William Jackson, lately
 ‘ admitted an attorney of the court, who speaks
 ‘ the Hindostan tongue fluently, were requested
 ‘ by the court to interpret.

‘ The counsel for the prisoner desired that the
 ‘ evidence might be interpreted to him in the
 ‘ Hindostan language, as it was most generally
 ‘ understood by the audience; and requested that
 ‘ the interpreter of the court might be employed
 ‘ for that purpose, and objected to the interpreta-
 ‘ tion of Mr. Elliot, as being connected with per-
 ‘ sons who the prisoner considered as his enemies.

‘ Chief Justice.—The principal interpreter of
 ‘ the Court is absent; the gentlemen of the
 ‘ jury have heard the interpretation of the assistant
 ‘ interpreters on other occasions. Do you gentle-
 ‘ men think we shall be able to go through this
 ‘ cause with the assistance of those interpreters
 ‘ only?

‘ Jury.—We are sure we shall not be able.

‘ Chief Justice.—It is a cruel insinuation against
 ‘ the character of Mr. Elliot.—His youth, just
 ‘ rising into life, his family, his known abilities,
 ‘ and honour, should have protected him from it.

‘ [Mr. Elliot desired he might decline inter-
 ‘ preting.]

‘ Chief Justice.—We must insist upon it that
 ‘ you interpret; you should be above giving way
 ‘ to the imputation—Your skill in the languages,
 ‘ and your candour, will shew how little ground
 ‘ there is for it.

‘ Mr. Farrer.—I hope Mr. Elliot does not think
 ‘ the objection came from me; it was suggested
 ‘ to me.

‘ Chief

‘ Chief Justice.—Who suggested it ?

‘ Mr. Farrer.—I am not authorised to name the person.

‘ Chief Justice.—It was improper to be made, especially as the person who suggested does not authorise you to avow it.

‘ Jury.—We all desire that Mr. Elliot, whose character and abilities we all know, would be so kind as to interpret.

‘ Mr. Farrer.—I desire on the part of the prisoner, that Mr. Elliot would interpret.’

Then Mr. Farrer said,

It never once entered into my mind to make the most distant insinuation against Mr. Elliot, of whom, not only from what I had heard, but from what I knew, no one entertained a higher opinion than myself; but I had reasons which, in justice to my client, induced me to make the objection which I then did; such objections being, by-the-bye, by his particular directions, and which reasons I beg leave to state.

* * * *

[Here were the parts of the Minutes afterwards ordered to be expunged.]

Mr. Farrer was going on; but an objection being taken to his giving reasons for objecting to Mr. Elliot’s being the interpreter, as he did not state those reasons to the court at the time;

A motion was made, and the question proposed,

That the chairman be directed to acquaint Mr. Farrer, That he is not to give any reasons which operated in his mind, which reasons he did not state to the court at the time of the trial; and that such parts of the Minutes that have been now taken relating to the grounds of his objections to Mr. Elliot’s being the interpreter, not having been stated by him at the time of the trial, be expunged.

And the question being put, and agreed to,

The Chairman acquainted Mr. Farrer therewith accordingly.

Then

Then Mr. Farrer said,

When I made the objection to Mr. Elliot's being the interpreter, I do not recollect at all the terms in which I made it; nor should I have recollected even the reason assigned by me, had I not read it in the printed trial—that brings the substance of the transaction pretty fresh to my mind; and, in my own opinion, that objection is fairly expressed in the printed trial; to wit, "That I objected to the interpretation of Mr. Elliot, as being connected with persons whom the prisoner considered as his enemies."

Mr. Elliot acted as one of the interpreters, and the trial went on—he discharging the duty he had undertaken very much to the credit of his own abilities, and to my satisfaction. I cannot pretend to speak to the particulars of the evidence, having no written account of it. I employed Mr. Foxcroft, whom I before mentioned, to take the whole of it down in writing in court, as it came from the lips of the witnesses. He did so, sitting at my elbow, from the beginning to the end of the trial; and I from time to time referred to it as occasion required, to aid myself in making to the court, and to my client, the necessary observations on the different witnesses, and the particulars of their evidence. This written account of the trial, together with my observations which are stated in the Chief Justice's summing up to the jury, I, after the trial was finished, sent to the Chief Justice at his desire, and I do not remember that either the one or the other has ever been returned to me. I have lately enquired of Mr. Tollfree, a gentleman who was at that time much patronised by the Chief Justice, and who by the votes I see is ordered to attend this House on this occasion as a witness, to know if he could tell me what was become of them, and desiring him to speak to Sir Elijah Impey about them. His answer was, that he believed he knew more of them than Sir Elijah; and that he thought they had been forgot, and left amongst his (Mr. Tollfree's) papers. I have one or two general observations however to make, as to what passed during the trial. Our principal witnesses, all, generally speaking, underwent very long, and very severe, cross examinations by all the judges, seriatim, Sir
Robert

Robert Chambers excepted; by Mr. Justice Le Maître principally, Mr. Justice Hyde next, and Sir *Elijah Impey* least of all, except Sir Robert Chambers, who asked very few questions indeed.

One day, just previous to the rising of the court before dinner (I think it was the second or third day, I am not sure which), after the prisoner had entered on his defence, Nunducumar desired leave to retire from the court, and to speak to me in private. Leave was given, and we retired to the further end of the then court room, which is a very long spacious room, at other times used as an assembly room. We were surrounded at a distance by the sheriff's people. I could not speak the language of the country; he spoke no English. We conversed together through the medium of an interpreter, whose name was Occermanna, a person in whom he placed confidence, and who afterwards acted as General Clavering's Banyan. He began by thanking me in strong terms for the pains I had taken to serve him; but told me he was convinced, from what he saw, that it would be of no avail, as it appeared to him that the court were decidedly his enemies; assigning as a reason for such his opinion, the different treatment his witnesses had met with from the court, from that which the prosecutor's had; that therefore it was his intention not to give either the court or me any further trouble, but submit at once to his fate. I advised him strongly by no means to give way to any such idea; to rest assured that the court would do him justice; and that though some things might appear somewhat extraordinary to him, who was unacquainted with our courts, yet that I had seen nothing that could warrant any such conclusion as he had drawn. He put it very strongly and very solemnly to me, Whether I did not think his witnesses had been very differently treated by the court to what the prosecutor's had been? and whether, in my opinion, the court did not seem against him? I avoided giving him a direct answer, but told him, since it seemed to have made so deep an impression on his mind, I would think of some means of communicating the substance of what he had said to the judges; but that it was a very delicate point,

point; and that I was at a loss at that moment how to do it. I begged of him, at all events, to make his mind easy, and that when he was brought back into court after dinner, I would let him know what I had determined upon, or done. This was the whole that passed between us. He returned back into court, and shortly afterwards the court rose for dinner. I felt the extreme impropriety that there would be in mentioning any thing of this sort in court, according to my ideas of it; and I had also great delicacy, as well as considerable apprehensions, as to doing it in private. However, as I thought the prisoner's coming into court, giving up his defence at once, and assigning those publicly for his reasons, which I was really apprehensive he would do, would be the worst and most disagreeable thing that could happen, I therefore determined on communicating in private to the judges what had passed between him and me. I accordingly, immediately after dinner, without having then, or at any time since, to the best of my remembrance, mentioned a word of the matter to any one, directly or indirectly, not even to Mr. Brix, joint advocate with me in the cause, went up stairs to the judges room (the counsel dined below, the judges on the same floor with the court room), sent in a message to the Chief Justice by his Chubdar. He came out to me. Before any thing particular was said, the other three Judges, at his desire as well as mine, were sent for out, and all came. I began by begging that no degree of blame might be imputed to me for what I was going to mention, solemnly averring, as the fact was, that the idea of it had not, directly or indirectly, originated with or been encouraged by me, but that it had originated with the prisoner himself, and been communicated to me when we retired from the Court that day before dinner; that it was of a very delicate nature, and by no means, in my opinion, fit to be mentioned in Court, and that I must again beg not to incur their displeasure, by communicating it in the manner I then proposed, which appeared to me the least exceptionable; and that I would not have offered to do that, was it not through the apprehension that something, which I conceived would be more disagreeable,

able, might otherwise follow. After a short consultation amongst themselves, the Judges determined to hear me. I then stated to them, as near in substance as I possibly could, what had passed as before mentioned between Nundoomar and me.—The following was the substance of their answer to the best and utmost of my remembrance and belief.

1st. That the nature of our defence, after the plain tale told by the prosecutor and his witnesses, was in itself suspicious.

2dly. That they found the prosecutor's advocates wholly unequal to the task of cross-examining witnesses, prepared as ours appeared to have been; and that, had they not acted, and did they not continue to act, in the manner they had done, it would be, in effect, suffering the purposes of justice to be entirely defeated.

3dly. That as to any difference of treatment by the Court between the prosecutor's witnesses and the prisoner's; in the first place, the prosecutor's case did not appear in so suspicious a light as ours did: And in the second, that, generally speaking, I had cross-examined the prosecutor's witnesses as far as the case seemed to them to require; and that they, the judges, had in fact, where I had left any thing deficient, put to them every question which appeared to them necessary to elucidate the business, and answer the ends of justice.

In all I have here said of the judges' answer to my communication, I do not mean to include Sir Robert Chambers, but only the three others; and as to them, I beg leave again to observe, that I only state a fact, and that not partially, but fully and fairly, the whole of what passed on both sides, to the best and utmost of my remembrance and belief, and which I should not have thought myself justified (standing in the light I at present do) in concealing. I do not remember that Sir Robert Chambers said any thing at that instant. He stood behind when the other judges returned into the room, or took another opportunity almost immediately afterwards, and before the Court sat again that day (I am really not sure which, but think the former), of speaking to me, nobody present but himself and me: He said that the communication I had made gave him great uneasiness;

[K.]

that